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ORIGINAL ARTICLE

Shortcuts and detours of environmental collective legal mobilizations: the cases of the Atrato River and the Amazon region in Colombia

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Abstract

Colombia's Atrato River and Amazon region were declared legal entities by Colombian judges in 2016 and 2018 respectively. This set the stage for a new era of environmental litigation in Colombia, in which a number of natural entities have been granted this status. In both contrasting cases, non-governmental organizations (NGOs) brought dramatic environmental harms to court through the special *acción de tutela* procedure, but did not claim a new ecocentric legal status for nature. This article asks how rights were collectively mobilized in the Atrato and Amazon cases and led to ecocentric judgments. Semi-structured interviews were conducted in 2020 with members of NGOs and grassroots organizations involved in these two cases, revealing the emergence of grievance collectives. Through the analysis of these qualitative data, we argue for a perspective that considers the interdependence of legal mobilization

and the collective as a social relationship. Collective support led to the choice of an unconventional process. However, this supported the litigation collectives and resulted in ecocentric judgments that generated challenges for the associated collectives in the post-litigation phase. Thus, the analysis of legal mobilization and social relations in the collectives as interdependent improves the understanding of the shortcuts and detours through which complex conflicts have been presented in cases of environmental litigation, and helps to strengthen the scope and concepts of collective legal mobilization.

1 | INTRODUCTION

In several countries, recent environmental legal mobilization has given a new ecocentric momentum to granting rights to nature. In 2006, a community achieved the first environmental personhood regime in Pennsylvania in the United States (US). In 2008, Ecuador's Constitution recognized the rights of Mother Earth. A statutory law granted legal personhood to New Zealand's Te Urewera Forest in 2014 and to the Whanganui River in 2017. Also in 2017, India recognized the Ganges and Yamuna rivers as legal entities through rulings (though later overturned), allowing for domestic courts and litigation to grant rights to nature.[1] Colombia has followed the path of nature rights litigation, starting with two ecocentric rulings that challenged law's human-centred approach: the Atrato River case from 2016 and the Amazon region case from 2018. In both cases, judges recognized natural entities' legal personhood.[2] The rulings were an innovative approach for Colombia's jurisdiction, though both lawsuits did not primarily claim environmental personhood. Interestingly, both cases resulted from collective legal mobilization via a legal procedure that is not primarily intended for rulings on collective or environmental rights. By comparing the two cases, this article shows that collective environmental legal mobilization depended on and fundamentally changed social relations between non-profit litigants and represented actors.

Scholars from different disciplines have been increasingly engaging with the study of collective legal mobilization. Their common concern is how non-governmental organizations (NGOs), social movements, and individuals cooperate in lawsuits.[3] The legal actions of individuals are known to face a 'path with barriers, which some travellers will surmount, while others fall by the wayside'.[4] By contrast, 'litigation collectives' offer different shortcuts for the path of legal

[1] A. Putzer et al., 'Putting the Rights of Nature on the Map: A Quantitative Analysis of Rights of Nature Initiatives across the World' (2022) 18 *J. of Maps* 89; N. Pain and R. Pepper, 'Can Personhood Protect the Environment? Affording Legal Rights to Nature' (2021) 45 *Fordham International Law J*. 315.

[2] G. Handl, 'The Human Right to a Clean Environment and Rights of Nature: Between Advocacy and Reality' in *The Cambridge Handbook of New Human Rights: Recognition, Novelty, Rhetoric*, eds A. Arnauld et al. (2020) 137, at 152.

[3] C. Helmrich, 'Strategic Litigation rund um die Welt' in *Strategic Litigation: Begriff und Praxis*, eds A. Graser and C. Helmrich (2019) 115, at 139.

[4] H. Genn, *Paths to Justice: What People Do and Think about Going to Law* (1999) 9.

mobilization; collective cases are expected to be more comprehensively resourced and strategic.[5] They are, in the words of Charles Epp, litigation's 'missing ingredient' when working as a support structure to overcome the material barriers that impede individual claims.[6] The importance of collective legal mobilization can be seen particularly well in the example of environmental lawsuits.[7]

However, these assumptions are too simplistic to explain the Colombian Atrato and Amazon lawsuits. Claiming the rights of nature was not necessarily the collective goal of the plaintiffs, and there was an urgent need to reduce the timescale of normally lengthy processes. Thus, the logic of both lawsuits must be understood as being more than merely a matter of resource orientation. Neither lawsuit can be understood as a collective process of targeting a legal goal, where the claimants chose the best possible legal remedy and finally obtained in court the ecocentric rights of the Atrato River or the Amazon region. According to the assumptions of collective legal mobilization, both environmental judgments would erroneously be seen as the result of reducing the timescale of long lawsuits for collective rights. In other words, the choice of the procedure, the preparation of the claims, and the implementation of the judgments would be perceived only in terms of shortcuts for faster environmental litigation. Thus, this approach wrongly assumes that all of the actors involved shared the same interest in achieving the litigation goals. In fact, there have been collective shortcuts for litigation; however, there have also been legal challenges during the collective lawsuits. As we show in this article, these contradictions become clearer when we focus on the social relationships and the mutual expectations between litigating NGOs and represented actors, as well as the situational use of power in the collectives.

Thus, this article not only contributes to the concept of collective legal mobilization but also outlines the long and remarkable journey that began with the extensive and persistent social crisis in the river communities on the Atrato and the massive deforestation of the Amazon forests in Colombia. We have chosen these two cases not only because they are the starting point of Colombia's recent debate on the rights of nature, but also because they have become important precedents for later legal decisions and fundamental references for civil society and environmentalists in Colombia. Furthermore, international comparative scholarship on environmental litigation is also turning its attention to the Colombian cases.[8] Complementing existing literature, in this article we hope to contribute to the discussion on the collective overcoming of legal and organizational barriers by local actors and NGOs.

In the first case, of the Atrato River from 2016, the NGO Centro de Estudios para la Justicia Social 'Tierra Digna' (henceforth Tierra Digna) took on the legal representation of ethnic self-governing commissions known as Consejos Comunitarios (henceforth Consejos) and other actors of the local civil society. The Consejos are part of the ethnic self-governance of Afro-Colombian communities and since 1995 have been considered the 'ultimate authority', though this only applies to 'internal affairs'.[9] The Consejos were crucial actors for the river communities and victims of the mass displacements in Colombia's armed conflict in the early 2000s.

The second case is from 2018. In the Amazon region case, the NGO Dejusticia represented 25 youths and young adults from different regions of Colombia. Dejusticia is a Colombian NGO

[5] L. Hahn and M. von Fromberg, 'Klagekollektive als "Watchdogs": Zu Chancen strategischer Prozessführung für den demokratischen Rechtsstaat' (2020) 1 *Zeitschrift für Politikwissenschaft* 217.

[6] C. Epp, *The Rights Revolution: Lawyers, Activists, and Supreme Courts in Comparative Perspective* (1998) 17.

[7] L. Vanhala, 'Is Legal Mobilization for the Birds? Legal Opportunity Structures and Environmental Nongovernmental Organizations in the United Kingdom, France, Finland, and Italy' (2018) 51 *Comparative Political Studies* 380.

[8] Handl, op. cit., n. 2.

[9] F. Quinche Ramírez, *Derecho Constitucional colombiano de la Carta de 1991 y sus reformas* (2009) 110.

working professionally in the legal field with other NGOs, local grassroots organizations, and individuals.[10]

Both litigation collectives used the *acción de tutela* procedure (henceforth *tutela*). Outside of the Spanish-language context, there is little research on the *tutela*.[11] It is a legal remedy by which individuals can claim the protection of their *subjective* fundamental rights. Subjective rights are common in Europe's continental tradition, which has shaped Colombia's legal system. They grant rights as entitlements to individuals, develop historically over three generations, and include civil, political, and economic, social, and cultural rights.[12] Originally, the *tutela* was not intended for the protection of collective rights. However, it can also work for these rights in exceptional situations. The *tutela* individualizes massive rights violations in the context of persistent social inequalities in Colombia. It is not a mass action but rather makes it possible for large segments of the population to take legal action.

