CEUB
EDUCAÇÃO SUPERIOR
ISSN 2237-1036

REVISTA DE DIREITO INTERNACIONAL
BRAZILIAN JOURNAL OF INTERNATIONAL LAW

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VOLUME 22 • N. 3 • 2025
TENSÕES REGULATÓRIAS NO DIREITO INTERNACIONAL CONTEMPORÂNEO

Sumário

doi: 10.5102/rdi.v22i3.9840

The two courses to the recognition of the rights of nature in Latin America*

Os dois caminhos para o reconhecimento dos direitos da natureza na América Latina

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Abstract

Last years' constitutional, legal and jurisprudential experiences point to two paths into the recognition of Rights of Nature in Latin America. This work collects the key features of this process which is over a decade old from an interdisciplinary perspective between anthropology and law to analyse both legal and case law on rights of nature. First, the path pursued by Ecuador's Constitution and Bolivian legislation is developed which recognise the rights of nature; in consequence, national, provincial and local law bills were issued across the countries of the region. Second, some cases that recognise rights to certain ecosystems using arguments that revisit the law in an ecocentric way are dealt with. Our thesis holds that this expanding process of rights implies of environmental justice since it brings back knowledge and practices absent in this field; it establishes new figures such as river guardians and it stops the North-South knowledge and legal tools unidirectional production adding worlds where the institution is not exclusively human.

Keywords: legal science; constitution; environmental political jurisprudence; environmental protection; rights of nature.

Resumo

As experiências constitucionais, legais e jurisprudenciais dos últimos anos apontam para dois caminhos de reconhecimento dos Direitos da Natureza na América Latina. O presente trabalho reúne as principais características desse processo, já com mais de uma década, a partir de uma perspectiva interdisciplinar entre a antropologia e o direito, com o objetivo de analisar tanto o arcabouço normativo quanto a jurisprudência relativa aos direitos da natureza. Em primeiro lugar, examina-se o percurso adotado pela Constituição do Equador e pela legislação boliviana, que reconhecem explicitamente os direitos da natureza; em consequência, projetos e iniciativas legislativas de âmbito nacional, provincial e local foram apresentados em diversos países da região. Em segundo lugar, são analisados alguns casos que reconhecem direitos a determinados ecossistemas, com base em argumentos que revisitam o direito a partir de uma abordagem ecocêntrica. Sustenta-se, como tese central, que esse processo expansivo de reconhecimento de direitos implica uma reconfiguração da justiça ambiental, na medida em que reintegra saberes

* Recebido em 28/11/2024
Aprovado em 19/02/2026
This article has received funding from the European Union's Horizon Europe research and innovation programme under the Marie Sklodowska-Curie grant agreement No 101086202. However, the ideas and opinions expressed are those of the authors alone and do not necessarily reflect those of the European Union. Neither the European Union nor the MSCA programme can be held responsible for them. An earlier version was published in Spanish as "Los dos caminos del reconocimiento de los derechos de la naturaleza en América Latina" in Revista de Dret Ambiental Vol. 13 Núm. 1 (2022). Since this first publication, we have participated in numerous academic events in both the fields of law and anthropology, which have allowed us to discuss our work with colleagues from Argentina and other Latin American and European countries. This exchange has enabled us to strengthen our work and produce this new version with a series of more detailed and extensive conclusions regarding our hypothesis.

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e práticas até então ausentes desse campo; institui novas figuras, como os guardiões dos rios; e interrompe a produção unidirecional de conhecimentos e instrumentos jurídicos no eixo Norte-Sul, incorporando mundos nos quais a institucionalidade não é exclusivamente humana.

Palavras-chave: ciência jurídica; constituição; jurisprudência político-ambiental; proteção ambiental; direitos da natureza.

1 Introduction

Until recently, our constitutions, laws and judgements relegated forests, rivers, mountains, animals and plants to the world of things that can be exploited or must be protected as just another part of the environment. Recent years have been characterised, on the contrary, by an irruption of non-human beings into the legal field that runs parallel to the growing activisms and socio-political struggles in the West that seek to transform our modes of identification and ways of relating to our environment.

In the legal field, a series of new regulations and judicial decisions are organising the discussion around the legal status of nature: can it be transformed from an object to a subject; in what way; with what limits; how to rethink the concept of justice and its functioning in the face of this expansion of rights; and how can the concept of justice and its functioning be rethought in the face of this expansion of rights?

In the framework of these debates, Latin America plays a central role: in our continent, the recognition of the rights of nature has been going on for more than a decade. The first undisputed milestone in this direction was the process initiated with the Constitution of the Republic of Ecuador in 2008, which established the rights of *Pachamama*[1] after an interesting assembly experience in which the members of the constituent assembly debated with representatives of indigenous peoples and environmental organisations. For almost a year, between November 2007 and October 2008, this heterogeneous group of actors discussed and rewrote the constitutional pact. Inspired by this innovative experience, the Plurinational State of Bolivia also incorporated this extension of rights shortly after its 2009 constitutional reform in two national laws of 2010 and 2012, which are the ones that give substance to Mother Earth as a bearer of rights. The first law enshrines a set of rights and the second defines the fundamental guidelines and principles for moving towards Vivir Bien as an *alternative horizon to capitalism*. The recognition of the rights of nature is linked to certain shifts in the Western conception of nature as indefinitely sacrificial. However, these modes of identification with our environment embodied in the rights of nature, and which present a battle to the more traditional naturalism[2], do not necessarily involve a change in the traditional model of development.

In recent years, an alternative path to enshrine nature as a subject of law has been developing in Latin America that does not involve constitutional reform or the approval of national laws. We are referring to judicial decisions that declare elements of nature as a legal subject, even when their current norms do not contain express recognitions to that effect. The first emblematic case of this alternative path was that of the Atrato River in Colombia, in 2016. Shortly afterwards, different courts in that country declared other rivers, the Colombian Amazon, páramos and protected natural areas to be subject to the law. There is also a line of jurisprudence that enriches this second path by outlining an ecocentric approach to conflict resolution, although without recognising nature or any of its components as a legal subject. This is the case of Argentina, whose Supreme Court of Justice incorporates an ecocentric or ecosystemic perspective in rulings involving rivers, wetlands and glaciers, in addition to the application of the *in dubio pro natura* principle in some of these decisions. This principle introduces a strong criterion for decision-making by both courts and administrative bodies: when there are doubts in a given dispute, the solution most favourable to nature should be adopted.

This paper thus traces the course of two complementary paths towards the recognition of the rights of nature in Latin America over the last 17 years. The first path refers to the incorporation of the rights of nature in Ecuador's Magna Carta and in Bolivian legislation,

[1] Quotations in italics throughout the article are from infrequently used foreign locutions or textual expressions found in constitutions, laws, lawsuits, judgments or interviews.

[2] For naturalist ontology, nature exists as an autonomous domain and humans are part of differentiated collectivities that exclude all non-humans. DESCOLA, Philippe. *Más allá de naturaleza y cultura*. Buenos Aires: Amorrortu, 2012.

which has been widely disseminated. The second path is made up of legal transformations linked to the judicial sphere, which have been woven into a web of actions that are not so visible. Although the expansion of ecocentric arguments does not imply the abandonment of the anthropocentric logic underpinning most of the region's constitutions or judicial decisions on environmental matters, we are facing an emerging paradigm shift.

Whether in its strong or *light* version, the consecration of nature as a subject of rights implies a significant transformation of contemporary environmental law in three dimensions: access to justice, the functioning of judicial processes and institutional designs. Can only natural or legal persons bring their claims to court when ecosystems are at risk?[3]; how to rethink the legal interests affected and the evidence produced in court cases; what types of knowledge are incorporated in the files as a result of this type of consecration; what types of knowledge are incorporated in the files?

If the enshrinement of the rights of nature entails profound transformations in the field of law, the same does not necessarily occur in the socio-political field: the production model and environmental policies in Latin America are largely unchanged. By their very existence, the rights of nature do not necessarily lead us to scenarios of greater social and ecological justice in our continent. Governments in the region continue to develop extractivist policies that depredate territories, even in those countries that have forged these processes of expanding rights. We will therefore review some of the potentialities, contradictions and limits of this enshrinement of the rights of nature in our continent.

Table 1 - Recognition of the rights of nature in Latin America

	Recognition of the rights of nature in Latin America	
Road 1: legislation	**Constitutions**	Ecuador: 2008 Constitution.
	National laws	Bolivia: Law 71/2021 and Law 300/2012. Costa Rica: Biodiversity Law 7788/1998.
	Provincial and local laws	Argentina: City of Santa Fe (2018). Brazil: cities of Bonito (2017), Paudalho (2018), Florianópolis (2019), Serro (2022), Alagoa Nova (2023), Alto Paraguai (2023), José de Freitas (2023), Cáceres (2023). Colombia: Department of Nariño (2019). Mexico: State of Guerrero (2014), Mexico City (2017), State of Colima (2019), Mexico State (2024).
Road 2: judicial decisions in countries with not explicit legislation	**Case law recognising rights to ecosystems**	Colombia: Atrato river (2016), Páramo de Pisba, Amazonia (2018), Otún, Pance, Quindío, Magdalena, Cauca, Coello, Combeima, Cocora, La Plata rivers (2019), Lago Tota, Complejo los Páramos las Hermosas, Los Nevados, Isla Salamanca (2020), Fortalecillas River (2021)
	Related judicial decisions	Argentina: Atuel River (2017), wetlands in Puerto General Belgrano (2019), Parana Delta (2020), Yungas (2021), Calilegua National Park (2025).

