



# Struggling for the recognition of river rights: A case of hydrosocial territorialization of the Atrato River in Colombia

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## ABSTRACT

This article focuses on understanding the territorialization processes caused by the decision of the Constitutional Court in Colombia to grant rights to the Atrato River. Against the background of the social-ecological conflicts of extraction, contamination, and direct use of the river's resources, state actors, ethnic and campesinos communities, and social organizations are now required to comply with Sentence T-622/16 and actively work together. The case is approached by using the hydrosocial territory framework and analyzing how this resonates with the territorial pluralism of the region. Based on field interviews and secondary data and documents from the first five years of implementation of the Sentence, we discuss how the Sentence defines a new hydrosocial imaginary around the collective territories of ethnic communities that we call territories-in-territory. We conclude by outlining the implementation struggles of Sentence T-622, especially those related to the requirement of participatory processes.

## 1. Introduction

Against the background of a global movement advocating the rights of nature, three rivers were recognized as subjects of rights in different world regions in 2017: The Whanganui River in New Zealand (New Zealand Government, March 2017), the Atrato River in Colombia (Colombian Constitutional Court, 2016, realized in May 2017), and the Ganga and Yamuna Rivers in India (Uttarakhand High Court, April 2017). When nature gains legal rights, this shifts the political landscape and the practices of nature conservation (Acosta, 2013) and challenges a country's judicial system (Gudynas, 2009). The literature emphasizes a discussion between the jurisprudential position of the earth, the personal legal status of nature, and the use of customary law (Clavijo Ospina et al., 2020; Macpherson and Ospina, 2015; O'Donnell and Talbot-Jones, 2018). Due to the lack of methodologies for implementation by decision-makers and subsequent evaluation by researchers from various disciplines, it requires work between social, natural, and political scientists.

At the same time, the idea is taking hold, especially in local movements that connect with rights of nature as a strategy aiming for a different and harmonious relationship with nature (Cano Pecharroman, 2018). Rights of nature thus stand for a radical change of vision and, in

many cases, a symbol for transformation (Acosta, 2019). In Colombia, the courts' applications of rights of nature have challenged the traditional legal paradigm of the country, as well as being a pragmatic response to long-standing environmental conflicts, particularly in regions where the state has neglected its environmental obligations and the rights of ethnic communities (Macpherson et al., 2020). By the time of this publication, seven rivers will have been declared subjects of rights in Colombia. However, the government's rapid application of this new legal model outpaces the understanding of the social-ecological implications that granting rights to rivers hold in these basins.

The Atrato River, being the first case of river rights in the country so far, is beginning to provide lessons learned not only for the other cases of rivers with rights in the country but also for the region. This novel legal move was the latest in a series of legal demands of the state in response to the ongoing humanitarian crisis, the degradation of the river, its resources, and the ecosystems of the basin (González, 2020), but so far, it has not been possible to analyze the territorial implications of these policy actions that seek to give the rivers their rights, due to the short period of time that has passed since their declaration and where the actions are only now beginning to consolidate and are starting to show the opportunities and deficiencies and can begin to highlight the opportunities, tensions and major bottlenecks in the implementation of these

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rights of nature. The Sentence, in general terms, aims for “the adoption of effective and concrete decisions that allow to progressively and permanently overcome both the insufficiency of resources and the shortcomings in institutional capacity, based on the constitutional principle of harmonious collaboration between public authorities to ensure the effective protection of fundamental rights and the full force of the Political Constitution in the department of Chocó.”<sup>2</sup> (Corte Constitucional Colombia, 2016). The Sentence is especially revolutionary because of the historical absence of efficient administrations and legal frameworks in the basin (Macpherson et al., 2020), the links between the river and recognized biocultural rights, the territorialization of the proposed legal model, and the opportunity of collaboration of the Afro-Colombian, indigenous and campesinos organizations and communities with state representatives and, in specific cases, with the private sector and academic and international observers in the river basin. However, the time that has elapsed since the ruling’s ordinance has not allowed for a deeper analysis of the implementation exercise and to bring this jurisprudential mechanism to the territory. So far, the analyses of this particular case have concentrated on reviewing the victories and criticisms of granting rights to the Atrato River, but there are not enough reviews and analyses of the implications, consequences, and challenges of putting them into practice.

The Colombian constitutional change in 1991 recognized, for the first time, pluri-ethnicity and multiculturality at the national level after a prolonged struggle of ethnic groups for their ethnic and territorial rights (Asher and Ojeda, 2009), which changed the political view of the Pacific Region as well as the collective land titles of black communities and indigenous peoples (Velez, 2011). The concept of collective territory has since gained momentum in changing the property rights regime. Colombia was the first country in Latin America to assign collective lands to a non-indigenous ethnic group, in this case, the Afro-Colombians<sup>3</sup> of the Pacific Coast (Plant and Hvalkof, 2001). The recognition in judicial terms of ethnic groups as collective subjects of rights brought specific territorial rights (including to the rivers and oceans) and cultural and identity integrity at the national level (Duarte and Castaño, 2020; Hoffmann, 2016; Offen, 2003). The diversity discourses (biological and cultural) made it possible to understand essential aspects of the Colombian Pacific and its inhabitants, spurning political action and the emergence of civil society organizations in the early 1990s (Acosta, 2013; Escobar, 1998) that have since pushed land tenure reform in the region (National Political Constitution (art. 329, 58, inc. 3th, 55 and 64 trans.)). The main jurisprudential developments are the focus on development (social, political, economic, and territorial) and the scope of applying the collective rights of Afro-Colombians, predominately led by the social organization of ethnic groups located in the Pacific Region since the release of Law 70/1993 (Grueso and Galindo, 2011). The land rights developed further for the indigenous peoples when the Resguardos Indígenas became recognized as a territorial entity (Law 164/1993). However, despite these advances, the collective territories in Colombia have struggled since their establishment, not only regarding the management and conservation of collective land and inland resources (Velez et al., 2019) but also in terms of contested legitimacy and sovereignty where the collective territories overlapped with each other, with the private land tenure of campesinos and with the local state administrations (Agnew and Oslender, 2013; Duarte and Castaño, 2020).

In this article, we use the hydrosocial territories concept (Boelens et al., 2016) as a lens for analyzing the process of Sentence T-622 from its release until the date of this publication, paying particular attention

to how this legal model brings a new imaginary to an already complex set of collective territories and aspirations. We thus connect to territorial pluralism (Hoogesteger et al., 2016) to explore how the Sentence defines an imaginary (the river with rights) that overlaps with the collective territories and other territorialities previously established and how this situation shapes current interactions, alliances, and power struggles in the Atrato basin. The article is structured as follows: First, the theoretical framework of hydrosocial territories and the links with the rights of rivers idea that guides Sentence T-622 are presented. Second, the study area and the empirical methods are introduced. Third, the case is analyzed as a process of hydrosocial territorialization, followed by a theoretical discussion and conclusions.

## 2. Rights of rivers and hydrosocial territorialization

The hydrosocial territories framework enables us to analyze the political nature of the rights of rivers approach, among its ecological, hydrological, and technological content, by understanding it fundamentally as a process of territorialization, which shapes, and is shaped by, the relationships of the basin actors, their institutions and competing imaginaries (Boelens et al., 2016; Camargo and Camacho, 2019; Duarte-Abadía and Boelens, 2019). We use the concept of territory as in the Latin American literature, which differs epistemologically, and in practice, from the Anglophone geographical scholarship (Elden, 2010; Oslender, 2019; Painter, 2010; Restrepo, 2016). Seeking to contribute to an epistemological dialogue and ways to understand land, terrain, and state relations from a Latin American perspective, (Halvorsen, 2018) presents a broad definition of territory as “the appropriation of space in pursuit of political projects – in which multiple (from bottom-up grassroots to top-down state) political strategies exist as overlapping and entangled.”

In particular, we mobilize the concept of territorial pluralism that views “territories-in-territory” to analyze how different groups of actors imagine their social, political, and ecological relations with each other and with water and how these divergent hydro-political projects, which are frequently contested, overlap and interact inside the same geographical space but with differing material, social and symbolic content (Boelens et al., 2016; Hoogesteger et al., 2016). The coexistence of multiple territorial notions, political projects, and discourses in the same geographical space has been called territorial pluralism (Hoogesteger et al., 2016). The overlapping of these territories can occur across multiple scales or through diverse networks (Halvorsen, 2018), which implies a hierarchy of hydrosocial territories at national, regional, and local levels (Hoogesteger et al., 2016). In several countries of Latin America, indigenous peoples and black communities have championed this overlap of territorialities as part of their claims for collective lands, where the ways these groups relate to and appropriate nature is different from the modern state logic (Agnew and Oslender, 2013).