The use of the *tutela* shows that the current theoretical explanations are insufficient for understanding the logic of both lawsuits, which come from two very different regions of Colombia. In terms of justiciability, the use of the *tutela* to mobilize collective rights should not be misunderstood as a general shortcut. It does save time, but a complex argument is required for using the *tutela* rather than existing resources for the legal protection of collective rights. Thus, it is imperative to understand how rights were mobilized collectively in the Atrato and Amazon cases.

In this article, we opt for a perspective that considers both legal mobilization and the collective as interdependent entities. By comparing the Atrato and Amazon cases, we show that collective legal mobilization cannot be understood if the collective is conceptualized only as a means of legal mobilization. Moreover, our research supports existing studies that recognize the development of collectives because of the fact of litigation, rather than seeing litigation only as a result of these networks or collectives.[13] Specifically, the changes and transformations of the collective need to be analysed in the light of legal mobilization and litigation. Through the example of the two cases from Colombia, we show that considering only litigation collectives, which provide structures to shortcut the path of legal mobilization and its obstacles, would not allow for an understanding of collective legal mobilization as such. This limitation becomes evident when litigation shortcuts, such as the choice of special procedures, become legal challenges but still support the social relationship of the collective.

The comparison of the Atrato and Amazon cases gives researchers more empirical reasons to emphasize the dynamics of collectives' social relationship in further research on collective legal mobilization. In fact, the two cases were selected because they offer contrasting insights for understanding collective litigation.

The next section introduces key approaches to collective legal mobilization. We follow recent proposals to extend traditional approaches to legal mobilization by emphasizing sociological

[10] M. García Villegas and M. A. Ceballos Bedoya, *Democracia, justicia y sociedad: diez años de investigación en Dejusticia* (2016).

[11] For exceptions, see R. E. Carlin et al., 'Public Reactions to Noncompliance with Judicial Orders' (2021) 116 *Am. Political Science Rev*. 265; W. K. Taylor, 'Ambivalent Legal Mobilization: Perceptions of Justice and the Use of the *Tutela* in Colombia' (2018) 52 *Law & Society Rev*. 337; K. Merhof, 'Building a Bridge between Reality and the Constitution: The Establishment and Development of the Colombian Constitutional Court' (2015) 13 *International J. of Constitutional Law* 714; M.-S. Heinelt, *Minderheitenrechte und Interessenvermittlung: Die Wirkung von Autonomie- und Konsultationsrechten in Lateinamerika aus vergleichender Perspektive* (2018).

[12] N. Weiß, 'Drei Generationen von Menschenrechten' in *Menschenrechte: Ein interdisziplinäres Handbuch*, eds A. Pollmann and G. Lohmann (2012) 228. For further reading, see R. Alexy, *Theorie der Grundrechte* (1994).

[13] M. E. Keck and K. Sikkink, *Activists beyond Borders: Advocacy Networks in International Politics* (1998).

categories. In addition to its role as a shortcut for limited resources, collective legal mobilization must also be understood as a social relationship with mutual expectations towards its members, mainly litigating NGOs and represented actors. Understanding legal mobilization and the collective as interdependent entities means asking not only whether the collective was a shortcut on the path of legal mobilization, but also whether following this path changed or transformed the expectations of the members of the collective that initiated the lawsuit.

A qualitative study on the Atrato and Amazon cases helps us to reflect sociologically on collective legal mobilization. The third section presents methodological details on the data collection, analysis, and evaluation of the guided interviews conducted with representatives of both collectives between July and September 2020. The case comparison presented in the fourth section is useful for showing that the agendas emanate from the social relationship of the collective actors (Section 4.1) and for assessing the meanings of several mobilization barriers (Section 4.2). Subsequently, collective support is assessed in terms of shortcuts and detours on the road to legal mobilization (Section 4.3). Finally, ambivalences surrounding ecocentric judgments in these legal mobilizations are analysed in Section 4.4.

2 | CONCEPTS OF COLLECTIVE LEGAL MOBILIZATION

When legal mobilization takes place collectively, a number of questions arise. Which actors and conflicts translate into a legal case? Moreover, when and where does legal mobilization happen? The answers are often embedded in the framework of a supportive, and sometimes collective, use of law.[14] However, such ends–means assumptions have been widely criticized.[15] Thus, the conceptual foundation of collective legal mobilization has the potential for theoretical development if it is considered not only as a supporter of the declining opportunity costs of litigation, but also as a social relationship structured by legal mobilization.

The more instrumental-utilitarian approach to the use of law is described by Emilio Lehoucq and Whitney K. Taylor, who have reviewed and systematized numerous scholarly contributions on legal mobilization.[16] Within that framework, on the one hand, they propose to understand legal mobilization as the use of law that inevitably involves an explicit and conscious 'invocation of a formal institutional mechanism'.[17] On the other hand, they recommend examining other uses of law – such as legal framing and consciousness – while conceptually distinguishing them from legal mobilization.

The assumption of the use of law for mobilization is also widespread beyond the boundaries of rational explanations of action; law is mobilized to resolve pre-existing conflicts[18] or to translate them into legal conflicts.[19] Latin American scholars also focus on this use, which does not necessarily have to address nation state or transnational law, but can also be directed at plural

[14] Taylor, op. cit., n. 11.

[15] A. Kretschmann, *Regulierung des Irregulären: Carework und die symbolische Qualität des Rechts* (2016) 83.

[16] E. Lehoucq and W. K. Taylor, 'Conceptualizing Legal Mobilization: How Should We Understand the Deployment of Legal Strategies?' (2020) 45 *Law & Social Inquiry* 166.

[17] Id., p. 178.

[18] E. Blankenburg, *Mobilisierung des Rechts: Eine Einführung in die Rechtssoziologie* (1995).

[19] N. Luhmann, *Kontingenz und Recht* (2013) 27.

legal systems.[20] Simultaneously, the rationalist tradition underscores the counter-hegemonic use of law by excluded groups. Their legal mobilization expands what is 'legally conceivable'.[21] The power sedimentation of post-colonial rule can sometimes become contested when law is used as a 'weapon of liberation'.[22]

Understanding the specific circumstances of rights mobilization in collective contexts requires consideration of the large number of social movements, civil society organizations, and NGOs.[23] What makes the use of rights collective is the fact that very different actors bundle technical expertise, infrastructure, and experience into synergetic actions that individual actors are unable to take due to a lack of resources.[24] According to this view, social collectives can create their own opportunities to use law.[25] This research traces its origins to the seminal work of Epp, who analysed advocacy and financial resources as a 'support structure' that explains the increased number of lawsuits and claims during the US civil rights movement. The support structure explains why legal mobilization does 'not arrive in supreme courts as if by magic', but depends on the support of lawyers, advocacy organizations, and financing.[26] This research gives reasons for the hypothesis that collectives provide support for lawsuits. The support structure is supposed to be the missing link for overcoming the barriers to legal mobilization, where legal, economic, practical, and social impediments affect claimants' 'ability and willingness to claim their rights, benefit from legal protection, and enjoy effective legal remedies in cases of violations'.[27] In the case of Colombia, these barriers have been identified as inadequate legal services and advice, lack of coverage and infrastructure, overburdened legal systems, and issues of institutional trust and legal certainty.[28] The support structure helps to collectively overcome these barriers. In this sense, a collective's support structure can be seen as a shortcut on the long path of legal mobilization.[29]

Beyond that, however, as Lehoucq and Taylor show, there is much disagreement on important issues of collective rights mobilization. For example, there needs to be a consensus on whether the conflicts that arise from rights mobilization must involve political concerns and agendas. While Chris Hilson tends to argue for this involvement of a broader agenda,[30] Lehoucq and Taylor point out that individual grievances can also become the starting point of collective legal mobilization.[31] Lisa Hahn and Myriam von Fromberg emphasize that litigation collectives tactically

[20] B. Sousa Santos, *Sociología jurídica crítica* (2009) 54.

