23 June 2019

Who are we after worlds collide

Explorations into the sources of sui generis legal persons in Colombia: the Atrato River

From the series "Photography of a pariah society"

Myriam Ximena Arenas Orbegozo
Master thesis
MLL International Law and Human Rights
Tilburg University

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EXPLORATIONS INTO THE SOURCES OF *SUI GENERIS* LEGAL PERSONS IN COLOMBIA: THE ATRATO RIVER

FROM THE SERIES "PHOTOGRAPHY OF A PARIAH SOCIETY"

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THE NETHERLANDS
23 JUNE 2019

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To my Avishai Raphael

Our ancestors
Our successors

For you and everyone else on Earth
deserve the unlimiting joy of experiencing
the beautiful and generous life I have seen in all its forms

God Love has healed us
God Love has blessed us

I. Acknowledgements

I am deeply grateful to all professors at Tilburg Law School who generously shared their wisdom in class and informal talks, especially Professors Kees Bastmeijer for his supportive supervision, Professor Floor Fleurke for her role as second reader, and Professors Hans Lindahl and Han Somsen for their unconditional support, as well as -in no particular order- Professors Morag Goodwin, Jonathan Verschuuren, Nicholas Raijkovic, Philip Paiement, Arie Trouwborst, Panagiotis Delimatsis, Anna Meijknecht and Nicola Jägers.

I am also deeply grateful to the interviewees, colleagues, professionals and leaders whose guide and enriching insights were enormously inspirational and educative; especially, in no specific order, Professors Patrick Parenteau from Vermont Law School; Otto Spijkers from Utrecht University; Gustavo Arosemena from Maastricht University; international lawyers Patricio Alvarado Luzuriaga and Agustina Gultom, and my classmates at Tilburg University; as well as those who preferred their names and contributions be kept in anonymity but had the kindness to share their knowledge with me. My greatest admiration goes to the people with the courage to defend the environment and human rights in Colombia despite such struggle taking dozens of lives every year in our country.

A very special note of admiration and appreciation is due to Felipe Clavijo-Ospina, whose inspiring, devoted, and conscious work within the Constitutional Court of Colombia and the office of the Inspector General of Colombia, together with his open disposition to share his wisdom, were central to the research reflected in this document.

A special mention is also due to Professor Fabián Cárdenas, whose insights and intellectual curiosity were extremely meaningful for this work. His initiative to conduct periodic events called "Green Lunch" at Universidad Jorge Tadeo Lozano in Bogotá, and to make them publicly available online, has been an enriching and awakening balm to this thesis despite geographic limitations.

The research prospects of the legal transformations incipiently explored hereunder took an unexpected turn thanks to Professor Aura Patricia Bolívar, who brought to my attention the implications of judicial decisions on legal personhood for non-human elements of Nature for social and legal problems that did not seem apparent from the outside, particularly, how they may encompass other processes such as the evolution of environmental, human rights, ethnic rights and peasants rights protections in the context of the land restitution efforts and the internal armed conflict scenario in Colombia; a country whose immense cultural, social and ecological diversity are its greatest blessings yet, sadly, are also the trophy of contention between ill-minded political and business elites. Her exceptional insights opened the door to a wide and fascinating world of conceptual and legal enquiry for which I am enormously grateful.

Many other masters of science and life to thank, they all invaluable: My family, by blood and hearth, accompanying me through academic, work and daily life; particularly my son, Avishai Raphael, whose smile has healed and powered all nights and dawns; my unconditional husband Michael Verba, for his love and wisdom; my sister-in-heart Paola Moreno, for being always there to listen and teach; and the feline and other gracious non-human blessings at home; as well as the friends, colleagues and scholars whose support in one way or another remains vivid, notwithstanding time and distance. To my parents, all words are insufficient to thank for, literally, everything. And to all spirits and souls of the universe, living on Earth and beyond, who shed light and love for us to become who we are meant to be.

All errors and flaws in this work remain solely mine.

II. PREFACE

This master thesis explores the world's first definitive national ruling that granted rights to a non-animal element of Nature, hereinafter referred to as the "Atrato-Tutela". While at first sight this judgement fundamentally proposes a transformation to our understanding of the core institution of legal personhood, by extending it beyond the human realm, it is important to note that the ruling can be positioned in the context of a broader landscape of narratives that question a wider range of fundamental assumptions embedded in mainstream (legal) discourses. In this sense, the reformulation of legal personhood may be viewed as a symptom, a feature, a point of departure, and also a result, of wider ethical and societal transformations powered by alternative ways of looking at the world. Due to space constrains, the pluriverse of narratives resonating with the tens of pages contained in the Atrato-Tutela will be herein omitted, but they are worthy of further exploration and appreciation.

Digging into the background and substance of transformational approaches as that proposed by the Atrato-Tutela is urgent considering that, to date, classical frameworks have extraordinarily failed to halt global warming and environmental degradation,[1] with their correlated devastating effects on human rights.[2] Furthermore, the fragmenting categories of the transnational legal order as a product of the hegemonic world(view) are increasingly becoming obsolete.[3] Facing the prospects of environmental catastrophe, the time seems ripe[4] for Nature-friendly worldviews and alternatives to

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[1] Intergovernmental Panel on Climate Change - IPCC, *Summary for Policymakers of IPCC Special Report on Global Warming of 1.5ºC Approved by Governments* (2018) 3, 22.

[2] World Meteorological Organization, 'WMO Climate Statement: Past 4 Years Warmest on Record' (Press Release 29112018, 29 November 2018). ‹ https://public.wmo.int/en/media/press-release/wmo-climate-statement-past-4-years-warmest-record › accessed 23 December 2018.

[3] Hans Lindahl, *Authority and the Globalisation of Inclusion and Exclusion* (CUP 2018) 7. Some of the categorizations at peril are: (i) states v non-state actors: (Melissa J. Durkee, 'The Business Of Treaties' (2016) 264 UCLA L Rev 264, 268, 272-273; (ii) sovereignty and territory (Christina M. Schiavoni, 'Competing Sovereignties, Contested Processes: Insights from the Venezuelan Food Sovereignty Experiment' (2015) 12 Globalizations 466, 474); (iii) subjects of rights, where the classical categories of born humans and human-made entities are joined by unborn humans, future generations, persons outside of the territory and animals and other non-human elements of nature; and (iv) top-down technocratic approaches v bottom-up approaches struggling to give voice to the unheard, the invisibilized, to *them* - those historically left behind/outside, as shown in the Atrato-Tutela, the numerous judgments on free, prior and informed consent of affected communities (some of which are referred to in this work), or the covenants contained in instruments like the Aarhus Conv., or the river disputes in USA that have led to collaboration between indigenous communities and local governments to maintain fisheries with the oversight of the judiciary (Interview with Patrick Parenteau, Professor of Law and Senior Counsel in the Environmental and Natural Resources Law Clinic (ENRLC) at Vermont Law School (Skype call, 21 December 2018); and The Bill Lane Center for the American West , *In the Pacific Northwest, Native Fishing Rights Take on a Role as Environmental Protector* (Stanford University 2018) and Timothy Weaver, 'Litigation and Negotiation: The History of Salmon in the Columbia River Basin' (1997) 24 Ecology LQ 677). Even if incipiently, the bottom-up approach might help enabling public exposure in hegemonic fora of new social movements like millennial socialism - which advocates for greater democracy for the 99% left behind/outside by the hegemonic world(view) (Ben Judag, 'What is Millenial Socialism?' (*The American Interest*, 2018) ‹https://www.the-american-interest.com/2018/07/24/what-is-millennial-socialism/› accessed 1 March 2019); climate justice activism -which lacks political representation but speaks for the youngest and for future generations (e.g. see Jonathan Watts, ''The Beginning of Great Change': Greta Thunberg Hails School Climate Strikes' (*The Guardian*, 2019) ‹https://www.theguardian.com/environment/2019/feb/15/the-beginning-of-great-change-greta-thunberg-hails-school-climate-strikes› accessed 1 March 2019), or the peasant movement (La Via Campesina, 'Finally, UN General Assembly adopts Peasant Rights declaration! Now focus on its implementation' (17 December 2018) ‹ https://viacampesina.org/en/finally-un-general-assembly-adopts-peasant-rights-declaration-now-focus-is-on-its-implementation/ › accessed 1 February 2019), i.a.

[4] John W. Kingdon, 'How Does an Idea's Time Come?', *Agendas, Alternatives and Public Policies*, vol Longman Classics in Political Science (Agendas, Alternatives and Public Policies, 2nd edn, Longman 2003).

the failing premises of the hegemonic world(view),[5] particularly for those attempting to deepen democratization, that is, to widen who *we* are.[6]

Before embarking on the thesis, it is important to make some clarifications:

To the extent of my knowledge, there is no official English translation of the Colombian judgments reviewed hereunder. Unless otherwise stated, all translations from Spanish into English of these judgements and other materials cited in this thesis are made by the author hereof.

A considerable portion of the texts contained in the documents reviewed and/or translated throughout this work are originally expressed in masculine form (referring to man or men). Similarly, some original texts appear in singular form. I translated some of the original text as gender neutral and/or plural language in order to ease readability and/or highlight the (potential) commonality of the argument. However, I maintained some of the original masculine and singular original wording in order to reflect how -even the most progressive and recent- legal narratives still are often expressed with a gender bias and/or with a non-holistic or non-collective perspective.

All texts in the tree-charts and graphics drawn herein were directly extracted or deducted from the judgements to which they refer. Quotations have generally been omitted for ease of illustration.

For methodological reasons, this work will fall in the trap of antagonizations and categorizations, dividing the Atrato-Tutela's universe into 'worlds' that overlook colorful spectrums of reasoning. Such approach contributes to illustrate how violent generalizations and stereotypes can be if one looks unidirectionally within one world. However, in fact, everyone can be a world on its own, and ultimately the point of this work is that all worlds should be contemplated and taken into account because they all are part of the same universe.

1. Tibet

"After a short time in the country, it was not possible for one thoughtlessly to kill a fly, and I have never in the presence of a Tibetan squashed an insect that bothered me. The at-titude of the people in these matters is really touching. If at a picnic an ant crawls up one's clothes, it is gently picked up and set down. It is a catastrophe when a fly falls into a cup of tea. It must at all costs be saved from drowning [...] In winter they break the ice in the pools to save the fishes before they freeze to death, and in summer they rescue them before the pools dry up [...] Meanwhile, the rescuers have done something for the good of their own souls. The more life one can save the happier one is [...]

Typical of this attitude toward all living creatures was a rescript issued in all parts of the country to persons engaged in building operations [...] It was pointed out that worms and insects might easily be killed during the work of building, and the utmost care to avoid this was enjoined on all. Later on, when I was in charge of earthworks, I saw with my own eyes how the coolies used to go through each spadeful of earth and take out anything living."[7]

[5] Oliver A Houck, 'Noah's Second Voyage: The Rights of Nature as Law' (2017) 31 Tul Envtl LJ 1, 45-48.
[6] D. Bethlehem, 'The End of Geography: The Changing Nature of the International System and the Challenge to International Law' (2014) 25 Eur J Int'l L 9 18.
[7] Heinrich Harrer, *Seven Years in Tibet* (first published 1953, Richard Graves tr, Penguin 1981) 263-265.

2. Abstract

This thesis explores the notion of legal personhood, as formulated by the Constitutional Court of Colombia, in the judgement that granted rights to the Atrato River Basin (hereinafter "Atrato-Tutela"). Understanding this redefinition of personhood helps dimension how the ruling differs from classical concepts relating thereto. The research results are presented in three stages: The first stage summarizes the Atrato-Tutela's input, that is, the main sources and arguments used to craft and interpret the content and scope of legal personhood, in view of their evolution with regards to two precedents: T-380/1994 and T-652/1998. This input has been divided into factual, scientific, legal, societal and ethical 'worlds', in order to facilitate the identification of concepts within given narratives. The second stage portrays the judicial output, i.e., the resulting reformulation of legal personhood within each world. The third stage analyzes how the Atrato-Tutela collides with classical narratives. The research reveals that legal personhood in the Atrato-Tutela is vested in *collective*, *interconnected*, *diverse* human and non-human subjects that cannot be reduced to the classical frameworks of environmental and individual human rights law. This construction of personhood strongly derives from preceding case-law embedding strong criticisms to the foundations of modernist values and legal categories, and responds to (transnational) biocultural and ecocentric narratives pursuant to which environmental and social policy are to be discussed and decided through transnational, bottom-up, multi-stakeholder fora that include subjects and worldviews generally marginalized in classical institutional and legal setups. The notions and arguments examined in this thesis may be relevant to environmental and human rights defense, ecosystem management and bottom-up policy design.

Keywords: Legal personhood, Nature's rights, Earth jurisprudence, environmental protection, ethnic groups, hegemony, biocultural rights, ecocentrism, Atrato River Basin, Chocó.

3. List of Abbreviations

ABBREVIATION	
Art(s).	Article(s).
CESCR	Committee on Economic, Social and Cultural Rights.
Conv.	Convention.
CP	Constitución Política de Colombia (Colombian Constitutional Charter).
Decl.	Declaration.
Envt./Envtl.	Environment/Environmental.
IACHR	Inter-American Commission of Human Rights.
IACtHR	Inter-American Court of Human Rights.
ILO	International Labour Organization.
Intl.	International.
IMF	International Monetary Fund.
M.P.	Magistrado Ponente (Justice).
OAS	Organization of American States.
Recomm.	Recommendation.
Ref.	Reference.
Res.	Resolution.
R&D	Research and Development.
Tty.	Treaty.
UN	United Nations.
UNDOC	United Nations Office on Drugs and Crime.
UNGA	United Nations General Assembly.
WTO	World Trade Organization.

4. List of Graphics

Cover:
Boy: Avishai Raphael. Photographer: Myriam Ximena Arenas Orbegozo. Frame: loonapix.com

III. Introduction

1. The Atrato River Basin Case

The history of the world's jurisprudence would change on 10 November 2016 when, for the first time, a definitive ruling by a national court granted rights to a non-animal element of Nature; in fact, to a river basin located in one of the mega-diverse hotspots on Earth: The Atrato River Basin. The ruling by the Constitutional Court of Colombia (hereinafter "Atrato-Tutela"),[8] was the final stage of a constitutional claim seeking to halt life-threatening extractive activities along the basin, and its innovative stand on non-human rights would make it famous in mass media and legal circles around the Globe.[9] But, what are the bases of this ruling? And how does the ruling differ from classical notions of law, beyond the immediate stand on non-human rights?

Answering these questions can be useful for international environmental protection, insofar as they may provide arguments to explore the viability of Nature's rights as a valid approach to manage the devastating environmental crisis ahead.[10] Furthermore, the ruling's substantiation can be useful for legal theory and human rights law, in order to assess to what extent classical definitions of legal personhood and legal entitlements may be suitable for the environmental challenges posed by the XXI century. The arguments underlying the governance mechanisms devised in the Atrato-Tutela may be relevant for policy analysis, to the extent that they are based on a bottom-up multi-stakeholder approach.

In the Atrato-Tutela, the NGO "Tierra Digna", representing several Community Councils of indigenous, afro-descendant and peasant groups in the province of Chocó, claimed that several divisions of the Executive Branch (the Presidency and multiple national, regional and municipal agencies), had failed to halt illegal mining and logging activities that were causing serious and massive environmental harm which, in turn, violated the claimants' fundamental rights.[11]

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[8] *Tierra Digna and others v Presidency and others* [2016] Constitutional Court of Colombia T-622/16, M.P. Jorge Iván Palacio Palacio, Expediente T-5.016.242, 10 November 2016, hereinafter "Atrato-Tutela".

[9] E.g. Bram Ebus, 'Colombia's Constitutional Court Grants Rights to the Atrato River and Orders the Government to Clean Up its Waters' *Mongabay* (22 May 2017) Global Forests ‹https://news.mongabay.com/2017/05/colombias-constitutional-court-grants-rights-to-the-atrato-river-and-orders-the-government-to-clean-up-its-waters/›; Nick Mount, 'Can a River Have Legal Rights? A different Approach to Protecting the Environment' *Independent* (13 October 2017) ‹https://www.independent.co.uk/environment/river-legal-rights-colombia-environment-pacific-rainforest-atrato-river-rio-quito-a7991061.html›.

[10] IPCC, *Summary for Policymakers of IPCC Special Report on Global Warming of 1.5ºC Approved by Governments*; G. Ceballos, P. R. Ehrlich and R. Dirzo, 'Biological annihilation via the ongoing sixth mass extinction signaled by vertebrate population losses and declines' (2017) 114 Proc Natl Acad Sci U S A E6089; W. Steffen and others, 'Planetary boundaries: Guiding human development on a changing planet' (2015) 347 Science 1259855.

[11] Pursuant to Arts. 86 and 239 through 245 CP, as well as Decrees 2591 of 1991 and 306 of 1992, "Tutela" is an expedite judicial action (of maximum 10 days from filed date), of residual character (where no other legal or judicial mechanism is available or as a transitory measure to prevent an irreparable harm), to afford immediate protection to fundamental constitutional rights), against state agents, and/or non-state agents providing public services or whose conduct seriously affects collective interests or in respect of which the petitioner is in a condition of subordination, dependence or defenselessness. The Constitutional Court, by means of 'Autos' (writs), may require information, performance of an act or other means of compliance with its tutela judgements. Pursuant to Art. 241 CP, the Constitutional Court assesses the constitutionality of certain legal provisions, instruments and acts (via "C" judgements); can discretionally review lower court *tutelas* (via "T" judgements); and harmonizes the application of constitutional case-law via unifying judgements (via Sentencias de Unificación, "SU" judgements).

Preceding the Atrato-Tutela, and in view of the serious threats to life posed by illegal activities, particularly (but not limited to) the exposure to highly toxic substances like mercury, the Colombian Ombudsman had declared an ecological, social and humanitarian emergency in the area,[12] while the petitioners had unsuccessfully sought different administrative and judicial measures of redress, including several class actions that had been resolved in favor of the claimants but remained non-complied by the authorities.[13]

Before reaching the Constitutional Court, originally the Administrative Tribunal of the Province of Cundinamarca had dismissed the case, such dismissal thereafter confirmed in an appeal resolved by the Council of State.[14] Upon the persistence of the Ombudsman, the case was chosen for constitutional review. Finally, the Constitutional Court ruled that:

A. The petitioners' rights to life, health, water, food security, and a healthy environment, as well as the ethnic rights to culture and territory, were being seriously violated by the omission of various State agencies to tackle the "multiple historical, socio-cultural, environmental and humanitarian problems affecting the region, which recently have been aggravated by intensive activities of illegal mining".[15]

B. The Atrato River Basin was acknowledged as a subject of rights to protection, conservation, maintenance and restoration. This *sui generis* legal person[16] was to be primarily stewarded by local peoples, who were deemed co-responsible for its protection.[17] The ecosystem was to be represented by a member of the ethnic communities in the area and a member of the State, both responsible for establishing and integrating a Commission of Stewards (*Comisión de Guardianes del Río Atrato*). The Commission was to have a multi-stakeholder advisory board integrated by the *Instituto Humboldt*, WWF Colombia and any public and private institutions, regional and national universities, research centers on natural resources, national and international environmental organizations, communities and citizens, that wish to join.[18]

C. Several State agencies at national, regional and municipal level were to formulate and conduct: (i) environmental plans to decontaminate the basin, recover its ecosystems and halt additional damage; (ii) joint action plans to definitely neutralize and eradicate illegal mining along the basin and the Province of Chocó; (iii) ethnic-development plans to recover ancestral means of subsistence and food security of the communities affected, ensure a minimum degree of food security and food sovereignty, prevent further displacement, and restore the communities' rights to culture, participation, territory,

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[12] Ombudsman Res. 64//2014.

[13] *Atrato Tutela*, 21.

[14] According to Colombia's Constitutional Charter, the Council of State is the highest tribunal on administrative law (Arts. 236-238), while the Supreme Court is the highest tribunal in all other legal matters (Arts. 234-235). The Constitutional Court is the ultimate forum on supra-legal matters, that is, constitutional affairs (Arts. 239-245). Besides, there are special jurisdictions, such as indigenous jurisdictions (by indigenous for indigenous, within indigenous reserves and under indigenous rules, Art. 246), peace jurisdictions (Arts. 247, and particularly the *Jurisdicción Especial para la Paz* (Especial Peace Jurisdiction) created in the context of the Peace Agreement through Acto Legislativo 001 of 2016) and the criminal jurisdiction for the military (Art. 221).

[15] *Atrato Tutela*, 163-164.

[16] For simplification purposes, in this work, the terms 'right-holder', 'legal person', 'legal subject', 'legal entity', 'subject of rights', 'subject of law' and the like will be used as synonyms denoting an entity vested with rights (and/or obligations) that may be enforceable for her/his own benefit, directly or through a representative. While doctrinally there may be differences among these and similar terms, discussions on those differences are herein omitted due to space constraints.

[17] *Atrato Tutela*, 144.

[18] Instituto Humbold and WWF Colombia were designated based on their experience with protection of the Bito river in the province of Vichada. Ibid, 159. This commission was inspired in the New Zealand model for the Whanganui river. Ibid, 145 and interview with Felipe Clavijo-Ospina, former law clerk at the Constitutional Court of Colombia (video-call conversation, 17 February 2019).

identity, ways of life and ancestral economic activities;[19] and (iv) toxicological and epidemiological research on the conditions of the basin and its inhabitants, in relation to the substances used in mining therein, with the support and supervision of the *Instituto Humboldt*, WWF Colombia, universities and research centers.[20]

D. The national government was to: (i) implement Ombudsman's Res. 64/2014 and create an inter-institutional commission to tackle the serious humanitarian, social and environmental crises affecting the Province of Chocó; and (ii) adopt measures necessary to secure sufficient and timely resources ensuring continuous and progressive implementation of the judgement.[21]

E. An interinstitutional monitoring mechanism was to be established between the Colombian Ombudsman, the Office of the Comptroller General, and the Office of the Inspector General, altogether responsible for follow-up and supervision of the judgement's implementation, complaint handling, advice and coordination. This mechanism was to be led by the Inspector General, responsible for (i) submitting semesterly reports thereon to the Administrative Tribunal of Cundinamarca and to the Constitutional Court -the latter retaining permanent jurisdiction over the case; and (ii) establishing and leading a Board of Experts (*Panel de Expertos*) integrated by the petitioners, NGOs and specialists in different fields. This Board was empowered to supervise, accompany and advise the Guardians.[22]

2. The Core of this Research

Legal transformations turning non-human elements of Nature into subjects of rights are scarce and have only started to appear in national legal systems of peripheral countries across three continents in the past 11 years.[23] Because these legal innovations embody discourse differing from mainstream approaches, clashing therewith, they may be considered as potential transnational cradles of alternative frameworks for environmental protection. Moreover, these innovations lead us to question what constitutes a person, and at which hierarchical level we should place non-human elements of Nature within the legal world, who should be entitled to alter such hierarchy and upon which basis, who should be the core beneficiary of environmental protection, and what role humans (should) play as part of ecosystems.

The Atrato-Tutela is *prima facie* located in the history of XXI century innovations in the landscape of the incipient fields of Nature's Rights or 'Earth Jurisprudence'.[24] Yet the Atrato-Tutela is special because, save for regional judgements in India, all previous proclamations of these kinds of rights occurred through legal or constitutional reforms and not through adjudication.[25] This particularity allows enquiry into the democratic character of such change as a function of the way how the legal order interacts with unconventional worldviews.[26]

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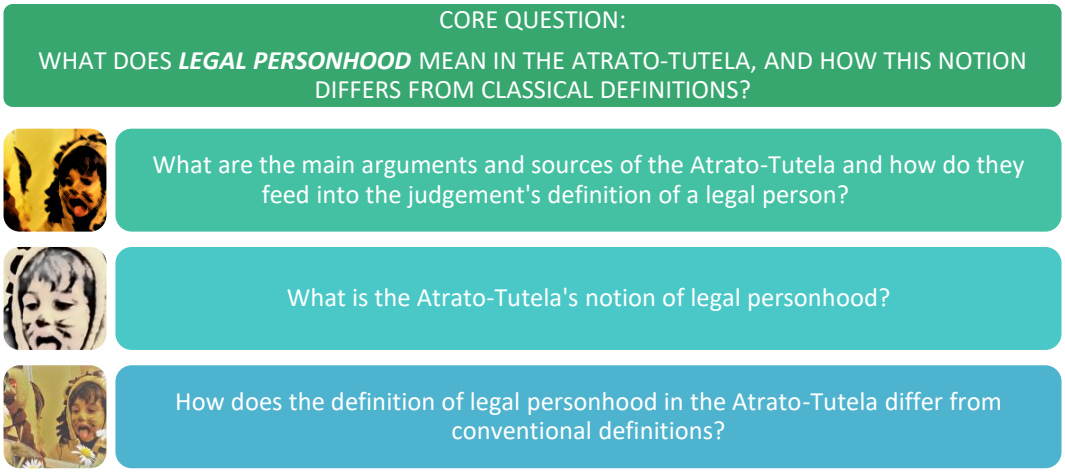
[19] Ibid, 166.
[20] Ibid, 160-162.
[21] Ibid, 168.
[22] Ibid, 159-160, 162.
[23] Harmony with Nature, (published 19 July 2017) UNGA (Report of the Secretary General A/72/175), 16.
[24] United Nations, 'Earth Jurisprudence' ‹http://www.harmonywithnatureun.org/ejInputs/› accessed 18 May 2019.
[25] It is worth noting that last year, the Colombian Supreme Court also declared another megadiverse ecosystem, the Amazon, as a subject of rights: *Andrea Lozano and others v Presidency and others* [2018] Supreme Court of Colombia STC4360-2018, M.P. Luis Armando Tolosa Villabona, Radicación 11001-22-03-000-2018-00319-01, 5 April 2018, hereinafter "Amazon Tutela".
[26] In this work, the terms 'cosmovision' and 'worldview' will be used interchangeably.

Being a first timer, was the Atrato-Tutela the eccentric ruling of an activist judge? International environmental lawyers know that the judgement encompasses similar legal innovations elsewhere,[27] but the underlying bases of the ruling have been eclipsed by the spectacularity of introducing a non-human element of Nature as a right-holder, or by practical concerns regarding environmental management. In particular, the Atrato-Tutela has been analyzed from the perspectives of legal pluralism,[28] ecosystem management,[29] standing,[30] protection of sacred sites,[31] environmental and constitutional justice,[32] and ecocentrism,[33] i.a. Yet the Court's orders summarized above suggest that the Atrato-Tutela was not only a judgement about a river's rights -as literature might tend to emphasize, but a ruling challenging traditional approaches to environmental law, human rights protection and policymaking.

International literature is still due to further draw the universe in which the ruling arose, and to dig into the substance of argumentation contained in its 293 pages. The purpose of this research is to unveil this universe, having as central hypothesis that the Atrato-Tutela is not an unexpected rarity within the Colombian constitutional landscape, but the superego of a large body of constitutional jurisprudence progressively redrawing core notions of law, in dialogue with alternative narratives gaining ground in constitutional and environmental discourses. If this hypothesis is correct, the Atrato-Tutela may be viewed as the ultimate expression of the ego ideal of environmental and human rights protection developed by the Constitutional Court since its inception.

With the aspiration to grasp said universe, this work focuses on the definition of *legal personhood* that the Court crafted in the Atrato-Tutela, assessing how this reformulation differs from classical approaches to such foundational notion. To that end, the research has been divided in three lines of enquiry, each addressing a sub-question: First, the document explores the judgement's main sources and lines of argumentation and how they fed into the ruling's definition of a legal person. Second, the thesis analyzes the resulting notion of legal personhood. Finally, the thesis contrasts the notion of legal personhood crafted in the Atrato-Tutela against classical approaches.

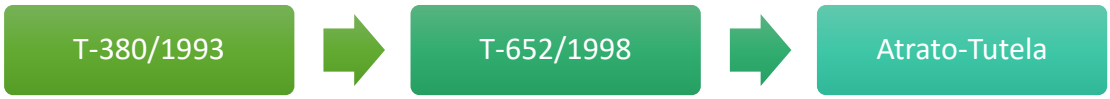


Graphic 1. Research questions.

[27] UN United Nations, 'Rights of Nature, Policy and Education' 2019) ‹http://www.harmonywithnatureun.org/rightsofnature› accessed 3 March 2019.
[28] Elizabeth Macpherson and Felipe Clavijo Ospina, 'The Pluralism of River Rights in Aotearoa, New Zealand and Colombia' (2015) 25 Journal of Water Law 283.
[29] Michelle Bender, 'As Nature Evolves, So Too Does MPA Management Need to Evolve' (2018) Biodiversity 1.
[30] Lidia Cano Pecharroman, 'Rights of Nature: Rivers That Can Stand in Court' (2018) 7 Resources 1.
[31] John Studley and William V. Bleisch, 'Juristic Personhood for Sacred Natural Sites: A Potential Means for Protecting Nature' (2018) 24 PARKS - The International Journal of Protected Areas and Conservation 81.
[32] Erin Daly, 'Environmental Constitutionalism in Defense of Nature' (2018) 53 Wake Forest L Rev 667; Heinrich Böll Stiftung, *La Corte Ambiental - Expresiones Ciudadanas sobre los Avances Constitucionales* (2018), 65-94.
[33] Heinrich Böll Stiftung, *La Corte Ambiental - Expresiones Ciudadanas sobre los Avances Constitucionales*, 263-318.

In order to assess the evolution of the notion of legal personhood within the Constitutional Court, the sources and argumentation of the Atrato-Tutela are viewed in reference with two of its source precedents: Tutela judgements T-380/1993 and T-652/1998, both dealing with the content and scope of legal personhood in the context of human rights violations against Emberá-Katío indigenous communities.

Shedding light on these source judgments allows for an account of the history of the Court's narratives relating to the foundational notion of legal personhood, in order to understand whether and to what extent the micro-cosmos of these precedents provided seeds for the innovative approaches taken in the Atrato-Tutela, altogether potentially useful as a reference for international defense of environments and human rights. These two judgements also help to dimension the environmental and social impacts that economic activities have had across river basins in the West of Colombia in the last 30 years, and how the Constitutional Court has responded to these impacts over time. Due to space constraints, other judgements, which may be equally relevant and valuable, will be omitted or only briefly referred to herein.[34]



Graphic 2. Jurisprudential timeline under study.

A. T-652/1998

T-652/1998[35] was chosen because it dealt with similar violations of rights to the Emberá-Katío of Alto Sinú indigenous community, affected by the alteration of the Sinú River system: In T-652/1998 (against the limited liability corporation 'Empresa Multipropósito Urrá S.A.-ESP' and several State divisions at national, regional and municipal level), the Constitutional Court found violation of the petitioners' rights to life (survival), participation, due process, and to ethnic, cultural, social and economic integrity; as a result of the serious environmental and social damage caused by irregularities in the construction of a hydroelectrical project that deviated the Sinú River, flooded indigenous territories, and decimated fish stocks necessary for the survival of peoples in the area. The ethnic development programs linked to the project had only been carried out for about a year and State authorities had meddled in the election and performance of the tribe's representatives.

[34] Besides T-380/1993 and T-652/1998 studied hereunder, other judgements that were particularly relevant for the Atrato-Tutela are: (i) T-188/1993, which dealt with a threat to life, equal treatment, health, education, religious freedom and other fundamental rights of the Paso Ancho tribe due to the failure by State authorities to apply laws on establishment of indigenous reserves (ii) T-342/1994, which dealt with fundamental rights of the nomadic Nukak-Maku indigenous people, whose rights to ethnic and cultural diversity, legal personhood, health and equal treatment were at peril due to the lack of access to basic services and the evangelizing activities of missionaries; (iii) T-576/2014, which dealt with minority rights of afro-descendant tribes, equating their protections to those of indigenous peoples (pages 52-70) and declaring unconstitutional to require official membership certificates (this judgement undertook an outstanding study of ethical, historic, literary, academic, constitutional and legal sources of the conditions and struggles of indigenous and tribal communities, strongly questioning mainstream attitudes and biases).

[35] T-652/1998, *Rogelio Domicó Amaris and others v Presidencia de la República (Presidence of the Republic of Colombia) and others*, M.P. Carlos Gaviria Díaz, Ref. Expediente T-168594 and T-182245, 10 November 1998.

The case was first brought before the Tribunals of the cities of Montería and Bogotá, which dismissed the claims on procedural grounds. In appeal, the Supreme Court of Justice confirmed the dismissal. In contrast, the Constitutional Court safeguarded the petitioners' rights, considering that the ecological damage caused by the project may lead to the community's disappearance, as it seriously affected fish stocks and put at risk the community's survival. The Court, ordered i.a. that the undertaker indemnify the petitioners for the cultural, social and economic changes forced by the hydroelectrical project, and that an agreement be reached to prevent, mitigate and compensate future effects of the project.[36]

B. T-380/1993

T-380/1993[37] played a preponderant role in the substantiation of T-652/1998, and also dealt with similar violations of rights to an Emberá-Katío tribe settled on the Chajeradó River, which is a tributary of the Atrato River and crosses the municipality of Murindó (a territory neighboring the Chocó province). T-380/1993 arose due to intensive illegal logging activities carried out by Reinero Palacios, a contractor of the private company 'Compañía de Maderas del Darién-Madarién', which were causing severe environmental degradation in an indigenous reserve.

This case was first adjudicated by an Agricultural Judge (*juez agrario*) in the Province of Antioquia, who afforded protection to the petitioners, condemning Madarién (for its actions) and the State agency 'Codechocó'[38] (for its omissions) to accept the petitioners' claims, fund an environmental impact assessment, and comply with a management plan to continue the logging exploitation that eventually would be authorized by the environmental authority. In appeal, the Agricultural Chamber of the Tribunal of Antioquia reversed the first ruling. The Constitutional Court's review found that indiscriminate forest exploitation was placing the petitioners at risk of ethnocide, given the biological interdependence between the tribe and the ecosystem, and given the ecosystem's role in the community's worldviews and ways of life. Consequently, the Court protected the community's rights to life, to ethnic, cultural, social and economic integrity, to legal personhood and representation, and to not be forcedly disappeared; and advocated for environmental prevention, protection, conservation and restoration, under the basis of the deep relationship between ecological health and the survival of indigenous peoples.

3. The Research Journey

In order to answer the research questions, this thesis undertakes a trip through multiple worlds, conducting three exercises: First, a descriptive exercise on the sources and substantiation of T-380/1993, T-652/1998 and the Atrato-Tutela, in view of the factual, scientific, legal, political and philosophical arguments powering these rulings, from the premise of a 'philosophy of praxis',[39] in order to answer the first research sub-question. Doing so allows viewing the genesis and dimensions of the Court's argumentation embedded in the Atrato-Tutela. Second, a deductive exercise on the Atrato

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[36] Contrary to international human rights law, under Colombian constitutional case-law, judicial redress for violations of fundamental rights can be sought against private agents performing public functions or in respect of which persons are placed in a condition of dependency, defenselessness or subordination. For further details on this matter, see T-342/1994, i.a.

[37] T-380/1993, *Organización Indígena de Antioquia - O.I.A. (Indigenous Association of Antioquia) on behalf of Comunidad Indígena (Indigenous Community) Emberá-Catío de Chajerado v Corporación Nacional de Desarrollo del Chocó – CODECHOCÓ (National Foundtion for the Development of Chocó) and Compañía de Maderas del Darién – MADARIÉN (Darién Timber Co)*, M.P. Eduardo Cifuentes Muñoz, Ref. Expediente T-13636, 13 September 1993.

[38] Corporación Nacional de Desarrollo de Chocó – Codechocó. State agencies created pursuant to Art. 150, num 7 CP, named "Corporaciones Autónomas Regionales" like Codechocó, are the regional governmental agencies responsible for environmental management.

[39] Sanjay Kabir Bavikatte, *Stewarding the Earth - Rethinking Property and the Emergence of Biocultural Rights* (OUP 2014), 45.

Tutela's notion of legal personhood at each stage, bearing in mind the second research sub-question. Third, an analytical exercise on the clash between the Atrato-Tutela and hegemonic (legal) frameworks, as to answer the third research sub-question.

Graphic 3. Worlds in the adjudication.