The central theoretical framework behind the Colombian Constitutional Court’s ruling in the Atrato case is the rights of rivers framework. In the literature, much recent attention has been focused on giving rights to rivers (Dupuits and Ongolo, 2020; MacPherson et al., 2020; O’Donnell and Talbot-Jones, 2018; Olmos Giupponi and Paz, 2015; Strang, 2020; Talbot-Jones and Bennett, 2019) and the implications for the legal apparatus of the countries where these legal models for rivers have been enacted. When nature, in these cases rivers, is conceived as a subject of rights, there are new opportunities for legal representation and tutela (Acosta, 2013; Espinosa, 2017; Gudynas, 2009) and, at least on paper, a transition from anthropocentrism to biocentrism (Martínez and Acosta, 2017; Molina-Roa, 2016). In the Colombian case, this brings a change in the distribution of decision-making powers with respect to the river (Macpherson, 2019) that is different from other constitutional regimes of Latin American countries, where environmental issues are included in the “third-generation rights,” also named “economic, social and cultural rights,” that allow bringing environmental issues and citizen rights to the political sphere and demanding state responsibilities (Gudynas,

<sup>2</sup> Objective of Sentence T-622 of 2016 translated from Spanish, Corte Constitucional Colombiana, p. 153.

<sup>3</sup> The Afro-descendant community can be differentiated into the following ethnic communities: the black community, the Raizal community, the Palenquera community, and the Afro-Colombian population (Grueso and Galindo, 2011:45).

2009). The declaration of rivers and their ecosystems as legal subjects allows, in principle, for the settling of disputes of natural resource management between local communities and governments (MacPherson et al., 2020) but in practice, face limitations as well as opportunities because these legal rights are granted through judicial, executive and legislative channels, which makes them a very flexible water governance tool that can be appropriated for many different ends (O'Donnell and Talbot-Jones, 2018).

Even if the legal, political, social, and environmental implications of rights of nature in comparison with the existing policy frameworks are not yet clear (Camargo and Camacho, 2019; Macpherson and Ospina, 2015), the movement for the rights of nature is gaining momentum (O'Donnell, 2020). At the time of writing, 19 rivers worldwide have some form of legal provision recognizing river rights.<sup>4</sup> Most recent studies agree that the phenomenon of rivers as subjects of rights cannot be generalized and must take into account national and regional contexts (Youatt, 2017) and identify that the rights framework contributes to alternative notions of environment and development based on scientific and juridical notions, where indigeneity can play a role in highlighting the relationship between indigenous visions and environment (Rawson and Mansfield, 2018).

The same applies to the process of territorialization. According to Kinkaid (2019), rights of nature become (re)territorialized due to their literal link to a territory or by consolidating specific identities, meanings, and practices. For example, the territorialization of grassroots processes is directly related to cooperation and mobilization among various actors with a common objective of resource management within a territory (Boelens et al., 2016). In the hydro-social territories, it is imperative to understand that the water that flows does challenge us researchers to go through the unresolved tensions of the multiple characteristics that can be found within a territory and the fluidity and dynamics of water and the societies that live in and with it (Hommes et al., 2022). Colombia is at the forefront of a new constitutionalism of nature due to the recognition of legal personalities in Colombian rivers, national parks, and strategic ecosystems (Wesche, 2021). In the Atrato basin, whose territory belongs for the most part to ethnic groups (black communities and indigenous peoples), including these historically marginalized groups in the nation-building narrative implies a significant change in how these ethnic groups see themselves and their relations with the nation-state (Agnew and Oslender, 2013).

One particularity of the Colombian case is the impending structural change after 20 years of struggle of ethnic groups for their rights and political-territorial autonomy. The struggles and impending changes are well studied under the heading of collective territories, especially in the Pacific Region (Asher and Ojeda, 2009; Delgado-Serrano and Ramos, 2015; Duarte and Castaño, 2020; Escobar, 2015; Hoffmann, 2016; Oslender, 2019, 2002; Plant and Hvalkof, 2001; Restrepo, 2011; Velasco, 2011; Velez, 2011). The definition of collective territories has combined an ontological differentiation of how each ethnic group understands the concept of territory, their relations with nature and non-humans that are not only instrumental (Escobar, 2015), and their rights and forms of being part of the world that is different from what is expected by modern development (Oslender, 2019). There is no single definition of this concept. However, we conceptualize collective territories in terms of collective land tenure by these ethnic groups – *Consejos Comunitarios de comunidades negras* and *Resguardos Indígenas* – which, according to IAP (2016a), are constituted by social networks, the history of displacement and the cultural appropriation of space. This recognition has been achieved by territorial claims related to power, identity, autonomy, and control over natural resources (Offen, 2003). Nevertheless, the mechanisms for regulating collective property are asymmetric between the ethnic groups. The recognition as *Resguardo Indígena* yields a complete territorial government covered by a legal

framework, while the *Consejos Comunitarios* are not complete territorial government organizations (Duarte and Castaño, 2020). Especially in the Colombian Pacific Region, the presence of the state is very limited (Asher and Ojeda, 2009; Molano, 2017).

At the same time, the Pacific Region is characterized by low income, high rates of illiteracy, and material deprivation, aggravated by illegal economic activities such as illegal deforestation, illegal mining (Galvis-Aponte et al., 2016), and drug trafficking that leads to frequent waves of violence. The most recent reconfigurations of space in the Pacific Region require new theoretical and political imaginaries aiming to understand further the ethnographically complex networks of the black communities (Restrepo, 2016), indigenous peoples, and campesinos and their relations and links with other governance processes of the region.

### 3. Study area and empirical methods

The Atrato River, whose source is located in the Cerro Plateado (3700 m.a.s.l.) in the municipality of Carmen de Atrato, Chocó, has 24 tributary rivers. The basin (Fig. 1) has a total area of 25826 km<sup>2</sup> and covers 20 ecosystems (IAP, 2016a). The river flows south to north towards the Gulf of Urabá in the Caribbean Sea and has a wetland bimodal flood pulse with high amplitude (Ricaurte et al., 2019). With a length of 750 km, of which 500 km are navigable, the river is an important communication and transportation route within the region. In terms of administration, the basin is shared between the Department of Chocó (17 municipalities and 69 % area) and the Department of Antioquia (10 municipalities and 31 % area).

In the Chocó region, the degradation of resources is driven mainly by mining and deforestation, followed by the expansion of the agricultural frontier and illicit crops (IAP, 2016a). Pollution of the Atrato River floodplain by mining, the sedimentation of the river mouth, and the rapid clogging of the marshes have jeopardized biodiversity. Fish species consumed by humans exhibit traces of mercury in soft tissue (IAP, 2016b). Almost the entire Atrato-Darien hydrological zone is at medium to high risk of slope mass movements. The exploitation of alluvial gold is evident in the middle and upper parts of the river, and the most affected zones are the Quito River, the Cabí River, and other tributaries of the Atrato (IDEAM, 2018). These unsustainable practices can be related to the historical poverty in the Pacific Region, which ranks lowest in all national economic indicators (Galvis-Aponte et al., 2016; Ulloa and Romero-Toledo, 2018), and is further linked with the armed conflict and a historically weak state presence (Duarte and Castaño, 2020; Roca-Servat and Perdomo-Sánchez, 2020).

The rural communities inhabiting the basin are economically highly dependent on the Atrato River and its tributaries. As in much of the Chocó region, collective land titling is 82 %. The social networks of the ethnic groups are spatially linked with the logic of the river and the water flows in the Chocó region, determining their livelihoods, cultural practices, and political arrangements (Oslender, 2002). Oslender has identified that the spatiality of the river goes beyond the main “river”. The river, its tributaries, and the surrounding lands all present an intricate network of relationships and materiality related to the rhythms of the tides, forests, and mountain ranges that embed the practices that connect the inhabitants of this region with nature (Oslender, 2019). The ethno-territorial struggles of these groups go beyond the right of occupancy and production and focus on building autonomy in modern territories (Duarte and Castaño, 2020; Halvorsen, 2018). Exercise of territorial autonomy is directly related to being able to influence and direct the transformations and changes that the territory may undergo and is directly linked with the collective titling that has cultural repercussions inside the communities (Observatorio de Territorios Étnicos y Campesinos, 2017).

