Rights of Nature and the pursuit of environmental justice in the Atrato case

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Abstract:

Local communities living close to the banks of the Atrato River, in the Chocó Department of Colombia, are historical victims of environmental injustices caused by extreme environmental issues and by the exclusion from political processes for the protection of their fundamental rights. After years of social mobilization, local communities managed to capture the attention of the Colombian Constitutional Court, which in 2016 created a historical judgment - the T-622/16 - making the Atrato River a subject of rights and giving local communities the legal means to protect their rights and the ones of the Atrato. This study focuses on understanding the key roles played by the different stakeholders involved in the negotiation process that brought about the decision of the Constitutional Court through a framework of environmental justice. Primary data was collected through interviews with a range of different stakeholders, from local communities to members of the Colombian government. Secondary data from the literature review of academic and legal texts was also analyzed. The results of this research show the decisive role of local communities in their collaboration with many different stakeholders such as non-governmental organizations (NGOs), universities and governmental authorities. These alliances have been essential for the development of the communities' cultural recognition and political participation. Moreover, this study demonstrates how the implementation of Rights of Nature (RoN) norms and the assignment of biocultural rights by the Constitutional Court contributed to the development of environmental justice for local communities.

Key words: Environmental justice, Rights of Nature, Local communities, Multidisciplinary collaboration

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Chapter 1: Introduction

1.1 The need of a paradigm shift in environmental policy

In an era where environmental problems are becoming increasingly complex and urgent to solve, many scholars requestioned the effectiveness of current environmental policies and try to assess new theoretical paradigms to protect natural entities. Many studies pointed out that a large number of environmental issues are based on the way humans place themselves into our ecosystems, in which the satisfaction of our needs comes at the expense of other living beings and natural entities (Glasbergen and Driessen, 2002; Valencia Hernandez, 2018). This anthropocentric approach has led to high rates of biodiversity loss and the degradation of numerous ecosystems, actions that have been too often excused by the global need for progress and economic growth. The practices of protecting nature solely for the ecosystem services it can provide to humans has been questioned by many theorists, moving away from assigning to nature a resource-exploiting value to creating a harmonious nexus among humans and nature (Langhelle, 1999) This requires a theoretical and institutional shift in the way legal provisions aiming at protecting our environment are created, where top-down policy-making processes seem outdated in creating adequate solutions (Glasbergen and Driessen, 2002). An exemplary case showing an important shift to a more ecocentric approach to environmental policy-making, is the one of the Atrato River in Colombia. The Atrato is one of the largest and most navigable rivers of Colombia, which has been exploited by illegal mining activities reversing hundreds of tons of mercury in its water every year. This caused serious water pollution problems as well as environmental and social injustices for communities depending on the river for their biological and cultural needs. In response to this problem, in 2016 the Colombian Constitutional Court recognized the Atrato River as a subject of rights. In this way, the Atrato has the power to be protected by legal representatives in case of harm from a third party (for example, mining industries). This decision of the Court challenges the common legal vision of natural resources, redefining the relationship between human beings and nature, by giving to natural entities the quality of protected legal goods. The one of the Atrato is not an isolated case; many other institutions around the world are starting to create legal provisions entitling natural entities as subjects of rights. In this way, the concept of Rights of Nature (RoN) is making its way into international and national environmental policy-making processes, raising into question the approaches used to protect

our ecosystems. Before exploring the dynamics and characteristics of the Atrato case, it is necessary to understand how the concept of Rights of Nature evolved through the years and which are its main features. These issues will be analyzed in the following section, where I will evaluate how the new principles of Rights of Nature are generating a normative shift in the way humans relate to nature in environmental policy.

1.2 What is Rights of Nature?

For many years scholars have tried to make a shift from the dominant neoliberal approaches to environmental policy-making introducing innovative norms capable of recognizing natural entities as subjects of rights. One of the first scholars to question whether natural entities should be holder of rights is Christopher Stone, who published in 1972 the essay: “Should Trees Have Standing? Toward Legal Rights for Natural Objects” (Stone, 1972). In this essay, Stone presents a set of reasons why natural entities should have the legal means to stand in court, basing his discourse on the fact that a century ago, it was normal that slaves and women didn’t appear in the legal jurisprudence, when nowadays they are holder of rights. In this way, Stone shows how entities which have been elected to be subjects of rights have evolved through centuries and he points out that giving rights to nature might sound derisive at that time, but in future years it could be ordinary in national and international legislations (Stone, 1972). Stone’s essay received many critiques from other scholars arguing that current legal systems were not designed to make nature a holder of rights (Cano Pecharroman, 2018). In response, Stone explained how entities such as corporations and municipalities have rights and can stand in court, in such a way also natural entities should be entitled of these rights.

The debates on the assignation of rights to natural entities evolved through the years engaging always a larger amount of scholars as well as national and international institutions. The first country recognizing Rights of Nature (RoN) as constitutional rights was Ecuador in 2008. On the occasion of a constitutional reform, the Constitutional Court created a chapter exclusively dedicated to RoN (Chapter 14) aiming at “building a new way of coexistence amongst citizens, in diversity and harmony with nature” (Constitución de la República del Ecuador, 2008; Cano Pecharroman, 2018). The Ecuadorian constitution wanted to create new forms of sustainable development on the Andean Indigenous concept of *sumak kawsay* (in

spanish *buen vivir*, in english *good living*) which focuses on the idea of humans living in a harmonious connection with nature (which is defined as Pachamama) (Kauffman and Martin, 2017a; Chuji, 2014). This new approach entails the awareness that “humans are part of Nature, and thus Nature is a vital part of human existence” (Kauffman and Martin, 2017a). The constitution identifies RoN as the new normative tool to create harmony among humans and create a respectful nexus among the two.

Following the Ecuadorian constitutional reform, national and international institutions became interested in RoN, creating transnational networks such as the Global Alliance for the Rights of Nature (GARN) to keep updated the international discussion on RoN. GARN defines Rights of Nature as the “recognition and honoring that Nature has rights. It is the recognition that our ecosystems – including trees, oceans, animals, mountains – have rights just as human beings have rights. Rights of Nature is about balancing what is good for human beings against what is good for other species, what is good for the planet as a world. It is the holistic recognition that all life, all ecosystems on our planet are deeply intertwined.” (GARN, 2019 July 1). This definition shows how RoN is inserted in a context of an ecocentric approach according to which nature does not belong to humans and, on the contrary, it assumes that humans are the ones who belong to the Earth, like any other species. In this way, RoN conceives nature as a real subject of rights for its intrinsic value.

In the last years, many efforts have been made to apply RoN norms for the protection of rivers. Indeed, rivers are considered planet’s lifeblood and water is often not seen only as biologically necessary, but also as a sacred natural entity (Kauffman and Martin, 2017b). This has been the case of the Atrato River in Colombia, which have been recognized as a subject of rights. In the following section, I will analyze what is the environmental, social and political context that brought the Colombian Constitutional Court to apply RoN principles in the Atrato case.

1.3 The Atrato Case in Colombia

The Atrato River is located in the Chocó Department in the north-west of Colombia, which is a historical site of armed conflicts, poverty and violence. This region is inhabited mostly by

Afro-Colombians - which have been brought by the Spanish during the period of colonisation - and indigenous communities, which are the native inhabitants of the Department. The Chocó is one of the most biodiverse regions of the world, mostly covered by tropical forests where the Atrato becomes the most abundant river of Colombia. Because of the limited power of the Colombian government on the Chocó due to armed conflicts, and because of the richness of resources in the soil, this region became a target for the expansion of numerous illegal gold mining spots. These activities are extremely harmful for the ecosystem since tons of mercury are reversed in the Atrato every year, causing environmental and social injustice for communities living close to the river. After many years of social and political mobilization by local communities to see their fundamental rights respected, in 2016 the Colombian Constitutional Court - thought the judgment T-622/16 - recognized the advanced stage of degradation of the Atrato and proclaimed the river subject of rights. In addition, the Court recognizes the importance of the Atrato for the physical, cultural and spiritual existence of the communities living close to its banks, assigning biocultural rights to local communities. These biocultural rights aim to recognize the cultural nexus among local communities and nature as well as politically recognize them as fundamental actors in the protection of the Atrato river.

The implementation of the judgment T-622/16 entails two fundamental parts. The first one is the formulation phase, which means that the Colombian government should work closely with representatives of Chocó communities to create action plans to protect the natural integrity of the Atrato basin and to protect fundamental communities' rights. The second part is the implementation phase, where these action plans created jointly should be implemented in the Chocó. At the time of writing this research, the formulation phase is still in progress, so any plan has been applied in the Chocó Department so far.

1.4 Problem formulation

From the previous section, it is possible to understand what are the main reasons of environmental, social and cultural injustices affecting local communities living close to the Atrato. From the analysis of several studies conducted on the claims of anti-mining groups, it often emerges that mining policies do not recognize the cultural dependence of local communities on natural entities and ignore the matters they expressed during participatory stages (Walter and Martinez-Alier, 2010). These issues are rooted in the historical lack of

recognition of the cultural bond linking local communities to the environmental resources they depend on. Moreover, it demonstrates how policy-making processes involving the participation of local communities often result ineffective in truly taking into consideration their opinions (Baker and McLelland, 2003). This shows how policies aiming at politically involving communities and culturally recognizing them are incorrectly and / or insufficiently implemented by governmental authorities.

In addition, these communities are also victims of environmental racism, since big corporations and governmental authorities are aware that opening mining activities close to living areas will cause protests and the engagement of procedural actions. Therefore, mining industries are more likely to be opened close to areas inhabited by communities with little economic resources and low levels of voting behaviours, such as the Chocó Department (Mohai et al., 2009). Consequently, local communities are lacking the legal means for protecting their fundamental rights and they do not have the necessary resources to engage procedural disputes to defend their rights (Baker and McLelland, 2003).

1.5 Research objective and research questions

Despite the numerous injustices affecting communities living in the Chocó Department, it has been observed that in the Atrato case different actors such as NGOs, universities and governmental entities collaborated in different ways to improve the living conditions of local communities. Little importance has been given in the literature on the dynamics of cooperation among these actors in the Atrato case. Therefore, in this research I focus on understanding the role played by these different actors in the negotiation process that brought about the final decision of the Constitutional Court over the Atrato river. This means analyzing which objectives, strategies, political, social and economic instruments have been used by the actors to pursue environmental justice. Environmental justice is not only considered as a matter of equal distribution of natural resources among communities inhabiting the Chocó, but mainly as their cultural recognition and political participation in the protection of the rights and territories. Therefore, though an environmental justice framework, I will analyze how different stakeholders collaborated in the evolution of the cultural recognition of local communities, their political participation as well as their access to unpolluted environmental resources.

In this research, particular attention will be given to the role that has been played by two fundamental actors in the Atrato case: local communities and the Colombian Constitutional Court. Local communities have been the most affected actors by environmental injustices in the Chocó and they have an historical limited political participation in the defence of their territories and rights. Moreover, social movements in the Chocó have been defined by exogenous adverse factors that come from both the Colombian government and the presence of armed groups in the Department. For this reason, I consider relevant analyzing more carefully the social and political actions that have been undertaken by local communities to express their ideas, cosmovisions and needs and how their determination has exceeded the numerous adverse factors.

On the other side, the Colombian Constitutional Court through the creation of the judgment T-622/16 played a vital role in the recognition and protection of local communities' rights. Thus, in this study I will analyze how the innovative norms applied in the judgment, such as RoN principles and the assignation of biocultural rights, helped in the pursuit of local communities' environmental justice. In this way, I will take into consideration which have been the reasons behind the decision of the Constitutional Court to adopt these innovative norms and how their implementation occur. Scholars such as Kauffman and Martin, (2017a) have pointed out that there is a consistent lack of studies showing how RoN norms might be implemented. Thus, in this study will try to fill the gap on the lack of information on how RoN principles can be applied, reporting how the Colombian Constitutional Court interpreted and implemented these principles for protecting both nature and local communities. This will allow a greater understanding on how RoN principles have been implemented into the complex and unique socio-political context of Colombia.

Similar cases to the Atrato are the ones of the Whanganui River in New Zealand, the Ganga and Yamuna Rivers in India. These cases have many similarities and differences in the way RoN principles have been created and implemented. This study is part of a larger project where the three cases of New Zealand, India and Colombia will be analyzed. Three different researchers will study how RoN norms have been institutionalized through Court rulings. In this project, I am responsible for the analysis of the Atrato river case in Colombia, in order to evaluate its context, legal provision and governmental arrangements. Analyzing different

cases of river becoming subjects or rights will allow to understand how RoN norms circulating globally have been interpreted and implemented by different countries. This will create not only more knowledge on RoN norms, but also to understand how RoN can be integrated and adapted by different institutions with diverse and particular political and legal backgrounds.

Based on the research objectives, the following questions are meant to operationalize the research.

Main research question:

How have the actors involved in the Atrato case pursued and put into practice environmental justice in the negotiation and formulation phases?

The study of collaborations among stakeholders will focus on two fundamental phases. The negotiation phase, which is the period preceding the decision of the Constitutional Court on the Atrato River where local communities collaborated with different stakeholders to stimulate the action of governmental entities. The second one is the formulation phase, which is nowadays still ongoing, representing the first part of the implementation process of the judgment T-622/16 on the Atrato case. In this phase, local communities collaborate with other stakeholders for the creation of action plans aiming at protect communities' rights and the Atrato.

General research questions:

1. What are the environmental injustices faced by marginalized communities living close to the Atrato?

This question wants to analyze the issues faced by local communities taking into consideration the different dimensions of environmental justice. Therefore, this question will highlight what are the environmental and social issues related to a limited political participation of communities over their fundamental rights. Moreover, the question clarifies how political integration and cultural recognition of local communities are key elements for achieving environmental justice.

2. Which governmental and non-governmental actors played a role in the negotiations processes about the Atrato case?

Identifying which actors participated in the negotiation process it is necessary to understand the cultural, social and political criteria that pushed them to participate and see how they have been involved in the process.

3. Which have been the objectives, strategies and instruments adopted by the different actors during the negotiation process in order to pursue environmental justice?

This question explores the different objectives of the stakeholders involved and analyzes which methods they used to achieve their goals during the negotiation process. This allows to understand how individually every stakeholder was involved in the case and how these actors have combined resources and knowledge to achieve common purposes.

4. How does the judgment of the Colombian Constitutional Court on the Atrato case improve environmental justice for local communities?

The decision of the Court entails mainly two important sets of rights: the one assigned to the Atrato river and biocultural rights recognized to local communities. Thus, this question wants to explore how the Court through the assignation of these two sets of rights contributed to the development of environmental justice. This question will be answered by analyzing the text of the judgment T-622/16 and carefully understanding its legal provision.

The previous research questions try to operationalize the objective of the study in order to understand how environmental justice has been sought in the negotiation and formulation processes. In fact, understanding which social and legal steps have been undertaken by different actors and how their cooperation has been regulated are essential elements for determining the evolution of recognition and participation of local communities. For this reason, studying the Atrato case with an environmental justice lens, which has never been done before, not only creates more knowledge on the applicability of this theoretical approach, but it can also be an example for several similar cases around the world of communities' perseverance and constancy. Indeed, an environmental justice theoretical framework has been used in this study because of the historical and contextual similarities between environmental racism that allowed the creation of environmental justice movement and the one affecting local communities in the Chocó. In addition, the reasons causing environmental

injustice in the Department are mainly cased by economic, socio-political and racial discrimination which are aspects analyzed while following and environmental justice framework. Finally, also the claims of local communities in the Chocó related to their poor political participation and cultural recognition are core element of an environmental justice discourse. Thus, adopting an environmental justice framework will help understanding more deeply the reasons that create environmental injustices in the Chocó as well as understanding the claims and actions undertaken by local communities and other stakeholders involved in the Atrato case.

In the following chapters it will be firstly explained how the concept of environmental justice evolved through the years, which are its main features and how it has been applied to the Atrato case. Lately, the methodology used in this research will be reported, analyzing which have been the main limitations of the data collection. Afterwords, three chapters presenting the data collected during my field work will be analyzed. The first chapter will evaluate which are the main environmental injustices present in the Chocó, analyzing the geographical, social and political context of this Department. Moreover, I will show which are the historical reasons causing lack of cultural recognition and political participation of local communities. The second chapter will present how local communities, collaborating with other stakeholders, managed to create a social mobilization to protect their rights. The third chapter of finding will carefully analyze how the Colombian Constitutional Court responded to the claims of local communities by making the Atrato a subject of rights and assigning biocultural rights to local communities. It will be also reported how the implementation of the decision of Court is currently proceeding as well as showing which are its main limitations. Finally, a discussion and conclusion chapter will follow where the results from the study will be presented.