While essentially this thesis navigates through the world of alternative or peripheral narratives underpinning the Atrato-Tutela, the journey will have in sight the world of classical or mainstream power devices and narratives -herein referred to as the "hegemonic world(view)",[40] that is, the systemic

[40] The terms 'hegemonic' and 'peripheral' have been privileged in this work for several reasons: Literature often uses the term "West" with a similar meaning as 'hegemonic', but 'West' is unattainable from a geographical perspective because the Western Hemisphere includes also Latin America, and a portion of Africa falls in the same longitudinal coordinates of Europe. The terms "Global North" and "Global South" do not reflect the contrasts observed hereunder, where orthodox worldviews clash against alternative worldviews inside the same country. According to Thomas R. Bates, "The concept of hegemony is really a very simple one. It means political leadership based on the consent of the led, a consent which is secured by the diffusion and popularization of the world view of the ruling class." Thomas R Bates, 'Gramsci and the Theory of Hegemony' (1975) 36 Journal of the History of Ideas 351, 352. This work considers that those who do not consent nor fulfil such worldview, are prone to fall (or be set) apart/behind/outside. The term 'hegemony' is often seen as partialized and politicized, so legal scholars tend to avoid it. However, this thesis views political, philosophical and legal processes (and their narratives) as intertwined and interdependent variables that should not be disentangled. The term *hegemony* thus accounts for the political dimension of worldviews prevailing in law-making and law-implementation, in a transnational perspective. They are dominant in domestic legal orders across the world, beyond the countries from which they originate (European and common law traditions) and regardless of other (legal) worldviews

ensemble of values, attitudes and structures upon which the modernist orthodox edifice is built pursuant to categorizations, hierarchizations, antagonizations,[41] and non-inclusiveness based on non-holistic, anthropocentric, individualist and/or utilitarian ethics of appropriation, mastery and/or segregation towards non-human elements of Nature[42] and towards humans falling behind/outside by virtue of their race or ethnicity, sexual condition[43] or sexual preferences, etc., or due to their marginal contribution to, or embodiment of, market-driven ideals.[44]

The dynamics of exclusion underpinning the hegemonic world(view) have significant effects on the subjects that become right-holders: Not too long ago (but still for too long) the orthodox legal world in the West[45] only concerned the privileged (white)[46] man and man-made organizations (corporations, organizations of international law, territorial entities -such as municipalities, states, kingdoms- and the like).[47] The legal persons of the hegemonic world were a tiny world that contemplated only a small fraction of the rest of the universe, where women and unprivileged men (e.g. slaves, indigenous, the poor and/or segregated), (unborn) children, future generations, and all other elements of the natural world, were either unimportant or equated to (potential) instruments, objects or properties of the privileged man and his legal entities.

In view of the third research sub-question, the *hegemonic* backdrop is important to understand the ways in which the Atrato-Tutela differ from classical viewpoints, what innovations it proposes, and how it addresses the tensions created between the hegemonic world(view) and its *alterity/otherness*.[48] One of the hypothesis in this study is that once the hegemonic world(view) collides with other worlds in the Atrato-Tutela, the content and scope of the notion of legal personhood widened by changing the underlying assumptions while transforming categories that are familiar to the hegemonic narrative.[49]

Chapter IV accounts for the factual sources and arguments of the cases, that is, the world of (harsh) reality on the ground, in which the claimants struggle to live. This world is characterized by

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that may be present in a given place. In this sense, a lawyer in a marginalized country may still revere the hegemonic worldview, while an indigenous rights activist in a hegemonic society may devote her/his life to defend peripheral worldviews. The term *peripheral* accounts for the dynamics and narratives interacting and/or orbiting outside the hegemonic world, sometimes in dialogue therewith, often clashing therewith.

[41] Peer Zumbansen, 'Transnational Law' in Jan Smits (ed), *Encyclopedia of Comparative Law* (Encyclopedia of Comparative Law, Edward Elgar Publishing 2006) 744.

[42] Kees Bastmeijer, 'An International History of Wilderness Protection and the Central Aim of this Book' in Kees Bastmeijer (ed), *Wilderness Protection in Europe The Role of International, European and National Law* (Wilderness Protection in Europe The Role of International, European and National Law, First edn, CUP 2016) 4.

[43] Christopher D. Stone, *Should Trees Have Standing? - Law, Morality, and the Environment* (Third edn, OUP 2010) 3.

[44] What will be herein referred to as the 'hegemonic world(view)' contrasts with the ethics of commonality, stewardship and holism embedded in alternative approaches like the biocultural narratives underpinning the Atrato-Tutela, as it will be seen in Chapter IX. An exhaustive elaboration on the features of the hegemonic world(view), among which one may mention an interpretation of the world in terms of inclusion/inclusion, *us* v *them*, the 'good' v the 'bad' guys, has been omitted due to space constraints. For a caricaturized version of the hegemonic world(view), see for example the inaugural address of Donald Trump as President of the United States. White House, 'The Inaugural Address' (20 January 2017) ‹ https://www.whitehouse.gov/briefings-statements/the-inaugural-address/ › accessed 21 February 2019.

[45] The *West* here understood in geographical terms, as Europe, Africa and the Americas.

[46] Houck, 'Noah's Second Voyage: The Rights of Nature as Law' , 10."

[47] A general overview of this evolution can be found on United Nations, 'Rights of Nature, Policy and Education'.

[48] T-576/2014, a landmark ruling profoundly concerned with the rights of afro-descendant tribes, and one of the sources of the Atrato-Tutela (cited in pages 21 and 61 thereof), states: "The concept of *alterity*, relating to the 'condition of being other', accounts for the process through which certain groups traditionally invisibilized achieved being acknowledged as differentiated collectivities and, that way, started to conquer political spaces from which they had been historically marginalized. The process of construction of alterities in Latin-America during the late 1980s and early 1990s occurred in the context of constitutional and legal reforms that recognized their multiculturality and declared their ethnic minorities as subjects of special protection." T-576/2014, 62 n 57.

[49] Bavikatte, *Stewarding the Earth - Rethinking Property and the Emergence of Biocultural Rights*, 45.

exuberant natural richness that attracts business hawks, where human and non-human life, as well as biological and cultural diversity, are seriously threatened by unrestrained business prospects. **Chapter V** portrays the contributions of scholarship to the rulings in question. Science is a world omitted or overlooked by those passively and actively responsible for the environmental and social harm caused in the cases at hand; but in the context of adjudication the scientific world gains a voice materialized in correspondence with legal notions.

Next, the legal sources and bases of substantiation are dissected: **Chapter VI** deals with the main concepts and principles of the domestic legal and 'supra legal' world,[50] the latter created by the (constitutional) legislator and the (constitutional) interpreter, with its particular concepts, doctrines and principles. In the supra-legal world, common to the cases studied hereunder, lays an endeavor to reinterpret the content of fundamental rights in order to strengthen the scope of minorities protection; indicating a constitutional shift towards the appreciation for the *alterity*, which in turn implies a vindication of non-hegemonic worldviews expressed in social, cultural, ethnic, economic and ecological dynamics that conflict with hegemonic rationales.[51]

The supranational legal world, with its own logics and principles (for example, the *Precautionary Principle* recognized in international environmental law), feeds into -and eventually from- domestic legal orders. **Chapter VII** is thus devoted to the dialogue established by the judgements with the supranational legal order. Of particular interest is the extensive number of international instruments referred to in the Atrato-Tutela in comparison with T-380/1993 and T-652/1998, and the transnational bridge created therein between international and national law through the domestic notions of '*Constitutional Block*', '*Cultural Constitution*' and '*Ecological Constitution*'.[52]

As it will be made evident, the humanitarian and ecological emergencies observed in the factual world, and the normative guarantees of the legal world, display such astonishing contrast that it is hard to concede they are present in the same universe simultaneously, while the scientific world seems to gravitate outside and encounter these at times. If they all were reconciled, the cases at stake would never have arisen.

Up to this point, the formal legal analysis may be completed. But in the course of the interviews and the jurisprudential study it became evident that the instances of (judicial) lawmaking examined hereunder were preceded by, and re-created, political projects that in turn are powered by social and ethical motors. Observing transformations to the legal institution of personhood without considering the underlying political/economic, social and ethical forces propelling them, would leave out the very substance of what these transformations entail.

The political world, as the scenario of social contestation that in the depth shapes the generation and implementation of legal instruments, is thus presented in **Chapter VIII**. This chapter portrays the Court's criticisms to the hegemonic worldview, and its visibilization of counter-hegemonic political/economic standpoints. Briefly, the central effort underling the societal project of the Atrato-Tutela is to place the foundational notion of the so-called 'Social Rule of Law' (SRL) at the service of those left behind/outside, as to correct the social and ecological injustices at hand.[53]

But having taken that road, one may see that political/societal projects are the external expressions of internal worlds, they aim at bringing peoples' worldviews into the public arena.

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[50] In Colombia, the 'supra-legal' order refers to the Constitutional world, which is above statutory law.
[51] T-080/2015, a ruling repeatedly cited in the Atrato-Tutela, serving as a source to substantiate the rights of non-human elements of nature based on alternative and ancestral worldviews (see e.g. Atrato-Tutela, 47), expresses the contrast between hegemonic and non-hegemonic standpoints. T-080/2015, 47-48.
[52] Generally, this work assumes that, in the globalization era, law is (or has the potential to be) transnational. The methodological distinction between domestic and supranational law made in this work merely wishes to portray how these realms may interact, seen as (potentially) complementary and mutualist portions or a whole rather than as separate or antagonistic. Zumbansen, 'Transnational Law' 738-741.
[53] *Atrato Tutela*, 27.

Consequently, political projects (and their economic dimension) are inextricable from ethical viewpoints. And neither can be disentangled from normative projects,[54] because rules are the supreme instruments through which political and philosophical projects can be made opposable to whomever may behave against what those rules prescribe, against 'our' interests and, ultimately, against 'us' - subjects of rights.

Chapter IX is thus devoted to the worldviews forming the ethical ground and aspirations of the decisions subject matter hereof. These worldviews are regarded hereunder as the paramount sources of the normative projects at stake and will permeate the analysis throughout the entire document. From a philosophical standpoint, the Court gradually moves from an anthropocentric or biocentric approach as to endorse a holistic ecocentric worldview supported on non-hegemonic cosmovisions (especially on the biocultural rights framework).[55] Finally, **Chapter X** synthesizes the research results in order to explicitly answer the core research question.

4. METHODOLOGY

This research relied on a desk-study of the aforementioned judgements and the underlying legal instruments, literature and other sources. Sources were classified by topic (a fact, a domestic legal/constitutional element, a supranational legal argument, or a scientific, political/economic, or ethical foundation) as to place them in the context of the "World" collision structure deducted from the different interviews held and the materials examined hereunder.

The jurisprudential study was based on the logical methodological framework used by ECLAC,[56] and the results have been illustrated by means of 'tree-charts' depicting concepts, problems/solutions or core arguments. A tree has been drawn up for each focus judgement within each 'world'. As it will become evident, dividing facts and arguments by 'worlds' is arbitrary because they all are intertwined; however, for illustrative purposes, the exercise facilitates the identification of rules, principles and notions, as well as their ramifications and relationships, as seen within the narratives of each 'world'. The arbitrariness of this choice, however, underscores the need for integrative approaches that account for the inextricable interrelationships between different 'worlds'.

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[54] David Kinley, 'Bendable Rules: The Development Implications of Human Rights Pluralism' in Caroline Sage and Michael Woolcock Brian Z. Tamanaha (ed), *Legal Pluralism and Development - Scholars and Practitioners in Dialogue*, vol 10 (Legal Pluralism and Development - Scholars and Practitioners in Dialogue, CUP 2012) 57.

[55] Page 45 of the Atrato-Tutela summarizes the Court's evolution of the relationship between humans and our environments. Features of the biocultural approach can be seen in different rulings used for substantiation of the Atrato-Tutela, notably: T-411/1992, featuring non-anthropocentric attitudes towards nature based on indigenous worldviews, notably at page 12; T-080/2015 and C-449/2015, sustained on alternative cosmovisions; C-339/2002 embedding a biocentric attitude; C-595/2010 and C-632/2011 set in eco-centrism; T-080/2015, which reviewed the evolution of the Court's position with regards to nature and law (highlighting the relationship with natural sciences, economics and societal projects), declared: "We may identify at least three approaches developing nature as a superior interest within Colombia's legal order and its incumbent protection: (i) an anthropocentric view that conceives of human beings as the only raison d'être of the legal order and of natural resources as objects for human benefit; (ii) a [biocentric] view based on a more global and caring notion of human responsibility, which advocates for humankind's obligations with nature and future generations; and (iii) counter-hegemonic [ecocentric] views understanding nature as an authentic subject of rights, supported on pluralistic cosmovisions that are alternative to mainstream positions. [...] The anthropocentric approach is the most widespread in Western legal culture and responds to a long philosophical and economic tradition conceiving of men as the only rational, whole and worthy being. [...] This idea is reflected in [recital 5 of] the Stockholm Declaration. [...] Under [the biocentric] approach, natural heritage not only belongs to the citizens of a given country but to future generations and people overseas. It entails a form of global and intergenerational solidarity often linked to sustainable development [e.g. as portrayed in the Brundtland Report and in C-519/1994, C-220/2011 and C-595/2010]." T-080/2015, 36-40 (citations partially omitted).

[56] Eduardo Aldunate 'Diagnóstico, Árbol de Problema y Árbol de Objetivos' (Economic Commission for Latin America and the Caribbean ECLAC, Course-Workshop "Formación de Capacitadores en Metodología de Marco Lógico", Mexico 27-29 May 2008.

The key observation during this exercise is that, at times, these worlds collide: The narratives within each world make sense provided that one stays in there, but they might seem unattainable and wacky from the outside. For example, viewed from the lenses of science or human rights law, severe harm to the environment or to fundamental rights is unjustifiable. Yet despite the clashes, even if all these worlds do not depict the same sky, they belong to the same universe.

The research also involved a literature review of academic articles, books and journalistic documents relating to the Atrato-Tutela and to the place occupied by non-human elements of Nature in legal and ethical discourses. Moreover, because the Atrato-Tutela is a recent development, semi-structured interviews were held with 10 legal practitioners in the fields of constitutional, human rights and environmental law in Colombia and overseas, which, however, are not representative of legal communities at large. These discussions revolved around the ways in which the interviewees perceive the Atrato-Tutela not only within the legal order but also in relation to socio-political projects, as well as ethical frameworks that the judgement encompasses or challenges, for example those of indigenous rights, peasant rights, human rights, biodiversity protection, nature conservation, environmental management, peace-building movements, (sustainable) development and legal doctrine. **Appendix 2** provides further details on the interviewees and questions dealt therewith.

The case-law, legal documents, literature and interviews were approached pursuant to the "turn practice" framework,[57] in order to build the thesis from the perspective of the dynamics encountered throughout the research process rather than from the perspective of *a priori* dogmatic notions. Special attention to the materials reviewed was given to the content and scope of legal personhood (that is, to the subjects of law, to what *us* entails in the legal order, and the entitlements vested into them), and to the legal attitude towards *the alterity* (living beings outside/behind the legal world and therefore outside/behind the effective entitlements that legal persons hold.

[57] Tanja E.Aalberts and Thomas Gammeltoft-Hansen Nikolas M. Rajkovic, *The Power of Legality: Practices of International Law and their Politics* (CUP 2016) 19, 20.

IV. Factual Landscape – The World on the Ground

Chocó Province: 46.530 km² in the Bio-Geographical Chocó region. 90% of Chocó is a special conservation area with various national parks.
Atrato River: Colombia's greatest water yield; 750 km long; +/- 40.000 km² basin area occupying 60% of Chocó province.

+/- 500.000 inhabitants:
87% afro-descendants,
10% indigenous,
3% mestizo.

96% of continental surface is collective property of 600 afro-descendant communities and 120 indigenous reserves (Embera-Dóbida, Embera-Katío, Emberá-Chamí, Wounan and Tule).
4% is inhabited by mestizo peasants.

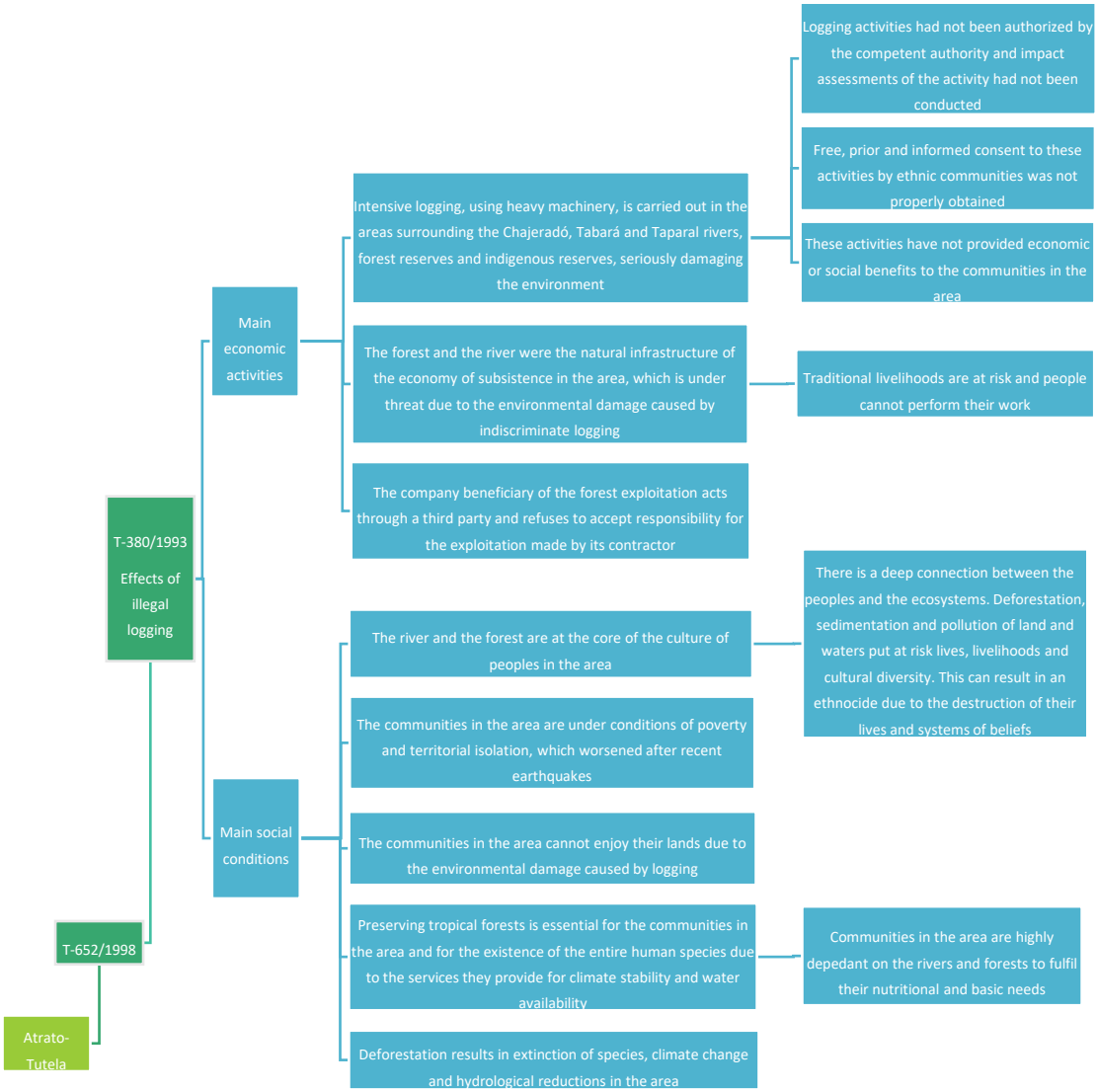
Graphic 4. Map of Colombia, Chocó Province Amplified.[58]

1. Conditions on the Ground

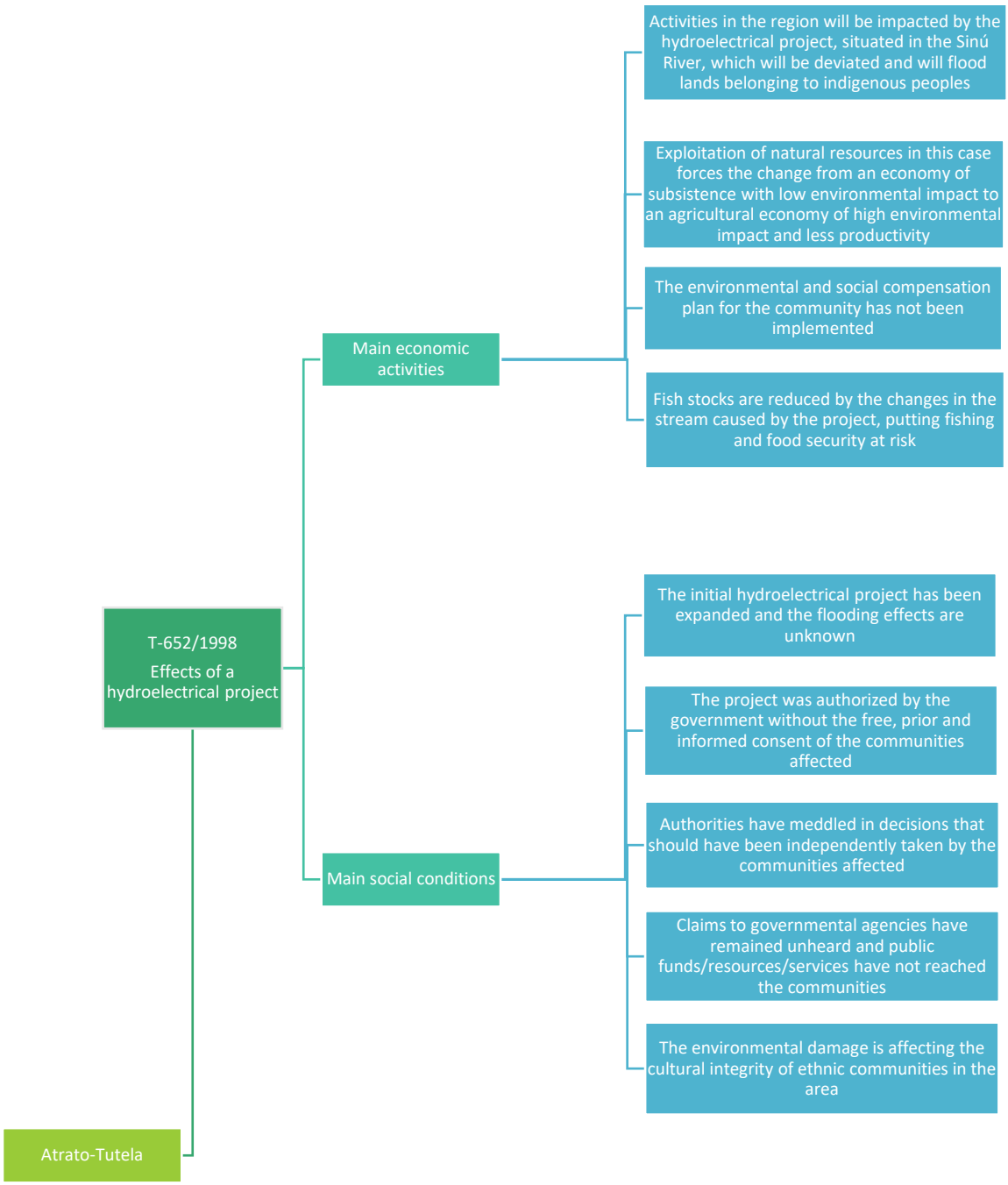
The following charts describe the main factual sources and arguments of the cases at hand. Common to these judgements is that they were an urgent call to halt extractive industries causing severe environmental degradation and threatening the survival of marginalized peoples settled along river basins in the West of Colombia, especially members of Emberá-Katío communities.

[58] Images: Instituto Geográfico Agustín Codazzi IGAC, Official Colombia Physical Map 2012; and Chocó Provincial Physical Map, Geoportal ‹ https://geoportal.igac.gov.co/es/contenido/mapas-nacionales › accessed 29 December 2018. Data: *Atrato Tutela* 6-7.

A. Main Conditions on the Ground in T-380/1993



B. Main Conditions on the Ground in T-652/1998



C. Main Conditions on the Ground in the Atrato-Tutela

2. The Court's Assessment of Factual Conditions

In order to contextualize and dimension the effects of environmental degradation experienced on the ground, the Court progressively assessed the biological, geographical and socio-economic conditions affecting the ecosystems and communities at stake. The Atrato-Tutela is remarkably comprehensive in this regard and can be seen as the ultimate expression of the path envisioned by its predecessors. Moreover, while life-threatening environmental degradation was common to the cases, they also shared a concern and an appreciation for the day-to-day traditions, rituals, routines, forms of organization, and hurdles of living communities in the area:

In T-380/1993, the Court exalted the ethnic diversity of the nation,[59] the importance and fragility of tropical forests for the survival of humankind, and the fundamental role indigenous communities play for environmental protection by virtue of their ancestral knowledge and practices.[60] There, the Court condemned abusive economic exploitation by private agents -acquiesced by the State's negligence- and condemned the long-term damage caused to ecosystems.[61]

T-652/1998 accounted for the petitioners' historical struggle to defend their territory against the hydroelectrical project at issue, upheld their ancestral modes of governance and subsistence, and emphasized the severe environmental and social harm caused by the destruction of the river lifecycle that led to intensify the precariousness of health and living conditions in the area.[62] The Atrato-Tutela followed a similar approach as its predecessors, although in much greater depth, as discussed below:

3. Planetary Heritage

T-380/1993 succinctly underscored the relevance of tropical forests for the planet's and human health, the growing global threats of deforestation, and the need for environmental protection, following international treaties enacted in 1992 relating thereto.[63] T-652/1998 reiterated T-380/1993,[64] although with no explicit mention of international effects of the environmental degradation encountered in the case at hand.

But global environmental concerns have dramatically changed since then. While T-380/1993 was adjudicated in the aftermath of the 1992 Earth Summit, the international landscape of the Atrato-Tutela (following the 2030 Agenda for Sustainable Development and the Paris Agreement accorded in 2015)[65] was one where global warming, biodiversity loss,[66] and environmental degradation threatened to reach catastrophic magnitudes, making the protection of life sanctuaries more urgent that ever.

At the outset, in the Atrato-Tutela, the biological and cultural exuberance of the region at stake appeared to have placed the Court beyond the specific human rights risks of the case, beyond a national territory, and beyond the present time. The Court addressed the case under the premise that this region

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[59] "The existence of 81 ethnic groups speaking 64 different languages in Colombia, which represent a population of approximately 450.000 indigenous persons, reflects the ethnic diversity of the nation and its invaluable cultural heritage." T-380/1993, 14.
[60] T-380/1993, 16.
[61] T-380/1993, 18-19.
[62] T-652/1998, 5-6, 9-11, 22, 24-29.
[63] Notably the Rio Decl. and the CBD. T-380/1993, 16 num 11.
[64] T-652/1998, 22.
[65] The Atrato-Tutela cites the 2030 Agenda for Sustainable Development to substantiate the right to water. *Atrato Tutela*, 65-66.
[66] FAO, *The State of the World's Biodiversity for Food and Agriculture* 2019), xix, 25.

is a place of extraordinary biological relevance that exceeds domestic interests and constitutes planetary heritage.[67]

This standpoint would play a central role to ground all other considerations, informing the ruling's ecocentric biocultural approach and the river's transnational institutional set-up, as detailed in Chapters VIII and IX hereof. In this decisive point of the Anthropocene, it was imperative to protect such extraordinary ecological diversity -and the communities stewarding it- not only for the benefit of the petitioners and the environment in which they live, but also for the benefit of the existing global community and the generations to come.[68]

4. Geographical and Demographical Considerations

The Atrato-Tutela contrasted the traditional ways of life pertaining to communities adjacent to the river (characterized by ancestral small-scale gold and platinum mining, agriculture, hunting and fishing, which remained intact until the 1980s and used to fulfil their entire nutritional needs),[69] against polluting activities contributing to leave almost half of the local population in extreme poverty and more than 80% with unsatisfied basic needs (the worst quality of life in the country).[70]

Throughout its 293 pages, the ruling exhaustively described the larger scale activities carried out in the region, the types of industrial mining encountered therein, the cycle of pollutant agents derived therefrom, the humanitarian emergency in the area and the inaction of numerous State agents to address it, and the impact of mining on peoples' daily life, on the social tissue of the communities, and on the preservation of the region's biological and cultural diversity.

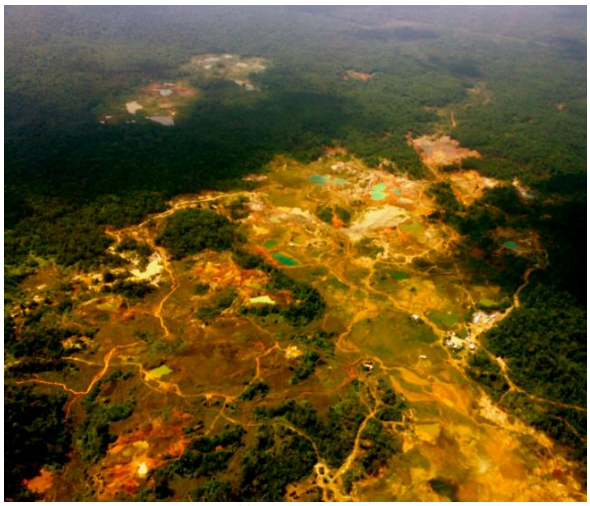
Graphic 5. Along the Atrato River Basin, communities are settled literally on the waters.[71]

5. Mining in the Region

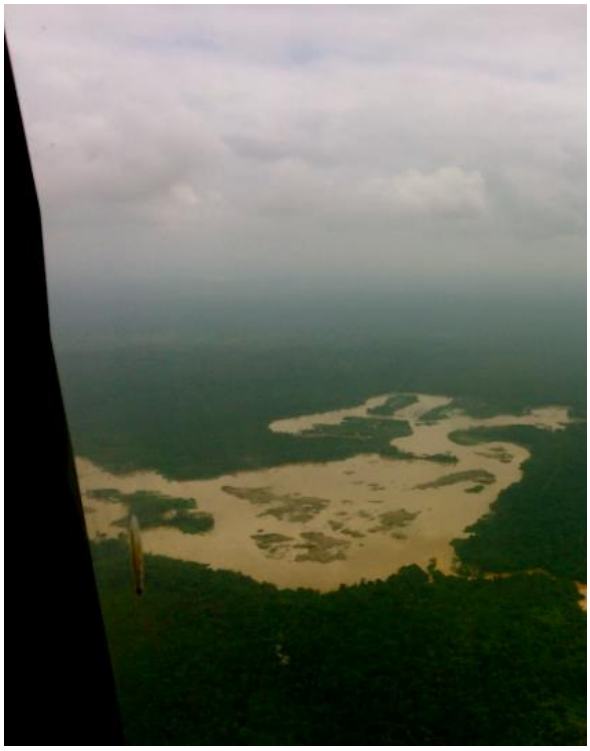
[67] Contrary to T-652/1998 and other prior judgements (e.g. T-342/1994, 14.), where territories were not viewed as planetary heritage but as national heritage.
[68] In particular, the Atrato-Tutela declared: "[T]he environment is a common heritage and its protection ensures the survival of present and future generations." *Atrato Tutela*, 70 (in turn citing C-431/2000).
[69] Ibid 8.
[70] 79%, while the national average is 58% ibid 9.
[71] Fredy Amariles García, 'La aldea de palafitos de Bucchado, a orillas del Atrato' (*El País*, 21 May 2006) ‹ https://elpais.com/diario/2006/05/21/domingo/1148182893_740215.html › accessed 30 May 2019.

The Atrato-Tutela thoroughly elaborated on the historical roots of mining,[72] and its social, economic, environmental and legal dimensions and consequences.[73] The devastating effects of mining were also witnessed by the Court during an on-site inspection in the region, showing the following contrast:

Forest free from minning and logging



Forest affected by mining



Destruction of water courses and flooding ('islands' or 'mountains' caused by mining)

Graphic 6. Before and after mining.[74]

[72] ibid, 81-82.

[73] The Atrato-Tutela relies in this regard on information requested to the national government. Ibid, 149-150.

[74] Photos taken during the Court's on-site judicial inspection. 29 January 2016. Ibid, 133-136, "The impact of mining on the river is so aggressive that nowadays it is materially impossible to determine the original course through which the river, its arms and tributaries used to flow, besides the considerable increase of deforested

With the evidence collected, the Court declared:

> "*Conclusion: The respondent State authorities are responsible for the violation of the fundamental rights to life, health, water, food security, a healthy environment, and culture and territory of ethnic communities, due to their omissions to undertake effective actions to halt the advance of illegal mining activities, which have produced a serious humanitarian and environmental crisis in the Atrato river basin (Chocó), its tributaries and neighboring territories*" (page 136).

Unavoidably, such analysis would lead to wonder, who are the beneficiaries of mining, if peoples living in mining areas are enduring multiple serious violations of their human rights? The Court gives a hint: from a geostrategic viewpoint, the beneficiaries have historically been in the hegemonic world since the early days of the colonies.[75]

This premise is fundamental to expose that what was at stake, after all, was a clash between the hegemonic world(view) and its *alterity*; a collision of values, ways of life and economic models that is fought on the ground at the expense of the lives of the vulnerable living communities enduring the destruction of their environments and communities -with their correlated effects on health and livelihoods- in a context of internal armed conflict.[76]

Being this collision at the core of the environmental and social damage at hand, the Court appeared confronted with the need to take in hand the difficult conditions on the ground as to not perpetuate the legal dispute. It chose to do so by tackling the political and economic motors of transgressions, and by providing opportunities for other voices to be part of decision-making fora, as described in Chapter VIII.

6. Institutional Redress

The difficult living conditions of peoples in Chocó, deepened by severe environmental damage and the internal armed conflict,[77] were evidenced by the Ombudsman (Defensoría del Pueblo), whose reports -and support to the petitioners-[78] played a central role as factual sources to the Atrato-Tutela.[79]

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areas, since illegal mining is performed both in rivers - alluvial mining - and in lands - surface mining -, which altogether produce serious deforestation." Ibid, 138.

[75] Ibid 81, 98.

[76] Ibid, 147.

[77] The Atrato-Tutela noted that the environmental damage left only 1 of the 18 Atrato's navigable branches available, generating thereby serious consequences for the peoples settled therein. Ibid 8-11, 15-16. Colombia's Ombudsman reported that at least 164 social leaders were killed in 2018. That is, at least 1 every 3 days. Redacción Judicial, 'En 2018 han sido asesinados 164 líderes sociales y defensores de derechos humanos' *El Espectador* (13 December 2018) ‹https://www.elespectador.com/noticias/judicial/en-2018-han-sido-asesinados-164-lideres-sociales-y-defensores-de-derechos-humanos-articulo-829102› accessed 4 March 2019.

[78] The Ombudsman has also supported ethnic communities in judgements that served as precedents to the Atrato Tutela, e.g. in T-652/1998.

[79] The Atrato-Tutela described how these reports document the damage inflicted to communities and the environment, especially because of mining, logging, transport projects and crops for drug traffic, altogether intensifying the armed conflict. Yet the urgent call made to the national government by the Ombudsman (*Defensoría del Pueblo*) and the Inspector General (*Procuraduría General de la Nación*) to halt these emergencies had not been followed by effective governmental measures. *Atrato Tutela*, 114-116, citing: Defensoría del Pueblo's

Of particular relevance are the 2014 Ombudsman Resolution 'Humanitarian Crisis in Chocó',[80] and the Ombudsman's on-site reports evidencing serious social and environmental damage arising out of gold-mining, forest destruction by indiscriminate logging, and the deviation and pollution of watercourses (especially with mercury);[81] altogether intensified by the internal armed conflict and resulting forced displacement.[82]

In the course of adjudication, the Ombudsman underscored the violation of the petitioners' fundamental rights and the unavailability of alternative mechanisms of protection.[83] Other judicial actions such as "Acciones Populares" (class actions to defend fundamental/constitutional/human rights) had been indeed pursued before but these, despite being favorable to the communities, had not been complied with, and so the violation of fundamental rights persisted. The case dismissal by lower courts despite the uninterrupted threat to fundamental rights, in the context of the undergoing humanitarian emergency, led the Court to select the case for review thanks to the Ombudsman's request.[84]

In contrast with the Ombudsman's efforts, governance gaps became evident as some of the respondents requested dismissal alleging lack of competence to address the petitions at issue,[85] including the very Ministry of the Environment which stated "not being able to perform any control in relation to the facts giving rise to the tutela".[86] The Ministries of Mines and Energy, of Housing, and of

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reports: *La Minería de Hecho en Colombia* (2010); *Informe de Riesgo Num. 15* (2010); *Informe de Seguimiento a la Publicación "La Minería en Colombia"* (2012); *Crisis Humanitaria en el Chocó: Diagnóstico, Valoración y Acciones de la Defensoría del Pueblo* (2014); Res. 64/2014; Joint Directive 005/2014, made in collaboration with the Office of the Inspector General; as well as report series *Minería en Colombia* (on mining and the environment), issued by the Office of the Comptroller General (Contraloría General de la República); and reports on mining and on Chocó issued by the Office of the Inspector General. Notably, the Ombudsman's reports indicated that at least 37 children had died and other 64 children had been intoxicated by ingestion of polluted water. On-site inspections carried out by the Ombudsman showed that forests were being severely destroyed, watercourses were being deviated and mercury was being released in uncontrolled ways. Based on the foregoing, the Ombudsman declared a humanitarian and environmental emergency in the area in 2014 due to illegal mining and fighting between criminal groups, but the provincial and national governments had not halted these nor the undergoing pollution and environmental degradation.

