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The rights of Nature: the legal revolution of the 21st century

Abstract

The article tries to show how the ecocentric approach, which preaches Ecological Justice, finds full legal recognition today both in Jurisprudence and in Law. Three cases will be studied where Nature is recognized as a subject of law, that is, environmental entities, such as rivers or lagoon, are granted recognition as subjects of law with their own rights, which generates protection and restoration obligations. The first, the Atrato River in Colombia and the second, the Whanganui River in New Zealand. The study of these cases gave me the possibility of fighting for the rights of the Mar Menor, which is the third case study of this work: the Laguna del Mar Menor in Spain, Law 19/2022, of September 30, of recognition of legal personality to the Mar Menor Lagoon and its basin.

Keywords: ecological justice, climate justice, anthropocene era, ecocentric vision, biocentric vision, biocultural rights, ecological citizenship, environmental person, rights of nature, ecological state of law

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Introduction

If we look at the history of the ethical evolution of humanity, as Aldo Leopold shows in the Ethics of the Earth,[1] each stage that develops the ethical dimension shows progress in the understanding of humanity with respect to its place in the world: from relations with oneself to relations with the family, to the tribe, relations between humanity as a whole, and finally relations with the natural environment. In this evolution of ethics, one goes from conceiving man as master and owner of his environment to conceiving him as a member of a biotic community or ecosystem. In this same sense, Darwin[2] observes the moral history of man and describes it as a continuous extension of the individual to the social and finally to the animal world. It is about the progress from the relationship between human beings, to the relationship between the human species and the other species that make up nature. The extension of the dimension of ethics to the natural environment, hitherto limited to the human sphere, results in the new paradigm of ecological ethics.

In scientific evolution, during the twenty-first century, the impact of human activity on the Earth system confronts humanity with global change and places it in a new geological era of the Earth known as the Anthropocene, which highlights the contradiction between a sick planet and a development model that allows unlimited exploitation of nature's resources. The threat of the current climate and ecological crisis is recorded by the latest reports of the Intergovernmental Panel on Climate Change (IPCC, 2018) and on Biodiversity and Ecosystem Services (IPBES, 2019) showing that the current model continues to pollute the air, water and soil. After all, it is humanity that has accelerated rates of extinction by 1,000 times, and it is human activity that is the driving force of the mass extinction currently underway, "a threat to biodiversity equal to the destructive power of the Chicxulub asteroid strike that wiped out 70 percent of species 65 million years ago the sixth extinction".[3] This new geological epoch (Anthropocene) which is evidencing human destruction on an epochal scale and mass ecological extinction makes the issue of ethical consideration (including interests/rights) of that ecology all the more pressing.

In a sense parallel to the evolution of the ethics and new scientific Anthropecenic era, the history of the evolution of the Law shows an advance in the inclusion of new subjects in the legal field, from the white man with money as the only subject of law (19th century), to the inclusion of women, children, all races and people of all classes as legal persons (20th century). At the beginning of the 21st century, the inclusion of nature as a subject of law raises enormous doctrinal discussions and difficulties in the legal field, and requires an ontological and epistemological revision of the theory of traditional law. Given the current difficulty of granting the status of the new legal concept of environmental personhood (which means designating environmental entities with the status of a legal person), it should be remembered that at the beginning of modern law, for the first time in the Law, the mercantile corporation had its own rights and being as a person and citizen.

The logic of this evolution leads us to consider nature as a legal subject ("environmental personhood"), which has recently been recognized by Jurisprudence and the Law. The novel addition to the current literature that my work contributes is to show the progress in the three new justice models: environmental justice, climate justice and ecological justice. The three models of justice, and also a normative justification of environmental ethics, imply the abandonment of the anthropocentric vision on which the formula of the State of Law or modern law has been based, a vision that conceives the human being as the sole reason for being of the legal system, and natural resources as simple objects in the service of the first. The biocentric vision is an intermediate step that conceives the relations between humanity and nature, which permits the leap towards a new ecocentric conception of Law. This biocentric vision is shared by the three models of justice: environmental justice, climatic justice and ecological justice, and vindicates more global and supportive conceptions of human responsibility and also advocate the duties of man with regard to the natural and future generations. The Ecological Justice model incorporates a *biocentric* vision and an *ecocentric* vision, which conceives nature as a true subject of rights, and recognizes human beings as integral parts of the global ecosystem - the biosphere.

In this paper, three case studies are considered. The first one, Río Atrato in Colombia (http://cr00.epimg.net/descargables/2017/05/02/14037e7b5712106cd88b687525dfeb4b.pdf) and the second one, the Whanganui River in New Zealand (http://www.legislation.govt.nz/act/public/2017/0007/latest/whole.html).