Source: Own elaboration.

[3] Demogue had already foreshadowed, at the beginning of the 20th century, the possibility of using the concept of subject of rights for animals. DEMOGUE, Rene. *Notions fondamentales de droit privé*: essai critique. Paris: Libraire Nouvelle de Droit et Jurisprudence, 1911.; BERROS, María Valeria; HAIDAR, Victoria; GALANZINO, Marianela. La mirada jurídica sobre los animales: un análisis de su estatuto en el derecho privado argentino. *Revista de Derecho de la Pontificia Universidad Católica de Valparaíso*, v. 48, p. 79-101, 2016.; In a classic text on the subject, Stone asked whether trees could have procedural legitimacy, that is, whether they could directly claim their rights before the courts. STONE, Christopher. Should Trees Have Standing? Toward Legal Rights for Natural Objects. *Southern California Law Review*, v. 45, p. 450-501, 1972.

2 A first path: constitutional or legal recognition of the rights of nature

2.1 The constitutional re-foundation of Ecuador and Bolivia

The first decade of this century was characterised by the electoral triumph of a series of so-called progressive governments in Latin America. After a neoliberal period that left deep traces in Latin American societies, other political experiences began to emerge and, in some of them, new constitutional pacts were developed. This is the case of both Ecuador and Bolivia, which in their respective preambles refer to the refoundational nature of the new constitutions. In the first case, the construction of a new form of citizen coexistence in diversity and harmony with nature is expressed. For its part, the Bolivian text refers to the collective construction of a new state that leaves behind the colonial, republican and neoliberal state.

The 2008 Ecuadorian preamble alludes to the decision to *build a form of citizen coexistence, in diversity and harmony with nature, in order to achieve good living*. In 2009, Bolivia's constitutional preamble enunciates the *historic challenge of collectively building the Unitary Social State of Plurinational Community Law* and affirms that the strength of Pachamama will allow *Bolivia* to be *re-founded*.

As a philosophical underpinning, both the Ecuadorian and Bolivian constitutions take up the indigenous notions of Good Living, which designate the harmonious life between humans and nature. The Andean cosmovision of living well is not centred on the individual but "...on the complexity and immanence of Mother Earth and the cosmos, considered as living matrices and integrated by animistic forces"[4]. The goal is to achieve *sumak kawsay* (good living) as proposed in the Ecuadorian constitutional text; or *suma qamaña* (living well), *ñandereko* (harmonious life), *teko kavi* (good life) in the case of Bolivia.

Buen Vivir or Vivir Bien proposes not only the revision of classical concepts such as development and progress, but also institutional restructuring and innovations in public policies[5]. The assumption is that there could be no Buen Vivir without a protected and conserved nature[6]. Jurists, academics and political leaders of the Latin American left at the time shared the hope that this proclamation of Buen Vivir would strengthen a "decolonisation of thought", or a "liberating and tolerant project"[7].

It is an eclectic concept that is used by various actors for different purposes. The vastness of the subject would merit a separate paper: the different meanings of Buen Vivir; the close link between this concept and those of plurinationality, autonomy and community; the alliances between local and international NGOs in the promotion of new rights and demands; the socio-political implications of legal innovations in the unique context of plurinational states; the contradictions between the spirit of Buen Vivir and the extractivist goals of Bolivia and Ecuador.

As Svampa reflects, the re-legitimisation of a community matrix is not alien to the extractivist paradigm or to neoliberal globalisation; the strong identity content of Buen Vivir may well be deactivated in practice by the expansion of this model of development. The expansion of the frontiers of law may coincide, although it may sound contradictory, with the expropriation of territories and environmental depredation[8].

The case of Yasuní ITT in the Ecuadorian Amazon or the progressive authorisation of the use of transgenic seeds that has been going on in Bolivia for more than a decade are paradigmatic examples. In 2007, Ecuador had planned to leave a significant volume of oil untapped, contributing to the protection of the global climate and the biological diversity of the rainforest and the territories of indigenous peoples. In return, the international community would contribute financially to the development of renewable energy sources, the maintenance and restoration of ecosystems, and the promotion of social development and sustainable

[4] SCHAVELZON, Salvador. *Plurinacionalidad y Vivir Bien/Buen Vivir*: dos conceptos leídos desde Bolivia y Ecuador post-constituyentes. Buenos Aires: Abya Yala/CLACSO, 2015.

[5] SILVA, Thiago dos Santos da. Cosmovisão indígena e a relação ética com o ambiente: Pacha Mama, Bem Viver e o ecocentrismo. *Revista de Direito Internacional*, v. 3, n. 3, p. 393–409, 2024.

[6] GUDYNAS, Eduardo. *Derechos de la naturaleza*: ética biocéntrica y políticas ambientales. Buenos Aires: Tinta limón, 2015.

[7] ACOSTA, Alberto. El buen vivir, una utopía por (re)construir. *CIP-Ecosocial*: Boletín ECOS, v. 11, p. 1-19, abr./jun. 2010.

[8] SVAMPA, Maristella. Modelos de desarrollo, cuestión ambiental y giro eco-territorial. *In*: ALIMONDA, Héctor. *La naturaleza colonizada*: ecología política y minería en América Latina. Buenos Aires: CLACSO-CICCUS, 2011.

employment. In 2013, Ecuador decided to resume oil exploitation in Yasuní, one of the most biodiverse territories on the planet, generating conflicts with different collectives due to the environmental costs incurred along with the loss of ancestral territories. For its part, the introduction of genetically modified seeds has led to a major transformation of ecosystems and the living conditions of the people who inhabit them, causing serious conflicts at the territorial level[9].

Despite the expectations generated by the region's progressive governments, the truth is that the redistributive social policies of that period were developed simultaneously with the deepening of the extractivist model[10]. It is within the framework of this complex political scenario that the rights of nature were enshrined.

2.2 The content of the surveys

Let us now return to the most significant aspects of the constitutional reform undertaken by Ecuador. In its seventh chapter, the Ecuadorian Magna Carta states that *"Nature or Pacha Mama, where life is reproduced and realised, has the right to full respect for its existence and the maintenance and regeneration of its vital cycles, structure, functions and evolutionary processes"*[11]. It also determines that any person, community, people or nationality can demand compliance with these rights from the public authorities, which implies a broad legitimacy to assert these constitutionally recognised rights. Article 72 of the constitution is also innovative in that it establishes a right to restoration beyond the claim for compensation that may correspond to communities and individuals for damage caused to natural systems. In addition, in cases of serious or permanent environmental impacts, the state must establish adequate mechanisms to achieve restoration and eliminate or mitigate harmful environmental consequences.

The enshrinement of the rights of Pachamama in a Magna Carta seeks to distance itself from the rhetoric of dominion over nature characteristic of the modern Western paradigm. At least declaratively, nature is now considered less external to the human experience.

In the case of Bolivia, the incorporation of Living Well as cross-cutting content at the constitutional level (2009) is followed by the enactment of the Law on the Rights of Mother Earth (2010) and the Framework Law on Mother Earth and Integral Development for Living Well (2012).

The 2010 law refers to Mother Earth as a *dynamic living system made up of the indivisible community of all life systems and living beings, interrelated, interdependent and complementary, sharing a common destiny,* recognising a series of rights and principles. Among the rights it incorporates are: to life, to the diversity of life, to water, to clean air, to balance, to restoration and to live free of pollution.

The principles accepted in this law focus on establishing a certain harmony between human activities and life cycles and processes based on the *diversity of feelings, values, knowledge, knowledge, practices, skills, transcendences, transformations, sciences, technologies and norms of all the cultures of the world that seek to live in harmony with nature*. They also assume the need to ensure the regeneration of Mother Earth and her systems, which cannot be commodified. These latter principles call into question the dominant attempts, especially at the level of international conventions, to solve global environmental problems through economic mechanisms. One example is the carbon credits embodied in the 1997 Kyoto Protocol as a market-based instrument to address climate change.

The Framework Law on Mother Earth and Integral Development for Living Well (2012) adds new principles to those already discussed in the 2010 law. These include the obligation to restore long-damaged livelihood systems; and a social and climate justice argument that seeks to institute differentiated responsibilities between those countries that generate the conditions of climate change and those that suffer most severely from its consequences. The law also proposes the plural participation of both the state and the Bolivian people in the defence of the recognised rights of nature through *consensual and democratic procedures*. To this it adds the promotion of solidarity between human beings, which should be promoted by the state, prioritising those with the lowest economic income and the highest level of

[9] SCHMIDT, Mariana *et al*. Resistencias a los agrotóxicos y conflictos en torno al modelo extractivo centrado en los agronegocios: un estudio en las provincias de Santa Fe, Santiago del Estero y Salta. *In*: FOLGUERA, Guillermo. *Diálogos sobre el modelo agroindustrial argentino*: miradas plurales de un pensar colectivo. Buenos Aires: Eudeba, 2022.