[80] Ombudsman Resolution 64 of 29 September 2014 – Humanitarian Crisis in Chocó.

[81] *Atrato Tutela* 15.

[82] In 2016, Colombia ranked first in the world's cumulative estimations of internal displacement by conflict, even above Syria, Sudan or Irak. Internal Displacement Monitoring Centre and Norwegian Refugee Council, *Global Report on Internal Displacement - GRID 2017*, 2017), 24. In this regard, the Atrato-Tutela said: "When the conditions of environmental degradation of the territory do not allow members of the ethnic community to access basic individual rights like health or personal integrity, they are forced to displace to other regions where these rights are guaranteed or at least are not directly threatened. On the other hand, such displacement does not only affect the lives of the individuals leaving their lands but also destroys the social fabric that keeps communities together in order to enable cultural traditions and different ways of living that, in the end, are what vivify the pluralist character of Colombia" *Atrato Tutela* 24), i.a.. Ibid 20-24.

[83] *Atrato Tutela* 15-16, 115-116, 129, 185-186. "[...] The Ombudsman issued Res. 064/2014 whereby it declared the social, environmental and humanitarian crises in Chocó. As a consequence of this resolution, the Ombudsman created a monitoring mechanism to the guidelines therein contained, through a national-level interinstitutional board body that after more than a year showed disappointing performance due to the lack of political will and interinstitutional coordination to solve the problems at issue. The Ombudsman declared that this was one of the reasons for it to support this *tutela*." Ibid 217.

[84] The case was chosen pursuant to Auto (Writ) of 14 October 2015. In fact, the lower court judgements were reviewed by the Court thanks to the persistence of the Ombudsman, who brought them to its attention, since originally the Court had not selected the case during the standard internal procedure of nationwide judgement review. Interview with Felipe Clavijo-Ospina, former law clerk at the Constitutional Court of Colombia (video-call, 17 February 2019).

[85] Save the Ministry of Health and Social Protection and the Municipality of Carmen de Atrato, which alleged to be in progressive compliance with their obligations; and save the Ministry of Education and all other municipalities, which remained silent. *Atrato Tutela* 14-16.

[86] Ibid 12, pursuant to Decree 3570 of 2011, which reformed such Ministry.

Health, argued for dismissal alleging the availability of other means (since the *tutela* track is only residual), though the ineffectiveness of administrative measures was exposed as the Ministry of Mines paradoxically noted that injunctions requested by the petitioners to suspend the assessment and granting of certain mining permits had been denied.[87]

The institutional disregard for the suffering of peoples in Chocó and the magnitude of the problems on the ground was so entrenched that, despite evidence to the contrary -including the Ombudsman's repeated reports on the serious risks against people's fundamental rights- the Ministry of Housing requested dismissal of the case for absence of threat or violation to fundamental rights, while the Ministry of Health did not consider that an irreparable harm was (about to) being caused.[88] The Mayor of the municipality of Carmen de Atrato denied the existence of illegal mining and logging in the area under his jurisdiction, and instead alleged that a decision favorable to the petitioners would affect the continuity of services to the citizens in his municipality.[89]

The overall institutional presence and management in the area was therefore under question before the Court. Working groups under the Direction for Mining Formalization had been meeting the communities since a mining protest held in Chocó in 2013, whose positive results were praised by the Ministry of Mines but contested by the petitioners.[90] Concerning programs undertaken by the Ministry of Health, the views of the petitioners and the Ministry were also contrary.

In this scenario, the Court conducted an on-site inspection in Quibdó (province of Chocó) and throughout the Atrato River Basin, confirming the facts giving rise to the case.[91] With the evidence collected, and reports issued by the Ombudsman, the office of the Inspector General and other institutions,[92] the Court determined that the petitioners' physical and cultural lives were being threatened by the intensive scale of illegal mining and forest exploitation, which made life conditions even harder in a region torn by forced displacement and internal armed conflict.[93] The veracity of the claims brought by the petitioners and the scarce institutional response to them was then confirmed.[94]

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[87] Ibid 12-14. In a similar vein, in T-380/1993, the representative of Codechocó, the environmental authority respondent to that *tutela*, stated that "in the country, irregular and illegal exploitation are commonplace and it is a "monstrosity" to hold the State liable for damage caused by third parties." T-380/1993, 9.

[88] Pursuant to Art. 86 CP, *tutela* is an expedite, residual/subsidiary mechanism admissible if there is a serious, immediate and imminent threat or violation of fundamental rights against which any other mechanism would (a) provide redress too late -at a stage when an irreparable harm would have been already caused; (b) be inappropriate or inefficient to safeguard the rights at stake; or (c) the petitioner is a subject of special constitutional protection, such as (but not limited to) ethnic groups, who have difficulties in accessing the judicial system due to geographic isolation, economic constraints or cultural barriers. Ibid, 22 The judgements cited by the Atrato-Tutela as precedents on this matter are: T-652/1998, SU-961/1999, T-955/2003, T-025/2004, T-814/2004, T-016/2006, T-158/2006, T-060/2007, T-148/2007, T-055/2008, T-243/2008, T-743/2008, T-760/2008, T-883/2009, T-177/2011, T-049/2013, T-172/2013, T-576/2014 and T-766/2015. As the cause of action was contested by some of the respondents, the Constitutional Court assessed fulfilment of *tutela*'s admissibility requirements under the Court's case-law, concluding that the petitioners' cause was admissible and had been filed within a reasonable and proportional time because: (i) violations of rights had uninterruptedly and persistently continued; (ii) other administrative and judicial mechanisms of redress had been ineffective: four "acciones populares" (constitutional class actions), in this case partially initiated by the regional Inspector General, had been granted to the petitioners but six enforcement requests thereto remained still unfulfilled; (iii) the petitioners were subjects of special protection; (iv) the petitioners were entitled to be represented by an NGO; (v) fundamental rights (to health and physical integrity, as well as the ethnic communities' right to a territory and to cultural integrity) were at stake together with a violation of the collective right to a healthy environment. Ibid, 20-25.

[89] Ibid 15.

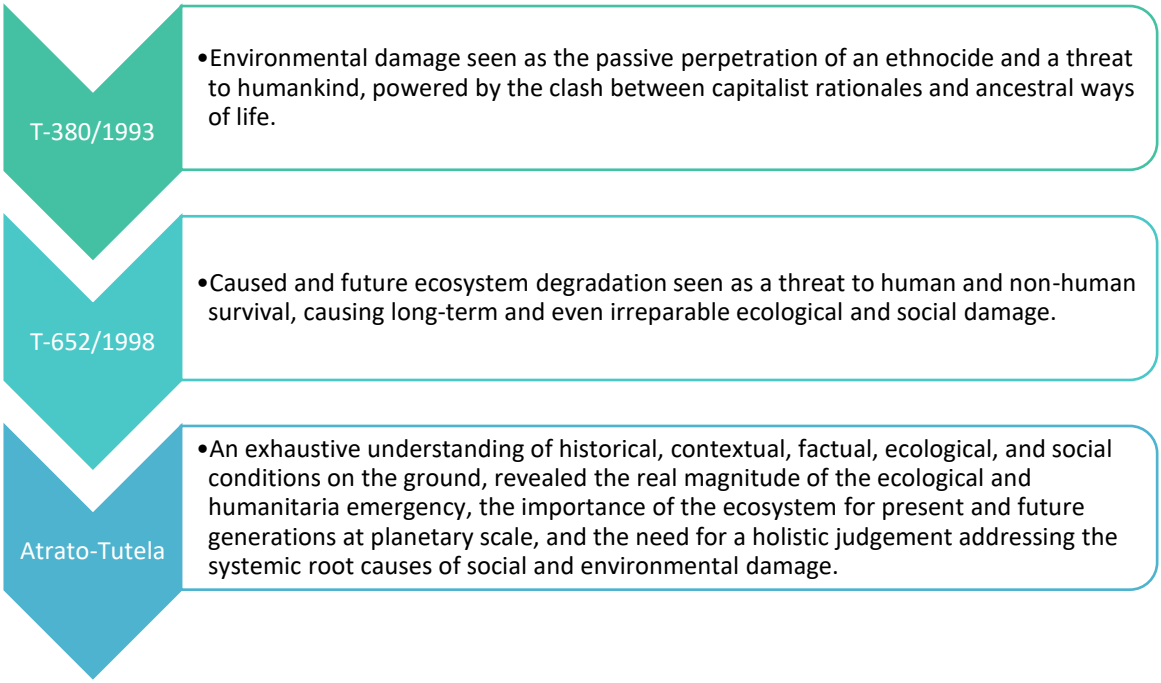
[90] Ibid 11, 14.

[91] Ibid 18-19, 117-128; and interview with Felipe Clavijo-Ospina, former law clerk at the Constitutional Court of Colombia (video-call conversation, 17 February 2019).

[92] Ibid, 130-131.

[93] Ibid 8.

[94] Ibid 144-145.



Graphic 7. Highlights of factual considerations.

7. Factual Considerations on Legal Personhood

T-380/1993 considered that individual legal personhood was inadequate to afford protection,[95] and reshaped legal personhood as to acknowledge the petitioners as a collective legal entity, entitled to the fundamental rights classically vested only in individual right-holders, including the right to be legally represented by a third party, especially considering the geographical isolation, economic restrictions and cultural barriers that these communities face to reach the authorities.[96] There, these collective subjects were deemed biologically interdependent with the ecosystem, and so the destruction of the latter would translate into the destruction of the former.

T-652/1998, built from this understanding of collective personhood,[97] advanced this premise by emphasizing how the destruction of river life endangered human life, and clarified that legal personhood implied autonomy to govern one's own affairs and to choose one's representatives, as well as prior opportunities to be informed about, and meaningfully and freely participate in, the decisions impacting the territories to which the communities belonged, as essential preconditions to preserve their existence as a group.[98] The Atrato-Tutela furthered these milestones:

[95] T-380/1993, 14-15.
[96] T-380, 15.
[97] T-652/1998, 10-15.
[98] The content of right to participation was primarily outlined by the Constitutional Court's judgement SU-039/1997, which was based on art. 40.2 CP and ILO Conv 169.

The Atrato-Tutela crafted legal personhood taking its precedents to a more concrete level, granting legal personhood and representation not only before the law but also in policymaking, both to the communities and to the ecosystem, in view of their interdependence, but also from the awareness of the universal responsibility to protect the irreplaceable biodiversity laying in the territories affected. On the ground, these collective subjects were considered as biologically and culturally diverse, connected not only one another, but at planetary scale and with universal relevance. 'Us' in the factual world, contains not mere individuals, but an inextricable, whole, collective, living ensemble transcending our universe.

Core factual dimension of legal personhood in the Atrato-Tutela.[99]

8. Who Are We After Worlds Collide on the Ground?

On the ground, the hegemonic world(view) pursuant to which nature is to be mastered and certain human communities are to be marginalized or dominated, clashed against worldviews embracing those left behind/outside (that is, the ecosystems under threat, and the peoples belonging thereto): Entrepreneurs intending to exploit natural resources, and armed actors intending to control territories and communities, clashed against indigenous, afro-descendants and peasants defending life(cycles); civil servants disregarding social and ecological damage, clashed against some State agencies entrusted with human rights protection.

Sanjay Kabir Bavikatte, whose work heavily influenced the Atrato-Tutela, describes how, in the course of adjudication, the classical legal approach typically reduces clashes on the ground to legal categories: this process of 'reification' reinterprets facts and worldviews in order to make them fit into classical legal notions, ensuring that market values prevail.[100] Such reification, in this thesis, is considered a feature of the hegemonic world(view).

An orthodox approach to adjudication would thus limit itself to the analytical exercise of reading what laws say and interpreting the facts in relation thereto, keeping the legal world within its own borders, putting lives into legal categories, thereby reifying subjects and values while glorifying the hegemonic legal edifice. Conversely, acknowledging a *sui generis* 'someone' as part of *us* -the persons of the legal order- implies an empathetic exercise to listen and validate her/his narratives, values, practices and needs, and to do what is within one's power to help her/him out when in trouble, as one may do with those close to one's heart.

In the Atrato-Tutela, on-site judicial inspections were conducted to experience at first-hand the stakes, following the approach of T-652/1998. This contrasts with former judgements pronounced on the basis of reports or attestations assessed from the comfort of the Court's palace in Bogotá's cement urban center. Reports and attestations cannot fully convey the vastness of a megadiverse ecosystem,[101] the extreme poverty of people, or the consequences in day-to-day life of pollution and environmental degradation. This choice expresses a more active and involved attitude to understand the problems on the ground and the way how people experience them.[102]

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[99] *Atrato Tutela*, 43. See also, ibid, 7.
[100] Bavikatte, *Stewarding the Earth - Rethinking Property and the Emergence of Biocultural Rights*, 71-88.
[101] On the Court's assessment of megadiversity, see e.g. C-519/119, C-595/2010 and C-632/2011.
[102] In T-652/1998, judicial inspections took place in the town hall of Tierralta, the reservoir, the flooding area and the indigenous reserves at issue (T-652/1998, 9). In contrast, 380/1993 relied on topographic maps and technical reports issued three years before.

In the three judgements at issue, the Court acknowledged *the alterity* that most other authorities had disregarded, requiring public and private actors to acknowledge it too, not only as a recipient of legal entitlements but also as an interlocutor and spokesperson. To that end, the Court reinterpreted the content and scope of existing legal institutions as to adjust them to the factual conditions unfolded before the Court. This way, the Court made the legal world attainable to whom otherwise may remain invisibilized. The ignored finally appeared in *our* world, were brought closer to *us*, were purported to be placed with *us*. At a deeper level, this means placing lives above all, to apply a bio-centered approach to law, that is, to vivify law -in this case, by rescuing the ethics of ancient worldviews.[103]

In this process of 'de-reification' and 'vivification', living communities subordinated or undervalued since the times of the Spanish conquest achieved explicit recognition of their rights -operationalized through participation in the decisions affecting their lives and territories. Their hurdles, routines, traditions, worldviews and ways of living were praised and defended to the point of remolding core notions of law and the very institution of legal personhood. In the Atrato-Tutela, de-reification and vivification were taken further by acknowledging rights to deprived human communities AND to natural elements objectivized by hegemonic thinking. Remarkably, the *sui generis* non-human subjects arising therefrom were deemed relevant, at planetary and universal scale, for present and future generations.

FROM THE COURT'S FACTUAL ASSESSMENT, IT CAN BE CONCLUDED THAT, IN THE ATRATO-TUTELA, WE -HUMAN AND NON-HUMAN ELEMENTS OF NATURE- ARE COLLECTIVE, INTERCONNECTED SUBJECTS WORTHY OF LEGAL PROTECTION, NOT ONLY FOR THE BENEFIT OF THE RIGHT-HOLDERS TAKING PART IN THE CASE, BUT ALSO FOR THE BENEFIT OF THE GLOBAL COMMUNITY NOW AND IN THE FUTURE. THE VIVIFICATION OF THESE SUBJECTS IN THE COURSE OF ADJUDICATION, ALLOWED FOR THE REFORMULATION OF LEGAL NOTIONS IN REFERENCE TO THE PETITIONERS' WORLDVIEWS

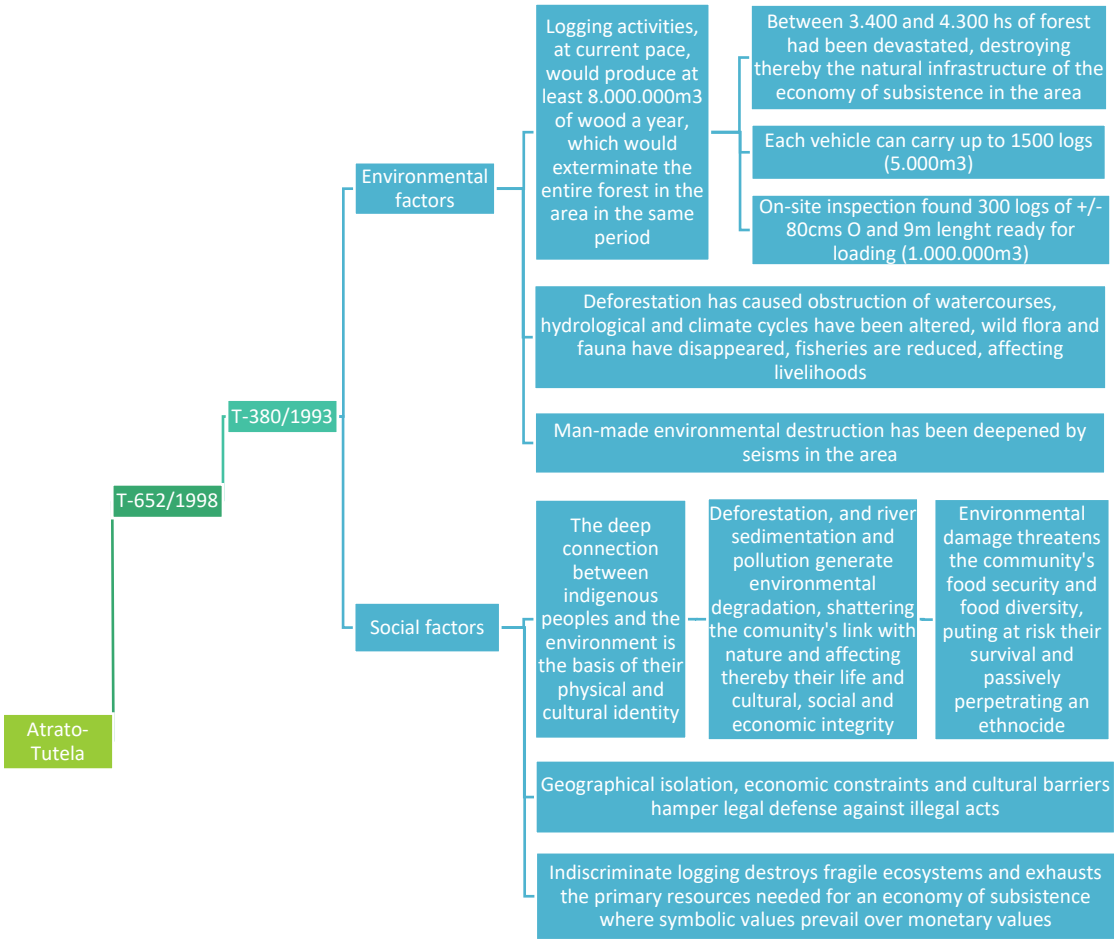
[103] Macpherson and Ospina, 'The Pluralism of River Rights in Aotearoa, New Zealand and Colombia', 285.

V. Scholarly Landscape – The World of Science

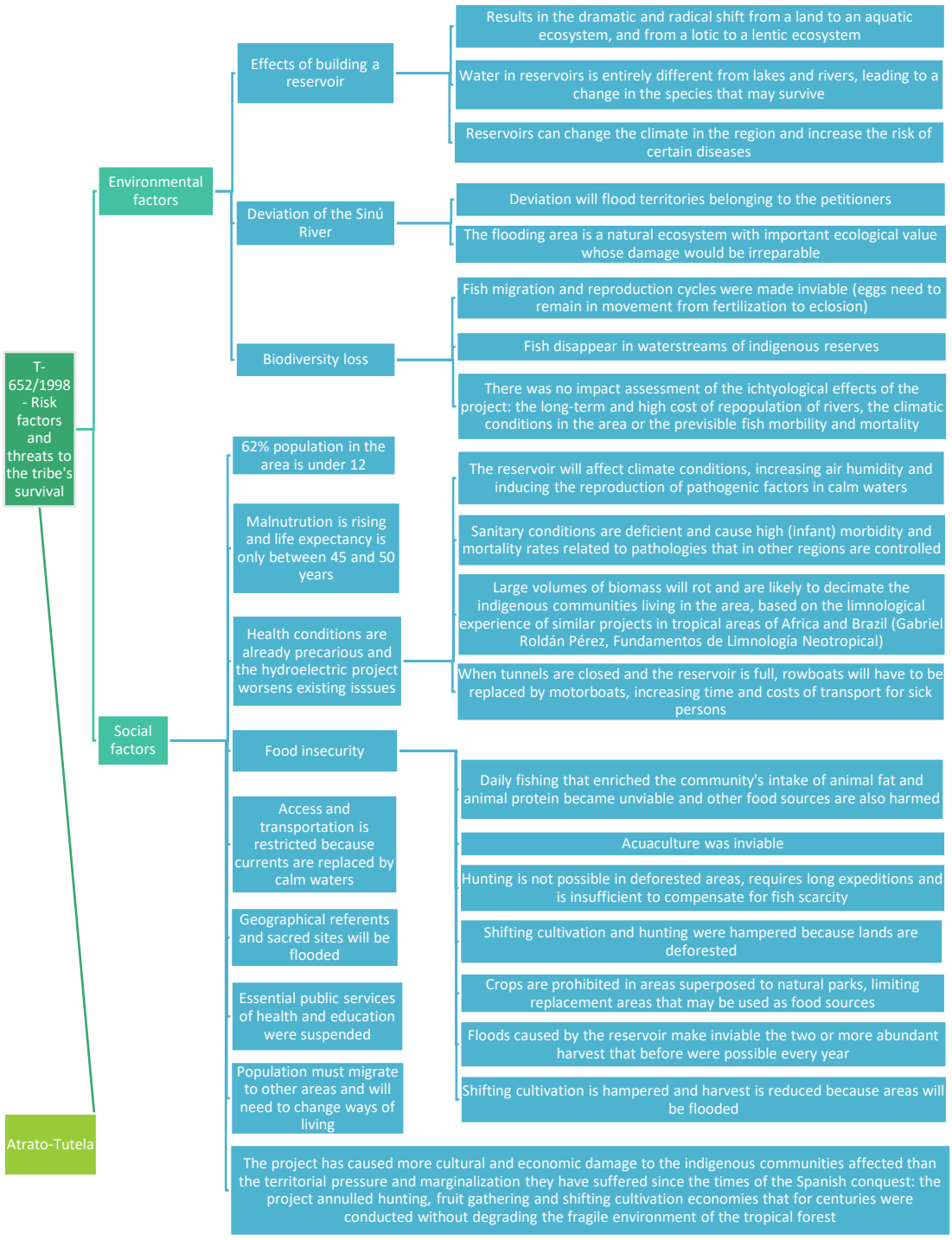
1. The Cases from the Lenses of Sciences

Astonishing environmental destruction was evidenced in the three cases observed hereunder. In T-380/1993, only a year of logging was enough to devastate forests that nature had taken millennia to produce and that indigenous peoples had stewarded for centuries, in one of the most biodiverse regions per m^2 in the world. Massive environmental destruction was also observed in T-652/1998, where fish stocks were decimated, and in the Atrato-Tutela, where mercury and other highly toxic substances were being released and water courses were being destroyed. The main scientific arguments and sources considered in the judgements at issue are described in the following charts:

A. Main Scientific Considerations in T-380/1993



B. Main Scientific Considerations in T-652/1998



C. Main Scientific Considerations in the Atrato-Tutela

2. Environmental Damage, Human Rights Violations and the Role of Scholars

T-380/1993 relied on topographic reports and an on-site inspection conducted in 1990 by the governmental agency Inderena,[104] which estimated the environmental damage caused and its prospects at the then-current pace of deforestation. In T-652/1998, the scientific input -considerably more exhaustive and up-to-date, included technical reports by experts, ecological studies, and social studies on multiculturalism, upon which the Court outlined in detail the ecological harm caused, especially regarding devastating effects on fisheries, and on the community's health and integrity.

The Atrato-Tutela heavily relied on scientific reports and attestations by various academics, experts and specialized institutions of natural and social sciences, regarding the social, economic, anthropological, geographical and environmental conditions in which the case was situated.[105] These resources were crucial to confirm the claims raised by the petitioners.

There, social sciences, particularly the historical and anthropological accounts, contributed to create awareness of the rich cultural heritage of the region, amidst centuries of political and administrative abandonment by State agencies. Natural sciences helped dimension the genetic diversity at risk, the impact of each link in the production chain of mining activities, and the severe disruption of lifecycles arising therefrom, including hydrological, climatic and biological effects. The detailed photograph presented by the Court, portrayed a transhistorical account evidencing centuries of biological and cultural evolution threatened with devastating long-term effects that may be irreparable in the future.

Interestingly, in the Atrato-Tutela the role of scientists did not end with their specialized input in the course of adjudication; they became part of the discussion and decision-making processes relating to the basin, as members of the Board of Experts and as supervisors/advisors to the Commission of Stewards created by the ruling.[106]

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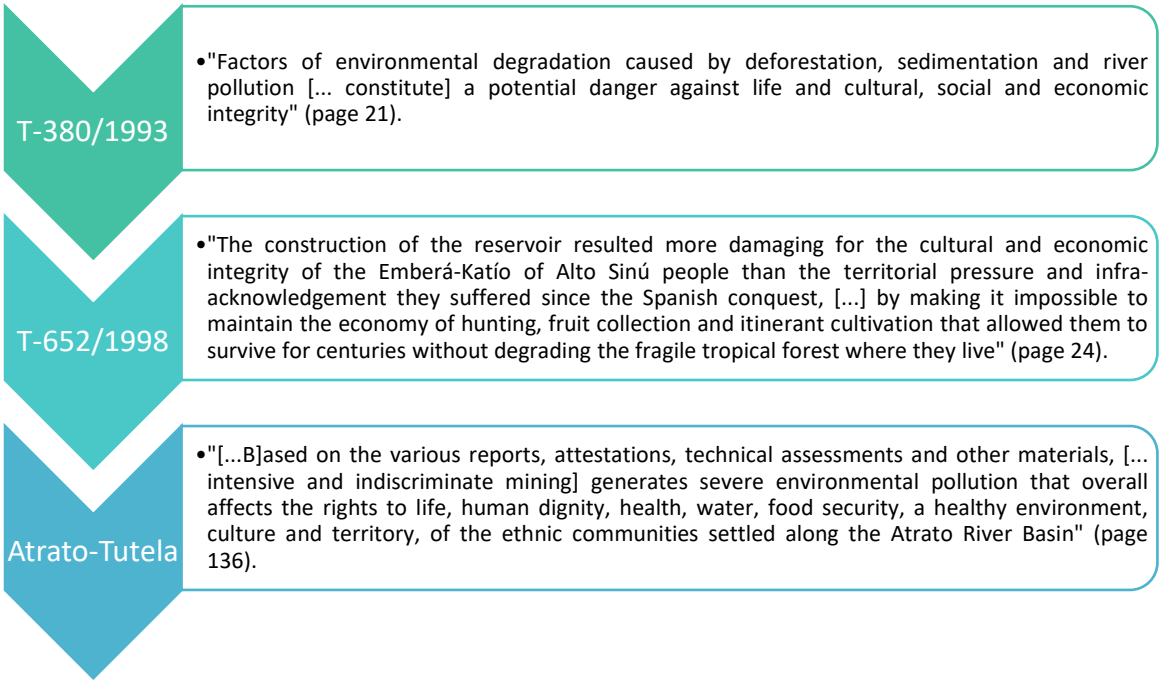
[104] *Instituto Nacional de los Recursos Naturales Renovables y del Medio Ambiente - Inderena* (National Institute of Natural Renewable Resources and the Environment), which ceased to exist pursuant to Act 99/1993.

[105] *Atrato Tutela* 5. 43, 49, 75, 117. Notably, Universidad Nacional, Universidad de Antioquia, Universidad de los Andes, Universidad de Cartagena, Universidad de Chocó, Universidad Javeriana, Instituto de Investigación de Recursos Biológicos Alexander von Humboldt, and Centro de Estudios para la Justicia Social Tierra Digna (acting as representative of the petitioners), WWF Colombia, and United Nations. Civil society organizations also contributed to the case; particularly, DeJusticia, Diócesis de Quibdó, and the petitioners (Consejo Comunitario Mayor de la Organización Popular Campesina del Alto Atrato (COCOMOPOCA), Consejo Comunitario Mayor de la Asociación Campesina Integral del Atrato (COCOMACIA), Asociación de Consejos Comunitarios del Bajo Atrato (ASOCOBA), Foro Étnico Solidaridad Chocó (FISCH), Red de Mujeres Chocoanas, i.a.) Ibid

[106] Ibid, 159-164.



Graphic 8. Highlights of scientific considerations.

3. SCIENCE AND LEGAL PERSONHOOD

In the three judgements, science helped inform the content and scope of legal personhood:

- The interconnectedness between ecological and social dynamics enabled a scientific dialogue between the genesis, the present and the future consequences of environmental and social degradation, and the need to tackle both forms of destruction.

- The dependence of the communities on the stability of ecological cycles was evidenced by science: Biological considerations helped comprehend that the existence of legal persons presupposes a balanced ecosystem, so personhood is not a mere legal category but the expression of a plentiful biological and social life requiring the protection of the conditions necessary therefor.

In the Atrato-Tutela, this understanding allowed widening the content and scope of legal personhood, first by safeguarding the community's worldviews under the right to cultural integrity, and then by erecting the Atrato River Basin as a *sui generis* subject of rights:

> ***The Court finds it necessary to advance in the interpretation of applicable law and of the means of protection for fundamental rights and the subjects thereof, considering the high degree of degradation and risk found along the river basin. Fortunately, in the international arena [...] a new legal approach has been arising, coined as biocultural rights, whose central premise is the deep relationship of union and interdependence between nature and humankind, which results in a new socio-legal understanding where nature and its environment must be taken seriously and with plentiful rights. In other words, as subjects of rights."***

Core scholarly contribution to legal personhood in the Atrato-Tutela.[107]

[107] Ibid, 142-143 (emphasis added).

4. Who Are We After Worlds Collide in the Eyes of Science?

Scholarly accounts of the biological and social lifecycles in the area clashed with the State's omissions to halt practices degrading the environment and causing social harm. In the course of adjudication, and considering the ecological and social dynamics examined on the ground, science helped dimension the vastness of forms of life and genetic diversity in the region -still largely unknown to scholars- and the historical value of the forms of life therein existing, enabling an understanding of the inter-temporal transcendence of human and biological life. Moreover, science demonstrated that losing the biological and cultural diversity at hand could have global effects in the only planet we know capable of hosting life. Henceforth, the resolution to the case would unavoidably call for a holistic, eco-centered, transnational, inter-sectorial approach with a potential to craft impactful actions to preserve life along the basin.

Contrary to classical approaches where the ancestral is disregarded,[108] scorned or considered obsolete,[109] in the judgements studied hereunder science highlighted the ancestral as irreplaceable planetary heritage worthy of preservation. In the Atrato-Tutela, the awareness of the biological and cultural interdependencies between different aspects of the lifecycle, as conveyed through science, strengthened the case for the recognition of rights to non-human elements of Nature. These interdependencies, and the need for nature preservation and restoration evidenced during adjudication, blurred the traditional boundaries between law, science and policymaking: While classically science is to remain aside from policy debates and should instead perform as a mere technical adviser, the Atrato-Tutela embeds the scientific viewpoint into the governance structure with a proxy to supervise the performance of the River's Guardians and the State agencies responsible for conducting toxicological and epidemiological research along the basin.[110]

From the Court's scientific assessment, it can be concluded that, in the Atrato-Tutela, We -human and non-human elements of Nature- are interconnected transhistorical living communities that should be governed with the support and supervision of a holistic science-based Approach

[108] Felix Mukwiza Ndahinda, 'Twa Marginality and Indigenousness in Rwanda' in *Indigenousness in Africa - A contested Framework for Empowerment of 'Marginalized' Ethno-Cultural Communities* (T.M.C. Asser Press, Chapter 6, 2011) 215, 217.
[109] Even contemporary scholars advocating for Nature's rights have underappreciated the potential of ancestral worldviews to reshape pro-Nature ethical frameworks. See, e.g. Stone, *Should Trees Have Standing? - Law, Morality, and the Environment*, 29.
[110] *Atrato Tutela*, 160-166.

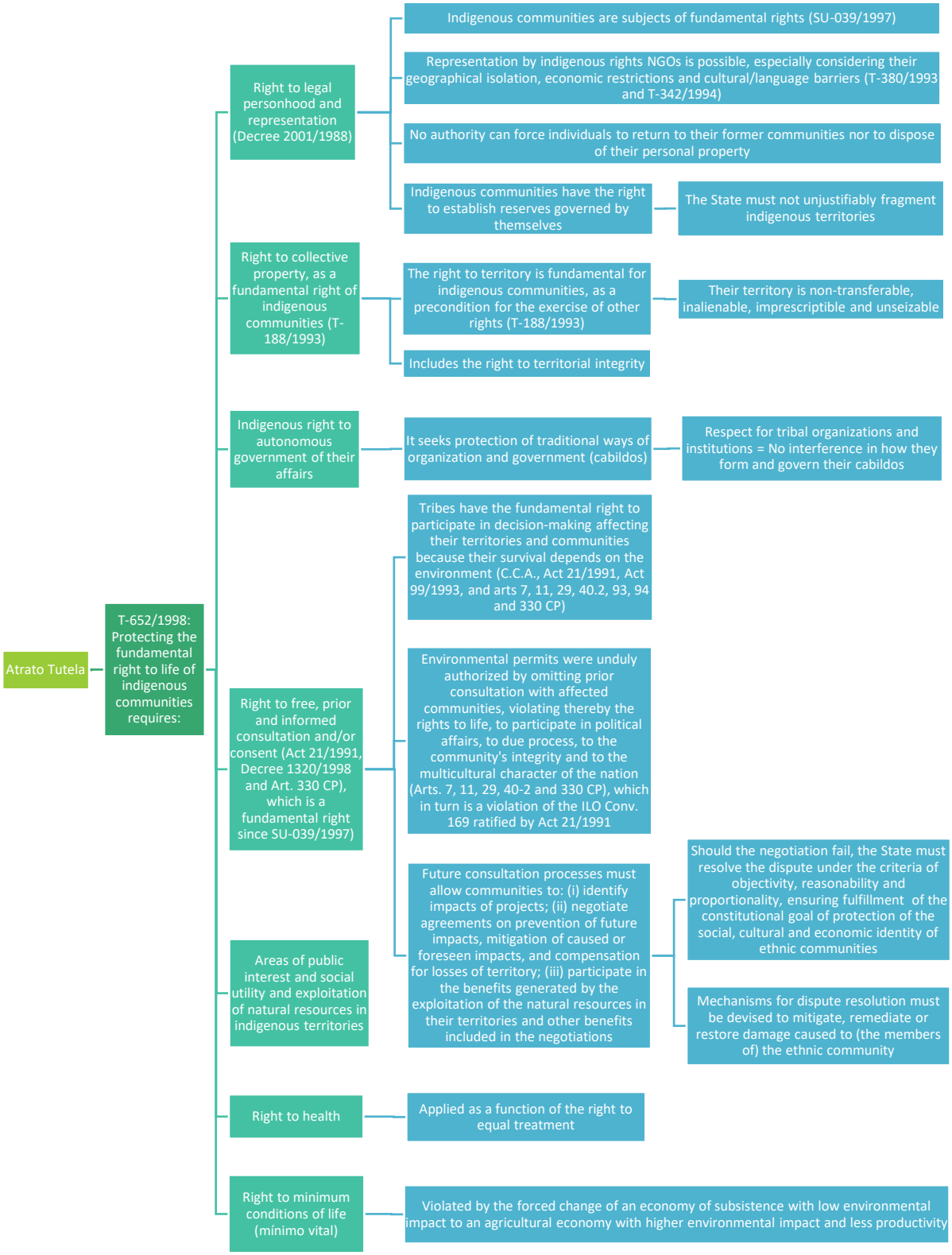
VI. Constitutional and Statutory Considerations – The World of the Domestic Legal Order

The following charts summarize the main sources and arguments outlined by the Court in relation to Colombian constitutional and statutory provisions in the cases at issue:[111]

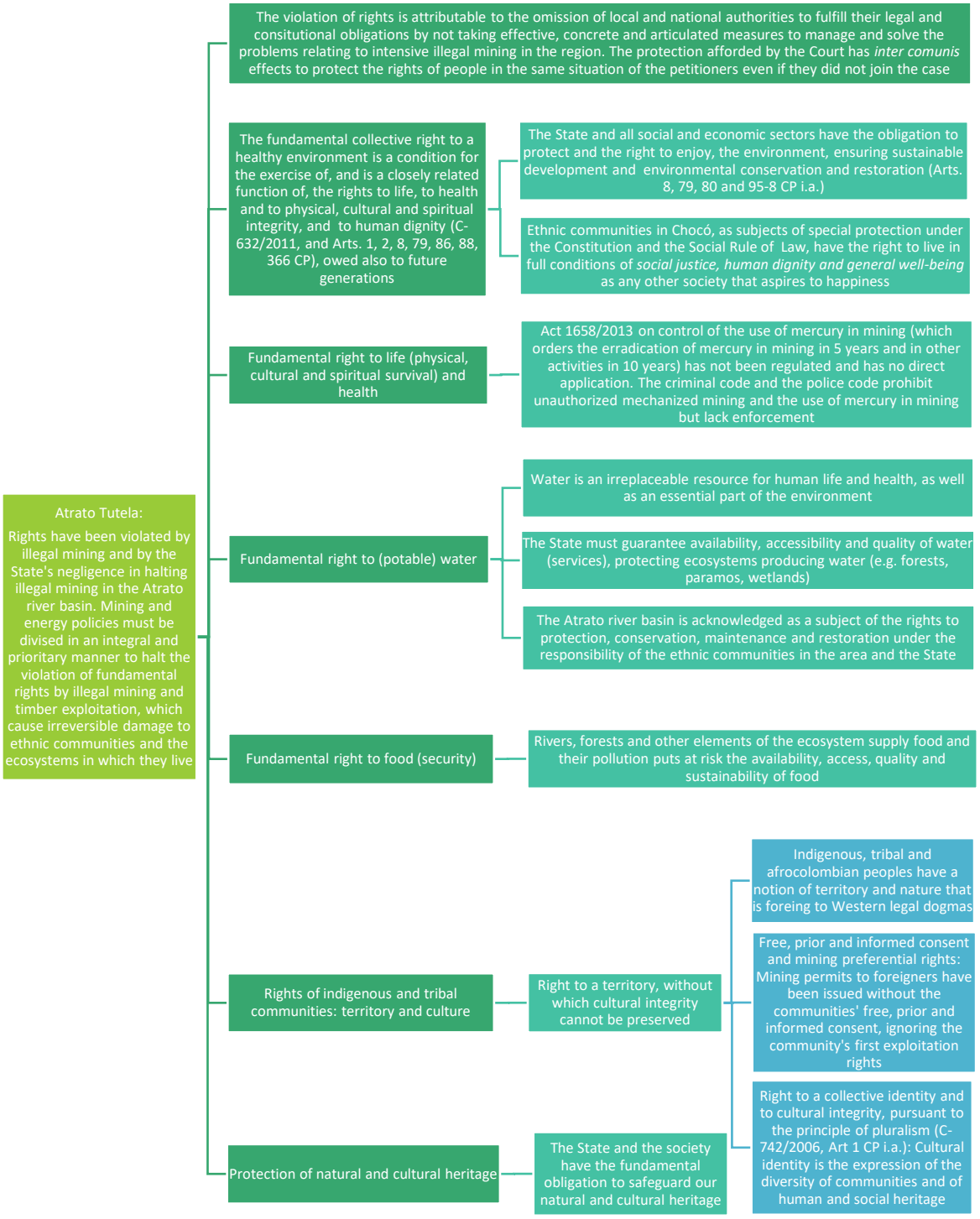
A. Main Domestic (Supra)Legal Considerations in T-380/1993

[111] For reasons of space, the charts omit precedents relating to procedural aspects.