In Colombia, the current debate between ethnocultural actors and the state has two structurally interconnected dimensions. The first is legitimacy, that is, the imaginaries and constructions of territory. The second is legality, which is related to the property rights framed by the

<sup>4</sup> <https://www.harmonywithnatureun.org/rightsOfNature/>.

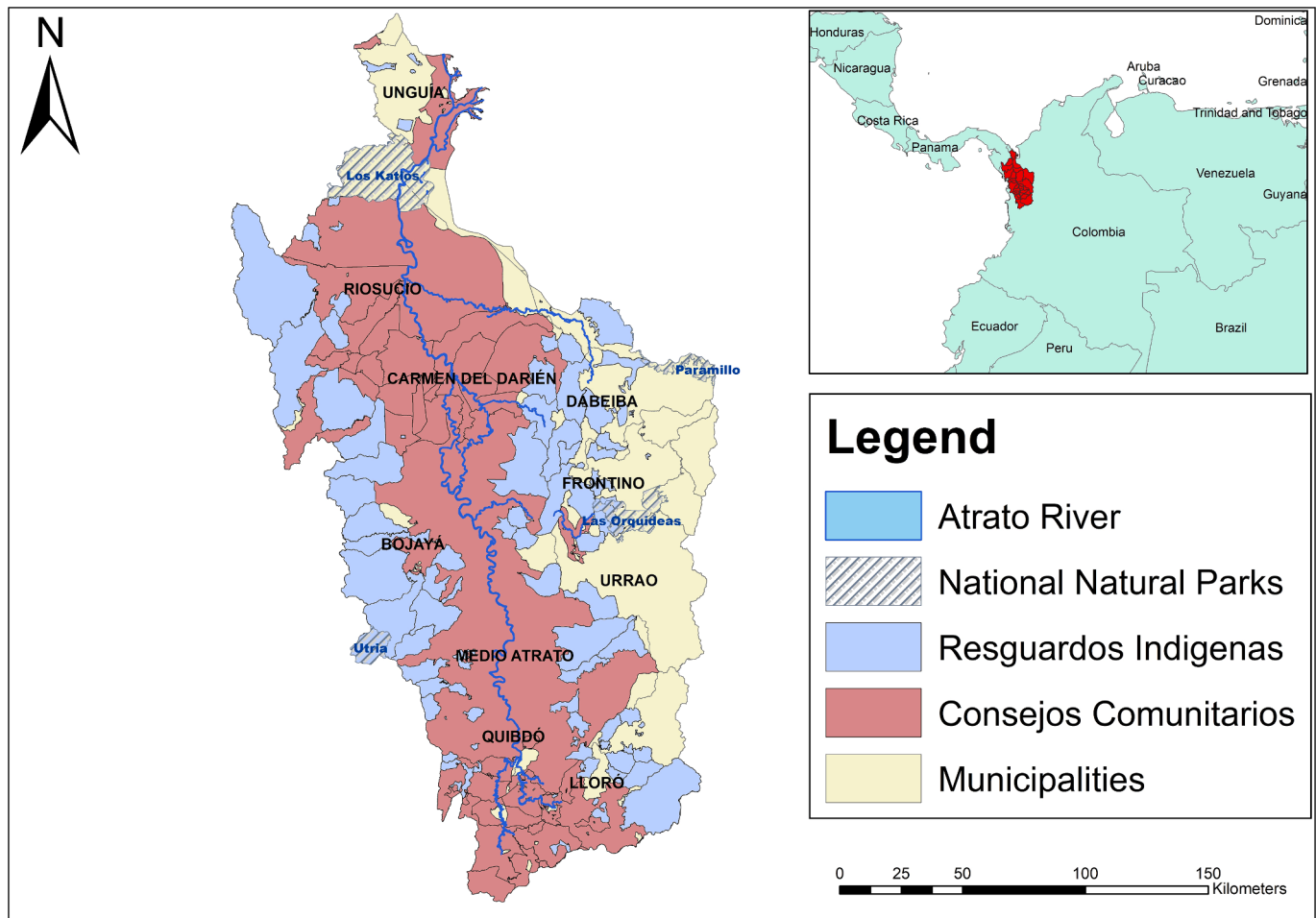


Fig. 1. Map of the Atrato basin, its Consejos Comunitarios, Resguardos Indigenas, National Natural Parks and Municipalities.

Colombian ethnical and agrarian norms (Duarte and Castaño, 2020). Formal land-use planning (*Ordenamiento Territorial*) made it possible to establish the presence of the state as the central and legitimate actor in the Pacific Region. However, state-level policies and techniques are unstable and full of contradictions, especially as they had not considered social and cultural information in land-use planning until this was demanded by the ethnic groups who insisted that this information should contribute to the demarcation of collective property rights and insisted on their participation in the state planning from the beginning (Asher and Ojeda, 2009).

In recent years, this discussion has evolved through the *Programas de Desarrollo con Enfoque Territorial* (Development Programs with a Territorial Focus; PDET in Spanish) that aim to close some gaps of past regulation and are part of the Integral Rural Reform of the Peace Agreement.<sup>5</sup> This agreement involves participatory reconstruction of regional policies using the approach of territorial peace. Territorial contestations and tensions, however, continue to this day and are one of the central points of discussion in the implementation of Sentence T-622, especially Order 5, where the mandate is “to implement a plan to decontaminate the Atrato river basin and its tributaries, the riparian territories, recover the ecosystems and prevent further damage to the environment in the region” (Corte Constitucional Colombia, 2016). Order 5 includes environmental proposals and actions with direct repercussions on the

water body and the riparian communities’ territories that also have to implement state land use planning policies.

Territorialization in the Atrato basin, and the Pacific Region in general, is directly related to the complex history of the identities of black communities that seek to articulate their cultural and ecological roots in territory and corresponding development alternatives (Escobar, 1998). In the case of indigenous peoples, territorialization is related to their ancestral territory, where the importance is not only centered on land rights but also on identity, politics, and culture, where jurisprudential developments have introduced a series of sub-rules to understand and protect the fundamental rights of these collectives (Herreño Hernández, 2004). The legitimacy and legality of territorial projects are a constant source of tension between the ethnic communities and the state (Duarte and Castaño, 2020). The ethnic groups also have their own territorial planning and biocultural development instruments, named Life Plans (*Planes de Vida*) for the indigenous communities and Ethno-development Plans for the black communities. The National Agency of Land (*Agencia Nacional de Tierras*) has registered 41 Black Community Councils and 92 Resguardos Indigenas in the Atrato basin (Fig. 1). Collective titling aims to improve access to formal timber and mining markets, but development in this regard remains precarious (Peña et al., 2017). The lack of access to resources is linked to the asymmetries in recognition of multicultural rights, where the Resguardos Indigenas have the status of robust territorial government, while the collective titling of black communities is incomplete in this regard (Duarte and Castaño, 2020). In the upper part of the Atrato basin, the rural communities organized themselves in well-defined campesinos organizations, and the land tenure in this area is mainly private.

<sup>5</sup> The Colombian Peace Agreement was signed on 26th of September 2016 among the Colombian State and the Fuerzas Armadas Revolucionarias de Colombia-Ejército del Pueblo (FARC-EP).

The state is perceived as absent in the view of social organizations and other actors at local and regional levels because it has low or no institutional presence in the territory. In addition, Serje (2012) argued that the absence of the state should be discussed in terms of how power groups<sup>6</sup> at different scales have historically acted as the state through their policies and interventions. The author argues that the groups representing the state in this particular region, without being direct institutions of the state apparatus, have become passive beneficiaries of the practices of enclave economies, whether illicit or not, ignoring their negative consequences. This implicit tolerance of environmental degradation and decline of social cohesion is what the population perceives as the absence of the state. Specifically, the territorial zoning policy after the constitutional reform of 1991 has been found full of contradictions as the process of state formation lacked social and cultural data. It was the ethnic groups that demanded this type of information to define their collective property rights (Asher and Ojeda, 2009). (see Fig. 2).