[21] M. A. Manzo, 'La movilización del derecho por movimientos sociales: dinámicas de la política radical de transformación y el espacio de lo jurídicamente pensable' (2018) 8 *Oñati Socio-Legal Series* 683.

[22] J. A. Torre Rangel, *El derecho como arma de liberación en América Latina: sociología jurídica y uso alternativo del derecho* (2006).

[23] C. Hilson, 'New Social Movements: The Role of Legal Opportunity' (2002) 9 *J. of European Public Policy* 238.

[24] Hahn and von Fromberg, op. cit., n. 5.

[25] Vanhala, op. cit., n. 7, p. 384.

[26] Epp, op. cit., n. 6, p. 18.

[27] International Commission of Jurists, *Women's Access to Justice in Kazakhstan: Identifying the Obstacles & Need for Change* (2013) 9, at <https://resourceequity.org/record/1863-womens-access-to-justice-in-kazakhstan-identifying-the-obstacles-need-for-change>.

[28] R. Uprimny et al., *Encuesta nacional de necesidades jurídicas y acceso a la justicia: marco conceptual y metodológico* (undated), at <https://www.dejusticia.org/wp-content/uploads/2017/04/fi_name_recurso_619.pdf>.

[29] Genn, op. cit., n. 4.

[30] Hilson, op. cit., n. 23.

[31] Lehoucq and Taylor, op. cit., n. 16, p. 172.

pursue agendas.[32] However, the related question of when exactly collective legal mobilization begins is quite controversial. Some scholars see the collective use of law as an alternative when political paths are blocked, and 'alternative legal solutions' and even international networks become necessary.[33] This can mean that collective legal mobilization begins when individual use of law is blocked due to a lack of knowledge or insufficient financial resources.[34]

On this basis, the *tutela* judgments of the Atrato and Amazon lawsuits could be recognized as the collective use of law following ecocentric agendas. The judicial designation of natural entities as subjects of law would be an extension of what is legally conceivable. This result would then be considered a supportive consequence made possible by the collective associations of social actors. The NGOs Tierra Digna and Dejusticia, together with other actors, would have collectively overcome mobilization barriers and thus would have translated their agendas into legal conflicts over nature's own rights.

However, as scholars have pointed out, this theory-based interpretation is contested because the collectives did not primarily target legal entitlements for nature and did not choose the principal procedure to protect collective rights. Scholars have also emphasized that these explanatory patterns of legal mobilization require differentiation. Accordingly, this article proposes that social relations – unpredictable interactions between non-profit litigators and represented plaintiffs – are also relevant for collective legal mobilization. This argument can be found in research on regulation.[35] We follow Max Weber's definition of social relations as the probability of the 'behavior of a plurality of actors insofar as, in its meaningful content, the action of each takes account of that of the others'.[36] We see collectives as social relations in which actors establish and institutionalize mutual expectations about behaviour, action, and thought.[37] However, this does not take place in a social vacuum. Moreover, it is possible that setting expectations about roles is also an exercise of power. The decision to be a litigant, while others accept being a client, may be an exercise of authoritative power in the emergence of a collective.[38] From this perspective, work on the Atrato and Amazon cases offers important insights into assessing the validity of the assumption that collectives provide support to overcome obstacles to legal mobilization.

3 | RESEARCH METHODOLOGY

For this article, an empirical study was conducted to better understand legal mobilization around the Atrato and Amazon cases. The Atrato River lies on the northern section of Colombia's Pacific coast and is located in the Chocó Department. Afro-Colombian descendants of slaves taken from the African continent make up the majority of the population (82 per cent), while Indigenous

[32] Hahn and von Fromberg, op. cit., n. 5.

[33] Hilson, op. cit., n. 23; G. Fuchs, 'Rechtsmobilisierung: Rechte kennen, Rechte nutzen und Recht bekommen' in *Interdisziplinäre Rechtsforschung: Eine Einführung in die geistes- und sozialwissenschaftliche Befassung mit dem Recht und seiner Praxis*, eds C. Boulanger et al. (2019) 243, at 245.

[34] Hahn and von Fromberg, op. cit., n. 5.

[35] Kretschmann, op. cit., n. 15.

[36] M. Weber, *Economy and Society: An Outline of Interpretative Sociology* (1978) 26.

[37] P. L. Berger and T. Luckmann, *The Social Construction of Reality: A Treatise in the Sociology of Knowledge* (1966).

[38] H. Popitz, *Phenomena of Power: Authority, Domination, and Violence* (2017).

people constitute a smaller proportion.[39] The Amazon region is a sub-region located in the south east of Colombia. The Colombian Amazon, however, is not a jointly administered legal region. The Amazon region accounts for an area of up to 42 per cent of the total state territory and extends over nine departments.[40]

Due to the absence of quantitatively testable hypotheses, exploratory interviews were chosen for this study. We used semi-structured interviews with open questions and optional in-depth inquiry to assess how legal mobilization works in practice. The central interview topics were the actors' initial problems and motivations, the organizations' work on the initial problems, the implementation of the ideas in the respective *tutela* lawsuits, and perspectives on how the *tutela* implementation phase may operate.

The interview partners were selected by submitting official requests to Dejusticia and Tierra Digna, the NGOs that filed the *tutela* lawsuits. In addition, contact was sought with other actors of the litigation collectives, insofar as they had had personal experience of one of the two environmental lawsuits (such as social activists and individuals). This strategy limits the generalizability of the results, which is common in studies with a small number of cases.[41] The intention is to use the case comparison to show the potential for differentiation in the existing conceptualizations of collective rights mobilization.

Due to the extensive contact bans associated with the COVID-19 pandemic, we used videoconferences to conduct the interviews. Six interviews were conducted between July and September 2020. Four of these were on the Amazon region claim, and two interviews were on the Atrato claim. Three interviews were conducted with active and former Dejusticia personnel in the Amazon region. In addition, one interview was conducted with a member of the Center for Development Alternatives (CEALDES), another NGO active in the Amazon region. Regarding the Atrato case, interviews were conducted with a former member of Tierra Digna and a key person from local Atrato community organizations. Audio recordings of the six interviews (hereafter INTW1 to INTW6), made with the consent of the interviewees, were transcribed. The interview transcripts were subsequently anonymized.[42]

For the analysis of the data, we coded the transcripts using an adapted version of open coding, according to Udo Kelle and Susann Kluge.[43] We developed the comparative dimensions after fully completing the interview coding. Each interview was coded by two authors separately. In the third step of the analysis, the main categories were consolidated.[44] These categories are shown in Figure 1, which includes social and legal requirements and judgment implementation.

[39] B. Hora et al., 'Raumstruktur, regionale Disparitäten und Bevölkerung' in *Kolumbien heute: Politik, Wirtschaft, Kultur*, eds T. Fischer et al. (2017) 59.

[40] F. Gutiérrez Rey et al., *Perfiles urbanos en la Amazonia colombiana: un enfoque para el desarrollo sostenible* (2004).

[41] B. Ebbinghaus, 'Mehr oder weniger? Quantitativer versus qualitativer Vergleich' in *Methoden der vergleichenden Politik- und Sozialwissenschaft: Neue Entwicklungen und Anwendungen*, eds S. Pickel et al. (2009) 197, at 203.

[42] While the Atrato collective included local grassroots organizations, the Amazon region collective did so only after the ruling. Therefore, we focused our interviews on representatives of Dejusticia since the initiative came from Dejusticia. By contrast, Tierra Digna has worked with local communities along the Atrato River over a longer period of time. Additionally, due to difficulties for empirical research during the COVID-19 pandemic, we focused on interviewing actors who had access to telephonic and/or virtual meetings and internet connection to avoid risks for the participants and further delays for the research.

[43] U. Kelle and S. Kluge, *Vom Einzelfall zum Typus: Fallvergleich und Fallkontrastierung in der qualitativen Sozialforschung* (1999) 76.

[44] Id., p. 81.

