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## A PARADIGM SHIFT IN COURTS' VIEW ON NATURE: THE ATRATO RIVER AND AMAZON BASIN CASES IN COLOMBIA

Paola Villavicencio Calzadilla

CASE NOTE



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# 1

## INTRODUCTION

The ecocentric rights paradigm – also expressed as ‘rights of nature’ – gains increasing traction at the national and international levels. While in some countries revolutionary ecocentric laws have been adopted for the recognition and protection of the rights of nature in her entirety; in others an emerging jurisprudence built on ecocentric rights-based approaches to environmental protection is admitting the intrinsic value of non-human elements of nature – such as rivers, mountains and forests – recognising them as subjects of rights. Precisely, one country where such jurisprudential paradigm shift took place recently is Colombia, one of the world’s mega-diverse countries.

In 2017, the Colombian Constitutional Court (*Corte Constitucional de Colombia*) gained international attention when, shifting away from traditional paradigms, issued a ground-breaking judgement recognising a river – the Atrato – as a legal subject with rights in order to increase its protection.<sup>1</sup> Although the jurisprudence of the Constitutional Court had previously referred to nature as a ‘subject of legal rights’ that must be guaranteed and protected,<sup>2</sup> this was the first time in the country’s history that a court recognised a specific ecosystem – a river – as a ‘*sujeto de derechos*’ (subject of rights) granting it specific rights.

In April 2018, the Colombian Supreme Court (*Corte Suprema de Justicia de Colombia*) also made a historical move when, following the same ecocentric approach adopted by the Constitutional Court in the Atrato River case, issued another landmark judgement – the second in the history of Colombia – changing the legal status of the Colombian Amazon rainforest and recognising it as an autonomous rights-bearing entity whose rights deserve special protection.<sup>3</sup>

In both cases the Colombian courts were mainly required to protect the fundamental constitutional rights of the plaintiffs, which were being infringed or threatened by the Colombian Government’s failure to adopt effective measures against the highly polluting illegal mining in and around the Atrato River and deforestation in the Amazon basin. However, in the light of the recent intensification of such environmental problems, the Constitutional Court and the Supreme Court decided to go further and take a step towards the effective protection of both ecosystems from human activity. Thus, although no legislation on rights of nature had been adopted at that time in Colombia, the courts ruled in favour of such natural entities and through two landmark decisions changed their traditional status and recognised them as rights-bearing subjects, thereby demonstrating that rights of nature/ecosystems can be recognised by both legislative and judicial channels.<sup>4</sup> This jurisprudential paradigm shift, from a human-centred to a non-anthropocentric world view, establishes that nature and her non-human elements – here the Atrato River and the Amazon basin – have an intrinsic value and can no longer be viewed as human property or useful senseless objects, and as such must instead be considered as subjects of rights deserving special protection.

As any step done on the rights of nature paradigm can provide important elements for the global debate

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1 See, *Tierra Digna y otros v Presidencia de la República y otros*, Colombian Constitutional Court, ruling T-622 of 10 November 2016, Expediente T-5.016.242. The decision was released to the public in May 2017. Full text in Spanish, available at <<http://cr00.epimg.net/descargables/2017/05/02/14037e7b5712106cd88b687525dfcb4b.pdf>>. All translations from Spanish to English are by the author, unless otherwise noted.

2 See, for example, Colombian Constitutional Court’s rulings: No C-595 of 27 July 2010 on a constitutional challenge filed by Juan Gabriel Rojas López, Expediente D-7977; C-632 of 24 August 2011 on a constitutional challenge filed by Luis Eduardo Montealegre Lynett, Expediente D-8379; and, Protection Ruling (*Sentencia de Tutela*) T-080 of 20 February 2015 on an action of tutela (*Acción de Tutela*) filed by *Fundepúblico y otros v Sala Civil y de Familia del Tribunal Superior del Distrito Judicial de Cartagena*, Expediente T-4.353.004.