Chapter 2: Theoretical Framework

In this chapter I present the environmental justice (EJ) framework that is going to be applied to the Atrato case. Environmental justice is a theoretical concept that have been evolved and enriched during the years to respond to cases of environmental racism all around the world. It's evolution has been strictly linked to the development of the general concept of justice and it has been applied to cases where environmental risks were dominant over marginalized communities. Hence, in this chapter it will be at first presented the history of EJ, starting from its social movement roots to its evolution to a theoretical concept. Afterwards, I will explain environmental justice based on the different features that build this concept and the possible further evolutions of the concept. Finally, different environmental justice frameworks that have been developed by distinct scholars are analyzed and discussed in order to elaborate an EJ framework that can help in exploring the complexity of the Atrato case.

2.1 The birth of environmental justice movement and its shift to theoretical concept

Over 30 years of research have documented that low-income and minority groups are exposed to higher environmental and health risks that the society at large (Banzhaf & Timmins, 2018). The first case reporting these environmental inequalities was in 1982 with the dumping of PCB-laden dirt in a waste landfill in Warren Country, North Carolina. The waste landfill was created close to the rural part of Warren Country which was one of the poorest of North Carolina and it was highly inhabited by African-Americans. The state claimed that the site has been chosen based on its appropriate soil permeability conditions but local citizens were denouncing that the demographics of the area was the main criteria of selection (Schlosberg, 2007). Therefore, Warren Country citizens started a protest to denounce the environmental health and risks to which they were confronted, claiming for environmental justice. The case gained mediatic attention and rapidly the environmental justice movement expanded in many countries involving also topics related to the creation of

clean jobs, building a sustainable economy and achieving social and racial justice. Thus, more studies showed that the one of Warren Country was not an isolated case, but people of color and low-income were generally exposed to higher environmental and health risks than upper-class societies also in many other America's countries. This disproportionate distribution of environmental risks on people of color has been called through the years “environmental racism” (Schlosberg, 2007).

The sociologist Bullard has been one of the first scholars to get interested in environmental racism, publishing in 1990 *Dumping in Dixie* which have been the first consistent study over environmental racism in America linking the sighting of polluting activities with the demographics of the territory (Bullard, 1990).The study shows that communities of colors were targeted for the installation of unwanted polluting facilities creating environmental racism. Consequently, many protests developed all around America making environmental justice movement responding to environmental racism and raising for the first time public awareness on the environmental issues affecting African Americans and other people of color (Bullard, 2000; Pellow et Brulle, 2005). These protests lead the Commission for Racial Justice to produce in 1987 the *Toxic Wastes and Race in the United States* which is the first national study to correlate waste facility sites and demographic characteristics (Bullard & Johnson, 2000). The study concluded that race was the main factor that could predict where new waste sites would be located. This study gave substantial evidence and academic bases to the claims coming from victims of environmental racism, empowering the environmental justice movement.

During an interview in 1999, Bullard stated that “the environmental justice movement has basically redefined what environmentalism is all about. It basically says that the environment is everything: where we live, work, play, go to school, as well as the physical and natural world. And so we can’t separate the physical environment from the cultural environment. We have to talk about making sure that justice is integrated throughout all of the stuff that we do” (Schweizer, 1999). In the same year, the U.S. Environmental Protection Agency (EPA), after years of bureaucratic work and researches, defined environmental justice as the “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies” (US Inst., 1999). Because of the vastness of the themes approached by environmental justice movement, because of the theoretical

foundations on which these themes were based, and because of its popularity, environmental justice gradually shifted from a movement to a theoretical concept. The environmental justice concept started to be adopted as a theoretical framework to analyse different cases concerning environmental inequalities and racism all around the world. In 1991, the participants of the First National People of Color Environmental Leadership Summit, defined and operationalized the concept of Environmental justice through 17 principles. These principles declared the rights "to be free from ecological destruction"; to be "free from any form of discrimination or bias"; the "right to clean air, land, water, and food"; the "right to political, economic, cultural and environmental self-determination of all peoples"; and the right "to a safe and healthy work environment." (Mohai et al., 2009). Particularly important is the the principle number 10, which declares that "environmental justice considers governmental acts of environmental injustice a violation of international law, the Universal Declaration On Human Rights, and the United Nations Convention on Genocide" (First National People., 1991) Therefore, the implementation of the concept of environmental justice requires a drastic transformation in the ways governments and corporations carry out normal organizational activities involving more the concepts of democracy and equality.

2.1.1 Why environmental injustices exist?

In order to have a larger vision over the concept of environmental justice, I consider essential to find out when environmental injustices exist, where they develop and which actors are mainly responsible of them. This would be helpful to understand when a particular situation can be considered as an EJ case. Mohai et al., (2009) analyzed the different reasons that bring to the development of environmental injustices all around the world. Three main factors contributing to environmental injustice have been highlighted and categorized in three different explanations: economic, socio-political and racial discrimination. The economic reasons are based on the fact business use cost minimizing techniques to maximize their profits. Therefore, when big corporations are looking for sites to place facilities, they are looking for the cheapest land to optimize their profit. However, very often these cheap lands coincide with where poor and marginalized communities live. Therefore, industries are not directly discriminating marginalized communities, they are just putting their facilities on cost-effective lands where coincidentally poor communities live. This is also the case with the industries which base their activities on natural resource extraction, since they must install their facilities where these resources are available (Roberts & Toffolon-Weiss, 2001). Though

these areas may appear isolated, they may coincide with the living areas of marginalized communities. Moreover, the implementation of these activities will cause negative impacts on the quality of life of the communities causing pollution, noises, odors and others (Mohai et al., 2009). Consequently, the quality of life would drastically decrease and people from the affected neighborhood would decide to move in more environmental friendly areas. This is also part of a discrimination process, because people with higher incomes would be more likely to move, and people with lower-incomes are left behind.

The second explanation of environmental injustices concerns socio-political reasons. This explanation is based on the idea that industries and the government are aware that many communities will protest if a polluting activity is started close to their living area. Therefore, decision-makers try to avoid to implant these activities close to communities most capable of mounting an effective opposition. As an example, they would not insert an incinerator close to an area where communities are more likely to have resources to create an opposition and have strong political representation. They would instead install it closer to communities with less resources and little political representation which are less likely to have a solid opposition. Therefore, communities with low levels of voting behavior, wealth and incomes are more likely to be exposed to high concentrations of pollution and health risks. Unfortunately, the previous characteristics are often tied up with race (Mohai et al., 2009).

The third explanation concerns racial discrimination. In the theory of “black trash”, Mills (2001) finds that people of color are often ideologically associated from white communities to barbarisms, dirt and pollution. This line of thought is hardly influenced by history, literature and policies of the global North, whether one is talking about Africans, indigenous communities and Latin Americans (Mills, 2001). Multiple philosophers such as Higgins (1994), tried to identify the cultural sources behind this racial pollution association, discovering that marginalized areas are usually seen as “appropriately polluted” spaces. Therefore, industry and government, based on this social perception, would be more likely to install new polluting facilities in areas where marginalized communities live because more “appropriate”, contributing to environmental racism.

The three previous explanations (economic, socio-political, and racial discrimination) are not always mutually exclusive and easy to distinguish. Probably many other factors can

contribute to the development of environmental injustice for marginalized communities. However, all of these economic, social and institutional structures participate to the construction of inequity, and exclusion of marginalized communities. Mohai et al., (2009), gave some recommendations saying that policy-makes should play an active role in limiting environmental hazards in marginalized communities, paying more attention on the sites chosen for the installation of unwanted facilities and informing more affected communities about the environmental risks they could face.

2.1.2 The three dimensions of Environmental Justice

Now that the reasons contributing to the creation of environmental injustices have been elucidated, it is important to understand how EJ evolved through the years to face these issues. The conceptualization of environmental justice was directly historically linked to the debates related to the evolution of the concept of justice in general. In fact, as the concept of justice has expanded and enriched through the years, also the concept of environmental justice developed and it concretized in three dimensions: fair distribution of environmental resources, cultural recognition and political participation (Schlosberg, 2003). Justice has been initially seen mainly as a matter of fair distribution of goods. In the case of environmental justice, it is equivalent to the distribution of environmental “bads”, referring to the category of events that damage environmental ecosystems. This means, a fair distribution of health and environmental risks - often linked to polluting activities - among people of different race, gender and religion. However, considering justice only as a matter of distribution of goods and bads, bases the core concept of justice on socio-economics factors, where society roots around economy (Schlosberg, 2003). Moreover, it is essential to determine how this (re)distribution should take place and how it changes based on the actors involved. Walzer is the first scholar that moves away from the distributional paradigm to associate justice different meanings based on different actors. Walzer attempts to introduce the notion of “difference” in the context of justice. Different goods are valued differently by different people. Therefore, how these goods are distributed should differ based on the value people associate with them (Walzer, 1983). Walzer’s discourse on “difference” has also been applied to the concept of environmental justice. In fact, environmental goods are evaluated differently between different actors acquiring different importance, dependence and use.

Consequently, scholars as Young started shifting the discussion of social justice from distributive theories towards a focus of lack of recognition. Young showed that there are some social groups that are privileged while others are oppressed and victims of social injustices (Young, 2011). Therefore, justice cannot take into consideration the unequal distribution of goods between groups if it primarily doesn't recognize their identity and cultural difference. This means an institutionalized recognition of communities' particular needs, livelihoods, believes and practices. The recognition of ethnic diversity is considered not only necessary for the development of their identities and positive self-feeling, but also for challenging inequalities and social cohesion (Verkuyten, 2006). Recognition became a core element of the concept of environmental justice, since environmental injustices of marginalized communities are very often tied to the lack of their social and political recognition.

Linking up with the concept of recognition, Fraser brought the concept of justice a step forward introducing procedural justice. Fraser considered that justice requires both redistribution and recognition because "it is unjust that some individuals and groups are denied the status of full partners in social interaction simply as a consequence of institutionalized patterns of cultural value in whose construction they have not equally participated and which disparage their distinctive characteristics or the distinctive characteristics assigned to them" (Fraser, 1998). Frazer introduced a new dimension of justice which refers to a broader need of public participation in policy-making processes (Fraser, 1998; Schlosberg, 2003). Fraser claims that for achieving participatory equity two conditions should be satisfied. The first one, it is the distribution of material resources to ensure participants independence and voice. The second one, it's the institutionalized cultural patterns to express equal respect for all participants (Fraser, 1998). These two conditions relate respectively to distributive equity and cultural recognition. Therefore, procedural justice requires both (re)distribution and recognition and neither alone is sufficient (Schlosberg, 2004).

2.2 Pellow's Environmental Justice theoretical framework

The three dimensions of justice (distribution, recognition and participation) became also the core pillars of the conceptualization of environmental justice and were also used in other

discussions about climate justice, water justice, etc. Environmental justice is built with these three dimensions and one cannot discuss about environmental justice taking into account one of these aspects without leading it to the other ones. Accordingly, scholars such as Pellow designed environmental justice theoretical frameworks taking into consideration all the three justice dimensions (Pellow, 2004). Pellow's theoretical framework operationalizes the dimensions of environmental justice through the analysis of four different aspects. The first one concerns studying the socio-historical processes that brought firstly to the unequal distribution of environmental and health risks and lately to the final institutional decision about these issues. As a matter of fact, it is important to recognize environmental inequalities as a result of historical and social processes and not as a separate event. This would explain which historical and social events contributed to the creation of environmental and social inequalities between communities. Secondly, analyzing the complex role played by the actors involved in the case. This means understanding the dynamics between the different actors, analyzing the allegiances and tensions between them. The third aspect wants to understand the effects of social inequalities on the different actors. This means, analyzing cases of institutional, environmental and social racism, class inequalities, political hierarchies and every kind of inequalities that could have influence power relations in the process. Understanding the influence and the participation/exclusion of certain stakeholders it is necessary to understand which role they played in the policy-making processes. Moreover, understanding how these actors have been affected by environmental risks will help analyzing their behaviors and responses. Finally, the fourth aspect concerns agency, which is the power of the groups facing environmental inequalities in shaping the outcomes of the conflicts. Accordingly, the objectives, strategies, action time and instruments undertaken by different actors need to be analyzed to understand their role in the negotiation process and understand how they contributed to the final outcome of the conflict (Pellow, 2004).

This four steps theoretical framework takes into consideration all the three dimensions of environmental justice (distribution, recognition and participation). The social-historical analysis will make clear which has been the origin of the environmental, cultural and participatory inequalities contributing to unfair distribution of environmental risks, lack of cultural recognition and political participation. Through the stakeholder analysis, it would be possible to determine how stakeholders have been differently affected by environmental injustices and evaluate which social and political instruments they adopted to defend their

rights. This would allow to understand how political participation improved/worsened during negotiation processes. Finally, understanding how the different actors participated and which power relations were dominant during the negotiation allows to discover which role cultural recognition and political participation played in the negotiation process

2.3 The evolution of the framework of environmental justice to face mining conflicts

The three dimensions of environmental justice have been largely applied over environmental conflicts from the simplest to the most complex cases. Although applying the standard frame of environmental justice (including distribution, recognition and participation) might be a clear way to map what environmental justice movements claims, it has been often criticized as not enough elaborated to face the complexity of certain current debates, limiting the understanding of the case. Indeed, the standard EJ framework can be consistently adopted by activists to protect certain rights, promote liability claims and propose alternative development projects. However, the question is whether these conditions alone are strong enough to change the current social and political structures on urgent environmental risks (Rodríguez-Labajos and Özkaynak, 2017). Moreover, many scholars consider that the concept of environmental justice has been - voluntarily and involuntarily - changed during the years facing the risk of co-operation. This happened because the different features of EJ are very wide, giving room to misinterpretation and distortion (Dowie, 1995). As an example, often in mining conflicts recognition and participatory procedures are respected on the name of environmental justice. However, these practices often fail to truly take into consideration communities' opinions or inadequate forms of recognition are introduced in official practices losing the original intentions of environmental justice (Rodríguez-Labajos and Özkaynak, 2017). As it has been underlined by Schlosberg (2013) and Sikor and Newell (2014), environmental justice continues to evolve through the years, and activist organisations contribute enormously to this end. Therefore, the environmental justice framework has to evolve combining "the environmental justice literature of the North with the environmentalisms of the South" (Rodríguez-Labajos and Özkaynak, 2017).

Over the years, thanks to the data collection of environmental justice organizations and environmental activist movements, evidence has been collected on the impacts of mining

activities and unequal distribution of environmental bads. Temper et al., 2015, analyzed 346 mining cases across the world, identifying which are the main features of EJ applied to mining debates. The study wants to understand which are the situations that bring to a successful implementation of the concept of EJ in mining struggles based on the opinions of the persons affected by the mining environmental injustices. The study analyses the answers to the question: "Do you think this case was a success for environmental justice?" obtained by participants of different mining conflicts. The results showed that justice or injustice are perceived in mining conflicts over four interlinked arenas (Fig.1). The four arenas are the state of the project, the impact in solving environmental risks, the institutional responses and community - power relations. In every arena, different circumstances determine the improvement or obstruction of environmental justice based on the conflict dynamics and on the outcome of the mining struggles. It is possible to observe that in mining conflicts a maximum level of environmental justice is reached when mining projects are suspended, active action is taken to limitate environmental risks, there is a legislative consideration and action over the case and finally when there is a consolidation of networks and the creation of activism movements. On the other side, environmental injustice persists when their action in order to close polluting projects is repressed by corporation or governmental entities, and environmental risks remain unchanged. However, different combination between the different arenas can also create a successful environmental justice arena. For example, if a project is still on-going but it doesn't create environmental risks, that would also be considered an optimal solution to the conflict.

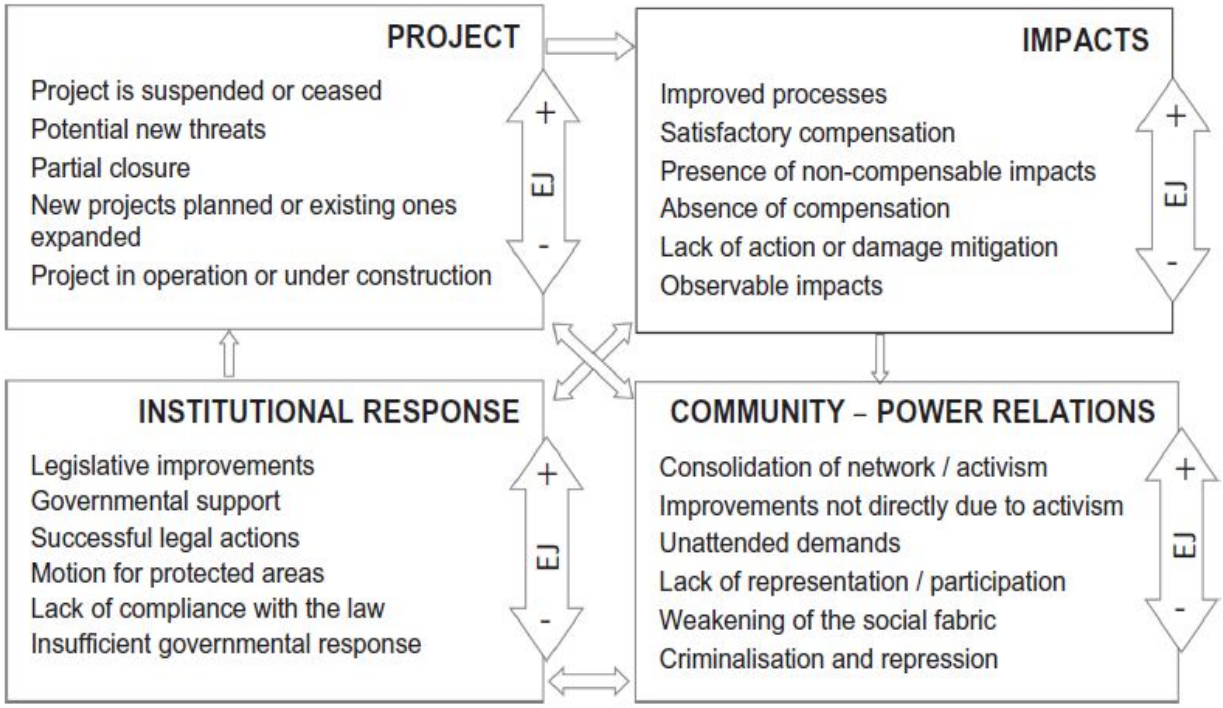

Figure 1. Keys of Environmental Justice (EJ) in mining conflicts. The diagram shows the four arenas of EJ while referring to mining conflicts. (Source: Rodríguez-Labajos and Özkaynak, 2017).