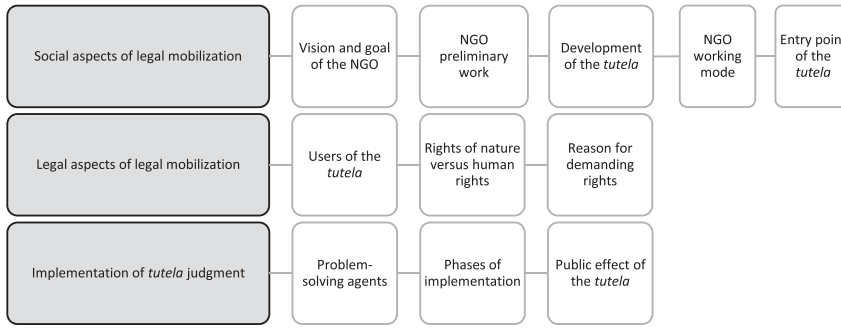

FIGURE 1 Main and secondary categories

4 | SHORTCUTS AND DETOURS OF COLLECTIVE MOBILIZATION IN THE ATRATO AND AMAZON CASES

4.1 | The collectives' agendas: entry points of the Atrato and Amazon lawsuits

The Atrato and Amazon lawsuits had very different entry points. The comparison shows that the two collective legal mobilizations clearly differed in their respective agendas. Nevertheless, what they had in common was the claim of fundamental rights violations because of (socio-)environmental conflicts. Specifically, the grievances emanated from complex social relations between the non-profit litigators and the represented plaintiffs.

While a general social crisis was the starting point of the Atrato lawsuit, the Amazon lawsuit had much more specific origins. It was primarily concerned with the deforestation of the Colombian Amazon and the associated encroachment on ecosystems, which the statement of claim described as a decisive contribution to global climate change.[45] In Colombia, it is the clearing of the Amazon forests, rather than industrial emissions, that generates the greenhouse gases that contribute to climate change. This scientific assessment raised an economic conflict in the statement of claim as cattle farming often uses forested areas, removing them from the original ecosystems through deforestation. In addition, there was a political conflict: Colombia's government does not adhere to its own political guidelines either at the national level or at the level of international obligations.[46]

By contrast, Tierra Digna's *tutela* claim had a more generalized approach to the initial problems on the Atrato River. The Atrato *tutela* was not limited to an environmental problem. Its starting point was a complex of political, social, economic-extractivist, and cultural conflicts. These conflicts manifested in the escalation of armed conflict directed against civilians, which culminated in mass population displacement from the region in the early 2000s. Even currently, Chocó is one of the Colombian departments most affected by forced internal population displacement. Mass evictions in Chocó began around 1997.[47]

[45] *Dejusticia in Representation of 25 Young People* v. *The Presidency of the Republic, Ministry of Environment and Sustainable Development and Others*, 29 January 2018.

[46] Id.

[47] Centro Nacional de Memoria Histórica, *Una nación desplazada: informe nacional del desplazamiento forzado en Colombia* (2015) 83.

The everyday incidents of violence and the impact of different violent agents on the Atrato river communities shook the social foundations of the villages along the Atrato. A member of the Bagadó municipality in Chocó reported: 'In 2001, the crisis was particularly bad. We had armed groups in the communities, on the roads. They control [my] food, what I have, where I go, my boat, my trips, and they punish that' (INTW3). In the wake of these significant violent incidents, the river communities referred to the river itself as a victim: 'We said there, the Atrato was a graveyard and many people die in the river and their bodies float in it and therefore it too is a victim in the conflict' (INTW3). Though this suggests a natural subjectification of the river, it should not be confused with a claim about the legal status of nature. Not only was there a distinction between the initial conflicts, there was also a difference between the ecocentric content of the *tutela* judgments. Originally, the *tutela* claims referred to conflicts about the social use of both regions, not about their legal status.

4.2 | Barriers to legal mobilization in the Atrato and Amazon regions

In both cases, there were barriers to legal mobilization that must be considered when analysing the interdependence of the collectives and their legal mobilization. However, obstacles related to the length of the process, lack of experience, and judicial failures are not necessarily insurmountable. Overcoming them does not always depend on the support of the collective.

Mobilization barriers were evident in the case of the Amazon lawsuit. Dejusticia had identified lengthy court proceedings as a problem in mobilizing its agenda against deforestation in the Colombian Amazon. According to Dejusticia, the only way to avoid the lengthy process was to use a *tutela*. However, this strategy presented new difficulties. While the *tutela* is a legal instrument designed for speed, its primary purpose is to protect the subjective fundamental rights of individuals under the Colombian Constitution. Another obstacle was that legal environmental work was a new area for the NGO at the time (INTW1). The lawsuit was more of a spontaneous experimental application on behalf of the younger members of the NGO who were interested in environmental issues. A comprehensive assessment of the asymmetries resulting from this unilateral initiative between the NGO and the plaintiff was not documented. One member paraphrased Dejusticia's leaders to illustrate the pragmatism with which they agreed to attempt the environmental litigation: 'You like this kind of thing – go do it!' (INTW5). The succinct description of the mandate for the new environmental lawsuit did not suggest a long-term coordinated expansion of the scope of work. However, it later became a major area of work for the NGO.

Mobilization barriers can also arise during the process itself. This can be the case with refusals, as illustrated by the Atrato case. The *tutela* lawsuit was rejected in two instances, leaving the collective the high-hurdle option of a non-obligatory and extraordinary appeal to the Colombian Constitutional Court. Though the Atrato case set the stage for the Amazon case, the latter was rejected in the first instance.

Similarly, with the Atrato *tutela*, we must also investigate the extent to which mobilization barriers obstructed the lawsuit. First, the litigation collective in the Atrato case was not primarily the means of overcoming barricades that stood in the way of the lawsuit. In 2011, the Consejos were already gaining experience of collective legal mobilization against deforestation and extractivist pollution of the river. Likewise, Tierra Digna had already undertaken work in the region before the Atrato lawsuit. On a tributary of the Atrato River, the organization had already supported other communities in protecting collective rights with an *acción popular*. Thus, the river communities on the Atrato had local structures and civil society organizations at their disposal, as well

as experience in rights mobilization. This meant that there was already a social relationship of expectation and experience of legal mobilization. Despite the comparatively simple *tutela* procedure and its high profile,[48] it should not be assumed that these groups had not attempted legal mobilization or that they lacked legal knowledge.

4.3 | Shortcuts and detours of collective legal mobilization

Given the established capacity to overcome obstacles prior to collective mobilization, collective support should not be underestimated. On the contrary, legal mobilization and the collective are interdependent. Both litigation collectives provided significant support to legal mobilizations in the elaboration of the *tutela*, the resolution of legal problems, the insistence on the *tutela*, and the use of judicial precedent.

4.3.1 | Collectives' shortcuts for legal mobilization

The fact that Tierra Digna developed the *tutela* for the river communities gives reason to see the collective as a support to shortcut the challenging path of legal mobilization and its obstacles. The preparatory process, rather than the *tutela* itself, could be seen as the shortcut. The result was a *tutela* lawsuit representing the Consejo Comunitario Mayor de la Organización Popular Campesina del Alto Atrato (COCOMOPOCA), the Consejo Comunitario Mayor de la Asociación Campesina Integral del Atrato (COCOMACIA), the Asociación de Consejos Comunitarios del Bajo Atrato (ASOCOBA), and the Foro Interétnico Solidaridad Chocó (FISCH).

Shortcuts as support for the collective are shown by Tierra Digna's solutions to the legal problems that only arose from using the *tutela* for collective issues. The *tutela* described environmental damages to the Atrato River as violations of subjective rights and outlined the complex and comprehensive conflict situation in the Chocó Department. The *tutela* also did not limit its criticism to the extractivist development model of raw material extraction, which had not been locally designed or legitimized. Both legal and illegal extractivist mining had displaced local traditional production practices such as agriculture and manual gold prospecting. From the perspective of the interviewees, moderate environmental degradation by the river communities had been replaced by massive environmental destruction by multinational companies.

