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ARTICLE

# The Atrato River as a Bearer and Co-creator of Rights: Unveiling Black People's Legal Mobilization Processes in Colombia

María Ximena González-Serrano

Human Rights Institute "Gregorio Peces-Barba", University Carlos III of Madrid, Madrid, Spain
**Corresponding author:** Emails: mariaxgo@clio.uc3m.es, ximegoz@gmail.com

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## Abstract

In 2016, Colombia's Constitutional Court recognized the Atrato River as the first water body in Latin America to have its own rights. This article interrogates the historical roots of the judicial decision declaring the river a rights holder. Drawing on my long-term engagement with social organizations as an activist, lawyer, and then researcher, I illuminate the influence of Black people from the Atrato River in the transformation of law in at least three areas: ethnic territorial rights, transitional justice, and river rights. To do so, I combine interdisciplinary theoretical critique with socio-legal research using community-based and autoethnographic approaches to trace the community methods and historical practices of political contestation deployed along the rivers. Thus, I conceptualize how an organic and distinctive style of claiming and creating rights has been constructed in the basin. Moreover, by listening to the voices of the riverine representatives, I argue that the river is a nonhuman existence that has participated in the processes of rights-making in conjunction with local communities and a broader mosaic of allied actors. However, I also outline how legal systems still function to overlook crucial socio-legal claims of marginalized and resistant communities.

**Keywords:** Rights of Nature - Atrato River - Law from below, Black peoples' rights - Legal Mobilization - Juridification

## Introduction

> *When the Atrato judgment came out, I was very excited, because it was the first in the country, the third in the world and at the same time the product of many struggles that Chocó has been going through.*
>
> Gloria Luna Rivillas.[1]

In 2016, the Colombian Constitutional Court recognized the Atrato River as the first water body in Latin America and the third in the world to possess its own rights. This landmark decision inspired other national courts and regional tribunals in Colombia to declare a variety of watersheds and ecosystems as bearers of rights. These innovations in Colombian law are part of a worldwide trend toward granting rights and legal personhood to natural entities. In recent years, a wide range of social sciences have generated a deeper understanding of this new legal borderline, interrogating its theoretical grounding, noting its ambiguities, and posing some practical dilemmas (Viaene 2022; Tanasescu 2020, 2022; Melo-Ascencio 2024).

My study of the Atrato River case centers on the following question: How have human and nonhuman voices from racialized territories contributed to the transformation of law and the making of rights? Answering this question allows me to contribute to scholarship on the rights of Black peoples, the rights of nature, and legal mobilization.

Specifically, I draw on extensive socio-legal research to demonstrate the central role of the Black communities of the Atrato in the recognition of new rights for nonhuman entities; the connection between the rights of the river as a new legal landmark and the claims of peace, autonomy, territoriality, and justice that Black peoples in the Colombian Pacific have been asserting over the last thirty years; and the role of the Atrato River in the processes of Black peoples' struggles for their rights. To do so, I integrate the categories of river logic and embarking ("embarcarse"), as developed from social anthropology and human geography in the Pacific region of Colombia, which make it essential to comprehend the importance of rivers in the geographic and identity configuration of Black populations.

This article emerges from my sixteen years working as a Colombian lawyer, litigator, and activist and four years of experience as a social science researcher in the fields of critical legal studies, legal anthropology, and political ecology—a double positionality that gives me a unique perspective on the experiences of the communities of the Atrato River.

This text begins with a brief description of my positionality and the methods employed and the geographical, historical, and legal background of the Atrato River Basin, followed by a review of the theoretical and analytical literature that I draw on in developing my argument. I then examine the three major currents of legal production on Black rights in the Atrato River Basin through the last thirty years.

First, I examine the recognition of the territorial rights of Black communities in the early 1990s. Second, I unpack the long process of constructing an ethnic and territorial approach into the transitional justice framework from the 2000s onwards.

[1] Gloria Luna Rivillas, a historian and human rights defender from the "Red Departamental del Mujeres Chocoanas" (departmental network of women in Choco), interviewed by the author during the fieldwork trip in February **2022** in Chocó-Colombia.

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Third, I show how the strategy of protecting the river and its communities from extractive pressures and toxic flows led to the judgment that declared it a subject of rights in 2016. I then turn to show how the riverine communities and their allies have shaped an organic style of law transformation, in which the river is a relevant nonhuman existence that interacts and participates. Finally, I offer some critical reflections on the politics of rights making as, despite the new rights holders and declarations, the root causes of extraction, exclusion, and toxicity remain unaddressed.

## Positionality and methods

Reflecting on positionality allows us to consider the relationship established between the researcher and the process of knowledge production. Following the reflections of Flores, Rusanzky, and Zantvoort (2022, 212, and 213), it is necessary to recognize that the researcher analyzes, elaborates, and creates from partial, rooted, subjective, and embodied views of reality, shaped by his own experiences and political and ethical commitments. In this way, the researcher situates herself and commits to the co-creation of knowledge through her own self-reflection and by making explicit the ways in which her social, political, and economic backgrounds, as well as her memories and lived experiences, inform her work (England 2006, 289).

As a legal practitioner, I worked for six years in the "Colectivo de Abogados José Alvear Restrepo – CAJAR" (Collective of Lawyers José Alvear Restrepo), a well-known Colombian NGO, with a vast experience and background accompanying individuals, families, rural communities, as well as trade unions and women's organizations and victims of serious human rights violations in the context of the internal armed conflict. There, I was part of the national and international litigation team that pursued several cases of human rights violations before the national courts and the Inter-American Human Rights System. From this compelling experience, some colleagues and I co-created an NGO called "Centro de Estudios para la Justicia Social Tierra Digna" (Social Justice, Tierra Digna), with the initial support of the Collective of Lawyers.

Tierra Digna carried out socio-legal research, advocacy, and litigation regarding the expansion of capital accumulation in extractive economies and its impact on environmental, cultural, and human rights. One of the most important cases the team worked on was the design and implementation of a regional and multisectoral strategy to expose and reverse extractive pressures in the department of Chocó (FISCH 2015; Tierra Digna Centro de Estudios para la Justicia Social Tierra Digna, 2017).

From 2010 to 2018, I co-coordinated the regional strategy in the department of Chocó, which included pedagogical initiatives among local communities, socio-legal research in the field, advocacy in national and international arenas, cultural mobilization, and the litigation of several legal actions, one of which was the "Acción de Tutela" (a domestic legal action) in defense of the Atrato River and the rights of ethnic communities, which was finally decided by the Constitutional Court in its ruling T-622 of 2016 (FISCH 2015; Tierra Digna Centro de Estudios para la Justicia Social Tierra Digna, 2017).

After the first year of the ruling's implementation, I left Colombia for family reasons and later reengaged with the Atrato River case in 2020, from a different

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standpoint as a doctoral researcher. This new role allowed me to have some physical distance to deeply analyze the process of the struggle for rights in the Atrato region, to contextualize the declaration of the river as a bearer of rights, and to process my concrete participation. During the Covid pandemic, and within the framework of the ERC RIVERS project,[2] I returned to Colombia in 2022, where I conducted two months of fieldwork between Bogotá and Chocó.

During this time, I revisited some local communities in the Middle Atrato River Basin and conducted two focus groups, several interviews, and had informal conversations with a variety of actors.[3] I also consulted local archives in Chocó and Bogotá looking for historical records of collective claims for recognition of rights, and revisited local organizations and people with whom I used to work, documenting my observations and impressions in a fieldwork diary.

Then, to incorporate my previous experience into the analysis, I turned to autoethnography, a method of writing through an evidence-based approach "to contextualize experiences in cultural, social, political, and personal history" (O'Hara 2018). It is "an analytical demonstration of how we come to know, name, and interpret personal and cultural experience" (Adams et al. 2015, 1; Hughes and Pennington 2017). Autoethnography as a research method involves a construction in which the researchers examine their being in a specific socio-cultural context, interrogating their actions and practices, as well as the structures and interactions that surround them, thus elaborating an analytical reading of reality (Chang et al. 2013, 107). Through this lens, I reexamined the Atrato River case evidence in the court file, as well as public reports, scholarly publications, online events, and local news produced during the preparation and litigation of the case. This allowed me to retrace the legal proceedings and revive my own trajectory, recording memories, sensations, reflections, and observations in an autoethnographic notebook.