These four arenas represent how actors involved in mining conflicts perceive environmental justice and injustice in a more transparent and specific way. However, this framework doesn't want to be an alternative to the standard EJ framework, because elements or distribution, participation and recognition are present in all the different arenas in different extents. For instance, the project and impacts arenas relates to the distribution condition of EJ, while participation and recognition aspects are more integrated in the last two arenas. Moreover, even if every arena incorporate different aspects, none of them can alone adequately analyze environmental justice in mining struggles. This framework, through the analysis and combination of all the four arenas together, helps in developing and expanding the scope of environmental justice from its standard framework to adapt to the complexity of the current mining conflicts (Rodríguez-Labajos and Özkaynak, 2017).

2.4 Environmental justice frameworks applied to the Atrato case

The history of the Atrato case presents many common points with the birth of the environmental justice movement in North Carolina. Indeed, in the same way as the Warren Country case, marginalized communities of the Chocó mounted a proper opposition against the environmental injustices created by polluting activities in their lands. However, the Atrato case has a complex relationship dynamic between actors and a unique history and evolution of environmental inequalities, risks and racism. Therefore, it results difficult to apply a standard EJ framework which can take into consideration the diversity of every EJ case. For this reason, in this research the Atrato case is analyzed through a tailor-made EJ framework based on the frames presented earlier in the chapter.

The EJ theoretical framework that is going to be applied in this study is composed of three stages. The first one concerns the study of the evolution of environmental injustices in the Atrato case. The main historical events that contributed to the development of environmental inequalities and racism would be analyzed taking into consideration the three main factors causing environmental inequalities previously explained: economic factors, socio-political factors and racial discrimination factors. Analyzing each of these factors would allow to have a wider view over the environmental and social issues faced by local communities.

The second step focuses on the understanding of the roles of the different actors involved in the case and the evolution of their power relations and collaboration. Indeed, it would be analyzed how the actors involved in the Atrato case pursued environmental justice analyzing which social and legal procedures they engaged at this aim. This means analyzing how the environmental justice movement born in the Atrato case and evaluate how certain actors have interacted and cooperate together to reach environmental justice.The collaboration process would be analyzed during the negotiation process that brought to the final decision of the Colombian Constitutional Court. This means analyzing how local communities with the help of other organizations managed to create a social and legal opposition to environmental inequalities.

Finally, the third step aims at analyzing the institutional response that have been created by governmental institutions to solve environmental injustices. Therefore, understanding how

institutions faced environmental issues and how they put into practice a fair distribution of environmental risks and how they try to improve marginalized communities cultural recognition and political participation. In the Atrato case, this means analyzing how the sentence T-622/16 put into practice EJ in its legal doctrine and provision.

As previously explained, the aim of this study is to evaluate how actors involved in the negotiation processes pursued environmental justice. The environmental justice framework presented by Pellow suits this case since it hardly incorporates the three dimensions of environmental justice - recognition, participation and distribution - while it analyzes the dynamics of the different actors working together and shaping an institutional outcome. However, while analyzing EJ in mining conflicts it is important to evolve the analysis further to the four arenas designed by Temper et al., 2015: project, impact, institutional response and community. In this study it is not possible to evaluate a successful implementation of an EJ discourse based on the outcome of the project and on the impact it had on environmental inequalities since nowadays the outcome of Court still didn't enter in its implementation phase. On the other side, it is possible to analyze how the stakeholders involved in the Atrato case perceived EJ based on the institutional response given by the Colombian Constitutional Court and on the power-relations and collaborations created during the negotiation and formulation phases. Therefore, the theoretical framework used in this study builds on Pellow's theoretical framework, evolving to the specific characteristics of EJ while studying a mining conflict.

Chapter 3: Methodology

In this chapter, the methods used for the data collection will be presented. It will be first explained why it is relevant to analyze the Atrato context through a case study analysis, explaining how this study is inserted in the larger project of two other researches. Later, the data collection methods will be presented, explaining how field work and interviews have been conducted as well as taking into account ethical consideration. Finally, the limitations encountered during the data collection will be evaluated in order to see how they can potentially influence the results of the research.

3.1 Why making the Atrato a case study?

The case of the Atrato with its features and institutional response fits into the broader context of the implementation of Rights of Nature. As previously mentioned, the research conducted on the Atrato case is part of a larger project where three cases of implementation of the Rights of Nature (RoN) are analyzed: the one of Colombia, India and New Zealand. Every case has a unique history, affectation by environmental injustices as well as social and political contexts. Therefore, analyzing different cases where the rights of nature policies have been applied is essential in the process of understanding how this relatively young concept can be applied in different political contexts now that it is making its way through international and national laws. In this picture of the Rights of Nature, the case of the Atrato is unique both in its social and cultural context as well as in its legal provision. In contrast to other countries where political authorities introduced rights of nature laws in their national and constitutional laws, Colombian legislation doesn't recognize RoN laws. The Colombian case shows how RoN laws circulating globally, have been institutionalized through the Constitutional Court decision when the country lacks laws specifically recognizing RoN (Kauffman and Martin, 2017b). In addition, the constitutional judgment on the case of the Atrato is unique in the way it creates a Commission of guardians composed both by state and civil society members and it also entails a rearrangement of governmental entities to be more efficient in protecting the Atrato.

Moreover, in the case of the Atrato a fundamental role has been played by marginalized communities which were victims of extreme environmental injustices. These communities

directly influenced the decision making of the Court, by creating an action for protection, which lately stimulated the Constitutional Court to take action on the case. Moreover, for years they have seen their fundamental rights unrespected by governmental entities but nevertheless kept fighting to be culturally and socially recognized and politically participating to the protection of their rights and territories. The case of the Atrato also shows how collaboration among different stakeholders such as local communities, NGOs and governmental entities are essential for generating specific information on environmental injustices and efficiently tackling them. The legal model of the Atrato case has inspired other Courts and Tribunals to make rivers subjects of rights in Colombia and in other countries. For this reason, having a holistic knowledge on the Atrato case is necessary not only for understanding how RoN can be applied in different contexts but also for evaluating its positive and negative aspects, improving RoN's implementation in future cases.

The analysis of local communities social mobilization and the development and implementation of the judgment T-622/16 have been studied through a case study research design. This methodology has been chosen based on the specific characteristics of the Atrato problematic. Hence, a case study allows to make in-depth investigations, analyzing phenomena that require to be studied through a holistic approach (Feagin et al., 1991). The problematics encountered in the Atrato case are diverse and complex varying from themes of water pollution and deforestation to local communities' political participation and cultural recognition. Therefore, in order to analyze the case, it is necessary to follow a holistic approach capable to analyze it through different perspectives including different data sources theories, and methodologies. Obtaining data from different sources allows to look at the issue from different angles and helps in having a holistic understanding of the case. Therefore, in the case of the Atrato, understanding and comparing different sources, opinions and documents it's essential for having a complete understanding of the problematic and being able to critically evaluate it. Combining different sources would also allow to have formal and informal understanding of the issues and also find possible disagreements between what it is written on paper and how it is implemented and perceived by different actors. Moreover, a case study normally relies on an analytical framework to direct analyze the context of the research (Thomas, 2015). In the case of the Atrato, the environmental justice framework has been chosen to structure the research. This framework is going to be applied on a specific

place restriction, the Chocó Department, more precisely the Atrato river banks, and a target population, the local communities living close to the Atrato.

In a research on the different ways of applying a case study, Tellis (1997) explains that *"Case studies are multi-perspectival analyses. This means that the researcher considers not just the voice and perspective of the actors, but also of the relevant groups of actors and the interaction between them. This one aspect is a salient point in the characteristic that case studies possess. They give a voice to the powerless and voiceless"* (Tellis, 1997). These characteristics of a case study are core objectives of this research, since giving voice to local communities of the Chocó, presenting their viewpoints and opinions on the Atrato case is one of the main aims of the study. In order to achieve this goal, understanding their social structures, cultural beliefs and values linked with natural resources, such as the Atrato river, is essential. This would help interpreting the necessities and claims made by local communities and understand their opinions on the environmental injustices they were victims of and analyzing their opinions on the assignation of biocultural rights by the Constitutional Court.

3.2 Policy analysis

In the case of the Atrato, a fundamental role has been played by the judgment T-622/16 assigning biocultural rights to local communities and making the Atrato river a subject of rights. Based on the important role played by this judgment and many other national and international policies on the Atrato case, carefully examining these documents is necessary for understanding how determined sets of rights are interpreted and implemented. For this reason, a policy analysis of the judgment T-622/16 and other relevant policies will be conducted in this research. Policy analysis entails "determining which of various policies will achieve a given set of goals in light of the relations between the policies and the goals." (Geva-May and Pal, 1999). Different dimensions of policy analysis exists on the evaluation of the effectiveness and implementation of a certain policy. In the case of the Atrato, the effectiveness of different policies will be taken into account by answering the question: "What effects does the policy have on the targeted problem?" (Salamon, 2002). In the framework of environmental justice, policies will be analyzed on the way they tackle and improve the three dimensions of EJ of local communities: cultural and social recognition, political participation

and fair distribution of environmental bads and goods. The current research is going to lead to an *ex-nunc* policy evaluation, which means making an analysis of a policy document when its implementation is still not fully completed (Crabb and Leroy, 2012). Indeed, in the case of the Atrato the different action stages provided by the judgment T-622/16 are still in the formulation phase and haven't gotten to the implementation phase. Therefore, the policy analysis that will be conducted in this research will focus on the evaluation of the text of the judgment T-622/16 and on the implementation stages undertaken so far in the formulation phase. Moreover, this research is going to follow a goal-free approach (GFE), because the evaluation of the case will be made without predetermined goals and objectives and without the influence of a third party. This approach helps the researcher to reducing potential goal-related tunnel vision which can happen when a very strict set of goals are determined from the beginning of the study. In the case of the Atrato, the data collected during the field work has been analyzed trying to use an impersonal mind allowing the "outcomes to speak for themselves" (Youker, 2013).

3.3 Data Collection

In order to collect data for this research, I spent three months in Bogotà, capital of Colombia, from February to April 2019. During this stay, both primary and secondary data have been collected. Primary data refers to the data collected by myself during the field work and the secondary data refers to the primary data collected previously by other researchers. The primary data are mainly based on interviews with different stakeholders that have been involved in the case of the Atrato river. Concerning secondary data, literature reviews of academic studies and official institutional documents would be the main sources of information.

3.3.1 Access to the field

During my data collection I encountered a problem with the accessibility to the Chocó Department, where the Atrato and the target population is located. The Chocó Department is considered from the Dutch Ministry of Foreign Affairs on a red code for security (Koninkrijk der Nederlanden, 2019 April 29). Therefore, it is not allowed to enter the area for any reason. Before leaving for Colombia, I had to fill in a Risk Assessment where I declared that, for

safety reasons, I wouldn't have gone to the Department. This factor largely affected my data collection since I couldn’t access the region where the Atrato is located and directly interview and observe some important stakeholders such as local communities.

3.3.2 Interviews

Interviews have been the main source of primary data collected for my study. Interviews have been conducted mainly with local communities, members of involved NGOs and members of the Colombian government. In order to determine which stakeholders needed to be interviewed from local communities, I analyzed the demographics of the target location, the Chocó. Hence, it has been essential to define which are the local communities living close to the Atrato and which are their connections and relationships. This helped me to identify which local organizations or Community Councils were relevant for my case study. In order to do so, I searched on the official pages of the Colombian government which ethnic communities are living in the Chocó Department. For what it concerns other stakeholders such as NGOs and Ministries, I based my interviews on the actors that were involved in the case and were playing a major role in protecting local communities. Moreover, after every interview I conducted with a stakeholder, I was always asking which other actors could be useful for my research and in this way I got into contact with new relevant stakeholders.

Before my departure for Colombia I sent out many emails to organizations and members of the government for making interviews and possibly creating a data collection partnership. However, I almost didn’t receive any answer to my emails. The only contact I made was with a member of Tierra Digna, which is an NGO who played a fundamental role in the Atrato case. Thus, once I arrived in Colombia I met the member of Tierra Digna that after an interview, gave me some phone numbers of other organizations and local communities. I rapidly understood that formal and informal communications in Colombia are mainly done by phone calls and text messages. Therefore, once I got in contact with new stakeholders, I was asking for the phone number of another actors that could be relevant for my thesis. In this way, I could create a chain reaction from one stakeholder to the other and making a larger network of important actors. In the following table there are all the stakeholders I interviewed for my research. For privacy reasons, I didn’t report the names of the persons with whom I had interviews, but only the organization / governmental entity where they work.

Stakeholders	**Way of conducting the interview / Location**
Members of local communities	
ASCOBA	On the phone
COCOMACIA	On the phone
COCOMOPOCA	On the phone
FISCH	On the phone
Mesa Social Y Ambiental El Carmen De Atrato	On the phone
Mesa de Diálogo y Concertación de los Pueblos Indígenas	On the phone
Consejo Comunitario del río Quito	On the phone
Mano Cambiada	On the phone
RED	In person, Bogotà
Jóvenes Creadores Del Chocó	In person, Bogotà
Members of Governmental and Constitutional entities	
Ombudsman's Office (Defensoría del Pueblo)	In person, Bogotà
Attorney of the Nation (Procuradorìa de la Nación)	In person, Bogotà
Ministry of Environment and Sustainable Development	In person, Bogotà
Colombian Constitutional Court	In person, Bogotà
National and International NGOs	
Tierra Digna	In person, Bogotà

FUMPAZ	In person, Bogotà
WWF Colombia	In person, Bogotà
Institute Humboldt Colombia	In person, Bogotà

In total I conducted 18 interviews: 10 from local communities from the Chocó (local organizations, Community Councils, etc), 3 from members of Governmental entities, 1 from the Colombian Constitutional Court and 4 from national and international NGOs. Before my departure, I was expecting to have around 30 interviews during my field work. However, in my thesis proposal I acknowledged the difficulty of reaching such number based on two issues: the impossibility to access the Chocó Department and the limited answers I received from Colombian's organizations. These worries, turned out to be partially true. Despite the fact that these two issues have considerably limited my data collection, the kindness and availability of many interviewed stakeholders helped me to obtain satisfying material and contacts to other important actors for my research. Indeed, before my departure I was not expecting to have 10 interviews from local communities since I couldn't access the Chocó. However, thanks to the network I created in Bogotà, I managed to obtain interviews with very important actors from local communities such as interviewing at least one Guardian of the Atrato from the seven organizations responsible for the guardianship. Moreover, I managed to get in contact with a member of the Colombian Constitutional Court whom directly worked in the redaction of the sentence T-622/16 on the Atrato case. These have been contacts that I didn't expected to gain before my departure in Colombia and which played a very important role in my data collection. In conclusion, despite the fact that the number of interviews conduced have been lower than what I hoped before my departure, the relevance of the stakeholders interviewed and the quality of the material collected was higher than my expectations.

The interviews have been conducted in two ways: on the phone (mostly with local communities) and in person. All interviews have been conducted in Spanish and they have been tailor-made to the stakeholders I was interviewing, based in his/her field of work and contribution to the Atrato case. For certain groups of stakeholders, such as local communities, some questions were equal or similar to create comparable data. Otherwise, interviews were semi-structured with open-ended questions. This method has been used in a

way that the respondent could have the possibility to respond flexibly to the questions making the conversation more dynamic. However, a lineup of questions have been always prepared in advance. This allowed me not to get lost in ongoing speeches while simultaneously covering the necessary knowledge that I want to derive from the interview. Moreover, leaving some open spaces to the person interviewed allowed me to acquire new related information I was not directly looking for. Before every interview, I presented myself to the respondent, explaining my background and the aim of my research. Moreover, I always asked whatever the person agreed on using his/her name on my thesis and if I could record the conversation. Unfortunately, some limitations occurred while doing interviews on the phone.