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3 See, *Dejusticia y otros v Presidencia de la República y otros*, Colombian Supreme Court, ruling STC4360 of 4 May 2018. Full text in Spanish, available at <<https://cdn.dejusticia.org/wp-content/uploads/2018/01/Fallo-Corte-Suprema-de-Justicia-Litigio-Cambio-Clim%C3%A1tico.pdf?x54537>>.

4 See, for example, the case of rivers in Erin L. O’Donnell and Julia Talbot-Jones, ‘Creating legal rights for rivers: lessons from Australia, New Zealand, and India’ (2018) 23 (1) *Ecology and Society* 6, 8.

on the significance, scope and implications of this emerging legal framework, this case note presents an analysis of two ground-breaking judgements that confront anthropocentric worldviews and set important precedents for rights of nature in Colombia and around the world.

## 2 FACTUAL AND LEGAL BACKGROUND

The first case, hereafter *Tierra Digna* case, resulted from the illegal mining activities taking place near the Atrato River basin and its tributaries, located in one of the most biologically diverse places in Colombia and on the Planet: *el Chocó*.<sup>5</sup> Given this situation, on 27 January 2015, the non-governmental organisation Center of Studies for Social Justice ‘*Tierra Digna*’ (*Centro de Estudios para la Justicia Social ‘Tierra Digna’*), on behalf of several Afrodescendent, indigenous and peasant communities living alongside the Atrato River – the third largest river in Colombia – and in neighbouring territories, filed a *Tutela* action<sup>6</sup> against various agencies of the Colombian government in order to obtain the effective protection of their fundamental constitutional rights which were being breached by illegal mining activities.

The plaintiffs argued that through the use of heavy machinery and toxic substances – such as mercury – illegal mining in the Atrato River basin, which escalated exponentially during the past decades, had produced serious environmental impacts in the region: pollution of and damage to the river, destruction of its natural course, erosion, deforestation, loss of biodiversity, to name but a few. These external disruptions have had

severe effects on local ethnic communities, affecting several of their rights (including their right to life, health, water, food security, clean environment, and their right to culture and territory), and even threatening their very survival.<sup>7</sup> According to the plaintiffs, the state authorities, at local or national level, did not undertake effective and comprehensive actions to confront the grave situation in the Atrato River which, exacerbated by the local socio-political context, gave place to a significant and unprecedented humanitarian and socio-environmental crisis.<sup>8</sup>

Considering several national and regional state entities responsible for the infringement of their fundamental rights by their lack of action, the plaintiffs referred to the *tutela* judge. They requested from him to issue a set of orders and measures in order to implement structural solutions to overcome the severe crisis taking place and to protect the Atrato River, its basin and tributaries.<sup>9</sup>

The Court of First Instance refused to grant the *tutela* action via ruling on 14 February 2015. The plaintiffs appealed against this decision, yet it was upheld by the Court of Appeal in April 2015. However, in compliance with the legal procedure of *tutela* actions, the ruling was referred to the Colombian Constitutional Court for a possible review.<sup>10</sup>

Eventually, on 10 November 2016, the sixth Review Chamber of the Constitutional Court (*Sala Sexta de Revisión de la Corte Constitucional*) ruled in favour of the plaintiffs and, acknowledging the alarming situation of the Atrato River, issued a ground-breaking judgement which, for the first time in Colombia, recognised a natural entity – the Atrato River – as a legal subject with concrete legal rights.

The second case, hereafter *Dejusticia* case, refers to a legal action brought by 25 Colombian children and young – ranging in age from seven to 26 – from high-

5 Colombian Constitutional Court (n 1) Ground 5.3.

6 The *tutela* action or *Acción de Tutela* is a constitutional action introduced by the 1991 Colombian Constitution, by virtue of which any person may directly request any judge in the country to protect his/her fundamental constitutional rights when they are being violated by a state agent or an individual. See art 86 of the 1991 Colombian Constitution and Decrees 2591 of 1991, 1382 of 2000 and 306 of 1992.