The Atrato litigation collective translated the complex web of conflicts on the Atrato into a demand for the protection of the river, which was seen as a victim. For the litigation collective, the river – an integral natural feature of the region – was a focal point for social, economic, and cultural organization and a source of integration for members of the river communities. 'We are concerned about our river; we are here at the end of the Atrato and we get all the polluted water', said one interviewee, quoting the river communities' concerns about the existential threats that they faced (INTW6).

Furthermore, collective support was not limited to the formulation of the claim but also extended to the proceedings. This was visible in the rejection barriers of the first two instances. In the Atrato case, the first instance argued that the *tutela* was not the appropriate legal mechanism to protect collective rights. The second instance rejected it because the collective's claim did not meet the requirements of imminent harm and subsidiarity. In response to the initial failure of

[48] Taylor, op. cit., n. 11, p. 339.

the mobilization, the litigation collective shortened the path of starting an entirely new lawsuit by convincing the Ombudsman, together with the Bishop of Quibdó, to defend the *tutela* before the Constitutional Court. Once the *tutela* was admitted to the Constitutional Court, a consultation was held in situ, during which, in addition to the litigation collective, representatives of the extraction companies were consulted. One member of the local Consejos reported:

> Seven representatives of the multinational companies came to the debate in Quibdó. So the debate with them was tough. We needed a lot of preparation to show them that the displaced communities could not go back if large-scale extraction went ahead. (INTW3)

Another member of the litigation collective also reported that the plaintiff's side gave the court a direct impression of the effects of environmental stresses:

> In Paimadó, there was a public hearing. The University of Cartagena, which did environmental studies, also came … There was a series of samples. They had found mercury in people's blood, in their urine, and hair … And people showed some of the effects. For example, there were women who showed deformities on their children's legs … The judges heard how the people said 'We can't wash at the river now' … This was documented on-site. (INTW6)

The comparison between the two cases also shows that the contributions of the Atrato collective in 2016 led to an indirect removal of potential mobilization barriers for the Amazon *tutela* in 2018. The Atrato *tutela* was a central precedent for the Amazon case, which, in the second instance, was decided in favour of the Amazon collective. Like the Atrato case, scientific expertise was important in the consultations. In court, Tierra Digna were able to show a causal connection between the deforestation of the Amazon rainforests and global warming (INTW4).

However, the Amazon case demonstrates an additional shortcut where a litigation collective not only supports helpful shortcuts for litigation but is itself a legal requirement for the use of the specific legal action, the *tutela*. Dejusticia's decision to use the *tutela* required the identification of individuals who would have to be protected (strategic litigation). In the Amazon *tutela*, the litigation collective was the central prerequisite for mobilizing the climate agenda in the form of a *tutela*.

These shortcuts for litigation can also be provided by collectives. During the interviews, members of Dejusticia emphasized different possibilities for strategic litigation. It is not always necessary to form a collective in advance. Likewise, it is not mandatory that third parties ask Dejusticia for legal support; the organization itself also seeks clients to implement certain litigation projects (INTW1). Therefore, the legal handling of a given issue does not necessarily require a litigation collective. Rather, the decisive factor for a given issue is whether legal mobilization would be helpful for 'advancing rights or avoiding a step backwards' (INTW1). Accordingly, the Amazon lawsuit was conducted on behalf of 25 youths and young adults from different regions of Colombia. This group had only an indirect connection to the Amazon region. However, Dejusticia argued that the risks of climate change are not limited to the Amazon. Unlike in the Atrato case, the plaintiffs in the Amazon lawsuit were not members of common grassroots organizations. The collective was created as a social relationship not to overcome the litigation obstacles faced by the youth but to find the path of litigation itself.

The previous findings suggest that the support assumption of collective legal mobilization should also be examined in terms of the decision to take legal action. The decision to mobilize rights is one of the most important forms of support for the collective. It works even before litigation obstacles can arise. In the collective emerges the decision to legally construe complex collective issues, as environmental damage is one of the central focuses of the litigation collective.

In the case of the Atrato *tutela*, the decision to take legal action was significantly linked to a series of educational events in 2013 and 2014. Together with members of the Consejos, Tierra Digna outlined the importance of the river for the communities in the lower reaches of the Atrato. Participants in these workshops expressed the belief that '*something* has to be done for the river' (INTW6, emphasis added). Accordingly, the path of rights mobilization cannot be said to be the central or singular intention of the collective.

On the part of local grassroots communities, collective legal mobilization is the transformation of a rather non-specific intention into a concrete constitutional complaint of the *tutela*. The Consejos also had experience of alternative civil society actions, so it is reasonable to assume that the workshops with Tierra Digna had spontaneous framing effects. The Atrato *tutela* evolved from an experimental application that was part of that series of events. This was recalled in the interviews:

> When these events happen, you come and look at what's been done before … 'Remember when we talked about this? Do you think this would be worthwhile?' Then they say 'Yes, *something definitely* has to be done for the river because without the river, we have no territory'. (INTW6, emphasis added)

4.3.2 | Legal challenges for collective lawsuits

Far from completely eliminating obstacles, collective mobilization leads to new challenges that question the idea of collective support for litigation. The litigation proposals of the Colombian NGOs, which were accepted by the represented actors, created new difficulties that can be described as legal challenges. Though the *tutela* is generally considered a support for lawsuit actions, it is evident that in both the Atrato and Amazon cases its use first led to choppy legal waters that the litigation collectives then had to navigate. This is demonstrated by the counterintuitive application of the *tutelas* in both cases.

The Atrato case primarily presented the complex and collective initial conflicts not as a violation of collective rights but rather as a violation of the state obligation to protect the subjective fundamental constitutional rights to life, health, and food security.[49] Using the *tutela* led to the challenge of making the initial social, economic, and cultural conflicts legally manageable as subjective rights violations in the first place. The *tutela* procedure requirements were more responsible for the legal translation in the lawsuit than were the original experiences of crises of the population of the Chocó Department. Collective conflicts were brought to court as subjective violations of rights, and it was necessary to show 'why defending the river was so important for defending the rights of the community' (INTW6). This subsequently involved the challenge of bringing the community's role in exercising subjective rights to court. To do this, the litigation collective subordinated subjective rights, which are inalienable for the *tutela*, to the membership of Afro-Colombian and Indigenous communities.[50]

[49] Ruling T-622-2016, 10 November 2016 (henceforth Atrato ruling) 7.

[50] Id., p. 43.

A similar legal difficulty arose in the Amazon case, where this community subject was fundamentally absent because an agenda against the deforestation of the Amazon and climate change had to be legally mobilized. In the case of the Amazon *tutela*, Dejusticia had to show the courts that deforestation and related climate change, or the Colombian government's failure to meet climate targets, threatened the rights of future generations, especially since the Colombian jurisprudence was rather generic and limited to an already existing and obligatory constitutional principle of intergenerational solidarity.[51] Ruling C-094 of 2015 speaks of the 'principle of solidarity' that consists in satisfying the needs of present generations without limiting the ability of future generations to satisfy their own needs.[52] This aspect of solidarity was a central challenge for the *tutela* and, according to Dejusticia, led to pioneering legal work in the protection of the rights of future generations (INTW5).

In the case of the Atrato *tutela*, the demand for protection of the collective fundamental constitutional right to an intact environment given in Article 79 of the Colombian Constitution was central. It was also demanded in the Atrato *tutela* that the rights to culture and territory of the ethnic communities – which arise from various legal sources, such as Article 7 of the Colombian Constitution, Law 21 of 1991, and Law 70 of 1993, and, at an international level, ILO Convention 169 of 1989 – should be protected.