[10] SVAMPA, Maristella; VIALE, Enrique. *El colapso ecológico ya llegó*: una brújula para salir del maldesarrollo. Buenos Aires: Siglo XXI, 2020.

[11] ECUADOR. *Ecuadorian Magna Carta*. art. 71.

dissatisfaction with their fundamental rights[12]. On the other hand, the law alludes to the relationship between the plurinationality of the state and the diversity of recognised knowledge: *The Plurinational State of Bolivia assumes the complementarity between traditional knowledge and the sciences*[13]. This diversity of content prefigures the tensions that would arise in these countries between the new constitutional commitments to protect nature and the aim of generating redistributive policies without changing the dominant extractivist model, within the framework of selective progressivism[14].

While Bolivia's national plans recognise the intrinsic value of nature, they also conceive of biodiversity as a 'comparative advantage', in line with more economistic ideas about biological and genetic resources. This is not a minor point, as Latin America is one of the richest regions in terms of biodiversity, and there is a constant dispute between its protection and its instrumentalisation.

2.3 *Ad hoc* institutional designs

One of the great challenges posed by these normative recognitions at the national level is how to make these rights effective in two major areas: access to justice and institutional designs.

In Ecuador, Article 71 of the new Constitution establishes that any person, community, people or nationality can demand the fulfilment of the rights of nature. For their part, the Bolivian laws of 2010 and 2012 grant legal status to Mother Earth as a collective subject of public interest and consider that both Mother Earth and its components, which includes human beings, are the holders of these rights. This opens up a broad possibility for claims for the rights of nature, as any human being could bring a case of infringement of the rights of nature before the courts.

On the other hand, the type of institutions that are to implement the content of these enshrinements is a major challenge. In the case of Ecuador, a National Plan for Good Living and a Secretariat for Good Living were created in 2013. A detailed analysis of the content and functioning of both reveals contradictions between developmentalist policies and the protection of nature.

In Bolivia, the 2012 Law generated some national institutions such as the Plurinational Council for Living Well in Harmony and Balance with Mother Earth, the Institutional Framework on Climate Change and the Plurinational Authority of Mother Earth, although only the latter has had significant weight.

These avenues of access to justice and *ad hoc* institutions for the rights of nature are also a pragmatic response to the criticisms made by local and foreign jurists. From the point of view of its detractors, nature should not be invested with rights corresponding to humans because it is not a subject with agency: it cannot manifest its own will or be represented. Faced with these objections rooted in individualistic liberal logic, which continue to reappear in legal debates, the constituent members of the Convention and the legislators outlined the strategies already mentioned.

In addition, several jurists assert that nature should not be considered a subject of law because legal systems only allow rights to be granted to natural and legal persons: civil associations, companies, states. The response of the governments of Ecuador and Bolivia consisted of granting nature specific rights, just as they would be granted to the human inhabitants of a country. If Bolivian (human) citizens have the right to health, education or housing, Pachamama has the right to life, to water, to clean air, to balance, to restoration and to live free of contamination.

2.4 Impacts and spillovers

Inspired by the constitutional and legal reforms carried out by Ecuador and Bolivia, other Latin American countries enacted local regulations granting rights to nature. In 2017, the Municipality of Bonito in Brazil included this enshrinement in its organic charter, as did the Municipality of Paudalho in 2018, the Municipality of Florianópolis in 2019, the Municipality of Serro in 2022, the Municipalities of Alagoa Nova, Alto Paraguai, José de Freitas and Cáceres in 2023. In Argentina, the

[12] See art. 4 in ESTADO PLURINACIONAL DE BOLIVIA. *Ley 300 Marco de la Madre Tierra y Desarrollo Integral para el Vivir Bien*. 2012.

[13] See art. 4 inc. 17 in ESTADO PLURINACIONAL DE BOLIVIA. *Ley 300 Marco de la Madre Tierra y Desarrollo Integral para el Vivir Bien*. 2012.

[14] Selective progressivism is an expression coined by the Argentine environmental journalist Darío Aranda, which is later taken up by Svampa and Viale to describe the cycle of Latin American populist governments (2000-2015) that minimise the preservation of common goods and the care of territories in pursuit of a productivist vision of development that reduces poverty and social exclusion through state redistribution of resources.

Municipality of the City of Santa Fe passed an ordinance in 2018 banning the use of glyphosate and recognising the rights of nature[15]. In Colombia, the town of Nariño consecrated nature as a subject of rights in 2019. In Mexico, the Political Constitution of the Free and Sovereign State of Guerrero initiated this extension of rights in 2014, followed by the Magna Carta of Mexico City in 2017 and Mexico State in 2024.

These innovations are also emerging in other continents: in Asia - especially in India - through a series of court rulings; and in Oceania, through the passing of laws and the enshrinement of agreements with indigenous communities in Australia and New Zealand[16].

On the other hand, the constitutional reform in Ecuador and the Bolivian laws had repercussions on international discussions that define agendas and priorities on environmental problems. Let us look at a couple of examples contemporary to the enactment of these laws. In Tiquipaya, a city in central Bolivia, 35,000 people gathered in 2010 to participate in the World People's Conference on Climate Change and the Defence of Life and approved a Declaration of the Rights of Mother Earth. This declaration inspired proposals for international declarations to achieve global recognition of the rights of nature[17].

Two years later, pressure from the governments of Ecuador and Bolivia succeeded in including a mention of Mother Earth and the recognition of the rights of nature in the final document of the United Nations Conference on Sustainable Development in Rio de Janeiro - known as Rio+20 - although this allusion was overshadowed by the simultaneous *promotion of sustainable development*:

> We recognise that planet Earth and its ecosystems are our home and that 'Mother Earth' is a common expression in many countries and regions, and note that some countries recognise the rights of nature in the context of *promoting sustainable development*. We are convinced that, in order to achieve a fair balance between the economic, social and environmental needs of present and future generations, it is necessary to promote *harmony with nature*[18].

Despite its ambiguous nature, the inclusion of the issue of the rights of nature in this meeting reflects the new visibility of the topic at the international level and the influence of some Latin American countries in introducing this discussion beyond their borders, subverting the dominant logic of the circulation of ideas and concepts of environmental law. Traditionally, the tools, concepts and principles of environmental law are formulated on the basis of debates at certain international meetings or in national laws sanctioned by some central countries. In these cases, the contribution not only comes from the South, but also strains the prevailing homogeneity of international environmental law[19].

Although some states, such as Bolivia, Ecuador, Costa Rica and Paraguay, had sought to introduce the legal status of nature with greater emphasis in the final document, only the ambiguous allusion in the aforementioned paragraph was successful. As we have already commented, this UN document simultaneously highlights and devalues the rights of nature by reframing them in terms of promoting sustainable development. Let us also recall that both Bolivia and Ecuador discuss the concept of sustainable development, as well as that of the green economy, which was the conceptual emblem of this 2012 conference. *Harmony with nature* certainly does not have to mean the same thing in the framework of Buen Vivir or as a simple abstract enunciation in the promotion of sustainable development, aligned with the *status quo*.

A document from the Bolivian Platform on Climate Change, which objected to the final document of the Rio+20 meeting, makes this clear:

> That document [*The Future We Want*] mentions the indigenous people and Mother Earth, but as a spiritual, folkloric question, as a make-up. (...) they do not take into account our proposals for structural change (...) they say that they have included our needs, but (...) the real intention (...) is to continue

[15] Argentina has had a national bill for the recognition of the rights of nature since 2015, presented by the then senator Fernando «Pino» Solanas, which was never dealt with. A new bill was presented in 2022.

[16] O'DONNELL, Erin; JONES, Julia Talbot. Creating legal rights for rivers: lessons from Australia, New Zealand, and India. *Ecology and Society*, v. 23, n. 1, p. 1-10, 2018.

[17] International organisations working towards this goal include the Pachamama Alliance and the Global Alliance for the Rights of Nature (GARN).

[18] UNITED NATIONS. *The Future We Want*. Rio de Janeiro: United Nations Conference on Sustainable Development, 2012. Grifo nosso.

[19] HAIDAR, Victoria; BERROS, María Valeria. Entre el sumak kawsay y la "vida en armonía con la naturaleza": disputas en la circulación y traducción de perspectivas respecto de la regulación de la cuestión ecológica en el espacio global. *Revista Theomai*, v. 32, p. 128-150, 2015.

with the plundering of our resources and our territories[20].

A year later, at an international meeting organised by the United Nations Environment Programme in Nairobi, the government of Evo Morales succeeded in incorporating an alternative approach to the green economy: *living in harmony with nature*[21]. While the government in question postulated the need to universally recognise the rights of Mother Earth in different international forums, there were tensions and criticisms caused by projects that violated the rights of nature in Bolivian territory[22].

The promising starting point provided by the recognition of the rights of nature must therefore be contrasted with its concrete implementation in the territories. The mere enactment of a law or constitution does not change the living conditions of the group of beings it claims to protect. The way in which extensions of rights are implemented at the territorial level is often unpredictable and contradictory: there are multiple difficulties and obstructions to the implementation of rights recognised by legal or constitutional means[23].

