ENVIRONMENT AND POLITICAL ECOLOGY IN THE MOKANÁ INDIGENOUS CULTURE OF STRUGGLE (MALAMBO, COLOMBIA)

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ABSTRACT

This paper analyzes the recent history of an indigenous community in Latin America. Its justification is the study of the struggle of the Mokaná indigenous people (Colombia) for the conservation of their territories, access to land for crops and water channels that have historically allowed them to subsist. The cultural, economic and social structure of the Mokaná community will be studied based on exchanges with neighboring peoples in the Colombian Caribbean region, as well as their recent struggles against environmental damage, climate change, State abuses and private companies for the conservation of their ancestral territories. This paper, through an analytical and descriptive methodology, with a qualitative approach, studies the prerogatives granted by international law to indigenous peoples, and the processes of socialization of projects and concessions to public and private entities in the territories in order not to trample the collective self-determination of indigenous communities.

Keywords: Socio-Environmental Conflicts, Economy, Indigenous Struggle, Territory Management, Mokaná

INTRODUCTION

The culture of struggle of indigenous people for the right to self-determination and environmental protection in Colombia has been a constant since the end of the 20th century. From a holistic perspective, it is easy to see those conflicts over the rights of self-determination and autonomy (understood as social, economic and political confrontations) between different private actors (farmers, traders, sand quarrying companies, road construction companies, cattle ranchers and transporters) and indigenous communities are on the rise. At the beginning of the 21st century, demands for greater rights and confrontations with state authorities have increased (Aguilar Barreto, 2018). In the case of the Mokaná peoples, which arise due to the existence of diverse interests related to the use, management, exploitation, exploration, conservation, protection, administration and/or affectation of natural resources.

This paper shows the importance of indigenous peoples in the historical and social construction, highlighting their struggle and resistance (Smolski & Lorenzen, 2020). The paper then shows the importance of indigenous peoples in the historical and social construction, high lighting the struggle and resistance, the socio-environmental conflicts they have faced, the self-determination of a percentage of the population that identifies itself as indigenous, or ethnic descendants of pre-Hispanic communities and minorities. It also addresses multiculturalism and self-determination since the 1991 Political Constitution of Colombia and the failure of the liberal

theoretical model for the inclusion of indigenous peoples in different contexts of the cultural, economic, political and social life of the country since the mid-nineteenth century until the staging of the concept of the Social State of Law and the legal inclusion of cultural pluralism in the Constitutional Charter.

The value of this paper lies in the need to make visible the historical struggle of an indigenous community, as already evidenced in other investigations (Martinez Durango, 2018) as a protective element of the environment. Although the Political Constitution establishes that "The State recognizes and protects the ethnic and cultural diversity of the Colombian nation", many times the territorial entities and the indigenous communities are not aware of this. (National Constituent Assembly, 1991) many times the territorial entities and the administrations at the service of the State do not comply with this obligation and the indigenous communities, ethnic and racial minorities, and the movement for the protection of the environment are faced with the rule that dictates that it is the obligation of the State and of the people to protect the cultural and natural wealth of the Nation.

The information gathering procedure was carried out with a series of structured interviews that allowed contrasting bibliographic, census and scientific information on the research topic. Access to bibliographic sources in institutional databases and local libraries was useful to support each of the hypotheses made in the approach. In fact, a first research showed that the Mokaná community has been the subject of study from different fields of anthropology, archeology, law, economics, ethnography, geography, history, politics among other sciences and disciplines, although little has been contributed to the study of the relationship between the State (municipal and departmental administrations, entities and agencies) and the policies of administrative control over the indigenous communities in Colombia, and in less research, in the department of Atlántico. Precisely, this lack of studies on administrative intervention and the culture of struggle and resistance was a motivation for the elaboration of a proposal on the policies of public interest in relation to the Mokaná, specifically on the deficiencies in the provision of public services to this community (Sanchez Botero, 2010).