The study of these two cases took place during my stay at the University of Reading in the United Kingdom from July to October

2019. The Spanish version of the study of the Atrato River and the Whanganui River was published in the Catalan Environmental Magazine in 2020.

This study provided me with the possibility of fighting for Mar Menor´s rights, which is the third case study in this work: the Mar Menor Lagoon in Spain, Act 19/2022, of September 30, for the recognition of legal personality to the Mar Menor lagoon and its basin (https://www.boe.es/diario_boe/txt.php?id=BOE-A-2022-16019).

In these cases, the jurisprudence and the Law respectively recognize nature as a subject of law, that is, it grants environmental entities, such as rivers or lagoon, their recognition as subjects of law with their own rights, which generates protection and restoration obligations.

From Anthropocentrism to Ecocentrism: the realization of the new paradigm of Eological Justice

To arrive at the realization of the ecological justification and achieve this ontological and epistemological leap in the field of Law requires moving from the anthropocentric conception of Law (the objects of law are human beings) to an ecocentric conception (the object of law is the ecosystem, of which human beings are a part). It has been necessary, previously, to take a step in the classical conception of the concept of Law and its scientific knowledge, moving from the rigid anthropocentric conception to a softer and more flexible anthropocentric conception, which leads to the biocentric conception, which broadens and corrects the limits of the classical anthropocentric conception. This step permits, finally, the leap towards a new ecocentric conception of Law. This evolution of Law - anthropocentrism, biocentrism and, finally, ecocentrism - has been possible thanks to the legal path opened by the United Nations. Next, we will analyze these stages.

At the beginning of the 21st century, a great step was made in the biocentric vision, recognizing the relationship between Nature and Law through the specific route of the United Nations Resolutions. In 2005, the United Nations Commission on Human Rights adopted Resolution 2005/60 on human rights and the environment as part of Sustainable Development (SD). Four years later, the United Nations Human Rights Council adopted Resolution 10/4 of March 25, 2009 on human rights and climate change, where the Office of the United Nations High Commissioner for Human Rights is required to seek information on climate change and human rights, and the decision to appoint a Special Rapporteur to regularly report on the impacts of global warming on human rights is welcomed. On June 3, 2008, the General Assembly within the framework of the Organization of American States (OAS) approved the Resolution on Human Rights and Climate Change in the Americas, AG / RES 2429 (XXXVIII-O / 08).

This new legal perspective, which affirms the relationship between human rights and the environment, allows the inclusion of the protection of the natural environment within the scope of protection of human rights, as it is the cause of violation of such rights, such as the right to life, food, health, water, housing, territory, culture, spirituality and self-determination, among others. It is concerned with the materialization of Environmental Justice, that is, its effective renewal in the field of Law. Environmental Justice is based on environmental problems such as pollution, biodiversity, desertification, deforestation, waste, etc., and how it affects people, in the development of Environmental Law, and in the approaches of environmental jurisprudence.[4]

A pioneering case in this regard has been the decision of the European Court of Human Rights dated December 9, 1994, where it recognized that environmental problems (pollution) affect people and their rights. This is the Complaint Resource filed by Gregoria López Ostra, claiming that the Spanish State had not protected her as a citizen against contamination caused by a waste treatment facility, and that it had violated her right to respect for domestic, private and family life. (López Ostra vs. Spain. Application No. 16798/90). The European Court considered the relationship between the right to a healthy environment and the right to respect for private life, home and family life, declaring state responsibility for actions of private companies in their jurisdiction, and ruled that "severe pollution of environmental conditions can affect people's well-being and prevent them from enjoying their homes in a way that negatively affects their private and family life".

From 2015 with the Paris Climate Agreement and the United Nations Summit where the Sustainable Development Goals of the 2020-2030 Agenda are established, Climate Justice takes centre stage in the legal sphere. Although the extent to which the Paris Climate Agreement does in fact reflect Climate Justice is questionable, the revelations about climate change which were forthcoming demonstrated that the situation is worsening and has become critical.

Climate Justice, as a further development of the biocentric vision, confirms that climate change does not affect everyone equally. In many cases, those most affected by climate change are the least responsible for the greenhouse gas emissions that are causing the current climate crisis, and these inequalities generated by climate change have an impact on global justice.

The regulatory framework provided by the 2015 Paris Agreement and the United Nations Sustainable Development Agenda 2030, in Object 13, drives a necessary "Climate Action" as a realization of the new Climate Justice model, creating obligations for governments and private entities. In this regard states must develop effective instruments to combat the causes and effects of global warming, that is, they are required to carry out climate change adaptation and mitigation policies; however, these adaptation and mitigation measures are performed by the governments of the countries slowly and are continuously paralyzed by uncertainty and unreachable certainties.