Equally relevant, however, were those demands for the protection of rights commonly understood as rights of the 'first and second rights generation'. The complex and collective initial conflicts of the Atrato communities have been examined through the lens of subjective rights to health and food security, which are part of the economic, social, and cultural rights of the Colombian Constitution. Applying these rights in the *tutela* mostly requires further development of constitutional jurisprudence, as the *tutela* is defined in Article 86 of the Colombian Constitution as protecting fundamental rights. However, there is controversy surrounding the question of what these fundamental rights encompass.[53]

Similar legal challenges, which on closer examination only arose from the decision to opt for subjectively protective legal action, can also be seen in the litigation collective in the Amazon case.[54] This *tutela* lawsuit also demanded that the Colombian judiciary protect the collective right to an intact environment; thus, like the Atrato lawsuit, the Amazon case took a legal detour. The operationalization of collective conflicts in the Amazon region using guaranteed claims to subjective rights could have facilitated legal mobilization. Instead, it was a challenge that emerged from the litigation collective itself. In addition to demanding the protection of the right to dignity and health, the litigation collective also demanded the protection of the right to water. This latter demand is not directly laid out in the Colombian Constitution. However, the constitution cites the jurisprudence of the Constitutional Court, which defines a constitutionally equivalent right to water and links this to the United Nations Sustainable Development Goals.[55] According to this jurisprudence, water is understood as a basic human need and must be considered both individually and collectively, even if doing so does not result in free access to water.[56] In this sense, the right to water becomes part of the economic, social, and cultural rights protected by the Constitution.

[51] *Dejusticia*, op. cit., n. 45.

[52] Ruling C-094-2015, 10 March 2015. This is a ruling on the unconstitutionality of a 1952 decree.

[53] C. Botero Marino, *La acción de tutela en el ordenamiento constitucional colombiano* (2006) 41.

[54] Ruling STC 4360-2018, 5 April 2018 (henceforth Amazon ruling).

[55] *Dejusticia*, op. cit., n. 45.

[56] J. Restrepo and J. E. Aguilar, 'El derecho al agua como Derecho Fundamental' (2019) 15 *Nuevo Derecho* 5.

4.3.3 | *Tutela* litigation as a social shortcut for collective social relations

The decision to use the *tutela* challenges the idea of collective support for legal mobilization. It turns out that collectives not only support litigation; it is also possible that litigation itself changes the collectives' social relationship between NGOs and the actors that they represent. This interdependence challenges path-oriented theories of legal mobilization insofar as litigation becomes what might be called a social shortcut for establishing a collective as a social relation.

Such an effect of litigation for collectives is evident in both the Atrato and Amazon cases. Since the *tutela* procedure is primarily intended to protect subjective rights, its use in collective legal mobilization seems to offer more legal detours than shortcuts. However, the procedure is a social shortcut. It is supportive from the point of view of establishing social relations within the litigation collective. In these cases, the simplicity of this legal mechanism proved to be supportive for the establishment of mutual expectations between the NGOs that became litigators and the local communities and young people that became represented *tutela* plaintiffs. The support structure was not the precondition for litigation, as Epp argues; rather, the legal process was the precondition for social relations of actors with clear mutual roles and expectations. The *tutela* turned NGOs with a broad scope of work into legal paralegals defending local communities and young people who had become clients. To put it bluntly, the *tutela* allowed for the quick and easy emergence of claim collectives.

The *tutela* as an instrument of legal action was not necessarily chosen because it was particularly suitable from a legal point of view for claiming collective rights. Rather, the *tutela* was supportive insofar as it enabled the establishment of very different social relations between the actors in both litigation collectives in a dynamic form. However, it was an asymmetrical initiative to create a collective, even if it was finally accepted by the represented actors. This indicates where the power to initiate a lawsuit was used because lawyers found the *tutela* to be a practicable instrument for establishing litigation collectives.

In the Atrato case, this *tutela* support was demonstrated by the time advantage involved in this legal remedy. Tierra Digna had been waiting for four years for a ruling on an *acción popular*, which was intended to protect collective community rights on the Quito River. By contrast, the *tutela* must be processed within just ten working days. In the interviews, it became clear that the *tutela* offered Tierra Digna the opportunity to fulfil its obligations towards the communities that it represented, whereas this would have been much more difficult in the case of the *acción popular*: 'No, we can't file an *acción popular* because they take too long. And what the people here [on the Atrato] need are quick solutions' (INTW6). The *tutela* made it possible for Tierra Digna and the local Consejos to avoid long-term litigation preparation, as the verdict was expected in a timely manner. This expectation of a quick verdict stood in contradiction to the belief that this legal process alone could completely resolve the complex initial conflicts:

> Besides the question of whether the ruling will be implemented or not, we really want these political and ideological debates … That's what people are saying: support what needs to be supported but without changing our way of seeing the world and being in it. That's the whole debate. (INTW3)

The *tutela*'s time advantage played out within the litigation collective, but it should not be equated with an expectation of quick conflict resolution: 'Everything can't be restored, but to get to the point at least where it's possible again … to live, to initiate things, that's what we look for, and

of course improving living conditions' (INTW3). The interviewees pointed out that Tierra Digna and the local Consejos were linked by a longer-term relationship in which mutual expectations had already emerged. Since the *tutela* had a comparatively short processing time, the litigation collective could expect a shorter time between the legal action and the actual interactions between the parties involved.

This interaction included, for example, the joint evaluation of all parts of the lawsuits, whether won or lost. In general, strategic litigation processes do not necessarily depend on being won.[57] In both the Atrato and Amazon cases, a defeat in the first or second instance and defeats in the intermediate stages in the process stimulated interactions in the litigation collective. Accordingly, the *tutela*'s short trial time meant the expectation not only of a quick verdict but also of earlier interaction between the participants of the collective. In the Amazon case, Dejusticia lost the lawsuit in the first instance. An interviewee described how this defeat was communicated to the 25 youths and young adults without simultaneously terminating the collective:

> Like when you have bad news and you're looking for the good news to bring: 'So, the bad news is we lost, but the good news is that it is the first instance and the law gives us a second chance – we can challenge it and make better arguments so the judge will hear us.' (INTW5)

The *tutela* is supposed to be a shortcut to bring about resolution in a few days; however, this does not mean that 'it is illegal or fraudulent, but that it brings a gigantic acceleration' (INTW4). It is important to note that an alternative process, the *acción popular*, can take years to complete and involves greater procedural complexity. The time advantage was also important for the litigation collective around Dejusticia. Given the instrumental initiation of the association, the Amazon *tutela* also placed fewer demands on the formation of social relations between the NGO and the represented actors. Instead of taking the long path of openly negotiating roles and expectations, these were established by concluding only a representation agreement with the group of youth and young adult plaintiffs that met the formal legal requirements. Compared to the preliminary work of Tierra Digna, this approach to the formation of the lawsuit was less preconditional. Furthermore, this approach made the collective less vulnerable to failure due to internal conflict. For example, Dejusticia was able to circumvent the potential for conflict inherent in the collective process of translating initial conflicts into legal questions. Taking advantage of this opportunity to avoid processes of negotiating mutual expectations in the collective was clearly a powerful action, fostered by the NGO's asymmetrical position towards the represented actors. Using this power, and being accepted by individuals, Dejusticia could more easily control the complex negotiation processes about goals, intentions, and methods in the litigation collective. For the NGO, there was no need for an open-ended and lengthy process of setting and clarifying mutual expectations.

However, as the next section shows, shortcutting the process of establishing a collective through the simple *tutela* procedure can pose consequential problems for the implementation of the judgments, since the very communities that live in the Colombian Amazon were excluded from the process. The interviews with members of Dejusticia suggest that the claim required less negotiation within the litigation collective. The *tutela* shortcut thus involved relief from time constraints and social-organizational facilitation. Given the instrumental establishment of the litigation collective, the *tutela* proved to be a flexible tool for constructing a social relationship between the NGO and the plaintiffs.

[57] Fuchs, op. cit., n. 33, p. 248.