B. Main Domestic (Supra)Legal Considerations in T-652/1998



C. Main Domestic (Supra)Legal Considerations in the Atrato-Tutela



1. Fundamental Rights and Environmental Law in the Domestic (Supra)Legal Order

Two topics are particularly recurrent in the three judgements under analysis: biodiversity and multiculturality, conveying an approach to protect the *alterity* historically subordinated by the hegemonic world(view): Nature, and peoples left behind/outside, both becoming prime subjects of judicial redress:

- T-380/1993: Protection against violations of the right to life were based on the communities' legal personhood and on nature conservation, restitution and substitution, simultaneously safeguard biological and cultural heritage.[112]

- T-652/1998: The right to life linked to the rights to: (i) health; (ii) a minimum livelihood ('*mínimo vital*', that is, the minimum resources one needs to survive), and (iii) legal personhood, representation and participation; subordinating the exploitation of natural resources to the petitioners' cultural, social and economic integrity.[113] Following other precedents (especially SU-039-1997), this integrity was to be safeguarded by exercising free, prior, meaningful and informed representation, consultation and participation (and where possible, consent) in decisions affecting the communities, pursuant to the governance mechanisms that the communities may autonomously devise.

In both judgements, the petitioners' life and health could not be considered aside from environmental health, preservation and restoration: Human groups were deemed an integral part of ecosystems.[114] The Atrato-Tutela built its case from this basis.

Outstandingly, the catalogue of legal entitlements, arguments and instruments of domestic law explicitly embedded in the Atrato-Tutela is enormous: more than 120 *tutelas*, almost 100 constitutional review ("C") judgements, and ten unifying rulings; in addition to numerous constitutional and statutory provisions, a vast number of international instruments, and several institutional reports and academic and literary works. Based on this massive body of references enshrining human rights and environmental protection, the Court reviewed the historical evolution and scope, under Colombian (case-)law and international doctrine, of the following human rights:[115] life,[116] personal integrity, equal treatment,[117] human dignity,[118] access to information,[119] health,[120] water,[121] sanitation,[122] food (security),[123] culture,[124] and the right to a healthy environment,[125] altogether interconnected with, and

[112] T-380/1993, 15.
[113] T-380/1993, 17.
[114] T-652/1998, 14. The original fragment, however, was originally outlined in the source judgement T-342/1994. The prevalence of ethnical, cultural, social and economic integrity of indigenous groups over the exploitation of natural resources was reiterated in judgement SU-039/1997.
[115] *Atrato Tutela*, 29.
[116] The right to life was understood in the Atrato-Tutela as the right to physical, cultural and spiritual survival. Ibid, 66-67.
[117] Ibid, 31-32.
[118] Ibid, 34,
[119] Ibid, 93.
[120] Pursuant to T-060/2007, T-148/2007 and especially T-760/2008.
[121] *Atrato Tutela*, 40, 62-71, 140. Water is deemed a fundamental right by reiterative constitutional jurisprudence, i.e. T-570/1992, T-740/2011, C-035/2016, i.a. in light of its connection with the fundamental rights to life, dignity, health and a healthy environment. Ibid, 69.
[122] Ibid, 28. The right to sanitation has been considered fundamental since T-406/1992.
[123] Ibid, 71, 124. The right to food is a fundamental right under Colombian constitutional case-law, especially by virtue of T-348/2012, C-644/2012 and T-606/2015.
[124] Ibid, 78-80. Pursuant to Art. 44 CP, culture is a fundamental right (of children).
[125] Ibid, 42, 70. Under Colombian constitutional case-law, the right to a healthy environment is a fundamental right. See, i.e., C-632/2011, 23, which in turn is based on C-401/1995, 11.

impacting (and/or being impacted by) a wide array of additional rights enshrined in constitutional, statutory and international instruments.

2. Environmental and Biodiversity Protection as Priority, Superior Interest and Fundamental Social Goal

Under the framework of the so-called "Ecological" Constitution",[126] Colombian case-law has developed the right to a healthy environment for the benefit of the existing human community and of future generations.[127]

In the Atrato-Tutela, environmental protection was seen as a priority,[128] a superior interest,[129] a social goal,[130] and a precondition for the exercise of other fundamental rights, especially (but not limited) to water[131] and food security[132] necessary for peoples' survival. Furthermore, recalling T-405/1993, the Atrato-Tutela underscored the fundamental character of the right to a healthy environment, and reiterated that protection of this right via the *tutela* track are admissible when: (i) the petitioner is directly or actually affected by environmental degradation, (ii) the threat or violation of the fundamental right is proven, and (iii) there is a causal nexus between the cause of action and the (threat of) harm.[133]

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[126] For a commentary on the notion of "Green", "Ecological" or "Environmental" Constitution, see Chapter VII.

[127] Notably, C-632/2011, a source judgement of the Atrato-Tutela, underscored that "the future generations of humanity have the right to receive this planet in conditions adequate to human dignity as universal subjects of rights". C-632/2011, 18-19. In this regard, the Atrato-Tutela recited: "[…] Environmental usages, pollution and damage demand from humanity a serious process of reflection and pose to States challenges for strengthening their foundational basis in order to realize a healthy environment." *Atrato Tutela*, 105. In 1993 (following T-411/1992, T-428/1992, T-451/1992 and T-536/1992), T-092/1993 declared that "the right to a healthy environment cannot be detached from the person's right to life and health. […] In fact, factors of environmental degradation cause irremediable harm in humans and therefore the right to a healthy environment is a fundamental right for the existence of humanity." T-092/1993, 10-11. C-632/2011 elaborated on the content of the right to a healthy environment as a prime objective and universal endeavor for general interest and community well-being of current and future generations that shall be made compatible with the preservation of cultural and historical values (based on the internationalization of ecological relationships reflected in international agreements like the Stockholm Declaration, the World Charter for Nature, the Rio Declaration, the Montreal Protocol, UNFCCC, the Kyoto Protocol and the UN Millennium Declaration). C-632/2011 acknowledged that global environmental degradation is mainly due to anthropogenic causes: (i) driven by industrialization, technification and overpopulation without criteria of sustainability; (ii) affecting water, air, land, living beings, and the atmosphere; (iii) increasing global warming, deforestation, habitat degradation, destruction and exhaustion of irreplaceable resources; and (iv) generating negative effects on human physical, mental and social health.

[128] Ibid, 41, recalling T-254/1993.

[129] Ibid, 30, 42, 45, 61, 110, 111 and 144.

[130] Ibid, 70, recalling C-431/2000.

[131] Water was there understood as a fundamental right and a public service. Ibid, 62-70, following T-411/1992, T-570/1992, T-570/1992, T-539/1993, T-244/1994, T-523/1994, T-092/1995, T-379/1995, T-413/1995, C-200/199, C-431/2000, C-671/2001, T-410/2003, T-1104/2005, T-270/2007, T-888/2008, T-381/2009, T-546/2009, T-143/2010, C-595/2010, T-614/2010, T-055/2011, C-220/2011, T-608/2011, C-632/2011, T-740/2011, T-348/2012, T-500/2012, C-644/2012, C-123/2014, T-606/2015, T-766/2015, C-035/2016 and C-273/2016.

[132] Ibid, 62-74. See also T-348/2012, C-644/2012 and T-606/2015.

[133] These conditions were set forth in T-405/1993 (*Comunidades Indígenas del Medio Amazonas v Ministry of Defense and USA Air Mission*) 26-28. In T-405/1993, the right to a healthy environment was in conflict with the construction of a USA military base (and a prospective Colombian military base) in territories collectively owned by Huitoto and Muinane indigenous groups.

3. Minority Rights

The three judgements evidenced a continuous struggle of indigenous and tribal peoples to defend their fundamental rights, territories and ecosystems, against oil, timber, infrastructure, hydroelectrical and other (mega)projects undertaken causing aggressive disruptions to ecosystems,[134] without acknowledgement of their impact on these communities and the areas where they live; and without proper mechanisms for free, prior and informed consent.[135]

To tackle these conditions, the three judgements safeguarded minorities under the premise that these groups are subjects of special constitutional protection,[136] by virtue of their historical marginalization.[137] Following its precedents, the Atrato-Tutela reiterated the rights of these groups to collective property of territory,[138] to physical, cultural and spiritual survival (life),[139] to ethnic and cultural integrity,[140] and to prior consultation,[141] altogether deeply connected with the safeguard of rivers, forests, food sources and biodiversity.[142]

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[134] Some of the direct or indirect precedents to the Atrato-Tutela (especially T-652/1998 studied hereunder), point out how megaprojects such as hydroelectric infrastructure led to forced displacement and cultural disruptions to the communities living in the impacted areas: SU-039/1997, ratified by T-652/1998, stated: "The exploitation of natural resources in indigenous territories requires the harmonization of two opposite interests: the need to plan the management and use of the resources laying therein as to warrant sustainable development, conservation, restoration or substitution (Art. 80 CP), and to ensure the protection of the ethnic, cultural, social and economic integrity of the indigenous communities living therein, that is, of the basic elements that constitute their cohesion as a social group [...]". SU-039/1997, 19.

[135] E.g.: SU-039/1997, which concerned the violation of fundamental rights (notably, to participation, to due process and to ethnic, cultural, social and economic integrity) of members of the U'wa indigenous community, by having omitted the community's free, prior and informed consent before issuing an environmental permit for activities of seismic exploration and petroleum exploration and exploitation by Occidental de Colombia, Inc. This judgement specified that free, prior and informed consent entails an active and effective participation and consultation of the community in decisions made with regards to their territory (which is essential for the community's survival), the final decision to be made in agreement or consensus with the community where possible, under the following conditions: (i) full knowledge about the (mechanisms, procedures and activities needed for the) projects and how they may affect or deteriorate social cohesion, cultural, economic and political life, and consequently the very basis of the tribe; (ii) interference-free deliberations to assess the projects' (dis)advantages; (iii) opportunities for the community to be heard and to pose questions, enquire goals, defend its interests and give opinions about the projects' feasibility; (iv) in absence of agreement or consensus, the authority's decision shall not be arbitrary nor authoritarian; instead it must be objective, reasonable and proportional as to comply with the State's obligation to protect the social, cultural and economic identity of the tribe; and (v) incorporation of a mechanism to resolve controversies in order to mitigate, correct or restore the negative effects caused to the tribes by the projects. These conditions would not be met if the tribe was merely informed or notified of the project, had no change to express its (non) consent nor to communicate how the projects affect its ethnic, social, cultural and economic identity, or if a mechanism to reach agreement or consensus through the tribe's authorized representatives was not offered. SU-039/1997, 22-23. In T-652/1998, the environmental permit for a hydroelectric project was issued under similar irregular conditions as in T-039/1997, violating the rights of the Emberá-Katío of Alto Sinú tribe. T-652/1998, 19-22. In T-380/1993, there was no environmental permit but indiscriminate logging was being carried out in an area belonging to the Emberá-Katío tribe of Chajeradó. Other precedents on this matter are SU-383/2003, T-955/2003, T-547/2010, C-595/2010, T-693/2011, T-384A/2014 and 449/2015, i.a.

[136] *Atrato Tutela*, 21-23, 30-32, 72, 90.

[137] T-576/2014, n 31.

[138] *Atrato Tutela*, 56, 66-67. The right to collective property for these groups is considered a fundamental right under Colombian constitutional case-law, particularly pursuant to T-188/1993 i.a..

[139] Ibid, 75-80, 148.

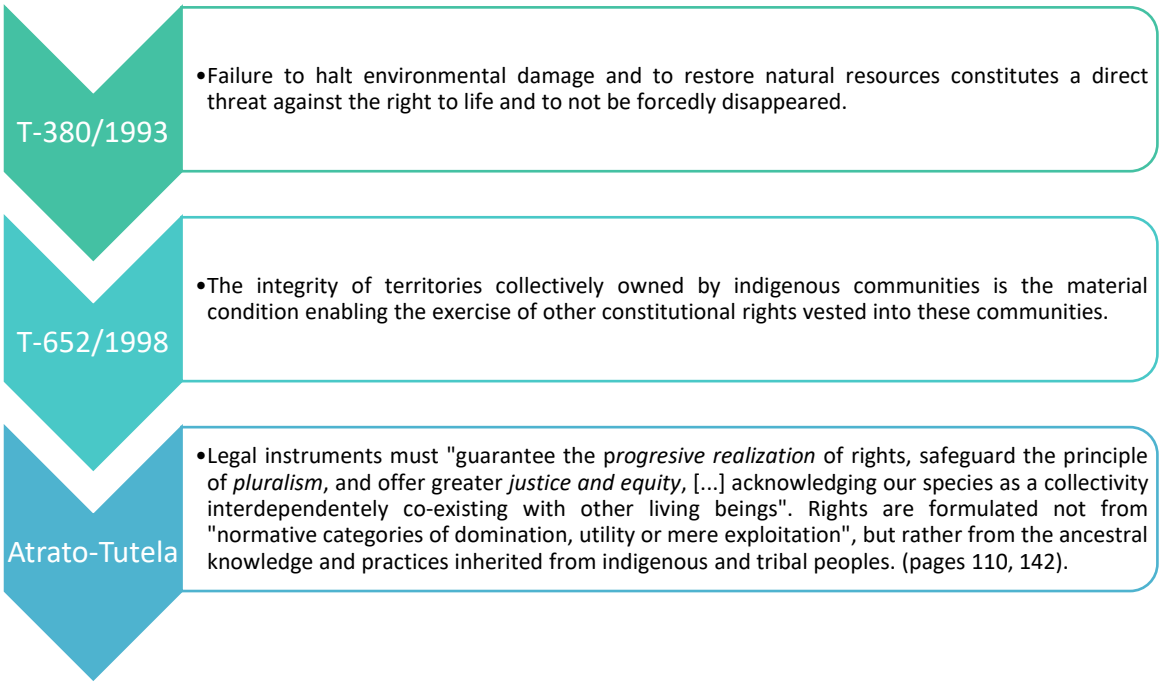
[140] Ibid, 57. The right to ethnical and cultural integrity of indigenous peoples is also deemed as fundamental under Colombian constitutional case-law, in light of T-380/1993 and T-342/1994 i.a..

[141] Ibid, 61, 149.

[142] Ibid, 39-40, 61, 72-74.

4. The Atrato River Basin as a Subject of Rights

Bridging environmental and minority protection, the most renown feature of the Atrato-Tutela came to life: The acknowledgement of the basin's rights to protection, conservation, maintenance and restoration, under the joint responsibility of the State and the ethnic communities living therein, each appointing a legal representative for this *sui generis* person. Yet recognition of the basin's rights did not arise from utilitarian considerations. It derived from the application of the constitutional principles of pluralism and cultural diversity, which supported the vindication of the material and immaterial relationships of interdependence and inter-nurturing between ancestral communities and the ecosystems to which they pertain.



Graphic 9. Highlights of legal considerations under national law.

5. Legal Personhood in the Domestic (Supra)Legal Order

As seen above, the existence of a legal person requires the biological and cultural conditions necessary to sustain her/his life. The legal approach purports to grant legal capabilities for those preconditions: [143]

- T-380/1993: The rights to collectively own territories, to obtain legal titles therefor, to independently govern them, and to have them protected from unsustainable activities, were viewed as the material requirements to biological and cultural life embodied in legal persons.

- T-652/1998: Clarified that the absence of free, informed and prior consultation would obliterate the aforementioned preconditions.

[143] In general, the precedents declared that (i) the collective property of ethnic and tribal groups is a fundamental right necessary to enforce other minority rights (T-652/1998, 11-12, reiterating T-188/1993); (ii) tribal peoples are subjects of special protection as a means to halt their marginalization, assimilation or destruction (T-576/2014, 29, 52-56, 69-72, 77; and T-405/1993); (iii) Consultation about, participation in, and free, prior and informed consent to decisions affecting tribal territory, are fundamental rights (T-576/2014, 52, 97-112, 122-129).

- Atrato-Tutela: Crafted a much greater compendium of preconditions, resorting to a massive universe of legal resources feeding into the content and scope of a plentiful human collective existence secured through a wide array of legal entitlements, including also second and third generation rights (some of which have been gradually reinterpreted by the Court over the years as fundamental rights). It complemented these numerous human rights with legal entitlements to non-human elements of Nature, in recognition of the petitioners' worldviews and dependency on the environment's health.

In the Atrato-Tutela, the content of legal personhood was crafted in dialogue with legal notions progressively interpreted by the Court throughout the years, where first, second and third generation rights are interdependent variables. The legal output, sustained in ancestral traditions and cosmovisions that generally had escaped the legal realm, resulted in the acknowledgement of personhood to intertwined human and non-human communities.

Core domestic legal dimension of personhood in the Atrato-Tutela.

6. Who Are We After Worlds Collide Before National Law?

The formal legal edifice clashed with the factual world where laws enshrining environmental and human rights protection were not honored or were defective, while scientific accounts highlighted the need to halt severe environmental and social damage. Moreover, the petitioners' values and traditions seemed dramatically different from the assumptions of classical legal notions: For the former, the individual, the community and the environment are deemed inextricable;[144] where *territory* is conceived of as an ensemble of invaluable (priceless) immaterial cultural and spiritual value rather than (potentially) exploitable land.[145] In the face of this collision, the Atrato-Tutela, furthering its preceding case-law, bridged these worlds: Through a generous process of judicial de-reification or vivification, reinterpreted (supra)legal notions under a biocultural approach supported on science-based arguments.

The biocultural approach was underpinned in the exaltation of cultural diversity as planetary immaterial heritage dependent on biological diversity, and an essential element for Nature's preservation -an understanding present in T-380/1993 and T-652/1998. The exaltation of ancestral means of production contrasts with the hegemonic pursue towards a globalization of standard social values functional to market values:[146] There, the legal edifice was re-shaped to express the cosmovisions of the *alterity*, rather than holding a classical formalistic/legalistic approach.[147] The Court revendicated

[144] *Atrato Tutela*, 24, 53-54, 60, 63, 72-76, 80.
[145] Ibid, 61. Notice that under the hegemonic world(view), for example, when defining areas of potential land investment, maps displaying 'available' land disregard the people already present in these areas. Andreas Exner and others, 'Constructing landscapes of value: Capitalist investment for the acquisition of marginal or unused land—The case of Tanzania' (2015) 42 Land Use Policy 652 660-661.
[146] This topic is further discussed in Chapter VIII.
[147] T-380/1993, 14; reiterated in T-652/1998.

the alterity, treasured its worldviews, and conferred preferential treatment to the communities over economic motors.[148]

The exaltation of biological and cultural diversity, which translates into an endeavor to protect its integrity, contrasts with hegemonic practices of homogenization, marginalization and extermination of the *alterity*.[149] In T-652/1998, this integrity presupposed the communities' right to participate in decision-making processes relating to economic activities affecting them, an empowerment statement that would be reflected in the Atrato-Tutela's institutional setup for legal representation and policymaking.[150]

The endeavor to give voice to the *alterity* was also underpinned in the Court's acknowledgement of the historical debt of society with the *otherness*, which the Court undertook to offset by putting the legal and institutional machinery at its service:[151]

- T-380/1993: Ordered to implement programs and legal actions to redress the damage inflicted to the ecosystem and the petitioners.

- T-652/1998: Established minimum thresholds of indemnification and compensation for the caused and expected environmental and ethnical harm.

In the Atrato-Tutela, the Court intended to achieve material equality of the *alterity*, pursuant to constitutional principles informing the notion of the *Social Rule of Law*:[152] solidarity,[153] distributive justice[154] and prevalence of general interests and general well-being[155] over particular interests,[156] which embody a reasoning sympathetic with those traditionally left behind/outside by the hegemonic world(view), hence contrasting with the mainstream attitude of disregard, scorn or underappreciation towards *the alterity*.[157]

The Atrato-Tutela's ultimate expression of this embracement towards the *otherness*, contrasting orthodox practices of reification and restrictive demarcation of legal boundaries in adjudication, was two-fold: (i) It granted rights to non-petitioners: the ecosystem -through the river's legal personhood,

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[148] T-342/1994, 2, 17.
[149] Practices of homogenization, marginalization and extermination were particularly evident in T-342/1994, a *tutela* dealing with threats to the integrity of the Nukak-Maku people, who had been subjected to evangelization, suffered very precarious health conditions, and saw their community dismember. See T-342/1994, 2, 16.
[150] *Atrato Tutela*, 90-92, referring to SU-039/1997, and reiterated in T-769/2009, 35. Other relevant precedents on this matter are, i.a.: C-366/2011, C-123/2014, T-766/2015, C-035/2016, C-221/2016.
[151] See for example, T-188/1993, 7-8.
[152] Equality understood primarily to ensure social justice and inclusion of the *alterity*, under the notion of Social Rule of Law discussed in Chapter VIII, and pursuant to (supra)legal provisions relating to the right to equal treatment. *Atrato Tutela*, 27-39.
[153] Ibid, 30-32, 35-38. "The principle of **solidarity**, as one of the basic pillars of the Colombian Social Rule of Law [...] constitutes a community of interests, feelings and aspirations from which mutual support and shared responsibilities emanate in order to fulfil the goals intended: *the satisfaction of individual and collective needs.*" Ibid, 35-36. Other precedents dealing with this principle are, e.g.: T-550/1994, C-239/1997, T-209/1999, T-434/2002 and C-188/2006.
[154] Ibid, 32.
[155] The principle of well-being in the Atrato-Tutela, closely related to the notion of human dignity, derives from the European model of welfare state and includes different dimensions, particularly material, physical, psychological and spiritual conditions to live, individual well-being and collective welfare. Ibid, 26, 30-41, 48, 65, i.a. It is worth noting that satisfaction of the most basic needs fall under the notion of *mínimo vital*, that is, the minimum conditions necessary to have a decent life. For further references on this notion, see i.a. T-015/1995, SU-995/1999, T-211/2011 and T-511/2011.
[156] This prevalence operates save when superior fundamental rights are at stake. Ibid, 36-37.
[157]Germán Castro Caycedo, *Colombia Amarga* (Bitter Colombia) (Editorial Planeta Colombiana S.A. 1986. 10th Ed. June 2001) 66.

representation and stipulation of other rights- and other victims of the same violations of rights - through *inter comunis* effects for the judgement,[158] contrary to the typical *inter partes* effects. (ii) It performed functions typically reserved to the executive and legislative branches, trying to fill-in and correct their governance gaps and omissions, retaining permanent jurisdiction over the case, and following-up compliance through periodic reporting.[159]

Moreover, the Court recognized the importance of territory to crystalize the communities' integrity and diversity, understanding territory beyond the classical geographical limitations of hegemonic notions.[160] Notably, in the Atrato-Tutela, the Court declared: "These communities have made of the Atrato River Basin not just their territory, but the space to reproduce life and recreate culture".[161] This understanding encompassed the character of fundamental right vested into *territory* of tribal communities under Colombian constitutional law, in turn linked to their evolving right to collective property:[162]

- T-380/1993: The content and scope of protection for the right to collective property was operationalized through the community's legal personhood and representation or their reserves.[163]

- T-652/1998: Collective property was viewed as a fundamental right, facilitating its defense via *tutela* for all future cases brought to court.[164]

- Atrato-Tutela: The basin was considered common heritage of humankind, given the planetary and universal importance of its mega-diversity, with its own personhood and representation.

Because the *tutela* track is only available if a fundamental right is at stake, the Constitutional Court since its inception has faded the boundaries between first, second and third generation rights (a categorization engrained in hegemonic legal orders), by progressively reinterpreting some non-first-generation rights as *fundamental*, and viewing different rights as an interconnected ensemble without which (legal) persons may not thrive. However, some of these rights have been deemed fundamental only with respect to certain persons or groups,[165] i.e. cultural rights have been considered fundamental with regards to ethnic communities.[166] Although the Atrato-Tutela extensively elaborated on the interconnectedness between a wide array of rights, further extension of these boundaries to other living communities is yet to be developed.

Finally, in the three judgements, supranational legal instruments and principles (especially those protecting the environment and minority rights) increasingly became engrained and harmonized with domestic law. In the Atrato-Tutela, the so-called domestic notion of the "Constitutional Block"[167]

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[158] *Atrato Tutela*, 111-112.
[159] Ibid, 162.
[160] Ibid 76-77, citing SU-383/2003; "For ethnic communities, territory is not for one individual – as it is understood under the classical notion of private law – but for the entire human group inhabiting therein, and in that sense territory embeds an eminently collective character." Ibid, 147-148.
[161] Ibid 8. Notice that redefining the notion of territory also deconstructs hegemonic narratives of development; i.e. ibid, 148-149.
[162] For example, C-1051/2012, 134, 147.
[163] T-380/1993, 16.
[164] T-652/1998, 1.
[165] T-380/1993, 14.
[166] *Atrato Tutela* 79, citing C-639/2009. Moreover, the Court noted: "[…] the advancement towards a Social Rule of Law axiomatically implies the recognition and implementation of the so-called Economic, Social and Cultural Rights […] Cultural rights are universal rights inextricable to, reflected in and feeding into and from human rights." Ibid 80.
[167] For a commentary on the notion of "Constitutional Block", see Chapter VII below.

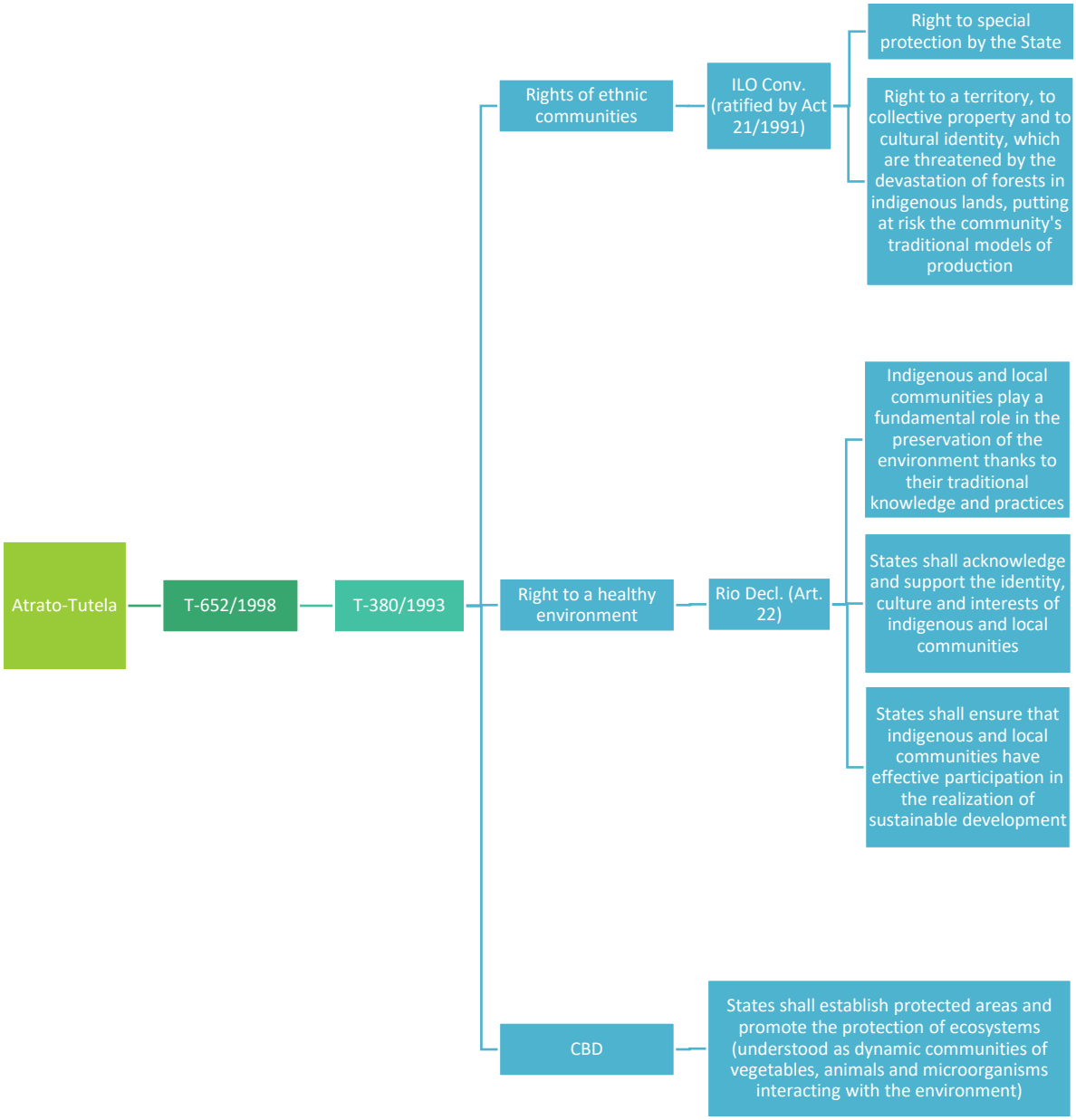
served as a tool of synchronization with transnational law, as further described in the following chapter.

From the Court's assessment of the national legal order, it can be concluded that we – subjects of law, considered one with our communities and environments - are jointly entitled to a wide array of interconnected rights for the exercise of legal personhood. The content and scope of such rights has been dynamically expanded through transformational judgements, formulated in view of non-hegemonic worldviews that contribute alternative discourses and values to reinterpret core legal notions.

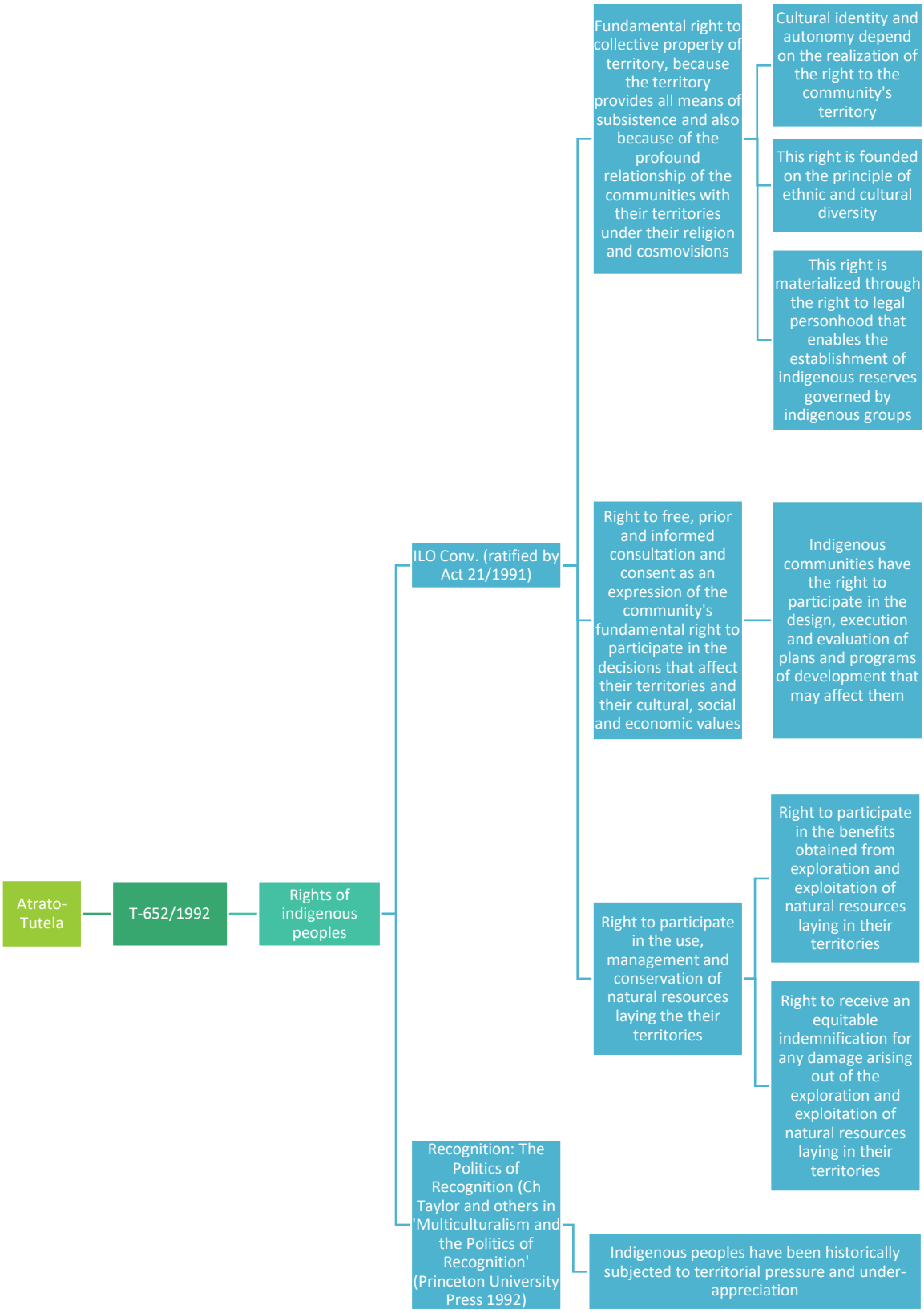
VII. Supra-National Legal Landscape – the World of Transnational Discourses

The following charts summarize the role of international instruments in the cases at hand:

A. Main Supra-national Considerations in T-380/1993



B. Main Supra-national Considerations in T-652/1998



C. Main Supra-national Considerations in the Atrato-Tutela

The charts show that international human rights and environmental instruments played a more preponderant role in the Atrato-Tutela's substantiation compared to the other two judgements. In the Atrato-Tutela, they fed into the domestic legal order by judicial interpretation, or -where possible- in light of the paramount mandate referred to as the "Constitutional Block". Consequently, international instruments were deemed embedded in the so-called "Ecological Constitution" and "Cultural Constitution". Moreover, there, the international principles of precaution and prevention enabled a more robust case to afford protection. This way, the domestic legal order was shaped in harmony with international environmental and human rights law.[168]

1. The Constitutional Block

The notion of "Constitutional Block" (*Bloque de Constitucionalidad*) sheds light onto the entire domestic legal order, and must be kept in sight to dimension the scope and content of the rules and principles dealt with throughout this work. By virtue of article 93 CP, the Constitutional Block is a supra-legal[169] order where "international treaties and agreements ratified by Congress, which acknowledge human rights and which prohibit limitation of these rights in states of emergency, prevail in the domestic legal order. The rights and obligations enshrined in the Constitutional Charter are to be interpreted according to the human rights treaties ratified by Colombia [...]."[170] Fundamental rights falling under the Constitutional Block are directly enforceable and subject to the expedite judicial redress provided by the *tutela* track. This Block includes first, second and third generation rights that may be deemed fundamental, even if they are enshrined in other legal sub-fields, such as environmental law treaties.[171]

2. The Ecological Constitution

The "Ecological Constitution"[172] is a catalogue of 34 constitutional provisions influenced by the international development of the right to a healthy environment constitutionalized around the world.[173]

In view of the *green legal toolkit* provided by the Ecological Constitution, following assessment of the evidence, and applying a systematic and teleological interpretation of numerous (international)

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[168] For example, in harmony with Act 99/1993, the Rio Decl. is central for the judgement, under the basis that the country's social and economic development shall be oriented by the contents of the Rio Decl. *Atrato Tutela*, 107.
[169] The term 'supra-legal' here denotes all provisions that are above the statutory level of the legal order: that is, the Constitution and the treaties contained in the Constitutional Block.
[170] Furthermore, Art. 94 CP states: "The enunciation of the rights and safeguards contained in the Constitution and in international treaties in force shall not be interpreted as to prevent the application of others that may not be expressly stated (t)herein but that are inherent to the human person."
[171] *Atrato Tutela*, 29 n 110.
[172] The precedents cited by the Atrato Tutela on the "Green", "Ecological" or "Environmental Constitution" and the fundamental character of the right to a healthy environment, are: T-411/1992, T-415/1992, T-536/1992, T-570/1992, T-092/1993, C-519/1994, C-401/1995, C-126/1998, C-200/1999, C-431/2000, C-432/2000, C-431/2000, C-671/2001, C-293/2002, C-339/2002, T-760/2007, C-486/2009, C-595/2010, C-632/2011, T-282/2012, C-123/2014, T-080/2015, C-449/2015, T-606/2015, C-035/2016, and C-298/2016. See also, C-666/2010 (on animal cruelty). In a former judgement serving as a source in the Atrato-Tutela, the Court had noted that: "[...] the Constitutional Assembly considered that: "Environmental protection is one of the goals of the Modern State; all structure of the State must, therefore, be guided by this goal, and must advance its realization. The environmental crisis is, likewise, a crisis of the civilization that reorganizes the way in which the relationships between people must be understood. Social injustices are translated into environmental disbalances which in turn reproduce the conditions of misery"." T-431/2000, 12, citing T-254/1993, 16-17, which in turn was based on the Constitutional Gazette 46 containing the deliberations held by the Constitutional Assembly when drafting Colombia's Carta Magna, 4-6.
[173] *Atrato Tutela* 41-42.

instruments, the Atrato-Tutela concluded that the environmental damage threatens one of the Planet's most important life sanctuaries.[174]

3. The Cultural Constitution

Developed by case-law, the 'Cultural Constitution'[175] (a notion closely related to the 'Ecological Constitution' in the Atrato-Tutela), incorporates the idea that cultural heritage is a value that overflows territorial and time limitations and as such expresses and forms human identities.[176]

Given the interrelatedness between the Cultural and the Ecological Constitution when dealing with tribal rights, throughout the case-law preceding the Atrato-Tutela, the Court has underscored that environmental degradation threatens the continuation and reproduction of ancestral traditions and cultures, as well as the habitats and natural resources with which cultural identity is edified, developed and consolidated.[177] In T-380/1993, for example, the Court stated: "The importance of the tropical forest -the World's lungs- for human survival, contrasts with its fragility", and recalled the crucial role played by traditional knowledge and practices of indigenous and other local communities for environmental preservation and sustainable development, particularly under the Rio Declaration (Art. 22).[178]

By placing cultural diversity in dialogue with transnational legal narratives, the ways of living and thinking embodied in the day-to-day traditions of peoples were seen as part of the heritage of humanity that society must preserve.[179] International instruments on indigenous and tribal rights and on cultural heritage,[180] as part of the Constitutional Block but also as expressions of supranational efforts to defend the *alterity*, served to construct and apply the constitutional mandate of cultural integrity and diversity in the Atrato-Tutela.