The COP21 Climate Summit in Paris (where the Climate Agreement was adopted not to exceed an increase of 2.0 ° C beginning with the period of the pre-industrial Revolution (1750) and approaching 1.5 ° C in the year 2100) was chaired by Ségolèn Royal, who in his Manifesto for an Ecological Justice (2017) promotes a necessary global climate action. It highlights three women who have promoted awareness and ecological action: Rachel Carson, the marine biologist and writer of ecological awareness in the sixties; Vandana Shiva, the Indian philosopher and activist driving the ecofeminism of the 1980s; and Wangari Muta Maathai, biologist and activist, Nobel Peace Prize 2004.

One of the main materialized elements of Climate Justice is the so-called "climatic conflicts" or "climatic change litigation". The climate disputes are aimed at pressuring the State Legislator, State Administration and Private Entities to fulfil, through the application to the State Judge, the global commitment to guarantee an adequate climate with the reduction of greenhouse gas emissions, and encourage renewable energy production (no fossil energy), accompanied by appropriate legal measures to implement the principles of precaution and prevention, with the objective also of preventing environmental disasters and promoting the principle of sustainable development.[5]

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Climate disputes have been multiplying, and many of them have been compiled in some legal studies, such as Ottavio Quirico and Mouloud Boumghar, *Climate Change and Human Rights* (2016). In some of these cases it is intended to hold the state responsible for causing climate change, as in the case of the two requests to the Inter-American Commission on Human Rights (IA ComHR) by the Arctic Indians: The request of the Council of Innuit of the Arctic Circle against the United States of America for human rights violations resulting from global warming caused by their acts and omissions; the request in 2013 from the Council of the Athalabaskan for violations of their human rights due to the warming and melting of the Arctic caused by black coal emissions from the government of Canada. In other cases, it is intended to hold private companies accountable, such as the Kivalina case, where in 2007 the native people of Kivalina sued the Kivalina District Court, and then the United States Supreme Court, and various power and oil companies, for contributing to climate change and thereby causing the worst consequences of Hurricane Katrina. Some lawsuits are intended to hold states and companies accountable, such as in Nigeria in 2005, where Jonah Gbemre on his behalf and on behalf of the Iwherekan community of the Nigerian Delta, filed a lawsuit against the Shell Oil company, the Nigerian National Oil Corporation and the Attorney General of Nigeria for oil spills and waste gases that have caused damage and environmental degradation that violate their fundamental human rights. Other cases follow the tendency to protect the natural environment based on the human rights of indigenous peoples, for example: Yanomami Indians against the government of Brazil (Resolution 12/85. IAComHR, March 5, 1985); or the case of the Kichwa indigenous community of Sarayaku against Ecuador (Resolution Series C N°245. IACtHR of June 27, 2012). In other cases, the natural environment is protected based on the rights of future generations, such as the case of the Republic of the Philippines where the Supreme Court of Manila resolved a lawsuit filed by children (GR N°101083, July 30, 1993). In all these cases the protection of the natural environment is carried out based on the protection of human beings and their rights (classical anthropocentric vision), although it is now extended to a new perspective of the responsibility of the human being towards nature (biocentric vision, which corrects the limits of classical anthropocentric vision). The paradigm of Climate Justice and Environmental Justice comprises these two visions: anthropocentric and biocentric.

In recent years, the legal avant-garde of the Law and the Jurisprudence makes the leap towards an ecocentric conception of Law: recognizing the protection of nature based on their own rights and their intrinsic value, and granting legal personality to natural entities. At the jurisprudential level, the Constitutional Court of Colombia, Sixth Review Section, in judgment T-622 of 2016, recognized the Atrato river, its basin and its tributaries as having the status of an entity subject to law, as a holder of rights to the protection, conservation, maintenance and restoration. And in in 2017, the New Zealand Parliament recognized the Whanganui River by law as a subject of rights.

The road to the recognition of the rights of nature began with the United Nations Nature Charter of 1982, which established that the human species is part of nature and life depends on the uninterrupted functioning of natural systems. And it was strengthened with the Earth Charter, a declaration of principles for the defense of the rights of the Earth, of all the beings that inhabit it and of all forms of life, which was not admitted at the Earth Summit of Rio de Janeiro in 1992, but the strength of the popular movement that supported it achieved its recognition by UNESCO in 2000.