## Background to the Atrato River struggles

Located in the northern Pacific lowlands of Colombia, the Atrato River flows through a humid and dense rainforest, finally discharging into the Caribbean Sea and forming a delta on the western side of the Gulf of Urabá. It occupies an area of 37,817 km$^2$ in two departments, Chocó and Antioquia, and is one of the rainiest regions of the world. Its catchment is considered one of the most biodiverse in the world, but also one of the most polluted and deforested in Colombia over the last thirty years (Velez-Castaño, Bethancourt and Cañon 2021).

[2] RIVERS *Water/human rights beyond the human? Indigenous water ontologies, plurilegal encounters and interlegal translation* (**2019–2025**), financed by a Starting Grant of the European Research Council (ERC) with Guatemala, Colombia, Nepal, and the UN human rights system as research contexts. More info: www.rivers-ercproject.eu

[3] Eleven individual interviews were carried out personally, which were recorded and fully transcribed. Twenty-four informal interviews were conducted as conversations registered in the fieldwork diary. The individual and informal interviews followed the ethical standards of the research funding body. I asked for prior consent and whether they wished to be named or anonymized. All participants indicated they wanted to be named. The interviews were conducted in Spanish and the cited quotes are translations made by the author.

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The river basin is pluri-ethnic. Approximately 82 percent of the population comprises Black communities who have established settlements, towns, and small villages along the riverbanks. Indigenous peoples—the Embera Katio, Embera Dóbida, Embera Chamí, Embera Eyábida, Gunadule, and the Wounan—are also ancestral inhabitants. Over time, the area has also been populated by mestizo communities in the upper part of the basin and, more recently, by migrants and miners who have moved along the area (Tubb 2020; Centro Socio-jurídico Siembra 2022; Jonkman 2021).

From the 1980s onward, armed actors, guerrillas, paramilitary groups, state military forces, and, in recent years, narco-criminal groups have fought for control of the Atrato River Basin (Ballvé 2013; Grajales 2022, Quintero Suárez et al. 2020). The resulting violence killed hundreds of victims; social leaders have been murdered or disappeared, and entire communities have been displaced and confined. The region has become an arena of warlike confrontation, with systematic violence and human rights violations (Quintero Suárez et al. 2020; Comisión de la Verdad 2022). Black communities worry about the impact of all this "bad death," a belief drawn from Black diasporic practices and ontologies that the souls of victims of death that occur suddenly, far from the community, without a wake, and usually by acts of violence will, in the words of Cagüeñas Rozo (2021, 50), "wander the earth awaiting the rest that a dignified burial provides" (see also Losonczy 1993, 53; Perea 2012; Ruiz-Serna 2020).

Historically, the economy of the Atrato River has been linked to formal and informal global chains of production and commercialization of raw materials, precious woods, and minerals (Leal and Restrepo, 2003; Tubb, 2020). Extractive activities in this region have included various sectors over the centuries, such as banana and oil palm plantations, cattle ranching, informal mining, logging, and coca cultivation (Grajales, 2022; Centro Socio-jurídico Siembra 2022, 183). In terms of mineral extraction—for example, during the colonial period—Chocó was the location of Novita and Citará mining enclaves, which allowed alluvial gold and platinum mining in the jungle and rivers until the mid-1800s. Since then, mining has been consolidated under a double heading: on the one hand, as an extractive economy dependent on international price cycles and orchestrated by companies and informal entrepreneurs; on the other hand, as one of the activities of memory, survival, the search for freedom, and the generation of cash for the river dwellers (Barragán 2021; Tubb 2020; Jonkman 2021).

Against this backdrop, Black populations in Colombia's Pacific lowlands have found in rivers living spaces for intimate social and productive settlements, collective organization, and political contestation (Escobar 2008; Oslender 2008; Cardenas 2012). In Chocó, social organizations and rural communities have constructed and expressed their economic, social, and environmental agendas to overcome violence, exclusion, and contamination of the rivers' courses (Quiceno 2016, Ruiz-Serna 2020). Then, the defense of the Atrato River itself has been part of a community-based tapestry enriched with a variety of social and political action methods and practices.

## Black peoples turned to the law to co-create it

In the colonial period, the slave trade was a transatlantic enterprise that articulated alliances and disputes between colonial powers between the fifteenth and nineteenth

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centuries. However, it was in the mid-seventeenth century, with the growing complexity of commercial relations that the regulation of slavery took on a different character, as it was the fundamental institution that strengthened the affirmation of the European colonial powers and gave rise to a series of companies and private actors participating in the market (Orozco Cruz 2020, 320). The functioning of the trade was based on a regulation embodied in the Black Codes; normative instruments that regulated the working conditions of Africans imported to be exploited in mines, plantations, construction, transportation, domestic and care work, and other capital accumulation activities (Friedmann and Arocha 1986; Bryant 2018; Barragán 2021).

In 1789, in an attempt to impose a uniform system of owner-slave relations in the Spanish colonies, King Charles IV of Spain issued the Royal Decree on the Education, Treatment and Employment of Slaves, also known as the Royal Decree of Aranjuez or the *Código Negrero* that reaffirmed the legal status of imported Africans under the category of *res*, a Latin term for chattel. It also established a set of stricter rules for the treatment, occupation, education, and evangelization that slaveholders had to provide, all with the aim of defusing the rebellious outbreaks of liberation and marooning at the beginning of the independence struggles (Castañón González 2005, 119).

Within this framework, slavery was an institution regulated and promoted by the colonial regime in the Americas, from which it received substantial profits in addition to having the labor and knowledge for the execution of all infrastructural enterprises: the control of land, the exploitation of natural resources, as well as domestic and care work (Friedmann and Arocha 1986; Hinestroza Ramírez 2023). The legal status of the population coming from different African geographies, peoples, and civilizations was supported by a philosophical and legal conception according to which they lacked the "legal capacity, will and technology to appropriate"; that is, to establish relations of domination and possession over objects (Bhandar 2018, 4).

In 1821, after the Declaration of Independence, the Congress of the nascent republic enacted the Free Womb Law, a gradual emancipation regime that materialized the first current of liberal politics in Latin America. This regulation created new categories such as "manumiso" and "concert," which referred to the children of slaves who were born free but had to wait until they were eighteen or twenty-five years old to exercise their freedom; that is, they remained de facto slaves. These figures synthesized the promise of freedom, or "freedom in pause," but the continuity of subjugation maintained the colonial productive and social system in response to the agitated context of the Civil War, the increase of marooning, and the civil resistance of the slaves (Cuevas 2023).

In 1851, Colombia passed the Law of Abolition of Slavery, the last relevant reference in the trajectory of the legal status of the enslaved Black population in colonial and republican times, which declared slaves and their descendants were equal before the law (Cuevas 2023; Friedmann and Arocha 1986, 3; Barragán 2021, 9). Nevertheless, according to Rehnals and Flórez (2019, 128), during the republican era, Black people remained socially considered as "lazy and savage, in need of tutelage by the national government," which meant that beyond the recent state of being free people, this was openly restricted in practice (Restrepo 2007).

In 1959, Law 2 declared the Pacific territories as "Reservas Forestales Nacionales" (national forest reserves), which in practice meant that the fluvial lands inhabited by

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Black peoples were considered uncultivated and unproductive, giving the state the exclusive authority to make all decisions regarding their future use and exploitation. Therefore, in the context of the liberal and neoliberal extractive policies introduced in the 1980s and 1990s, the Pacific lowlands were opened up to concessions to private investors and entrepreneurs from different economic sectors (Valencia 2011; Ballvé 2013).