To add to the complexity of the issue, a significant part of Latin American socio-environmental conflicts are judicialised, and the interpretation of judges on this type of extension of rights becomes central. To what extent do the courts in these countries distance themselves from the still dominant -that is, anthropocentric- logic for the resolution of environmental conflicts? If we look at the case of Ecuador - the country with the largest number of rulings and several of the most emblematic cases - we will notice an oscillation between the use of the rights of nature and more traditional legal tools to settle environmental claims.

Let's look at the case of an environmental conflict that took place in 2011. Residents of the town of Vilcabamba brought a legal action for the alteration of the natural course of the river of the same name caused by the construction of a road. The judgment ruled in favour of the neighbours, articulating both traditional legal tools and those introduced by the constitutional reform. First, the ruling determined that the construction work could not continue and that the damage should be repaired because the road company failed to comply with the environmental impact assessment procedure required by the applicable legislation.[24] Furthermore, the final decision took up the constitutional recognition of the rights of nature, expressed in terms of the river's right to flow through its natural course. In this case, the combination of the two bodies of law was virtuous: the logics involved were not mutually exclusive but complementary.

These novel normative sanctions, institutional design or judicial approaches distance themselves from hegemonic conceptions of nature in terms of domination or exploitation. In tune with the ideologies of various socio-environmental movements, these Western devices claim what has been part of the daily praxis of other societies since time immemorial: the interconnectedness of the living world[25]. An interconnectedness that is made more palpable - for the inhabitants of our countries - by the dramatic consequences of climate change, the mass extinction of species and the expe-

[20] BOLIVIAN PLATFORM AGAINST CLIMATE CHANGE. *The future the capitalists want*. 2012.

[21] PACHECO, Diego. Enfoque «Vivir Bien» is internationally recognised. *ALAI América Latina en Movimiento*, 2013. Available at: https://www.alainet.org/en/articulo/74630. Access on: 17 feb. 2022.

[22] This contradiction will be reactivated in 2021, as Eduardo Gudynas points out in: GUDYNAS, Eduardo. Buscando a la Pachamama en Bolivia: otra vez la divergencia del mandato local y la excusa global. *Observatorio Plurinacional de Aguas*, 08 jun. 2021. Available at: https://oplas.org/sitio/2021/06/08/eduardo-gudynas-buscando-a-la-pachamama-en-bolivia-otra-vez-la-divergencia-del-mandato-local-y-la-excusa-global/. Access on: 17 feb. 2022.

[23] The legalisation of abortion in Argentina in December 2020 provides an excellent example of the latter. Since the law was passed, lawyers, citizens and associations have filed legal actions in several provinces of the country in order to obtain a declaration of unconstitutionality of the national law, which have obtained favourable results in some courts. On the other hand, and even if the appeal of this type of sentences is successful, access to legal abortion does not mean the same for any woman in Argentina due to the very unequal access to the health system and to information, among other reasons.

[24] BERROS, María Valeria. Defending Rivers: Vilcabamba in the South of Ecuador. *RCC Perspectives*: Transformations in Environment and Society, LMU, v. 6, p. 37-44, 2017.

[25] In various indigenous groups of the Amazon, beings live in a social continuum capable of managing resources in such a way that humans, animals, plants, atmospheric phenomena and owners or masters of species and spaces can develop an environment of joint habitability. DESCOLA, Philippe. *Más allá de naturaleza y cultura*. Buenos Aires: Amorrortu, 2012.; CARMAN, María; BERROS, María Valeria; MEDRANO, Celeste. La irrupción política, ontológica y jurídica de los no-humanos en los mundos antropocénicos. *Quid 16*, n. 14, p. 1-14, 2020.; These processes are not exclusive to indigenous worlds: peasant, agro-ecological, fishing and fair communities think of themselves with an «inclusive we». FURLAN, Violeta; JIMÉNEZ-ESCOBAR, Néstor David; ZAMUDIO, Fernando; MEDRANO, Celeste. Ethnobiological equivocation and other misunderstandings in the interpretation of natures. *Studies in History and Philosophy of Science*, v. 84, p. 1-9, 2020.

rience of a pandemic at the edge or inside our own bodies. The spread of the Covid coronavirus19 has indeed made citizens more aware of the interdependence of all beings than ecocentric laws and constitutions.

3 A Second Path to the Recognition of the Rights of Nature: Court Decisions

3.1 The case of the Atrato River in Colombia

The regulatory innovations mentioned in the first part of this article - the constitutional or legal recognition of the rights of nature - have shaken a certain consensus in the Latin American legal field, mainly with regard to who can be rights-holders. Although disagreements between jurists remain the order of the day, more and more judges are echoing these new ideas and incorporating them into their rulings, even when there is no explicit recognition of nature as a subject of law in their legal systems. This makes it possible to think of a second path that begins with judges who reinterpret existing norms from an ecocentric perspective.

The emblematic case to illustrate this second path is the ruling of the Colombian Constitutional Court that enshrined the Atrato River as a subject of law in 2016. This decision opened the door to other court rulings declaring animals, rivers, natural areas and even the Amazon as subjects of rights.

The Atrato river basin represents 60% of the area of the department of Chocó and is located in one of the most biodiverse areas on the planet. It is home to almost 500,000 people, mostly Afro-descendants and mestizos. Extractive activities, many of them illegal, such as deforestation and gold mining, are carried out in the basin. The intensification of extractive activities since the 1990s has not only caused irreparable damage to the ecosystem but also to people's health, as evidenced by the alarming level of mercury in the blood of the local population. The natural course of the river was altered; the creatures that live there and the people who rely on the river for their survival were also harmed. The inhabitants continued to feed on lead-contaminated fish and agricultural products. The result: disease, poisoning and death. This was compounded by the state's neglect of an area that is difficult to access and is only crossed by two dirt tracks in very poor condition.

Illegal mining activities have changed the course of rivers and affected water sources with the dumping of fats, oils and heavy metals. The contamination of the basins, marshes, wetlands and tributaries of the Atrato River threatens the survival of the population, the fish and the development of agriculture.

After years of deepening grief of all kinds, the Centro de Estudios para la Justicia Social Tierra Digna - representing a group of community councils in Chocó - filed a lawsuit in January 2015. This first lawsuit was rejected in court on formal grounds. However, this type of frustration can be the kick-start to reach higher instances. And so it happened with this claim: shortly afterwards, the Constitutional Court declared itself competent to decide.

The representative councils of the Chocó communities then filed a new legal action directed against different governmental institutions, including the Presidency of the Nation and a number of ministries. The request was clear: to stop the intensive and large-scale use of illegal mining and forestry operations that affected both the rights of the communities and the balance of the ecosystems.

One of the intervening judges, Jorge Iván Palacio Palacio, had been familiar with the problems of this region of Colombia for many years before this judicial presentation. The arrival of this legal action at the Court was a privileged opportunity to intervene in the region's problems:

> I dreamed of coming to this Constitutional Court to try to advocate for animals. Since I was a child, I found the slaughter of pigs very cruel. They were lucky to have me on the Court! Interview with former magistrate Palacio Palacio, 2021.[26]

The dossier was nourished by reports from scientific institutions, NGOs and international organisations that contributed elements on issues of interest to the Court and whose imprint was reflected in the 2016 ruling. However, it was the judicial inspection carried out in the territory that caused the Constitutional Court to - in the words of the judge - *turn the case around*, granting *reason to these communities*. The palpable effects of the polluting substances appeared brutally before the judge's eyes:

[26] Interview with former magistrate Palacio Palacio. 2021.

> ... we noted the problem of mercury and cyanide. I was impressed by the state of health of the children, of the elderly, the suffering, the degradation caused by the ingestion of mercury and cyanide in the fish, in the food, because the fish is also contaminated and suffers the consequences of this cyanide. Interview with former magistrate Palacio Palacio, 2021.[27]

The testimonies of the affected persons were collected in evidence notebooks that were incorporated into the case file. These testimonies, together with the images of the judicial inspection, as well as the scientific studies and other documents submitted to the proceedings, demonstrated the humanitarian and environmental tragedy of the Atrato River, to which *the Court could not be oblivious.*

The highly harmful substances dumped in the river were responsible both for illnesses, intoxications and deaths of the elderly and minors, and for the danger of extinction of plant and animal species. The judgement exposed both axes: the humanitarian crisis suffered by the inhabitants and the progressive destruction of one of the richest areas in the world in terms of biological diversity, where 90% of the territory is a special area of conservation.

Colombia is considered a megabiodiverse country, as its invaluable natural wealth on the planet merits special protection under universal co-responsibility. Many of the species and ecosystems present in Colombia are exclusive, i.e. endemic, so if they disappear from the territory they will disappear from the Earth. Flora and fauna can disappear, paradoxically, faster than the capacity to know them.