The new ecocentric perspective and the rights of nature jeopardizes the traditional concept of Law based on the separation between Nature and Culture, and raises the greatest legal obstacles and doctrinal discussions. However, the current climate and environmental crisis, the ecology and the new environmental sciences have provided the scientific bases for a new model of Justice, Ecological Justice, and a new legal argument, which is based on the understanding of the human being as part of the ecosystem.[6]

The new model of Ecological Justice must have as its central axis the principle of distribution, that is, that natural entities become part of the distribution of what each one corresponds to for its development and based on its own value.

Ecological Justice is born from Ecological Conscience and Ecological Ethics, and tries to build a distributive model of justice capable of giving human beings and nature their due for their effective development, based on their own value and dignity. The value of nature lies in itself, in its own effectiveness, which is determined by its internal structure and is described according to its durability, productivity and efficiency. The idea of Justice has to assume the ecological question because there are the material and spiritual foundations of human and ecological needs which belong to each one, which include the limits imposed by the natural environment.[7]

Columbia. The constitutional court of Columbia recognizes the river, Atrato River, as a legal subject.

The Atrato River, which crosses the tropical rainforest of Colombia, has suffered the ravages of gold and platinum mining and logging for years, resulting in a deep humanitarian and environmental crisis.

In November 2016 in a historic verdict, only announced in November 2017, the Constitutional Court of Colombia introduced a novel interpretation of the Law: the Atrato River has its own rights, as well as to protect the biocultural rights of the ethnic communities that inhabit its Basin and its banks.

There is a legal novelty in both legal issues: 1. guaranteeing biocultural rights to indigenous communities; and 2. assigning legal status to the Atrato river; which opens a revolutionary legal path in the protection of nature, and expresses the realization of the idea of Ecological Justice. The Ecological Justice model is based on the paradigm of Social Justice and Social Rights (anthropocentric vision), which now expands with the inclusion of Socio-ecological Rights, and Biocultural Rights (biocentric vision). The new model of Ecological Justice (Ecocentric vision) is based on strengthening Social Justice through the effective realization of social and ecological human rights, allowing in addition the granting of rights to nature.

Judgment of the constitutional court of Colombia, Bogota, D.D., November 10, 2016

The sixth review chamber of the constitutional court of the Republic of Colombia (T-622 of 2016. File: T-5,016,242) handed down Judgment in Bogotá on November 10, 2016, in response to the Tutela Action filed by the Centre of Studies for Social Justice "Tierra Digna" - on behalf of the Greater Community Council of the Popular Peasant Organization of the High Atrato (Cocomopoca), the Greater Community Council of the Integral Peasant Association of the Atrato (Cocomacia), the Association of Community Councils of Atrato (Asocoba), the Inter-ethnic Forum Solidaridad Chocó (FISCH) and others-; against the Presidency of the Republic, the Ministry of Environment and Sustainable Development and others; within the process of review of decisions issued by the State Council

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- Second Section, Subsection A - and the Administrative Court of Cundinamarca.

The place where the events of the Tutela Action referred to are developed is the department of Chocó, which is located in one of the regions of greatest natural diversity on the planet known as the biogeographic Chocó, which covers 187,400 km^2. The department of Chocó has an area of 46,530 km^2, which is equivalent to 4.07% of the total area of Colombia, and its territorial organization is made up of 30 municipalities distributed in 5 regions: Atrato, San Juan, North Pacific, Baudo (Pacific South) and Darién. It is a territory of great natural, ethnic and cultural diversity where multiple racial groups converge, with a population close to 500,000 inhabitants, of which 87% are Afro-descendants, 10% indigenous and 3% mestizo. All these communities have made the basin and the banks of the Atrato river not only their territory, but also their space to reproduce life and recreate culture.

The reasons why constitutional protection is requested is the serious health, socio-environmental, ecological and humanitarian crisis that is being experienced in the Atrato River Basin, its tributaries and surrounding territories. In the action of protection, the plaintiffs request the Constitutional Court to protect the fundamental rights to life, health, water, food security, a healthy environment, culture and territory of the ethnic communities. Consequently, the orders and appropriate measures that allow articulating structural solutions to the serious ecological and humanitarian crisis that is suffered are issued. It also stands out that several popular actions have been presented, but in the end have not been successful.

In **the procedure of instance**, the Constitutional Court ordered that the defendant entities be provided with notification of the Tutela Action so that they could exercise their right to defence.

The Sixth Chamber at the Review Headquarters decided to take the case under review and request information from several entities, and in response 26 replies were received. Based on the foregoing, the Sixth Chamber of the constitutional court declared itself competent to issue a Review Judgment. And the Chamber considered that the Tutela Action was appropriate to protect the fundamental rights of ethnic communities, and noted that all the necessary requirements for the origin of the tutela action concurred.