4. Precaution and Prevention

Historically, the precautionary principle has been applied by the Court against environmental and/or health threats, under the understanding that activities posing a serious and irreversible danger to the environment must be ceased even if absolute scientific certainty is lacking.[181] In order to protect

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[174] Ibid 140-141, 145.

[175] The «Cultural Constitution » is a notion developed based on T-428/1992, C-027/1993 (which declared that the Concordat between Colombia and the Holy See was 'integrationist and homogenizing'. Ibid, 57), T-188/1993, T-257/1993, T-380/1993, C-058/1994, T-342/1994, C-519/1994, C-139/1996, T-349/1996, T-496/1996, SU-039/1997, T-523/1997, SU-510/1998, T-652/1998, T-552/2003, C-742/2006, T-955/2003, C-639/2009, C-434/2010, T-129/2011 and T-256/2015.

[176] Ibid, 80.

[177] Ibid, 78, 139.

[178] T-380/1993, 16.

[179] *Atrato Tutela*, 79 para 6.10.

[180] E.g. the American Decl. on the Rights of Indigenous Peoples and the Conv. for the Safeguarding of the Intangible Cultural Heritage.

[181] C-293/2002, C-339/2002, T-1077/2012, C-071/2003, C-988/2004, C-595/2010, T-104/2012, T-1077/2012, T-397/2014, C-672/2014, T-080/2015, C-449/2015 and Consejo de Estado's judgement 25000-23-27-000-2001-90479-01(AP), i.a. are the main precedents relating to the precautionary principle. Pursuant to T-080/2015, a source judgment in the Atrato-Tutela, the burden of proof falls on the agent potentially carrying out the suspicious activity, and the principle is applied in order to "[...] respond to the technical and scientific uncertainty surrounding environmental phenomena due to the incommensurability of pollutant factors, the lack of appropriate systems of assessment or when damage fades over time. [...] Contrary to the theory of certain and verifiable damage, in force since Roman times, precaution operates against risk of expansion and delay [...] The Court has no doubt that there has been occurring a change of paradigm over time that has led to a re-dimensioning of the principles guiding environmental protection, **strengthened and applied more rigorously under the ultimate criterium of *in dubio pro ambiente* or *in dubio pro natura***, pursuant to which, facing a conflict

the petitioners and the environment where illegal mining was taking place, and considering the technical limitations to fully convey the extension and intensity of damage (to be) caused, the Atrato-Tutela subordinated mining to the precautionary principle.[182]

The Atrato-Tutela also applied the principle of prevention, which requires that States avoid or reduce environmental damage by adopting early measures instead of applying remedial actions after harm has occurred or increases.[183]

Graphic 10. Highlights of international considerations.

between principles and rights, authorities shall favor the interpretation that is more consistent with the protection and enjoyment of a healthy environment above other considerations that otherwise may suspend, limit or restrict such protection and enjoyment." *Atrato Tutela*, 107-110 (citations omitted). According to case-law, this principle applies when the following cumulative conditions are met: "(1) There is a danger of damage; (2) Such damage is serious and irreversible, (3) There is a principle of scientific certainty, even if such certainty is not absolute; (4) The authority's decision is aimed at avoiding environmental degradation; and (5) The decision is motivated, is exceptional and is subject to potential judicial review." C-293/2002, 16-17. In this regard, the Atrato Tutela stated: "[…] the solution that avoids damage must prevail over such that may allow it. This principle has been conceived not only to protect the right to [a healthy] environment but also in the event of threat to the right to health […] When there is reasonable doubt on whether illegal mining activities affect people's health or nature, as it has been examined in the case at issue, measures shall be taken to anticipate and avoid any harm, and if harm has been caused, compensatory measures must be undertaken. Considering the evidence of potential negative effects of mercury and other toxic substances used in illegal mining in the Atrato River Basin, which can endanger not only the communities but the entire environment, even though there is no scientific certainty thereof, the Court considers that all conditions are fulfilled to apply the ***principle of precaution for environmental matters and to protect the right to health of persons***. […] S]imply said, the precautionary principle implies that, in the event of scientific uncertainty, the right to a healthy environment, connected to the right to life, must be protected […] In concrete, the application of the precautionary principle in this case shall have the following objectives: (i) prohibit the use of toxic substances like mercury in mining, whether legal or illegal; and (ii) **declare the Atrato River as a subject of rights, which implies its protection, conservation, maintenance and, where applicable, restoration** […]" ibid, 139-140 (citations omitted, emphasis added).

[182] Ibid, 139.

[183] Ibid 105.

5. Legal Personhood and the Supranational Legal Order

In T-380/1993, international treaties on the protection of biodiversity, and international laws on the rights of indigenous peoples, served to highlight the interdependence between healthy ecosystems and the biological and cultural survival of indigenous groups, insofar as they mutually contribute to the preservation of one another. For their protection, the Court established that indigenous communities are entitled to legal personhood.[184] T-652/1998 advanced this understanding by establishing that, pursuant to the ILO Conv. 169, the existence of these groups presupposed the effective exercise of their right to collective property of territories, in turn secured though the right to establish indigenous reserves (which are collective legal entities).

In the Atrato-Tutela, the enormous body of national provisions feeding into the scope and content of legal entitlements was complemented by a numerous catalogue of international instruments elaborating on the interconnection between the right to life and other rights like water, food or culture.[185] Given that the existence of a person in biological and cultural terms in the legal realm is translated into the capacity to enjoy legal entitlements, this catalogue made a more robust case for granting rights to humans and non-humans inhabiting the river basin, once their collective personhood was laid out understanding them as collective subjects embedding the world's heritage. There, legal personhood was not just a category of national law, but a living system of global relevance, whose existence was operationalized through a broad range of complementary legal guarantees for humans and non-humans, the content of which fed from international frameworks: Besides the vast catalogue of international laws envisaged in the ruling, the recognition of rights to non-human elements of Nature in other jurisdictions (particularly in Ecuador, Bolivia and New Zealand), also served to strengthen the case to do likewise for the benefit of the Atrato River Basin,[186] an approach that would be supported by international discourses on biocultural rights. Remarkably, in view of the planetary relevance of the mega-biodiversity of the region, the basin's governance mechanisms devised in the Atrato-Tutela contemplated the permanent participation of the international community (i) as counselor to the Commission of Stewards; (ii) as technical support to decontamination programs; and (iii) as members of the Board of Experts, responsible to advise State agencies on the ruling's compliance, and with power to supervise the Commission of Stewards.[187]

The international acknowledgment of rights vested in non-human elements of nature, a large compendium of international instruments of environmental and human rights law, and international narratives on biocultural rights, helped to craft legal personhood for the Atrato River Basin, whose protection is to be undertaken with the participation -and under the supervision of- the international community, by virtue of the mega-biodiverse character of the ecosystem. Legal personhood of human communities was sustained in international human rights instruments, and especially in instruments on the rights of indigenous and tribal peoples.

Core international dimension of legal personhood in the Atrato-Tutela.

[184] T-380/1993, 16. This understanding is specifically based on the CBD and Art. 22 of the Rio Decl.
[185] *Atrato Tutela*, 55, 72. See also, Craig M Kauffman and Pamela L Martin, 'When Rivers Have Rights: Case Comparisons of New Zealand, Colombia, and India' (International Studies Association Annual Conference).
[186] *Atrato Tutela*, 47.
[187] Ibid, 159-167.

6. Who Are we After Worlds Collide Beyond National Borders?

Severe social and ecological damage on the ground met in court science and the international body of environmental and human rights law, while the constitutional judge encountered the narratives of the peoples inhabiting the basin and the biocultural rights approach -heavily inspired by the work of Sanjay Kabir Bavikatte.[188] From there, the Atrato-Tutela re-dimensioned the interconnected transnational character of the domestic framework provided by the Cultural and the Ecological Constitution. As a result, entitlements enabling the survival of legal persons became more comprehensive and overflew the boundaries of classical adjudication by reinterpreting legal personhood of humans and not-humans not only for the benefit of the petitioners and the responsibility of the respondents, but for the benefit, with the collaboration of, and under the co-responsibility of the international community, which had not been a party to the case.

The Court's green legal toolkit of the Ecological Constitution, which also contains international treaties enshrining human rights, broadened the content of constitutional protection of legal persons by creating bridges with the international legal order and with different sub-fields of international law (such as chemical regulations), indirectly bridging with other sciences too (like the natural sciences underlying environmental laws), enabling the protection of nature's health as a function of the effective realization of this toolkit. The Ecological Constitution, conceived of in terms of complementarity with the Cultural Constitution, resulted in the basin's legal personhood and an exhaustive compendium of preconditions to fulfil the rights vested into legal persons.

From the Court's assessment of international instruments, it can be concluded that non-human right-holders are to be protected for the benefit and with the collaboration of the international community, who is co-responsible in the verification of compliance with the Atrato-Tutela. Human and non-human legal persons are not seen in isolation, neither are their hurdles and successes a national issue: Legal persons are members of the planetary community, and their entitlements feed from international legal discourses and laws.

[188] Interview with Felipe Clavijo-Ospina, former law clerk at the Constitutional Court of Colombia (video-call conversation, 17 February 2019).

VIII. Political and Socio-Economic Landscape– the World of Societal Projects

Now it is time to start taking the first actions to effectively protect the planet and its resources before it is too late or damage is irreversible, not only for future generations but for the entirety of the human species.[189]

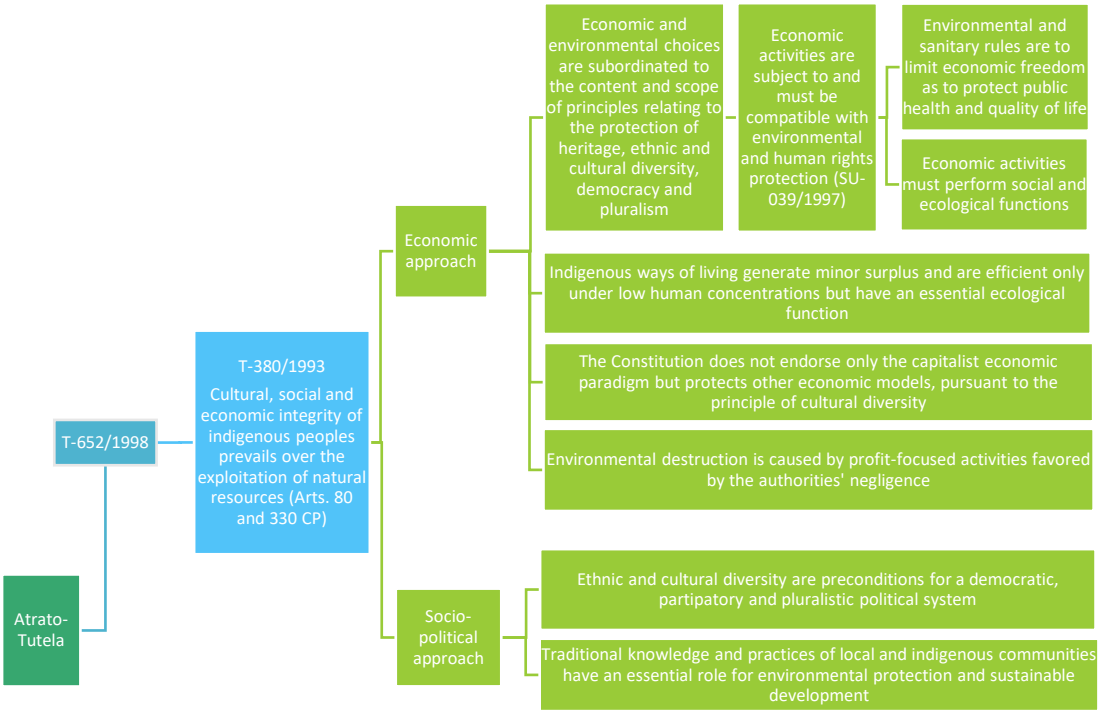
Granting rights to nature can be interpreted as a decolonizing effort to resist anthropocentric and predatory economic and political features of the cultural hegemony[190] embedded in mainstream legal institutions.[191] The following pages explore such dimension of legal transformation:

[189] *Atrato Tutela*, 143.

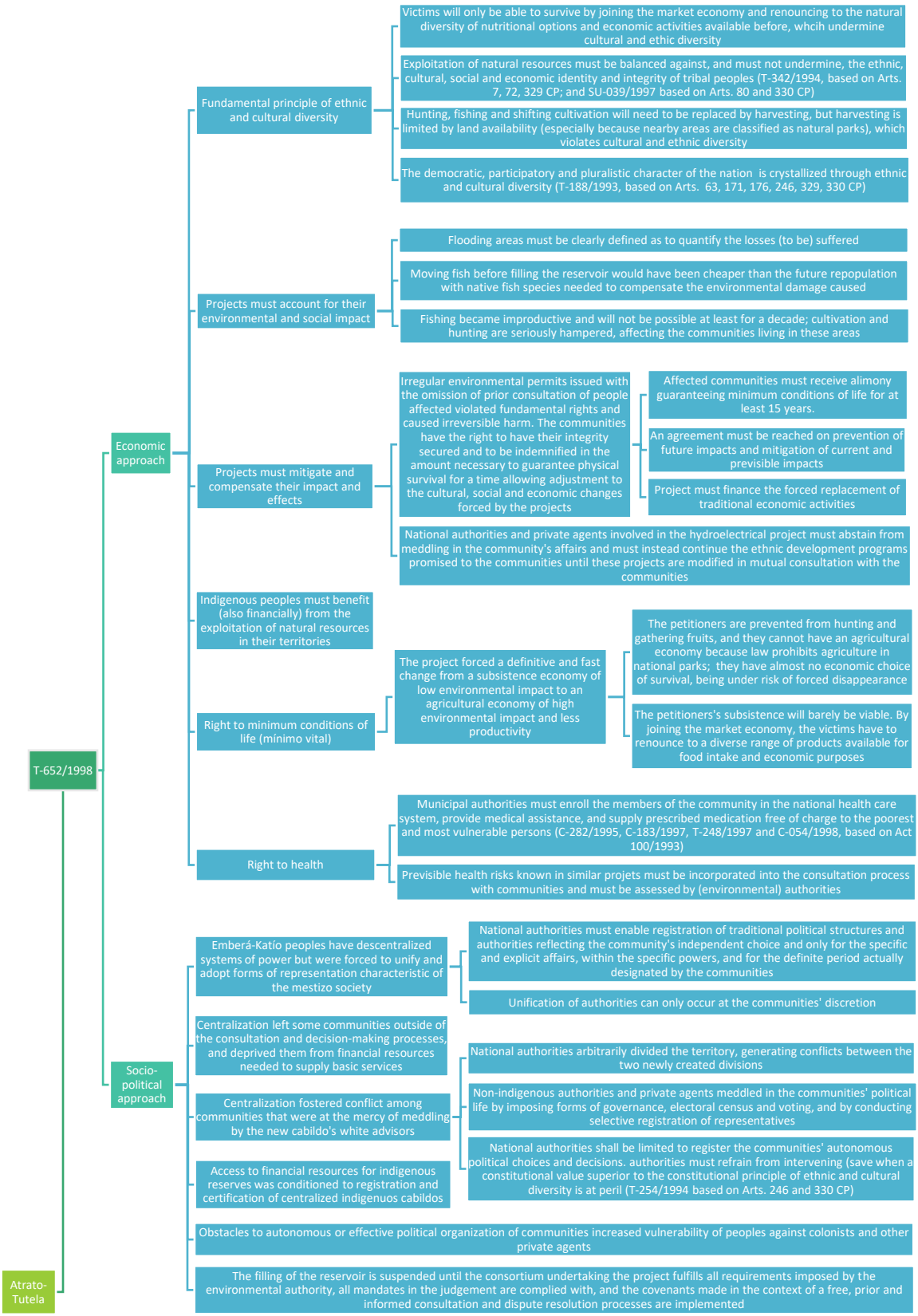
[190] "It is often observed that economic globalization tends to favor cultural products and models of wealthier countries, resulting in the standardization of cultural expressions of poorer or smaller countries. The World Trade Organization (WTO) and international trade agreements concluded under its auspices have been criticized for undermining the ability of governments to maintain policies aimed at sustaining national cultural industries and creation." Robert McCorquodale, 'Group Rights' in Daniel Moeckli and others (eds), *International Human Rights Law* (International Human Rights Law, Third edn, Oxford University Press 2018) 284.

[191] Alberto Acosta, referring to Nature's rights as an expression of the Good-Living philosophy, stated that "[...] it rejects the vision that intends to drive us through the path of perpetual accumulation of material goods as a symbol of development and progress; a path that leads to the auto-destruction of humanity... We finally understand that we are compelled, on the one hand, to seek choices of dignified and sustainable life that do not represent the caricatured reedition of the Western life style, and, on the other hand, also to reject structures marked by a massive social and environmental inequity. We must resolve the existing disbalances and, especially, incorporate sufficiency criteria instead of trying to maintain, at the expense of most of the population and Nature itself, the logics of efficiency understood as the increasingly accelerated material accumulation that benefits a reduced segment of people. [...] We are aware that these new school of legal thinking is not exempted of conflict. [...] In any event, someday, not far away, the Universal Declaration of Nature's Rights will be crystalized as an inseparable complement of Human Rights." Alberto Acosta, 'Derechos de la Naturaleza y Buen Vivir: Ecos de la Constitución de Montecristi' (2009) 25 Pensamiento Jurídico 21 23-24. See also, Sergio Miranda Hayes, *Decolonization in the Constitutional System: Indigenous Rights and Legal Pluralism, a Comparative Study between Bolivia, Colombia, and Ecuador*

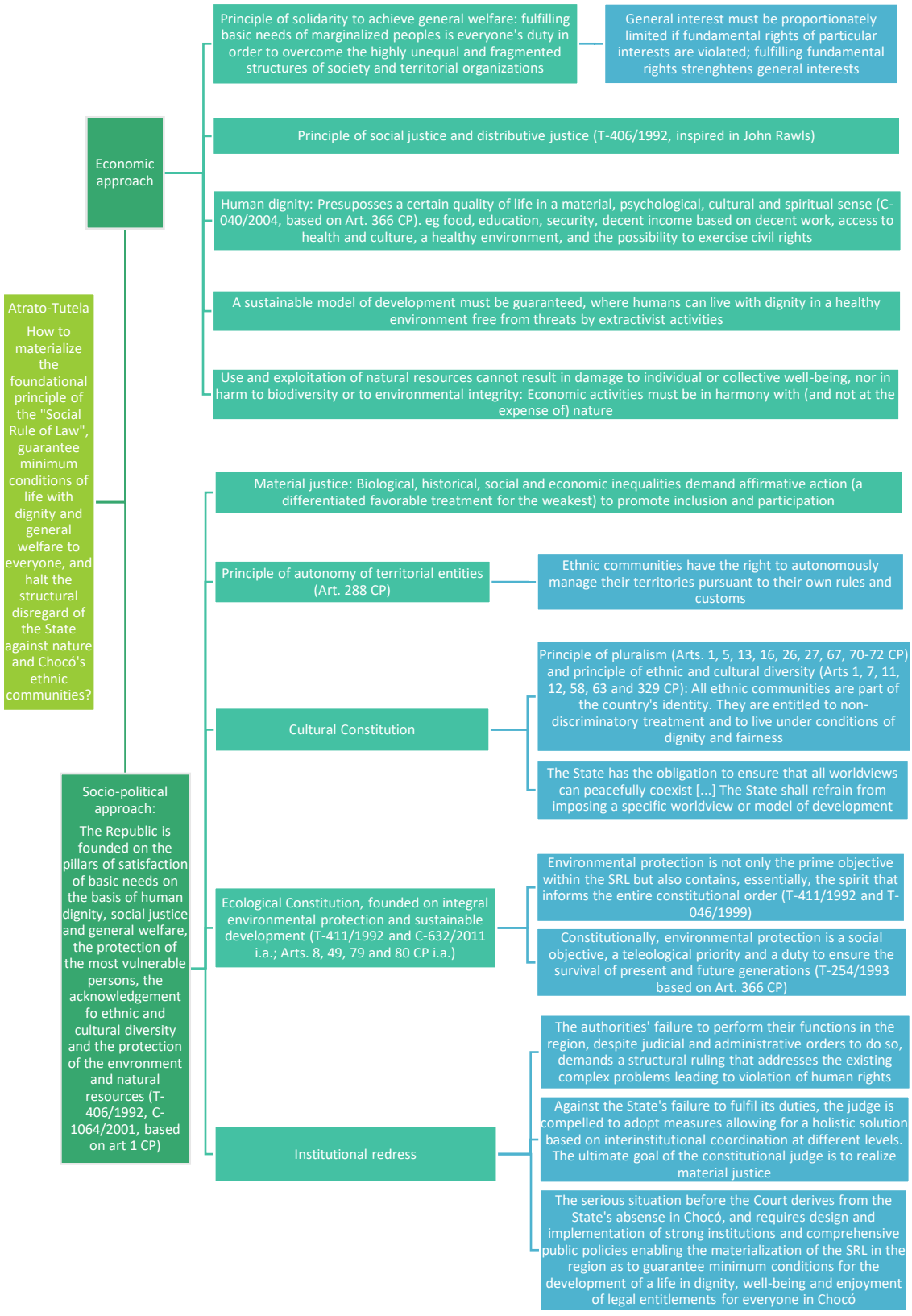
A. Main Societal Considerations in T-380/1993



B. Main Societal Considerations in T-652/1998



C. Main Societal Considerations in the Atrato-Tutela



The worlds seen in the previous chapters reflect a contrasting universe where very serious life-threatening conditions were permanently experienced on the ground, there was scientific support ascertaining the severity of social and environmental damage, and legal instruments were available to halt transgressions against environmental and human rights harm but those instruments were not being furthered nor enforced. The distance between these worlds is, at a deeper level, political: Most State institutions (part of the hegemonic world), and the society as a whole, were not putting the legal world into motion to tackle the environmental, humanitarian and social emergencies at issue.

Understanding that this mismatch has very deep historical roots and results from socio-political dynamics defining how and at the service of whom effectively institutions work and resources are allocated, throughout the years the Constitutional Court has stood as a critical voice intending to address the underlying structures that have left the *alterity* behind/outside, and that have given rise to the factual conditions leading to the proceedings. While this work centers its attention only on three judgements, there is a vast series of examples in which the Court has played this role, some of which are succinctly referred to herein.

In the Atrato-Tutela, following the tradition of judicial activism underpinned in former judgements,[192] the Court raised its voice as a counterbalancing power with a narrative embedding a strong criticism to the societal project of the hegemonic world(view) that creates the legal and political disbalances between respondents and petitioners. There, the Court reminded the authorities that their performance and raison d'être are subordinated to the constitutional principle of the Social Rule of Law (SRL).[193] This principle has two prime implications: First, that economic activities have social and ecological functions; second, that constitutional provisions must be realized for the benefit of everyone and particularly of the most vulnerable members of society.[194] But the Court did not stay in the realm of criticism, it empowered the petitioners and the ecosystem to take part in discussion, policymaking and supervision fora to halt the crises at issue.

1. From Hegel's dualism to Heller's Social Rule of Law

While the axiological legal formula chosen by the Court in the Atrato Tutela for joint protection of the environment and collective fundamental rights is that of biocultural rights,[195] the political statement is deeply rooted in the foundational principle of the SRL as the ultimate goal of society. This ensemble is crafted to overcome the antagonisms on which classical legal and political structures have been built at the expense of the *alterity*.[196]

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[192] For example, T-380/1993 criticized the hegemonic economic system and protected non-individualistic ethics (pages 13 and 14-15, respectively). T-652/1998 reiterated the criticism to the hegemonic economic system in page 23.

[193] The Constitutional Chart enshrines the principle of the SRL as follows: Art. 1, Title I (Fundamental Principles) CP, states: "Colombia is a social rule of law, organized as a unitary decentralized republic [...]"; while Art. 334 CP recites: "The general direction of the economy is the State's responsibility. The State shall intervene, through statutory mandates, in the exploitation of natural resources; the use of soil; the production, use and consumption of goods; and in public and private services; in order to streamline the economy as to achieve at national and local level, within a framework of fiscal sustainability, the improvement of the quality of life of the inhabitants, the equitable distribution of opportunities and benefits of development, and the preservation of a healthy environment. This framework of fiscal sustainability shall serve as an instrument to progressively reach the objectives of the Social Rule of Law. In any event, social public expenses shall have priority.
The State shall especially intervene to fully employ human resources and progressively ensure that every person, and particularly those with less income, have access to the ensemble of basic goods and services [...]"

[194] *Atrato Tutela*, 72. These functions derive from Art. 58 CP para 2: "Property is a social function that entails obligations. As such, an ecological function is inherent to it."

[195] The biocultural rights approach is further explained in the next chapter.

[196] *Atrato Tutela* 28. Departure from the Hegelian viewpoint would also have implications on the way how the legal system related to Nature; Heinrich Böll Stiftung , *La Corte Ambiental - Expresiones Ciudadanas sobre los Avances Constitucionales*, 88.

In other words, the logics of pluralism and inclusion, under the premise of social justice, presupposes a political design where the State (in fact, the welfare State)[197] is the instrument for realization of rights and as such must take positive action to materialize the SRL, particularly for the benefit of those falling behind/outside, which emphasizes the interconnectedness of first, second and third generations rights.[198]

The Atrato-Tutela advanced the Court's social justice premise, walking towards ecological justice by recognizing non-human elements of Nature as right-holders. There, being the SRL an essential aspect of the Constituent's societal project, intended to irradiate the entire legal order, ontologically the State is not to exist unless it, in fact, realizes the SRL.[199] To that end, the principles of solidarity, democracy and diversity underpin the societal project,[200] as to embrace and protect the *alterity* -those traditionally excluded from effective entitlements granted to the subjects of the hegemonic legal system.[201]

2. Who Had Been Left Behind?

The decisive political background of the Atrato-Tutela is the acknowledgement that "historically this region has been deeply marginalized since the independence from Spain [in 1810], and since colonial times it has lacked inclusive political and administrative structures, being instead the object of highly unregulated extractive activities".[202] The historical and institutional segregation was evidently a situation that the Court undertook to correct.

This attitude has been pervasive in the Court's case-law, which has acknowledged that ethnic groups have been left behind and that the constitutional principle of ethnic and cultural diversity entails a political aspiration to bring them along through State environmental and economic policy choices.[203]

In the depths, there underlies a criticism to the political and economic thinking that not only has surrendered and marginalized peoples, but also has dominated and mastered nature.[204] The essential conflict is between two economic worldviews:[205] On the one hand, the life projects of indigenous and afro-descendants; on the other hand, the extractive economic model, whether undertaken by private actors or devised by the government in breach of legal obligations like those relating to the communities' free, prior and informed consent.[206] A defense of the former, as an expression of cultural diversity results in a defense of economic models and ecological values diverging

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[197] *Atrato Tutela*, 37.
[198] Ibid 21-23.
[199] T-406/1992, 10.
[200] Art. 1 CP states: "Colombia [...] is founded on [...] the solidarity between the persons that integrate it and in the prevalence of the general interest." The principle of solidarity is also expressed in Arts. 48, 49, 95, 356 and 367. Similarly, the democratic principle is enunciated in the Constitutional Charter's Preamble, in Art. 1 and in others articles. The principle of diversity is enshrined in Arts. 7 (ethnic and cultural diversity), and 79 (ecological and environmental diversity) CP.
[201] Macpherson and Ospina, 'The Pluralism of River Rights in Aotearoa, New Zealand and Colombia', 289.
[202] *Atrato Tutela*, 8.
[203] T-380/1993, 15-16.
[204] C-339/2002, 18.
[205] For an account of root cause approaches, see Susan Marks, 'Human Rights and Root Causes' (2011) 74 The Modern Law Review 57.
[206] Foro Interétnico Solidaridad Chocó and others, *Informe sobre la Grave Crisis Humanitaria, Social, Económica y Ambiental en el Departamento del Chocó*, 2018) 3.

from the hegemonic worldview.[207] Condemnation of environmental and social damage is at the same time a condemnation of the hegemonic capitalist and anthropocentric worldview.[208]

Sustainable development can be seen with its physical and economic connotations AND with its social and cultural dimensions.[209] Outstandingly, in the Atrato-Tutela, this deconstructive effort is not limited to bringing on board ethnic communities, but everyone alive, even non-humans.[210]

In this context, at the outset, the Atrato-Tutela demarcated the constitutional problem in function of the "repercussions that illegal mining can have on the content, scope and limitations of the Colombian State's policy on mining and energy".[211] Having set this scene, the Court undertook to determine if omissions by the authorities violated fundamental rights. In this sense, the judicial question was not restricted to the legal world, it had a political-economic dimension expressed through the exercise of enquiry and control over performance of State duties. Interestingly, this is a feature of groundbreaking judgements of international environmental law, such as the famous Oposa case[212] or the recent Urgenda cases,[213] where the judges performed as a balancing power to enquire about compliance with State's environmental duties.

3. An Ecocentric, Biocultural, Multi-Sectorial Policy-Making Framework

In view of the serious crises undergoing in Chocó, the Ombudsman had issued several instruments[214] that unfortunately had no echo among most other State agencies.[215] In absence of effective governance to address the crises, the Atrato-Tutela did not stay in the realm of the justice system. It required that additional national and local authorities join the case as respondents.[216] It also invited the academia, NGOs and international organizations to render specialized opinions, and it conducted an on-site inspection in Chocó's capital city, Quibdó, and throughout the Atrato River Basin.[217] In doing so, the Court undertook to fill in the pervasive governance gap, acquiring first-hand

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[207] See T-342/1994, 5-7 and T-080/2015.

[208] T-652/1998, 23; citing T-380/93, 13. In a similar vein, the IACtHR declared: "this Court considers that indigenous communities might have a collective understanding of the concepts of property and possession, in the sense that ownership of the land "is not centered on an individual but rather on the group and its community." This notion of ownership and possession of land does not necessarily conform to the classical concept of property, but deserves equal protection". Inter-American Court of Human Rights *Sawhoyamaxa Indigenous Community v Paraguay*, 71.

[209] *Atrato Tutela* 73, referring to T-574/1996.

[210] Ibid, 110.

[211] Ibid 19.

[212] *Minors Oposa and others v Secretary of the Department of Environmental and Natural Resources*, GR No 101083, 30 July 1993, 12-15.

[213] *Urgenda Foundation v The State of the Netherlands (Ministry of Infrastructure and the Environment)* (2015) The Hague District Court, 24 June 2015, ref C/09/456689 / HA ZA 13-1396; and *The State of the Netherlands (Ministry of Infrastructure and the Environment) v Urgenda Foundation* (2018) The Hague Court of Appeal, Civil Law Division, 9 October 2018, case number 20.178.245/01, ref C/09/456689/ HA ZA 13-1396.

[214] Notably, the Ombudsman Report *Crisis Humanitaria en el Chocó: Diagnóstico, Valoración y Acciones de la Defensoría del Pueblo* (Defensoría del Pueblo 2014); Res. 64/2014; and Joint Directive 005/2014 (the latter in collaboration with the office of the Inspector General).

[215] Chocó and others, *Informe sobre la Grave Crisis Humanitaria, Social, Económica y Ambiental en el Departamento del Chocó* 2-3.

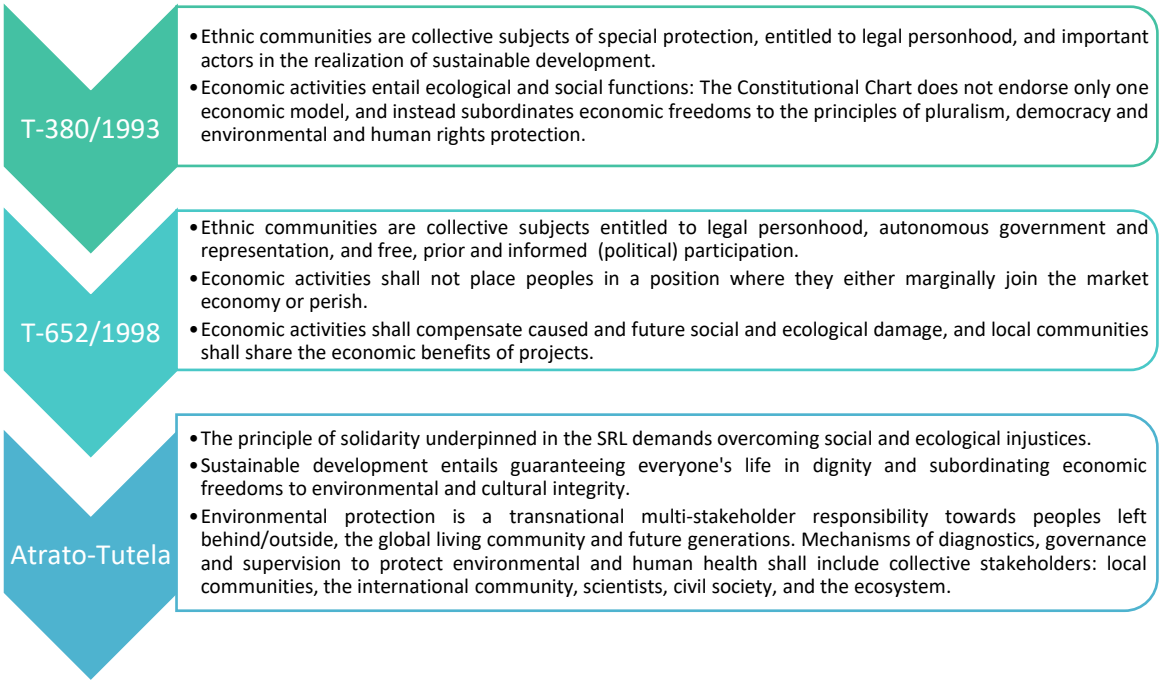
[216] *Atrato Tutela* 17-18.