Contemporary Realities and Indigenous Self-Determination

In contemporary times, the reality of the Mokaná remains in a condition of vulnerability in the access to the benefits offered by society and the administrations of a country like Colombia. The organizational pattern of the Mokaná has known the abandonment of access to education, health policies and social change, which is a disadvantage in the consolidation of this culture at the local level (Mayor's Office of Malambo, 2015). The ethnicity in the department of Atlántico is closely related to the constitutional reform of 1991, especially in the vindication of their descendants in the national territory, although in practice this is little reflected because the different municipal and departmental administrations do not have a greater interest in the rescue and preservation of the ethnicity.

In terms of ancestral practices, the Mokaná indigenous community has been creating alternative spaces for the development of agriculture on a domestic scale, basically because they still recognize themselves as farmers and fishermen, and find in the cultivation of small strips of land, yards and open territories, a suitable space for the cultivation of cassava, corn, millet, pigeon peas, sorghum, zaragoza and some vegetables such as melon, patilla and ahuyama (Rodríguez, 2016). As during the colonial period, cassava and corn continue to be their main source of food, especially because they are harvested in the early (Gobernacion del Atlantico, 2017) especially because their harvest occurs during two periods per year, but also because the preparation of the land through slashing, burning and clearing, allows them to maintain the crops for domestic consumption and the commercialization of what they produce.

The game of exchanges is also present in Mokaná society. While the rate of domestic crops reveals that the community lives on what it produces, trade practices have also become an essential part of the native territories and open spaces for production, since time immemorial, where large borders and natural divisions have no major impact, despite their respect for private property (Angulo Valdés, 1978). The existence of spaces for commerce plays an essential role in the native territories and open spaces for production, since time immemorial, where large borders and natural divisions do not have a major impact, despite the respect they feel for private property. The existence of spaces for commerce plays a preponderant role internally, first because they break with the traditional circuit that places the members of the community as farmers or fishermen, placing them in other sectors of the economy such as commerce, transportation and construction work. Second, because it allows the visibility of women's work within the community in the development of crafts and handicrafts as a mechanism to protect their memory and profit, where the work in cooking, ceramics, and the sale of fish and various handicrafts that were then marketed in the towns of the Caribbean stand out (Monje, 2015).

Indigenous self-determination is essential in the preservation of the Mokaná tradition, because it constitutes a cultural complex comprising the rural sites of Los Mangos, Ciénaga del Convento, La Barrita, Caimital, Ciénaga de Mesolandia and other areas of the urban and rural headwaters of the municipality of Malambo, covering nearly 10 square kilometers in its totality. (Angulo Valdés, 1981). There is a greater presence of members of this community in the urban area of the municipality, where cosmology and practices linked to the fauna and flora are still important in their lives, which is reflected in the use of ancestral plants in the natural medicine practiced by the members of this community in Malambo.

Ethno-education has been another of the main pillars on which the Mokaná community works for the reconstruction of their cultural traditions. With the reorganization of the cabildo and the ancestral rural territories, the descendants of the pre-Hispanic community have rescued the cultural legacy of linguistic affiliation, using academia and university platforms to rescue an essential part of their legacy (Figuera, 2016). The ethnic group seeks an education that projects processes of formation and training of indigenous leaders that defend the ethnic and cultural diversity of the peoples, strengthen autonomy in the control, management and administration of their territories, as well as the internal organizational strengthening in our partiality, the recovery of their lands and their language to preserve their uses and customs and they are attended with a differential approach.

Socio-Environmental Conflicts and Mokaná Territoriality

Socio-environmental conflicts have remained present in the history of the Mokaná. The State and the interests of particularities have often carried out exploitation and use of their ancestral territories without taking into account the presence of that community. The case of the Mokaná indigenous community of Malambo against the Ministry of the Interior, the National Infrastructure Agency, the National Environmental Licensing Authority and the Concesión Costera Cartagena Barranquilla S.A.S., has been one of the most recent and notorious administrative and environmental conflicts in recent years.

The Constitutional Court through file T-6.839.494 in Auto 651 of 2018 (Constitutional Court of Colombia, 2018) ruled on the claim of the Governor Mokaná Roque Jacinto Martínez Blanco, who recounted in his writ of tutela that has settled in the municipalities of Malambo, Tubará, Galapa, Baranoa, Usiacurí, Piojó and Puerto Colombia, as recognized by the Ministry of Interior, the outrages that the community had been suffering by the expansion of road projects figure is that crossed its territory Atlántico. As a basis, he mentioned that the ANLA issued Resolution 1382 of October 29, 2015 in which it granted the environmental license for the road

project between the cities of Cartagena - Barranquilla and Circunvalar de la Prosperidad, without warning of their presence and the need to carry out a prior consultation for the development of this project (Contraloria General de la Republica, 2015).