Having declared the jurisdiction of the Court and the origin of the judicial action, the Chamber studied the substance of the matter. In the study of the merits of the matter by the constitutional court chamber, the following legal issues were analyzed:

A. The development of the "social status of law" formula recognized in the 1991 Constitution.

The Chamber considered that this formula has been developed by the jurisprudence of the Constitutional Court over 25 years, which has generated a whole "rights revolution" aimed at building a genuine Social Rule of Law. In the task of building a genuine Social State of Law, the Chamber affirms that this formula responds to the fundamental principles of a fair social organization that allows the solving of basic unsatisfied needs that must be addressed as a priority, thus overcoming the classic conception of the State of Law, in which the State did not intervene in seeking the attention of social needs.

In relation to the principle of human dignity, the Court has established that it is not enough simply that the person exists; it is necessary that the person exists in a framework of material, cultural and spiritual conditions that allow living with dignity. In its close relationship with the principle of solidarity, the Court has understood in general terms a mutual aid agreement and shared responsibility for the satisfaction of individual and collective needs.

Regarding the principle of prevalence of the general interest, and finally in relation to the concept of general well-being - which has been taking shape since the beginning of the 20th century and is a direct consequence of the European "Welfare State" model - it requires the nation and territorial entities to design and include the special attention of these needs within their plans and budgets, which also must receive priority over any other allocation as long as they are part of what has been called social public spending.

In this way, the jurisprudence of the Constitutional Court has extensively developed the normative postulates of the Social State of Colombian Law, in search of Social Justice, but especially, the best interest in the protection of the environment through the so-called "Ecological Constitution".

B. The "ecological constitution". The constitutional relevance of the environment and biodiversity: The protection of rivers, forests and food sources.

The judgment of the Constitutional Court refers to the multiple normative provisions, that exist in the 1991 Constitution, to explain *the best interest of the nature* in the Columbian legal ("Ecological Constitution"). It can be interpreted in three theoretical approaches: a) an Anthropocentric vision, which conceives the human being as the sole reason for being of the Legal System and natural resources as simple objects in the service of the first; b) a Biocentric vision, which claims more global and supportive conceptions of human responsibility, and that advocates the duties of man with the natural and future generations; c) finally, an Ecocentric vision, which conceives of nature as a true subject of rights.

For the Chamber, the Ecocentric approach finds full foundation in the 1991 Constitution, which understands nature and the environment as worthy of protection in themselves, and becomes aware of the interdependence that connects us to all living entities in the land. It recognizes human beings as integral parts of the global ecosystem – the biosphere - rather than from normative categories of domination, simple exploitation or utility.

This comprehensive approach to protection, which becomes especially relevant in Colombian constitutionalism, allows us to explore an alternative vision of the collective rights of ethnic communities in relation to their natural environment and cultures, which has been called "Biocultural Rights". The legal concept of Biocultural Rights is a new special category that unifies the rights of ethnic communities to natural resources and culture, understanding them as integrated and interrelated.

In summary, the Court affirms in its judgment that the so-called biocultural rights result from the recognition of the deep and intrinsic connection that exists between nature and the culture of the ethnic and indigenous communities that inhabit it. The central element of this approach is the existence of an intrinsic link between nature and culture, between the ecosystem and the human species. And it emphasizes the importance of the biological and cultural diversity of the nation for the next generations and the survival of the planet. The biocentric vision, which includes Biocultural Rights, allows to the Court to recognize finally, in the Resolution of the case, the Atrato River as a subject of rights (Ecocentric vision).

C. The "cultural constitution". The right to physical, cultural and spiritual survival of ethnic communities: Territorial and cultural rights.

The Sixth Chamber sets out in its judgment the considerations of what the Colombian constitutionalism has called Cultural Constitution. The Court explains that the Constitution includes in its articles the duty of the State to protect the cultural wealth of the Nation and to promote access to the culture of all citizens. However, the legislator did not indicate a precise formula, and left the court or the executive in charge of that regulation; this invited the study of the Cultural Constitution. In this regard, the Constitutional Court notes that the term "cultural rights" designates the human rights included in the field of "economic, social and cultural rights."

It is clear to the Court that the concept of Cultural Constitution is a substantial part of the configuration of the Social State of law, as is the Ecological Constitution, which carries the mandate to protect. The aforementioned cultural and ecological protection includes all Colombian ethnic communities, their ways of life, their customs, languages and ancestral traditions, as well as their cultural and territorial rights and the deep relationship that these communities have with nature. The Constitutional Court has recognized, in repeated case-law, that indigenous, tribal and Afro-Colombian peoples have a concept of territory and nature that is alien to the legal canons of Western culture: it does not constitute an object of dominion but is rather an essential element of ecosystems and biodiversity with which they interact daily (for example, rivers and forests).