Even if local and regional organizations' struggles achieved collective land titling and changed the spatial configuration of what was previously "wasteland" for the state, the Pacific Region has remained in desolation since the late 1980s as a result of the armed conflict and the dynamics of drug trafficking and illegal mining (Restrepo, 2016). The extensive literature on "geographies of terror" or "landscapes of fear" (Oslander, 2008), "social orders of violence" (García de la Torre and Aramburo Siegert, 2011), and "geographies of violence" (Jaramillo Marín et al., 2019) has demonstrated how violence by armed and unarmed, private and institutional actors have reconfigured spaces through fear, forced displacement, intimidation, dispossession, and the murder of social and environmental leaders to establish or maintain social, economic and relational orders that seek power over territories. Since the escalation of violence in the Chocó region in 1996, the region has remained volatile, with the primary victims of violence being the civilian population (Duarte et al., 2020).

Against this background, this paper is based on primary empirical data and a review of secondary grey and academic literature produced on Sentence T-622. Two phases of fieldwork were conducted, the first from January to March 2020 and the second from February to March 2021. Because the Sentence implementation was affected by the Covid-19 pandemic, participant observations could only be made in person during the first fieldwork phase and had to be done virtually during 2020 and 2021, in both cases in meetings that were open to external observers. In addition, a total of 28 semi-structured interviews were conducted with 16 key actors of the Sentence. Interviews with the Guardians of the Atrato River from the ethnical and social organizations were conducted face-to-face, 5 of them riverine people themselves, while the Guardians from the state were interviewed virtually. Interviews were also conducted with additional key actors from state organizations, the Follow-up Committee, and the Expert Panel. During the field phase, two transects of sites were visited, the first along the Quito River and the second along the Atrato River between Quibdó and Rio-sucio. The field phases were followed by a phase of coding the primary information using the qualitative analysis software MaxQDA. The information was clustered around imaginaries, legal schemes, collective models of management and production, territorial pluralism, relations/links, struggles, environmental conflicts, actors, and specific results from the implementation of Sentence T-622. Twenty-two documents of grey secondary information elaborated by the community Guardians, state Guardians, Expert Panel, and Follow-up Committee were reviewed.

<sup>6</sup> According to Serje (2012), these power groups include: traders, missionaries and businessmen, administrators and officials; controlling the institutions, decisions and resources of the State at different levels.

#### 4. Sentence T-622 and its implementation as a process of hydrosocial territorialization

To better understand how the first river became a subject of rights in Colombia, it is necessary to review the *Acción de tutela*<sup>7</sup> (henceforth lawsuit) behind this legal act. The initial lawsuit arose as a response to the environmental conflicts and the humanitarian crisis identified by the social organizations in the basin. It focused on the degradation of human and environmental health caused by illegal mining in the upper and middle basins, deforestation in the lower basin, and contamination of the Atrato River due to the lack of water supply, sewerage, and other sanitation infrastructure in the municipalities of the basin. The lawsuit was filed at the beginning of 2015 by four grassroots organizations (Cocomopoca, Cocomacia, Ascoba, and Fisch). The core of the lawsuit was centered on fundamental rights to life, health, water, basic sanitation, food security, a healthy environment, culture, and territory.

The Constitutional Court responded to the lawsuit through Sentence T-622 of November 10, 2016, in which it recognized the Atrato River and its tributaries as an entity subject to rights (*Sujeto de Derechos*); rights of protection, conservation, maintenance, and restoration by the state and the ethnic communities (*Corte Constitucional Colombia, 2016*). The arguments behind the Sentence are based on a modern conception of the Social State of Law conceived by the Colombian Constituent Assembly of 1991 and its implementation in the last 25 years of jurisprudence, and six dimensions: (i) an ecocentric approach; (ii) the concept of biocultural rights; (iii) the dimensioning of the principles of biocultural rights; (iv) the dimensioning of the principles of prevention and precaution; (v) the declaration of the Atrato River as a subject of rights; and (vi) design and implementation of a mixed mechanism to follow up on compliance. The last group comprises control agencies, academics, scientists, NGOs, and the Guardians (Clavijo Ospina, 2020:882).

The Sentence established a structure that seeks to ensure the rights of the river and consists of a Commission of Guardians, a bipartisan guardianship body (The Collegiate Body of Guardians and the Ministry of Environment and Sustainable Development), the Follow-up Committee (independent from the Constitutional Court and with the competence to evaluate the implementation of the ruling periodically), and a Panel of Experts with representation from academia, non-governmental organizations, and state research institutes (Fig. 3). The feature that makes the Colombian case uniquely different from the cases of New Zealand and India is that the Atrato case has an inter-institutional follow-up mechanism that allows the Court to maintain jurisdiction after the verdict and to follow up on the implementation process (Wesche, 2021). The Follow-up Committee is responsible for issuing the biannual reports on the state of implementation of the Sentence that is openly accessible by the general public and an important source of analysis in this research.

Sentence T-622 includes a total of eleven Orders (Annex 1) that respond to the initial demands of the lawsuit on issues of 1) decontamination, restoration, and protection of the environment, 2) neutralization and definitive eradication of illegal mining, 3) recovery of traditional forms of subsistence and food, 4) toxicological and epidemiological studies of the river, its tributaries, and its communities, 5) environmental indicators, and 6) sufficient technical and financial resources for sustainable and progressive implementation.

##### Timeline of implementation

Since the approval of the Judgment in November 2016, the implementation process has gone through different phases. At first, dialogues

<sup>7</sup> Political Constitution of Colombia, article 86; decree 2591 of 1991; decree 306 of 1992 compiled in decree 1069 of 2015 and decree 1983 of 2017 allows all Colombians to apply to any judge or the Constitutional Court for an order for protection of their fundamental rights when they are made vulnerable or threatened by an act or omission of a public or private authority.