Regarding road infrastructure, it is worth mentioning that it is evident that there is a need to take action in this regard, taking into account the state of deterioration of the main roads, which although some have been intervened in recent years, due to problems associated with the quality of the materials and the quality of the work, are in terrible condition, affecting mainly the student population and the population in general for their displacement to different sectors of the municipality, as for the tertiary roads the balance is not positive because their condition is not good, affecting mainly the rural sector.

Under these conditions, the project was developed in their ancestral territory, so much so that Mokaná archaeological remains have been found during its implementation, which were arbitrarily removed and destroyed. As part of the road project, there are currently plans to close ancestral roads, which will increase the time, effort and cost of travel for the community. Thus, it denounces that (1) at the entrance to the Montecristo trail, a weighing scale was installed that damaged Olivares Avenue; and (2) dividers have been installed that hinder the community's traditional forms of transportation (mule and donkey carts), the contamination of water sources and the displacement of animals from the area constitute another enormous damage to the Mokaná environment.

He pointed out that it is a contradiction that (1) the 10th Civil Circuit Court (circuit that was not specified) recognized the rights of the Mokaná in Malambo to the territory in which the works are being executed, through a clarification of that which can be predicated of the domain of the Mokaná community itself, (2) an injunction on the prior consultation for the election of ethno-educators was found to have been granted and, meanwhile, (3) the parties omitted to consult them on the Cartagena-Barranquilla and Circunvalar de la Prosperidad road project.

On December 21, 2017, the Single Criminal Court of the Specialized Circuit of Barranquilla admitted the tutela lawsuit, without binding any third party interested in the matter. Concesión Costera Cartagena Barranquilla S.A.S. specified that it executes the mentioned road project within the framework of the fourth-generation road concession program with the purpose of reducing infrastructure gaps and consolidating the national road network. From this program arises the project under the APP004 scheme of 2014, whose regulatory framework was designed by the Ministry of the Interior, the ANLA and the ICANH.

During the processing of the environmental licenses, the Ministry of the Interior was consulted for functional units 5 and 6 of the project, to which Resolutions 1383 and 1382 of 2015 correspond respectively, which are supported by Certification 987 of July 13, 2015. The latter stated that in the area of influence of the project no ethnic communities were found in the preconstruction or construction stage, and that it is an administrative act whose legality must be presumed.

He indicated that in any case, the Mokaná community has no presence in the area of influence of the project, so it cannot be conceived that there was an invasion of their territory, and there was a risk of damaging part of their ancestral culture. He called attention to the fact that the access roads mentioned by the plaintiff have not been declared assets of cultural interest by the Nation, but they were part of the historical legacy of the community as mentioned in the previous chapters. The weighing station to which Governor Roque Blanco referred to was installed, but the installation area is part of a private property that has been used as a passageway for the community, that is, it is a road that has been granted by a private party only for the passage of Mokaná members. The Olivares Road, which connects Malambo with the municipality of Polonuevo, is under constant maintenance and will be delivered in the same conditions in which the concessionaire found it, according to inventory. And finally, in relation to the concrete separators whose installation, far

from compromising fundamental rights, are intended to prevent the invasion of the opposite lane by vehicles in transit.

The Mokaná community through its Governor informed that the concession already started work in functional unit 5 (Resolution 1383 of 2015) and indeed, in Barranquilla and Puerto Colombia archaeological rescues have been made with the authorization of the Colombian Institute of Anthropology and History (ICANH) in accordance with Law 397 of 1997 and Regulatory Decree 763 of 2009. ANLA emphasized that there are no arbitrary extractions and that, in any case, the archaeological findings belong to communities that no longer exist, which is a lie because since 1995 the Mokaná community has been making efforts to reclaim their territories as reaffirmed by ONIC. The ANLA argued that there is no proof of the affectation of fundamental rights or of the existence of an irremediable damage, reason for which the plaintiff must resort to the means of control of nullity or to the popular action.