Subsequently, during the drafting of a new constitution, finally adopted in 1991, Black peoples and their representatives were openly excluded from the process. This led to a national Black mobilization with three main strategies to demand their recognition. First, the building of an alliance with Indigenous organizations to present their demands of recognition as ethnic group and subjects of rights through the voice of Francisco Rojas Birry, one of the two Indigenous representatives who participated in the Constituent Assembly (Hinestroza Ramírez 2023). Second, the "Black Telegram," through which hundreds of Black people from all over the country, but especially from the riverine territories, sent massive communications to the Constituent Assembly demanding their inclusion. Finally, the organization of Black people caravaned from their rivers to the urban centers, making some "takeovers" of embassies and institutions in the cities of Bogotá and Quibdó and asking for their inclusion as rights holders in the new constitutional framework (Gonzalez 2020).

As a result, the Constituent Assembly included the transitory article AT-55, which was the first national norm that ordered the creation of a specific legal framework to regulate the right to collective property of the Black communities, mainly those settled in the Pacific River basins, which later became Law 70 of 1993 (Arocha and Friedmann 1993; Asher 2016; Cardenas et al. 2020). Thus, on this matter, Oslender (2008, 85) argues that Article AT-55 "paved the way for legislation redefining the relations between Afro-Colombians and the state."

At this point, it is fundamental to interrelate the historical evolution of the legal status of the Black population in Colombia as presented above, bringing together, on the one hand, theoretical insights from the literature on the rights of Black peoples and the operation of racism in the Americas (Ture and Charles 1967; Restrepo 2004; Anderson 2007; N'gweno 2007; Dulitzky 2010; Goett 2017), and, on the other hand, the prolific research on the neoliberal politics of recognition in Latin America, which has contextualized from a political economy approach the continental trend of declaring new rights to Black peoples (Hale 2005, 2020; Speed 2008; Bocarejo 2009; Coulthard 2014; Dest 2020; Cardenas et al. 2020).

From these interdisciplinary frameworks, many studies have pointed out crucial questions. For example, what happens when multicultural reforms shape new rights in favor of usually excluded populations when the incorporation of wide-ranging neoliberal economic policies and ongoing violence against racialized people converge (Hale 2004, 2005, 2020), and even how "rights to land and natural resources, while a crucial step in the struggle for justice and equality, they do not resolve complex patterns of state, structural and interpersonal violence" (Goett 2017, 5).

In this direction, Hale argues that neoliberalism is a "prominent strategy of governance that reaches well beyond economic reforms," and promotes the recognition of the collective rights of excluded and marginalized cultural groups "to shape and neutralize political opposition" (Hale 2005, 12). The politics of cultural recognition is then a nefarious project that purports to neutralize political

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antagonism and resistance through rights. In Hale's words, rights politics have the "ability to restructure the arena of political contention" (2005, 13).

In the same vein, Dest suggests that the multicultural turn is a "passive revolution," which implies that "Black and Indigenous social movements became institutionalized," with an unprecedented involvement of the state and its "slow-moving bureaucratic" logic in the internal affairs of communities (Dest 2020, 3). Furthermore, Smith and Rahier adopt the concept of "*negro permitido*," building on Rivera Cusicanqui and Hale's concept of the "*indio permitido*," referring to the ways in which some social demands of racialized peoples have been included in the system while their more radical claims and more radical actors have been strategically excluded (Rahier 2012, 146; Smith 2016, 102).

Nevertheless, many studies in the fields of legal anthropology, social movements, and legal pluralism have shown that marginalized, racialized, or discriminated peoples are not passive subjects of law, but have employed innovative collective strategies such as political advocacy and litigation in the courtrooms, among others, to strategically use or challenge legal frameworks as a means of political transformation or as a vehicle to advance their autonomous processes (Postero 2007; Hirschl 2008, Kirsch 2012, Eckert 2012, Claridge 2018; Gilbert 2020; Viaene 2024).

Taking up this latter perspective means considering whether Black and Indigenous peoples in the Americas have been, on the one hand, receptors of top-down law production from colonial times and, on the other hand, protagonists of long struggles to transform their legal status from that of objects and commodities to that of rights holders in liberal and multicultural politics (Escobar 2008; Ng'weno 2007; Anderson 2007; Dulitzky 2010; Goett 2017).

In this terrain, the concept of juridification is suitable to reveal the social dynamism and multivocality of communities in their interactions with the law. This concept interrogates the diverse uses of law by ordinary individuals or traditionally excluded and racialized communities as a form of protest against the state (Kirsch 2012; Eckert et al. 2012). Sieder persuasively argues that the law is a "liberal technology of appraisal" that allows things to be commensurable, and enables the measuring and defining of the boundaries of what is possible, what is real, and what exists in society (Sieder 2020, 8). Juridification, then, speaks of the process of codifying people's claims in the language of rights, which translates into a transformation of legal frameworks and institutional policies.

Additionally, legal mobilization theory highlights the ways in which the law can be a resource for social struggles because it is not entirely defined and can be reinterpreted and rearticulated over time. As Meakin (2022, 204) notes, "the opportunity in law for social struggles occurs in the determination of legal meaning, intended application and associated remedies," which implies dynamic processes of inclusion and exclusion of social demands and possible meanings into the legal system. Consequently, juridification and legal mobilization are interactive processes between peoples and the normative order, involving the demand for rights through different strategies and the alteration of the nominal categories of insertion into the system (McCann 2006).

Thus, in the context of the transformation of the legal status of Black people in Colombia, I argue that the enactment of the AT-55 in the Constitutional Bill marked the beginning of a consistent participation of Black riverine communities in the

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construction of the law from below (ICANH 2021). Thus, in the following section, I identify three milestones of law production that I name "legal currents," in which Atrato Black peoples and a broad network of allies have played a crucial role, involving constant and iterative connections, and relations with the water territories.

To do so, I turn to the reflections of Oslender (2001, 2008) and Gracia (2013), who pose the idea of a "river logic," in which the sustenance of Black peoples' daily social, cultural, spiritual, and political practices and relations is determined by their linkages to their riverine territories, which even shapes the features of their social struggles. It is precisely at this point that Quiceno's work becomes illuminating. She adopted the concept of "embarking" to refer to the multi-level interactions between communities and the Atrato River. From her perspective, the river is a space where a wide repertoire of practices and actions of political and everyday resilience in the face of adversity converged (Quiceno 2016, 2020). Here my contribution focuses on unpacking the legal dimension of the "river logic," tracing the diversity of methods and practices used by Black communities to influence changes in the dominant legal system.

## Legal currents in the Atrato River basin

### *Shaping ethnicity and collective territoriality*

> *All the idea of [ ]Law 70 was framed from Chocó, mainly from the Atrato. We are a referent for black struggles in the country.*
>
> José Américo Mosquera, leader from Cocomopoca, Upper Atrato - Chocó[4]

The first current refers to the political crusade of Black organizations throughout the Atrato River Basin to be recognized as an ethnic people with political and territorial rights through the enactment of Law 70 of 1993. This legal instrument was spearheaded by the Black movement at the national level and was promoted through the political articulation of men and women leaders, representatives of movements, and organizations from different rural and urban backgrounds.

For the elaboration of the law, the Special Commission of Black Communities was created in July 1992, which was composed of representatives of state institutions and Black people's delegates from different regions of the country (Espinosa Bonilla 2019, 107). Through this mechanism, a participatory process took place, but not without contradictions, in which informative and reflective sessions were promoted with grassroots communities inhabiting river territories, inter-Andean valleys, and cities in order to compile strategic propositions that would feed the content of the law to be agreed with the government, under the unprecedented condition of recognizing Black communities as political and legal subjects (Espinosa Bonilla 2019, 113).

The national mobilization of Black people was fundamental to achieving the enactment of Law 70. However, I will demonstrate how this struggle was leveraged by the advances achieved by riverine organizational processes, particularly those driven by the Atrato communities. As Hinestroza Ramírez (2023, 177) states, "Law 70 of 1993 is the result of the struggle of the riparian people. They fought for political and land

[4] José Américo Mosquera, interview by the author during the fieldwork trip in February **2022** in Chocó-Colombia.

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rights, which the abolition of slavery in 1851 did not give them." Then, in the following lines, I unpack the concrete practices and mechanisms used by Atrato populations that were instrumental in creating Law 70.