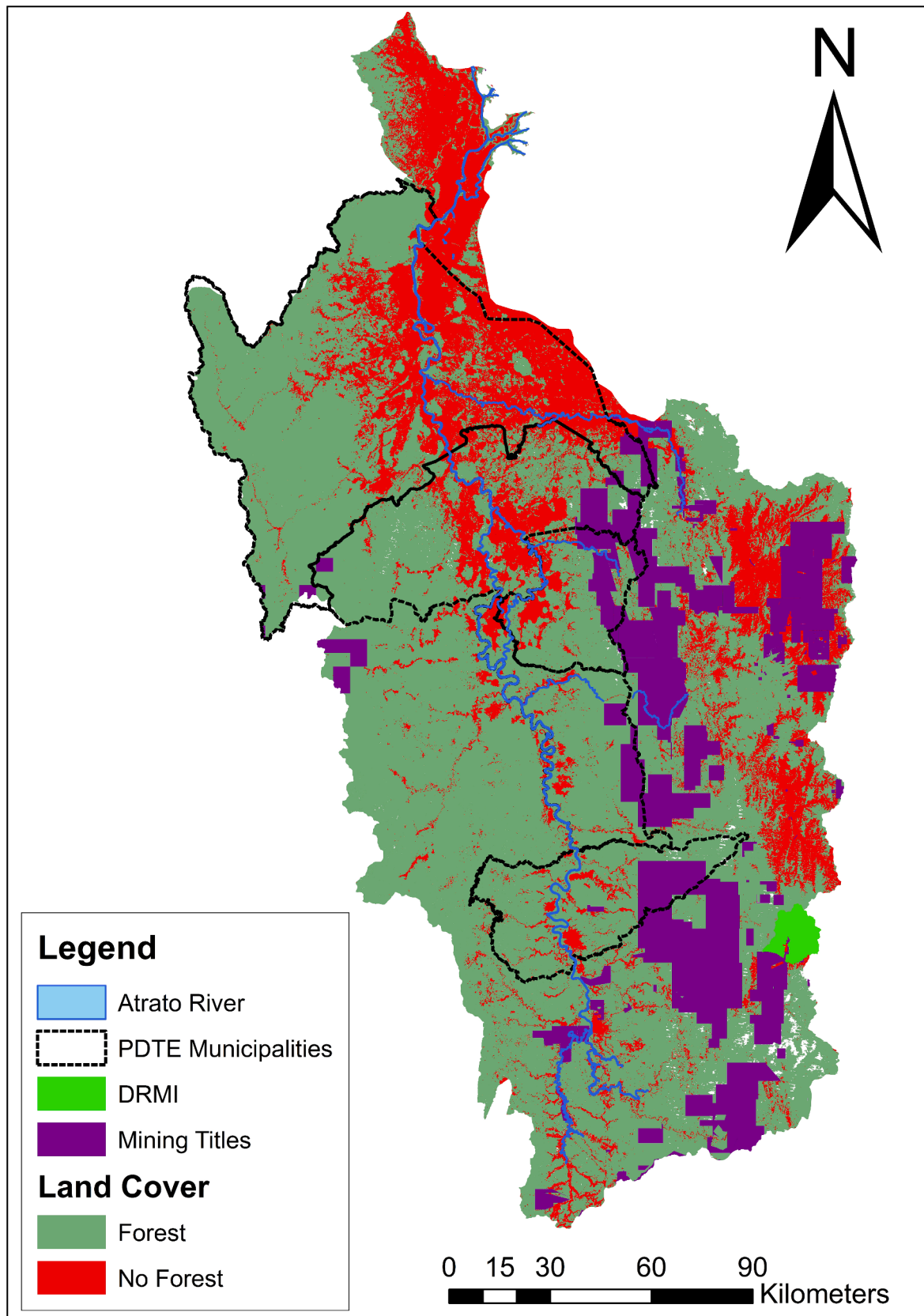


Fig. 2. Environmental conflict zones in the Atrato Basin. The current mining titles, the main areas of deforestation, and the municipalities selected for the implementation of the PDETs and DRMI.

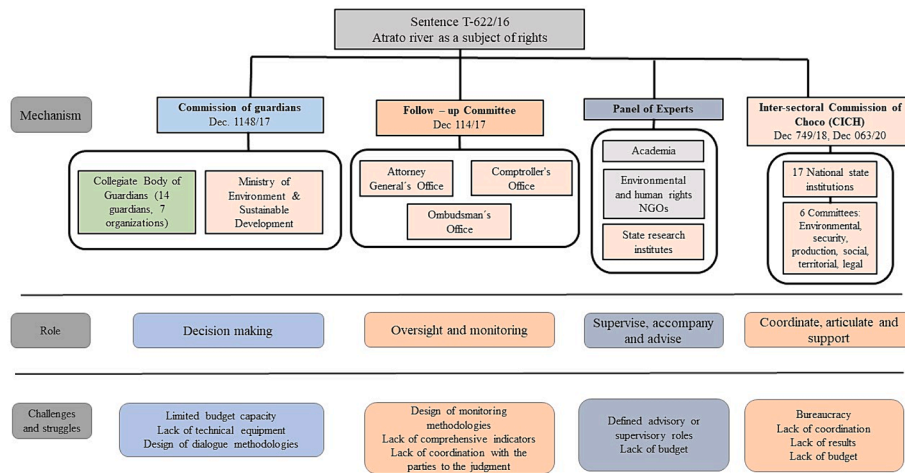


Fig. 3. Functional structure of Sentence T-622/16 (own elaboration from secondary information).

between the parties took approximately six months to initiate, and Decree 1148/17 was issued to designate the Ministry of Environment and Sustainable Development as the legal representative of the river on behalf of the Colombian State, followed by Resolution 907/18 which established the guardians of the Atrato River on behalf of the communities and grassroots organizations and Decree 749/18 and Presidential Decree 63/20 which defined the key role of the Chocó Intersectoral Commission (CICB from now on) for the implementation of the Judgment in the territory. In 2018, the implementation focused on resolving the tension between the parties of the Guardian Commission due to the fact that there were neither methodologies nor implementation routes to follow for the elaboration of the Action Plans imposed in the orders of Judgment T-622/16. Between 2019 and early 2020, these tensions began to be resolved after a year of dialogues between the parties through the definition of the strategic lines (Annex 2), but the process slowed down again due to the Covid-19 pandemic and that the state delegates could not return to the territory during the isolation. Because the orders have different responsible ministries, the action plans have followed different timelines (Table 1). Due to the pandemic, the initial Order 7 Action Plan document was significantly delayed in delivery by IIAP, and efforts were concentrated on having a final version of this action plan in 2021. From this point on, the process entered a phase of identifying implementation pathways for these two existing action plans and addressing the other orders that have not been able to be executed or have significant delays.

**Tensions and alignments with previous and parallel territorialization projects**

New hydrosocial territories result from the intersection and confrontation of divergent territorial projects and the realization of contested political-economic, social-ecological imaginaries (Boelens et al., 2016:7). Sentence T-622/16 is immersed in a territory with various territorial projects with differentiated processes in space and time, which have been partly legitimized by the state recognizing

Colombia’s multiculturalism. We begin to see the different political projects for which the indigenous peoples and black communities have struggled since the recognition of the collective special rights for ethnic groups. Campesinos, in turn, remain invisible as collective subjects of rights, given that in the legislation, they are not considered as an ethnic group but are associated with the category of “rural worker”, causing asymmetries in the recognition of multicultural rights (Duarte and Castaño, 2020). Territorial pluralism is strongly linked to legal pluralism in Colombia. This can be seen in the different territorial projects of the state, the international agencies, and the networks of violence that have existed prior to the Sentence. In the words of interviewees, “...there are multiple agendas in the territory, there is the Programas de Desarrollo con Enfoque Territorial (Development Programs with a Territorial Focus; PDET in Spanish), there is the T-622, there is the 080 Sentence, there is the Order for the displaced, there is the victims’ law, and no mechanism has been sought to articulate all these agendas that exist in the territory...” (Interview, member of the collegiate body of Guardians, March 10, 2020).

Besides procedural uncertainties and challenges in realizing the Sentence, tensions and alignments have also existed between the Sentence as a territorialization project and other territorialization projects occurring in parallel in the same basin or in parts thereof. Most important are the social-ecological practices and public policies towards realizing the collective territories of the ethnic and campesino communities that are only indirectly related to the river itself, each of which has its own route of implementation, defined goals, and instruments. These territorialization projects include the Regional Interethnic Peace Agenda, the mandate of the Departmental Civic Strike for the Salvation and Dignity of Chocó, the PDET that was conceived in the frame of the Peace Agreement (2016), and territorial processes at the scale of Consejos Comunitarios, Resguardos Indigenas, or municipal ecological organization (Table 2). These territorial projects are based on particular struggles of social organizations to leverage reterritorialization

Table 1

Timeline of key actions for the implementation of Sentence T-622. Source: (Comité de Seguimiento Sentencia T-622, 2021).

Action Plan	Start	Concertation process	Approval	Responsibility	Year of initiation of implementation
Action Plan Order 5	December 2018	Yes	21/12/2019	Ministry of Environment and Sustainable Development	In 2021,1
Action Plan Order 6	April 2017	No	Unknown	Ministry of National Defense	Unknown <sup>2</sup>
Action Plan Order 7	January 2020	Yes	26/11/2021	Ministry of Agriculture and Rural Development	In 2023,1

<sup>1</sup>Even if implementation has been initiated, for the most part, this has been done with limited economic resources.

<sup>2</sup> The Action Plan of Order 6 has not been approved by the Commission of Guardians as of the date of this publication.

**Table 2**

Multiple territorial processes of the Atrato River basin in competition or alignment. Own elaboration. Sources: (José Archila et al., 2021; Ministerio del interior, 2018; Rogelis Rincón et al., 2022.