The Ministry of the Interior stated that in the process that gave rise to certification No. 0632 of September 6, 2017, the area of influence of the project does not include the municipality of Malambo, since the project under which it was issued is concentrated in Puerto Colombia and Galapa. The certifications in the case were issued in accordance with the information provided by the project executor.

The National Environmental Licensing Authority reported that through Resolution 1382 of 2015, an environmental license was granted for the project located in the municipalities Galapa, Puerto Colombia and Barranquilla; Resolution 1383 of the same year granted the environmental license for the project with development in Galapa and Malambo. Both were issued based on the certification of the Ministry of the Interior, according to which there are no ethnic communities in the area of influence of the project.

The ANLA itself stated that it fulfilled its obligation to explain to the companies the obligations that the presence of indigenous communities in the area of development and influence of the same project entails for them. In its favor, it alleged good faith exempt from guilt and lack of legal standing as it is not in charge of certifying the presence of communities in the area, nor of requesting the certification. In addition, it considered that an irremediable damage was not accredited and that there is a judicial remedy that the plaintiff must use to ventilate this matter, through the means of control of nullity and reestablishment of rights.

The ANLA argued that the concession contract, under the PPP scheme No. 004 of September 14, 2014 did not affect any community with regard to functional units 5 and 6. It opposed the claims for lack of legal, factual and evidentiary support. It informed that the variation in the accesses to the Montecristo trail affected a property that was used by people with the acquiescence of its owner (Inversiones Agropecuarias Vergara Parra S.A.S.), without it ceasing to be of a private nature. However, in the case of the Tamarindo trail, the impact on access to the trails represents, in the case of the Tamarindo trail, a load of between 50 seconds and 2 minutes of travel time, and solutions are planned to connect to the road. In the case of the felling of trees, a commitment was made to the State to carry out environmental compensations, but these were never carried out, and the loss of flora and fauna species in this territory still persists and is increasing due to the periodic burns that are carried out.

The ANLA then requested that the tutela action be declared inadmissible to the extent that no fundamental right was affected, there is no immediacy, no subsidiarity and no legal standing. The Single Criminal Court of the Specialized Circuit of Barranquilla issued a judgment on January 4, 2018, in which it declared the protection action inadmissible since the certification supporting the environmental license was requested and the project was socialized with the community.

The Mokaná community in its position as plaintiff challenged this decision with the argument that the ancestral territory should be considered as that which is occupied and used by the ethnic community, as specified by the International Labor Organization (ILO). In this case, he

pointed out that the road accesses are used, among others, by the children of the community to reach the different educational institutions they attend (as in the cases of La Bonga and Caracolí).

By judgment of March 1, 2018, the Superior Court of the District of Barranquilla resolved to revoke the decision to, instead, deny the protection because although the tutela action is the appropriate means to resolve the matter under debate, no rights were violated because of the certification of the Ministry of the Interior. Both matters were selected by order of July 13, 2018, in which Selection Chamber No. 7 of the Constitutional Court resolved to accumulate them to be decided in a single judgment, based on the identity between them. Once the matter was distributed to the substantiating Magistrate, by order of September 11, 2018, several interested third parties were linked and evidence and concepts were requested in relation to the files, as with the common issues they presented. The Ministry of Environment and Sustainable Development, and the ICANH were added to the case file T-6.839.494.

Through the order in question, all the entities involved were warned that they could request the nullity of the proceedings, and so did the National Land Agency (ANT) and the Ministry of Environment and Sustainable Development. The ANT, by means of a communication dated September 17, 2018, stated that having been notified that same day of the decision to link it to the tutela matters in process, it requested the nullity of all the proceedings as of the writ of admissibility of the tutela actions, based on the fact that the entity was not notified of them.