In its ruling, the Court adopted various measures to address the violation of fundamental human rights such as the right to life, health, drinking water, culture, territory and food security. Firstly, it ordered the government to carry out three action plans with the aim of decontaminating the river basin, recovering the ecosystems and avoiding further damage to the region's environment; neutralising and eradicating illegal mining; and recovering traditional forms of subsistence and food. It also ordered toxicological and epidemiological studies and the development of environmental indicators. Finally, it designed a structure for the control and monitoring of the sentence and ordered the Attorney General's Office, the Ombudsman's Office and the Comptroller General's Office to supervise compliance with the sentence. It also convened a Panel of Experts and ordered the creation of an Inter-Institutional Commission for Chocó, among other oversight measures. This ruling is similar to other Latin American rulings that ordered actions and established a control and monitoring scheme in a highly polluted basin, such as the famous case on the Matanza-Riachuelo basin in Argentina.

However, this ruling gains international visibility for recognising the Atrato River as an entity subject to rights.

Despite the fact that Colombia does not have a law or a constitution that explicitly declares nature as a subject of rights, the ruling effectively makes up for this absence. The decisive actor in the conquest of progressive extensions of rights in Colombia has not been the legislative or executive power, but - as Palacio Palacio emphasises during the interview - the judiciary: *Judges are the ones who defend nature with innovative sentences. The judiciary has been the standard bearer on these issues*.

The recognition of the Atrato River as a subject of law is the result of an ecocentric interpretation of the current Colombian legal system. In the words of the judge in the case, this tutela leaves *anthropocentrism aside and focuses on ecocentrism*[28]. It is about *thinking of the human species as one more species within the species*.

> The main order is not to continue polluting the river, because you see petrol stains (...) The cow, the vegetables, the bulls (...) have their own cosmovision. And that is why they are subjects (...) Each species has a role in this world, on this planet. Interview with former magistrate Palacio Palacio, 2021.[29]

The ruling also makes explicit its ecocentric approach by stating that the land does not belong to humans but that, on the contrary, *"(...) it is man who belongs to the*

[27] Interview with former magistrate Palacio Palacio. 2021.

[28] In the words of the former magistrate, constructing this judgment from an ecocentric perspective is the result *of one's worldview: how one conceives of nature, how one conceives of man's relationship with the environment. And from reading Martha Nussbaum, Peter Singer, Arthur Schopenhauer, Bertrand Russell. All this literature enriches and shapes (...) the day I became a judge (...) these teachings of (...) these great masters and what one has experienced, because theory and practice mix*. Interview with former judge Palacio Palacio, 2021. Palacio Palacio had already demonstrated an innovative spirit in cases related to gender issues. Indeed, the former magistrate played an important role in legal actions related to abortion, equal marriage and adoption for same-sex couples; issues that advanced in Colombia not through legislation but through judicial decisions.

[29] Interview with former magistrate Palacio Palacio. 2021.

land, like any other species'"[30]. The ruling ordered the national government to protect and legally represent the rights of the river, through the institution designated by the president, in conjunction with the ethnic communities that inhabit the Atrato river basin in Chocó. At the same time, in order to ensure the recovery of the river, the Court ordered that these legal representatives be supported by an advisory team made up of the Humboldt Foundation and the World Wildlife Fund Colombia.

In this way, the river is both a subject of rights and an entity that needs to be endowed with representation through the figure of its guardians. Both aspects become a reference in the regional legal field: other judges are inspired by this ruling to recognise various Colombian ecosystems as subjects of rights.

Another aspect of the judgement that had transcendence in the legal field is the conception of bioculturalrights. Based on a diagnosis of the precariousness to which various beings - human and non-human - are thrown, the judgement enunciates "an alternative vision of the collective rights of ethnic communities in relation to their environment", which it calls biocultural rights. This is the first Colombian judgement to develop this concept. According to the ruling, these are not "new rights for ethnic communities", but "a special category that unifies their rights to natural resources and culture, understanding them as integrated and interrelated".

> ... the so-called *biocultural rights* refer to the rights of ethnic communities **to administer and exercise** autonomous **guardianship** over their territories - in accordance with their own laws and customs - and the natural resources that make up their habitat, where their culture, traditions and *way of life* are developed on the basis of the special relationship they have with the environment and biodiversity[31].

Like other rulings declaring animals or other non-human entities to be subjects of rights, the Atrato River ruling sparked controversy in the judicial field[32]. Despite the ongoing debates, the truth is that this ruling constitutes a watershed in environmental jurisprudence: five years later, dozens of rivers were declared subjects of rights and several also have a guardian[33]. In addition to rivers, a significant number of animals, natural areas, moorlands and even the Colombian Amazon were declared subjects of rights based on decisions of different courts in the country.

Another of the repercussions of the Atrato River ruling is that, shortly afterwards, a presidential decree banned the manufacture, import and export of mercury-added products.[34] Although there is no strict control over the application of this decree, the intervening judge considers it an auspicious initiative: "*At least it made visible not only in Chocó, but in all of Colombia a problem that is general, and of Latin America as a whole: the problem of mining*"[35].

The judgement points out the importance of ensuring the reproduction of life for all beings, including human inhabitants: all these sufferings have an entity, are related and must be remedied.

3.2 Deforestation in the Colombian Amazon

The Colombian Amazon court case is of particular interest as it is the first case of climate litigation to take place in Latin America. Climate litigation claims the fulfilment of states' commitments on greenhouse gas emissions and has been developed especially in Europe, the United States, Canada, New Zealand and Australia[36].

[30] CORTE CONSTITUCIONAL DE COLOMBIA. *Centro de Estudios para la Justicia Social Tierra Digna and others v. Presidencia de la República and others*. 2016.

[31] CORTE CONSTITUCIONAL DE COLOMBIA. *Centro de Estudios para la Justicia Social Tierra Digna and others v. Presidencia de la República and others*. 2016. Italics and highlights are from the original text.

[32] The greatest resistance to these groundbreaking rulings recognising rights to non-human subjects comes from specialists in private law, a branch of law that studies relationships between subjects and between subjects and things. The same happened in Argentina with the rulings declaring the orangutan Sandra a non-human person.

[33] The judgments can be downloaded at: UNITED NATIONS. Harmony With Nature. *Rights of nature law and policy*. Available at: http://www.harmonywithnatureun.org/rightsOfNature/. Access on: 17 dec. 2023.

[34] COLOMBIA. Presidential Decree nº 419, de 2021. Por el cual se da cumplimiento a los compromisos adquiridos por Colombia relacionados con el Anexo A - Parte I del Convenio de Minamata sobre el Mercurio y se adoptan otras disposiciones. *Diario Oficial*, nº 51.653, 22 abr. 2021.

[35] Interview with former magistrate Jorge Palacio Palacio. 2021.

[36] The United Nations, through a series of reports, has been tracking climate litigation cases around the world. See: UNITED NATIONS ENVIRONMENT PROGRAMME; COLUMBIA LAW SCHOOL. Sabin Center for Climate Change Law. *Global Climate Litigation Report*: 2020 Status Review. Nairobi: UNEP, 2020. Available at: https://www.unep.org/es/resources/informe/informe-mundial-sobre-litigios-climaticos-revision-global-2020. Access on: 17 dec. 2023.; CAVEDON-CAPDEVILLE, Fernanda de Salles *et al.* An ecocentric perspective on climate litigation: lessons from Latin America. *Journal of Human Rights Practice*, v. 16, n. 1, p. 89-106, 2024.

This first case of climate litigation on our continent addresses a conflict over deforestation in the Amazon, the intensification of which is alarming. In 2016, Colombia lost 178,597 hectares of forest, a 44% increase in the level of deforestation compared to the previous year. A large part of these destroyed hectares are part of the Amazon, which is continually at risk from land grabbing, illegal crops, pressure from agribusiness, infrastructure construction and illegal timber extraction. The group of people filing the lawsuit is made up of children and adolescents from the affected communities in the different provinces of the Colombian Amazon - with the support of the NGO Dejusticia - who will reach adulthood between 2041 and 2070 and old age from 2071, in line with life expectancy in the country. If urgent measures are not taken, the temperature will rise by between 1.6 and 2.14 degrees Celsius, seriously affecting their quality of life in the future.

The lawsuit was filed against the Presidency of the Republic, several national ministries, the Special Administrative Unit of National Natural Parks and the Governors of Amazonía, Caquetá, Guainía, Guaviare, Putumayo and Vaupés, with the aim of requesting compliance with the commitments made on climate change and, in particular, the curbing of deforestation.

The court ruling provides for a series of orders linked to the protection of people's human rights, the protection of future generations and the safeguarding of the region's biodiversity. The first order is to draw up a short-, medium- and long-term action plan to counteract the rate of deforestation. Likewise, an "Intergenerational Pact for the Life of the Colombian Amazon" is ordered to be signed, with the participation not only of state entities but also of the plaintiffs, the affected communities, scientific and research organisations in environmental matters, and the interested population in general. The defendant municipalities are also requested to update and implement their land-use plans. Finally, several corporations in the region must present an action plan to counteract the deforestation problems reported in the case.

The recognition of the Colombian Amazon as a subject of rights takes up several arguments of the Constitutional Court in the Atrato River case.