Process	Objective	Policy	Responsability	Stakeholders	Stage in 2021 and 2022	Relation to Sentence T-622/16	
						Competition	Alignment
The Regional Interethnic Peace Agenda2006	Creation of an economic and political environment that guarantees communities autonomy, and the pursuit of rights in their ancestral territories according to their worldviews and in agreement with the central state, local authorities, and the private sector.		Dioceses of Quibdó, Apartadó and Istmina – Tadó; social and ethnic territorial organizations of Choco, headed by the Foro Interétnico Solidaridad Chocó (Chocó Interethnic Solidarity Forum).	Afro-Colombian, indigenous, women, victims, and church organizations	Strengthening spaces for deliberation and decision-making of ethnic-territorial organizations. Implementation of the Community Leadership School. Creation of consultation tables at the municipal and departmental levels. Support and political influence for the creation of the Departmental Roundtable for Dialogue on Mining.	None	The issues of illegal mining in the upper and middle Atrato and the illegal exploitation of forest resources in the lower Atrato addressed in the Peace Agenda, have been partly the basis for progress on these issues in the framework of T-622.
Departmental Civic Strike for the Salvation and Dignity of Chocó2017	Coordination, dialogue, participation, and monitoring of compliance with the agreements signed between the Departmental Civic Committee for the Salvation and Dignity of Chocó, hereinafter “Civic Committee”, and the National Government, under the coordination of the Ministry of the Interior.	Decree 766/18	Ministry of the Interior	Ministry of Environment and Sustainable Development, Ministry of the Interior, Ministry of Transportation, Presidential office, representatives of the Civic Committee	The monitoring tables established in the Decree 766/18 have not been installed by the Ministry of Interior, therefore there is no progress report on the agreements established in the Civic Strike	Competition for financial, technical and human resources of the state institutions. Disarticulation at the local level of ethnic organizations and representatives of the Paro Cívico.	The issues of water, sewage and basic sanitation are share. The central theme of sustainable production has sub-themes that are also defined in the T-622 as is the case of productive chains, differential ethnic entrepreneurship; but there is no clear connection between the implementation process of the sentence and the agreements of the Chocó Civil Strike.
Programas de Desarrollo con Enfoque Territorial (Development Programs with a Territorial Focus; PDET) in the Atrato basin2019	15-year planning and management instrument aimed at stabilizing and transforming the territories most affected by violence, poverty, illegal economies, and institutional weakness.	Decree 893/17	Territorial Renovation Agency	2 Departments, 6 municipalities	In progress: 1 project to reduce emissions from deforestation and forest degradation for Cocomacia. 1 project to strengthen the economic reactivation and recovery of environmental sustainability in the ethnic communities of Carmen del Darien and Riosucio.1 project to strengthen economic reactivation and recovery of environmental sustainability in ethnic communities in the municipalities of Carmen del Darien and Riosucio.1 project for weaving community ties for education, reconciliation, and peace-building in	Competition due to the allocation of economic resources by the state.The Territorial Renovation Agency is not articulated with the process of implementation of T-622 in any of the actions proposed in the action plans.	The actions proposed in the PDETs of the 6 municipalities are in line with the strategic lines of the Action Plans of the 5th and 7th Order of Sentence T-622. Especially the Improvement of quality of life and Sustainable Production.

(continued on next page)



Table 2 (continued)

Process	Objective	Policy	Responsibility	Stakeholders	Stage in 2021 and 2022	Relation to Sentence T-622/16	
						Competition	Alignment
Regional Integrated Management District Atrato upper basin (DRMI in Spanish)	Preserve in natural conditions representative areas of the páramo, subpáramo, high Andean, and Andean forest of the Pacific region as a functional part of the Central Western Andes corridors and the El Sol-Las Alegrías páramo complex. It aims to protect the spring of the Atrato River.	Agreement 011/16 Codechoco	Codechoco	Codechoco, social organizations	the municipalities of Carmen del Darien and Riosucio. The Management Plan of DRMI upper basin of Atrato River is not adopted by the regional environmental authority until now (Dec 2022), but it is on the priority to-do list for Codechoco.	None	The Collegiate Body of Guardians accompanied the presentation and adjustment of the instrument "Regional District of Integrated Management-DRMI of the Upper Atrato River Basin" by Codechoco. A committee was created to support the technical secretariat and the guardians in: i) Review and agreement on the prioritization of the actions in the DRMI, ii) approval of expenditures and follow up on commitments, and iii) follow up on the commitments of the environmental public hearing held in 2019.

processes at the national level.

Granting rights to nature in some cases contradicts the existing legal frameworks that see nature as a resource or property and, at the same time, leaves open the capacity of people or organizations to enforce these rights, as well as the costs of implementation and governance (Camargo and Camacho, 2019). For the specific case of the Atrato River basin, the legal frameworks of land ownership of collective territories put the source of the river and its mouth under the scheme of regional protected areas (Regional Integrated Management District Atrato upper basin, DRMI in Spanish) with use restrictions on public or private property. In contrast, the river water and riverbed belong to the state by Colombian law. The Sentence implementation must thus navigate existing processes of territorialization. Specifically, forms of resistance and subversion by local communities emerge in these collective territories (Asher and Ojeda, 2009) as these are spaces where actors seek territorial autonomy, while the state is largely absent and alternative regimes of authority, such as FARC (before the Peace Agreement), ELN,<sup>8</sup> AGC,<sup>9</sup> and paramilitaries exert territorial control (Agnew and Oslender, 2013; Cairo et al., 2018).

Despite these contradictions, the Sentence aims to provide a political space for the collective territories project to connect with the state territoriality by bringing together different actors for an integral management of the basin's natural resources that did not previously have to engage with each other by making an effort to advance in the integrated management approach of the country's water policy, which is limited for this implementation process, and to integrate it with the approaches of the policies with an ethnic focus necessary for a progressive change in the management of water in the country. In theory, this should create a multi-scalar coalition that will allow to strengthen the territorial reconfiguration (Swyngedouw and Boelens, 2018). For the Atrato basin, these coalitions are related to territorial processes that are happening in parallel at present. Although there are evident tensions between these

processes (Table 2), it can also be observed that T-622/16 has allowed alignments between projects and actions of different territorial processes, among which the environmental ones stand out: the strengthening of the organizational processes of the local communities and projects related to sustainable productivity, which is transversal and vital to all the processes occurring in the basin.

#### Implementation challenges

The building and materialization of imaginaries can involve different strategies and take different forms (Hommes et al., 2016; Hoogesteger et al., 2016). The establishment of the river as a subject of rights is an imaginary of protection, conservation, maintenance, and restoration. To a certain extent, the form of structural public policy applied to translate abstract rights into concrete interventions (Wesche, 2021) transgresses the traditional forms of land use planning in Colombia. Each relevant actor is now required to fulfill the Orders given by the Sentence to create or reshape mechanisms of dialogue, negotiation, and concertation, and to define plans, programs, and projects that allow the materialization of the new imaginary. However, the primary information and the gray literature we reviewed cite implementation challenges for this "new" imaginary of the Atrato River as a subject of rights. Some of these challenges have been recurring in all territorialization processes of the basin, such as the absence of the state and the lack of horizontal coordination. Others have been generated through the establishment of the Sentence, such as the lack of definition of roles, the lack of development of indicators, and the pressures on the capacities of grassroots organizations. These five points are now discussed in turn.

#### Absence of the State

The first known challenge is the state's low territorial control over the region. According to Ulloa (2018) and Restrepo (2016), the indigenous and black community movements are used to building their territorial autonomy in complex negotiations with other superimposed territories, i.e., those of paramilitaries, illegal economies (drug trafficking and mining), guerrillas, NGOs and the state itself, all with different territorial interests that diverge or align at different points in space and time (Boelens et al., 2016). Even within the formal state, we see a classic lack of vertical integration of interests, responsibilities,

<sup>8</sup> ELN: Ejército de Liberación Nacional.

<sup>9</sup> AGC: Autodefensas Gaitanistas de Colombia.

policies, and interventions.

In response to its perceived absence, the state has actively moved public servants from the central level to the Atrato basin in the T-622/16 Sentence frame. Some, but not all, state institutions make an effort to be visible in the collaborative work with the social organizations of implementing the Sentence. Difficulties in working together remain mainly at the municipal level. Hence, despite the efforts to change the perception of state absence, the state's agency in the territorialization processes is perceived as weak. Much more present is the territorial control (Diaz et al., 2021) of armed groups engaged in drug trafficking and other illicit economies, such as illegal forestry and illegal mining, that continue to view natural resources as a source of profit without caring about the environmental cost (interview, Regional State Institution, August 2021).

According to those interviewed in the field, one crucial lesson from implementing the T-622 is that state responsibilities and management procedures are well defined but easily confused, especially the inter-ministerial procedures and the limited functions of state institutions. This has led to state offices deferring responsibilities to each other, also across scales, or the progress of implementation stalling altogether due to a lack of clarity about responsibilities.