First of all, I couldn't record any of the phone interviews I collected because the settings of my phone didn't allow me to do so. In this case, I was carefully taking notes while on the phone. Secondly, while conducting interviews with local communities, the telephone connection was at the time poor, caused by the remoteness and isolation of the Chocó. It happened multiple times that the connection left for a couple of seconds or got frozen. Moreover, people from the Chocó use proper dialects and talks very fast. It is important to notify that before the beginning of this thesis, I didn't speak Spanish. I learned some basic Spanish before my departure following a two months course where I reached a B2 level CEFR. Therefore, it has been challenging to understand fast dialects with bad telephone connections. However, all the interviewed persons have been very kindly, repeating and talking slower when I requested it. Regarding the interviews I made in person, I could record all of them. Also during in person interviews, I was taking some notes on the main important concepts expressed by the respondent in case some of them were not clear or needed further discussion. In this way, I could highlight and ask questions concerning unclear points afterwards, without interrupting the respondent discourse. After a maximum of two days following an interview, I transcribed the entire conversation in a Word Document.

3.3.3 Literature review

Concerning secondary data, literature and policy reviews from scholars and institutions have been taken into consideration. Many of the documents analyzed in this research have been provided by the stakeholders interviewed. The main papers analyzed focused on environmental justice frameworks, political inclusion or local communities and distribution of

environmental goods. Moreover, official documents from NGOs involved in the case have been also taken into consideration in order to understand their position and how they contributed to the case. Also articles from national and local newspapers have been consulted to find evidence about facts that have succeeded.

3.4 Ethics

Some ethics issues has been taken into consideration during the data collection. Concerning the participants selection for the interviews, no vulnerable groups have been taken into consideration. Thus, all the participants were legal majors (older than 16 years old). Moreover, the interviews have been conducted in Spanish, for avoiding any kind of misunderstanding of the participant on the content of the interview. Before the beginning of any interview, all the respondents had access to my full name and contact details and they got informed about the aim of the research. Moreover, information about confidentiality and data security has also been discussed with every respondent. Every person had a opt-in consent, which means they made the active choice of becoming involved in the research. Moreover, if some participants prefer to report their data anonymously, their name and the name of the organization they work for would not be publicly shared and pseudonyms would be used instead. The data collected during the interviews has been used only for the purposes for which it has been collected and the data will be kept until the end of the writing of my thesis, afterwards it will be destroyed.

During the data collection it has been taken into consideration the external risks that the responded could face in participating in my research. As an example, a respondent, while answering questions regarding the activities of other stakeholders, may interfere in others privacy and indirectly harming a certain person or community. These issues have been always discussed with the respondent, especially in the cases where I interviewed local communities or local organizations and discussing about the various environmental, social and cultural problems affecting them, where I might create discomfort or psychological harm to the participant. In order to prevent this issue, straightforward questions have been avoided,

so that every participant had the opportunity to expand his/her speech in the way that best suits him/her.

3.5 Limitations

As previously explained, most of the data collected by local communities are based on phone calls because of my limited access to the field, which didn't allow me to make any kind of live observation both to the respondents than on the environmental degradation caused by illegal mining activities. This limitation didn't allow me to identify unexpected issues that can emerge while doing *in-situ* research. For example, discovering relevant issues while doing observations allowing me to get new information also when respondents neglect to mention important data. However, in my case this kind of observation hasn't been possible, highly influencing my data collection. Moreover, it is important to mention that some of the information collected during interviews can be bias by the potential impact I could generate during interviews. Indeed, although at the beginning of every interview I was specifying that I was working autonomously for my university and that the data collected will be reported anonymously, many stakeholders seemed to be highly influenced by my presence and did not dare to extend certain topics with personal opinions. This happened mostly with members of local communities that has been interviewed on the phone. I think that interviewing people on the phone negatively affected the establishment of an intimate exchange of knowledge with the respondents. Moreover, it is important to remember that local communities have been historically victims of persecutions and killings and most of them never left the Department. I think this affected the way they interacted with me since discussing on the phone with a person can result impersonal and most people of the region have never been in contact with someone from another country. These ideas have been confirmed by the few interviews I made in person with members of local organizations from the Chocó. In this case, respondents opened up more easily with me. I think the fact of seeing me in person gave them more confidence and created a more pleasant relationship of opinions and knowledge sharing. During in person interviews it was very clear how interested the respondents were in talking to a person of a different nationality, making interviews lasting on average more than one 1 hour, in contrast with the 30 minutes interviews made on the phone.

Another important limitation of this study is given by the large cultural difference between me and the respondents. One of the most challenging missions during my data collection was to

avoid bringing own experience and cultural behaviours while creating and asking questions and when reviewing data. This could cause bias both in the data collection as well as during the analysis of data. These are unfortunately “uncontrolled” issues that occur while making research with different cultures. These issues could have been limited by immersing myself in their contexts, behaviours and traditions, which in my case haven’t been possible because of the impossibility to enter the Chocó Department.

Chapter 4: The historical development of environmental injustices in the Chocó Department

The reasons causing environmental injustices in the Chocó are multiple and linked between each other. The limited presence of state action in the Department has caused the growth of illegal gold mining activities creating catastrophic environmental problems such as water pollution and deforestation. Moreover, the presence of armed groups in the Department and their violent activities caused further social issues to local communities. In this chapter, I will analyze how these factors historically affected political participation and cultural recognition of local communities, influencing environmental justice.

4.1 Geography and demography of the Chocó Department

The Chocó is located in the north-west of Colombia. This Department which is equivalent to 4.07% of the total extension of Colombia and it is mainly covered by coastal-plain forest, rich in biodiversity and poorly populated (Myers, 1988). The Chocó Department is part of the *Chocó biogeográfico*, which is a tropical region located from the eastern region of Panama, passing through the Pacific coast of Colombia and the coast of Ecuador, to the northwestern corner Peru. This area of an extension of 187.400 km^2 containing most that the 60% of the biodiversity of the planet (Rodríguez et al., 2005). The Atrato which is the most abundant river of Colombia, flows through this region connecting the Western Cordillera to the Gulf of Darién, for a total length of 400 meters (Fig. 2). Because of its strategic position and for its easy navigation along 250 meters from the Caribbean Sea close to Panama to Quito, the Atrato has become a central connection for drug trade in the country (Howald, 2017). Consequently, the Department is a historical site of conflicts due to drug trade and the presence of organized armed groups, leading to extreme poverty among local communities.

The Chocó is divided into 30 municipalities distributed in 5 regions: Atrato, San Juan, Pacífico Norte, Baudó and Darién. In these municipalities live different ethnic groups with distinct beliefs and practices. In fact, 87% of the communities living in the Chocó are Afro-descendent, 10% are indigenous communities and 3% of “mestizos”, which are a mixed

race between the previous two (Macpherson and Ospina, 2015).

Figure 2. The Chocó Department of Colombia and the Atrato river. On the left, a map of Colombia with the Chocó Department limited in red. On the right, the Atrato river is represented by the red line. (Source: Google Maps).

Despite the cultural and natural diversity in the Chocó, this Department has a history of state abandonment, corruption, marginalisation and poverty. About 80% of the population of Chocó has insufficient access to housing, public services and education and more than 30% live in extreme poverty (Colombian Constitutional Court, 2016). Very often while conducting interviews for this research, most of the people from the communities and governmental entities were defining the situation in the Chocó “dramatic” and talking about a serious humanitarian and environmental crisis in the Department (interview, Ministry of Environment and Sustainable Development). The multiple reasons affecting the current crisis in the Chocó are eradicated in Colombia's history varying from political, economic and racial discrimination problems. In the next section the historical reasons that brought to the development of environmental racism and inequalities in the Chocó would be analyzed in order to understand the current situation in the Department.

4.2 The expansion of mining activities and armed groups in the Chocó

Colombia is one of the most ethnically and linguistically diverse countries in the world. Colombia's rich cultural heritage reflects the influence of indigenous peoples which has been inhabitants of the country since 12,000 BCE (Maya, 2009). Before the arrival of the Spanish, the first indigenous communities were living spread all around the country subsisting with little agriculture and commerce. Around 1499 the Spanish landed in the Colombian territory for the first time remaining impressed by the cultural richness of the indigenous communities and by their knowledge of the territory. Accordingly, the coasts of Colombia became the first settlements of the Spanish, but they quickly spread throughout the country. The Spanish began to exploit the indigenous knowledge on farming, mining, and metalcraft and their workforce - drastically decreasing the indigenous population in the territory (Maya, 2009). With the arrival of Africans slaves, the population in the colonies began to diversify and in some areas as in the Chocó, they exceeded the number of indigenous people. Indeed, Africans communities were brought by the Spanish from Africa in the process of colonization to take advantage of their workforce and to launch an economy of mining in the Chocó region (Villa, 2017).

Nowadays, 96.7% of the mining spots in the Department are for gold exploitation, where 45.9% of them are illegal (Delfado-Duque, 2017). According to the US newspaper El Nuevo Herald, illegal mining generates approximately $2.4 billion a year, which is three times more than the drug industry in Colombia (Wyss and Gurney, 2018). These mining activities are mostly owned by international corporations, mostly from the USA and China (Tierra Digna, 2016). However, also many afro-colombians participate to these activities by renting their territories to big corporations contributing to these extractive activities. The reasons pushing communities to rent their territories are mostly economic; in an isolated and extremely poor Department, renting lands is one of the few ways to generate incomes (Tierra Digna, 2016; interview, RED[1]). However, these activities drawed the Department into large environmental and social issues. More than 10 million hectares of forest have been sat on the ground to create the space to the mines (Delfado-Duque, 2017). Moreover, in order to extract gold from the soil, approximately 180 tons of mercury and cyanide are dumped every year in the water of the Atrato (Fig. 3) (Villa, 2017). Studies show that miners in the Chocó region are exposed

[1] RED Departamental de Mujeres Chocoanas is an organization building equity relations between men and women and contributing to sustainable social development in the Chocó.

to mercury levels 50 times higher than acceptable levels set by the World Health Organization (WHO) (Rojas and Montes, 2008). These substances are extremely harmful for the species inhabiting in the river and for the local communities living next to the Atrato since they fish and drink the water from the river. As a result, there are more and more cases of intoxication and deaths of children in the Atrato besin. The contamination of the river also affects the development of local agriculture and cultural practices producing damages in the communities' social, physical and cultural development (Braun, 2009). Many families entirely depend on the water of the Atrato for their survival and they consider that "the river is everything for the communities, the river is life itself" (interview, Mesa Social Y Ambiental El Carmen De Atrato[2]). Moreover, indigenous communities consider that the introduction of mining activities have disrupted the harmony between man and nature introducing occidental culture in their practices (interview, Mesa de Diálogo y Concertación de los Pueblos Indígenas del Chocó[3]).

[2] The Mesa Social Y Ambiental El Carmen De Atrato is one of the seven organisations of guardians of the Atrato river.

[3] The Mesa de Diálogo y Concertación de los Pueblos Indígenas del Chocó is an organisation politically representing indigenous communities of the Chocó. It is also one of the seven organisations of guardians of the Atrato river.

Figure 3. Destruction and pollution of the Atrato River. On top, a photo of the Atrato river in zones where there aren't mining activities. Down, a photo of the banks of the Atrato polluted and destroyed by mining activities. (Source: Colombian Constitutional Court, 2016).

Indigenous and afro-descendent communities are also victims of extreme violence imposed by the armed groups present in the region. Indeed, the establishment of the Spanish rule in South America with their human exploitation and commercial monopoly, gradually lead to an independent revolutionary movement coming from the colonies (Dix, 1980). After years of conflict, in 1819 the independence of the Republic of Colombia has been proclaimed. Despite this act of independence, Colombia was still far from finding political stability. After the declaration, two predominant political groups were formed: the conservatives (with centralist aspirations) and the liberals (who favored federalism), whose rivalry led to numerous civil wars and insurrections. In order to stop the conflicts between the two parties, in 1957 it was signed an agreement called Frente Nacional (National Front), in which each party declared that they would peacefully take over the presidency every four years. However, this agreement was only a new trigger of conflicts since the power remained in the hands of the leaders of the two political parties that created the previous conflicts. In addition, the

agreement prohibited any political activity extraneous to the two governing parties, which forced the opposition to operate clandestinely and outside of the political system, laying the foundations for the birth of guerrilla movements in the most remote areas in Colombia such as the Chocó (Dix, 1980).

Although the Frente Nacional had wounded the rivalries between conservatives and liberals, the new conflicts made their way between rich landowners from the rural areas and the natives of the poorest class who had fallen into extreme poverty because of the numerous conflicts (Dudley, 2004). This paved the way to the birth of armed groups that were fighting for agrarian reform and the redistribution of wealth such as the FARC (The Revolutionary Armed Forces of Colombia) which has been the biggest guerrilla group in Colombia until 2016. The rich landowners afraid of losing their territories, founded the AUC (Autodefensas Unidas de Colombia), one of the biggest paramilitary groups in Colombia to defend their lands from the interests of the FARC and other guerrillas groups. Unfortunately, both guerrilla and paramilitary groups have developed over time different values and ideologies from their initial ones, becoming the actors of terrorist attacks, persecutions and countless murders of civilians (Dudley, 2004). In the meantime, numerous drug cartels start growing all around the country making Colombia the biggest cocaine producer in the world. These drugs cartels acquired political relevance by financing public works and public housing activities and they managed to establish officials in public offices who defend their interests. The armed groups and drug cartels often operated in alliance to curb and manipulate the Colombian government's action through kidnappings and killing of political leaders (Thoumi, 2002). However, in 2016 a peace process has been brought to end between the Colombian government of President Juan Manuel Santos and the FARC. This peace agreement is supposed to end the Colombian conflict with armed groups and the FARC has been recognized as a political party in Colombia (Gruner, 2017). The Peace Agreement recognized ethnic communities as the main victims of the long conflict between the government and the FARC and recognized a set of rights to defend communities, which have designed suitably to meet their needs and cosmovisions (Moreno, 2018).

The armed groups that nowadays have the biggest control in the Chocó are the ELN (National Liberation Army) and the Clan del Golfo (the Gulf's Clan) (interview, COCOMACIA[4]). These groups set limitations and regulate the hunting and fishing activities of the communities. Moreover, they are also responsible for many killings of social leaders in the rural areas. Social leaders are persons elected by a community to coordinate collective activities to protect and improve their lives. Some leaders are involved in land restitution cases, trying to return the land to those who had been taken away during conflicts and trying to protect the environment from extractive business and megaprojects. Armed groups usually try to take control over communities by manipulating social leaders with death threats or kidnappings in order to protect their businesses and interests (interview, CINEP[5]). However, these violent activities target also communities inhabitants which are very often victims of kidnapping, persecutions and killings by the armed forces (Braun, 2009). Because of these problems, thousands of people are forced to migrate to different Colombian departments every year looking for safer living conditions (Internal Displacement Monitoring Centre, 2017).

In conclusion, the historical exploitation of natural resources and the lack of cultural recognition of local communities starting from the time of colonialism until today, have caused the creation of extreme environmental injustices. Local communities in the Chocó have always been victims of social injustices and exposed to great environmental risks. Moreover, the lack of intervention from the Colombian government left these communities completed abandoned in front of these environmental risks. These factors show how environmental injustices are rooted in the historical context of communities living in the Chocó. In the next section the reasons why these environmental injustices persist will be explained, analysing the historical evolution of the political participation of local communities as well as their cultural and social recognition.

4.3 Local communities' political participation and cultural recognition

The social and environmental crises present in the Chocó are the result of an historical lack of cultural and social recognition of communities' livelihoods. The communities living in the

[4] The Consejo Comunitario Mayor de la Asociación Campesina Integral del Atrato (COCOMACIA) is a community council representing communities living in the Atrato basin. It is also one of the seven organisations of guardians of the Atrato river.

[5] The Centro de Investigación y Educación Popular (CINEP) is a non-profit foundation promoting equitable and sustainable human development.

Department have a background of exploitation without sufficient recognition of their culture, identity and behaviour from armed groups as well as governmental entities. This lack of recognition is not only based on social and cultural level, but it is also rooted in the limited political participation of the communities (interview, COCOMOPOCA[6]). As a matter of fact, communities have a very little political participation on issues concerning their territories and needs which creates enormous problems for them to improve their living conditions. However, the Colombian's legislation evolved throughout the years becoming on paper one of the most advanced of Latin America concerning ethnic communities rights. In 1991, the new Constitution of Colombia recognized the country as a multiethnic and multicultural nation (Wouters, 2001). The new Constitution also introduced the "Green Constitution" or "Ecological Constitution", which is the first Political Charter in Colombia that evidences a clear concern for protecting the environment and guaranteeing a development model sustainable in the country. This new Constitution 1991, through more than 30 articles, obliges the Colombian State and society to protect the environment and biodiversity, in order to prevent and control environmental deterioration (Valencia Hernandez, 2018). Always in 1991, Colombia ratified the ILO Convention 169 that recognized to indigenous communities the right to be consulted in policy-making processes concerning activities affecting their livelihood and territories (Baker and McLelland, 2003). In 2013 the Constitutional Court through the judgment T-955/13, recognized afro-descendent communities as part of the social and ethnic diversity of the Colombian nation and therefore they acquired the same legal status that any other ethnic community in the country (Macpherson and Ospina, 2015).