The arguments presented by the entity show its interest in being summoned in both files, in which the lack of notification prevented it from making an adequate technical defense in a timely manner and requested to have as evidence the admissory orders of the accumulated actions. The Ministry of Environment and Sustainable Development by email of September 19, 2018, requested to declare the nullity of the proceedings as of the admissory order of the tutelas formulated against it, by the indigenous community. On the other hand, among the evidentiary requests made in the aforementioned order, the Ombudsman's Office, with the support of its Delegate Ombudsman for Ethnic Groups and its regional office in Atlántico, was requested to submit a report on the effects that the construction of the road projects in question has had on the plaintiff community, for which it was granted a term of ten days following the notification of the decision; The Colombian Institute of Anthropology and History was ordered to answer a specific questionnaire, for which it was granted a term of five days. Both entities, the first by communication of September 26, 2018 and the second by memorial of September 21, 2018, requested to extend the term initially granted, in view of the complexity of the matter.

In the review of the Sixth Review Chamber of the Constitutional Court, it noted that 29. Notwithstanding the informality in the filing and processing of the tutela action, which allows this judicial mechanism for the defense of fundamental rights to be accessible to any person, it is imperative to respect and safeguard the right to due process of those who have a legitimate interest in each of the matters, so that the determination adopted in the specific case is the product of the dialogue between the legal positions of those who would be affected by the judicial decision of the constitutional judge.

In this regard, in Auto 130 of 2004, the Court stated that the guarantee of the exercise of due process by the interested parties in a tutela case must be even stricter since this is the proper scenario for the protection of fundamental rights. Now, the exercise of the right of defense in a judicial proceeding, including the tutela action, depends on the knowledge that the interested parties have about it. Therefore, the judicial notification of its opening is not a mere formal act, but becomes the way for the right of contradiction, which assists anyone who has the quality of party or interested party, to materialize.

The notification of the admission of the claim, thus conceived, is a *sine qua non* condition for the exercise of the right of defense, an essential component of the right to due process of the parties, of third parties, and of all those legitimized to intervene, insofar as, even eventually, they

may be affected by the decision on the merits to be adopted. Through it, persons with a legitimate interest in a judicial debate can intervene in it, which not only guarantees their right to due process from an individual perspective, but from the point of view of the judicial debate ensures that the judge's decision can respond to all the arguments, factual and legal, surrounding the specific case.

It is the material act of communication, through which the subjects who may have an interest in a given judicial or administrative action are linked to it, making them aware of the decisions that are made therein. Through it, persons with a legitimate interest in a judicial debate can intervene in it, which not only guarantees their right to due process from an individual perspective, but from the point of view of the judicial debate ensures that the judge's decision can respond to all the arguments, factual and legal, surrounding the specific case.

Although the notification of judicial decisions is transcendental at any time and stage of the process, with regard to the admission of the claim it has special connotations. This is because it allows the parties to recognize the existence of an action of their interest and access to the material in the process, and gives the procedural subject the possibility of recognizing the judicial debate, determine its position in relation to it and provide a defensive strategy that results, most of the time, in procedural actions such as contradicting the arguments of the opposing party and requesting the evidence deemed necessary. Thus, the act of notification of the writ of admissibility of the claim guarantees the parties and interested third parties the opportunity to participate in the judicial dialogue and to present their arguments in defense of their own interests.

From this point of view, according to the provisions of Article 133 of the General Procedural Code, the process is null and void, in whole or in part, when the admissory order of the claim has not been notified to all persons with a legitimate interest in the procedural action or to those who may be affected by the decision. However, the same codification in article 136, provides that nullity of this type is sanctionable in four cases:

1. When the party that could allege it did not do so in a timely manner or acted without proposing it.
2. When the party that could allege it expressly validated it before the annulled action was renewed
3. When it originates in the interruption or suspension of the process and is not alleged within five days following the date on which the cause ceased
4. When despite the defect, the procedural act fulfilled its purpose and the right of defense was not violated. The paragraph of the article in question establishes the nullities that cannot be sanctioned, and among them the Legislator did not list the lack or improper notification.

The nullities must be requested by the party or noticed by the judge, in the terms of Article 137 of the Code of Civil Procedure. When they are proposed, Article 135 of the Code of Civil Procedure requires standing to the party filing the nullity and, in this regard, provides that when its basis is the lack of notification, only the affected party may propose it, so it must state the cause and the facts on which it is based, as well as the evidence it wishes to provide. When it is the judge who becomes aware of the existence of the nullity, according to Article 137 of the same Code, he may warn of it at any stage of the proceeding. In doing so, he will inform the affected party of the situation, provided that the defect has not been cured and if, after three days from the time of notification of the order that brings the fact to his attention, the party does not allege the irregularity in his favor, the same will be cured and the process will continue its course.

