

## Waiting for justice: Fishing ban contestation and the fight for reparation in the Tayrona National Natural Park, Colombia



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The Tayrona National Natural Park (PNNT) was established in 1969, covering the area from the foothills of the Sierra Nevada de Santa Marta to the Caribbean coast. Artisanal fishers in Mendihuaca, adjacent to the park, have traditionally fished within the park's first and half nautical mile. Historically, both subsistence and commercial, artisanal fishing have taken place inside the park, and catch limits have not been clearly defined.

In 2005, conflicts inside the PNNT escalated after the creation of a concession system designed for the management of tourism services. A ten-year concession was signed with the *Unión Temporal Tayrona*, which initiated the demolition of artisanal fishers' houses inside the park (Ojeda 2012). Later, in 2011, fishing was banned inside the park to protect vulnerable coastal-marine ecosystems. However, only in June 2012, a park official told a group of artisanal fishers that the park had the authority to confiscate any fishing gear found fishing inside the park (Constitutional Court, Sentence T-606-15). The fishing ban was enforced without prior and informed consultation with traditional artisanal fishers, emerging as a threat to their income and food security.

Photo: *Fishers from Taganga pulling a beach-seine net in Aguja Island in the PNNT. 2009.*  
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**Location:**

Magdalena State: Tayrona National Park, Mendihuaca community, Colombia

**Ecosystem type:**

Marine, brackish

**Main gear:**

Gillnet, hook & line

**Target species:**

Multi-specific fisheries

**Vessel type:**

Motorboat

**No. of small-scale fishers:**

700



*The fishing ban (2011) dispossessed commercial, artisanal fishers from their rights to fish in their traditional fishing grounds, escalating the conflicts between Park officials and fishers.*



## Justice in context

Types of justice:

- **Distributive**
- **Social**
- **Economic**
- **Market**
- **Infrastructure/wellbeing**
- **Regulatory**
- **Procedural**
- **Environmental**
- COVID-19 related

Fishers have been largely excluded from the PNNT decision-making arenas. The fishing ban (2011) dispossessed commercial, artisanal fishers from their rights to fish in their traditional fishing grounds, escalating the conflicts between Park officials and fishers. This impacted small-scale fishers' fishing rights and practices, livelihood opportunities, and food security. In response, in July 2014, impacted fishers requested fishing permits to fish inside the park from the National Natural Parks System Administrative Unit. However, in August 2014, Park officials confiscated artisanal fishing gears without any consideration of the seriousness of the infraction or criteria of proportionality.

Importantly, fishing yields in the Caribbean coast of Colombia have approximately decreased by 52% from 2000 (129,463 t; INPA, 2001) to 2009 (62,579 t; CCI and MINAGRICULTURA, 2010). In 2015, the Comprehensive Policy for the Development of Sustainable Fisheries in Colombia (MINAGRICULTURA, 2015), revealed a dramatic decline in the marine fishing yields in the Caribbean, from 22% in 2002 to 2% in 2011, caused by low productivity, competitiveness, profitability, and the reduction in the abundance of fishing resources (Constitutional Court, Sentence T-606-15). However, the use and exploitation of fishing resources within marine protected areas such as the PNNT have been maintained over time (Martinez et al., 2014). Hence, the loss of coastal and marine species and ecosystems within the PNNT is more linked to the impacts of extractive industries and regional coastal development projects, including mineral extraction and transportation, illegal constructions, port infrastructure, and the dumping of toxic and hazardous substances, than those of SSF (Cordero and Leyva 2019).

### Definition of small-scale fisheries (see Decree 1071, 2015, Article 2.16.1.2.8)

Small-scale fisheries (SSF) in Colombia are legally divided into subsistence fishing (*pesca de subsistencia*) and commercial artisanal fishing (*pesca comercial artesanal*). The National Natural Parks legal framework only enables subsistence fishing inside parks, which is defined by law decree as the capture and extraction of fishing resources in small volumes (daily catches of up to 5 kg), part of which may be sold (for nonprofit purposes), in order to guarantee the minimum vital for the fishers and their family nucleus. This fishing can be exercised freely throughout the national territory. However, each park has the autonomy to define subsistence fishing in their own terms in their management plans. The process to define SSF within the Tayrona National Natural Park (PNNT) has not been completed, which is relevant considering the historical presence of commercial, artisanal fishing inside the park.



*In filing for legal and administrative claims, fishers have faced many challenges linked to the lack of legal literacy and guidance on potential solution pathways, as well as the limited access to funds to cover for legal expenses.*



## Dealing with justice

This case is informed by the Bachelor thesis of Cordero and Leyva (2019), who conducted focus groups with fishers in Mendihuaca (one of the many fishing communities impacted by the fishing ban) to reconstruct a history line of the conflict between fishers and the PNNT.

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In 2014, a group of artisanal fishers filed a complaint with the Ministry of Environment, Housing, and Territorial Development and the National Natural Parks System Administrative Unit, demanding fishing permits. They also filed a *tutela* – a constitutional mechanism aimed to protect fundamental rights in Colombia – in the Magdalena Administrative Court, alleging the violation of their rights to work, minimum wage, access to food, and food security. A year later, impacted fishers organized a peaceful protest against the fishing ban. The *tutela* was finally reviewed by the Constitutional Court, via judgment T-606 of 2015, who banned fishing practices inside the park, but ordered the protection of fishers' fundamental rights to work, participation, human dignity, food sovereignty and essential conditions to life. The Court ruled that the fishers were subjects of reparation, which had to be negotiated and implemented by decision of a roundtable gathering the Ministry of Environment and Land Development, the Special Administrative Unit for the National Parks System (UAESPNN as it is known in Spanish), the Colombian Rural Development Institute, the Regional Autonomous Corporation of Magdalena, the National Learning Service, the Magdalena's Ombudsman, the Attorney's General Office, the Magdalena departmental government and the artisanal fishing associations fishing in the PNNT along with the design and implementation of a Compensation Plan. Meanwhile, the Court ordered the UAESPNN, the Regional Autonomous Corporation of Magdalena, and the Ministry of Environment and Sustainable Development to develop a Master Plan for the protection of terrestrial and marine ecosystems and reparation of fishers (Martínez et al. 2018). The Master Plan was finalized in 2018 and the Compensation Plan in 2020, however, until now few fishers have been compensated. Fishing inside the PNNT continues, considering that fishing in other areas is not profitable due to the additional costs of traveling further offshore. In filing for legal and administrative claims, fishers have faced many challenges linked to the lack of legal literacy and guidance on potential solution pathways, as well as the limited access to funds to cover for legal expenses.



### How to cite

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