[217] Participation of other State and non-state actors in the judgement's implementation was also chosen in T-576/2014, a precedent to the Atrato-Tutela, as a way to address the forced displacement and other structural harsh conditions to which afro-descendant tribal communities were being subjected. *Moisés Pérez Casseres v Ministerio del Interior*, M.P. Luis Ernesto Vargas Silva, Reference Expediente T-3482903, 4 August 2014, 8-46. The

information on the actual conditions in which people lived, and becoming a policy coordinator and policymaker extending its domain beyond typical judicial duties.

The judicial output was an eco-centered, biocultural, multi-sectorial policy framework to give voice to the *others*.[218] While this new governance setup may be viewed as essentially anthropocentric,[219] the bridge created between transnational, biocultural, anthropocentric and ecocentric narratives in reference to numerous instruments of environmental and human rights, is one of the greatest virtues of the ruling, because it made for a more robust case accommodating different backgrounds and positions, showing that these narratives are not inextricably antagonistic but can be complementary, consolidating the holistic character of the ruling.

The value of the approach chosen by the Court is that those who were counterparties, antagonists, were to become a collaborative team whose mandate must harmonize the values and interests of dissimilar stakeholders despite their differences; in other words, those who were contraries in court were to become one to walk together a common dialectic path.[220] Moreover, this approach was shielded with the participation of civil society, scientists and international organizations that may exert the pressure necessary to help the policy mechanisms move forward.



Graphic 11. Highlights of economic and political considerations.

governance approach was partly inspired by New Zealand's model of nature's personhood, although such model does not have an international institutional framework. Macpherson and Ospina, 'The Pluralism of River Rights in Aotearoa, New Zealand and Colombia', 287) and interview with Felipe Clavijo-Ospina, former law clerk at the Constitutional Court of Colombia (video-call conversation, 17 February 2019).

[218] "The Court introduces the idea of an *ecocentric approach* as part of its exercise of persuasion, consisting of establishing a link between the 1991 Constitutional Charter and the interpretative legacy of the Court in its 26 years of existence, separating itself from the *anthropocentric paradigm* in the relationship between humans and the environment. For the Court, the latter paradigm "responds to an old philosophical and economic tradition -from naturalist theoreticians such as Smith and Ricardo to pragmatic neoliberals like Stiegler and Friedman – which have conceived of men as the only rational, complete and worthy being in the planet. […] In the Court's view, the change towards an *ecocentric paradigm* is constitutionally sustained by the formula of the Social Rule of Law." Heinrich Böll Stiftung , *La Corte Ambiental - Expresiones Ciudadanas sobre los Avances Constitucionales*, 148 (citations omitted, original in Spanish).

[219] Macpherson and Ospina, 'The Pluralism of River Rights in Aotearoa, New Zealand and Colombia', 291.

[220] Heinrich Böll Stiftung , *La Corte Ambiental - Expresiones Ciudadanas sobre los Avances Constitucionales*, 306.

4. Legal Personhood in Economic and Political Terms

The nature and content of *legal personhood* in the judgements under analysis were not explicitly devised by a legislator nor did they emerge from a Code or from other exercise of classical representative democracy. Yet the judicial output portrays a deeply democratic approach extending rights to the *alterity* in the greatest sense of the term; legal personhood was devised beyond (until then) national written law: The three cases safeguarded fundamental rights of human collectivities, and the Atrato-Tutela vested rights into an element of Nature overflowing human communities. As it has been shown, this result was backed by the Court's years of political and economic enquiry towards private agents and other State institutions, and found justification in the severity of social and environmental damage at a point in history where the hegemonic world(view) has driven the planet to the verge of biological catastrophe. In the Atrato-Tutela, besides the planetary ecological threat, there were political and economic contentions, by act or omission, between armed actors, mining and logging businessmen, State agencies, and local communities, altogether appearing to have made it imperative for the Court to take an economic and political stand in order to give a voice to whomever had been historically disregarded. In law, such voice is called legal personhood.

But a legal person without autonomous representation and participation in decisions affecting it would be an empty formalism. Legal persons were then to be taken as political subjects, vested with political rights to bring forward their narratives, values and hurdles. And these political persons were not left on their own. They were to be accompanied by transnational, multi-sectorial advisory and supervisory bodies with the potential to exert the political pressure necessary to advance the ruling's implementation, and the Court itself retained jurisdiction through periodic supervision.

Finally, these legal persons were not unavoidably destined by the Court to either surrender to the hegemonic economic model or perish. The possibility to survive outside the market economy was seen as an expression of economic freedom, biological and cultural integrity, and cultural diversity. The same economic freedom that an entrepreneur may claim to enter the market economy, has been reformulated by the Court as a social and an ecological responsibility, which may be expressed by the right to exist even if refrained from the values and practices that the market economy praises.[221] These notions, contrary to the hegemonic worldview, defend the *otherness* under a holistic approach, considering that economic activities and aspirations must be harmonized with biological and cultural diversity.[222]

The recognition of legal personhood without a political empowerment to take part in decisions affecting one's existence, would make a formal but empty category. For a meaningful existence before the law, subjects shall have the right to be represented and to be co-participants, pursuant to the principles of pluralism and democracy enshrined in the Constitutional Chart. In view of the planetary relevance of the ecosystem at stake, policymaking design and implementation for the river as subject of rights shall be accompanied, supported and supervised by multiple national and international stakeholders. In the current global scenario of environmental degradation, we must enquire ourselves about the economic choices we make, and subordinate economic rationales to social and ecological justice.

Core societal dimension of personhood in the Atrato-Tutela.

[221] Tim Lindgren, 'Ecocide, Genocide and the Disregard of Alternative Life-Systems' (2017) 22 The International Journal of Human Rights 525 528-529.
[222] That is, biodiversity and bio-culture. *Atrato Tutela*, 48-81.

5. Who Are We After Worlds Collide in Political and Economic Terms?

Probably the most salient political feature of the rulings at hand is their activism for the benefit of the *alterity*, as an expression of the Court's vision on the role that judges are to play within the SRL. Since its inception, the Constitutional Court has defended that the SRL demands from the constitutional judge an active role where political will is lacking to materialize the rights of those left behind/outside the hegemonic societal project;[223] as an expression of the contemporary doctrine of separation of powers pursuant to which each branch serves as a mechanism of balance and control with respect to the other branches,[224] and as a means to adapt law to the particularity of the cases at hand.[225]

The Court's legacy of protection for the benefit of the *alterity* that other branches (or even lower courts) failed to afford, tolerated, or even fostered can be seen, for instance, in T-652/1998, which ordered indemnifications and set minimum parameters of compensation to be paid (by the consortium undertaking the hydroelectrical project) for no less than 15 years, the time that the Court considered reasonable for the affected communities to adapt to the cultural, social and economic changes forced by the hydroelectrical project at issue.[226]

These antecedents would support the Atrato-Tutela's case for an intervention beyond the classical scope of adjudication, powering instead multi-layered governance and supervisory mechanisms devised with a bottom-up approach,[227] rather than under the classical top-down technocratic approach to environmental and crises management.[228]

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[223] Heinrich Böll Stiftung , *La Corte Ambiental - Expresiones Ciudadanas sobre los Avances Constitucionales*, 303-307. (citations omitted, original in Spanish).

[224] In a similar vein, see *Urgenda Foundation v The State of the Netherlands (Ministry of Infrastructure and the Environment)* (2015) The Hague District Court, 24 June 2015, ref C/09/456689 / HA ZA 13-1396. 53-54. The position held in internationally known environmental cases as the Urgenda ruling or the Atrato-Tutela contrasts with the doctrine of the 'political question' in jurisdictions where the executive branch has eclipsed environmental affairs and the legislative branch has not managed to address the issue, for example, regarding federal climate change policy in the US. Stone, *Should Trees Have Standing? - Law, Morality, and the Environment*, 34-36, 51-54.

[225] *Atrato Tutela* 28, based on T-406/1992 i.a.. See also *Atrato Tutela* 22-23.

[226] T-652/1998, 20.

[227] While Hongji describes vertical transnational processes where international rules are internalized into domestic law (Harold Hongju Koh, 'How Is International Human Rights Law Enforced?' (1999) 74 Ind LJ 1397 1406), Nature's rights can be seen as an example of a bottom-up transnational process that is feeding into and from grassroots organizations in multiple directions (vertically, horizontally and cross-sectionally: "[…T]he extreme environmental crises required a shift in people's thinking and a fundamental change in the economic system to reflect the intrinsic value of nature, which [extend] far beyond ecosystem services. The current legal system [is] not working because the notion of "rights" was too narrow; it must be broadened to extend rights to future generations and to nature. A deep paradigm shift occurs when a theoretical legal approach is replaced by tangible instances in which rights have been extended to natural entities, for example the initiative to give legal standing to Lake Balaton in Hungary". Secretary-General, *Harmony with Nature - Report of the Secretary-General*, 2018), 3. See also Houck, 'Noah's Second Voyage: The Rights of Nature as Law', 17-18.

[228] The Atrato-Tutela's institutional setup partly resembles the local governance scenario emerging from judicial disputes involving environmental conservation and indigenous rights in the U.S., particularly regarding fisheries in the Pacific Northwest, where the judge also retained permanent jurisdiction. Interview with Patrick Parenteau, Professor of Law and Senior Counsel in the Environmental and Natural Resources Law Clinic (ENRLC) at Vermont Law School (Skype call, 21 December 2018); Weaver, 'Litigation and Negotiation: The History of Salmon in the Columbia River Basin' and , *In the Pacific Northwest, Native Fishing Rights Take on a Role as Environmental Protector* . However, the U.S. fisheries disputes were not sources in the Atrato-Tutela. Interview with Felipe-Clavijo Ospina, former law clerk at the Constitutional Court of Colombia (video-call conversation, 17 February 2019).

Considering the legal pitfalls in environmental regulation,[229] the governance gaps and corruption,[230] and the lack of enforcement of existing laws,[231] the Constitutional Court appeared to be the ultimate resort available to the petitioners and some State human rights agencies to try to halt transgressions against ecosystems and people's rights. Neither civil unrest by mining protesters (who had gained some visibility -but little practical achievements- in the context of the 'Direction for Mining Formalization' created as a result therefrom), nor the Ombudsman's warnings and emergency statements, nor previous administrative and judicial proceedings, had accomplished that a brawny public authority take the *alterity* on their shoulders and effectively require dismissive agencies to perform their duties for the benefit of the lives at stake. While these antecedents set the political scene to strengthen the Court's policy choices, the Court could not have placed this ruling in the political arena without the political muscle built over years of permanent activism against hegemonic political structures and dynamics.

As a result of the Atrato-Tutela and other cases adjudicated to protect the fundamental rights of peoples in Chocó, on 2 May 2018 the Colombian Government enacted Decree 749 in order to create an inter-sectorial commission integrated by different governmental units, where civil society in general and ethnic groups in particular could be heard.[232]

Without the chain of bold precedents, transformational judgements with structural implications as the Atrato-Tutela would be hard to sustain in support of the originary societal project, let alone as a normative mandate.[233] At times where the hegemonic worldview has eclipsed national and international policy and lawmaking,[234] the Constitutional Court has persisted enquiring about the role that businesses are to play for environmental and human rights protection, and the Court has done as much as it was possible within its power, not only as a political and legal duty, but essentially as a transcendental moral imperative, as shown in the following chapter. This political authority also enabled it to internationalize the stakes.

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[229] *Atrato Tutela* 102, 104, and 117-119 para 9.12. Notice that the English and the Spanish version of some fragments of the introductory section (Executive Report) of the report therein referred to are totally different.
[230] Ibid 8, 96 para 7.19, 102, 154-158, 216, 218.
[231] Ibid 12-16, 21, 24, 25, 97, 99, 114, 115, 119, 128-130, 140, 150-158, 193, 216, 226, 232.
[232] Particularly the Atrato-Tutela, the Council of State's judgement on "Protection of Indigenous Children in Chocó" and T-080/2018. Recital 2 of Decree 749/2018 states: "Currently there exist different judicial decisions involving the activities of various national and local authorities for the protection of fundamental rights of Chocó's populations, like the Constitutional Court's judgement T-622 of 2016, and the Council of State's judgement "Protection of Indigenous Children in Chocó", partially modified by the Constitutional Court's judgement T-080 of 2018". Recital 5 thereof indicates "That the National Government, having considered these judicial decisions and being aware of the serious situation in the Province of Chocó, deems pertinent and necessary to create a mechanism of inter-sectorial coordination and articulation to reach: (i) greater effectiveness, efficiency and efficacy [...] (ii) greater coordination [...] (iii) greater verification and follow-up of implementation, recommendations and activities to be performed; and (i) greater coordination between the National Government, civil society, and ethnic groups in the province."
[233] *Atrato Tutela*, 152-153.
[234] See e.g. Ibid.

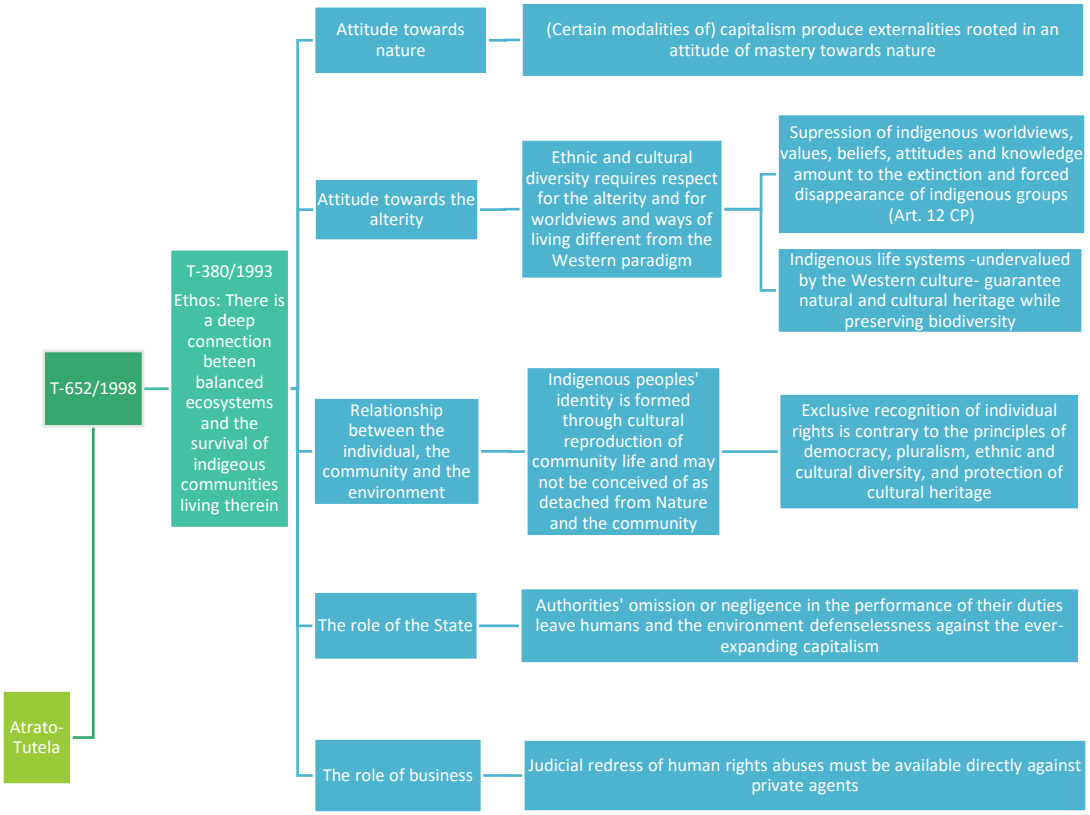
From the Court's assessment of political and economic conditions, it can be concluded that the nature, content and scope of legal personhood, both for human and for non-human elements of nature, requires the capacity to exercise meaningful legal representation and participation in decision-making processes and scenarios of political discussion, which can be supported and supervised by a wide variety of stakeholders: state agencies, the judiciary, NGO's and other civil society organizations, local communities and the international community, altogether responsible for the preservation of the World's natural and cultural heritage.

IX. Philosophical Considerations – The World of Ethos

For Judge Jorge Iván Palacio,
who ruled in favor of granting rights to the Atrato River,
his conclusion was as obvious as it was difficult:
they must save the planet from man himself.[235]

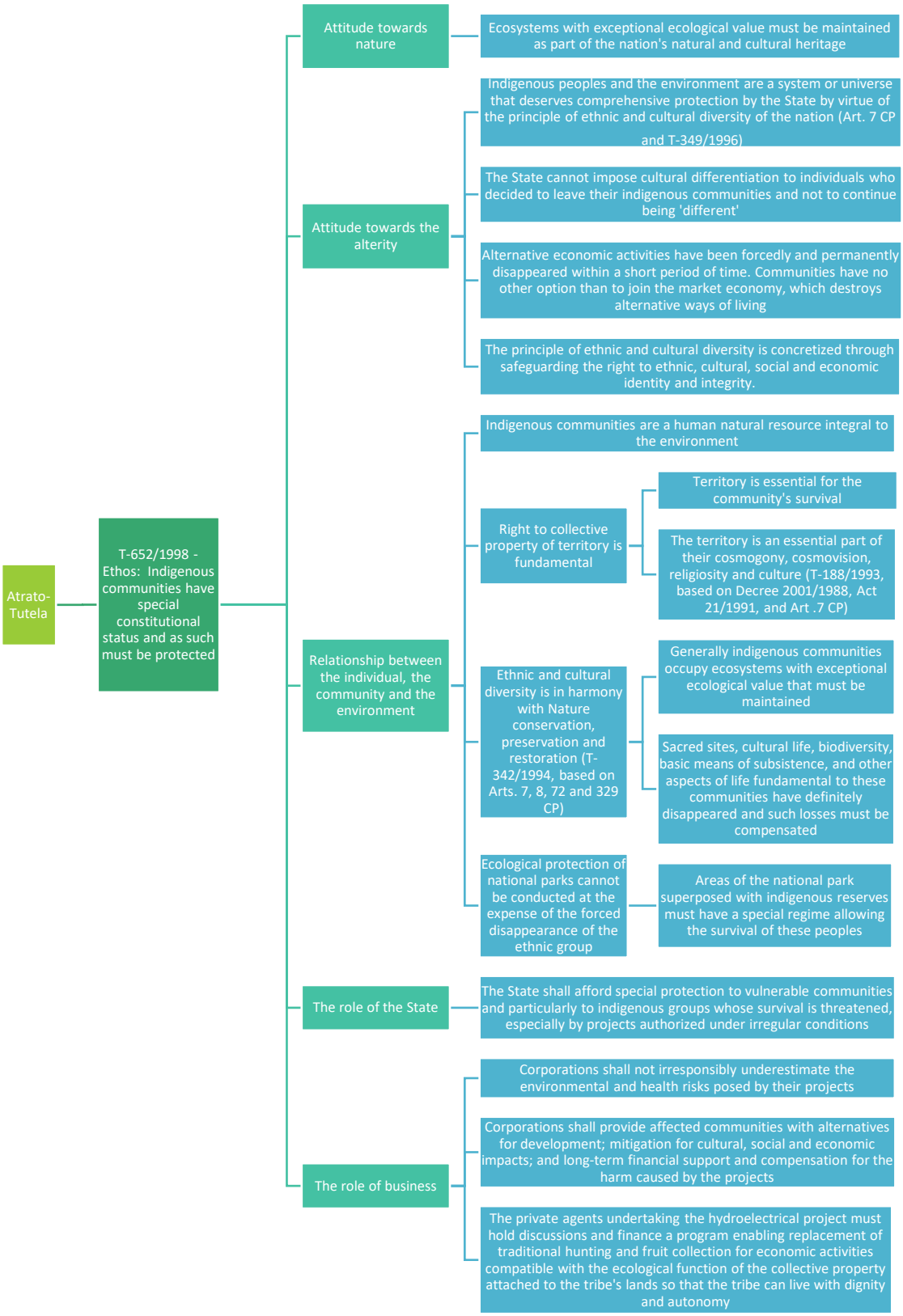
The charts below provide an overview of the main ethical considerations outlined in the judgements under analysis:

A. Main Philosophical Considerations in T-380-1993

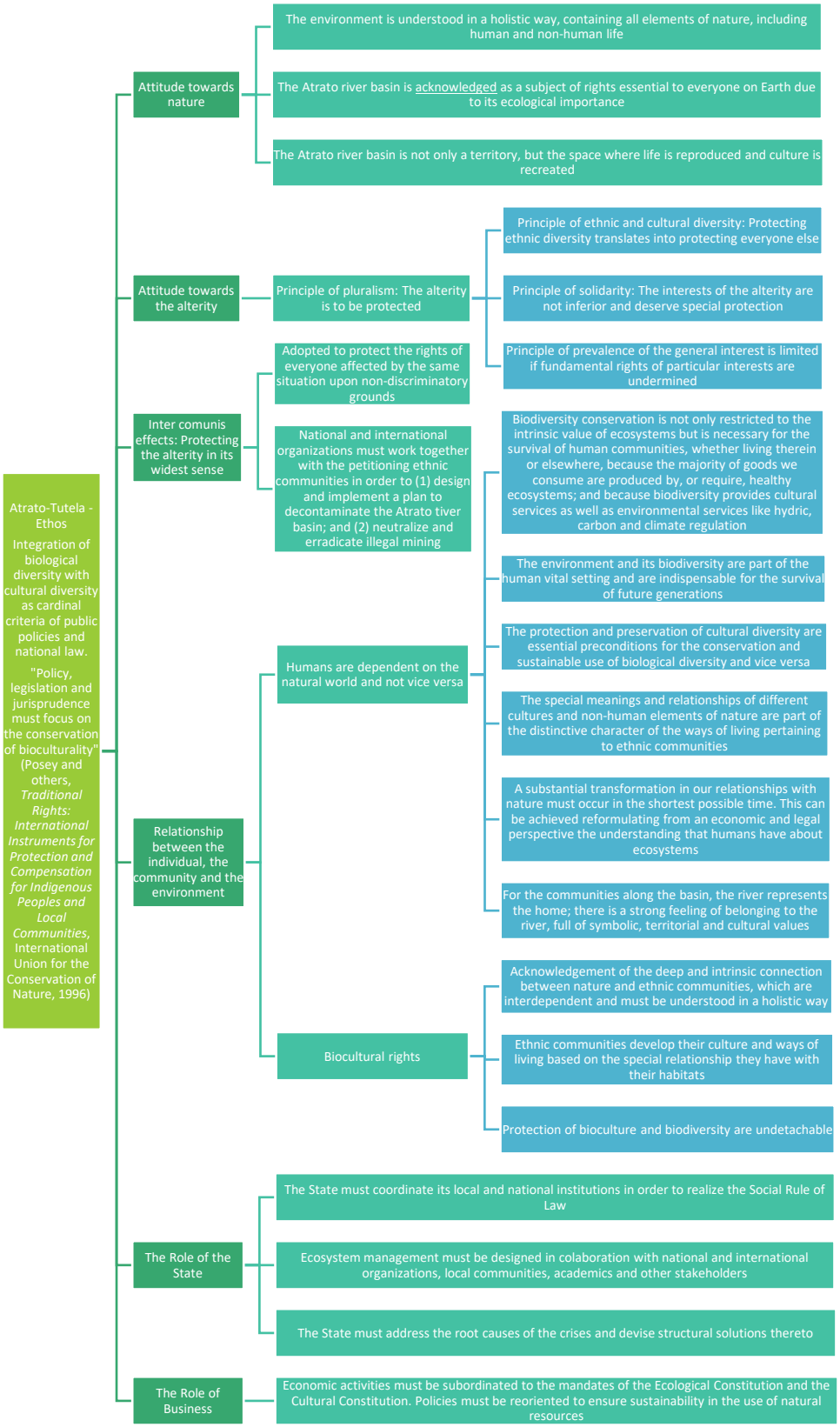


[235] Harmony with Nature (published 19 July 2017) UNGA (Report of the Secretary General A/72/175), 6.

B. Main Philosophical Considerations in T-652/1998



C. Main Philosophical Considerations in the Atrato-Tutela



1. Ethical and Ontological Challenges

Formulation and realization of a (political) project, find inspiration and traction in the deep set of values and motivations powering the attitudes, behaviors and relationships of its participants in and beyond the scenario where a given project is set. The SRL, as a political project, was interpreted by the Constitutional Court as a mandate to progressively overcome the inequalities that the *alterity* has historically endured. In that context, the judgements under analysis kept in scope the pervasive marginalization, assimilation and biological and cultural destruction to which petitioning rural, indigenous and afro-descendant communities and their environments have been historically subjected, as an expression of the rejection and exclusion of them as the *other* that diverges from the aspirational ideal of the hegemonic worldview.[236]

At the profoundest level, these judgements embody an ethical commitment to confront, condemn and halt -through the constitutional edifice- hegemonic neglectful or demeaning attitudes towards *the alterity*,[237] from the understanding that the 1991 constitutional reform served as a forum for marginalized groups to conquer spaces of public and political existence and participation, which can only crystalize if these conquests can be vivified and enforced.[238] It follows that the constitutional principle of cultural *diversity*, when materializing the SRL, translates into an ontological and ethical exercise of defending *different* forms of *being* and *living*, while safeguarding the material conditions necessary therefor. This vision is engrained for example in T-380/1993, where environmental protection of indigenous territories -recognized as legal entities- was deemed essential for the community's integrity, and the contrary would be against the rights to life and to not be forcedly disappeared.[239]

2. The Ecocentric Bio-Cultural approach

The indissoluble connection between biological and cultural diversity and integrity is present both in T-380/1993 and T-652/1998, and in that sense they may be viewed as incipient steps towards the Atrato-Tutela's explicit biocultural approach,[240] whereby the Court's continuous endeavor to repositioning non-hegemonic ways of *being* and *living* found a reference framework, enabling theoretical anchor of the petitioners' ancestral, inextricable and interdependent relationship with their ecosystem.[241] The biocultural rights approach was viewed as an international trend reflected in various

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[236] For example, see T-405/1993 (*Comunidades Indígenas del Medio Amazonas v Ministry of Defense and USA Air Mission*, 53-54 n 31); and T-576/2014, 53 n 32.

[237] T-380/1993, 13; and T-652/1998, 23.

[238] See T-405/1993 (*Comunidades Indígenas del Medio Amazonas v Ministry of Defense and USA Air Mission*), 53.

[239] T-380/1993, 15 and T-652/1998, 23. This view contrasts with the position held by law in the past concerning indigenous peoples; e.g. Act 89 of 1980 (partially in effect and partially annulled by C-139/1996 and C-463/2014) determines "the way how sauvages that surrender to a civilized life shall be governed", naming indigenous communities as 'incipient societies' that are an object to civilize. T-139/1996 declared that "The terminology used in the legal text [...] ignores the dignity of the members of indigenous communities as well as the fundamental value of ethnic and cultural diversity. A pluralistic conception of intercultural relationships, as that adopted by the 1991 Constitution, rejects the idea of domination implicit in integrationist streams." T-139/1996, 12.

[240] *Atrato Tutela* 48-49, citing Bavikatte's and Benneth's 'Community Stewardship: The Foundation of Biocultural Rights' (Sanjay Kabir Bavikatte and Tom Bennett, 'Community Stewardship: The Foundation of Biocultural Rights' (2015) 6 Journal of Human Rights and the Environment 7) and Bavikatte's and Robinson's 'Towards a People's History of the Law: Biocultural Jurisprudence and the Nagoya Protocol on Access and Benefit Sharing' (Sanjay Kabir Bavikatte and Daniel F Robinson, 'Towards a People's History of the Law: Biocultural Jurisprudence and the Nagoya Protocol on Access and Benefit Sharing' (2011) 7 Law, Environment and Development Journal 35).

[241] For the petitioners, the biocultural rights approach is the most valuable aspect of the Atrato-Tutela. Ana Gutiérrez, '#TodosSomosGuardianesDelAtrato' *Revista Arcadia* (20 December 2017) Colombia ‹https://www.revistaarcadia.com/agenda/articulo/sentencia-rio-atrato-sujeto-de-derechos-choco-colombia/67553› accessed 5 March 2019

instruments of international law,[242] as well as in previous Constitutional Court judgements linking cultural integrity and land rights, even if they did not explicitly mention the term 'biocultural'.[243] Henceforth, the Court emphasized that protection of biocultural diversity is to become a central aspect informing public policy and national law.[244]

The Atrato-Tutela navigated through the history of humanity to highlight how the human tale has been shaped by a spiritual connection to bodies of waters, forests and other natural elements, from the Epic of Gilgamesh to our times.[245] To continue the journey, the Constitutional Court proposed inverting the values of the hegemonic worldview: "**it is essential to strengthen a constitutional pedagogy exalting the value of biological diversity and cultural heterogeneity in order to advance towards a new human rationality founded on the protection and respect of nature as an expression of evolution and civilization.**"[246] Crucially, there humankind was not conceived of as the planet's user and master but her steward; here human capabilities and social, legal and political structures are to be placed at the service of Nature and her enterprise of life, of which humans are an integral part. This approach can be summarized as follows:

Because the Atrato-Tutela heavily relied on the defense of biocultural rights, some authors have considered that this ruling partially takes an anthropocentric stand.[247] However, under a biocultural framework purporting a holistic approach, this may pose no contradiction because human and non-human elements of Nature can be conceived of as an indivisible whole, where integral and systemic protection of one may derive in protection of the other and vice versa. From a biocultural perspective, the antagonizations embodied in hegemonic thinking pursuant to which ecocentrism may stand in exclusion of or in conflict with human concerns, do not reflect what a holistic worldview may entail.

Considering the harsh conditions evidenced on the ground, crystallization of the ecological and cultural constitutional mandates called for joint protection of the communities and the ecosystem, as the former cannot thrive without the latter, and the latter cannot defend itself from human-driven degradation without the former.[248]

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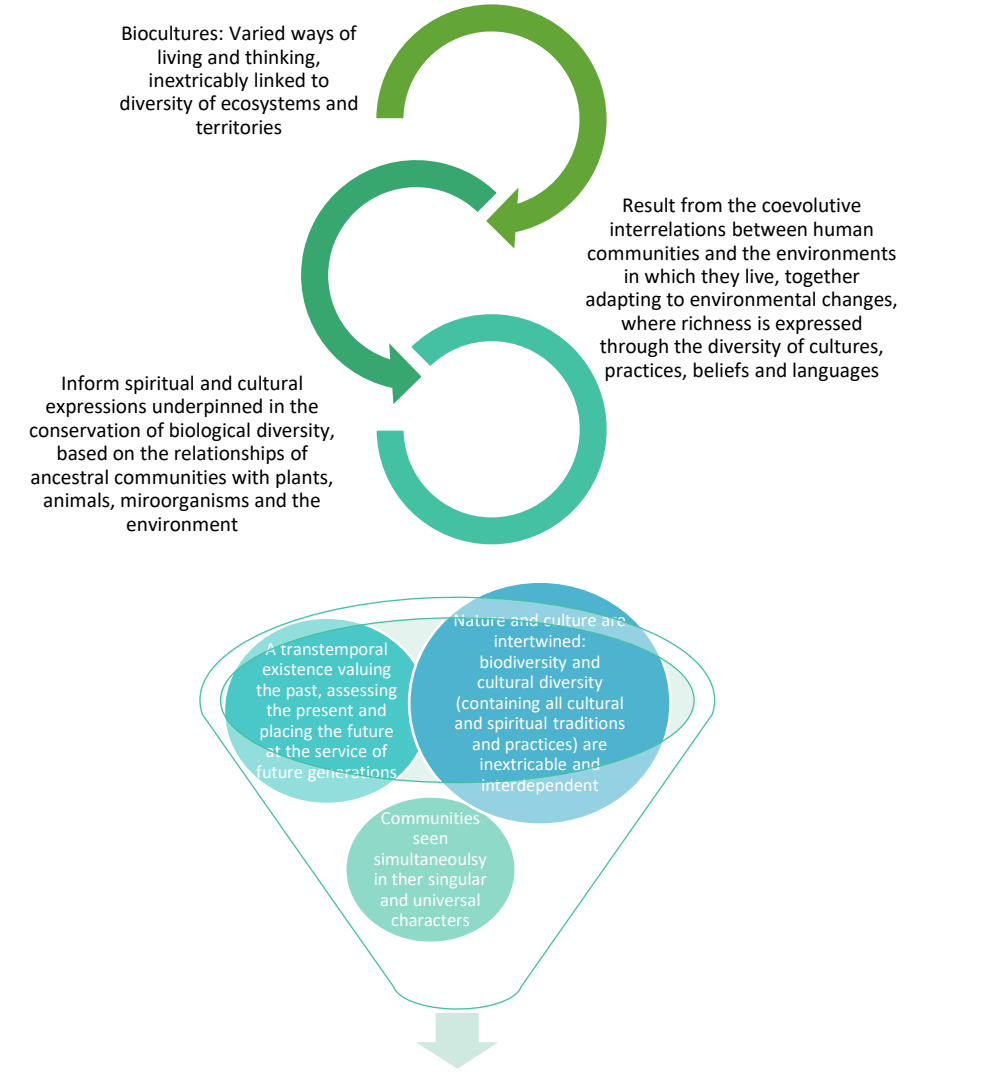
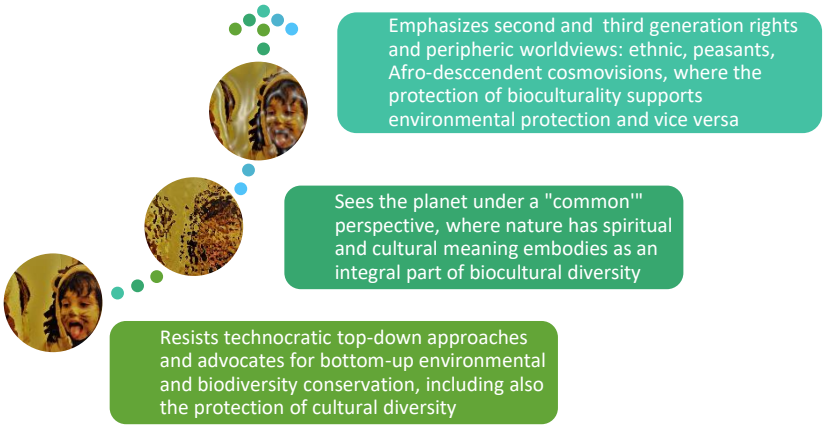
[242] *Atrato Tutela*, 53. Among these instruments, the Court mentioned the ILO Conv. 169, the CBD, UNDRIP, the Conv. for the Safeguarding of the Intangible Cultural Heritage, and the American Decl. on the Rights of Indigenous Peoples. Ibid, 53-55.
[243] Particularly, T-433/2011 and C-1051/2012. E.g., in T-433/2011, "the Court, when resolving a tutela intended to protect the integrity, identity, autonomy and collective property of an Embera-Dobida community settled in Chocó, reiterated a set of case-law rules aimed at protecting the special relationship of indigenous peoples with their territories, acknowledging and respecting ethnic and cultural diversity as preconditions for the subsistence of these communities, conserving the spiritual value that all ethnic communities have with their lands and territories, and safeguarding the community's right to have a legally recognized territory." Ibid 60 (citations omitted).
[244] Ibid 55.
[245] Ibid, 62.
[246] Ibid, 153. (emphasis added).
[247] Macpherson and Ospina, 'The Pluralism of River Rights in Aotearoa, New Zealand and Colombia', 291.
[248] T-380/1993, 16.