7 Colombian Constitutional Court (n 1) 5-7.

8 *ibid.*

9 *ibid* Ground 9.1

10 The Colombian Constitutional Court has among its functions the review of *tutela* actions and, therefore, all decisions resolving them are automatically referred to it for possible review. The Court can discretionally review any *tutela* case. See arts 86 and 241-9 of the Colombian Constitution and arts 31-36 of Decree 2591 of 1991.

risk areas affected by climate change, seeking to stop deforestation in the Colombian Amazon basin.<sup>11</sup> Supported by the non-governmental organisation *Dejusticia*, the plaintiffs filed a *tutela* action on 29 January 2018 against several governmental actors – including the President of Colombia, the Ministries of Environment and Agriculture, the National Parks and regional autonomous corporations, and the mayors and governments of the Colombian Amazon – demanding the protection of their constitutional rights threatened by the accelerated deforestation rate of the Amazonian rainforest in Colombia which causes emissions of carbon dioxide and other greenhouse gases (GHG).<sup>12</sup> The plaintiffs argued that, despite the national and international commitments of Colombia to curb the deforestation of the Amazon rainforest, neither the national government nor any other public authority adopted strong measures and actions to stop it.<sup>13</sup> In fact, as they denounced, deforestation in the country's Amazon region had significantly increased recently – by 44% between 2015 and 2016 – as a result of illegal land grabbing, illicit crop cultivations, illegal mining and logging, infrastructure and agricultural frontier expansion for agro-industries, among other causes.<sup>14</sup> For the applicants, the continued deforestation in Colombia's Amazonian territory – generating serious consequences on ecosystems and climate conditions on the entirety of the national territory – together with the government's failure to address it and protect the Amazon basin, jeopardises their future and constitutes a violation of their constitutional rights to life, health, food and water, as well as of the right to a healthy environment for present and future generations.<sup>15</sup>

As a consequence, the plaintiffs, also representing the future generations which will have to face the major implications of climate change, requested the *tutela*

judge to order the government to respect and fulfil its national and international commitments and to adopt a series of measures aimed at reducing deforestation in the Colombian Amazon basin and therefore mitigating GHG emissions causing climate change.<sup>16</sup>

On 12 February 2018, without ruling on the merits of the case, the civil division of the High Court of the Judicial District of Bogotá (*Tribunal Superior del Distrito Judicial de Bogotá- Sala Civil*), denied the *tutela* on procedural grounds. Yet, as the plaintiffs were not satisfied with the judgment, they appealed the ruling on 16 February before Colombia's highest court. Eventually, on 5 April 2018, following the approach of the Atrato ruling, the Colombian Supreme Court issued another historic ruling accepting the *tutela* and also recognising Colombia's Amazon basin as an entity subject of rights.

### 3 THE COURTS' JUDGMENTS AND REASONING

In both cases, *Tierra Digna* and *Dejusticia*, we face groundbreaking courts decisions that, on the one hand, confirmed the protection of the applicants' fundamental constitutional rights, which were being violated by the Colombian government's omission to effectively control illegal mining activities in the Atrato River and deforestation in the Amazon basin and, on the other, as never before in the country, recognised both ecosystems not as objects used for the benefit of humans, but as subjects of law and bearers of rights.

In *Tierra Digna* case, the Constitutional Court issued a comprehensive judgement – over 160 pages – which departs from traditional environmental protection paradigms and takes an ecocentric and biocultural approach to reinforce the protection and ensure the restoration of the Atrato River. After confirming the devastating impacts that illegal mining activities have

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11 Colombian Supreme Court (n 3).

12 This was also the first *tutela* action on climate change filed in Latin America.

13 Under the Paris Agreement (adopted by way of the Act 1844 of 2017) and the national Law 1753 of 2015, the Government had committed, *inter alia*, to reduce to zero the deforestation net rate in this region by 2020, meaning that at the time the case was filed, it only remained two years to comply with this target. *See*, Colombian Supreme Court (n 3) 2.

14 *ibid* 2.

15 *ibid* 3-4.