In the 1980s, the Black populations of the Atrato River, in alliance with missionaries, cooperation agencies, and NGOs, with the support of external professionals, employed a set of diversified strategies to counteract the government's extractive policies that sought to grant logging concessions to private companies (Villa 1996; Ballvé 2013; Grajales 2022).

First, an internal process was initiated in which the community leaders, as described by Quiceno (2016), "embarked" on tours, meetings, training workshops, and verification visits in different tributaries, as well as the formation of local groups for community debate and reflection. As a result, local communities took part in "study circles"[5] and in the "ecclesial base communities,"[6] which promoted dialogue, reflection, literacy, education, and the evangelization of Black and Indigenous peoples (Gracia 2013; Restrepo and Gutierrez 2017). These local ensembles became the seeds for the constitution of the Cocomacia"[7] and other Black riverine organizations in the region.

To dynamize the conduction of these activities, community representatives of the basin and their allies created a "technical commission" that worked as a specialized team providing orientation, concepts, and training to communities throughout the length and breadth of the rivers, enriching knowledge and invigorating local capacities of dialogue, negotiation, and advocacy (Arocha and Friedmann 1993; Restrepo and Gutierrez 2017).

One concrete example was a very important community workshop held in December 1985 in the community of Amé in the Middle Atrato, which focused on agrarian legislation and the analysis of the legal situation of the lands inhabited and occupied for centuries by the Black riparian peoples. At the meeting, the participants were clear that the system of individual and family land titles in force at the time was incompatible with their way of life and their productive and self-sustaining practices. They also realized "the need to achieve the legalization of land ownership through a type of titling that would correspond to their practices of managing and exploiting natural resources" (Concejo Comunitario de la Asociación Campesina Integral del Atrato (Cocomacia) 2002, 117).

Additionally, representatives from communities in the Middle Atrato traveled to other parts of the basin and the country. Particularly informative were the visits to

[5] Study circles were one of the main strategies developed by the Cimarrón National Movement to establish groups for dialogue and collective reflection on racism, discrimination, ethnic rights, and ethno-education. These study circles were part of the seeds of the black community organizations that gave birth to Law 70 of **1993**.

[6] The ecclesial base communities were working groups created by the ecumenical churches in Chocó and Antioquia, oriented to literacy, education, and evangelization of Black and Indigenous peoples. In the Middle Atrato region, these working groups were part of the community organizations that gave life to Law 70 of **1993** (Restrepo and Gutierrez 2017).

[7] Cocomacia "Consejo Comunitario Mayor de la Organización Campesina Integral del Atrato" is a Black collective organization in Chocó, whose formation and political positioning largely guided the recognition of the rights of Black peoples in Colombia. It has a collective territory of more than 700,000 hectares in the Middle Atrato region.

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the initiatives of OCABA[8] in the Lower Atrato and the Colonization Committee in Caguán (Caquetá-Colombia) to learn about rural population processes of defending territories and demanding rights in extractive contexts (Valencia 2011; Restrepo and Gutierrez 2017, 115). The communities conducted "exchanges of experiences," which were crucial encounters not only for the improvement of skills and learning successful strategies but also for the construction of common agendas to tackle similar problems.

Furthermore, the Comprehensive Agricultural Development Project (locally known as the DIAR project[9]) supported the undertaking of "technical studies" in the Atrato Basin, in the fields of cartography, the environment, and production. These studies were the first instance of external expert knowledge being brought in to mediate the rights claims of Black populations. They allowed the category of "collective territory" to be sustained and articulated, which was previously unknown to community narratives (Arocha and Friedmann 1993; Restrepo 2004; Hinestroza Cuesta 2018).

The Atrato Black communities also implemented various forms of outward advocacy with external political actors. Particularly, the approaches between the Black communities and state institutions were energetic processes, characterized by a two-way methodology. On the one hand, the representatives of the communities visited the main headquarters of the national institutions in the fields of agrarian and environmental policies, voicing their demands in the center of the hegemonic power; on the other hand, the communities promoted meetings in their territories, locally called "zonal and regional encounters," which took place in different communities along the basin. Once there, the functionaries, politicians, and experts had to "embark" on the Atrato, interacting with the river, its inhabitants, and its realities.

The most significant outcome of these discussions was the formalization of agreements between state entities and the Atrato communities. In particular, the Buchadó Agreements (1987) and the Act of Commitment of Bellavista (1987) were the first written pacts entered into between Black communities, with an ancient and deep oral tradition, and official institutions. These agreements then marked a turning point. They recognized the continuous and productive collective possession of their riverine lands by Black communities and the importance of community participation in forest management. These crucial aspects were subsequently incorporated into institutional plans and projects, setting a pivotal precedent that paved the way for the legal recognition of Black collective territoriality, as set forth in Law 70 (Restrepo and Gutierrez 2017).

Then, the entire organizational process between the Atrato riparian communities and their partners provided the political and substantive foundations that propelled the approval of the transitional article AT-55 of the Political Constitution in 1991. This opened the space for the co-construction of Law 70 of 1993 (Restrepo 2004; Pashel 2016; ICANH 2021).

[8] OCABA "Organización Campesina del Bajo Atrato", was one of the first organizations constituted in the Lower Atrato Basin.

[9] The DIAR Project was a Dutch government cooperation program developed in the Atrato Basin that focused on improving agricultural production techniques and practices in the region through educational, institutional, and market processes.

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At the national level, Black people's representatives from the entire country and their civil society partners formed a "technical team" to compile the necessary legal, historical, productive, and ethnographic inputs for the formulation of proposals to draft Law 70. At the same time, Black leaders once again took to the rivers, forming a special commission to collect proposals, ideas, questions, and requests from riverine communities. These insights were considered through the process of negotiating meanings, senses, and scopes. As a result, this process advanced three crucial concepts: Black communities are "ethnic groups"; they have "their own culture linked to their traditional production practices"; and they have a "collective territory" (Arocha and Friedmann 1993; Restrepo 2004; Pashel 2016; Restrepo and Gutierrez 2017; Hinestroza Cuesta 2018).

In consequence, Law 70 established a new governance landscape in the Colombian Pacific lowlands. It resulted in standardized communitarian structures called "Consejos Comunitarios de Comunidades Negras" (Community Councils of Black Communities), a common Indigenous governance structure established by multicultural policies in Latin America (Asher 2016; Dest 2020). In this sense, Hinestroza Cuesta explained to me that Law 70 "adopted categories of hegemonic civil law (property) and [I]ndigenous movement conceptualizations (territory) to adapt them to the need to protect the living spaces inhabited by Black peoples."[10]

This law has become a point of contention. On the one hand, it forged an unparalleled change in customs through the incorporation of semi-institutionalized political arrangements. On the other hand, it is renowned as the highlighted Black communities' legal outcome in the process of advancing their historical claims for autonomy and self-determination (Arocha and Friedmann 1993). Adith Bonilla, a Black geographer and legal expert on titling black territories in Chocó, reflected in our conversation on Law 70[11]

> That law gave power to Black peoples, and this was not because the State wanted to do it. Remember that the law was promoted by the people themselves. This revolution has taken place here [in Chocó] and this achievement was due to pressure.

In conclusion, it is clear that the acknowledgment of Black peoples' collective rights occurred within the expansive framework of the policies of multicultural recognition in the Americas. This gave the neoliberal political and economic project a strong dynamism (Asher 2016; Dest 2020). However, the emergence of ethnic and territorial rights was also a collective response of Black peoples at the national level, and a creative and multi-level struggle framed and enriched by a repertoire of methods and practices deployed from the aquatic territories, particularly from the Atrato River.

[10] Lisneider Hinestroza Cuesta, interview by the author during the fieldwork trip in February **2022** in Chocó-Colombia.

[11] Adith Bonilla, interview by the author during the fieldwork trip in February **2022** in Chocó-Colombia.