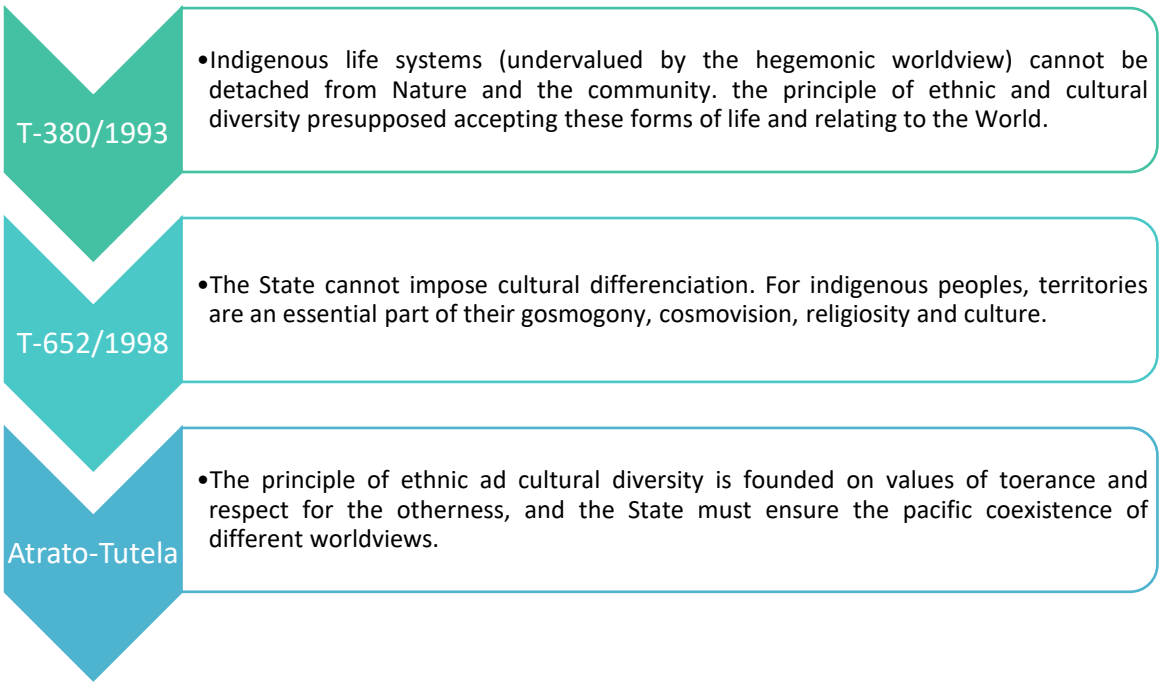
Graphic 12. Overview of the Atrato-Tutela's biocultural output

The biocultural formula is thus encompassed with an ecocentric[249] stand for the defense of all forms of life,[250] by virtue of their intrinsic value.[251] The ecocentric position would see its legal expression primarily materialized through the ecosystem's legal entitlements, under the premise that local communities, with their cosmovisions, values, knowledge, and ways of *being* and *living*, are the ecosystem's prime stewards.

3. Nature as a Right-Holder

While the Atrato-Tutela was the first to declare a specific ecosystem as a right-holder in Colombia, it was not the first to defend non-human elements of Nature as right-holders: C-220/2011 stated that both humans and Nature are worthy under the Constitution; while C-632 stated that Nature has rights and as such must be protected.[252] T-080/2015 suggested that under certain cosmovisions Nature was a proper right-holder.[253]

The Atrato-Tutela is not a rarity within the Colombian legal system but an evolutionary step on the ecocentric milestones placed before by the Constitutional Court. These precedents would pave the way for the Atrato as a *sui generis* right-holder.[254] The Atrato-Tutela's recognition of a non-human element of Nature as a subject deserving rights, derives from an ecocentric stand,[255] as from the biocultural rights worldview[256] that provides a framework for an integral way of *living*, where life, in all its forms, is to be preserved.[257]



Graphic 13. Highlights of philosophical considerations.

[249] Macpherson and Ospina, 'The Pluralism of River Rights in Aotearoa, New Zealand and Colombia', 284.
[250] *Atrato Tutela*, 285.
[251] Ibid, 48.
[252] Ibid, 47. This view would be reiterated in T-080/2015.
[253] Ibid, 47-48, 141-142.
[254] After the Atrato, other non-human elements of nature would follow suit. Notably, the Amazon Tutela pronounced by the Supreme Court, erected the Amazon as a right-holder. *Amazon Tutela* .
[255] Houck, 'Noah's Second Voyage: The Rights of Nature as Law', 18-23.
[256] Bender, 'As Nature Evolves, So Too Does MPA Management Need to Evolve', 132.
[257] *Atrato Tutela* 75, 143-144.

4. Legal Personhood from a Philosophical Perspective

While the Atrato-Tutela's most renown innovation in the extension of legal entitlements to a non-human element of Nature, the embracement of the *alterity* and the institution of legal personhood was not exhausted there. In fact, the Atrato-Tutela's concern for entities that did not enjoy legal personhood also included future generations, in a global perspective.[258] There, legal personhood was not rooted in the premises of the hegemonic worldview but in the ethics of commonality and stewardship underpinning the biocultural rights framework.[259]

Building upon the ground laid by its predecessors, the ruling portrayed that *we*, the persons of the legal order, are collective subjects sharing ecological and cultural heritage of planetary relevance for present and future generations. As such, human collectivities are inextricable from the human and non-human living fellows left behind/outside mainstream legal, political and ethical realms; living fellows with whom *we* have a historical debt that must be rectified.[260]

It follows that the Atrato River Basin, as a *sui generis* legal subject, was to be stewarded by the transnational community, in a framework where local communities are a prime voice to the ecosystem.[261] The legal institution of personhood, vested into a non-human element of Nature, was emphasized as the legal mechanism through which environmental provisions, human rights and other entitlements embodied in human legal entities could be best safeguarded, However, the ecocentric holistic ethical framework enabled an understanding of the basin's entitlements as a means to protect every living being related thereto.

Moreover, in the institutional setup devised in the judgement for ecosystem and crises management, collective subjects were granted the right to encounter and contest the discretional power of the State's hegemonic world(view), at its same hierarchical level: as the river's co-representatives (in the case of local communities); or as partners (within the collaborative and advisory roles assigned to academia, scientists, civil society and international organizations), Furthermore, the State's performance and the designated guardians would be under the transnational supervision of the Panel of Experts, authoritatively placed above. Henceforth, the then-*alterity*[262] was to become a peer to build the way forward; the *alterity* was called to be part of *us* -to be an enabled member of a diverse legal, political and scientific community.

The Atrato-Tutela's redefinition of legal personhood is, essentially, a holistic endeavor to leave no voice unheard, no one behind/outside: "[…] the Court has reinterpreted the core concept of biocultural rights not only as an instrument to manage stewardship of biocultural protocols but as a possibility to understand the protection of human communities and nature as a whole unto

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[258] Ibid, 41-49, 72-75, 141-143. The Amazon Tutela (a 2018 judgement by Colombia's Supreme Court vesting the Amazon with rights), resonated with the Atrato-Tutela's concern and, calling out to transform selfish ethics into public ethics of solidarity, advanced protection to future generations. The Amazon Tutela is particularly rooted in the principles of intergenerational equity, precaution and solidarity, but also has an ecocentric component that questions the hegemonic approach to Nature. *Amazon Tutela* , 16. The notion of solidarity there was inspired by María Eugenia Rodríguez Palop. María Eugenia Rodríguez Palop, *Claves para Entender los Nuevos Derechos* (Ed. Catarata, Madrid-2011), 54-55.

[259] Bavikatte, *Stewarding the Earth - Rethinking Property and the Emergence of Biocultural Rights*, 30-31.

[260] Rafi Youatt, 'Personhood and the Rights of Nature: The New Subjects of Contemporary Earth Politics' (2017) 11 International Political Sociology 39, 1-2.

[261] For a short overview of the origin of trusteeship or guardianship and other antecedents to nature's personhood, especially under the public trust doctrine, and the principle of intergenerational equity, see Dinah Shelton, 'Nature as a Legal Person' (2015) Vertigo Law Revue Electronique en Sciences de l'Environment 1.

[262] Yoel Kahn, *The Three Blessings – Boundaries, Censorship and Identity in Jewish Liturgy* (OUP Ch 1 Defining Oneself Against the Other 2011) 10-12.

constitutional law."[263] The holistic, eco-centric and biocultural ethical framework of legal personhood dissolved the boundaries between the individual, the (global) community and the non-human Natural World: Legal personhood was vested in collective subjects interacting with all other living beings with whom the planet is shared, the only planet we know in the universe that is capable of hosting life.[264]

Legal personhood in the Atrato-Tutela was underpinned in an ethical ensemble of holistic, ecocentric and biocultural values where the individual, the (global) community and the environment were not viewed as separable. Once these categories were bridged through such ethical ensemble, amidst the threats to all forms of life evidenced on the ground, legal personhood for the Atrato River Basin seemed morally imperative, given the role that the ecosystem plays for the petitioning communities and for the global community as a whole. The sui generis legal person arising therefrom emphasizes the philosophical stand whereby our role as human species is not to master the alterity, but to give a voice to it in dialogue with a wide variety of transnational stakeholders, and to steward it, insofar as we have not found in the universe another planet that can host life.

Core philosophical dimension of personhood in the Atrato-Tutela.

5. Who Are We After Philosophical Worlds Collide?

If the hegemonic legal order was to be assumed as primarily concerned with serving the interests of market values and its elites,[265] the judgements at issue attempted to put the hegemonic legal and political systems and their institutions at the service of the voiceless (and their ways of living), who historically have been left behind/outside,[266] pursuant to the principle of ethnic and cultural diversity.[267]

Moreover, while for Hegel there were antagonistic interests whose differences may be irreconcilable,[268] the Atrato-Tutela sees each entity as a living part of an indivisible ensemble feeding into and from one another: It conceives of collective subjects connected not only with their immediate human communities and ecosystems, but also with their planetary fellows now and in the future, altogether depending on the quality of the environment, with which there is a biological interdependence and a universal responsibility.[269]

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[263] Email from Felipe Clavijo-Ospina, former law clerk at the Constitutional Court of Colombia, to author (4 June 2019).
[264] *Atrato Tutela*, 43, 143.
[265] Saskia Sassen, 'When Territory Deborders Territoriality' (2013) 1 Territory, Politics, Governance 21 32-33; Felix Mukwiza Ndahinda, *Indigenousness in Africa - A Contested Legal Framework for Empiwerment of 'Marginalized' Communities* (T.M.C. Asser Press 2011) 58, 75, 88, 176; Philip McMichael, 'The Land Question in the Food Sovereignty Project' (2015) 12 Globalizations 434 435.
[266] *Atrato Tutela*, 140.
[267] Ibid, 34.
[268] Ibid, 26-27.
[269] The status of indigenous communities as collective subjects of fundamental rights was also outlined in T-380/1993, T-652/1998, and T-049/2013 i.a.; pursuant to which these collective subjects can act on their own behalf or be represented by their community leaders, organizations destined to defend indigenous rights or the Ombudsman. Ibid 23.

Essentially, the philosophical collision underlying the Atrato-Tutela concerned the existence and content of the *alterity*. Before the Court, there laid the axiological formula of inclusiveness engrained in the 1991 Constitutional Chart, yet simultaneously the societal configuration displayed a highly fragmented society where the petitioners endured the hardships of poverty, armed conflict, forced displacement and many other forms of exclusion and invisibility. The Atrato-Tutela's ethical endeavor was primarily to recognize the diversity of the *alterity* as a collectivity to be contained in *us* – the beneficiaries of the law.

Remarkably, the judgement afforded protection to *others* that had not demanded judicial redress, nor could do so: (i) the ecosystems (crystalized through the acknowledgement of non-human elements of Nature as subjects with legal entitlements), (ii) non-petitioning victims of the same violations (applying *inter comunis* effects);[270] and future generations (applying notions like the principle of inter-generational equity, or the rights to sustainable development, to a healthy environment and to water, in order to safeguard biocultural diversity for the future). In doing so, the Court appeared to exhibit a hardcore non-discriminatory and equitable treatment beyond formalities, overcoming exclusions, categorizations and hierarchizations typical of the hegemonic worldview.

The biocultural rights approach proposed by the Atrato-Tutela represents a step from the utilitarian view of philosophers like Singer or Leimbacher,[271] towards the biocultural approach, through eco-centrism,[272] where the defense of Nature is a defense for the continuation of life cycles (including also human cycles). If an utilitarian would think of right-holders in terms of their capability to suffer or be sentient, the Court's biocultural approach would base rights on life itself. As the entire natural world is alive, interconnected and interdependent with the environment, preserving the part translated into preserving the whole over time.

Biodiversity was then seen as an ancient common living history of infinite pieces deserving to be preserved and informing culture (being culture a dynamic continuum too).[273] This understanding resonates with the contemporary scientific awareness that we all hold the (epi)genetic code of our ancestors and that territories portray the geography of the planet's evolution, to which *we* are a part interacting with the rest of *us*.

Several core categorizations of the hegemonic worldview were blurred here: (i) the antagonists in the adjudication (*us* v *them*) were transformed into co-participants of the basin's governance framework; (ii) the distinction between the individual, the community and the environment was annulled through the biocultural framework; (iii) subsets of human activity, biological evolution and cultural richness were seen in transtemporal terms: today's bioculturality and healthy ecosystems are built from ancestral legacies and are tomorrow's heritage. In other words, the ancestral was given superior transhistorical planetary value, which demands protection for present and future generations of all living beings.[274] This assumption contrasts with the capricious chronology of the hegemonic worldview that brags on the modern, views the ancestral as primitive, and purports increasing future

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[270] Ibid, 145, 151.
[271] Lidia Cano Pecharroman, 'Rights of Nature: Rivers That Can Stand in Court' (2018) 7 Resources , 3.
[272] Macpherson and Ospina, 'The Pluralism of River Rights in Aotearoa, New Zealand and Colombia', 285.
[273] *Atrato Tutela*, 141-142. "A second value added by nature rights is deeply rooted in the human genome. We grew up together, producing linkages that E.O. Wilson calls "biophilia"." Houck, 'Noah's Second Voyage: The Rights of Nature as Law', 49.
[274] *Atrato Tutela*, 49. Similarly, the 2018 judgement by the Supreme Court of Colombia that declared the Amazon as a subject of rights (following the steps of the Atrato-Tutela) also establishes the link between nature's rights and the rights of future generations. For further reference, see *Amazon Tutela* .

production/consumption with little regard for its long-term cross-boundary environmental impact,[275] with devastating consequences for future generations of all species.[276]

From the Court's ethical standpoint, it can be concluded that we -subjects before the law- are an inextricable ensemble of individuals, communities and environments interacting to express the uniqueness of our forms of life, altogether worthy of protection. Pursuant to an ecocentric, biocultural, holistic framework where humans are entrusted with the planet's stewardship, classical ethics of antagonization and exclusion are challenged by granting legal personhood, and (political) representation and participation, to historically invisibilized collectivities of human and non-human elements of nature.

[275] FAO, *The State of the World's Biodiversity for Food and Agriculture* , 107. "Many vertebrate and invertebrate associated biodiversity species are bred and reared in captivity, for instance in zoos, aquariums or research institutes or by commercial companies. In many cases, conservation is not the primary objective. For example, companies that raise biological control agents for sale are motivated by profitmaking rather than by concerns about the loss of biodiversity. They may nonetheless maintain large populations of important associated biodiversity species in ex situ conditions. Zoos and aquariums have the potential to play an "insurance" role in conservation and may be the only option available for the short-term conservation of wild species threatened by severe habitat loss. They do not normally have any particular focus on associated biodiversity, but often keep species that are found in and around production systems." Ibid, 353 (citations omitted).

[276] Lindgren, 'Ecocide, Genocide and the Disregard of Alternative Life-Systems', 529.

X. Conclusions

This thesis examined the definition of legal personhood under the judgement that declared the Atrato River Basin as a right-holder, and analyzed how such definition differs from mainstream concepts. The research entailed three phases: First, the judgements' factual, scientific, legal, supranational, political and ethical sources and arguments were identified. Second, the content and scope of legal personhood was outlined within each 'world'. Finally, the judicial output was contrasted with mainstream legal approaches.

In order to answer the first research sub-question (what are the main arguments and sources of the Atrato-Tutela and how do they feed into the judgement's definition of a *legal person*?), the Atrato-Tutela was studied in a historical perspective, accounting for the genesis and evolution of judicial substantiation in view of source-rulings T-380/1993 and T-652/1998.

These three judgements arose amidst severe environmental and social damage that threatened the survival of peoples settled along Colombia's Western river basins -especially members of Emberá-Katío indigenous communities. The Court's factual considerations show that, contrary to the orthodox process of reification during adjudication (where facts, and individuals' hurdles and values, are reduced to standardized legal categories), conditions on the ground were vivified through the rulings: Legal notions -particularly the foundational notion of *legal personhood* and the entitlements vested into legal persons- were (re)interpreted by reference to the worldviews pertaining to the petitioning communities rather than by reference to established legal definitions.

Scientific considerations played a central role in helping dimension the severity of the social and environmental damage at hand, and their long-lasting and sometimes irreversible consequences. Thenceforth, human and non-human communities were deemed interdependent, and ancestral ways of life were seen as crucial for environmental preservation. In the Atrato-Tutela, this departure point served to appreciate environmental damage from a planetary and transhistorical viewpoint: biological and cultural diversity were therein understood as an ancestral process of interconnections whose preservation is owed to present and future generations at global scale, given the cultural richness inherited by the affected communities and the mega-biodiversity of the ecosystem at stake.

With the factual and scientific evidence, the Court ascertained that the undergoing social and environmental damage violated (collective) constitutional rights, especially the rights to life and to ethnic and cultural integrity. In doing so, the Court attributed to various first, second and third generation rights the character of *fundamental* by virtue of their interdependence. Outstandingly, in the Atrato-Tutela, legal protections were not restricted to the petitioning communities but extended to non-petitioners: to the ecosystem (vested with the rights to protection, conservation, maintenance and restoration, in light of the ruling's biocultural character); AND to victims of the same violations that did not join the case (via *inter communis* effects).

International discourses and legal instruments also contributed to the rulings' substantiation, particularly with regards to indigenous rights and environmental protection. International instruments were significantly more numerous in the Atrato-Tutela, where they were harmonized with national laws through judicial interpretation or in light of the notion of the "Constitutional Block" -pursuant to which ratified international treaties enshrining human rights become part of the domestic constitutional order.

Yet the distance between enforcement of legal provisions enshrining human rights or environmental safeguards, and the environmental and social harm unveiled in the cases, evidenced that a material resolution of the disputes at hand would require addressing historical root causes overflowing the boundaries of the legal realm. The judgements studied hereunder embodied strong criticisms to the dominant political and economic structures that tolerated or caused the damage presented before the Court. In the Atrato-Tutela, the foundational notion of the Social Rule of Law

served as the prime basis for judicial redress to correct social and ecological injustices; an endeavor operationalized through the establishment of multi-stakeholder mechanisms for research, governance and supervision, where subjects of protection have direct participation and representation. There, local communities, scientists, the international community, governmental agencies, general public and -remarkably- the ecosystem itself (vested with personhood under the joint stewardship of the government and the petitioning communities), were envisaged as permanent members of a governance setup with the jurisdictional mandate of social and intergenerational justice.

At the deepest level, the supreme sources of the judgements are philosophical: The rulings embed an aspiration to embrace those left behind/outside the benefits of the prevailing political, economic and legal edifices; in other words, to view the *alterity* as part of *us* (the actual subjects of the legal order) and to have *them* effectively enjoy entitlements equivalent to *ours*. In the Atrato-Tutela, this aspiration led to craft legal personhood from holistic, biocultural and ecocentric ethics of stewardship towards non-human elements of Nature, in contrast with the ethics of mastery entrenched in mainstream frameworks.

Regarding the second research sub-question (what is the Atrato-Tutela's notion of legal personhood?), the explorations into the sources evidenced that the content and scope of legal personhood, and of the legal entitlements to be vested into legal persons, as developed by the Atrato-Tutela, portray the *higher self* of a massive body of groundbreaking constitutional case-law embracing alternative discourses since the Constitutional Court's inception in 1992. The Atrato-Tutela subsumes its precedents and provides a more robust case for environmental and human rights protection, combining a large catalogue of legal instruments and theoretical tools.

The Atrato-Tutela views legal persons as entities that cannot be disentangled from their local and global communities of human and non-human elements of Nature. These persons are conceived of as interdependent living entities that are trans-historically interconnected at planetary scale, who for their survival require autonomous legal representation and participation, as well as fulfilment of a wide catalogue of legal entitlements under the premises of equal treatment and material justice to be achieved by embracing and safeguarding biological and cultural diversity.

Concerning the third research sub-question (how does the definition of legal personhood in the Atrato-Tutela differ from conventional definitions), the precedents analysis showed a Court permanently challenging the values that have powered economic activities of high environmental impact at the expense of ways of life that are more beneficial to Nature conservation but do not function under market-driven values. Indeed, the exaltation of the collective dimension of life, and the importance of ancestral knowledge and practices, played a central role for the protection of biodiversity and cultural integrity in the judgements under scrutiny.

The research shows that *legal personhood* in the three rulings studied hereunder evolved alternatively to classical definitions, by transforming underlying legal, political and ethical assumptions, reshaping thereby categories that are familiar to prevailing narratives: The mainstream legal edifice was therein placed at the service of collective entities that had fallen outside/behind, erected in the course of adjudication as right-holders deserving the effective exercise of entitlements historically denied to them.

Interestingly, the jurisprudential study allows to conclude that the Atrato-Tutela was not the first judgement where the Constitutional Court of Colombia proposed rights to non-human elements of Nature, although it was the first to vest them into a specific ecosystem and operationalize them through inter-sectorial representation and governance mechanisms whose permanent members are collectivities typically marginalized from policymaking:

Besides the ecosystem's *sui generis* legal personhood and bi-sectorial representation, local communities became the ecosystem's voice and stewards, embedding thereby a bottom-up approach that contrasts with technocratic top-down structures; scientists became supervisors, requiring

environmental and social policy to be informed by independent science-based considerations; and the national ruling internationalized the stakes by placing the ecosystem as planetary heritage and planetary responsibility under the international community's scrutiny. In doing so, the Court filled in the governance vacuum left by other branches of government, extending its intervention beyond the usual judicial realm.

The resulting governance setup reconfigured the ontological assumptions of exclusions that are deep-rooted in legal orders exclusively devoted to humans (or human-made entities), and especially to the humans for the benefit of whom the hegemonic legal and political edifice works. In the Atrato-Tutela's institutional structure, the various 'worlds' and cosmovisions with a seat in policymaking (may) collide. The value of this approach for international environmental and human rights debates lays on the democratization of environmental management and social policy, from the prism of ecocentrism and bio-cultural rights -rather than from an anthropocentric utilitarian first-generation rights approach- which may help overcome the theoretical limitations of the mainstream human rights framework.[277]

Moreover, the combination of legal arguments and policy instruments may result valuable for complex environmental issues, which however will require an ethical and political shift within hegemonic (non-)State machineries to bridge the distance between policies and implementation.

The approach taken by the Atrato-Tutela is holistic: It views humans as an integral part of the environment, and gives a voice to Nature (in fact, two voices: the government's and the local communities'):[278]

Graphic 14. The Bio-Cultural Rights approach in the Atrato-Tutela.

[277] Daly, 'Environmental Constitutionalism in Defense of Nature', 670-671.
[278] Harmony with Nature (published 19 July 2017) UNGA (Report of the Secretary General A/72/175), 5. See also *Atrato Tutela*, 284; and Houck, 'Noah's Second Voyage: The Rights of Nature as Law', 14-15.

Further research is due to elaborate on the (potential) legal and policy implications of the model proposed by the Atrato-Tutela, as well as on the possibilities to outspread biocultural narratives to other social groups, to the extent that *sui generis* subjects of rights -once the worlds described above have collided- triggers a reconfiguration of what *us* entails, of the value that society (should) assign(s) to such *sui generis* right-holder(s), and of the actors that (should) take part in decision-making. It is worth exploring the potential of the Atrato-Tutela's bio-cultural rights approach to protect other collectivities and to develop transformational frameworks for the global environmental catastrophe and social crises ahead.[279]

[279] Ximena Arenas, Irina Ivanova and Angus Sargent, *Report of the NNHRR 'Toogdag' 2018*, 2018).

XI. APPENDICES

1. ATRATO-TUTELA COURT DETAILS

Petitioners:	Centro de Estudios para la Justicia Social "Tierra Digna", en representación del Consejo Comunitario Mayor de la Organización Popular Campesina del Alto Atrato (Cocomopoca), el Consejo Comunitario Mayor de la Asociación Campesina Integral del Atrato (Cocomacia), la Asociación de Consejos Comunitarios del Bajo Atrato (Asocoba), el Foro Inter-étnico Solidaridad Chocó (FISCH) y otros
Respondents:	Ministerio de Interior, Ministerio de Ambiente y Desarrollo Sostenible, Ministerio de Minas y Energía, Ministerio de Defensa Nacional, Ministerio de Salud y Protección Social, Ministerio de Agricultura, Ministerio de Vivienda, Ciudad y Territorio, Ministerio de Educación, Departamento para la Prosperidad Social, Departamento Nacional de Planeación, Agencia Nacional de Minería, Agencia Nacional de Licencias Ambientales, Instituto Nacional de Salud, Departamentos de Chocó y Antioquia, Corporación Autónoma Regional para el Desarrollo Sostenible del Chocó -Codechocó-, Corporación para el Desarrollo Sostenible del Urabá -Corpourabá-, Policía Nacional – Unidad contra la Minería Ilegal, Instituto Geográfico Agustín Codazzi -IGAC-, Instituto Colombiano de Desarrollo Rural -Incoder-, Registraduría Nacional del Estado Civil, Defensoría del Pueblo, Contraloría General de la República, Procuraduría General de la Nación, Municipios de Acandí, Bojayá, Lloró, Medio Atrato, Riosucio, Quibdó, Río Quito, Unguía, Carmen del Darién, Bagadó, Carmen de Atrato y Yuto (Chocó), y Murindó, Vigía del Fuerte y Turbo (Antioquia)
Justices:	Aquiles Arrieta Gómez (e), Alberto Rojas Ríos y Jorge Iván Palacio Palacio
Filed Date:	27 January 2015 before Tribunal Administrativo de Cundinamarca (Administrative Tribunal of the Province of Cundinamarca)
First Instance:	Tribunal Administativo de Cundinamarca (Administrative Tribunal of the Province of Cundinamarca), Fourth Section, Subsection B, 11 February 2015, denied petition.
Appeal:	Consejo de Estado (Council of State), Second Section, Subsection A, 21 April 2015, confirmed first instance judgement.
Constitutional Review	Corte Constitucional de Colombia (Constitutional Court of Colombia), M.P. Jorge Iván Palacio Palacio, Ref. Expediente T-5.016.242, 10 November 2016.

2. Interview Information

The interviews conducted for this research were semi-structured and varied depending on the professional and geographical background of the interviewee. The structured part of the interviews revolved primarily around the following questions:

1. Are environmental degradation or climate change issues about which you are personally worried to tackle? Why?
2. What is, in your view, the position of your colleagues and the institution for which you work about these issues?
3. How do you think these issues can be more comprehensively tackled?
4. Are you familiar with legal developments granting rights or personhood to nature? Do you know which are the sources of these developments? What do you think about them? Do they impact your work? How?
5. Before learning about developments to grant rights or personhood to nature, were you aware of the theoretical possibility to do so?
6. (To what extent) Do you think this innovation is sensible? Is it practical? Do you feel that it seems legitimate within your organization, your professional network and your social circle?
7. What challenges do you foresee to implement this change?
8. Do you think effective environmental or human rights protection could have been achieved without this change?
9. What implementation efforts are you aware of (court cases, sub-laws, etc.) with regards to nature's rights? Have you been involved in these? In which way?
10. Are you aware of other initiatives in similar directions?
11. Do you collaborate on these or other environmental or human rights issues with other disciplines and with organizations abroad? To what extent?

Interviewees:

1. Professor at law faculty in Netherlands. Phone call, 4 October 2018.
2. Professor at law faculty in Colombia. Whatsapp call, 2 November 2018.
3. Environmental lawyer in Ecuador. Skype videocall. 14 November 2018.
4. Professor at law faculty in Netherlands. Personal meeting, 19 November 2018, Utrecht, Netherlands.
5. Professor at law faculty in Colombia. Whatsapp call, 8 December 2018.
6. Professor at law faculty in the U.S.A.. Skype call. 21 December 2018.
7. Professor at law faculty in Netherlands. Personal meeting, 9 January 2019, Tilburg, Netherlands.
8. Environmental lawyer in Colombia. Phone call, 19 January 2019.
9. Constitutional lawyer in Colombia. Whatsapp call, 1 February 2019.
10. Human rights lawyer in Indonesia. Personal meeting, 16 April, Tilburg Netherlands.

3. List of Legislation and Institutional Documentation

JURISDICTION	YEAR	LEGISLATION
		MULTINATIONAL
	1933	Convention Relative to the Preservation of Fauna and Flora in the Natural State (signed 8 November 1933 entered into force 14 January 1936) International Conference for the Protection of the Fauna and Flora of Africa (London Conv. 1933).
	1948	Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 2017 A(III) (UDHR).
	1954	International Convention for the Prevention of Pollution of the Sea by Oil (signed 12 May 1954 entered into force 26 July 1958) International Maritime Organization (OILPOL).
	1957	Treaty Establishing the European Economic Community (signed 25 March 1957, entered into force 1 January 1958). Intergovernmental Conference on the Common Market and Euratom (Treaty of Rome).
	1958	Convention on the High Seas (adopted 29 April 1958 entered into force 20 March 1966) United Nations Conference on the Law of the Sea (High Seas Conv.).
	1966	International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) UNGA Res 2200A XXI (ICESCR).
	1969	American Convention on Human Rights (adopted 22 November 1969, entered into force 18 July 1978) OAS (ACHR).
	1969	International Convention on Civil Liability for Oil Pollution Damage (adopted 29 November 1969 entered into force 19 June 1975) IMO (CLC).
	1972	Convention for the Prevention of Marine Pollution by Dumping from Ships and Aircraft (adopted 15 February 1972, entered into force 7 April 1974) United Nations Conference on the Human Environment (Oslo Conv.).
	1972	Declaration of the United Nations Conference on the Human Environment (adopted 16 June 1972) United Nations Conference on the Human Environment (Stockholm Decl.).
	1972	Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (signed 13 November 1972 entered into force 30 August 1975) Intergovernmental Conference on the Convention on the Dumping of Wastes at Sea (Marine Dumping Conv.).
	1973	International Convention for the Prevention of Pollution from Ships (signed 17 February 1973 entered into force 2 October 1983) IMO (MARPOL).
	1974	Universal Declaration on the Eradication of Hunger and Malnutrition (adopted 16 November 1974) UNGA (UDEHM).
	1977	Mar del Plata Action Plan (adopted 25 March 1977) UN Water Conference.
	1978	Universal Declaration of Animal Rights (adopted 17 October 1978) UNESCO.
	1979	Convention on Long Range Transboundary Air Pollution (adopted 13 November 1979, entered into force 16 March 1983) UNECE (CLRTAP).
	1979	Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979) UNGA (CEDAW).
	1982	World Charter for Nature (adopted 28 October 1982) UNGA.
	1987	Montreal Protocol on Substances that Deplete the Ozone Layer (adopted 26 August 1987 entered into force 16 December 1987) Conference of Plenipotentiaries on the Protocol on Chlorofluorocarbons to the Vienna Convention for the Protection of the Ozone Layer.
	1987	World Commission on Environment and Development ("Brundtland Report"), *Our Common Future* (OUP, 1987).
	1988	Additional Protocol to the ACHR in the Area of Economic, Social and Cultural Rights (adopted 17 November 1988) OAS (Protocol of San Salvador).
	1989	Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (signed 22 March 2989, entered into force 5 May 1992) Conference of Plenipotentiaries (Basel Conv.).
	1989	Convention 169 on Indigenous and Tribal Peoples (7 June 1989 entered into force 1991) International Labor Organization (ILO Conv. 169).
	1989	Convention on the Rights of the Child (adopted 20 November 1989, entry into force 2 September 1990) UNGA (CRC or UNCRC).

	1992	Dublin Statement on Water and Sustainable Development (adopted 31 January 1992) International Conference on Water and the Environment (Dublin Principles).
	1992	Convention on the Protection of the Marine Environment of the Baltic Sea Area (adopted 9 April 1992 entered into force 17 January 2000) HELCOM (Helsinki Conv.).
	1992	United Nations Framework Convention on Climate Change (adopted 4 June 1992 entered into force 21 March 1994) UNCED (UNFCCC).
	1992	Convention on Biological Diversity (signed 5 June 1992 entered into force 29 December 1993) UNCED (Biodiversity Conv. or CBD).
	1992	The Rio Declaration on Environment and Development (adopted 5 June 1992 entered into force 29 December 1993) UNCED (Rio Decl.).
	1992	Convention for the Protection of the Marine Environment of the North-East Atlantic (signed 22 September 1992 entered into force 25 March 1998) Ministerial Meeting of the Oslo and Paris Commissions (OSPAR Conv.).
	1992	World Declaration and Plan of Action for Nutrition (adopted December 1992) International Conference on Nutrition (WDN).
	1994	ICPD Programme of Action (adopted 13 September 1994) International Conference on Population and Development.[280]
	1996	Rome Declaration on World Food Security (adopted 13-17 November 1996) World Food Summit (Rome Decl. WFS).
	1997	Kyoto Protocol to the United Nations Framework Convention on Climate Change (adopted 11 December 1997 entered into force 16 February 2005) UNFCCC (Kyoto Protocol).
	1998	Aarhus Protocol on Persistent Organic Pollutants (adopted 24 June 1998) UNECE (POPs).
	1998	Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (adopted 25 June 1998 entered into force 30 October 2001) UNECE (Aarhus Conv.).
	1998	Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (signed 10 September 1998 entered into force 24 February 2004) Conference of Plenipotentiaries (Chemicals Conv.).
	1999	The Right to Adequate Food (published 12 May 1999) CESCR E/C.12/1999/5 (CESCR General Comment 12).
	2000	Earth Charter (adopted March 2000) UNESCO.
	2000	Cartagena Protocol on Biosafety to the CBD (adopted 15 May 2000 entered into force 11 September 2003) UNCTAD (Cartagena Protocol).
	2000	United Nations Millennium Declaration (adopted 8 September 2000) UNGA (UN Millennium Decl.).
	2001	Universal Declaration on Cultural Diversity (adopted 2 November 2001) UNESCO (UDCD).
	2003	Convention for the Safeguarding of the Intangible Cultural Heritage (adopted 17 October 2003 entered into force 20 April 2006) UNESCO.
	2003	The Right to Water (published 20 January 2003) UN-ECOSOC (General Comment 15).
	2004	The Right to Food (adopted 16 April 2004) UNCHR E/CN.4/RES/2004/19 (Res. 2004/19).
	2004	Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security (adopted November 2004) FAO Council (2004 FAO VG).
	2006	Convention on the Rights of Persons with Disabilities (adopted 13 December 2006 entered into force 3 May 2008) UNGA (CRDP).
	2007	United Nations Declaration on the Rights of Indigenous Peoples (adopted 13 September 2007) UNGA (UNDRIP).
	2009	Right of Everyone to Take Part in Cultural Life (published 20 November 2009) CESCR (General Comment 21).
	2010	Universal Declaration on the Rights of Mother Earth (adopted 22 April 2010, Earth's day 2010) World People's Conference on Climate Change and the Rights of Mother Earth.
	2010	Resolution on the Human Right to Water and Sanitation (adopted 28 July 2010) UNGA (Res. 64/292).

[280] The Key Actions to implement the Programme were adopted by UNGA in July 1999. UNFPA, 'Programme of Action' (2004) ‹ https://www.unfpa.org/sites/default/files/event-pdf/PoA_en.pdf › accessed 25 February 2019.

	2010	Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising From their Utilization (adopted 29 October 2010, entered into force 12 October 2014) UNCTAD (Nagoya Protocol).
	2010	Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples (published 9 August 2010) UNGA (Res. A/65/264).
	2011	Declaration of Animal Rights (drafted May 2011) "Our Planet. Theirs Too" conservation group.
	2011	Universal Declaration on Animal Welfare (drafted 2011) World Society for the Protection of Animals (UDAW).
	2013	Minamata Convention on Mercury (signed 10 October 2013 entered into force 16 August 2017) Intergovernmental Negotiating Committee on Mercury – Conference of Plenipotentiaries (Minamata Conv.).
	2015	2030 Agenda for Sustainable Development (adopted 25 September) UNGA (A/Res/70/1).
	2015	Annual Report 2015 (5 October 2015) IACHR.[281]
	2015	Paris Agreement (adopted 12 December 2015 entered into force 4 November 2016) UNFCCC.
	2016	American Declaration on the Rights of Indigenous Peoples (adopted 15 June 2016) OAS.
	2016	Alluvial Gold Exploitation – Evidences from Remote Sensing (published May 2018) UNDOC and Gobierno de Colombia (Colombian Government) (Alluvial Gold Exploitation report).[282]
	2017	Harmony with Nature (published 19 July 2017) UNGA (Report of the Secretary General A/72/175).
	2018	UN Declaration on the Rights of Peasants and Other People Working in Rural Areas (adopted 17 December 2018) UNGA (UNDROP).
	2018	Harmony with Nature (published 23 July 2018) UNGA (Report of the Secretary General A/73-221).