> (...) a new legal approach called biocultural rights has been developing, whose central premise is the relationship of profound unity and interdependence between nature and the human species, and which has as a consequence a new socio-legal understanding in which nature and its environment must be taken seriously and with full rights. That is, as subjects of rights.
>
> Sentence STC4360/2018. Civil Cassation Chamber of the Supreme Court of Colombia, 05.4.2018, p. 40-41.[37]

Like the Atrato River ruling, the call for a pact that considers the future of the Amazon is a departure from the anthropocentric paradigm. It defends the intrinsic value of the non-human: species have the right to develop their own life processes and ecosystems have the right to persist, regardless of their usefulness to humans.

3.3 Other related judicial decisions

In addition to this proliferation of rulings declaring certain ecosystems as subjects, there is also a set of judicial decisions that contribute to the Latin American ecocentric turn, although without reaching such explicit formulations. This is the role played by the Supreme Court of Justice of Argentina: although the ecocentric allusions in its rulings are tenuous, they are nonetheless significant as the highest judicial authority in one of the largest countries in the region[38].

In the *dégradé* of cases that we have covered throughout the article, we will now review this discrete link, which we can characterise as a recognition of rights of nature in a weak sense.

The Court's first judicial decision that includes ecocentric arguments rules on a conflict between two Argentine provinces over the use of the Atuel River. The province of La Pampa has a historic claim against the province of Mendoza for overexploitation of the watercourse upstream, causing damage and shortages downstream. The claim filed by La Pampa reached the Supreme Court of Justice of the Nation in 2014 and was resolved in 2017 from an ecocentric perspective:

The legal regulation of water has been based on an anthropocentric model, which has been purely dominion-based, taking into account the private utility that a person can obtain from it, or else in terms of the public utility identified with the State (...). The legal paradigm

[37] SUPREME COURT OF COLOMBIA. *Sentence STC4360/2018*. Civil Cassation Chamber. 05 apr. 2018. p. 40-41.

[38] One of the rulings of the Argentine Supreme Court that had international repercussions was the one on the contamination of the Matanza Riachuelo basin in 2008.

that orders the regulation of water is eco-centric, or systemic, and does not only take into account private or state interests, but those of the system itself, as established in the general environmental law.[39]

Although the Atuel River is not declared a subject of law, the existence of ecosystem interests is affirmed, contrasting them with those held by States or private individuals. This ecocentric perspective is consolidated in later rulings, as in the case we will see below.

In a conflict generated by the construction of a private neighbourhood on a wetland in the town of Puerto General Belgrano in the province of Entre Ríos[40], the Court incorporated the principle *of in dubio pro natura* as a criterion for decision-making:

> (...) in cases of doubt, all proceedings before courts, administrative bodies and other decision-makers shall be resolved in a manner conducive to the protection and conservation of the environment, giving preference to the least harmful alternatives. Actions shall not be taken when their potential adverse effects are disproportionate or excessive in relation to the benefits derived from them.

This principle is inspired by contributions from criminal and constitutional law with the *in dubio pro* imputado principle, followed by developments in labour law with the *in dubio pro* operario principle and, later, the *in dubio pro* consumidor principle. In the first case, when there are doubts about the authorship of a person accused of a crime, one must be in favour of his innocence. In the case of labour and consumer law, we find entire bodies of law that have a protective nature: the weaker party to the employment contract or the consumer relationship must be protected. In the case of the principle applied here by the Court, the environment will be protected as a priority in those conflicts that have different resolution alternatives.

Although it is not an explicit recognition of the rights of nature, these innovations involve an initial shift from the status of nature as an object to that of a subject. Gradually, the legal work of Argentina's highest judicial authority abandons an orthodox logic in environmental matters: it ceases to speak - to use Bourdieu's beautiful expression[41] - "in the language of conformity with the past". The rulings in question distance themselves from anthropocentrism and are in tune with a certain zeitgeist in which ecological concerns occupy a growing place.

4 Conclusions

Throughout this paper we have seen the main milestones of the two paths to the recognition of the rights of nature in Latin America. These innovations were predominantly driven by governments of the progressive cycle - in the case of the constitutional re-foundation of Ecuador and Bolivia -; to a lesser extent, by NGOs and, to an even lesser extent, by local populations.

The first path of recognition of the rights of nature, represented by the advances in the constitutions and legislation of Ecuador and Bolivia, has had an impact on laws, court rulings or agreements between governments and communities in different parts of the world, as well as on debates at various international meetings on climate change and other environmental issues.

The "contagion effect" was also present in Latin America. Suffice it to mention the first bill on the rights of nature presented in Argentina, which has not yet been debated; the proliferation of sentences that veer towards ecocentrism; and the impact on the imaginaries of environmental, peasant-indigenous and ecofeminist movements that increasingly echo this idea and incorporate it into their discourses, mobilisations and demands.

Both the recognition of the rights of nature and Buen Vivir in the Ecuadorian and Bolivian charters and norms speak of respecting, protecting and restoring ecosystems and the life of all natural beings, including humans. However, some public policies implemented *subsequent to* these sanctions contradict the central spirit of these legal creations. In the name of a nation's Good Living, extractivist policies can be implemented in peasant or indigenous territories without the consent of these communities, violating their right to self-determination.

[39] CORTE SUPREMA DE JUSTICIA DE LA NACIÓN ARGENTINA. *Provincia de La Pampa v Provincia de Mendoza s/ uso de aguas, 243/2014*. 2017.

[40] CORTE SUPREMA DE JUSTICIA DE LA NACIÓN ARGENTINA. *Majul, Julio Jesús v. Municipalidad de Pueblo General Belgrano, 714/2016/RH1*. 2019.

[41] BOURDIEU, Pierre. Elementos para una sociología del campo jurídico. *In*: BOURDIEU, Pierre; TEUBNER, Gunther. *La fuerza del derecho*. Bogotá: Siglo del Hombre Editores, 2000. p. 153-220.

It is not idle to recall that the extension of rights to Pachamama and other non-human beings is taking place in one of the most socially unequal territories on the planet, which also breaks sad records in terms of biodiversity loss and violence against environmental defenders confronted with various types of extractivism.

The second path, represented by judicial transformations, is also far from reaching its ceiling. On the one hand, there is a growing legitimacy of these ecocentric arguments in the courts, even in the framework of legal regimes that do not have this type of rights extension, such as Colombia and Argentina. On the other hand, there is a proliferation of claims that make use of these arguments, several of which have yet to be resolved.[42]

Although the *mainstream of* Latin American constitutions, laws and judicial rulings on environmental matters responds to an anthropocentric logic, rulings with an ecocentric content are multiplying. Let us quote the judge in the Atrato River case: *With respect to how we consider nature, change is inexorable. I am exaggerated in my optimism. It is a force that comes from below, from the strength of the people*.[43]

And why is this change, in the judge's words, inexorable? We know that the recognition of rights of nature is part of a variation of rights-holders throughout Western history. Various struggles involving subordinated, invisibilised or oppressed groups such as slaves, women, people with disabilities and children, prompted the enshrinement of rights as a way of circumventing these injustices.

In contrast to these precedents, the granting of rights to nature challenges the modern conception of justice, which is exclusively concerned with the interests of human beings, and also redefines notions usually mobilised in this sphere. If the concept of person, for example, had been reserved for human beings, the declaration of a great ape as a non-human person involves no less a transformation of the anthropocentric starting point of justice in the West. Who are, nowadays, the people entitled to claim justice? Let us recall that in Argentina, a protectionist NGO has filed habeas corpus on behalf of an orangutan and a chimpanzee to interrupt their captivity in zoos, conceived as a *prison for non-human prisoners*; and Greenpeace filed, on behalf of the yaguareté species, a legal action before the Supreme Court of Justice of the same country claiming the protection of its habitat[44]. Another example of this inexorable change in justice is the consolidation of the field of ecological justice. Unlike environmental justice, which deals with the protection of the environment based on human needs, ecological justice focuses on the extension of rights to non-human beings.

On the other hand, the recognition of rights to rivers, mountains, moors and other beings is part of an ontological transformation still underway in our Western societies. This growing emergence of the non-human takes shape not only in legal innovations in Latin America and other regions with respect to nature, Buen Vivir and animals, but also in vegan conversions and environmental activism of various kinds, and in the presence of *earth-beings*[45] during political negotiations in different Latin American socio-environmental conflicts involving peasant and indigenous societies. Through different forms of resistance - militant, academic, legal, domestic - the hitherto dominant mode of relating to the environment is challenged.

The successive catastrophes - fires, droughts, floods - caused by climate change; the continuous depredation of territories in the context of the environmental blindness[46] of neoliberal and progressive states; the assassi-

[42] In Argentina, one of the amparos over the burning of the Paraná Delta calls for the Delta to be declared a subject of law and for a guardian to be appointed, in line with Colombian innovations. In the same direction, a recent claim was made in Florianópolis for the protection of Lagoa da Conceição.

[43] Interview with former judge Jorge Palacio Palacio in charge of the Atrato River case. 2021.