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### *Assert rights to scare away the bad death*

The second legal current refers to a bottom-up normative influence articulated from the Atrato River Basin in the transitional justice regime, defined as the "body of laws, norms and principles that apply during the transitions from war to peace" (Easterday 2020, 329). Ethnographic studies have criticized top-down formulations of transitional justice contexts and called for integrating the voices of survivors in their own terms (Lundy and McGovern 2008; Nagy 2008; Viaene and Brems 2010; McEvoy et al. 2013; Viaene 2023). Cardenas (2012), for example, argues that urban Afro-descendants, displaced persons, and victims' organizations have been protagonists in promoting a national political and legal agenda that recognizes the grave violations caused by the war against Black populations.

I argue that riverine organizations that resisted war in their localities became central actors in outlining a sui generis perspective in the transitional legal framework. Civil resistance to the war, local peace proposals, and experiences with negotiations and dialogues were central to the formation of an "ethnic and territorial approach" that was embodied in several public regulations related to transitional justice (Ruiz-Serna 2017).

In this sense, local actors have pushed pioneering concepts such as "la paz desde los territorios" (peace from the territories), which over time became a government slogan and even a public policy called "paz territorial" (territorial peace) (Cairo and Ríos 2019; Diaz et al. 2021), or the demand to "poner en el centro a las victimas" (put the victims at the center) which was reflected in different categories in law. These notions, currently known as part of the institutionalized framework, originally came from the peoples who resisted the war in their living spaces.

I then present examples of how this process occurred in Chocó and show claiming methods and practices developed by the communities and their civil society allies along the Atrato River that influenced the national legal system.

In the 1990s, in the midst of the armed confrontations, the ethnic communities of the Atrato, accompanied by social and ecclesial organizations, mobilized among the rivers of Chocó to establish "direct dialogues" with the guerrillas and paramilitary forces who controlled their territories. These meetings aimed to achieve humanitarian actions that would protect the lives and mobility of the local communities.

In my conversation with Fanny Rosmira Salas, a prominent female leader of Cocomacia and the official spokesperson for Medio Atrato at the peace negotiations between the Colombian government and the FARC-EP guerrillas between 2012 and 2016, Rosmira made it clear that her role as a representative of the riverine communities entailed taking responsibility for raising the voice of the communities before the armed actors, regardless of their ideology and affiliation. Rosmira informed me that, despite the atrocities and violent dispossessions suffered by the Atrato riverine communities, she and several Cocomacia leaders initiated conversations with the armed actors, asserting their status as ethnic authority and peace advocates. Recalling these experiences, Rosmira confidently synthesizes them with a phrase she repeated to FARC commanders, "you have your weapons and I have my tongue."[12]

[12] Transcription of the interview conducted by María Ximena González with Fanny Rosmira Salas. Quibdó, February 7, **2022**

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Black communities have also promoted "humanitarian agreements" in which various institutional, armed, and cooperation actors agree to concrete measures that will de-escalate the conflict. Members of community organizations have also worked with national and international civil society organizations and churches to organize "humanitarian missions" or "mingas," and tours along the Atrato River to verify the human rights situation at the local level.

Local groups also helped create "humanitarian zones" that were free of hostilities. For example, from 1996 onwards, the Black communities of the Cacarica, Jiguamiandó, and Curvaradó rivers in the Lower Atrato region suffered an outbreak of violence and systematic attacks by paramilitary groups and state forces that displaced them from their villages ( Ballvé 2013; Grajales 2022). A group of families decided to move within their own territory and resisted the aggressions in the middle of the jungle. Over time, they built a network of strategic allies and, using the legal notion of "zones of neutrality," provided for in Art. 15 of the Fourth Geneva Convention, they declared areas free of hostilities (Bouley y Rueda 2009; Oslender 2008b).

Another example of cooperative resistance strategies was "resistance pilgrimages." Riverine communities and allied social, cooperation, Indigenous, and ecclesial organizations organized trips along the tributaries of the Atrato to the most affected fluvial villages. Their mission was twofold, to verify the local impacts of war and to provide support to victims and vulnerable communities. The most prominent of these was "Atratiando," carried out in 1999 and 2003. This was during the period of paramilitary domination of the lower reaches of the river and guerrilla military control of the civilian population in the upper and middle reaches. Participants demanded an end to the hostilities and challenged paramilitary control. To finalize the fluvial collective action, the communities and their partner organizations made a historic move, signing the political declaration "A good deal for the Atrato." They demanded that the river's importance as a productive, spiritual, and political force not be overlooked, highlighting how war and extractivism led to its degradation (Perea 2012, Quiceno 2016; González 2020).

The Black community councils constituted under Law 70 of 1993 assembled specialized community structures to confront the various forms of violence that penetrated their living spaces, which included human rights commissions, gender commissions, victims' committees, youth groups, and displaced peoples organizations (Perea 2012, Comisión de la Verdad 2022).

Indigenous and Black peoples, together with social and ecclesial organizations, formed an intercultural initiative known as Foro Interétnico Solidaridad Chocó (FISCH) (Interethnic Solidarity Forum from Chocó). This was part of a regional coalition focused on promoting local interregional and interethnic dialogue, and political advocacy to raise local peacebuilding demands (FISCH 2015).

These demands were grouped in the "Agenda Regional de Paz del Chocó" (Regional Peace Agenda of Chocó), a key tool that served two purposes. First, it was a collective process of documenting the impacts, affectations, and proposals of riverine communities affected by war and dispossession. Second, it was a written text that functioned as a political declaration and advocacy guideline that outlined the course of peacebuilding claims articulated from local territories and facilitated the exploration of political and legal routes, among them the judicialization strategy

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in defense of the Atrato River, which I describe in the next lines (FISCH 2015; Melo-Ascencio 2024).

### *Judicialization against extractivism and toxicity*

> *Litigation has always been an exercise parallel to mobilization, struggle, and social organization. The ethnic peoples give light to the Courts, and then the Courts are opening the mind.*
>
> Acxan Duque, lawyer and legal practitioner from Chocó[13]

The third legal current was the judicialization route to protect the river and its communities from extractive pressures and toxic flows, which led to the decision by the Constitutional Court in its ruling T-622 of 2016 which declared the river as a subject with rights (Calzadilla 2019; González 2020; Cagueñas et al. 2020). I demonstrate how this case was one expression of a broader legal strategy developed by Black people and their partner organizations in the Chocó department, which was imbricated to the wide range of methods and practices embraced by riverine communities to influence the law.

The intensification of war during the 1990s and 2000s irrefutably exposed the limitations of advocacy and civil resistance while simultaneously disclosing critical contradictions in the relationship between Black people and the state. In the Pacific lowlands, some public institutions recognized the need to address collective territories and severe humanitarian situations. However, others formed alliances and arrangements with businessmen and paramilitary groups to facilitate dispossession (Asher and Ojeda 2009; Ballvé 2013; Asher 2016).

Given this background, judicialization, defined as "the displacement of political and social disputes of the peoples to the courts" (Sieder 2020, 2), emerged as a prominent strategy in the Atrato region. Its purpose was to contest plunder, protect the collective territories, and stop the "bad death." While many judicial avenues opened up, I am going to focus on the legal strategy that was integrated as part of the "Agenda Regional de Paz del Chocó," promoted by FISCH (Melo-Ascencio 2024). This was an instrument that served as a hinge between the historical claims of territoriality, autonomy, peace, and the declaration of the river as a subject of rights.

In 2009, representatives of FISCH traveled to Bogotá to find a competent organization with experience in human rights litigation. They sought advice on challenging the territorial impacts and human rights violations caused by war and extractivism in the courts. They formed an alliance with "CAJAR," one of the human rights NGOs with a significant trajectory, and with "Tierra Digna," an emerging organization that was just being formed. By that time, I was working with CAJAR and had just founded Tierra Digna with some colleagues, being part of the core team in charge of the conception and implementation of the judicialization strategy.

From 2010 and 2012, we documented the extractive pressures and impacts in Chocó at a sub-regional level. With that purpose, we conducted interviews, focus

[13] Acxan Duque, interview by the author during the fieldwork trip in February **2022** in Chocó-Colombia.