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16 *ibid* 5.

had on the river,<sup>17</sup> altering the natural dynamic of the whole region and creating serious threats to present and future generations,<sup>18</sup> the court recognised the Atrato River as a '*sujeto de derechos*' (subject of rights). In this way, the river, its basin and tributaries were granted specific rights, including the right to protection, conservation, maintenance and restoration.<sup>19</sup>

Based on the premise that the earth does not belong to humans but that humans belong to the earth, just as every other species,<sup>20</sup> the Constitutional Court considered necessary to take a step forward in the jurisprudence toward the constitutional protection of the Atrato River, identifying at the same time the significance of a healthy environment, as well as the inextricable links between human beings and nature.<sup>21</sup> In this light, the Court recognised that

...the biggest challenge modern constitutionalism faces concerning the environment consists in achieving the effective safeguard and protection of nature [...] and of her associated forms of life [...] not for the mere material, genetic or productive potential they can represent for human beings, but for they form a living entity [...] subject of distinguishable rights. As a consequence, they become a new integral protection imperative which must be respected by the states and societies.<sup>22</sup>

As the Court explained, it is about being conscious of the interdependency relationship and deep connection we have with every other living being with whom we share our planet – understood as existences worthy of protection in themselves – and that we acknowledge ourselves as being integral parts of the global ecosystem – the biosphere – rather than as its user and simple masters.<sup>23</sup> Thus, according to the court

...only from a deeply respectful and humble position toward nature [and] her components

[...] it is possible to create a relationship with them in fair and equitable terms, leaving behind all concepts limited to utilitarianism, the economy or efficiency.<sup>24</sup>

In this context, given the high level of environmental degradation of the Atrato River – and of the planet in general, to a large extent due to extractive industries such as mining – as well as the constitutional protection of the environment in Colombia, the Court emphasises on the necessity to 'make headways on the interpretation of the applicable law and on the mechanisms of protection for the rights [...] and their subjects'.<sup>25</sup> For the Court, the way forward is an ecocentric and biocultural approach seeking to dissolve the human-nature binary interaction in order to reach 'a new socio-legal understanding in which nature and her components are taken seriously and granted with full rights'.<sup>26</sup> As the court states

... now is the moment to take the first decisions to protect the planet and its resources efficiently before it is too late, or before the ecological damage became irreversible, not only for future generations, but for the human species.<sup>27</sup>

Therefore, from the understanding of human beings as integral and interdependent part of nature, the court insists on the need to establish a legal tool which, based on the progressiveness of the rights and of legal pluralism, 'offers to nature and her relationship with human beings enhanced justice [and equity]'.<sup>28</sup> With this in mind, the court noted that 'justice with and for nature has to be applied beyond the human interest and [recognising her intrinsic value] must allow nature to be subject of rights'.<sup>29</sup> This interpretation, as the court highlights, is justified by the notion of the environment's superior interest as developed by the constitutional jurisprudence and included in various constitutional provisions revealing the transcendence of a healthy environment and the interdependency linkage with human beings.<sup>30</sup>

17 According to the Court, currently it is impossible to determine the Atrato River's original course. Colombian Constitutional Court (n 1) Ground 9.21.

18 *ibid* Grounds 9.21 and ss.

19 *ibid* Operative part pt 4.

20 *ibid* Ground 5.9.

21 *ibid* Ground 9.31.

22 *ibid* Ground 9.27.

23 *ibid* Ground 9.27.

24 *ibid*.

25 *ibid* Ground 9.28

26 *ibid*.

27 *ibid* Ground 9.29.

28 *ibid* Ground 9.30.

29 *ibid* Ground 9.31.

30 *ibid*.



Following, the court highlighted that the current Colombian mining policy promotes an increased consumption of natural resources over the coming years<sup>31</sup> and that in practice the anthropocentric environmental legislation in force lost its binding force to be endowed with a mere 'symbolic effectiveness'.<sup>32</sup> As a result, the Court decided to take an important step in the jurisprudence and, breaking up with the anthropocentric ideological orientation of rights, ordered that the Atrato River be a subject of law and bearer of rights.