If as a consequence of this warning, on the contrary, the affected party alleges nullity, the judge must declare it. It is important to bear in mind that the parties and the intervening parties, within the framework of the autonomy they have in the exercise of their right to defense, may choose to request it or to obtain a prompt decision, when it serves their interests better to validate a circumstance that would eventually constitute a ground for nullity of the proceeding, such as the lack of timely notification of the claim through their procedural action.

In any case, when the nullity is declared by the judicial officer, the General Code of the Process establishes that only the action subsequent to the defect is affected and it is necessary to indicate from which action the process will be restarted. Specifically, in the cases provided for in Article 138 of the C.G.P., it is indicated that the evidence practiced within such action will retain its validity. Consequently, the evidence collected is valid as long as the parties have the opportunity to controvert it. The constitutional jurisprudence, in a univocal and consistent manner, indicates that the lack of integration of the contradictory in tutela, does not imply always going back to the beginning of the judicial proceeding. In some cases, such a procedure may disproportionately compromise the fundamental rights of the respective plaintiff.

Although it has been considered that, undoubtedly, the lack of notification of the decisions in tutela, and specifically of the order admitting the claim, compromises the due process of those who were not informed of the judge's decisions and of the existence of the process, and that this imposes the declaration of nullity of the proceedings, in the tutela proceeding this does not operate automatically, given the legal assets at stake and in view of the principles of procedural economy and speed that guide the tutela proceeding.

In Auto 271 of 2002, the Court highlighted the events in which it has opted for the direct involvement of interested persons who were not notified of the admissibility order of the tutela action. It pointed out that this is only appropriate in special situations. In sum, in the absence of notification of the parties or third parties with a legitimate interest in the tutela proceeding, there are two options in the venue of review. The Review Chamber may choose either to return the process to the first instance so that the process may be redone or, in view of the urgency of the constitutional protection and in a situation that at first sight may be considered pressing, to directly bind the party who was not called to the process.

The second option, which is oriented towards the binding in the venue of review, implies that the persons involved would waive their right to challenge the decision adopted, whether or not it is unfavorable to them. From this perspective, the Court has held that if this position is adopted, the different review chambers must act in accordance with the provisions of article 137 of the CGP and warn of the nullity, together with the possibility for the persons involved to decide whether it is in their interest to continue with the proceeding, or to request its reinitiation in order to participate in it and strengthen the debate before the judges of the instance.

When the person involved requests the declaration of nullity, in order to safeguard his right to due process, it is imperative to send the file to the court of first instance so that the proceedings of the instance can be carried out again and the appearance of the person who had not been summoned to the process and could not materialize his right to defense can be ensured. The foregoing in the understanding that, even in the events in which constitutional protection is urgent, due process is a guarantee that cannot be restricted to the subjects involved in the constitutional tutela process. This position has been reiterated in multiple pronouncements that emphasize, as recalled in Auto 281 of 2010, that the exceptional use of direct linking in review implies that the factual circumstances warrant it.

In the specific case, by order of September 11, 2018, the existence of a sanable nullity was noticed, on the grounds that the Ministry of Environment and Sustainable Development, the Ministry of Transportation, the National Institute of Anthropology and History (ICANH) had not been summoned to the constitutional proceeding in the case file T-6.839.494. Given that the plaintiff is an indigenous community that turns to the constitutional judge to preserve their idiosyncrasy in view of the threat they perceive in the fact that they have not been consulted in the execution of the road project they are developing, in this specific case, the interested parties that were not summoned to the process of the reference, by means of the same ruling, were also summoned to the constitutional proceeding.

In doing so, in order to protect the right to defense of the different persons involved, they were warned of the existence of the irregularity and their correction was sought. However, the Ministry of Environment and Sustainable Development considered that the omission of the instances and the lack of notification of the constitutional proceeding prevented them from defending their interests. Therefore, they requested the declaration of nullity, with the intention of participating in the judicial debate of the case with all the procedural opportunities available to them.