4.4 | Ecocentric judgments as ambivalent support for litigation collectives

Collectives support litigation. However, the opposite is also true. Collectives offer shortcuts that avoid and overcome the obstacles on the way to justice, but it turns out that taking the legal route instead of other alternatives also unintentionally supports the social relationship of the collectives. Even though this was not an intentional support, but rather a consequence of the decision to litigate, the Atrato and Amazon judgments shed light on the mutual expectations of the NGOs and the represented actors, which had arisen as a result of collective legal mobilization. Taking this effect into account helps us to understand legal mobilization more holistically.

Both judgments upheld the *tutelas* and recognized the Atrato River and the Colombian Amazon as natural subjects of rights. The courts found that on the Atrato, the *present* river communities' subjective and collective rights were being violated.[58] By contrast, deforestation in the Amazon region was found to violate the subjective and collective rights of *future* generations. In both cases, the judgments combined exact orders for state institutions with broad specifications on the legal status of nature. If we understand these judgments as the result of the collective overcoming of mobilization barriers, then they represent the success of strategic mobilization processes.

Both judgments can be considered milestones in Colombian environmental legislation. Undoubtedly, they expanded legal categories. The 2016 judgment named the Atrato River as a legal entity in its own right;[59] the Amazon judgment in 2018 followed suit and granted the forest the same denomination.[60] Both judgments were united by an ecocentrism that claims to be a counter-model to anthropocentrism based on the exploitation of natural 'resources'.[61] However, the 'reintegration' of humans into the overall context of nature was justified differently in each case: in the Atrato case, by the fundamental constitutional rights of ethnic communities, and in the Amazon case, by the precedent of national jurisprudence. Regardless of whether this is understood as endowing nature with 'inherent rights' or as recognizing natural rights,[62] these were extraordinary legal decisions that hardly had any international precedent. The Atrato ruling relied heavily on the 'biocultural rights' of ethnic river communities and the 'special relationship they have with the environment and biodiversity'.[63] The Amazon ruling primarily adopted the possibility of recognizing the Colombian part of an entire ecosystem as a legal subject and relied on the inter-generational argument.[64]

[58] Atrato ruling, op. cit., n. 49, p. 158.

[59] Id.

[60] Amazon ruling, op. cit., n. 54, p. 45.

[61] J. Pötzsch, 'The Call of the Anthropocene: Resituating the Human through Trans- & Posthumanism; Notes of Otherness in Works of Jeff Vandermeer and Cixin Liu' in *Transhumanism and Posthumanism in Twenty-First Century Narrative*, eds S. Baelo-Allué and M. Calvo-Pascual (2021) 161.

[62] D. Cagüeñas et al., 'El Atrato y sus guardianes: imaginación ecopolítica para hilar nuevos derechos' (2020) 56 *Revista Colombiana de Antropología* 169.

[63] Atrato ruling, op. cit., n. 49, p. 43.

[64] Amazon ruling, op. cit., n. 54, pp. 39–41.

4.4.1 | New expectations due to ecocentric judgments

Neither of the two litigation collectives had originally demanded for the Atrato River and the Amazon region to be declared legal subjects. To reiterate, this fact challenges the idea that collective legal mobilization mainly supports the expansion of legal possibilities. In both cases, the expansion of legal categories did not intentionally stem from collective legal mobilization but was the consequence of additional initiatives of the courts.

Expectations about the *tutelas* emerged in the litigant collectives after the surprising ecocentric verdicts. Though unexpected, the collectives generally welcomed the courts' decisions and subsequently even identified their lawsuits with this particular legal formula: 'I think the backbone of the judgment on Atrato is the ecocentric approach. It assumes that the land does not belong to the people, but the people belong to the earth' (INTW3). Even if the decisions to use the *tutela* manifested the power of the NGOs in relation to the represented actors who accepted the proposals, the processes allowed a broader formation of opinions on the ecocentric judgments. Interviewees from the litigation collectives pointed out that the rulings created innovative legal entities that could integrate pre-existing cosmovisions into the legal framework. One interviewee noted how Indigenous groups commented on this integration of nature into legal systems: '[T]hey [Indigenous people] didn't think it was all that revolutionary: "That's just what we've been fighting for all our lives – nature is a living thing … That's what we've been saying all along and now the courts come and recognize it; so, now at the very end, they've noticed it too"' (INTW6).

However, the process of litigation led the collectives to disagree on the broader content of the decisions, which created tensions in the relationship between the NGOs and the represented actors. On the part of the Amazon litigation collective, there was a lack of clarity on what environmental rights might be and entail. Of particular concern were the unresolved relationship and potentially contradictory tension between human rights and the new ecocentric rights of nature. Dejusticia, in particular, pointed out that other groups, such as farmers and Indigenous communities, have special rights because of their ties to the land. These rights could be challenged by less clearly delineated rights of nature (INTW1).

It should be added that the Atrato *tutela* had originally demanded the annulment of the concessions for the extraction companies on the river. However, this demand regarding the economic conflict over the legal use of the river was not met by the Atrato ruling:

> When the ruling was announced, we were really very disappointed that the request to cancel the mining permits was not granted. That was most important, because this kind of mining does not create development for the communities. On the contrary… (INTW3)

However, while the judgment did not place direct restrictions on the official extraction companies, it did decree action against illegal raw material extraction on the Atrato River. Plans for cleaning up and restoring the river also need to be drawn up. The implementation thereof is to be ensured by specially appointed 'river guards'.[65] In the case of the Amazon *tutela*, the government is obligated to develop a plan against deforestation and, collaboratively with the plaintiffs, an 'intergenerational pact for life in the Colombian Amazon'.[66] In addition, the

[65] Atrato ruling, op. cit., n. 49, p. 161.

[66] Amazon ruling, op. cit., n. 54, p. 45.

reduction of deforestation has to be integrated into the existing spatial development plans of the municipalities.[67] Finally, immediate transitional measures must be taken to curb illegal deforestation.[68]

4.4.2 | Litigation collectives in post-litigation contexts

The litigation process can support collectives in an unintended way, and this can be seen in the implementation phase of both cases. Both litigation collectives have emphasized that the implementation of the judgments is a fundamental component of their activities. They do not see themselves as vehicles that serve solely to overcome barriers to litigation jointly. Post-litigation means that the collectives dedicate themselves to the implementation of judicial decisions, which turns out to be a much more complex endeavour than the implementation of traditional *tutela* rulings on subjective rights. In both of these cases, the *tutela* shows the limited capacity of legal mobilization to solve problems. It is not a shortcut to deep conflict resolution, since its judgment dispenses with the lengthy design process of public policies. Moreover, it leads to fast decisions. This results in changes within the litigation collectives. Winning cases brings new challenges for the collectives, since their social relationships need to adapt to the post-litigation contexts.

Both litigation collectives attempt to assess the effectiveness of the judgments, considering the continuities of the initial conflicts or the changes thereof. For this observation task, which goes beyond the initial legal mobilization, both litigation collectives integrate themselves into the division of labour processes involved in the implementation of the judgments. At roundtables, conferences, and work meetings, the implementation must be discussed among several actors. Furthermore, a control problem is emerging: 'Often the problem with these issues is not that nothing is being done, but that things are going in different directions' (INTW1). During the post-litigation period, the meetings between governmental and non-governmental actors increase the opportunities for the latter to obtain information about the implementation of the judgments and its challenges. The local organizations of the Atrato and the NGOs have had the opportunity to work with the government agencies that they have sued in the lawsuits. At the same time, information acquisition is also contingent upon these networks. Specifically, as the Amazon collective was originally an instrument for the *tutela* claim, this new function provided primarily by Dejusticia is remarkable even beyond legal mobilization.

Similarly, the need to understand the interdependence of legal mobilization and the collective can be demonstrated by the fact that, as explained above, the choice of procedure requires the representation of complex conflicts as violations of individual subjective rights. It is also clear that the litigation NGOs went the other way after the verdict was pronounced: 'Afterwards, the aim was to understand what the judge had said' (INTW5). Due to the ecocentric rulings, the NGOs had difficulties in establishing a binding interpretation of the *tutela* rulings within the litigation collectives. In this regard, the Amazon case shows that the tension between social, economic, and political conflicts cannot be resolved by the verdict alone (INTW1). The *tutela* brought climate change as a legal problem to the attention of Colombia's justice system. It operationalized global warming in legal terms that make visible the responsibilities and liabilities on the part of

[67] Id., p. 49.