The communities and nature are being allegedly threatened by the execution of intensive activities of illegal mining with toxic chemicals and heavy machinery in the Atrato River Basin, tributaries, forests and territories of indigenous communities, which put at imminent risk not only their physical existence and the perpetuation and reproduction of ancestral traditions and culture, but also the habitat and natural resources of the place where the identity of these communities as ethnic groups is built and developed.

D. The principle of prevention and the principle of caution in environmental and health material. Mining and its effects on water, the environment and human populations.

The Court affirms that the Principle of Prevention is a postulate of maximum importance for Environmental Law, insofar as it means a change of direction of all public policy and of the legal framework from a pending model of sanction and reparation, towards a model that prepares and organizes the necessary tasks to prevent damage from occurring. It requires, therefore, regulatory and administrative actions and measures that are undertaken at an early stage, before the damage occurs or is aggravated. This principle seeks that the actions of the State are directed to avoid or minimize environmental damage.

The effectiveness of the Prevention Principle - preventive action - requires harmonization with the Precautionary Principle, which operates in the absence of the scientific certainty required by the former. In this way, the rigor of the knowledge necessary for the State to make a decision is made more flexible, that is, the absolute knowledge of the consequences that the development of a certain project, work or activity will have on the environment.

Finally, in **the resolution of the case by the constitutional court**, the Sixth Review Chamber of the Constitutional Court resolves to:

Declare the existence of a serious violation of the fundamental rights to life, water, food security, healthy environment, culture and territory of the ethnic communities that inhabit the Atrato River Basin and its tributaries. That said violation of fundamental rights is attributable to the entities of the Colombian State driven by their omissive conduct by not providing an appropriate, articulated, coordinated and effective institutional response to face the multiple historical, socio-cultural, environmental and humanitarian problems that afflict the region, and that in recent years have been aggravated by the realization of intensive illegal mining activities.

Order the entities of the Colombian State to carry out the appropriate measures that allow the articulation of structural solutions to the serious ecological and humanitarian crisis that is being suffered.

Recognize the River Atrato, its basin and tributaries as an entity subject to rights protection, conservation, maintenance and restoration in charge of the State and ethnic communities. Consequently, the Court ordered the National Government to exercise legal guardianship and representation of the river, through the institution designated by the President of the Republic, which could well be the Ministry of Environment, in conjunction with the ethnic communities that inhabit the Atrato River Basin in Chocó. Additionally, the legal representatives of the Atrato River must design and form a commission of guardians of the Atrato River, composed of the two designated guardians and an advisory team that should be invited to the Humboldt Institute and WWF Colombia.

Grant *inter communis effects* to the present decision for those ethnic communities of Chocó that are in the same factual and legal situation as the shareholders. The Court has defined *Inter communis effects* as those effects that exceptionally extend to specific situations of people who, even when they did not request constitutional protection, are equally affected by the situation of fact or right that motivates it, which is justified by the need to give all members of the same community equal treatment to ensure the effective enjoyment of their fundamental rights.

Doctrinal analysis of the Constitutional Judgment from the perspective of the new paradigm of Ecological Justice.

Today we have a duty to repair and protect nature, because the degradation of the planet has been triggered by human action, and because we have a duty with respect to the future of humanity. The idea of justice to "give to each his own" is now extended to the natural environment. This idea of Justice means, in legal language, environmental personhood and rights for its defence and protection.

The proposal of designating certain environmental entities the status of a legal person was the initial object of reflection by Christopher D Stone[8] in the article *Should trees have standing? Towards legal rights for natural objects.* He states that nature may have legal personality and be entitled to rights, protected and defended by a guardian or legal representative, following the idea put into practice by law beforehand, when granting legal rights to corporations and inanimate entities.

To strengthen the idea of recognizing and guaranteeing basic rights to nature, it was necessary, previously, to develop a new ecological ethic, capable of extending human responsibilities to the natural environment. The development of ecological ethics, and ecological conscience, will allow the configuration of the new model of Ecological Justice, which tries to give the human being and the elements of nature what corresponds to them for their realization.

In the eighties, German doctrine expresses concern about this issue and the problems that it entails with respect to future generations, and the need for a new approach that unites ethics and ecology, as a previous step to the development of a new legal model based on the interaction of human beings with nature. A pioneering work is that of Professor Dieter Birnbacher (University of Essen) *ökologie und Ethik*.[9] The work cited is a compilation book of the existing doctrine,

among which are outstanding articles. Two of these authors, Professor Spaemann and Professor Tribe, try to solve two of the great problems of the theory of justice in relation to the responsibility and duty of humanity to heal and protect the Earth. These two problems are: the protection of nature from its own value, that is, the rights of nature; and the rights of future generations.