However, the historical presence of violence and armed groups in the Chocó put a brake to the implementation of these regulations making the Colombian government unable to comply with laws (Wouters, 2001). The state weakness has provided armed groups with the political opportunity to take control over areas where there is a strong lack of state presence such as the Chocó (McDougall, 2009). Multiple scholars, journalists and politicians denounced the disinterest of the Colombian government on matters concerning safety and environmental protection of the Chocó because of the conflicts with guerillas and paramilitary forces. This caused a perpetual delay in the implementation of laws, leaving local communities without governamental protection and without the ability to participate in political decisions concerning the protection of their fundamental rights. Not only in the Chocó, but in many

[6] The Consejo Comunitario Mayor de la Organización Popular y Campesina del Alto Atrato (COCOMOPOCA) is one of the seven organizations of guardians of the Atrato river

mining conflicts it has been proven that the participatory procedures to take into account local views and concerns have been insufficient (Suryanata and Umemoto, 2005). Policy-making processes don't truly take into consideration ethnic communities opinions forcing them to engage procedural disputes to defend their rights (Baker and McLelland, 2003). Moreover, anti-mining groups often argue that mining policies often don't recognize the cultural dependence of local communities on natural entities and ignore the matters expressed during participatory stages. Consequently, even if some participatory mechanisms involve local communities, the final outcome of policy-making processes often fail to include an environmental justice discourse in current policy-making mechanisms (Walter and Martinez-Alier, 2010). This problem in the implementation of the laws made many actors involved in the Atrato case state that "Colombia is not a democratic country" (interview, Ospina and la Mesa de Diálogo y Concertación de los Pueblos Indígenas del Chocó). The ineffective implementation of laws protecting local communities causes many problems on the political participation of local communities on issues concerning their rights and territories. However, truthful political participation of local communities is one of the main pillars of environmental justice.

The argument about the lack of implementation of governmental laws protecting ethnic communities came out in almost all the interviews that have been conducted for this research from all different types of actors. A recurring sentence was: "In Colombia the laws to protect communities and nature exist, the problem is that no one applies them" (Interview, Mesa de Diálogo y Concertación de los Pueblos Indígenas del Chocó). Local communities are extremely dissatisfied of governmental actions and they consider that "environmental justice doesn't exist in the Chocó" (interview, RED).

However, these problems are well known to governmental entities which seem to be unable – or uninterested - to solve the current social and environmental crisis. While conducting an interview with a member of the Colombian Ministry of the Environment and Sustainable Development (MADS) responsible over the Atrato case, the reasons for this lack of state intervention in the Chocó have been asked. It has been pointed out that currently exist policies, projects and activities to protect local communities and the environment in the Department. The problems in the implementation are linked to the isolated geographic position of the Chocó from the rest of the country, it's poor communication and access, and

the presence of armed groups who take control over the territory. However, local communities argue that these are still issues that should be regulated and solved by the government through projects of infrastructure improvements and national security (interview, COCOMOPOCA).

In conclusion, from the examples reported it is possible to notice how the limited intervention of the Colombian government affected the cultural recognition and political participation of local communities. Although the government made many political efforts to culturally recognize and protect communities from armed groups, state's actions have been too modest to deal with the magnitude of social and environmental problems in the Chocó. In this way local communities have been abandoned by the state and subdued by armed groups without having the legal means to protect themselves and the environment. This caused the development of intense environmental justices covering the cultural recognition, political participation and access to clean environmental resources of local communities.

4.4 The effect of historical persecutions on local communities' behaviour

While the Colombian government has trouble implementing laws, citizens do not tend to respect them. During an interview with Jairo Felipe Clavijo Ospina, anthropologist and ex member of the Colombian Constitutional Court, I raised the question as to why Colombians generally do not respect laws. Ospina gave an explanation of this phenomenon based on the historical and social roots of Colombian's laws. Indeed, during the process of colonisation, the Spanish Rule has been introduced in Colombian's colonies. This means that the laws and regulations that were created and adopted in Spain, would have been applied also in the colonies in a process of unification. However, this political decision didn't take into consideration the cultural, geographic, economic and social differences between Spain and Colombia. People of the colonies didn't have the resources and power to create an opposition to this legal decision and they had to accept the Spanish rule in Colombia's territory. However, communities didn't found in the Spanish law their cultural identity and started to unrespect it. This drew a historical line of lack of respect of laws which eradicated in colombian's system and mentality (interview, Ospina). Such a phenomenon has been studied by anthropologists in many colonial cases, defining this systematic non-respect for laws as "anomie" (Samuel-Mbaekwe, 1986).

Another issue has been raised while I was conducting an interview with Josephina Klinger, director of Mano Cambiada, an agency promoting ecotourism as a tool of moral support to develop local communities identities in the Chocó. Klinger has been raised in the Chocó and she is a member of Afro-Colombians communities of the Department. Through the years she thought that the current biggest problem in the Department was due to a lack of material facilities (roads, houses, electricity). Although these are strong limiting factors, she later identified that the biggest problem in the Department was based on the cultural impact from larger cities. Local communities of the Chocó would like to have the accessibility to imposing infrastructures and mobility systems like in big cities such as Cali and Medellín. However, Klinger thinks that aspiring to facilities present in neighbours cities would be self-defeating because it would limit the process of self-identification and innovation in the Department which has to be based on the uniqueness and particularity of the Chocó. Thus, Klinger thinks that the poverty in the Chocó isn't solely based on the lack of economic resources, but also on the lack of self-confidence and on the historical fear generated by social and cultural discrimination (Interview, Josephina Klinger).

Similar visions have been shared also from other members of local communities interviewed during this research and I do believe it is an important example of how historical violence have shaped the behaviour of these communities. The presence of armed groups undoubtedly have impacted the security and self-confidence of these communities, shaping the way they relate to laws and on the way they culturally behave. I think these factors are still very little discussed in a large range of studies conducted on local communities of the Chocó. However, these are emblematic features which are necessary to be analyzed for understanding the cultural and social behaviour of these communities.

4.5 Conclusion

In conclusion, the reasons generating environmental injustices in the Chocó are numerous and strongly linked between each other. The historical human and natural exploitation in the Department has stimulated the growth of mining activities and shaped the behaviour of local communities. The geographic remote area of the Department as well as the political instability of the country have favorized the settlement of armed groups. Moreover, the strong

absence of state control in the region didn't bring any help to the local communities to redeem their rights and their culture. These factors have largely limited the cultural recognition and the political participation of communities, as well as the fair distribution of environmental resources. These are key features of environmental justice which have been neglected by many different stakeholders for centuries. However, despite the dramatic conditions that involve these communities, they succeeded after years of attempts to make their voices heard and claim their rights. In the next chapter, the steps undertaken by these communities will be analyzed showing that the collaboration between different actors and perseverance have been key features to reach environmental justice.

Chapter 5: Local communities' social and legal mobilization to pursue environmental justice in the Chocó Department

Local communities living in the Chocó have been historically exposed to environmental and social issues given by the presence of armed groups in the region and the limited action of governmental authorities in protecting their fundamental rights. However, through the years local communities developed different strategies to let their voices heard and pursue environmental justice. In this chapter, I will evaluate how the claims of social and cultural recognition as well as political participation of Afro-Colombians and indigenous communities evolved through time from the era of colonialism to the Constitutional judgment T-622 of 2016. An important place will be given to the role played by determination and perseverance of local communities to pursue the different dimensions of environmental justice - cultural recognition, political participation and fair distribution of environmental resources and risks - and to the collaboration of the latter with other stakeholders. An analysis of the objectives and strategies adopted by other actors, such as Universities, humanitarian NGOs and governmental entities, will also be taken into consideration to understand how these actors helped in defending communities' rights. Finally, I will analyze the negotiation process that took place between local communities and governmental institutions to activate the Colombian Constitutional Court on the Atrato case with the sentence T-622 of 2016.

5.1 Afro-Colombian and indigenous communities actions to gain social and political "visibility" in Colombia

Before 1990, very limited political and social consideration was given to Afro-Colombians communities in Colombia. At that time, the social mobilization of Afro-Colombians wasn't much developed and few laws existed to protect and recognize these communities. Hence, many academics and activists complained that Afro-Colombians were "invisible" in the eyes of the state (Wade, 2012). Even academic disciplines, such as sociology, history and anthropology were considered not taking into account Afro-Colombians, and they preferred to

focus on indigenous and poor communities. The reasons for this neglect are mainly linked to the historical context in which Africans' people were moved to Colombia. Indeed, Africans were brought to the rural areas of Colombia to exploit their workforce in mining industries. Although slavery was abolished in 1851, the Pacific coastal region remained a poor, underdeveloped area, with a predominance of Afro-Colombians communities (Sánchez & Bryan, 2003). This "racialized" geography helps in understanding the situation of Afro-Colombians and their process of political mobilization. Indeed, very often regions that are associated with black and indigenous communities, are marginalized in socio-economic development and political participation (Escobar, 1996). However, the social status of these particular marginalized regions often opens ways for political mobilization and racial-ethnic identification (Wade, 2012). This has been the case for Afro-Colombians and indigenous people in the Chocó, which started social movements to defend their rights and lands.

The first constitutional step made to recognize ethnic communities in Colombia was taken in 1991 when a constitutional reform was created to officially recognize multiculturalism (Van Cott, 2000; Sieder, 2002). This reform was brought about by the desire of the Colombian government to appear in line with the international criteria of modernity, given by the growing power of ethnic groups movements worldwide. Moreover, it was also an attempt for the Colombian state to address in the reform issues of violence created by guerrilla's groups (Wade, 2012). Hence, the new Constitution declared in Article 7 that it would "recognize and protect the ethnic and cultural diversity of the nation" (Colombian Constitutional Court, 1991). Following this reform, considerable progress was made in 1993, with the Law 70 or "Law of the Black Communities", which recognized Afro-Colombians as a distinct ethnic group and provided for the first time a legal foundation for the defense of their territorial rights. Indeed, with this law the Colombian government expressed the interest to invest on the economic development and on the protection of Afro-colombians' cultural identity and civil rights. The Community Councils, where Afro-colombians were exercising their rights, were recognized by law as the maximal authority of internal administration for the defense of their territories. Therefore, in the Chocó Department, 120 Community Councils raised representing all the different communities living in the region (Ramos Páez, 2010).

At the same time, in the Pacific coast, an increasing number of local organizations emerged, initiated by the Catholic Church to help peasant farmers, often Afro-colombians,

such as the Integral Peasant Association of the Atrato River, (ACIA). Most of these organization allied also with local indigenous groups with whom they shared similar issues and objectives (Wade, 2012). However, it is important to notice that indigenous communities had a different legal status compared to Afro-colombians in the Pacific region. Indeed, indigenous have been considered belonging to Colombia's territory before the arrival of Spanish people. Therefore, they have seen their culture and identity recognize much earlier that Afro-Colombians which were exported later as slaves (Findji, 2018). Hence, indigenous communities were claiming for a large autonomy in the management of their territories and better negotiation processes with the state. In contrast, the history of Afro-Colombians people, marked by the oppression and indolence of the Colombian State, were demanding for the recognition of their rights as citizens, related both to the satisfaction of their basic needs, as to the respect and equality of their racial condition (Ramos Páez, 2010). Despite these differences, all local communities were both concerned in the fight against illegal gold mining, the presence of armed groups and the limited action of the Colombian government (interview, Mesa de Diálogo y Concertación de los Pueblos Indígenas del Chocó). Local communities consider that these issues tied up the different ethnicities in the Department making them working together to protect their rights, territories and health. Moreover, Afro-Colombians and indigenous communities have cohabited the same region for hundreds of years making them aware and respectful of each other identity, needs and believes (interview, ASCOBA).

Hence, humanitarian organisations continued to arise in the Chocó to defend the rights of local communities and protect their territories. These organizations started also to create pacific protests to ask armed groups to respect their fundamental rights. Indeed, as paramilitary groups between 1996 and 2005 installed three control points on the Atrato that restricted the free movement of people, food, commerce and medicines, from Quibdó (capital of the Chocó) to Turbo (town where the Atrato flows into the Carrebean sea) (Fernanda Gómez, 2017; interview Tierra Digna). The objective of the paramilitary was to take control and possession of the lands of local communities by blocking the main artery of the Chocó: Atrato River. In those years the boats stopped arriving in Quibdó and the communication channels between the Chocó and the rest of the country through the Atrato were lost (Fernanda Gómez, 2017; interview, ASCOBA). Local communities in this period of extreme restrictions on the use of water of the Atrato, were used to say that "el río se cerró" which means "the river closed" (Quiceno Toro, 2018). In response to this action, in 2003 ethnic

territorial organizations, the Diocese of Quibdó, the Ombudsman's Office and Community Councils organized a large social mobilization to bring the river back to life. Between November 16th and 20th of 2003, dozens of boats driven by local communities crossed the Atrato from Quibdó to Turbo (more than 500 km). Through this action, local communities were demanding to set the Atrato free since it didn't belong to anyone. This social mobilization took the name of "Atriatiando" (Fig. 4), and although the situation in the territory did not change radically, many civilians returned to their territories understanding that they could organize strong actions to defend their rights and protecting the river (Fernanda Gómez, 2017; Interview, ASCOBA, Tierra Digna). These kind of pacific protests set the ground to the creation of legal actions from local communities to tackle the issue of environmental injustices and stimulate the intervention of the Colombian government.

Figure 4. The Atratiando movement in the Chocó Department. (Source: https://www.pbase.com/stevecagan/atratiando),

Moreover, because of the limited action of governmental entities to prevent illegal mining, local communities created environmental lobbying against illegal gold mining in the

Department. Although lobbying activities were limited by the presence of armed groups, many local organizations managed to create pacific ways to denounce the environmental crisis they were exposed and tried to revendicate environmental justice. In a study conducted in the Chocó by Delfado-Duque (2017), it has been examined which were the main requests of local communities in order to limit mining activities. The study shows that communities were asking for spaces of social participation for the conservation of the environment, areas of awareness against pollution of water sources, strict monitoring of procedures illegal miners, popular consultations in favor of protection of the ecosystem and (limited) impact on the agenda setting (Delfado-Duque, 2017). These requests are basic features of an environmental justice discourse since communities were asking for a larger participation into decision-making processes concerning mining activities in their territories and more knowledge on the environmental and health risks produced by these activities. In 2011, local communities asked the National Mining Agency to create an action plan to stop illegal mining activities in the Chocó. Local communities asked for being involved in this action plan since they are the actors who are the most affected by environmental injustices created by illegal mining and because they have ancestral knowledge about sustainable mining practices (interview, COCOMOPOCA). However, the government responded to this request with the creation of an intergovernmental panel called the Interinstitutional Mining Working Group (Mesa Minera Interinstitucional) which was formed in 2014 to stop illegal gold mining. This panel worked autonomously, with very little consideration of local communities knowledge and initiatives. The panel was dismissed after one year by the National Mining Agency because of the limited impact it had on varieting illegal mining, and local communities complained that the intergovernmental panel did not meet its duties and was ineffective in protecting local communities (Kauffman and Martin, 2017b; interview, COCOMOPOCA). Local communities think that the failure of the intergovernmental panel is partially based on the fact that the panel didn’t work with people of the communities that have large knowledge on mining activities in the region (interview, FISCH). This shows how local communities are convinced that cooperation among different actors is essential to achieve concrete results on complex issues as the one of illegal minings. In the next section it will be presented how positive results have been attained when the knowledge of local communities and governmental authorities have been combined.

5.1.2 The Ombudsman Resolution 064

After years of struggle and frustration for local communities to receive adequate attention from the State, a fundamental role for the protection of communities' rights has been played by the Ombudsman's Office of Colombia (Defensoría del Pueblo). The Ombudsman's Office is a constitutional and autonomous body responsible for overseeing the protection of civil and human rights in Colombia (National Constitution of Colombia, 1991). In 2014, the Ombudsman's Office of Colombia published the Ombudsman Resolution 064 called *"Humanitarian crisis in Chocó: diagnosis, assessment and actions of the Ombudsman's Office"*. In this Resolution the Ombudsman's Office denounced the complete abandonment of the Colombian State in terms of basic infrastructure in the region, and inadequate sewerage and waste disposal systems. Moreover, it showed that for several years Community Councils and their representatives have warned the State about the urgency of protecting and guaranteeing the dignified life of the ethnic communities inhabiting the Atrato basin, without any concrete actions from the part of the Colombian government. The Resolution also added that currently the problems reported have deepened to the point of setting an unprecedented crisis, caused by the contamination of water by toxic substances due to illegal mining, erosion, accumulation of garbage, intensive sedimentation, dumping of solid waste and liquids to the river, deforestation and loss of species; all this, in the middle of a historical scenario of armed conflict (Defensoría del Pueblo, 2014). In addition, the Ombudsman's Office made a detailed analysis over the main problems encountered in guaranteeing a wide range of fundamental rights and living conditions in the Chocó, and made a series of urgent recommendations to different authorities of the national government to take concrete measures. For example, it suggests to the Ministry of Defense to have higher presence of public forces in the Department to protect local communities from armed groups and to assure the implementation of the set of regulations aiming at reinforcing local communities fundamental rights. It also urges the Ministry of Health and Social Protection to implement tailor-made plans for guaranteeing adequate sanitary conditions for local communities. More recommendations have been also created for the Ministry of Interior, the National Attorney General's Office, the Ministry of Finance and Public Credit, and many others (Defensoría del Pueblo, 2014).