[44] Although the case is still pending, the Supreme Court of Justice of the Nation declared itself competent on 2 November 2023. GREENPEACE sobre el fallo de la Corte: "Es un avance importante para defender a los últimos 20 yaguaretés del Gran Chaco". *Greenpeace*, 02 nov. 2023. Available at: https://www.greenpeace.org/argentina/story/problemas/bosques/greenpeace-sobre-el-fallo-de-la-corte-es-un-avance-importante-para-defender-a-los-ultimos-20-yaguaretes-del-gran-chaco/. Access on: 16 dec. 2023.

[45] De la Cadena calls earth-beings «the presence in politics of those non-human actors that the dominant disciplines assigned to the sphere of nature (where they should be known by science) or to the metaphysical and symbolic fields of knowledge». LA CADENA, Marisol de. Cosmopolítica indígena en los Andes: reflexiones conceptuales más allá de la "política". *Tabula Rasa*, v. 3, p. 273-311, 2020.

[46] «In this political-ideological framework dominated by the productivist vision and so refractory to the principles of the environmental paradigm, the current dynamic of dispossession becomes a blind spot that cannot be conceptualised. As a consequence, socio-environmental issues are considered a secondary concern (or are simply sacrificed) in view of the serious problems of poverty and exclusion in Latin American societies». SVAMPA, Maristella; VIALE, Enrique. *Maldesarrollo*: la Argentina del extractivismo y el despojo. Buenos Aires: Siglo XXI, 2014.

nation of environmental leaders in the region and, in recent years, the experience of a pandemic at the limits of one's own skin, have only deepened awareness of the planetary crisis and the limits of the dominant mode of production.

The case of Argentina is eloquent: although environmental resistance has been going on for several decades, activism has become more vigorous in recent years. In 2019, a massive mobilisation took place in Mendoza to stop the modification of a law that allowed the use of highly polluting chemicals in mining activities. In Chubut, in 2020, the provincial government sought to regressively modify the 2003 law banning open-pit mining. The local population took to the streets as they did then, 17 years ago, denouncing the collusion between political parties and provincial state powers to promote mining activity. In the midst of the pandemic, the Paraná Delta suffered - and continues to suffer - the consequences of an overwhelming fire generated by multiple causes, mainly anthropogenic. Faced with this, organisations and citizens from different localities along this wetland mobilised creatively, demanding the approval of a wetland protection law. In addition to this, there is the emergence of collectives such as Río Feminista, an articulation of women and organisations living along the Paraná Delta; the struggles of different groups against toxic agro-chemical spraying in the central north of the country, or against the expansion of territories destined for open-pit mining projects in different parts of the Andes mountain range.

The rights of nature form part of the repertoires of struggle of diverse socio-environmental, peasant-indigenous or feminist activisms in Latin America, even if they do not necessarily fight through the courts or pursue legal reform. Many of these struggles promote other ways of doing and practising politics, incorporating the legal and political representation of beings who, until recently, were conceived of as unrepresentative. In this sense, the enactment of the rights of nature - and especially their implementation - poses enormous challenges for our societies.

First, the rights of nature, like Buen Vivir, refer us to a historical moment in which a particular political philosophy became legible and audible in disparate spheres, stimulating novel debates on other forms of coexistence in Latin America and other regions[47]. In this sense, one of the greatest challenges is to achieve an ontological decentring on the part of jurists, civil servants or other experts responsible for enacting laws, modifying the constitution in the framework of an assembly or settling legal agreements with local populations. In this regard, let us look at an emblematic case of the enshrinement of the rights of nature at the global level: the case of the Whanganui River in New Zealand. Disputes over this river between Maori communities and the New Zealand government date back 140 years. While the state regarded and regulated the river as a waterway and a natural resource, the communities saw it as a living entity with a shared history. After years of negotiation, an agreement was reached that considers the river as a subject of law. The Whanganui River is now legally recognised as a living person: it is an indivisible and living whole, a physical and spiritual entity stretching from the mountain to the sea. The testimony of Minister of State Christopher Francis Finlayson gives an account of the difficulties involved in the dialogue and negotiation with local communities that led to the signing of the Whanganui River Treaty:

> (...) the Whanganui River people say 'I am the river and the river is me'. The first time I heard it, it sounded like something out of James Cameron's Avatar. But the more you look, the more you realise that indigenous people have a completely different view of nature than European New Zealanders[48].

In effect, Maori communities passed on the voice of the *land-beings* and made that relationship between the river and the people part of the agreement. The introduction to the text of the agreement synthesises the pervasive reciprocity between Maori, land, waterways and ancestors in the above-mentioned phrase: *I am the River and the River is me*. If the river disappears, so do they. These are powerful beings - the sky, the mountains, the rivers - who act as guardians of humans and on whom humans depend, not the other way around[49].

47 BRIONES, Claudia. Políticas contemporáneas de convivialidad. *In*: MECILA (ed.). *Convivialidad-desigualdad*: explorando los nexos entre lo que nos une y lo que nos separa. Buenos Aires: CLACSO, 2022. p. 315-378.

48 Interview by Hal Crimmel and Isaac Goeckeritz as part of the making of the documentary The rights of nature. A global movement. THE RIGHTS of nature: a global movement [documentary]. Isaac Goeckertiz; Hal Crimmel; María Valeria Berros. United States: IG Films, 2018. 1 vídeo (52 min 41 s). Available at: https://www.youtube.com/watch?v=RupkZM8dV14. Access on: 17 dec. 2023.

49 SALMOND, Anne. Tears of Rangi: water, power and people in New Zealand. *Journal of Ethnographic Theory*, v. 4, n. 3, p. 285-309, 2014.

This multiplicity is inscribed in the government--community agreement, albeit more in terms of juxtaposition than a deep interrogation of differences: the agreement is written in English and interspersed with Maori words without translation.

The effort of ontological decentring of jurists is thus expressed in a double gesture: abandoning the conviction that our society - and our justice - can serve as a standard to qualify all forms of society; and trying to understand how another human group attributes certain characteristics to entities, spaces, artefacts or animals in order to "make the world" with them[50].

This government-community agreement is inspiring for rethinking the rights of nature in the framework of an interlocution that interrogates our dominant naturalist ontology and allows us to assume the limitations of the legal concepts and tools in use. Like the appropriation of Andean categories of Buen Vivir in Ecuador's constitution and Bolivia's national laws, the Whanganui River agreement testifies to the complexities of dialogue between governments and communities. Even with its flaws, the agreement accounts for compositions of the world comprised of both humans and non-humans, as agents with their properties and modes of action[51].

Like Buen Vivir, the rights of nature seek to tell other stories and draw other maps of what matters[52]. In each of these situated contexts, the rights of nature propose cohabitations between humans and non-humans in ways that do not necessarily seek to generalise to the whole and are made comprehensible from ways of knowing that are also not enabled for the whole[53]. Some of these cohabitations might not be adequately processed, for example, on the basis of this legal tool. In the last section we will return to these blind zones of Pachamama's rights: the spaces of dissent that they enable or hinder, and the need to be articulated with other rights, demands and interests.

In the area of environmental justice, the enshrinement of rights of nature involves a democratisation and *ontological pluralisation*[54] in three senses.

Firstly, their recognition in constitutions and court rulings takes up knowledge and practices that, in general terms, did not have a significant presence in these spheres. We refer, for example, to the growing legitimacy of victims' testimonies in environmental cases - such as the case of the Atrato River - or the very compositions of the worlds of indigenous communities, as we saw with the notion of Buen Vivir or the case of the Whanganui River.

Secondly, the salutary fresh airs that these extensions of rights introduce into the legal field are expressed in the creation of new figures and institutions, such as the guardians of rivers and other ecosystems. These figures are not free of tensions and misunderstandings: how close - or far away - are these figures from the aspirations and uses of the world of the local communities in which socio-environmental conflicts are rooted?

Thirdly, the democratisation of environmental justice occurs in a geopolitical sense: the single North-South direction in the production of knowledge and legal tools is interrupted. It is now the South that generates new guiding concepts - the rights of Mother Earth, Buen Vivir - which the North has to take up either in international debates seeking to promote a declaration of the rights of nature, in proposals for the recognition of ecosystem rights - as is happening in the United States - or through the extension of rights to rivers and lakes in Australia, Canada, Colombia and Peru. As Schavelzon summarises, the legal innovations of Ecuador and

50 DESCOLA, Philippe. *La composición de los mundos*. Buenos Aires: Capital Intelectual, 2016.

51 DESCOLA, Philippe. *La composición de los mundos*. Buenos Aires: Capital Intelectual, 2016.

52 BRIONES, Claudia. Políticas contemporáneas de convivialidad. *In*: MECILA (ed.). *Convivialidad-desigualdad*: explorando los nexos entre lo que nos une y lo que nos separa. Buenos Aires: CLACSO, 2022. p. 315-378.

53 BRIONES, Claudia. Políticas contemporáneas de convivialidad. *In*: MECILA (ed.). *Convivialidad-desigualdad*: explorando los nexos entre lo que nos une y lo que nos separa. Buenos Aires: CLACSO, 2022. p. 315-378.