With the purpose of assuring that the Atrato River's rights are guaranteed in practice, the Constitutional Court pronounced a number of points in its judgement's operative part to enforce its decision. It declared that the national government, in conjunction with the ethnic communities living in the Atrato River basin, will become guardians of the river and, therefore, will exercise jointly the guardianship and legal representation of the river's rights.<sup>33</sup> Also, the Court ordered the river representatives to form the Commission of the Guardians of the Atrato River (*Comisión de Guardianes del Río Atrato*) that should be established within three months of the ruling.<sup>34</sup> It will be advised by an Advising Team formed by members of the Humboldt Institute and WWF Colombia – who have prior experience on rivers protection – and can receive support from public and private entities, universities, national and international academic and research centres and environmental organisations, and community-based organisations and civil society which want to be linked to the Atrato River's protection project.<sup>35</sup> Thus, by nominating two

specific guardians for the river and facilitating institutional support and collaboration, the court seeks to address the challenges and difficulties of enforcing the Atrato River's legal rights.

In *Dejusticia* case, the Colombian Supreme Court followed the same ecocentric approach adopted by the Constitutional Court in the Atrato case. This is apparent when the court declares that deforestation in the Amazon represents a serious threat to the Colombian people as well as for the survival of native species of fauna and flora. The court adds that the Amazon is ecologically important for the Planet's environmental balance and the regulation of the climate at world scale.<sup>36</sup> On these bases, the court recognised the Amazon Basin as subject of rights.<sup>37</sup>

The court emphasised that in the current context of extremely serious change in the natural conditions of our planet, 'ecosystems are exposed to a situation hampering their survival' just as for humankind.<sup>38</sup> As an example, the court refers to the irrational colonisation of forests and extension of the agricultural, urban, industrial and extractive frontiers, hence increasing deforestation, causing pollution and a rapid transformation of our surroundings.<sup>39</sup>

The first responsible for the situation is, according to the court, the very human species

...its hegemonic planetary position lead to the adoption of an anthropocentric and selfish model presenting various harmful features for the environmental balance, namely: i) a disproportionate demographic increase; ii) a dizzying development system guided by consumerism; and, iii) the limitless exploitation of natural resources.<sup>40</sup>

Yet, the Court admits that the consciousness of the compulsory reorientation of our behaviour and of the recognition of the intrinsic value of nature is gradually being created. Thus, a new 'ecocentric-anthropogenic' ideology has emerged, which moves away from the purely anthropocentric and utilitarian

31 As the Court noted, the current Colombian mining policy aims at converting the country into a mineral extraction power. Colombia is already among the biggest gold producers at the global level. *ibid* Ground 7.6.

32 *ibid* Ground 9.45.

33 *ibid* Operative part pt 4.

34 *ibid*.

35 *ibid*. Moreover, the Court ordered, among other things, the design and execution of: (i) a decontamination plan of the Atrato River basin (Operative part pt 5); (ii) a coordinated action plan to neutralise and eliminate illegal mining in the Atrato River and its tributaries, as well as in all of the *Chocó* department (Operative part pt 6); (iii) an integrated action plan for traditional livelihood and food retrieval (Operative part pt 7); and, (iv) the conduction of toxicological and epidemiological studies in the Atrato River, its tributaries and neighbouring communities to determine the degree of contamination and the possible impact on human health (Operative part pt 8).

36 Colombian Supreme Court (n 3) Ground 11.

37 *ibid* Ground 14.

38 *ibid* Ground 4.

39 *ibid*.

40 *ibid*.

perspective and places human beings at the same level as nature with the aim to ‘avoid the arrogant, dismissive and irresponsible treatment of nature and her components, only to fulfil materialistic purposes without respect for their protection or conservation’.<sup>41</sup>

Moreover, in light of the environmental risks and issues at global scale, the Court underlines the obligation of solidarity with the ‘other’, including present and future generations, just as nature, animal and plant species living on this planet (the others).<sup>42</sup> Thus, according to the court,

...all human beings have to stop thinking only in their own interest. We must realise how our daily activities and behaviour have an impact on society and nature.<sup>43</sup>

The court assures that this obligation of solidarity rests on the fact that humankind ‘is part of nature, ‘being’ itself nature’.<sup>44</sup>

In this sense, acknowledging that the conservation and protection of the Amazon – considered as ‘a pivotal environmental area on Earth’ and dubbed ‘the lungs of the planet’ – is a national and global imperative,<sup>45</sup> the Supreme Court issued a decision recognising the Colombian Amazon rainforest as a subject of rights beneficiary of the protection, conservation, sustenance and restoration that must be provided by national and local governments.<sup>46</sup> Thus, the representation of and advocacy task for such rights have been given to the Colombian government and the territorial entities of the country’s Amazon region.