In view of the request of the interested parties, the Chamber will declare the nullity of the proceedings as of the moment in which the tutela action was admitted in each of the accumulated files, so that the proceedings in each of them may be redone and the right of defense may be guaranteed to all the interested parties. The foregoing, without affecting the validity of the evidentiary elements collected, for which purpose the communications received in the review venue must be sent to the judge of first instance; since they are contained in the review notebook of the main file, it will be ordered to provide a copy thereof so that it becomes part of the file T-6.839.494.

Now, it is noteworthy that each one of these entities was linked to only one of the accumulated files, both institutions claim to have an interest in both of them and are claiming the nullity of both together. Therefore, it is necessary that in both cases the judges of first instance, at the time of admitting the tutela action, summon the entities claiming the nullity in this opportunity, that is, the Ministry of Environment and Sustainable Development, which recognizes in the files of reference matters of their interest in which they want to deploy the mechanisms they have for their defense.

As a consequence of the foregoing, each of the judges of first instance shall redo the processing of the amparo action, prior notification to the Ministry of Environment and Sustainable Development, as well as to the other entities involved in the venue of review in each specific case, without prejudice to the other links it may find pertinent. For the purpose of this declaration of nullity, the Sixth Chamber of Review shall previously proceed to de-cumulate the file T-6.839.494, so that it may be sent to each of the judges of first instance that heard the same.

Now, this Corporation through Auto 202 of 2017 considered that the Constitutional Court: "Maintains a wide margin of assessment to establish the procedure to be followed once the procedural irregularities have been remedied in the corresponding instances. Indeed, in view of the particularities of the case and especially the broad power to define the criteria for the selection of the tutela actions, the Court may order that the case must go through the selection process again or, on the contrary, the file must be sent directly to this Court for its review. The Sixth Chamber of Review considered that the matter should return to this Corporation without going through the selection process again. The reasons that lead it to adopt this determination are as follows:

> 1. The selection criteria used to choose these matters for review by this Corporation. Since they are not focused solely on the protection of the rights of the plaintiffs (a situation that may vary substantially from the decision of the judges of first instance), but are focused on the need to rule on a line of jurisprudence and on the possible disregard of the precedent of this Corporation, the usefulness of the review transcends the particular circumstances of each of the cases and focuses on broader factors, which allow this Corporation to consolidate its functions as a closing body of the constitutional jurisdiction. It should be taken into account that the selection criteria, focused on the jurisprudential line on the matter, would subsist even in the event of the reorganization of the proceedings in the case of one of the accumulated files, then it is necessary for the matter to return to the Court for a decision on the review of the corresponding tutela decisions.
> 2. The constitutional relevance of the issue under debate, regarding prior consultation in road projects for allegedly affecting the access roads to the territories where indigenous communities are settled, an issue from which the Court may expand the jurisprudential line in relation to this fundamental right and issue clear guidelines in this regard. Therefore, once the constitutional process has been completed, the judges of first instance must issue a decision in accordance with the terms set forth in Decree 2591 of 1991, and if the decision is not challenged, they will refer this matter directly to the Office of the Presiding Judge, so that the

review process by this Chamber can be carried out. Therefore, the files must be sent separately from those that are sent to the Corporation, so that when they arrive, they will be sent immediately for review.

In the event that the first instance decision is challenged, the second instance must proceed in the same manner. At the end of that process, the Constitutional Court ordered to de-cumulate the file T-6.839.494. Likewise, to declare the nullity of all the proceedings carried out in the tutela process T-6.839.494, as of the admissory order of December 21, 2017, issued by the Single Criminal Court of the Specialized Circuit of Barranquilla. The procedural nullity decreed has as a consequence to leave without effects all the procedural acts carried out in this process, except for the evidence collected.

It is worth mentioning by way of reflection that the territory under discussion between the administration and the Mokaná is part of the indigenous universe and the indigenous is an integral part of the territory. The territory is not conceivable without the indigenous people, this consideration anchors the differentiating concept between the Mokaná, the farmers and peasants, because the first ones mark the use of the territory as the fundamental axis of their survival, of their life and not of their model or style of subsistence. The principle of autonomy enshrined in the Constitution is the basis of the nation's recognition of its ancestral peoples and must be adequately regulated, institutionalized and all indigenous communities must be given the opportunity to participate in the construction of the jurisprudence that governs them.