#### **Power imbalances**

The lack of horizontal coordination of actors from different political, economic, cultural, and ecological spheres maintains the power imbalances in the basin and leads to slow implementation of the Orders given by the Constitutional Court. This lack of coordination is well recognized by the Commission of Guardians and in the reports presented by the Follow-up Committee. The decrees approved by the state and the Action Plans elaborated to date (Orders 5 and 7) emphasize the need for dialogue, articulation, and coordination to fulfill the actions of the Sentence T-622. The lack of horizontal coordination is missing at the grassroots level, where the territorialization of grassroots processes requires interdependence between the different social organizations at the same (and at different) levels. The combination of multiple ethnic groups in the same territory enlarges and complicates the political processes (Götz and Middleton, 2020), the elaboration of their own policies, and coordination for the implementation of the sentence. Horizontal coordination is also lacking between state institutions and between the community Guardians and the state institutions at local, regional, and national levels.

At the local scale, the interviewees complained that "...the communities change authorities often, so when they come (to the meetings for T-622), they are not the same (person). So many times there are difficulties to continue and socialize the information to that person because those who came do not have the whole perspective (of the process) or do not remember, the information and dynamics are always lost" (Interview, Community Guardian, March 2021). At the regional and national level, even though the imbalances of political power have partially diminished, mainly due to the participatory way of working proposed by the Commission of Guardians to address the implementation process (Follow-up reports on Ruling T-622), there is still a lack of horizontal coordination and high interdependence among the fulfillment of the Orders: "...in the ruling, everything is related in some way or another, and I see that everyone wants to show something, but this showing something is disjointed; this disjointedness leads to the fact that what is really needed is not really done (Interview, Regional State Institution, March 2021).

At the same time, the beginning of the implementation of Sentence T-622 in 2017 and 2018 involved complex negotiations of the actors' different interests, ideas, meanings, and sensibilities. For the social organizations struggling for autonomy, the leveling of horizontal power imbalances towards a collective form of governance (Halvorsen, 2018) is hampered by the violence in the region and the limited presence of the Colombian state that could reinforce a reconfiguration of horizontal power, making the social organizations highly dependent on actors and processes external to the process of Sentence T-622 itself. One example

is the close relationship that social organizations have with the church to confront problems with illegal groups in the Choco region.

#### **Interdependencies**

We consider that Ruling T-622 is a new imaginary in the process of actual materialization. It has arisen as a result of the adoption of a legal procedure that, in turn, has led to ordinances that transform institutions, meanings, and practices in relation to the re-configuration of the basin and the collective territories of the ethnic communities. The implementation process has already transformed the cooperation between the state and the ethnic and campesinos communities, while improvement in the cooperation between the state offices themselves has been limited. As perceived from the beginning of the implementation process to date in relation to the bodies proposed by the Sentence itself and the problematic materialization of public policy proposals such as the case of the CICH and even contradictory among themselves. "Here, this idea can be grouped with the following: So much so that the government's policy was to begin to divide it, guardians on one side, state institutions on one side, the institutional framework on one side, and the territorial entities on the other, when the Follow-up Committee began to ask them for results, first the national government shielded itself by saying that nothing could be done because there was no Inter-institutional Commission in the department of Chocó, which was a commission that was going to coordinate, that was going to articulate all the institutions of the state, but we saw that it was more to delay the time, the process, because finally the CICH was constituted and this commission was not operational anywhere" (Interview community guardian, 2020).

In the implementation proposals of the action plans elaborated so far, there is progress on issues of multiculturalism, multidimensionality, and social-ecological integrity. The knowledge system integration has started by bringing into the discussion, negotiations, and proposals of diverse actions that "work" for different ethnic groups. Politically, the significant change lies in the forms of dialogue and concertation, such as for the adoption of the Action Plans. The interdependence of the Orders proposed in the ruling is considered relevant by the actors responsible for it. As one of the interviewees put it:

"When we talked about the integrity of the sentence, it was how the plans were intertwined with each other, and that, let's say that ultimately didn't come through. Because what was expected was that everything would start at the same time, right? It's like my action depends on yours and yours depends on mine, right, but that was not achieved in the end; then some of us (Guardians Commission) had to start first, while the others (State institutions) started much later and the integrality was to make an integral plan. For example, what we were saying ...if there is no guarantee of security or destruction of the machinery in the territory, for example, the Ministry of Health, the Ministry of Agriculture, or the Ministry of Environment could not enter to do their work; in other words, one Order led to the other" (Interview Community Guardian, March 2021).

#### **Technical and financial limitations**

Our interviewees also identified limitations in the implementation of the Sentence, including technical limitations, budgetary constraints, and what the interviewees identified as political willingness. In terms of technical limitations, there is a lack of social and biocultural indicators (Comité de Seguimiento Sentencia T-622, 2022) that would allow measuring the progress of the policies, plans, and projects outlined in the ruling, and baselines against which to compare the progress. Establishing the baselines of the environmental indicators stipulated by the Orders of the Sentence have made significant progress. However, by the date of this publication, 23 environmental indicators have been proposed, but only 14 of these have a baseline (Dirección de Gestión Integral de Recurso Hídrico, 2022).

Another technical limitation that has received no attention in the literature on the Atrato so far; is the inequality between actors in relation to knowledge systems. The Collegiate Body of Guardians (see Fig. 2) has identified that the technical teams of the grassroots communities do not have the same technical capacity to respond to the requirements of

implementing the Sentence in terms of quantity and quality compared with the technical teams of the state institutions. This inequality is also understood to a lesser extent by state agencies, which, in an exercise to recognize in the sentence an opportunity to reduce this gap, in these first years of implementation discussions have focused on balancing the knowledge systems in the implementation process: “the mainstreaming of actions and knowledge is different, then that arrogance that characterizes us in the national government believing that we are the experts in this sentence is completely re-evaluated because the experts are them, those who inhabit the territory, those who have knowledge in front of their river, in front of their basin, in front of their territory, so, of course, we are in a dialogue of knowledge... because it may seem absurd to say it, but I have to say it, the differential approach is not optional, it is legally binding” (Interview, National State Institution, July 2020). At the same time these grassroots organizations struggle to keep up with the multiple demands from various territorial agendas ranging from the Regional Interethnic Peace Agenda, over the PDETs, to the conservation schemes and many of their issues related to identity, autonomy, and political commitments (Table 2).

#### A “new” structure and new challenges

In comparison with the territorialization projects summarized in Table 2, Sentence T-622 decrees a complex structure in its 4th Order (Annex A), which foresees a shared management approach (state and social organizations) as well as advisors and observers that are supposed to guarantee compliance with the rights conceived of for the river and its basin. The Guardians recognized that even for the core group of the Commission of Guardians, it is a struggle to work with such a challenging structure, mainly because there are tensions between some state institutions: “We have a very strong tension with the Ministry of National Defense, I have to say that this is widely recognized and there is, let’s say, a very strong language of tension and even confrontation between the parties..., what it cannot be ignored is that the sentence without the participation and direct action of the Ministry of National Defense and its assigned entities and associated authorities we will not be able to do anything and we will not be able to move forward” (Interview, State Guardian, June 2022). The tensions between state institutions focus on limiting their actions to law-established functions. In this sense, they indicate that the fulfillment of the actions ordered by the Sentence go beyond their legally established functions, so that if they were to comply with them, they would be incurring in illegal and null actions under public law; this affects all scales of state offices.

However, the structure imposed by the Sentence T-622 also has positive aspects. Having parties in charge of controlling and monitoring the implementation of the Sentence, as well as advisors and experts on issues related to the Orders, has helped overcome long-standing discussions and debates and hence moved forward the implementation of actions. Among those interviewed, there is a consensus on the importance of the role of each part of the Sentence, although there are still aspects of legitimacy to overcome:

“But I feel that, within the structure, I rescue the articulation of the Commission (of Guardians); because (in the past) they had their shortcomings, but now I recognize the interlocution among the commission. I cannot talk about the interlocution with the Panel of Experts, with the Follow-up Committee, because I am not part of them. I still feel weakness in the relationship between the Guardians Commission - Advisory Team, because I am one of those who believe that not all the advisory team should be in all the meetings. Depending on the topic, if we are going to talk about X, then the advisors who know about X should be there. In other words, we don’t necessarily all have to be there. It is how to make the structure really work and not combine us so much, because we are all part of everything. It’s not like that either, that sometimes takes away the legitimacy of things” (Community Guardian, March 2021).