As in the Atrato case, in order to guarantee the rights of the Colombian Amazon, the court ordered a number of measures in the operative part of the decision. Such measures included the creation, within four months of the decision, of short, medium and long-term plans of action to combat deforestation and deal with the impacts of climate change.<sup>47</sup> It also requested the creation, within five months of the ruling, of an

41 *ibid* Ground 5.3.

42 *ibid* Ground 5.2.

43 *ibid* Ground 5.1.

44 *ibid* Ground 5.3.

45 *ibid* Ground 10.

46 *ibid* Ground 14.

47 *ibid* Operative part pt 1.

intergenerational agreement: the ‘*Pacto intergeneracional por la vida del Amazonas colombiano PIVAC (Intergenerational Covenant for the Life of the Colombian Amazon)*’ incorporating measures to reduce deforestation, mitigate GHG emissions, and to enhance adaptation to climate change.<sup>48</sup> Such plan should be developed by the government, with the participation of the plaintiffs, affected communities, scientific and environmental groups and the concerned Colombian population.<sup>49</sup>

## 4 ANALYSIS

The landmark rulings made by the Constitutional Court and the Supreme Court of Colombia in both *Tierra Digna* and *Dejusticia* cases, are part of a growing number of legislation and judicial decisions that, challenging traditional legal paradigms, adopt ecocentric approaches for the protection of nature. Indeed, in different parts of the world the legal status of a number of ecosystems changed via legislation or court rulings and they were recognised as legal subjects with enforceable rights to improve their protection. For example, this has been the case of the Vilcabamba River in Ecuador,<sup>50</sup> the Te Urewera forest and the Whanganui River in New Zealand,<sup>51</sup> and the Ganges

48 *ibid*.

49 *ibid*.

50 In 2011, the Vilcabamba River lawsuit became the first case worldwide in which the ‘rights of nature concept’ was applied. Regarding the Ecuadorian experience on rights of nature see Louis J. Kotzé and Paola Villavicencio Calzadilla, ‘Somewhere between Rhetoric and Reality: Environmental Constitutionalism and the Rights of Nature in Ecuador’ (2017) 6(3) *Transnational Environmental Law* 401.

51 The Te Urewera Forest and the Whanganui River and its tributaries were granted legal personhood in 2014 and 2017 respectively. See The Te Urewera Act (Public Act 2014 No 51) and the Te Awa Tupua (Whanganui River Claims Settlement) Act of 2017. In addition, it is expected that the Mount Taranaki, the second highest mountain on New Zealand’s north island, will soon become the first mountain in the country to be awarded a legal person status. P. Smith, ‘Mount Taranaki: will the New Zealand peak’s ‘living person’ status bring respect?’ *The Guardian* (5 June 2018) < <https://www.theguardian.com/travel/2018/jun/05/mount-taranaki-will-the-new-zealand-peaks-living-person-status-bring-respect> >.

and Yamuna Rivers in India.<sup>52</sup> Together these normative and jurisprudential novel developments demonstrate the increasing relevance of the rights of nature paradigm to enhance the protection of nature and her vulnerable natural entities and to, ultimately, transform the human-nature relationship on the basis of non-anthropocentric world views.

By establishing significant rights of nature precedents in Colombia and worldwide, the Colombian courts' rulings intended to protect both the Atrato River and the Amazon basin from human activities are particularly significant for various reasons. Owing to the length limitations of this case note, only the most relevant of those reasons are discussed below.