[68] Id., p. 50.

the Colombian state. However, the ruling makes little reference to the social conflicts that underlie human-made climate change in Colombia. The recognition of the Amazon region as a legal subject is proving to be an ambivalent outcome for the litigation collective, in that it both enables and requires further interpretative work on social conflicts:

> What can we do so that people in the Amazon aren't forced to cut down the forest? And that they have an alternative to planting coca? Some say 'We have to destroy the coca'. But what are people left with? Why don't we think about environmental services, pay for these people to protect the ecosystem because it's so important? (INTW5)

Within the new networks of state and non-state actors now involved in implementing the ruling, existing asymmetries are sometimes confirmed. For example, local planning processes in Chocó are being outlined using the new legal status of the river. However, it became apparent in the interviews that the success has only been moderate, as the extractivist development model was supposed to have been restricted by the new ecocentric legal formula: 'In Colombia, the state only offers the communities extractivist development but not traditional practices. That's why meetings with the state have been very difficult' (INTW3).

Finally, the impact of litigation on the social relations of the collective can also turn against the NGO. This unintended consequence is a 'boomerang effect' that extends the mechanism observed by Margaret Keck and Kathryn Sikkink.[69] In both the Atrato and Amazon cases, state actors such as the Colombian army have used the new ecocentric rulings to justify actions that go against the collective interest. As part of its military anti-narcotics strategy Operación Artemisa, the Colombian state was cracking down on coca plantations in parts of the Amazon region. Dejusticia reports that the *tutela* ruling was instrumentalized as a justification for the military operations. This use obliged the NGO to explain the implementation of the verdict to the involved local organizations.[70] In addition, when Dejusticia wanted to become part of the monitoring network, it appeared that local Indigenous organizations had reservations about the *tutela* ruling. They complained that the ruling does not represent their political agenda (INTW2). A similar situation is also being reported from the Atrato region. There, the military has started destroying machinery belonging to illegal extraction companies. In this context, the litigation collective considers it necessary to explain that military interventions were not part of the *tutela* demands (INTW3). Though mitigation strategies vary between litigation collectives, collectives share the observation that vaguely worded judgments are not necessarily applied in line with their objectives.

This loss of control by the litigation collectives makes it clear that after legal mobilization, the associations of actors switch from legal activism to a mode of observation and from legal to public debates. Both judgments have become flagships for the NGOs; current cases of environmental jurisprudence in Colombia refer to the Atrato and Amazon cases as having initiated a new era of environmental litigation in the country. Meanwhile, further rivers and natural entities have been granted legal personhood, which the Atrato collective welcomes. At the same time, it has been questioned whether socio-ecological conflicts can be transformed in this way (INTW6).

[69] Keck and Sikkink, op. cit., n. 13.

[70] *Dejusticia*, op. cit., n. 45.

5 | CONCLUSION

In this article, we have argued for a perspective that takes into account the interdependency of legal mobilization and the collective as a social relationship. The analyses of the ecocentric *tutela* rulings on the Atrato River in 2016 and on the Amazon region in 2018 provide empirical reasons for an improved conceptualization of collective legal mobilization that takes into account how legal mobilization can be the result of collective action. However, the choice of legal mobilization, the choice of procedure, and the naming of certain claims are just some of the factors that affect the social relations between the collective's litigators and the represented plaintiffs. The most obvious case is when the collective is united for the sole purpose of legal action.

This article complements explanations that understand such collectives as support structures and show the importance of social relations for collective mobilizations. As we know from research on civil rights movements, it is not entirely novel to claim that collectives emerge and transform during their (legal) experiences.[71] It is striking that the practice of mobilizing rights has strategic elements. However, the sometimes spontaneous decisions to litigate underline the importance of the moment and the context for legal mobilization.[72]

The starting assumption was that conceptual differentiation is urgently needed. After all, the ecocentric judgments of both lawsuits have become milestones of Colombian environmental legislation but did not clarify the new legal status of the Atrato River and the Amazon region for the benefit of the litigation collectives. Thus, both rulings exceeded the objectives of the lawsuits. While they resulted from an explicit and deliberate invocation of the Colombian courts, they went further.

The results of these rulings constitute why this article has asked how the broad social crisis of the river communities on the Atrato and the deforestation in the Colombian Amazon became environmental lawsuits on the legal status of nature. The original *tutela* lawsuits were not requests for judicial clarification on the rights of nature. Despite the differently delineated conflicts, the legal mobilizations of the NGO Tierra Digna and the Consejos in the Atrato case and of Dejusticia in the Amazon case resulted in surprisingly similar lawsuit agendas. In addition to violations of collective rights, both *tutela* lawsuits specifically brought violations of subjective rights to court. Research on collective legal mobilization should include such differentials in analyses. It is essential to ask which actors can enforce which agendas in litigation collectives and which agendas may disappear.

In both the Atrato and Amazon cases, there were obstacles along the way. The lawsuits were not won in the first instance, and there were barriers to overcome, especially in the internal focus of the organizations. However, the perspective developed here shows that legal mobilization cannot be explained by collective support where there is prior civil society mobilization and litigation experience. In the Atrato case, the litigation collective was not primarily a means of overcoming barriers on the way to legal action. In the Amazon case, by contrast, the litigation collective was a tool for executing the purposes of the claim. Mobilization barriers inhibit the use of rights; however, another question is whether the barriers hinder claim initiatives.

In the same way, the two litigation collectives paradoxically proved to be both shortcuts and detours on the way to legal action. In both cases, the *tutela* procedure meant that it was simpler to

[71] E. M. Adam, 'Intersectional Coalitions: The Paradoxes of Rights-Based Movement Building in LGBTQ and Immigrant Communities' (2017) 51 *Law & Society Rev.* 132; P. Burstein, 'Legal Mobilization as a Social Movement Tactic: The Struggle for Equal Employment Opportunity' (1991) 96 *Am. J. of Sociology* 1201.

[72] Kretschmann, op. cit., n. 15.

establish the social relationships that were the condition for the collectives' own litigation support. This does not mean that the *tutela* itself is necessarily a shortcut. While it is an expedited legal process, it can also be a legal detour or challenge, as collective conflicts can be – and indeed have been – presented as violations of subjective rights. The time advantage of the *tutela* enables both groups of plaintiffs to establish follow-up interactions more rapidly and integrate varied social relations.

Additionally, the analysis of collective legal mobilization in post-litigation contexts can reveal relevant problem areas. For the litigation collectives in both the Atrato and Amazon cases, the implementation of the judgments is evidence of whether the ecocentrism is a stroke of luck or a loss of control. They acknowledge that different participants in the conflict can use and exploit the substantive indeterminacies of this formal subjectification of nature. The litigation collectives experience a boomerang effect, as vaguely worded judgments are not necessarily applied in ways that fit their agendas. The extent to which ecocentric judgments have the potential to resolve complex conflicts remains questionable. This also applies to other cases that have followed the trend of recognizing the rights of nature. This scepticism raises the question of the extent to which such experiences influence the interplay of claim strategies and/or pragmatic interactions within litigation collectives. It also needs to be clarified whether environmental collective legal mobilizations are a shortcut or a detour in navigating the asymmetrical power imbalances between local communities and extractivist companies.

Finally, it is important to note that the Atrato and Amazon rulings opened up the possibilities of environmental litigation in Colombia. Currently, more than ten natural entities have been declared legal subjects. Therefore, these initially unintended ecocentric rulings have become cornerstones of a new way of organizing collective litigation. However, as demonstrated in these two cases, the follow-up/implementation phase, rather than the ruling itself, is key to assessing the effectiveness of litigation. This means that, to be truly effective, litigation collectives need to not only engage in the legal challenge but also adapt to and participate in the social, administrative, and political struggles relating to implementation in the post-litigation context.

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