NATIONAL		
Bolivia		
	2010	Act 071 of 2010 – Ley de Derechos de la Madre Tierra (Act of Mother Earth's Rights).
Colombia[283]		
	1873	Act 84 of 31 May 1873 (hereinafter "Act 84/1873") - Colombian Civil Code.
	1890	Act 89 of 25 November 1890 (hereinafter "Act 89/1890") – By means of which it is determined the way how sauvages that surrender to a civilized life shall be governed.
	1922	Act 114 of 30 December 1922 (hereinafter "Act 114/1922") on Immigration and Agricultural Colonies (current validity unconfirmed).
	1961	Act 135 of 15 December 1961 (hereinafter "Act 135/1961") on Social Land Reform (repealed by Act 160 of 3 August 1994 – Whereby the National System of Land Reform and Peasant Rural Development is created, a subsidy for land acquisition is established, the Instituto Colombiano de la Reforma Agraria (Colombian Institute of Land Reform) is reformed and other provisions are adopted).
	1968	Decree 760 of 22 May 1968 (hereinafter "Decree 760/1968") – Whereby the *Corporación Nacional para el Desarrollo del Chocó* (National Corporation for the Development of Chocó) - CODECHOCÓ is created.
	1974	Decree 2811 of 18 December 1974 (hereinafter "Decree 2811/1974") - Whereby the National Code on Renewable Natural Resources and Environmental Protection is adopted.
	1984	Decree 1 of 1984 (hereinafter "Decree 1/1984") - Código Contencioso Administrativo – C.C.A. (Administrative Code).
	1988	Decree 2001 of 28 September 1988 (hereinafter "Decree 2001/1988") – Whereby Act 135 of 1961 is partially regulated with regards to Indigenous Reserves (repealed by Decree 2164 of 7 December 1995 by means of which Act 160 of 1994 was regulated with regards to land titles for indigenous communities to establish, restructure, widen or clear Indigenous Reserves).

[281] Ch IV.A deals with the right to access to water in the Americas.
[282] The Atrato-Tutela refers to the Spanish language version of this document: UNDOC and Gobierno de Colombia, *Explotación de Oro de Aluvión –Evidencias a partir de Percepción Remota* (June 2016).
[283] Unless otherwise stated, the instrument is in effect, even if only partially. The legal effects of legal instruments in other jurisdictions has not been verified in the course of this study.

	1991	*Constitución Política de Colombia* (hereinafter "CP", "Colombian Constitutional Charter" or "Constitution").
	1991	Act 21 of 4 March 1991 (hereinafter "Act 21/1991") – Whereby it is approved the ILO Convention 169 on Indigenous and Tribal Peoples adopted by the 76th session of the General Conference, Geneva, 7 June 1989.
	1991	Decree 2591 of 19 November 1991 (hereinafter "Decree 2591/1991") - Whereby the Tutela action is regulated pursuant to Art. 86 of the Constitution.
	1992	Decree 306 of 19 February 1992 (hereinafter "Decree 306/1992") – Whereby Decree 2591 of 1991 is regulated.
	1992	Decree 1332 of 11 August 1992 (hereinafter "Decree 1332/1992") – Whereby the Special Commission for Black Communities referred to by transitory Art. 55 CP is created, and its functions and powers are established; and on the acknowledgement of territorial and cultural rights as well as economic, political and social rights of black peoples in Colombia.
	1993	Act 70 of 27 August 1993 (hereinafter "Act 70/1993") – Whereby the transitory Art. 55 CP is regulated.
	1993	Act 99 of 23 December 1993 (hereinafter "Act 99/1993") – Whereby the Ministry of the Environment is created, the Public Sector responsible for the management and conservation of the environment and renewable natural resources is reorganized, the National Environmental System (SINA) is organized, and other provisions are adopted (partially modified).
	1993	Act 100 of 23 December 1993 (hereinafter "Act 100/1993") – Whereby the System of Integral Social Security is created and other provisions are adopted.
	1994	Act 165 of 9 November 1994 (hereinafter "Act 165/1994") – Whereby the CBD, adopted in Rio de Janeiro on 5 June 1992, is approved.
	1998	Decree 1320 of 13 July 1998 (hereinafter "Decree 1320/1998") – Whereby prior consultation with indigenous and black communities for exploitation of renewable natural resources in their territory is regulated.
	2002	Act 740 of 24 May 2002 (hereinafter "Act 740/2002") – Whereby the Cartagena Protocol on Biosafety to the CBD is approved.
	2006	Act 1037 of 25 July 2006 (hereinafter "Act 1037/2006") – Whereby the Convention for the Safeguarding of the Intangible Cultural Heritage, adopted by the XXXII General Meeting of UNESCO celebrated in Paris and ending on 17 October 2003, signed in Paris on 3 November 2003, is approved.
	2010	Ombudsman Report, *La Minería de Hecho en Colombia* (Defensoría del Pueblo 2010).
	2010	Ombudsman Report, *Informe de Riesgo Num. 15* (Defensoría del Pueblo 2010).
	2011	Decree 3570 of 27 September 2011 (hereinafter "Decree 3570/2011") – Whereby the objective and structure of the Ministry of the Environment and Sustainable Development are modified and the Administrative Sector of the Environment and Sustainable Development is integrated.
	2012	Ombudsman Report, *Informe de Seguimiento a la Publicación "Minería de Hecho en Colombia"* (Defensoría del Pueblo 2010).
	2013	Act 1658 of 15 July 2013 (hereinafter "Act 1658/2013") – Whereby the commercialization and use of mercury in diverse industrial activities are established, requirements and incentives to reduce and eliminate the use of mercury are determined, and other provisions are adopted.
	2014	Ombudsman Report *Crisis Humanitaria en el Chocó: Diagnóstico, Valoración y Acciones de la Defensoría del Pueblo* (Defensoría del Pueblo 2014).[284]
	2014	Resolución Defensorial (Ombudsman Resolution) 64 of 29 September 2014, Defensoría del Pueblo (hereinafter "Res. 64/2014").
	2014	Directiva Conjunta (Joint Directive) 005/2014, Defensoría del Pueblo (Ombudsman) and Procuraduría General de la Nación (Inspector General (hereinafter "Joint Directive 005/2014").
	2016	*Acuerdo Final para la Terminación del Conflicto y la Construcción de una Paz Estable y Duradera* (Final Accord to End the Conflict and Build Stable and Long-Lasting Peace,

[284] Available on ‹ http://www.defensoria.gov.co/public/pdf/crisisHumanitariaChoco.pdf › accessed 28 February 2019. Data for 2013 show at least: 8 victims of anti-personnel mines, 157 cases of extorsion, 169 murders, 636 death threats, 4.600 persons expulsed of their territory, 18 massive displacements, i.a. It also reports land dispossession, armed conflict, child mortality by preventable diseases (intestinal diseases and malnutrition), geographic and language barriers to treat sick people, lack of medical services, sexual abuses (including of minors), unlawful recruitment of children, i.a. Between January-July 2014, 53 forced disappearances had been reported. The report also highlights the National Government's non- compliance with the commitments made in the interinstitutional plan of return of victims to the area. Defensoría del Pueblo, *Crisis Humanitaria en Chocó - Diagnóstico, Valoración y Acción de la Defensoría del Pueblo*, 2014).

		hereinafter "Peace-Agreement"), entered into 24 October 2016 between the Colombian Government and the *Fuerzas Armadas Revolucionarias de Colombia – Ejército del Pueblo (FARC-EP)*.
	2017	Decree 749 of 2 May 2018 (hereinafter "Decree 749/2018") - Whereby the Intersectorial Commission for the Province of Chocó is created.
Ecuador		
	2008	*Constitución de la República del Ecuador* (Constitution of the Republic of Ecuador) (adopted 28 September 2008 entered into force 20 October 2008. *Asamblea Nacional Constituyente de Ecuador de 2007-2008* (National Constituing Assembly of Ecuador).
	2017	*Código Orgánico del Medio Ambiente* (Organic Code of the Environment) (adopted 12 April 2017, entered into force 12 April 2018).
Mexico		
	2000	*Ley Ambiental de Protección a la Tierra en el Distrito Federal* (Environmental Act of Protection to Earth in the Federal District) (published 13 January 2000).
	2014	*Constitución Política del Estado Libre y Soberano de Guerrero* (Political Constitution of the Free and Sovereign State of Guerrero) (adopted 30 June 2014).
	2017	*Constitución Política de la Ciudad de México* (Political Constitution of Mexico City) (adopted 31 January 2017).
New Zealand		
	2014	"Te Urewera" Act 51 of 27 July 2014 (entered into force 28 July 2014).
	2017	"Te Awa Tupua (Whanganui River Claims Settlement)" Act 7 of 20 March 2017 (entered into force 21 March 2017).
United Kingdom		
	1215	Charter of the Forest (adopted 1217, joined to Carta Magna in the 1297 Confirmation of Charters).[285]
Venezuela		
	1999	*Constitución de la República Bolivariana de Venezuela* (Constitution of the Bolivarian Republic of Venezuela) (adopted 19 December 1999).

4. List of Case Law and Other Judicial Instruments

JURISDICTION	YEAR	COURT	CASE
Inter-American System			
	1997	Inter-American Commission of Human Rights	*Report on the Situation of Human Rights in Ecuador* (1997) OEA/Ser.L/V/II.96, 24 April 1997 (IACHR report on Ecuador).
	2001	Inter-American Court of Human Rights	*Mayagna (Sumo) Awas Tingni Community v Nicaragua* (2001) 31 August 2001 (Mayagna v Nicaragua).
	2002	Inter-American Court of Human Rights	*Juridical Condition and Human Rights of the Child* (2002) Advisory Opinion OC-17/2002, 28 August 2002.
	2005	Inter-American Court of Human Rights	*Yakye Axa Indigenous Community v Paraguay* (2005) 17 June 2005 (Yakye Axa v Paraguay).
	2006	Inter-American Court of Human Rights	*Sawhoyamaxa Indigenous Community v Paraguay* (2006) 29 March 2006 (Sawhoyamaxa v Paraguay).
	2007	Inter-American Commission of Human Rights	*Access to Justice and Social Inclusion: The Road Towards Strengthening Democracy in Bolivia* (2007) OEA/Ser.L/V/II, 28 June 2007 (IACHR report on Bolivia).
	2007	Inter-American Court of Human Rights	*Saramaka People v Suriname* (2007) 28 November 2007 (Saramaka v Suriname).

[285] Available on ‹ http://www.nationalarchives.gov.uk/education/resources/magna-carta/charter-forest-1225-westminster/ › accessed 5 March 2019.

	2009	Inter-American Commission of Human Rights	*Indigenous and Tribal Peoples' Rights over Their Ancestral Lands and Natural Resources – Norms and Jurisprudence of the Inter-American Human Rights System* (2009) OAS-IACHR OEA/Ser.L/V/II 30 December 2009 (IACHR Doc. 56/09).
	2010	Inter-American Court of Human Rights	*Xákmok Kásek Indigenous Community v Paraguay* (2010) 24 August 2010) (Xákmok Kásek v Paraguay).

Colombia			
	1992	Corte Constitucional de Colombia (Constitutional Court of Colombia)	**T-406/1992**: *José Manuel Rodríguez v Enriqye Chartuny González, mamager of Empresas Públicas de Cartagena (Public Enterprises of Cartagena)*, M.P. Ciro Angarita Barón, Ref. Expediente T-778/1992, 5 June 1992.
	1992	Corte Constitucional de Colombia	**T-411/1992**: *José Felipe Tello Varón*, M.P. Alejandro Martínez Caballero, Ref. Expediente T-785, 17 June 1992.
	1992	Corte Constitucional de Colombia	**T-415/1992:** *Fundepublico v Marino Mayor Romero (Bugalagrande Mayor), Personero Municipal (Bugalagrande Attorney) and Director de Saneamiento Ambiental de la Secretaría de Salud del Departamento del Valle (Director of Public Sanitation, Health Department of the Province of Valle del Cauca)*, M.P. Ciro Angarita Barón, Ref. Expediente T-101, 17 June 1992.
	1992	Corte Constitucional de Colombia	**T-428/1992**: *Amado de Jesús Carupia Yagari v Solarte and Ministerio de Obras Públicas (Ministry of Public Works)*, M.P. Ciro Angarita Barón, Ref. Expediente T-859, 24 June 1992.
	1992	Corte Constitucional de Colombia	**T-451/1992**: *S.A.S. Televisión Ltda. v Alcalde Municipal de Ibagué (Mayor of Ibagué City) and others*, M.P. Ciro Angarita Barón, Ref. Expediente 1285, 10 July 1992.
	1992	Corte Constitucional de Colombia	**T-536/1992**: *Olinda Barragán and Teresa González v Compañía Vicón S.A.*, M.P. Simón Rodríguez Rodríguez, Ref. Expediente 2610, 23 September 1992.
	1992	Corte Constitucional de Colombia	**T-570/1992**: *Jaime Santamaría Téllez and others v Res. of 26 March 1992 issued by Alcaldía Municipal de Suaita (Municipality of Suaita)*, M.P. Jaime Sanín Greiffenstein, Ref. Expediente T-2630, 26 October 1992.
	1993	Corte Constitucional de Colombia	**C-027/1993**: *Carlos Fradique Méndez and others v Act 20/1974 (whereby the Concordat and Protocol signed between Colombia and the Holy See was approved)*, M.P. Simón Rodríguez Rodríguez, Ref. Expedientes D-018, D-116 and D-136, 5 February 1993.
	1993	Corte Constitucional de Colombia	**T-092/1993**: *Antonio Mauricio Monroy Céspedes v Administración Municipal de Villavicencio (Municipal Administration of Villavicencio)*, M.P. Simón Rodríguez Rodríguez, Ref. Expediente 5849, 19 February 1993.
	1993	Corte Constitucional de Colombia	**T-188/1993:** *Rogelio Domicó Amaris and others v Presidencia de la República (Presidence of the Republic of Colombia) and others*, M.P. Carlos Gaviria Díaz, Ref. Expediente T-168594 and T-182245, 10 November 1998.
	1993	Corte Constitucional de Colombia	**T-254/1993**: *Alberto Castrillón and others v Chief of the Public Health Service of Puerto Tejada*, M.P. Antonio Barrera Carbonell, Ref. Expediente T-10505, 30 June 1993.
	1993	Corte Constitucional de Colombia	**T-257/1993**: *Asociación Evangélica Nuevas Tribus de Colombia (Evangelic Association Nuevas Tribus de Colombia) v Aeronáutica Civil (Civil Aviation) and División de Asuntos Indígenas del Ministerio de Gobierno (Division of Indigenous Affairs of the Ministry of Government)*, M.P. Alejandro Martínez Caballero, Ref. Expediente T-10239, 30 June 1993.
	1993	Corte Constitucional de Colombia	**T-380/1993:** *Organización Indígena de Antioquia - O.I.A. (Indigenous Association of Antioquia) on behalf of Comunidad Indígena (Indigenous Community) Emberá-Catío de Chajerado v Corporación Nacional de Desarrollo del Chocó – CODECHOCÓ (National Corporation for the*

			Development of Chocó) and Compañía de Maderas del Darién – MADARIÉN (Darién Timber Co), M.P. Eduardo Cifuentes Muñoz, Ref. Expediente T-13636, 13 September 1993.
	1993	Corte Constitucional de Colombia	**T-405/1993:** *Comunidades Indígenas del Medio Amazonas (Indigenous Communities of Central Amazonas) v Ministerio de Defensa Nacional (Ministry of Defense) and Misión Aérea de los Estados Unidos (USA Air Mission)*, M.P. Hernando Herrera Vergara, Ref. Expediente T-12559, 23 September 1993.
	1993	Corte Constitucional de Colombia	**T-539/1993**: *Rafael Enrique Martínez Torres v Aslo S.A.*, M.P. José Gregorio Hernández Galindo, Ref. Expediente T-20297, 22 November 1993.
	1994	Corte Constitucional de Colombia	**C-058/1994**: *Alfonso Palma Capera v Arts. 27 and 63 of Act 48/1993*, M.P. Alejandro Martínez Caballero, Ref. Expediente D-369, 17 February 1994.
	1994	Corte Constitucional de Colombia	**T-244/1994**: *Arnulfo Camacho Medina v INDERENA – Regional Cundinamarca, Carlos Adolfo Van Arcken and María Angélica Medina*, M.P. Hernando Herrera Vergara, Ref. Expediente T-28216, 20 May 1994.
	1994	Corte Constitucional de Colombia	**T-254/1994:** *Ananias Narvaez v Cabildo de la Comunidad Indígena de El Tambo (Cabildo of the Indigenous Community of El Tambo)*, M.P. Eduardo Cifuentes Muñoz, Ref. Expediente T-30116, 30 May 1994.
	1994	Corte Constitucional de Colombia	**T-342/1994:** *Ariel Uribe Orozco and Jorge Alberto Restrepo González v Asociación Nuevas Tribus de Colombia (Colombian New Tribes Association)*, M.P. Antonio Barrera Carbonell, Ref. Expediente T-20973, 27 July 1994.
	1994	Corte Constitucional de Colombia	**C-519/1994**: *Constitutional review of Acts 162 and 165 of 1994 whereby the CBD was approved*, M.P. Vladimiro Naranjo Mesa, Ref. Expediente LAT-036, 21 November 1994.
	1994	Corte Constitucional de Colombia	**T-523/1994**: *María de Jesús Medina Pérez and other inhabitants of Llanos de Cuivá v Álvaro Vásquez (owner of a property containing a water source)*, M.P. Alejandro Martínez Caballero, Ref. Expediente T-34561, 22 November 1994.
	1994	Corte Constitucional de Colombia	**T-550/1994**: *Lorenzo Miguel Piña Ahumada and others v Mayor of the Municipality of Córdoba (province of Bolívar) and the company "TURFIN Limitada"*, M.P. José Gregorio Hernández Galindo, Ref. Expediente T-43712, December 1994.
	1995	Corte Constitucional de Colombia	**T-015/1995**: *Esrilda Correa Marimón v Fondo Nacional de Caminos Vecinales (National Fund for Rural Ways)*, M.P. Hernando Herrera Vergara, Ref. Expediente T49824, 23 January 1995.
	1995	Corte Constitucional de Colombia	**T-092/1995**: *Baltasar Guerrero Márquez v Municipio de Aipe (Municipality of Aipe) and Gobernación del Huila (Government of the Province of Huila)*, M.P. Hernando Herrera Vergara, Ref. Expediente T-54798, 2 March 1995.
	1995	Corte Constitucional de Colombia	**C-282/1995**: *Gabriel Muyuy Jacanmejoy and Edgar Pardo Rodríguez v Art. 157 of Act 100/1993*, M.P. Carlos Gaviria Díaz, Ref. Expediente D-692, 29 June 1995.
	1995	Corte Constitucional de Colombia	**T-379/1995**: *Pedro Rojas León v Francisco Próspero Fleury and other successors of Manuel de Vengoechea de Mier*, M.P. Antonio Barrera Carbonell, Ref. Expediente T-61500, 28 August 1995.
	1995	Corte Constitucional de Colombia	**C-401/1995**: *Constitutional review of Act 183/1995 whereby the Framework Agreement of Cooperation between the European Economic Community and the Cartagena Agreement and its Member Countries, namely the Republic of Bolivia, the Republic of Colombia, the Republic of Ecuador, the Republic of Peru and the Republic of Venezuela*, M.P. Vladimiro Naranjo Mesa, Ref. Expediente LAT. 045, 7 September 1995.
	1995	Corte Constitucional de Colombia	**T-413/1995**: *Fernando Agustín Delgado v Junta Administradora del Acueducto Regional "La Cuchilla" (Administrative Board of "La Cuchilla" Regional Aqueduct)*, M.P. Alejandro Martínez Caballero, Ref. Expediente T-71043, 13 September 1995.

	1996	Corte Constitucional de Colombia	**C-139/1996**: *Jaime Bocanegra and others v Arts. 1, 5 and 40 of Act 89 of 1890*, M.P. Carlos Gaviria Díaz, Reference Expediente D-1080, 9 April 1996.
	1996	Corte Constitucional de Colombia	**C-262/1996**: *Constitutional review of Act 243/1995 whereby the International Convention for the Protection of New Varieties of Plants UPOV was approved*, M.P. Eduardo Cifuentes Muñoz, Ref. Expediente LAT-068, 13 June 1996.
	1996	Corte Constitucional de Colombia	**T-349/1996:** *Ovidio González Wasorna v Asamblea General de Cabildos Indígenas Región -Chamí and Cabildo Mayor Único - CRIR (General Assembly of Indigenous Cabildos in the Chamí Region and Unified Major Cabildo)*, M.P. Carlos Gaviria Díaz, Ref. Expediente T-83456, 8 August 1996.
	1996	Corte Constitucional de Colombia	**T-496/1996**: *Libardo Guainas Finscue v Third Criminal Court in the Judicial District of La Plata, Province of Huila*, M.P. Carlos Gaviria Díaz, Ref. Expediente T-100537, 26 September 1996.
	1996	Corte Constitucional de Colombia	**T-574/1996**: *Pescadores de Salahonda (Fishermen of Salahonda) v Ecopetrol*, M.P. Alejandro Martínez Caballero, Ref. Expediente T-100774, 29 October 1996.
	1997	Corte Constitucional de Colombia	**SU-039/1997:** *Defensor del Pueblo (Ombudsman) Jaime Córdoba Triviño on behalf of Grupo Étnico Indígena U'wa (U'wa indigenous community) v Ministerio del Medio Ambiente (Ministry of Environment) and Occidental de Colombia Inc.*, M.P. Antonio Barrera Carbonell, Ref. Expediente T-84771, 3 February 1997.
	1997	Corte Constitucional de Colombia	**C-183/1997:** *Javier Lizcano Rivas v Art. 217 of Act 100/1993*, M.P. José Gregorio Hernández, Ref. Expediente D-1469, 10 April 1997.
	1997	Corte Constitucional de Colombia	**C-239/1997**: *José Eurípides Parra Parra v Art. 326 of Decree 1000/1980 (Criminal Code)*, M.P. Carlos Gaviria Díaz, Ref. Expediente D-1490, 20 May 1997.
	1997	Corte Constitucional de Colombia	**T-248/1997**: *Hilario Sarmiento Tarazona and María Teresa Jurado de Sarmiento on behalf of their child Jose Hilario Sarmiento Jurado*, M.P. Fabio Morón Díaz, Ref. Expediente T-122350, 27 May 1997.
	1997	Corte Constitucional de Colombia	**T-523/1997**: *Francisco Gembuel Pechene v Luis Alberto Passu and others*, M.P. Carlos Gaviria Díaz, Ref. Expediente T-124907, 15 October 1997.
	1998	Corte Constitucional de Colombia	**C-054/1998**: *Juan Carlos Galiendo Vacha v Art. 193 of Act 100/1993*, M.P. Fabio Morón Díaz, Ref. Expediente D-1764, 4 March 1998.
	1998	Corte Constitucional de Colombia	**C-126/1998**: *Luis Fernando Macías Gómez and Luis Roberto Wiesner Morales v Decree 2811/1974 (household utilities regime) and Arts. 19 and 20 of Act 23/1973 (assigning competences to the President to adopt the Code on Natural Resources and Environmental Protection)*, M.P. Alejandro Martínez Caballero, Ref. Expediente D-1794, 1 April 1998.
	1998	Corte Constitucional de Colombia	**SU-510/1998**: *Alvaro de Jesús Torres Forero v Autoridades Tradicionales de la Comunidad Indígena Arhuaca de la Zona Oriental de la Sierra Nevada de Santa Marta (Traditional Authorities of the Arhuaco Indigenous Community of the Eastern Zone of Sierra Nevada de Santa Marta)*, M.P. Eduardo Cifuentes Muñoz, Ref. Expediente T-141047, 18 September 1998.
	1998	Corte Constitucional de Colombia	**T-652/1998:** *Rogelio Domicó Amaris and others v Presidencia de la República (Presidence of the Republic of Colombia) and others*, M.P. Carlos Gaviria Díaz, Ref. Expediente T-168594 and T-182245, 10 November 1998.
	1999	Corte Constitucional de Colombia	**T-046/1999**: *Ricardo Correal Morillo (Director of the Ombudsman National Directorate of Judicial Action) v C.I. Prodeco Productos de Colombia S.A.*, M.P. Hernando Herrera Vergara, Ref. Expediente T-183139, 29 January 1999.
	1999	Corte Constitucional de Colombia	**C-200/1999:** *Constitutional Review of Act 464/1998 – Whereby the 1994 International Tropical Timber Agreement is adopted*, M.P. Carlos Gaviria Díaz, Ref. Expediente LAT-133, 7 April 1999,

	1999	Corte Constitucional de Colombia	**T-209/1999**: *Elsa Mery Tacurí Hernández and Olga Polanco de Iriarte v Instituto de Seguros Sociales (Institute of Social Security)*, M.P. Carlos Gaviria Díaz, Ref. Expediente T-152647 and T-154236, 13 April 1999.
	1999	Corte Constitucional de Colombia	**SU-961/1999:** *Gloria Lucía Sarmiento and José Fernando Valencia v Corte Suprema de Justicia Sala Plena (Plenary Chamber, Supreme Court of Justice,)*, M.P. Vladimiro Naranjo Mesa, Ref. Expedientes T-229103 and T-237605, 1 December 1999.
	1999	Corte Constitucional de Colombia	**SU-995/1999**: *Iván Enrique Brito Roncallo and others v Alcaldía Municipal de El Plato (Municipality of El Plato in the Province of Magdalena)*, Ref. Expedientes T-218550, T-229080, T-233549, T233551, T-233586, T-233681, T-233709 and T-237521, 9 December 1999.
	2000	Corte Constitucional de Colombia	**T-158/2000:** *Rosalba Galvis Gómez v Hospital Universitario "San José" de Popayán (University Hospital "San José", Popayán)*, M.P. José Gregorio Hernández Galindo, Ref. Expediente T-254424, 22 February 2000.
	2000	Corte Constitucional de Colombia	**C-431/2000**: *Julio César Rojas Monsalve v fragments of Art. 1 of Act 507/1999 (on land management)*, M.P. Vladimiro Naranjo Mesa, Ref. Expediente D-2589, 12 April 2000.
	2000	Corte Constitucional de Colombia	**C-432/2000**: *María Teresa Pardo Plata v Art. 21 of Act 344/1996 (on public expenditure)*, M.P. Alfredo Beltrán Sierra, Ref. Expediente D-2590, 12 April 2000.
	2001	Corte Constitucional de Colombia	**C-671/2001**: *Constitutional control of Act 618 of 2000, whereby the 1997 Montreal Protocol was approved*, M.P. Jaime Araujo Rentería, Ref. Expediente LAT-191, 28 June 2001.
	2001	Corte Constitucional de Colombia	**SU-1023/2001**: *Librada de Dios Viuda de Fajardo and others v Compañía de Inversiones de la Flota Mercante S.A. and others*, M.P. Jaime Córdoba Trivino, Ref. Expedientes T-409301, T-411010, T-411263, T-442235 and T-426970, 26 September 2001.
	2001	Corte Constitucional de Colombia	**C-1064/2001**: *Armando José Soto Jiménez v Art. 2 of Act 628/2000 (whereby the 2001 national budget was established)*, M.P. Manuel José Cepeda Espinosa and Jaime Córdoba Triviño, Ref. Expediente D-3449, 1 October 2001.
	2002	Corte Constitucional de Colombia	**C-293/2002**: *Ricardo Vanegas Sierra v fragments of Arts. 1 and 85 of Act 99/1993*, M.P. Alfredo Beltrán Sierra, Ref. Expediente D-3748, 23 April 2002.
	2002	Corte Constitucional de Colombia	**C-339/2002**: *Carlos Alberto Mantilla Gutiérrez v fragments of Arts. 3, 4, 18, and 34 to 36 of Act 685/2001 (Mining Code)*, M.P. Jaime Araujo Rentería, Ref. Expediente D-3767, 7 May 2002.
	2002	Corte Constitucional de Colombia	**T-434/2002**: *Fabio Andrés Ospina v Protection Technology S.A.*, M.P. Rodrigo Escobal Gil, Ref. Expediente T-537584, 30 May 2002.
	2003	Corte Constitucional de Colombia	**C-071/2003**: *Constitutional Review of Act 740/2002 whereby the Cartagena Protocol was approved*, M.P. Álvaro Tafur Gálvis, Ref. Expediente LAT-222, 4 February 2003.
	2003	Corte Constitucional de Colombia	**SU-383/2003**: *Organización de Pueblos Indígenas de la Amazonía Colombiana – OPIAC (Organization of Indigenous Peoples in the Colombian Amazon) v Presidencia de la República (Presidency of the Republic of Colombia) and others*, M.P. Álvaro Tafur Galvis, Ref. Expediente T-517583, 13 May 2003.
	2003	Corte Constitucional de Colombia	**T-410/2003**: *Jorge Hernán Gómez Ángel v Alcalde Municipal de Versalles – Valle del Cauca (Mayor of Versalles in the Province of Valle del Cauca) and the Director of Empresa de Servicios Públicos de Versalles (Versalles Public Services Corporation)*, M.P. Jaime Córdoba Triviño, Ref. Expediente T-697667, 22 May 2003.
	2003	Corte Constitucional de Colombia	**T-552/2003**: *Ever Quinayás Omen and other v Consejo Superior de la Judicatura (Superior Council of Judicature)*, M.P. Rodrigo Escobal Gil, Ref. Expediente T-506199, 10 July 2003.
	2003	Corte Constitucional de Colombia	**T-955/2003:** *Consejo Comunitario Mayor Cuenca Río Cacarica (Grand Community Council of the Cacariva River Basin) v Ministerio del Medio Ambiente (Ministry of the Environment) and others*, M.P.

			Álvaro Tafur Galvis, Ref. Expediente T-562887, 17 October 2003.
	2004	Corte Constitucional de Colombia	**T-025/2004:** *Abel Antonio Jaramillo and others v Red de Solidaridad Social (Network of Social Solidarity) and others*, M.P. Manuel José Cepeda Espinosa, Ref. Expedientes T-653010 and others, 22 January 2004.
	2004	Corte Constitucional de Colombia	**C-040/2004**: *Jesús Alfonso Angarita Ávila v Art. 42.20 of Act 715/2001 (on membership to the health care system)*, M.P. Jaime Córdoba Triviño, Ref. Expediente D-4719, 27 January 2004.
	2004	Corte Constitucional de Colombia	**T-814/2004:** *Ofelia Vásquez v Alcaldía Municipal de Padilla, Cauca (Municipality of Padilla, Province of Cauca)*, M.P. Rodrigo Uprimny Yepes, Ref. Expediente T-894976, 27 August 2004.
	2004	Corte Constitucional de Colombia	**C-988/2004**: *Marcel Tangarife Torres v Arts. 1, 3, 4 and 6 of Act 822/2003*, M.P. Humberto Sierra Porto, Ref. Expediente D-4884, 12 October 2004.
	2005	Corte Constitucional de Colombia	**T-315/2005:** *Alvaro Latorre Nigrinis and Janeth Pardo Martínez v Juzgados Cuatro y Primero Laboral del Circuito de Santa Marta (First and Fourth Labor Courts in the Judicial District of Santa Marta) and Sala Laboral del Tribunal Superior del Distrito Judicial de Santa Marta (Labor Chamber, Superior Tribunal in the Court District of Santa Marta)*, M.P. Jaime Córdoba Triviño, Ref. Expediente T-989589, 1 April 2005.
	2005	Corte Constitucional de Colombia	**C-590/2005:** *Rafael Sandoval López v Art. 185 of Act 906 of 2004*, M.P. Jaime Córdoba Trivino, Ref. Expediente D-5428, 8 June 2005.
	2005	Corte Constitucional de Colombia	**T-1104/2005**: *Jaime Castro López v Empresas Públicas de Medellín (Public Enterprises of Medellín)*, M.P. Jaime Araújo Rentería, Ref. Expediente T-1138238, 28 October 2005.
	2005	Corte Constitucional de Colombia	**T-1110/2005:** *Luis María Ardila Morales v Juzgado Tercero Penal del Circuito de Bogotá (Third Criminal Court in the Judicial District of Bogotá) and Fiscalía 106 Seccional de la Unidad de Delitos contra la Fe Pública y el Patrimonio Económico – Bogotá (Prosecutor 106, Section of Crimes against Public Faith and Economic Assets)*, M.P. Humberto Antonio Sierra Porto, Ref. Expediente T-1150497, 28 October 2005.
	2006	Corte Constitucional de Colombia	**T-016/2006:** *Susana del Carmen Pupo de Rosanía v Sala Civil del Tribunal Superior de Barranquilla (Civil Chamber, Superior Tribunal of Barranquilla) and Sala de Casación Civil de la Corte Suprema de Justicia (Civil Chamber, Supreme Court of Justice)*, M.P. Manuel José Cepeda Espinosa, Ref. Expediente T-1200120, 25 January 2006.
	2006	Corte Constitucional de Colombia	**T-158/2006:** *Laureano Augusto Ramírez Gil v CAPRECOM*, M.P. Humberto Antonio Sierra Porto, Ref. Expediente T-1217433, 2 March 2006.
	2006	Corte Constitucional de Colombia	**C-188/2006**: *Pedro Pablo Camargo v Arts. 98 to 110 of Act 795/2003 (organic statute of the financial system)*, M.P. Rodrigo Escobar Gil, Ref. Expediente D-5931, 15 March 2006.
	2006	Corte Constitucional de Colombia	**C-742/2006**: *Edgar Eduardo Manrique Muñoz v Art. 4 of Act 397/1997*, M.P. Marco Gerardo Monroy Cabra, Ref. Expediente D-6212, 30 August 2006.
	2007	Corte Constitucional de Colombia	**T-060/2007**: *Paola Pardo Pérez on behalf of Luis Alberto Pardo Franco v Famisanar*, M.P. Humberto Antonio Sierra Porto, Ref. Expediente T-1422889, 1 February 2007.
	2007	Corte Constitucional de Colombia	**T-148/2007:** *Martha Amparo Gómez Henao on behalf of Elizabeth Montoya Gómez v Instituto de Seguros Sociales EPS (Institute of Social Security)*, M.P. Humberto Antonio Sierra Porto, Ref. Expediente T-1452446, 1 March 2007.
	2007	Corte Constitucional de Colombia	**T-270/2007**: *Flor Enid Jiménez de Correa v Empresas Públicas de Medellín*, M.P. Jaime Araújo Rentería, Ref. Expediente T-1426818, 17 April 2007.
	2007	Corte Constitucional de Colombia	**T-760/2007**: *María Delfina Castaño de Ospina v Corporación Autónoma Regional de Caldas*, M.P. Clara Inés Vargas Hernández, Ref. Expediente T-1398036, 25 September 2007.

	2008	Corte Constitucional de Colombia	**T-005/2008:** *Santiago David Peñalosa v Cafesalud EPS and Cafesalud Medicina Prepagada*, M.P. Mauricio González Cuervo, Ref. Expediente 1693981, 15 January 2008.
	2008	Corte Constitucional de Colombia	**T-243/2008:** *Norma Yaneth Vásquez Díaz v Empresa Empoibagué S.A., Juzgado Segundo Laboral del Circuito de Ibagué (Second Labor Court in the Judicial District of Ibagué) and Sala Laboral del Tribunal Superior del Distrito Judicial de Ibagué (Labor Chamber, Superior Tribunal in the Judicial District of Ibagué)*, M.P. Manuel José Cepeda Espinosa, Ref. Expediente T-1706145, 6 March 2008.
	2008	Corte Constitucional de Colombia	**T-743/2008:** *José Ignacio Durán Cuellar v Sala Civil del Tribunal Superior del Distrito Judicial de Bogotá (Civil Chamber, Superior Tribunal in the Judicial District of Bogotá)*, M.P. Manuel José Cepeda Espinosa, Ref. Expediente T-1818638, 24 July 2008.
	2008	Corte Constitucional de Colombia	**T-760/2008**: *Luz Mary Osorio and others v various health care providers*, M.P. Manuel José Cepeda Espinosa, Ref. Expediente T-1281247 and others, 31 July 2008.
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constitutional block, the adoption of Act 1518/2012 [...] should have been consulted with traditional communities, with the purpose of seeking ways to avoid that such convention may directly harm Colombia's ethnic and cultural diversity by disregarding the historical contribution of ethnic and peasant communities to biological diversity, its conservation and development, as well as the sustainable use of components thereof and the benefits that such contribution has generated". C-1051/2012, para 9.23. For a commentary on the notion of "Constitutional Block", see Section V.4.A above.

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