First, the courts' judgements bring light not only to the inefficiency of the Colombian government and various local and national authorities to provide and coordinate effective responses to serious environmental problems facing the country, such as those associated to illegal mining activities in the Atrato River and deforestation in the country's Amazon region, but also to the insufficiency of environmental law and policy – in Colombia and in the rest of the world – to ensure the effective protection of nature and her diverse ecosystems. Such deficiencies result from the anthropocentric ontological orientation of environmental law that, without recognising the intrinsic value of nature, values her in terms of short-term economic gains humans derive from her use.<sup>53</sup> Thus, in order to overcome these deficiencies, the Colombian courts decided to adopt an ecocentric approach recognising that both the Atrato River and the Amazon basin are not only mere providers of services and resources, but are rights-bearing subjects

of law. Therefore, the recognised legal rights of both ecosystems – including the rights to protection, conservation, maintenance and restoration – can be enforced by local communities and individuals in courts, while their guardians and representatives could also be sued for failing to fulfil their responsibilities.

As the Constitutional Court noted, this paradigm shift from a human-centred to a non-anthropocentric world view, identifying humans as part of nature and not as her masters, is based on the understanding that environmental law is part of a dynamic and evolving concept continuously being updated and submitted to democratic deliberation, following the scientific developments, and should seek to be part of a fair and equitable framework.<sup>54</sup> Based on these premises, in an effort to overcome the current limitations and deficiencies of environmental law, the Colombian courts used the ecocentric approach to halt and reverse the environmental deterioration of the Atrato River and to stop deforestation in the country's Amazon region. This represents an important shift in the legal framework for environmental protection in Colombia and a significant development of environmental law.

Second, while stressing the relevance of the recognition of the rights of nature on paper, both judgements emphasise on the significance of the protection and enforcement of those rights.<sup>55</sup> Precisely, in an effort to operationalise legal personhood granted to the Atrato River and the Colombian Amazon basin and to ensure that their new legal rights are implemented properly, the courts issued a number of important orders. In *Tierra Digna* case those measures included the designation of the Atrato's guardians – which are members of the affected communities alongside with the government – who uphold the river's rights and are allowed to speak and stand for it.<sup>56</sup> Meanwhile, in *Dejusticia* case, the Colombian Supreme Court ordered that the recognised rights of the Amazon rainforest will be represented by the government and the territorial

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52 In March 2017, the High Court of the State of Uttarakhand ruled that the Ganges and the Yamuna rivers have the status of a legal person with rights. *Mohd Salim v State of Uttarakhand & others*, WPIL 126/2014 < <http://lobis.nic.in/ddir/uhc/RS/orders/22-03-2017/RS20032017WPIL1262014.pdf> >. After the state government of Uttarakhand appealed that judgement, in July 2017 the Supreme Court stayed the Uttarakhand High Court landmark judgement.

53 See, for example, Louis J. Kotzé and Duncan French, 'The Anthropocentric Ontology of International Environmental Law and the Sustainable Development Goals: Towards an Ecocentric Rule of Law in the Anthropocene' (2018) 7 (1) *Global Journal of Comparative Law* 5.

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54 Colombian Constitutional Court (n 1) Ground 7.33.

55 On the enforcement of the legal rights of nature or her ecosystems see, for example, O'Donnell and Talbot-Jones (n 4).

56 The guardians of the Atrato River were designated on August 2017. *Tierra Digna*, 'Hoy se elige en Quibdó el guardián del Atrato de las comunidades' (31 August 2017) < <http://tierradigna.org/2017/08/31/hoy-se-elige-en-quibdo-el-guardian-del-atrato-de-las-comunidades/> >.

entities integrating such ecosystem. Moreover, the ruling on the Atrato River case stated that specific institutions – *the Procuraduría General, the Defensoría del Pueblo and the Contraloría General* (the Attorney General, the Ombudsman, and the General Controller's Office) – will form an Expert Panel in charge of monitoring and verifying the compliance of the court's orders.<sup>57</sup> However, one could express doubts over the true commitment to be expected by the government's representatives in these bodies as it has been shown earlier that the Colombian government lacked actions to protect these areas. Also, the guardians and representatives have not been given additional funding to support their new responsibilities. Yet, as it has been noted, the independence of the legal entities holding the legal rights of ecosystems from state and national governments and the provision of funding and organisational support to uphold the rights of nature are key to their enforcement.<sup>58</sup> Despite the above, the courts' rulings provide important elements regarding the enforceability of the rights of nature, as well as of the inter-institutional articulation and cooperation with civil society that could be useful for future experiences – ruling and legislation initiatives – on nature's rights.