54 The concept of ontological pluralisation is taken up by Marisol de la Cadena. Her proposal consists of transforming the concept of politics, conceived as power disputes within a singular world, for another concept that includes the possibility of adverse relations between worlds. LA CADENA, Marisol de. Cosmopolítica indígena en los Andes: reflexiones conceptuales más allá de la "política". *Tabula Rasa*, v. 3, p. 273-311, 2020. In line with Stengers' cosmopolitical proposal and Blaser's conceptual elaborations, ontological pluralisation starts from the idea of a world that is multiple, recognising the interconnection between these worlds without making them commensurable. STENGERS, Isabelle. The Cosmopolitical Proposal. *Pleiade*, 14, 2014.; BLASER, Mario. Is another Cosmopolitics possible? *Cultural Anthropology*, v. 31, n. 4, 2016. Paraphrasing Descola, this exercise of democratisation and ontological pluralisation is linked to the challenge of living together in collectives whose forms are not pre-determined. DESCOLA, Philippe. *La composición de los mundos*. Buenos Aires: Capital Intelectual, 2016.

Bolivia have made it possible to think of worlds where agency is not exclusively human[55].

The hegemonic North-South directionality in the production of environmental knowledge is, however, still present in the legal innovations of animal law. Unlike the rights of nature, the argumentation of Latin American protectionists and judges in the most prominent cases in which an animal is declared a subject of rights tends to take up an animalist literature from the Anglo-Saxon world that extends the benefit of moral consideration - previously reserved only for humans - to certain animals[56].

With few exceptions - such as the holding of public hearings in the Sandra orangutan court case - Latin American animal law rulings declaring great apes to be subjects of rights lack the polyphonic quality of a ruling that is the product of a sustained collective struggle, such as that of the Chocó communities that mobilised to recover their river. The lawsuits surrounding the Suiça chimpanzee, the Cecilia chimpanzee or other equally emblematic individual animals were brought by some protectionist NGO with little representation in their communities, and resolved by the courts in relative solitude. While these rulings are seen by some experts as revolutionary or responsible for opening a metaphysical rift, we believe that declaring some great apes to be non-human persons represents a moderate ontological rupture.

In effect, these actions operate selectively by ranking animals in a hierarchy and taking care of those animals that are most similar to us. Animal ethics is sensocentric: its focus is not on the totality of living or abiotic organisms, but exclusively on those animals identified as sentient. Vertebrate mammals," says Singer, one of the most famous authors, "have a complex cerebral cortex and nervous systems almost identical to our own, so their reactions to pain are remarkably similar[57]. Promoters of this *species-free ethic* stress that physical differences between humans and animals should not be the basis for discrimination in the treatment of nonhuman animals, given that we have important similarities in our capacities to feel pain, pleasure and other emotions.

This implies the triumph of an extensionist perspective: we recognise in them - the vertebrate mammals, with special emphasis on the great apes - the same as we recognise in ourselves. By contrast, the rights of nature bring into play a greater political and anthropological imagination and involve a holistic perspective, focusing on the inherent value of all beings.

This does not diminish the relevance of the above-mentioned rulings in recognising, for the first time in the world, some great apes as non-human persons. We simply want to point out the differences with respect to the predominant features of the rights of nature in terms of the democratisation, ontological pluralisation and ecocentrism involved.

The rights of nature and Buen Vivir stand as synthesis-ideas that have the capacity to articulate struggles and translate - when this is desirable or possible - territorial, conservationist, anti-capitalist or anti-patriarchal claims.

How is the complementarity of the rights of nature with human rights, ecofeminisms, demands for plurinationality, indigenous claims for water or territory woven or not woven into practices? Under what circumstances does the struggle for ecological justice include demands for social justice?

In the constituent assembly held in Chile, the Mapuche president of the Constituent Convention, Elisa Loncón, proposed representing all those excluded by the state: indigenous peoples, women, sexual and gender-based dissidents, children and adolescents, people with disabilities, non-human animals and nature[58]. CIMA, a self-organised interdisciplinary network for a new constitution, was also formed, with Buen Vivir as one of its axes; and FIMA, a historic environmental NGO, is also pushing for a new ecological constitution. The text of this first convention was submitted to a referendum and was not approved by Chilean society. At the end of 2023, the content of a new version of the constitution, which does not incorporate the ecological issue from the perspective of the expansion of rights, was adopted.

We have seen throughout this paper that nature is often hegemonically conceived as a fragile other, exter-

[55] SCHAVELZON, Salvador. *Plurinacionalidad y Vivir Bien/Buen Vivir*: dos conceptos leídos desde Bolivia y Ecuador post-constituyentes. Buenos Aires: Abya Yala/CLACSO, 2015.

[56] DESCOLA, Philippe. *Más allá de naturaleza y cultura*. Buenos Aires: Amorrortu, 2012.

[57] SINGER, Peter. *Liberación animal*. Buenos Aires: Taurus, 2011.

[58] ALFIE, Camila. La revolución de Chile: Elisa Loncón, la lingüista mapuche que encabeza el entierro de la constitución de Pinochet. *Página/12*, 09 jul. 2021.

nal to the human experience, which must be protected. In this respect, let us recall the principle of *in dubio pro natura* of the Argentine Supreme Court of Justice or the figure of the guardians of the Atrato River instituted by the Constitutional Court of Colombia. The Mapuche leader Adolfo Millabur, one of the indigenous assembly members of the Constituent Convention that took place in Chile, distances himself from this dominant vision of care: "when we talk about the relationship with nature, we are not referring to protecting and caring for it. On the contrary, it is nature that takes care of us"[59].

Although it is beyond the scope of this paper, it is sufficient to mention that the rights of nature are rethought, demanded, performed performatively and sometimes articulated with other emancipatory demands in Latin America, such as the struggles against different forms of extractivism, the new feminist agendas of care, the search for recognition of the plurinationality of states or the search for a socio-ecological transition.

Their postulates admit multiple transversalisations and reinterpretations, in tune with the cognitive liberation that Svampa and Viale point out as a mark of these times. Perhaps the greatest creativity of Buen Vivir and the rights of nature does not come from governments that can, at certain junctures, bureaucratise them or empty them of content, but from the activisms that revitalise them.

We are aware that this paper leaves unanswered several questions about the emergence, consolidation and implementation of the rights of nature in Latin America: the conditions of possibility for the emergence of these rights; the role played by socio-environmental and indigenous activism in the region; the limitations of environmental law and its anthropocentric philosophy that these new rights seek to remedy.

One of the misunderstandings that this paper may raise is the assumption that we, the authors, pontificate on the rights of Pachamama as intrinsically desirable or "progressive". As we have discussed in previous work, the emancipatory character of ecocentric positions is not guaranteed in advance: it is necessary to assess who takes them up, for what purposes, and what are the political effects of such uses, as they can also become a new argument for reactionary policies. Ecocentric postulates can also be capitalised on by right-wing activists proposing authoritarian or fascist measures[60].

The transition from anthropocentric to ecocentric does not necessarily aim at more equitable relations. Within the framework of these allegedly innovative paradigms, there may also be a prescription as to what the morally appropriate relationship of human beings with the environment should be.

If constitutions and laws are passed or rulings are made with ecocentric content, we are not necessarily on the way to achieving greater parameters of social and ecological justice. We must observe how the implementation of the rights of nature is put into play in relation to productive or extractive processes in a given region. We also know that not all extractivism generates rejection in the territories: sometimes, local populations tolerate, endorse or participate in processes of this nature[61].

What dialogue - or lack of dialogue - is established between these rights and those issues that mobilise the interest of local populations? What happens when the rights of nature conflict, for example, with the reproductive needs of subaltern groups?

The implementation of rights of nature can sometimes lead to unexpected conflicts: how to integrate the paradigms of social and ecological justice in situated territories, or do rights of nature amount - to use Fraser's classic formulation - to a mere "cultural recognition" of the environment that does not alter the profound inequalities in the mechanisms of economic redistribution? Fraser warned, decades ago, of the mutual interference that can arise when demands for justice are presented with contradictory objectives[62].

The contribution of this new legal instrument can only be understood in the framework of ethnographies

[59] PARA SENTAR las bases de un Estado plurinacional. *Página/12*, 28 mayo 2021. This perspective is similar to the case of the Whanganui River already discussed: the sky, mountains and rivers act as guardians of humans, and not the other way around.

[60] In his disturbing book, Stefanoni shows different scenarios of political response to the environmental crisis, especially those that are woven from right-wing environmentalism in countries such as Austria, France or the United States. American ethno-nationalists spread, for example, the following slogan: plant trees, save seas, deport refugees. Similar slogans of European right-wing parties coincide in this desire to achieve both environmental and racial purity. STEFANONI, Pablo. *La rebeldía se volvió de derecha*. Buenos Aires: Siglo XXI, 2021.

[61] LAPEGNA, Pablo. *La Argentina transgénica*: de la resistencia a la adaptación, una etnografía de las poblaciones campesinas. Buenos Aires: Siglo XXI, 2019.

[62] FRASER, Nancy. *Repensando la esfera pública, el reconocimiento y la justicia. Autodeterminación*. 2015.

that accompany the implementation of its implementation in situated territories, critically analysing the specific circumstances in which these ecocentric laws or court rulings come to life.

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