The problem of the theory of justice in relation to the rights of future generations is studied by Robert Spaeman[10] in his article *Technical intervention in nature as a problem of political ethics.* He justifies our obligations towards future generations based on the idea of "unanimity of the human species". The author affirms that: if the human species is presupposed as an integrated and continued unit over time, that includes both future and past generations, then, individuals, as components of the human species, are entitled to natural legal rights, which can be realized in fundamental and human rights, such as the right to live and survive, including dimensions of an ideal natural environment.

The problem of the theory of justice in relation to the values of nature is also studied by Laurence H Tribe[11] in his article *What arguments exist against plastic trees?* He affirms that the intrinsic and imponderable values of the environment can be taken into account in the same way as economic and technical values. These statements about the value of nature itself become statements about the damage caused by exploitation (exploitation by man). The author starts from the fact that these values of the natural environment, which are often described as questionable, not apprehensible or not measurable, have special characteristics, which cannot receive treatment equal to that given to such concrete topics as technical power and economic efficiency. The formulation of the problem seeks an objectivity that is hardly attainable, which leads to omitting a series of values of nature, which could be called fragile, which have to do with people who do not yet exist (future generations) and values that have to do, not with people, but with nature (the rights of nature).

The new ecological ethic entails, therefore, a new responsibility: the responsibility of humanity towards nature. Hans Jonas[12] in his work *The principle of responsibility. Essay of an ethic for technological civilization* (1995) proposes an ethics of responsibility that imposes "the principle of responsibility" towards the natural environment, referring to the responsibility of the evil that we have done to nature: "the paradox of our situation is that the respect lost we must recover through the shudder".

The realization of the new paradigm of Ecological Justice in the field of Law is still undeveloped. An important step in this regard has been the Judgment of the Constitutional Court of Colombia. The first step in building this new model of Ecological Justice is to strengthen and realize the social justice model, that is, the Social State of Law. The Ecological Justice model has as its basis the Social Justice model, and for that reason the Judgment of High Court gives priority to and strengthens social justice, the principles of distributive justice and, the economic, social and cultural rights. In this respect, the Court tries to build and develop a genuine and solid Social State of Law, which assumes the responsibility of solving the problems of poverty and exclusion with the aim of integration; this will generate a whole revolution of rights aimed at the construction of a true Social State of Law. In effect, the Constitutional Court has extensively developed the normative postulates of the Social State of Law, but in particular, the best interest in environmental protection through the so-called "Ecological Constitution".

The formula of the Social State of Law, responds to the fundamental principles of a just social organization that allow it to address and solve the unsatisfied basic needs that must be addressed as a priority, thus overcoming the Liberal Conception of Law, in which the State did not intervene in guaranteeing social rights to meet social needs. In this way, the Colombian Social State of Law model seeks to achieve social justice, with the implementation of social and ecological principles such as social and distributive justice principles, and the prevention and caution principles, along with other fundamental principles, such as the principles of territorial autonomy, pluralism, and ethnic and cultural diversity of the nation, the principle of human dignity and the principle of prevalence of the general interest.

As a result of the historical development of Law, fundamental human rights are now recognized worldwide; however, humans cannot exist without the natural environment. The ecosystem and its implications in the field of Law, (meaning the union between Nature and Culture) entails a prolonged creative development of the theory and application of the legal order. In this respect, the development of the new perspective of the ecocentric vision by the Judgment of the Colombian Constitutional Court, has performed an important legal task. The Judgment of the Constitutional Court affirms that the three visions, Anthropocentric, Biocentric and Ecocentric, are in the 1991 Constitution of Colombia. The Anthropocentric vision advances the consideration of the human being, its culture and its civilization, as a centre of dominance, exploitation and utility. The Biocentric vision means that obligations to respect, protect and promote human rights must be interpreted to force the State to act with respect to all measures for prevention and reaction to climate change. The Court affirms the Ecocentric vision as the most suitable. This last step allows the recognition of the rights of the Atrato river (ecocentric), and the biocultural rights of the communities that inhabit it (biocentric). The Judgment of the Constitutional Court of the Republic of Colombia is a pioneering precedent because it recognizes the socio-ecological rights of the communities that live in its basin and its banks, biocultural rights, that is, fundamental rights to water, the right to food security, and forest protection; as well as the rights of the Atrato river as a natural entity or ecosystem. This legal novelty is the concretion of the new paradigm of Ecological Justice.