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groups, and workshops with community leaders (women and men, youths, adults, and elders), participated in the sub-regional meetings related to the construction or socialization of the "Agenda Regional de Paz del Chocó," collected and organized information requested from public entities, and analyzed academic studies, public reports, and institutional and community archives (Autoethnographic Notebook 2022). This research required a constant presence in the field, periodic visits to riverine communities, short human rights verification trips (called *mingas*), and planning and follow-up meetings with leaders of a variety of social, ethnic, ecclesial, and humanitarian organizations in the region (Autoethnographic Notebook 2022).

We gathered and processed the information, and then designed four "enforceability strategies." These documents set out the judicial, quasi-judicial, and political scenarios and the objectives that we pretended to achieve, unifying the judicial and advocacy scenarios in a single route. The strategies engaged various extractive drivers, considered multiple potential outcomes, and prepared for alternative scenarios in case the decisions were unfavorable. We also produced research reports, advocacy tools, and educational materials to guide our work with different narratives, formats, and key messages. These materials supported our direct work with local communities and other key actors.

In 2012, CAJAR left the process and Tierra Digna spearheaded the next phases of the sub-regional and regional strategies, in constant dialogue with FISCH and local communities to ensure a successful implementation according to their needs and demands (Autoethnographic Notebook 2022; Melo-Ascencio 2024). Then, the second phase began with the presentation and litigation of various cases in multiple courts. In the Middle Atrato region, we filed an "Acción Popular" to address the food, environmental, and health impacts caused by alluvial gold mining in the Quito River Basin, an Atrato tributary, which was drafted in a blurred context of community tensions and the control of the territory by foreign miners and paramilitary forces, (Tubb 2020; Tribunal Administrativo de Cundinamarca 2015).

We presented a body of relevant evinces throughout this legal process, including local testimonies from community leaders (men and women), coadjuvants, and an expert opinion on the social, environmental, and territorial impacts of the expansion of gold mining in the Quito River. Litigation of the case lasted several years and was finally decided in 2015. By that time, we had already presented the regional lawsuit of the Atrato River case (Tribunal Administrativo de Cundinamarca 2015; Autoethnographic Notebook 2022).

In the Upper Atrato, we developed a specific subregional strategy that included legal actions to challenge national policies and specific mining concessions granted to private companies. Concessions to foreign companies for large-scale projects and the effects of informal mining activities in the collective territory of Cocomopoca further harmed forty-three riverine communities that had been severely afflicted and displaced by the war.

As a part of our strategy, we filed a lawsuit against the National Directive on prior consultation 001 of 2010. This was an administrative resolution promulgated by the government to accelerate the process of consultation with ethnic communities at the national level (Consejo de Estado 2022). We then proceeded to challenge the mining

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concessions granted to companies in the territory of Cocomoca[14] after going through a labyrinthine administrative procedure to gain access to public information about them (Autoethnographic Notebook 2022).

This legal action was established in the Victims Decree-Law for Black communities, Decree 4635 of 2011, designed to obtain the restitution of property, tenure, and governance of Black collective territories fractured by armed conflict (Comisión de la Verdad 2022; Melo-Ascencio 2024). After four years of work with the local communities of Alto Atrato, we demanded that the judge order urgent measures to protect the collective rights affected by the expansion and damage caused by medium-scale gold mining in the collective territory. We also asked for the immediate cancellation of the mining contracts by proving that mining rights were granted to private companies in the middle of the armed conflict without consideration of the territory's ancestral occupation by Black communities whose territorial and participation rights were flagrantly violated (Juez Primero de Restitución de Tierras de Quibdó 2014).

The final decision was issued by the 'Tribunal Superior de Antioquia' (Superior Court of Antioquia) in July 2021, after seven years of waiting (Tribunal Superior de Antioquia 2021). The judicial delay in dealing with the Cocomopoca land restitution case became a decisive factor in providing us with strong arguments to pursue a regional lawsuit calling for the general protection of the entire Atrato River Basin from significant extractive pressures. The Cocomopoca land restitution ruling ultimately ordered the temporary suspension of the mining rights granted to the companies until the right to prior consultation was effectively protected (Tribunal Superior de Antioquia 2021).

In the Pacific coast of Chocó, our sub-regional legal strategy was to confront the multi-scale impacts of industrial tuna and shrimp fishing head-on. We did this through an "Acción Popular," which exposed the effects this fishing has on artisanal fishing zones and community practices. In 2011, my colleagues initiated the regular litigation of this cause supported by substantial community and technical evidence, which resulted in a favorable decision in 2020 (Consejo de Estado 2020). In Lower Atrato and Darien, we identified the massive exploitation of natural forests by logging companies, monocrop plantations, and the construction of infrastructure mega-projects as drivers of serious violations of Black people's rights. Nonetheless, local communities made the decision not to file a complaint at that time due to fear of reprisals from the paramilitary forces and businesspeople behind the territorial dispossession of collective territories (Comisión de la Verdad 2022; Grajales 2022).

In the end, all of the sub-regional cases were successful. However, we were forced to confront the reality that the critical situation of the local communities, faced with continued extractive policies and human rights abuses, could not wait for the excessive time taken by the ordinary judicial pathways. We therefore initiated a new phase of judicialization, aimed at exposing the interconnectedness of the extractive issues throughout the Chocó region (González-Serrano 2024). We employed a combination of ordinary and extraordinary judicial procedures, structural litigation,

[14] Cocomopoca, "Consejo Comunitario Mayor de la Organización Popular Campesina del Alto Atrato" is a black collective organization in Chocó. It has a collective territory of 43,000 hectares in the Upper Atrato.

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and the technical and legal support of key actors, including scientists, politicians, artists, NGOs, and a variety of local organizations and communities acting at the local, regional, national, and international levels (Autoethnographic Notebook 2022).

The first expression of this new phase took place between 2013 and 2015 when Black communities in Chocó led the national arenas in questioning the creation of "Areas Estratégicas Mineras" (AEM), or Strategic Mining Areas. The Ministry of Mines and Energy created this model and handed over territories to private investors through public auctions. These areas were imposed on collective Indigenous, Black, and Mestizo territories in 20 percent of the country. In Chocó, the AEM's boundaries were set around the Atrato Basin and the Pacific coast (Corte Constitucional 2015).

Hence, with the support of FISCH and the social organizations from all the subregions of Chocó, we launched a first regional litigation path that built bridges between communities from different regions of the country that were affected by top-down and exclusionary extractive policies (Autoethnographic Notebook 2022). We filed a constitutional complaint ("Acción de tutela") and an administrative complaint ("Acción de Nulidad") in the country's highest courts in the different jurisdictions. We did so despite the broader complexities, pressures, and public attention sparked by the litigation processes. We were partially victorious in both cases, securing rulings that ordered the temporary suspension of the national resolutions that created the AEMs (Corte Constitucional 2015; Consejo de Estado 2015; González-Serrano 2022).

In parallel to this ongoing litigation, in 2014 we developed in all the subregions of the Chocó department an itinerant community training program called "Cultivadores de Dignidad" (Growers of Dignity) (Melo-Ascencio 2024). During the sessions held in Bajo Atrato, the leaders of the local communities identified the socio-environmental degradation of the Atrato as their main substantive and daily problem (González 2020). At this pivotal moment, we made the decision to reembark on a regional legal strategy focused on the defense of the entire Atrato River Basin (Quiceno 2016, González 2020; Richardson and McNeish 2021).

As in the previous phases, we embraced the collective methods implemented by ethnic and civil organizations in Chocó, which I have already outlined, and continued to document facts, patterns, and concrete affectations caused by the degradation of the river. In this effort, on the one hand, we privileged our presence in the field to facilitate dialogues and gathered inputs from local actors in different sectors (Autoethnographic Notebook 2022; Revet 2020; McPherson et al. 2021). On the other hand, we acted outside the region to weave strategic alliances with national and international actors, including academia, some state institutions, feminists, civil cooperation, and ecclesiastical organizations based abroad. Thus, the strategy we pursued during the litigation carefully considered local communities and organizations, listening multiple voices, knowledge, and points of view. We integrated an interregional and multidisciplinary mosaic of actors located in different corners, which provided support and arguments to energize our steps towards the defense of the river in and beyond the courtrooms (Autoethnographic Notebook 2022).