In order to collect data, the members of the Ombudsman's Office worked close to local communities. Many interviews were conducted with members of the Community Councils to realize what are the main sources of the humanitarian and environmental crisis. Local communities also helped members of the Ombudsman's Office to find evidence about the current crises sharing reports, photos and witnesses (interview, Defensoría del Pueblo). The members of the Ombudsman's Office that were in charge of the Resolution 064 were highly satisfied with the collaboration they created with local communities, understanding the important role local communities play in providing information and suggestions on environmental issues (interview, Defensoría del Pueblo). For this reason, the opinions and the possible solutions to tackle the social and environmental crisis expressed by local communities have been integrated in the final recommendations section made by the Ombudsman's Office in the final Resolution 064 (interview, Defensoría del Pueblo).

During interviews I conducted with members of different Community Councils of the Chocó, they expressed their satisfaction on the collaborations made with the Ombudsman's Office during the creation of the Resolution 064. Indeed, local communities were happy that for the first time issues related to their living conditions were taken into consideration at the national level and receiving adequate political attention. This gave these communities the ability to directly participate in the creation of a text aimed at the defence of their rights and the one of the ecosystems they depend on. Moreover, local communities consider this episode as one of the first times the got directly recognized as important actors for creating plans in the protection of their rights and directly influencing a legal Resolution (interview, FISCH, ASCOBA). For these reasons, members of different Community Councils wrote an official letter of thanks to the Ombudsman's Office where they expressed their gratitude for taking into consideration their opinions and working so hard to protect their rights (interview, Defensoría del Pueblo & FISCH). This collaboration built the foundation for the development of the cultural recognition and political participation of local communities, leading the way to environmental justice.

5.2 The development of the action for protection in the defense of local communities' rights and the Atrato river

Despite the multiples improvements achieved both by social mobilizations and by governmental entities from colonialism to the beginning of the 21st century, environmental and social injustices were still affecting local communities in the Chocó. In 2011, many different Community Councils of the Chocó created the Inter-ethnic Solidarity Forum of the Chocó (FISCH), which is an information platform where different actors can share and work together over the issues affecting the Department (Interview, FISCH). For the first time, members of Community Councils and local organizations of the Chocó started sharing and creating solid knowledge and evidence on the environmental injustices affecting their territories.

In 2013, members of the FISCH decided to bring their action a step forward and start a legal action to protect their livelihood. In this year, members of the FISCH referred to the help of the Center of Studies for Social Justice 'Tierra Digna'. Tierra Digna is an organization dedicated to the defense of the territory, life and culture of marginalized communities in Colombia, concentrating its efforts in the realization of an integral accompaniment to the communities, through legal and investigative procedures which ensures the protection and full realization of their rights (interview, Tierra Digna). Therefore, members of the FISCH with the legal help of Tierra Digna, started to think about the possible ways to protect the communities living close to the Atrato. After many sections of reflection and discussion, members of the FISCH and Tierra Digna decided to gather evidence on the environmental injustices present in the Chocó and start an 'action for protection' (acción de tutela) to defend their rights and environment. An action for protection is a mechanism that aims to protect fundamental constitutional rights, even those that are not enshrined in the constitution, when these are violated or threatened by the action or omission of any public authority (Constitución política de Colombia). In the case of the Atrato, the action for protection has been co-created and signed by different organizations and Community Councils to legally claim for the protection of their fundamental rights. The action of protection was signed by the Inter-ethnic Solidarity Forum of the Chocó (FISCH) and the Major Community Councils of the Atrato Basin (Community Council of the Popular and Peasant Organization of the Alto Atrato - COCOMOPOCA, Community Council Mayor of the Peasant Association Integral del Atrato - COCOMACIA and the Association of Community Councils of the low Atrato - ASCOBA), with

the support and representation of the Center of Studies for Social Justice 'Tierra Digna' (Colombian Constitutional Court, 2016 & Tierra Digna, 2016).

However, In order to collect data on the environmental injustices in the Chocó, FISCH asked for the help of many other actors that were making research on the Atrato case such as Universities (The Diego Luis Cordoba Technological University of Chocó, University of Antioquia, University of Los Andes, etc.) and humanitarian and environmental organizations (WWF Colombia, the Pacific Environmental Research Institute (IIAP), Alexander von Humboldt Biological Resources Research Institute, etc.) (interview, FISCH & Tierra Digna). Hence, local organizations, Community Councils, NGOs and Universities worked together for two years in a collective process where everyone contributed to the debate bringing different information, skills and help (interview, Tierra Digna).

In the action for protection communities denounced the lack of state presence on issues related to the protection of fundamental human rights. The action demanded 26 State entities, such as the Ministry of the Environment and Sustainable Development, the Ministry of Mines and Energy, the Ministry of Agriculture and Rural Development, the Ministry of Housing, City and Territory, etc. to guarantee for the fundamental rights of communities settled on the banks of the Atrato, affected by the pollution and degradation of the Atrato river and its surroundings (Tierra Digna, 2016).

The action for protection has been presented for the first time the 27th of January 2015 to the Administrative Tribunal of Cundinamarca, which is the first instance level in the judiciary of the country. However, with the first instance judgment of 11st February 2005, the Court decided not to start a protection process of the river and communities since local communities have first to notify a mechanism of popular action responsible for these issues and not directly the Court. Therefore, the action for protection have been rejected by the Administrative Court (Botello and Manrique, 2017; Colombian Constitutional Court, 2016). However, local communities and Tierra Digna didn't stop at this decision and they opposed to the first instance ruling, stating three arguments against the decision of the court. The first one concerns the ignorance of the violation and threat to the fundamental rights of the communities by the Administrative Court; the second shows irregularities in the judicial process of the action for protection and finally it shows that the activation of other judicial

actions have not been effective in other similar cases (Colombian Constitutional Court, 2016; interview, Tierra Digna).

Based on this opposition the action for protection went through a second instance judgment made by the Council of State. In the judgment of the 21st April 2015, the Council rejected the action for protection for the second time because there was no violation of the alleged collective rights, since the plaintiffs failed to demonstrate the irreparable environmental harm of certain activities polluting the river (Botello and Manrique, 2017). Based on this second rejection, there was no other action that local communities could undertake to get the action for protection approved by the Colombian government. However, the Colombian's legislation foresee a last legal step to take into consideration actions for protection. Indeed, actions for protection are sent to the Internal Chambers of Revision of the Constitutional Court, which have a period of 30 working days to select or exclude the case for an eventual revision. The Sixth Chamber of Revision by order of the 13rd November 2015, ordered the realization of a judicial inspection in Quibdó (Chocó), where Community Councils, local communities and local organizations were interviewed (Colombian Constitutional Court, 2016). This has been a fundamental step for the recognition of local communities' issues since members of the Constitutional Court spent three days in the Department assessing for the first time the real humanitarian and environmental crisis in the Chocó. Moreover, Constitutional Court interviewed Community Council and local organisations to hear their opinions and making them actively participate to the inquiry (Colombian Constitutional Court, 2016; interview, Clavijo Ospina). During an interview with Clavijo Ospina, a member of the Constitutional Court who participated in the inquiry to the Chocó, he explained to me that the Court decided to send some members to the Department because they acknowledged that there was a substantial lack of information on the environmental crisis in the Department. Ospina and the other members of the Court participating to the inquiry remain "shocked" by the environmental degradation caused by illegal mining activities and they decided to involve the highest amount of Community Councils of the Department in order to have a large vision of the problems and of the possible solutions (interview, Clavijo Ospina).

Finally, based on the outcomes of the interviews and on the inspections made in the Department, the Colombian Constitutional Court decided to respond favorably to the request of action for protection from local communities. Thanks to the inquiry made in the Chocó,

Clavijo Ospina and other members of the Court realized the serious lack of state action in the protection of both the environment and the communities. Moreover, the Court decided to tackle the environmental injustices faced in the Chocó also because of the important research and considerations that have been collected by the Colombian Ombudsman's Office with the Resolution 064 (interview, Tierra Digna; Ombudsman's Office; Clavijo Ospina).

5.3 Conclusion

In this chapter it has been analyzed which have been the processes that brought the Colombian Constitutional Court to take action over environmental injustices in the Chocó. The analysis took into consideration the historical events contributing to the development of fundamental human rights for Afro-Colombians in the Department and which have been the roles and strategies played by different actors. Afro-Colombians through the years have seen many improvements concerning their legal status and switched their claims from being recognized as ethnic communities to have effective political participation and cultural recognition. Therefore, local communities started to socially mobilized creating local organizations and collaborating with many different stakeholders such as NGOs, Universities and governmental entities to gather evidence about environmental and social issues. So, these collaborations have been crucial in terms of environmental justice because they allowed to increase the cultural recognition and the political participation of local communities.

Also governmental entities such as the Colombian Ombudsman's Office took an important role in defending local communities providing evidence and recommendations to other governmental entities. However, other governmental entities such as the ones responsible for the first and second instance judgment on the action for the protection of the Atarto case put a break to the process of recognition of local communities. Nevertheless, this didn’t stop local communities from receiving the attention of the Colombian Constitutional Court which took action creating a historical sentence for the cultural and social recognition of local communities. The different steps undertaken by local communities despite the numerous external adverse factors, shows how determination and perseverance have been key features in the process of creation of the action for protection and the persecution of environmental justice. Moreover, an important role has also been played by the collaborations between different actors that occurred throughout the years which created a

common ground of knowledge and skills sharing. In the following chapter, I will analyze how the Colombian Constitutional Court with the judgment T-622/16, managed to put into practice environmental justice by culturally recognizing local communities and increasing their political participation.

Chapter 6: The development and implementation of RoN norms and biocultural rights through the judgment T-622/16 of the Constitutional Court

After decades of social and legal mobilization from the part of local communities of the Chocó to defend their fundamental human rights, they have finally seen their rights recognized and their environment protected thanks to a historical constitutional judgment. In this chapter I will analyze how the judgment T-622 of 2016 of the Colombian Constitutional Court aims at protecting local communities rights and the ones of the Atrato River. The analysis will take into consideration the theoretical approaches used by the Court to create two fundamental set of norms: the biocultural rights and the application of RoN principles. While RoN norms focus on the protection of nature for its intrinsic value, biocultural rights aim at recognizing the link between nature and local communities' practices. Particular importance will be given to the assignation of biocultural rights since they opened a chin on the way of cultural recognition and political participation of local communities, contributing to the pursuit of environmental justice. Finally, based on interviews collected during my fieldwork, I will present which are the limitations of the judgment T-622/16 and how the different stakeholders involved in the case perceived and put into practice the final decision of the Court.

6.1 The recognition of biocultural rights to local communities and the assignation of the legal status to the Atrato river

After almost two years of intense work and data collection from the Colombian Constitutional Court, the 10th of December 2016, the Court released the judgment T-622 where it recognized that the Colombian government has violated fundamental constitutional rights in protecting the local communities inhabiting the Atrato basin. The Court recognized that the Chocó is one of the most biodiverse regions of the world and that the conservation of a healthy environment must constitute a fundamental objective of the Colombian State. The judgment T-622/16 also analyzes the dynamics that brought to the current crises in the Department recognizing illegal mining activities as the main sources of environmental and humanitarian issues, by reporting:

"pollution - especially the one of mercury and cyanide [309] - and the carrying out of illegal mining activities in the Atrato river basin and its tributaries not only violates the right to water and other components of the right to a healthy environment (as it has been seen) but also violates the essential standards of availability, accessibility and water quality established in General Comment No. 15, since this type of mining harms the production of food (trees, crops and fish), sanitary conditions, the traditional ways of life and the cultural practices of the active ethnic communities." (Colombian Constitutional Court, 2016. Pag.136).

In this sentence, the Court, a part recognizing illegal mining activities as harmful threats to the environment and local communities, it also considers that the problems generated by water pollution does not only affect local communities in their sanitary conditions and food collection, but it also ruins the link between communities' cultural practices and traditions and the environment. In this way, it has been introduced for the first time in the constitutional law of Colombia the concept of biocultural rights, which emphasizes that the rights of people and nature are inextricably linked. These biocultural rights have been assigned to ethnic communities to manage their territories autonomously, according to their own laws and customs, where they develop their culture, traditions and way of life, under a unique connection with the environment and the biodiversity that surrounds them (Valencia Hernandez, 2018). These rights recognize the profound and the intrinsic connection that exists between local communities and their resources, since they are interdependent with each other and can not be understood in isolation (Colombian Constitutional Court, 2016). The Court also declared that the assignation of biocultural rights should prevent environmental destruction and should support conservation, restoration, and sustainable development. For the local communities of the Atrato basin, this means having a safe environment where they can practice their customs and traditions, among which artisanal mining, agriculture, hunting and fishing, with which they assured for centuries a total supply of their food needs. However, the Court wants to guarantee the effect of *inter communis* in the judgment. This means that all the communities of Chocó that are in the same factual and legal situation of those living close to the Atrato, can enjoy the same protection of rights, whether they participated in the action for protection or no (Colombian Constitutional Court, 2016; Valencia Hernandez, 2018).

The judgment also marked a point of break in the jurisprudence of Colombia around the protection of the environment. Traditionally, decisions had been adopted with an anthropocentric or biocentric vision, in which the environment is subject to protection because of the services it provides to humans and because of the need to preserve natural resources for future generations. In contrast, the sentence of the Atrato reflects an ecocentric vision which conceives nature as a real subject of rights and its mere existence is worthy of protection. Within this concept, the land does not belong to human beings but on the contrary, it is the human who belongs to the earth like any other species (Valencia Hernandez, 2018). Based on this approach, the Court recognizes the rights of conservation, protection, maintenance and restoration of the Atrato river, considering that the Atrato is worthy of protection in itself, for its intrinsic value (Colombian Constitutional Court, 2016). In this way, the Atrato became a subject of rights and holds a locus standi. This means that if a third party (for example, illegal mining) harms the well-being of the river, the Atrato, through a legal representative, can stand in Court and enforce its rights to protection (Cano Pecharroman, 2018). This decision inserts the case of the Atrato in the current larger discourse of Rights of Nature. The Colombian Constitution is one of the first to take into consideration the RoN norms in its jurisdiction, which many academics consider an essential feature to ensure the effective protection of natural entities by government authorities (Kauffman and Martin, 2017a).

It is important to highlight that in Colombia, laws recognizing RoN do not exist (Kauffman and Martin, 2017b). For this reason, in the judgment T-622/16, RoN is not explicitly recognized in the text. The Court justifies its decision by showing how the assignation of legal rights to natural entities has been considered by many institutions worldwide as a required element for the promotion of sustainable development and the protection of river ecosystems and communities depending on them. This inserts the case of the Atrato in the current debate on judicial activism, considering the decision of the Court an illegitimate intrusion of the judicial branch in the other branches of power and an attempt against the democratic process and balance of powers (Hammer, 2007). Indeed, members of the Constitutional Court are not directly elected by civil society and they are not responsible for taking legislative and executive decisions. The criticisms to judicial activism have created the theory "judicial restraint", which claims constitutional judges should avoid making decisions with very strong political impacts and be more respectful of democratic decisions (García and Verdugo, 2013). This was also discussed with an ex-member of the Colombian Constitutional Court, Jairo

Felipe Clavijo Ospina. Ospina recognizes that constitutional judges should be more careful in the analysis of the risks that can be generated by their exceeding powers that can create imbalance between legal branches. However, Ospina underlines the importance of the action taken by the Court when there are massive violations of human rights of vulnerable populations such as the case of the Atrato, in which governmental entities were not taking action. Moreover, the Colombian Constitutional Court, in the judgment T-622/16, recognized that in order to face the crisis in the Chocó, the State should be organized and articulated in such a way to be able to meet its duties to protect people and ecosystems. Therefore, in the next section, it will be analyzed how the Constitutional Court articulated governmental entities to put into practice the concepts of rights of nature and biocultural rights.