The territory of the marshes and roads has a divine ancestral origin, historically located and identified from the Mokaná story of origin, habitation, use and existence, where the territory from its conception will never be subject to an economic negotiation on its area or part of its area, it will not be sold and will never be considered as territory to a purchased space, this is not an indigenous activity; therefore, the indigenous territories require a special process for their administrative considerations regarding the State and its function. In the cases and hypotheses mentioned above, the importance of land use plans (POT) is reflected, where through the Constitutional Court ruling C-795 of 2000, Law 388 of 1997 was repealed, having as a reference on the POT and the indigenous communities the principle of autonomy, ruling the unconstitutionality of the same. (Monje Carvajal, 2016).

CONCLUSIONS

In this order of ideas, it should be emphasized that nature and territories play a preponderant role in the construction of the Mokaná world historically, and as it allowed the relationship with other communities and peoples.... (Archila, 2010). Likewise, how from nature the Mokaná in Malambo built a spiritual and a material universe that allowed them to satisfy their basic needs, but at the same time to subsist and create exchange networks with other populations regardless of their ethnic or racial condition.

It was possible to verify that the implementation of infrastructure projects and the improper use of natural resources and decisions such as the granting of environmental licenses in territories that have historically belonged to indigenous communities cause conflicts that demand a deep legal analysis and environmental and ethnic rights, and also on institutional development and its coincidence with the progress of national works and large projects for progress. In the Mokaná case, it was established that these projects are part of a national development plan, but they have not been executed based on consultations with the communities located in the territories where the works are being carried out (Mayor's Office of Malambo, 2019).

It is worth mentioning that the 1991 Constitution promoted several institutions with the objective of protecting the cultural uniqueness and preservation of ethnic minorities, however, at present little account is taken of the norms of the ancestral communities themselves, in addition to

the collective ownership of the resguardo, the administrative autonomy through the indigenous territorial entities and their intervention in legislative or administrative decisions that may affect them, through the right to prior consultation. It is worth mentioning that the indigenous resguardo is the only mechanism that can be legally materialized (Figuera, 2015).

Territorial conflicts in Malambo over the natural areas used by the Mokaná for their agricultural activities and roads between properties are constantly a matter of dispute between the administration, landowners, settlers and the indigenous community. However, the establishment of the Mokaná reservation found a legal institution that protects the rights of the communities according to articles 63 and 329 of the 1991 Constitution, partly because they are inalienable, imprescriptible and unseizable under a collective political property title that enjoys the same guarantees as private property, and where an autonomous organization governed by the indigenous jurisdiction and its regulatory system; in this part plays a fundamental role the principle of territorial autonomy that the indigenous people won with the 1991 Constitution.

Environmental conflicts are still present in the development of the works that are being executed in the expansion of roads within the municipal area. The Ministry of the Interior and the National Environmental Licensing Authority have resolved through recent pronouncements by the Constitutional Court and the Colombian Institute of Anthropology and History to consult with the indigenous community to recognize their roads and sacred spaces. A consensus has also been created on the preservation of the clay articles and vessels found in excavations within the municipality, taking into account that these are part of the nation's cultural heritage as they are made up of material goods that represent the culture and traditions of pre-Columbian peoples, and are of great historical, artistic, aesthetic and symbolic interest.

It is worth mentioning that part of the activities carried out by the administration in relation to the environmental problems of the municipality include water treatment and garbage collection, although other problems such as contamination of water channels and swamps, deforestation and burning of tropical forests, poor solid waste management, and destruction of historic roads for road construction continue to affect the population, especially the Mokaná because, as we have described, they subsist on the swamps and land for agriculture and fishing. The existence of inequality and cultural backwardness suffered by transculturation has also caused the ignorance of the ancestral Mokaná contributions to the department of Atlántico. The loss of customs, language and aspects of daily life are also other factors that affect the defense of the rights of this community, which demands a more inclusive treatment in the municipal development plans of Malambo to preserve its history, but also in environmental and administrative issues in relation to the interests of the whole community, where nature and the preservation of the Mokaná being are prioritized.

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