After an extensive documentation phase, a colleague and I wrote the draft of the "Acción de Tutela" over a year, having constant team roundtables to double-check facts, calibrate arguments, and calculate the legal road to undertake. Then, I did the

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final preparation of the lawsuit during an outside four-month stay abroad in Switzerland in 2014 while almost all of Tierra Digna's team at that time were involved in the work of editing and finalization. Then we filed it, demanding the responsibility of twenty-three state institutions, and litigated the case over twenty-eight months in three different courtrooms before the judicial decision was published in May of 2017 (Autoethnographic Notebook 2022).

We advanced the legal debate with a series of compelling amicus curiae and coadjuvants. We also demanded the presence of the Constitutional Court on the ground in order to create a community-based experience. This would allow the judges to be in contact with the river and its communities, realities, and aspirations (Constitutional Court 2016; González 2020). This aspect was central to the practice of two emblematic probes on the ground. On the one hand, a public hearing was held where, in addition to the usual institutions, lawyers, and academics' voices, the testimonies of women and social and community leaders from the Atrato were finally heard. On the other hand, a judicial inspection was performed in two moments. First, there was a flyover and a fluvial pilgrimage in the Medio Atrato, in which a large group of people from different local, national, and international organizations, institutions, universities, and media, embarked throughout the Quito River and participated in a community assembly in Paimadó. Then, as an extra activity, we invited the Constitutional Court to participate in the "Foro Regional del FISCH" (FISCH Regional Forum), a massive community meeting where representatives (women and men) from all of the basin and the entire region meet to express their crucial problems and demands (Constitutional Court 2016, Melo-Ascencio 2024; Autoethnographic Notebook 2022).

The entire trajectory of judicialization I have described was not simply an expression of conventional strategic litigation led by lawyers to create a general impact on society beyond the specific interests of the parties involved or to change some aspect of the law or the way the law is applied (Rekosh et al. 2001; Gilbert 2020; Langford 2021). Rather, this experience of elevating the defense of the river and its communities to the courtroom was particular because it was borne and nourished by riverine communities, territories, and voices, incorporating their local practices and methods of political contestation.

In this sense, Vértiz (2013) and Andrade (2019) suggest that the counter-hegemonic use of state law requires a subversion of legal practices more favorable to oppressed and subaltern sectors, displacing the centrality of the figure of the lawyer and technical legal knowledge, which the author calls the "lawyer king" (Aragón Andrade 2019, 5). This approach aims to undermine the hierarchical relationship of lawyers to the struggles of subaltern subjects, which can replace the direction of the social movements or deny the consideration of actors' voices in the legal strategies (Vertiz 2013, Carlet 2015, Andrade 2019).

The other side of the externally successful legal strategy of the "Agenda Regional de Paz del Chocó," described above, was that we, the Tierra Digna team, underestimated the importance of maintaining internal care, confidence, and consistency. The unprecedented visibility gained with the legal cases and the wave of external demands and expectations from a multitude of social actors who unexpectedly became interested in the cases and strategies that we pursued contributed to the increase of internal discomfort, competence, disagreements, and

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internal power struggles. These, together with unresolved personal and administrative issues, led to the internal implosion of the organization in 2020 (Autoethnographic Notebook 2022). Nevertheless, part of the team resisted and actively confronted the institutional collapse, leading to the creation of a new organization called "Centro Socio Jurídico para la Defensa Territorial Siembra." This new entity continues the work of providing legal and technical assistance to the communities and social organizations in Chocó (Centro Socio-jurídico Siembra 2022; Autoethnographic Notebook 2022).

This bittersweet experience has led me to the firm belief that an alternative or counter-hegemonic use of law is not only related to the positionality and practices employed between lawyers and communities. It is imperative that we make a conscious and concerted effort to de-escalate the hierarchical structures, the abuses of power, and the prominent individualism (the lawyer king, or board of kings) embedded in NGOs and other non-profit structures of human rights and environmental litigation.

## Methods and practices of law transformation

The three legal currents I described above allow me to point out two significant features of the law transformation processes forged from the Atrato River over the last thirty years. First, Black people and social organizations from the region have shaped an organic style of claiming/creating rights. Second, the river is not only a subject of rights as a result of the judicial precedent; rather, it has been a nonhuman existence that has had an active role in accompanying Black peoples' legal mobilization initiatives. Hence, this process demonstrates the connections between humans and nonhumans and their impact in the political arenas; in this case, in the struggles to shift the hegemonic law. As Hinestroza Cuesta rightly observed, "the river is a being not comparable to humans, whose existence has been key to trigger new rights in the system."[15]

### *An organic style of claiming/creating rights*

The experience of resistance in the Atrato River Basin allows us to decenter the narrative of rights making from the institutionalized structures of the state and reveal a style of claiming and creating rights used by the Black people and social organizations in Chocó.

This bottom-up approach to forging new rights has several distinctive characteristics. First, Black communities have used what I call a "method of interlocution" to open and maintain dialogic settings with powerful actors, both inside and outside the fluvial territories (even with armed groups). They use it to pose their demands, agendas, and proposals, and to achieve commitments, agreements, regulations, and even rulings. This method has been applied in different ways and circumstances over time, through deliberative and negotiating practices between numerous actors or activating legal controversies decided by the courts.

[15] Lisneider Hinestroza Cuesta, interview by María Ximena González during the fieldwork trip on February **2022** in Chocó-Colombia.

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Second, Black communities have embraced a "method of interaction" to weave multi-stakeholder alliances with diverse civil society and international organizations, from ecclesiastical, academic, legal, and humanitarian to financial and technical cooperation. The aim has been to develop skills and competences; to receive support, assistance, and solidarity, especially in times of tragedy; and to create a multivocal network that can disseminate local perspectives and needs. Articulation with committed outsiders played a pivotal role in Black communities' legal mobilization from their riverine territories. In Quiceno's words, "these societies have been in contact with the outside world since their birth. This exchange and dialog are also what defines them" (2016, 27).

Third, Black communities practice a "method of regional cooperation." They deliberately and strategically expand or contract their internal ties and relations with other organizations in the region according to the context. Quiceno states that "it is important to see how these societies constantly incorporate rupture and change" (2016, 27). This attribute allows them to move between the advancement of internal autonomous processes of each organization and the activation of temporary or permanent coalitions to face common causes at will.

Furthermore, the Atrato style of claiming and creating rights combines the practices of orality, movement, and creativity. These three constitutive elements are rooted in spirituality, medicine, the local economy, and the resistance of the Pacific Black populations in Colombia (Losonczy 1993; Ruiz-Serna 2017).

Orality has been a way in which Black peoples in Chocó have shaped their daily practices, livelihoods, and familial and communitarian relationships. The spoken word not only has a sacred character and is an active agent in remedy, rituals, and productive activities, it also has operated as the main vehicle of standing claims, demands, and proposals (Losonczy 1993; Quiceno 2016). Movement defines the character of Black peoples in the Pacific lowlands as a mobile society, which is observed in their entire way of being (Oslender 2008; Wade 1990). Creativity describes a willingness to attempt innovative initiatives to challenge oppression. For Tubb (2020, 106), creativity is one of the essential components of "rebusque" (shifting), which he conceptualizes as a particular way of doing, producing, and living for the Black peoples of Chocó, including the constant rotation and changing of survival activities in highly volatile and adverse contexts.

Through the creative circulation of the word in movement, different spaces, actors, and territories can be connected to forge changes. In this way, political action in the Atrato River Basin is not an impromptu reaction to adversity or an improvised response to new fronts of oppression. Rather, it is a strategy synchronized with a particular way of being, doing, and inhabiting the world.

### *The Atrato River, a living entity*

The literature on social and environmental anthropology in the Pacific lowlands has shown that the Atrato River is a complex geographical setting. It is a space where people create meaningful lives despite war and destruction, despite the prevalence of "bad and slow death" (Ballvé 2013; Nixon 2011; Ruiz-Serna 2020; Quiceno 2016, 2020). It is a place of community resistance to racism and violence (Oslender 2001, 2008; Escobar 2008).