Third, while the recognition of the Atrato River and the Amazon Basin as '*sujetos de derechos*' was not something that applicants sought or requested directly in the *tutela* actions they brought, the Colombian courts took the opportunities offered by the cases to make progress on the 'rights of nature' paradigm in the country. Thus, in the absence of a national law providing for the rights of nature in Colombia, the courts ruled in favour of such ecosystems recognising their legal personhood. Both cases, therefore, have shown that legal rights of nature can be recognised by both legislative and judicial channels.<sup>59</sup> In addition, they underlined the key role that courts play to promote the effective protection of nature and her ecosystems, even making use of ecocentric approaches, especially in countries where the legal framework on this emerging legal paradigm is still lacking behind. Even in lawsuits not originally based on rights of nature or not brought on behalf of her, courts can set powerful precedents regarding new approaches on environmental

law, such as the rights of nature legal framework, contributing to its understanding and development. This casts light upon three key aspects: i) the importance of science in helping courts understand the threats to nature and the urgency to cope with them, ii) the importance of raising awareness and knowledge among judges – and lawyers – on rights of nature, and iii) the importance of promoting citizens awareness of rights of nature and the implications of related rulings.

While the Colombian courts' rulings analysed in this case note are without a doubt of great significance for the country's people and ecosystems, they neither imply an immediate and effective protection of the Atrato River and the Amazon rainforest, nor ensure their prompt and comprehensive restoration. Certainly, such effective protection will depend on the enforcement of the courts' orders.<sup>60</sup> As a matter of fact, the enforcement of laws and court rulings recognising rights of nature still confronts many difficulties and challenges in jurisdictions where the rights of nature paradigm emerged.<sup>61</sup> It is also not clear what the real implications of recognising the Atrato River and the Amazon rainforest as being rights-bearing subjects will be. For example, if such recognition will be limited to a symbolic effect, or whether it will generate real practical changes in the governance, management and control of these (and others) ecosystems in Colombia or in the current national development model based on the exploitation of natural resources. Similarly, there is no certainty about the results – and their effectiveness – of the collaboration between the governmental entities and the plaintiffs aimed at enforcing the courts' rulings. As this collaboration is currently occurring, only time will reveal if the outcomes are strong enough to ensure the effective protection of both the Atrato River and the Amazon basin.

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<sup>60</sup> Although in both cases there were some initial delays, the Colombian government and the plaintiffs have made steps on the implementation of measures to comply with the courts' judgements. For more detailed information, see the websites of the NGOs *Tierra Digna* [www.tierradigna.org](http://www.tierradigna.org) and *Dejusticia* [www.dejusticia.org](http://www.dejusticia.org)

<sup>61</sup> This has indeed been the case in Ecuador and Bolivia. See Kotzé and Villavicencio Calzadilla (n 50); Paola Villavicencio Calzadilla and Louis J. Kotzé, 'Living in Harmony with Nature? A Critical Appraisal of the Rights of Mother Earth in Bolivia' (2018) 7 (3) *Transnational Environmental Law* 397.

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<sup>57</sup> Colombian Constitutional Court (n 1) Operative part pt 9.

<sup>58</sup> O'Donnell and Talbot-Jones (n 4) 6-7.

<sup>59</sup> *ibid* 8.

In any case, given the urgency and magnitude of the environmental problems facing the planet, the rulings on both *Tierra Digna* and *Dejusticia* cases challenge the human-centred or anthropocentric orientation of environmental law and highlight the need for innovative and effective legal approaches to environmental protection such as the ecocentric rights paradigm. Thus, by providing new elements on the implementation of ecocentric conceptions of rights, both rulings contribute to the global debate and development of the emerging field of rights of nature and set important precedents for rights of nature law and litigation in Colombia and worldwide. The challenge for the country is now to achieve the successful implementation of the new legal rights granted to the Atrato River and the Amazon rainforest.

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