6.2 How the judgment T-622/16 seeks to articulate various public entities

In order to understand how the implementation of biocultural rights and the RoN principles should occur, the Colombian Constitutional Court analyzed how the current governmental structure influenced the development of environmental injustices in the Atrato case. The judgment T-622/16 denounces the various public, national, regional and local governments, which have been partially responsible for policy failures that contributed to the lack of protection of local communities and the Atrato. The Court identifies one of the problems related to the lack of governmental action on the limited availability of information related to the case. Indeed, the Court refers to a poor information over mining activities and environmental and social issues in the Department, which made impossible to design public policies and long-term solutions that could effectively combat the current problems (Colombian Constitutional Court, 2019). The Court, based on the Resolution 064 of the Ombudsman's Office, identified the sources of this disinformation the lack of response on these concerns by the Government of Chocó, or the lack of personnel and administrative capacity of Codechocó[7]. Moreover, the Court points out a lack of articulation and coordination between the different entities involved in the implementation of measures appropriate for the protection of the Atrato river (Valencia Hernandez, 2018). In addition, it ensures that the actions taken by the competent state entities in that case have been mostly *"[...] isolated,*

[7] The Codechocó is the Regional Autonomous Corporation for the Sustainable Development of Chocó, which is an entity in charge of exercising and developing policies, plans, programs and projects to protect the environment in the Chocó Department.

without greater coordination with respect to guaranteeing care, maintenance or recovery of the Atrato river basin and its tributaries" (Colombian Constitutional Court, 2019. Pag. 139). Therefore, in the judgment T-622/16, the Court assigns specific roles to different actors involved in the case and creates specific entities responsible for protecting the rights of communities and nature.

In order to ensure the protection of the Atrato, the Court established a Commission of guardians of the Atrato, responsible of legally represent the river, composed by both members of the government and local communities. Indeed, the judgment T-622/16 decided that the Commission is composed of one member from the government and one member from local communities. However, local communities opposed to the constitutional decision to have only one guardian on the part of the communities, because a single physical person cannot represent the ethnic and cultural differences of all the diverse communities living close to the Atrato (interview, Tierra Digna, ASCOBA, COCOMACIA). Therefore, communities decided to elect multiple guardians from the members of the four organizations that have initiated the action for protection: ASCOBA, FISCH, COCOMACIA and COCOMOPOCA. These guardians have been elected based on their leadership in the organisations in which they were involved. All the previously listed organizations work for protecting fundamental rights of local communities and claiming recognition and procedural justice (Silva Numa, 2017). However, these local organizations do not represent the integrity of all the different communities in the Department since in these organizations the members are mostly Afro-Colombians. For this reason, members of these four organizations decided to integrate other three organizations representing also indigenous communities with the Mesa de Diálogo y Concertación de los Pueblos Indígenas del Chocó, and also other two organizations representing the southern part of the Atrato with the Mesa Social Y Ambiental El Carmen De Atrato and the Community Council of the Quito river, which is the main tributary of the Atrato with the Consejo Comunitario del río Quito (Fig. 5) (Tierra Digna, 2016; interview, COCOMACIA, Mesa de Diálogo y Concertación de los Pueblos Indígenas).

In the end, every organization between the seven involved should elect two members that will represent them. At the beginning, only male guardians have been elected. However, after the opposition from many women to this decision, the guardians have been elected one male and one female in every organization (with the exception of the Mesa Social Y Ambiental El

Carmen De Atrato which has two male guardians) (Interview, FISCH, RED). Therefore, nowadays the Atrato is represented by 14 guardians from local communities, 8 males and 6 females (Fig. 6). On the other side, also the Colombian government decided to don't elect only one physical person, but the entire Ministry of Environment and Sustainable Development is considered as guardian of the Atrato. During an interview with a member of the Ministry of Environment and Sustainable Development, it has been pointed out that nowadays three persons from this Ministry are working on the Atrato case and consequently are responsible of the guardianship. However, the Ministry assures that as soon as possible the number will increase to seven. The need of having more persons from the Ministry to work on the case of the Atrato has been explained by the member I interviewed, who acknowledge the complexity and the importance of the environmental issues in the Department and recognizes the urgency of tackling environmental injustices in the Chocó (interview, Ministry of Environment and Sustainable Development).

Figure 5. The geographic locations of the seven organizations taking part to the Commission of Guardians of the Atrato. From north to south, the organizations on the map are: ASCOBA, COCOMACIA, Mesa de Diálogo y Concertación de los Pueblos Indígenas del Chocó, COCOMOPOCA, Mesa Social Y Ambiental El Carmen De Atrato. The two organizations on the left side are the Consejo Comunitario del río Quito and FISCH, which are present all over the region. (Source: Tierra Digna, 2016).

Figure 6. Some of the members of the Commission of Guardians of the Atrato the day of their election. (Source: Heinrich Boll Stiftung Bogotà Colombia. Accessed 4th July 2019: https://co.boell.org/es/2017/09/04/todas-y-todos-somos-guardianes-del-atrato).

In addition to the Commission of Guardians, the judgment T-622/16 also provides for the creation of an Advisory Team composed of members of different national organizations which also helped to the creation of the action for protection such as WWF Colombia, Instituto Von Humboldt and other Universities and research centers. The task of this Advisory Team, which works at the national level, is to help guardians in their work of protecting communities and the Atrato by providing scientific, technical and academic knowledge. Moreover, in order to avoid that the judgment is not respected and to ensure that every involved actor performs its duties, the Constitutional Court created also a supervisory body called Expert Panel composed by the Attorney General's Office with the help of the Ombudsman's Office and local communities (Colombia Constitutional Court, 2016; Tierra Digna, 2016). The judgment T-622/16 also involves other actors in the process of protection of local communities and nature assigning different projects. For example, the Ministry of Defense, National Police, Commission against Illegal Mining, the National Military, the Treasury, and the municipalities of Chocó and Antioquia must collaborate for the eradication of illegal mining in the Atrato

basin. The Ministries of Agriculture, Interior, and Housing; the Departments of National Planning, Social Prosperity, and Interior; with the collaboration of municipal governments must create action plans within six months to recuperate traditional forms of subsistence farming and cleaner food sources. Finally, the Ministry of Environment, Ministry of Health, the Humboldt Institute, the University of Antioquia, University of Cartagena, the Institute of Environmental Research of the Pacific, and WWF Colombia should perform epidemiology and toxicology studies to establish the levels of water pollution of the Atrato river (Kauffman & Martin, 2017b, Colombian Constitutional Court, 2016).

6.3 Limitations and perceptions on the judgment T-622/16

The judgment of the Constitutional Court on the Atrato case is indisputably an historical decision for the protection of marginalized communities and nature. While collecting data with literature review and interviews on the case, many different stakeholders defined the judgment as an "exemplary" decision of the Court (interview, ASCOBA). However, some limitations have been noticed, much more from governmental entities and NGOs compared to local communities. Indeed, for this research, I interviewed at least one of the two guardians of the 7 organizations concerned by the guardianship. The general perception was extremely positive, guardians seemed satisfied with the decision of the Court and they felt that their voice has been finally heard (interview, ASCOBA, COCOMACIA, COMOPOCA, etc.) At the questions: *"Does the decision of the Constitutional Court adequately respond to the needs of local communities? (in terms of health and food security, environmental and humanitarian protection, etc.). Do you think there are important aspects that the final decision does not take into account?"* which I asked to the guardians of the Atrato, all of them responded that the judgment was taking into consideration all the claims reported in the action for protection and it was adequately responding to the numerous issues in the Department. "Despite the cultural difference between guardians belonging to different organizations, the judgment has been perceived generally as an opportunity to finish all the environmental and social inequalities persisting in the Chocó" (interview, COCOMOPOCA). Another common point that emerged was the narrative about education. When I asked what the inhabitants of the Department generally thought about the decision of the Court, all the guardians responded that there is an extreme lack of knowledge of the judgment by the citizens of the Chocó. This ignorance is mainly caused by the limited access to information to local communities

because of their isolated area and poor condition, which prevents them from knowing what rights they are subject to. Thus, one of the main roles of the Guardians of the Atrato became to make the judgment known and inform the communities of the role they can play to protect the ecological resources they depend on. Indeed, the slogan that has been adopted by the guardians and by members of Tierra Digna is *"todos y todas somos guardianes del Atrato"*, which means *"we are all guardians of the Atrato"* (Tierra Digna, 2016). This means that the projects of protection, conservation, maintenance, and restoration of the Atrato should be well known by all the inhabitants of the Department and everyone should be active to enforce their rights and protect their environment. In order to tackle this lack of knowledge, guardians explained me that they monthly organize in different Community Councils open presentations, panel sessions and workshops to spread information on the rights of local communities and nature are entitled (interview, FISCH).

During an interview I conducted with Jairo Felipe Clavijo Ospina, which has worked in the production of the final decision of the Constitutional Court and participated in the inquiry expedition to the Atrato, we discussed about the positive perception of the guardians on the decision of the Court. Ospina, which have observed the dramatic consequences of illegal mining on the Atrato and and get to know members of the different Community Councils in the region, said that *"local communities were in such a desperate situation, that when the sentiment came out, they couldn't believe it"* (interview, Ospina). Despite the fact that positive impressions have been collected by the guardians interviewed, some of them are however skeptics with the implementation of the judgment. During an interview with a guardian member of the Mesa Social Y Ambiental El Carmen De Atrato, representing Afro-Colombians living in the southern part of the Atrato, which is considered the region mostly affected by illegal gold mining, many worries about the effective implementation of the judgment have been discussed. First of all, it has been pointed out that the planned actions of the judgment are not adequately taken into account by government members causing omissions and delays. The causes of these delays are considered as a consequence of corrupt and irresponsible politics (interview, Mesa Social Y Ambiental El Carmen De Atrato, COCOMACIA). Moreover, it has been pointed out that even if the judgment provides for many actions in which local communities are involved, it doesn't present sufficient monetary funds to carry out the projects. As an example, the guardians have asked to the Ministry of Environment and Sustainable Development funds for creating a project aiming at making the

judgment T-622/16 more known among the different communities inhabiting the Chocó. However, the guardians have seen their request denied by the Ministry, letting them without any financial aid (interview, Mesa Social Y Ambiental El Carmen De Atrato).

On the other side, also the limited organization between local organizations and Community Councils in the Department have been responsible of certain delays in the implementation of the decision of the Court. The judgment T-622/16 stated that the Commission of guardians should have been set up three months after the decision of the Court. In reality, the election of the guardians took an entire year and the Commission of guardians have been created on October 2017 (Garzón Cardozo, (no date); Cano Pecharroman, 2018). This time the reasons of this delay has been asked to some guardians which didn't provide a common answer. The limited organization inside the different local organization, the scarce communication between the organizations and the utopist decision of the Court to create a Commission of guardians in only three months have been pointed out as the main reasons that brought to the delay (interview, FISCH, ASCOBA, Consejo Comunitario del río Quito, Tierra Digna).

A more critical approach has also been adopted by other stakeholders involved in the judgment. During an interview with a member of the Ministry of Environment and Sustainable Development, it has been pointed out that many other Ministers should have been involved in the outcome of the Atrato case. As an example, the Ministry of Mines and Energy has not been adequately involved in the different action plans of the Court, although mining activities are one of the biggest issues in the Chocó. Moreover, the Ministry of Transport hasn't been included in all the judgment, when the Atrato is the third more navigable rivers of Colombia and it is the first means of transport of local communities (interview, Ministry of Environment and Sustainable Development). In addition, it has been remarked that the final decision of the Constitutional Court doesn't take into consideration in its text and in its implementation gender equality. Indeed, originally the decision foresee to have only male guardians of the Atrato, if women have been involved, it is only because they insisted to be part of the Commission of guardians (interview, RED). Finally, some scholars have also pointed out the unclear way the implementation of the legal protection of the Atrato should occur. Indeed, despite the fact that the Atrato is subject of rights and has legal representatives, it has been left unclear in the decision how these representatives should legally act to protect any harm to the river (Cano Pecharroman, 2018). Looking more closely to the judgment, the Court

stated that the way the guardians have to act in the defence of the rights of the Atrato should be decided on a case by case basis (Colombian Constitutional Court, 2016). Nevertheless, this model can cause problems in the actual protection of the river because it doesn't provide specific legal directives to the Commission of guardians to enforce their role of legal representatives, causing ambiguity and possible tensions among guardians on their operations.

Finally, in the interviews I conducted with the different guardians of the Atrato - from the Ministry of the Environment and Sustainable Development to the different organizations from local communities - I asked how the cooperation between guardians was proceeding. Both sides have pointed out that collaboration is working very well, and particularly that there are no hierarchical problems between guardians from the Ministry and local communities, nor other issues in communication, task division or decision-making processes (interviews, Ministry of the Environment and Sustainable Development, FISCH, ASCOBA, COCOMOPOCA, etc.). During interviews with different stakeholders involved in the judgment T-622/16 such as the Attorney General's Office and the Ombudsman's Office, they have highlighted the major efforts made by guardians from local communities, who have been considered highly involved in the case and they carried out their duties with punctuality and determination. Indeed, despite the fact that the guardians from local communities have different social and cultural backgrounds, they all share the same objectives and visions to protect the Atrato and their livelihood (interview, FISCH, COCOMACIA, Mesa Social Y Ambiental El Carmen De Atrato, etc.). This helps in their collaboration avoiding cultural and idealistic tensions, creating a harmonious and productive working environment.

6.4 Conclusion

This chapter focused on the theoretical and practical functionings of the judgment T-622/16 to protect local communities and nature in the Atrato case. About this matter, two set of principles have been used by the Court. The first one, is the application of RoN norms which consider that the Atrato is worthy of protection for its intrinsic value, which is the reason why it becomes a subject of rights. In this scenario, biocultural rights recognize local communities livelihood, practices and traditions highly linked to nature and directly involve them in the legal representation and protection of the Atrato. In this way, local communities obtain the rights to politically participate to the protection of nature and their ecosystem which are the

main features of environmental justice. Moreover, this chapter evaluates some limitations raised by different stakeholders on the judgment T-622/16. Most of the limitations concern the implementation of the judgment caused by delays of governmental actors in performing their duties as well as local communities in electing the Commission of guardians. It has also been shown that the applicability of the biocultural rights and the RoN norms remain vague in the judgment T-622/16 since it doesn't describe how the Commission of guardians should act to legally represent the Atrato in case of damage to the latter.

Despite the multiple limitations, the general perception of local communities and other stakeholders involved on the judgment T-622/16 is very positive. Local communities found in the judgment all the claims presented in action for protection they created to defend their rights. In addition, they have been for the first time ever involved in the legal procedures aiming at protecting their rights and the ones of the natural resources they depend on. Therefore, because of the decision of the Court to make the Atrato a subject of rights, local communities acquired biocultural rights that, apart from recognizing their culture as interlinked with nature, gave them the legal means to politically participate in the protection of their rights and those of nature. In this way, local communities acquire procedural and recognition justice, which are key feature of environmental justice.

Chapter 7: Discussion

The case of the Atrato is embedded into complex stakeholders' dynamics which have succeeded in creating a historical judgment in the protection of the environment and of marginalized communities. The previous chapters show the historical development of humanitarian, environmental and economic issues in the Chocó Department and the different social and political approaches to pursue environmental justice. In this chapter, I will evaluate the results that can be drawn from the information reported in the previous chapters and I will answer the main research question of this study:

How have the actors involved in the Atrato case pursued and put into practice environmental justice in the negotiation and formulation phases?

In order to answer this question, I will analyze the importance of the alliances that have been built during the negotiation process and how the decision of the Constitutional Court seeks at further stimulating these corporations. Moreover, I will explain how the judgment T-622/16 with the application of RoN norms and biocultural rights empower local communities. Finally, I will discuss how the results obtained in the Atrato case create more knowledge on the implementation of RoN principles.

7.1 Assessing Environmental justice in the Atrato case

7.1.1 Collaboration among different stakeholders

In order to assess environmental justice in the Atrato case and answer the main research question of this study, it is important to define which actors took place in the negotiation process. Thanks to the data collected, five categories of stakeholders have been highlighted: local communities, NGOs, Universities, governmental authorities and the Colombian Constitutional Court. All these actors played different roles in the negotiation and formulation process, contributing in different ways to pursue environmental justice. All the stakeholders pointed out have worked for different reasons with local communities in distinct moments in

time during the negotiation process. One of the main reasons that allowed these collaborations, was the general need to gather more evidence on the environmental injustices local communities were facing. In this way, local communities have strictly worked with NGOs, Universities, the Ombudsman's Office and members of the Colombian Constitutional Court to gather more information on the humanitarian and environmental crisis in the Chocó.

These collaborations played a fundamental role in improving the social recognition of local communities and their political participation as well as highly influenced the quality of the outcomes of the judgment T-622/16. As an example, when the Interinstitutional Mining Working Group, reported in Chapter 4, has been created by the National Mining Agency in 2014, local communities were not integrated into the projects to stop mining activities. The Interinstitutional Mining Working Group worked autonomously and have been dismissed after one year because of the limited concrete actions undertaken to stop mining activities in the Department. The failure of this intergovernmental panel also relies on the fact that members of the panel did not take into consideration the knowledge and ideas carried forward by local communities which could have helped in the generation of effective actions plans (interview, COCOMOPOCA). Moreover, if local communities would have been included, they could have supervised and check the activities undertaken by the panel, stimulating their work.