Despite the complexity of the implementation structure, the dialogue of the Commission of Guardians with the Follow-up Committee and partially with the Panel of Experts was effective, mainly due to clearly

defined communication channels set out by the Commission of Guardians. However, the dialogue has been less effective at the national level, especially with the Intersectoral Commission of Choco (CICH). The constant changes within CICH, especially in 2020 and 2021, have slowed down the processes of strengthening the Integrated Management Model of the T-622 Management System at state-level (Comité de Seguimiento Sentencia T-622, 2021).

In its first five years of implementation, the process has been characterized by the actors and decision-makers directly involved in the implementation of the ruling as a process of learning by doing. Since they did not have a pre-defined formula or agenda for the execution of the ruling, the implementation process in this initial phase concentrated on finding possible routes for implementation, making mistakes in communication strategies, and developing methodological frameworks that allowed them to pursue a horizontal relationship, while defining a timeframe for implementation that allowed achieving results. The meager progress made in implementation so far, which related mainly to the development of the Action Plans, has focused on changing the forms of dialogue and consultation between the community Guardians and some of the state institutions. However, tensions with some ministries and municipal governments remain (Comité de Seguimiento Sentencia T-622, 2022, 2021, 2020).

The Sentence also invoked new forms of relationships and cooperations of state bodies and social organizations, with academia and civil society as key actors in monitoring the ruling. These relationships and cooperations include defining a series of mechanisms ranging from territorial planning, the allocation of technical and economic resources by the local and national entities responsible for enforcing the Sentence, and the definition of binding mechanisms (public policy development) that guarantee the political, social, and environmental requirements for compliance with the Sentence. The elaboration and inclusion of the territorial planning instruments of the ethnic communities (life plans of the indigenous communities and management plans of the Community Councils) have been vital for elaborating the two existing Action Plans until 2022. However, the ethnic communities were not included in the proposals of the Management Model of the Action Plan of the 7th Order. Likewise, in 2022, the State’s allocation of resources (technical and economical) was limited to the general budgets of each local to national-level organizations responsible for implementing T-622. This has resulted in a limited allocation of resources for the implementation of the action plans approved to date. Another explanation for these scarce resources is the lack of programmatic results by the CICH.

One consequence of the Sentence entering new legal ground without clear implementation routes and follow-up procedures is the malleability of what the Sentence is supposed to achieve, which has led to a continuing process of reinterpretation of the Sentence by the community and state actors. This can be seen, for example, in the formats of the biannual follow-up reports required by the Sentence. In the beginning, these reports followed the Orders and their results, but since 2020 they have followed the strategic lines proposed in the Action Plan of Order 5 (Annex B), making the follow-up of the Sentence challenging to understand. Many of the actors involved in implementing the Sentence see the process as an opportunity to materialize political demands that have a long history. These include the territorial planning of the collective territories involving the social organizations. The Sentence is a catalyst here because it requires actors to work together across scales.

## 5. Conclusions

Applications of rights of nature are linked to territories through political, electoral, foreign relations, international agendas, and struggles for sovereignty (Kinkaid, 2019). In the case of the Atrato River basin, Sentence T-622 brings a new imaginary to existing territorial projects at regional and national scales related to a basin of which 80 % are recognized as collective territories. Although the T-622 seeks to safeguard the rights of the Atrato River on paper, it gives new legal

backing to existing territorial projects with which it enters into competition or alignment.

While the T-622 gives rights to the Atrato River, the ethnic communities inhabiting the basin are themselves subjects of rights related to collective land tenure and its administration and management. However, their lack of formalization in law (specifically Law 70/1993 and Law 164/1993) makes these rights permanently contested (Escobar, 1998). Several actors involved in the implementation of Sentence T-622 have for several decades lobbied for the implementation of collective territories in formal law. Sentence T-622 has provided new impetus for this struggle, for example, by allowing the basin's organizations access to regional and national decision-making circles. However, the requirement to work together brings forth what (Escobar, 2015; Oslender, 2019), among others, have called ontological conflicts, where different communities use different strategies, mechanisms, ansometimes differential policies to manage their territories. Not all of them fit with the state's bureaucracies and structures but as (Rawson and Mansfield, 2018) has described, indigeneity makes a contribution to alternative notions of ethnic visions and the environment, and this exploration in the framework of rights is given in this political process and is recommended to be maintained.

The social organizations (black, indigenous, and campesinos) are also found by other political agendas (The Regional Interethnic Peace agenda, PDET, Departmental Civic Strike, and others) (Duarte and Castaño, 2020). Conflicts between these agendas can harden the borders between the collective territories and their individual struggles (Duarte et al., 2020). Since the proposed mode of legal formalization of divergent property rights is based on identity (black, indigenous, and campesinos), the process of legal formalization becomes a struggle for divergence and marginalization because it does not encourage dialogue. It can thus become a breeding ground for tensions and intercultural conflicts (Duarte and Castaño, 2020). Biocultural rights are one dimension of the T-622. However, the implementation process so far lacks a convincing narrative that could overcome the tensions between legitimacy and legality of the exercise of power in collective territories and intercultural conflicts. All this overshadows the much-needed improvement in water governance, which was a promise of the Ruling.

Nevertheless, the collective territories of ethnic groups are critical in the development and implementation of the rights of the Atrato River, not least due to their level of organization within their communities. At the same time, they are bringing the case to a broader scale of negotiation. As mentioned by (Halvorsen, 2018), the autonomy strategies in opposition to what the author calls a "modern territory" seek to balance power relations towards collective forms of governance. In the case of the Atrato, we see the territories-in-territory operate in that way as they interact and enter into conflicts via the Community Councils and the Resguardos Indígenas against the backdrop of environmental impacts and violence. This territorial micro-local level is the source of the autonomy-building strategies (Community Councils and Indigenous Reserves) and, at the same time, a key scale of implementation of the Sentence, given that the same ethnic organizations are tasked with the coordination of the fulfillment of the rights of the Atrato.

To link the various scales of implementation, the Sentence proposed new methodologies and practices of dialogue and concertation between communitarian and state Guardians and, at the same time, between state institutions and social organizations. As a legal mechanism with no precedent in Colombia, it has enabled new forms of collaborative work between the parties and collectively between organizations. The State's engagement at the beginning of the implementation process was slow but improved after several interventions by the Follow-up Committee and the Guardian Commission. At the level of municipalities, however, implementation of the Ruling remains a continuous struggle. For example, the Action Plan of Order 6, led by the Ministry of Defense, did not have the participation of the community guardians. Vice versa, the Action Plans of the Orders that have been consolidated so far (APO 5, 6, and 7) present objectives and strategic lines of implementation projects,

though some lack political support at the departmental or national level. This means that they require further negotiation with the state institutions, as demonstrated by the recent limited consideration of T-622 in the National Development Plan 2022–2026.

In order to improve the negotiations between the parties of the Sentence, a recommendation to improve the forms of cooperation between the State institutions themselves, given that the lack of articulation between them is causing delayed in the implementation process and is incapable of timely compliance with the agreements established between the different instances of the Sentence structure that has as a challenge a progressive social and political change to the social, environmental, political and relationship problems in the territory of the basin.

In conclusion, the complex and hard-fought process of granting rights to the Atrato River has changed the narratives of the region (Dietz, 2019), creating opportunities as well as dissonances and frictions as part of the implementation and concertation process (Revet, 2022). It will now be important to monitor whether this shift towards rights of nature leads to significant changes in the lives of communities in relation to the river and its basin or whether it is simply a political move that might even attract attention away from long-term community struggles and social-ecological problems. The Atrato case thus holds valuable lessons for applying rights of nature elsewhere in Colombia and the world.

#### CRedit authorship contribution statement

**Liliana Mosquera-Guerrero:** Project administration, Funding acquisition, Conceptualization, Methodology, Investigation, Validation, Formal analysis, Writing – original draft, Writing – review & editing, Visualization. **Tobias Krueger:** Conceptualization, Formal analysis, Methodology, Supervision, Writing – original draft, Writing – review & editing.

#### Data availability

Data will be made available on request.

#### Appendix A. Supplementary material

Supplementary data to this article can be found online at <https://doi.org/10.1016/j.geoforum.2024.104000>.

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