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The people from the Atrato who I interviewed found special meaning in the river itself. William Rivas, a poet, lawyer, and community leader from the Atrato explained:

> The river represents life and death. A river that overflows is a river that gets angry and takes everything away. The river feels. The river behaves according to how its creek is. The river dies, it is a being, it is an existence.[16]

Hinestroza Cuesta, an environmental lawyer and teacher from Chocó, offered a similar perspective:

> Rivers are not isolated elements. They are other beings and existences with their own life, different from human life, but connected to it and linked to spirituality. Rivers and water have spirits and each of them has their own function.[17]

According to Diana Mosquera, a local expert in the linkages between territory and local gastronomy, "[r]ivers and people are one and the same, there is no black without a river."[18] Rosmira Salas, an educator, community leader, and peacebuilder from the Atrato, stated: "We are defending the life of all beings. Water is alive. It feels, resents, and reveals."[19] Adith Bonilla, an expert geographer from Chocó, explained: "We are people from the river, the river is an extension of our life."[20]

As these voices reveal, for people who live along the Atrato River, the river is an existance, a kind of being; sentient, often emotional, and fully intertwined with their daily lives. The river has also been an integral participant in the legal mobilization struggles of local communities. It has provided both the setting and the impetus for the pursuit of collective claims.

My analysis of the centrality of the river to the claims-making of the Atrato River communities offers a new approach to juridification and legal mobilization literature. I show how their style for claiming rights revolves around a dynamic and constantly present human-nonhuman linkage. Direct contact and exchange with the river are at the heart of the legal changes promoted by the Black peoples of the Atrato.

## The sediment left behind by law

The exercise of constructing new meanings in law is dynamic and implies a constant tension between advancing-retreating, including-excluding, and expansionary-restrictive approaches. In this sense, Meakin argues that, in the case of social struggles, the determination of what constitutes law always implies a critical moment

[16] William Rivas, interview by the author during the fieldwork trip on February **2022** in Chocó-Colombia.

[17] Lisneider Hinestroza Cuesta, interview by the author during the fieldwork trip on February **2022** in Chocó-Colombia.

[18] Diana Mosquera, interview by the author during the fieldwork trip on February **2022** in Chocó-Colombia.

[19] Fanny Rosmira Salas, interview by the author during the fieldwork trip on February **2022** in Chocó-Colombia.

[20] Adith Bonilla, interview by the author during the fieldwork trip in February **2022** in Chocó-Colombia.

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"in which a social struggle's proposed interpretation of what the law ought to be is either included in a redefined implementation of the law or it is excluded" (Meakin 2022, 204). Legal mobilization occurs when a proposed interpretation is left outside the law, but over time or using different strategies, it is possible for social movements to "re-enter" and to position statements to be incorporated based on the idea of plurality in legal meaning. In this regard, making a pause in the Rights of Nature international proliferation, I elucidate how, besides the importance of the long-term struggles of Black communities, the law has a fickle nature to change and resists change at the same time.

### *The excess of rivers in territorial rights*

As was pointed out by the historical leaders from the Atrato's Black communities during the interviews,[21] the logic of community life in the region combined permanent settlement with mobility, coming and going according to the dynamics of production, exchange, and trade, which depended on the change in the rhythm of water due to flooding, torrential rains, and droughts (Tubb 2020). Yet the notion of Black territories and the juridical conceptualization of collective property only nebulously incorporated the fluid dynamics that Black communities establish with their aquatic environments.

The legal conceptualization of collective Black territories in Colombia was highly influenced by the Indigenous struggles and activism, which has been a common pattern in Black people's rights recognition in Latin and Central America (Anderson 2007; Dulitzky 2010). As Goett (2017, 6) argues, "one of the particular challenges that Afrodescendants face in rights regimes has been the normative construction of indigeneity." The legal concept of territory as a collective right fails to adequately protect the character of riparian Black communities. Their practices, linked to movement, change, rotation, and shifting livelihoods, have not been captured in the emergent narrative of ethnic and cultural rights (Offen 2003; Tubb 2020).

### *Black people as experienced peacebuilders*

Over the last decade, Colombia has changed its approach to transitional justice, albeit with setbacks and stumbles. Usually, relegated voices are now welcome at the peacebuilding table and in making decisions on truth, justice, and reparation (Ruiz-Serna 2017; Comisión de la Verdad 2022). The participation of Black people at the national level was achieved through political action and judicial rulings that reorientated their legal status regarding armed conflict. Hence, Black people are recognized under the law as "subjects of special constitutional protection" having "reinforced constitutional protection." They are "subjects of collective reparation" and have the right to the "restitution of their territories dispossessed by the war." Even their territories and living spaces are now recognized as "victims of the war" (Comisión de la Verdad 2022).

Such legal protections continue to prioritize a victim-focused approach, however, leaving behind other key roles that Black people in the Atrato invoke (Cardenas 2012).

[21] Semi-structured interviews conducted by the author with local leaders and professionals from the Atrato River Basin in February **2022**.

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These roles include serving as friendly mediators between opposing sides and facilitators of dialogue between victims and perpetrators; as healers of individual and collective pain through crafts, artistic practices, food preparation, ritual chants, and medicine; and performing rituals around mourning, death, and continuity of life. In this case, the law ignores the people's role as peacebuilders and as the architects of practical, daily solutions based on orality, movement, and creativity (Quiceno 2016, 2020).

### *The river from a Black perspective*

The Constitutional Court recognized the Atrato River as a holder of rights in its ruling T-622 of 2016, citing precedents in India and New Zealand. The river is entitled to rights with regard to protection, conservation, maintenance, and restoration, as well as bicultural rights in favor of ethnic communities (Corte Constitutional, 2016). The ruling recognized the river as a subject with legal personality and its own system of representation. To ensure compliance with the ruling, the state was ordered to formulate and implement public policies that consider community participation and technical advice (Macpherson and Clavijo Ospina 2018; Richardson and McNeish, 2021; Macpherson et al. 2021).

The constitutional ruling T-622 of 2016 has been applauded as a major accomplishment of the international Rights of Nature movement. The ruling changed the river's juridical status, giving especial attention to the ecocentric theory based on Western environmental ethics, the rights of nature, and biocultural rights, which were used as argumentative basements. However, the ruling's prominence and its narrative have obscured the historical processes of Black legal mobilization and juridification in the Atrato Basin (Macpherson and Clavijo Ospina 2018; Macpherson et al. 2021).

Local scholars and community leaders have observed that the Court's decision failed to consider the river as complex, with diverse community-based meanings. Instead, it treated the river as a singular entity with liberal rights, overlooking spiritualities, local practices, daily relations, and community-based meanings about water spaces and riverine lives.

## Conclusion

This article places Black communities at the center of environmental legal transformation, linking the defense of the Atrato River to the local struggle for peace, justice, and autonomy over the last three decades. I demonstrate that Black communities and the river are not passive objects of institutional recognition but are agents of legal transformation. From my long-term engagement with the Atrato River's people and realities, I offer detailed evidence to show how the processes of judicialization and strategic litigation expressed a rooted style of claiming and creating rights that takes the form of a community-based tapestry enriched with a variety of social and political action methods and practices.

My study shows how the local strategies promoted by excluded regions from a human-nonhuman linkage play a significant role in reconfiguring rights. I reveal hidden points of legal production, showing how humans, nature, and the connections between them can speak to and transform the Western legal system—and what is left behind.

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**Biographical Statement**: The author is a Colombian activist, lawyer, and committed researcher. Over a period of fifteen years, she worked with Indigenous, Black, and Peasant communities leading collective strategies to defend territories and rivers facing extractive economies in and out of the courts. She then turned to pursue an academic path, where she is advancing research focused on water disputes, strategic litigation, extractivism, and Indigenous and Black peoples' legal mobilization processes and has been a doctoral researcher in the ERC research project RIVERS – Water/human rights beyond the human? Indigenous water ontologies, plurilegal encounters and interlegal translation. Email: mariaxgo@clio.uc3m.es-ximegoz@gmail.com

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