On the other hand, positive results born from the collaboration of local communities and the NGO Tierra Digna. Local communities could create an action for protection for formally requiring the intervention of the Colombian government. In this way, local communities' complaints were directly integrated in the action for protection which was reported to the Administrative Tribunals for the different levels of judgment. Moreover, constitutional entities such as the members of the Ombudsman's Office and the Constitutional Court, directly interviewed local communities to understand which were their claims and which suggestions they had to improve the current situation. These constitutional authorities have chosen independently to make inquiries in the Department, giving the chance to local communities to participate in the data collection and explain their concerns and requests. This shows how authorities were interested to discover which are the bonds that link local communities with their environment in order to understand which value nature has in their cultural practices and beliefs. These are examples of the development of social and cultural recognition of local

communities from constitutional authorities, stimulating also their political participation by reporting their claims into resolutions and constitutional judgments.

The importance of the collaboration amongst different actors was also been perceived by the Colombian Constitutional Court which ensured the inclusion of this aspect in the implementation of the judgment T-622/16. In the final judgment the Court acknowledged the importance of the involvement of local communities in the legal provision by involving them in the Commission of Guardians. Also other actors have been involved such as different NGOs and universities in the Advisory Team. Involving new actors from civil society, NGOs and academia, is a fundamental element to create direct interaction between key actors which allow generating innovative and potentially democratic alternatives for the judicial protection of the rights violated (Rodríguez and Rodríguez, 2015). Moreover, these collaborations also allowed the communities to directly and indirectly shape the judgment T-622/16 and its implementation. The judge Palacio, responsible of the writing of the final decision of the Court on the Atrato case, reported in the judgment that the inquiry made in the Chocó, where local communities have been interviewed, helped him to decide about the creation of biocultural rights. Moreover, most of the information used in the judgment T-622/16 were taken from the Resolution 064 made by the Ombudsman's Office, which was largely based on the data collected during an inquiry in the Chocó Department (Colombian Constitutional Court, 2016; interview, Ombudsman's Office). In this way, local communities say to find all their claims in the final judgment (interview, COCOMOPOCA). In addition, local communities directly participated in the implementation of the judgment. As for example, local communities opposed to the decision of the Court to have only one guardian representing all the local communities living close to the Atrato. Moreover, they also opposed to the decision of having only male guardians, creating gender equality among guardians.

The reported examples show the increasing power local communities developed during the negotiation process, from marginalized communities with poor political power to directly participating in shaping the sentence T-622/16 and its implementation. This has been possible thanks to the strong determination of local communities to see their rights protected and on the different inclusion strategies adopted by other actors such as NGOs, Universities and constitutional entities. The examples also show the little interest made by the Colombian government in understanding local communities's claims and collaborating to create possible solutions. However, thanks to the numerous efforts made by other stakeholders, local

communities have seen for one of the first times their culture recognized not only on paper but also by being taken into consideration during procedural processes. In this way, the creation of collaborations has been a crucial element for local communities in their pursuit of environmental justice.

7.1.2 The judgment T-622/16 and environmental justice

Another important aspect influencing the political participation and the cultural recognition of local communities is the implementation of RoN norms and the assignation of biocultural rights to local communities by the Colombian Constitutional Court. The assignation of biocultural rights requires a complex and holistic vision of the relationship linking communities and nature, which is not only based on the benefit of certain natural resources, but mostly on the fundamental cultural and social value nature plays for these communities. In this way, the Court specifically recognize the cultural practices and beliefs of local communities, by understanding and respecting their systems of values. Moreover, the decision of Court also plays a fundamental role in improving local communities political participation. The Court recognizes in its decision that in order to enforce the rights provided to the Atrato river, it is necessary to create a legal body responsible for the protection of the Atrato. In this way, the Court creates a Commission of guardians, entitling local communities to become important actors in the defence of their rights and the ones of the Atrato. Indeed, local communities can now actively participate in the protection of their environment by becoming members of the Commission of guardians of the Atrato. Consequently, they are actively collaborating for proposing ideas for the creation of plans aiming at the protection of their environment as well as their fundamental rights.

The analysis of the functioning of biocultural rights has permitted to highlight the fact that the Court recognizes the cultural bond linking nature to local communities and gives to the latter the legal means of inclusion and participation on policy-making processes. These are the fundamental features of the concept of environmental justice. Many previous international and national laws and treaties were recognizing local communities as having cultural connection with nature entities and ensuring them with political participation. As previously reported, many stakeholders identified the main problem of the juridical inefficiency of protecting local communities not on the lack of laws oriented on these subjects, but mostly on the lack of implementation of these laws made by the Colombian Government. Consequently,

what makes the judgment T-622/16 innovative, is the set of strategies and tools provided to local communities in such a way they can truly act to defend their rights. The decision of the Court entails an articulation of different public entities so that the biocultural rights of local communities can be enforced. In this way, the recognition and participation of local communities can be improved.

7.1.3 The pursuit of environmental justice in the Atrato case

The different stakeholders involved in the Atrato case have differently contributed to the pursuit of environmental justice in mainly two ways. The first one concerns the construction of alliances among different actors, where local communities have been taken into consideration. The second one through the introduction of RoN norms and the assignation of biocultural rights by the Court which recognizes the dependence of communities on natural resources and gives them a set of legal tools for participating in the protection of the Atrato. In these ways, local communities managed to get involved in decision-making processes where they were playing an active role in the protection of their rights and the ones of the environment.

It is important to take into consideration that one of the main limitations I faced during my data collection has been the impossibility to access the Chocó Department because of security reasons. This hardly affected the data collected on the existing local communities living close to the Atrato and how they are socially and politically represented. During an interview I conducted with a member of the Ministry of Environment and Sustainable Development, it was discussed that in the Chocó there are many marginalized communities of fishermen and farmers which are not represented by any organization or Community Council. During interviews with members of local communities, I asked if there were communities that were not politically represented in the region and which were not taken into consideration in the final decision of the Court. The respondents told me that all communities where taken into consideration and that even when the Court decided to have only one guardian from communities, they insisted to involve more local organisations to represent all the ethnich and cultural diversity of the people living close to the Atrato. However, I couldn't personally verify if this is true and if the judgment T-622/16 and the guardians of the Atrato really take into consideration all the different groups living on the Atrato's banks. It is possible that some local

organizations didn't want to represent smaller marginalized communities because of conflict of interests. Because this hypothesis could not be verified due to the impossibility to make *in situ* observations and because of the limited official information on the demography of the Department, the results of this study takes into account the local communities which have been represented by Community Councils or local organizations.

In addition, it is also important to make a consideration whether in this study I had the means realistically assess the pursuit of environmental justice in the Atrato case. I consider important to make a distinction between the pursuit of the concept of environmental justice, and the pursuit of environmental justice in reality. As previously explained, the implementation of the judgment T-622/16 is still in its formulation phase, so for the moment any action plan to protect the Atrato and local communities have been started. This creates a great limitation for assessing whether the decisions taken into the judgment can really create environmental justice. Before the judgment T-622/16, many national and international treaties and laws existed aiming at protecting local communities rights and culturally recognize them. However, the problem surrounding these communities it is not the lack of policies protecting them and assigning them rights, but the limited action made by actors such as the Colombian government to implement them. This is caused by a large range of factors such as the presence of armed groups which have control over the Chocó, the isolated geographical position of the Department, etc. Because of the historical problems that put a brake to the implementation of many previous policies aiming at protecting both communities and nature, it is difficult to assess if the judgment T-622/16 can truly contribute to the development of environmental justice before its implementation phase starts.

For this reason, through the analysis of constitutional judgment it is not possible to fully assess if environmental justice could be realistically put in practice. The development of RoN norms and assignation of biocultural rights can undoubtedly helped in the development of the concept of environmental justice. However, it is too early to evaluate if the participation of local communities and the fair distribution of environmental resources could really be pursuit if the implementation process didn't started yet. Starting from this observation and expanding to a general discourse on environmental justice, I consider that the analysis of the real pursuit of environmental justice while analyzing policies requires an *ex-post* evaluation. In order to assess whether a policy can help in recognizing local communities, assign them legal means

to defend their rights and give them access to unpolluted natural resources, it is necessary to wait until its implementation is completed or at least already started for a certain period of time which may be indicative of how the plans are developing.

From the data collected, it is possible to have a positive perception of the following stages of the implementation of the action plans for the protection of both local communities and the Atrato river. This is possible thanks to the immense goals achieved by local communities in recent years and for the recent predisposition of other stakeholders in collaborating with them in the formulation of the action plans. In the negotiation process which precedes the Court's decision, features of environmental justice such as cultural recognition and involvement of local communities have been really taken into consideration as it has been previously explained in the section 7.1.1. Moreover, also positive feedbacks have been gathered by local communities, the Ministry of the Environment and Sustainable Development and NGOs such as Tierra Digna and WWF Colombia about their collaboration for the formulation of action plan. However, it is too early to assess if a fair distribution of environmental goods could occur in the next stages of implementation of the decision of the Court. Indeed, an effective distribution of environmental goods would mean to shut down many illegal mining industries causing water pollution and deforestation as well as many other social and environmental issues caused by the presence of armed groups in the region and the isolated political situation of the Chocó (based on the EJ framework of Temper et al., 2015). These are undoubtedly very complex issues to face, which may require many attempts to be solved. However, precisely because of the complexity of these issues, a strong collaboration among diverse stakeholders integrating different viewpoints, knowledge and experiences is essential to efficiently tackle them. The collaborations are the first step in order to reach effective decisions to solve the numerous environmental and social problems in the Chocó and to pursue environmental justice.

7.2 The Atrato case and Rights of Nature

This study has analysed how the Colombian Constitutional Court applied RoN norms in the judgment T-622/16. The case of the Atrato shows that the Constitutional Court judge Palacio, involved in the constitutional decision T-622/16, has been inspired by other countries' legislations on RoN which he applied in Colombia, modeling the decision based on national

political and social characteristics. Judge Palacio didn't ask in the judgment for RoN to be recognized in national rulings, but he adopted RoN norms for facing the current environmental crisis in the Chocó. The Atrato case also shows how RoN has been connected with new procedural structures created to implement more ecocentric approaches for environmental issues caused by mining activities (Kauffman and Martin, 2017b). This creates more knowledge on the possible ways RoN principles can be applied to a specific legislation like the one of Colombia, which doesn't directly recognize RoN in its laws.

The decision of the Court also demonstrates the important role that the collaboration among stakeholders have for the implementation of RoN norms. Through the creation of a Commission of guardians, responsible for the defence of the rights of the Atrato, the Court recognises the essential role of collaboration among fundamental stakeholders such as local communities and governmental entities. Indeed, for the implementation of RoN norms, aiming at protecting natural entities for their intrinsic value, it is neccessary to tackle a large range of legislative structural problems as well as environmental and social issues such as water pollution, deforestation, presence of armed groups, etc. For this reason, there is a need to tackle these different issues taking into consideration multidisciplinary stakeholders' collaborations capable of analyzing issues with different visions and opinions. The Court, in order to allow the creation of effective action plans, has set up an Expert Panel, where NGOs, Universities and experts can work closely to achieve complex solutions to environmental injustices. This will not only allow to create more complete and democratic action plans to protect the environment, but it will also allow to have different stakeholders supervising on each other work, ensuring real improvements in the enforcement of the rights of the Atrato. For this reason, the Court creates a supervisory body the Advisory Team, entitling governmental and constitutional entities as well as local communities to inspect and ensure the evolution of the projects. Therefore, through the construction of multiple forums for collaboration among different stakeholders, the Court aims to create legal bodies capable of effectively implementing RoN norms in the Atrato case.

The case of the Atrato also opens a window on the international discussion about judicial activism. The decision of the judge Palacio shows how judicial activism is sometimes necessary for the protection of collective liberties when there is a lack of action form governmental authorities (Hammer, 2007). Of course, judges deserved to be criticized when

they go beyond their functions without foundation or rigor. However, in the Atrato case the judge Palacio took a limited amount of legislative and executive decisions, limiting the judgment to set an arrangement of norms and structural decisions that should be applied by other stakeholders. The Court decision opens orders that state the necessity of strong dialogues between key actors so that they can be the ones taking final decisions as is the case for the action plans that are currently in the formulation phase. Many stakeholders argued that the judgment T-622/16 doesn't explain how the Commission of Guardians of the Atrato should act as legal representatives of the Atrato (Kauffman & Martin, 2017b). However, these are issues that should be determined by legislative powers and not by the juridical ones held by the Constitutional Court. Therefore, the Court, through the judgment T-622/16, aims at creating procedural structures among different actors and a balance among the branches of power, in order to create the possibility for the engaged stakeholders to develop solutions for environmental injustices.

The Atrato case is not isolated. Many other institutions around the world are applying RoN norms in their legislation seeking to increase the protection of natural resources. The case of the Atrato in Colombia as the ones of the Whanganui River in New Zealand and the Ganga and Yamuna Rivers in India show the urgent need to take innovative decisions on environmental issues, capable of creating a normative shift in environmental policy-making processes. These different cases demonstrate how RoN principles can be shaped and adapted to different cultural, social and political contexts in different countries, as well as showing which are the current limitations that still need to be overcome. However, environmental problems are increasingly relevant and the importance of the protection of ecosystems goes beyond constitutional judgments and international treaties. It is fundamental that all national and international entities are articulated in a concrete way to conserve, protect and effectively recover ecosystems and natural resources. In this sense, although the judgment of the Atrato River is a huge step towards a more protectionist vision of the environment and set a landmark in Colombia's jurisprudence, it is essential that everyone, including civil society and to the academy, get involved in the environmental wave, and closely work together for engaging current and future generations in the pursuit of environmental justice.

Chapter 8: Conclusions and Recommendations

This research aimed to analyze the different strategies adopted by the actors involved in the Atrato case to pursue and put into practice environmental justice. In this respect, an environmental justice framework has been used to guide the research and evaluate the most important elements that contributed to the development of the cultural recognition and political participation of local communities. The results of this study show how the determination of local communities and their collaboration with other stakeholders played a vital role in the pursuit of environmental justice. Local communities shifted their position from marginalized communities without political rights to directly shaping the implementation of the decision of the Court and becoming part of the legal representatives of the Atrato River. This has been possible thanks to the collaboration communities developed with actors such as NGOs, universities and constitutional bodies. On the other side, the multiple attempts of local communities to collaborate with governmental entities have been vain. The Colombian government seemed incapable or uninterested to listen to local communities claims and protect their fundamental constitutional rights. However, from the successful alliances local communities built with constitutional and non-governmental actors, their claims and needs have been reported and recognized. All these stakeholders collaborated with local communities to create more evidence on environmental injustices they were facing as well as integrating their claims into official Ombudsman's Resolution, actions for protection and in the final decision of the Constitutional Court.

Moreover, it has been analyzed the important role played by the Colombian Constitutional Court in protecting local communities and nature by applying RoN norms and assigning biocultural rights. The Court in the judgment T-622/16 recognized the cultural nexus linking local communities and nature and assigned the legal means to local communities for the protection of their rights and the ones of the Atrato. The Court entails the creation of a Commission of Guardians of the Atrato where local communities can become legal representatives of the Atrato and be involved in political processes concerning the protection of their rights. Although the decision of the Court helps in the development of the concept of environmental justice, the implementation of the judgment T-622/16 didn't started yet. For this reason, it is not possible to assess whether the judgment can really create environmental justice also in its implementation. This would mean taking active action against sources of environmental injustices such as illegal mining industries and the presence of armed groups

in the Chocó. These are very complex issues to solve, for this reason creating solid multidisciplinary collaboration is essential for the development of more democratic and specific solutions to environmental injustices. Based on this issue, in order to evaluate if a legal text can create a real pursuit of environmental justice, it is necessary to conduct and *ex-post* policy analysis to evaluate its implementation.

This research also helped in filling the gap of knowledge on the possible ways RoN principles can be implemented at national level. This study evaluates how RoN norms have been integrated in the socio-political context of Colombia where laws recognizing RoN do not exist. In this regard, I analyzed how the Constitutional Court justifies the decision of introducing RoN norms in the judgment and how it creates legal bodies capable of protecting the rights of both local communities and the Atrato River. In conclusion, this study shows how the creation of multidisciplinary corporations among different stakeholders is an essential feature for the implementation of RoN norms at national levels as well as for the creation of more democratic and complex solutions to face environmental injustices.

To better understand the implications of these results, future studies are necessary for addressing the lack of official information on which communities are settled in the Chocó Department. This would help in understanding whether there are communities that haven't been taken into consideration into the decision of the Constitutional Court or by the Commission of Guardians of the Atrato. Moreover, there is a need to gather more knowledge on the cultural bonds linking communities with nature. This will allow to evaluate how the Constitutional Court interpreted and protected local communities' traditions and beliefs. Moreover, further research is needed to evaluate the future development of collaborations between stakeholders during the formulation and implementation phases. I consider necessary to wait a minimum of five years from the implementation of the action plans to evaluate how these collaboration will develop and whether their evolution will bring to environmental justice.

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