The idea of whether we should also grant rights to environmental entities has gained strength in recent years. Nick Mount[13] in his article *Can a river have legal rights? A different approach to protect the environment*, raises the question and answers that rivers are the example of this emblematic legal development. The case of Colombia is of particular interest to Nick Mount as a scientist and geographer of the river, because the Atrato River flows through a globally recognized "biodiversity hot spot" in the tropical rainforest of the northwestern Pacific of Colombia. The decision of the Constitutional Court of Colombia to grant rights to the Atrato River is subtly different from the others because one of the legal arguments is to focus on "biocultural rights."

Biocultural rights refers to the rights of ethnic communities in relation to their natural environment and culture. The Judgment points out that the constitutional jurisprudence and the instruments of international law that have been ratified by Colombia, and other additional instruments, have consolidated the development of a comprehensive biological diversity and cultural diversity of the nation. This has meant a breakthrough in the model of the Social State of Law, which recognizes the protection of the rights of ethnic communities from an integral perspective, that is, biocultural.

In the field of positive law, to guarantee the rights to nature, it is necessary to recognize and guarantee all human beings´ social rights, which guarantee the basic needs of people; that is, strengthen social

justice and create a solid Social State of Law. In any case, it is a new later model of the Social State or Western Welfare State, where classic elements of the Social State are mixed with elements more typical of a Post-Social context. In this respect, Nancy Fraser[14] plans an approach beyond the Welfare State, and proposes a new post-Westphalian democratic model. For the author, the theory of post-Westphalian democratic justice answers a key question in our time, which consists of how we can integrate the poor distribution, the lack of recognition and the lack of representation in a post-Westphalian model.

In accordance with the above, the new Environmental State of Law and Ecological State of Law bring, therefore, an evolution of the concept of citizenship. Andrew Dobson[15] refers to the conceptual difference between "environmental citizenship" (Environmental Justice) and "ecological citizenship" (Ecological Justice) terms. Dobson uses "environmental citizenship" in terms of reasonable and consensual positive rights, procedurally legitimized and limited to the nation-state space, which does not substantially alter the concept of citizenship. On the other hand, the author uses the term "ecological citizenship" to refer to extra-contractual and universal rights and duties that focus on citizenship as a virtue, which corresponds to Justice, and which forces us to rethink traditional conceptions of citizenship.

"Ecological citizenship" surpasses the traditional concept of citizenship in Law, both temporally and spatially, by now including future generations and natural entities. In any case, the temporal dimension of justice is easy to address from the traditional model of citizenship. In this respect, Brian Barry[16] refers to a principle of "equal opportunities" which could satisfy the new dimension of collective responsibility: each generation should have a basic ecological capital to cover basic ecological needs.

In the analysis of the concept about "ecological citizenship", it is important to distinguish between similar concepts. Professor Chris Hilson[17] explains the particular distinction between the "republican ecological citizenship" and the "liberal environmental citizenship": liberal environmental citizenship places an emphasis on individual human rights enjoyed by citizens in relation to the environment. The freedom enjoyed by liberal citizens is the negative liberty of non-interference by other people. Republican ecological citizenship, in common with other models of ecological or green citizenship,[15] instead of rights, stresses the idea of obligations or duties owed by citizens.[16] The freedom aimed at for citizens is freedom as non-domination. This goes beyond mere non-interference, recognizing that a relationship in which one party is exerting domination over another may mean non-interference, but also, still exercises a restriction on their liberty. To prevent exposure to the exercise of arbitrary power, freedom as non-domination requires accountability mechanisms, suggesting the idea of obligations or duties owed by citizens.

Chris Hilson[17] in his article *Republican Ecological Citizenship in the 2015 Papal Encyclical on the environment and climate change*, situates the Encyclical's analysis of "ecological citizenship" with the academic literature on the topic, for example Andrew Dobson and Brian Barry, and affirms that, although the Encyclical does not explicitly refer to "republican ecological citizenship", the vision of ecological citizenship it offers has much in common with republican political theory and academic writing on the topic in the republican tradition.

The author argues, in the end, that the fact that as the Encyclical is likely to be read by many Catholics, it may contribute towards changing individual behaviour, for ecological citizenship practice. Although he does question whether it provides enough of a blueprint for action, Hilson affirms that in reality, the main change it provokes is likely to be limited and individualistic, but this is both its strength and, ultimately, its weakness. The broader political change that is needed to replace our current, troubled system and how to get there, is not as clear in the Encyclical.

New Zealand. The Te Awa Tupua recognizes the Whanganui River as a legal subject.

As we have already pointed out in the argument in this paper, the path towards legal recognition of the ecocentric perspective based on the new paradigm of Ecological Justice is a path full of difficulties. The ecological justice model, like other new and current justice models, such as climate justice or environmental justice, and models with justice as distribution or justice as representation, tries to respond to one of the great contradictions with which humanity is faced in the 21st century: the limits of an unlimited growth model on a planet with limited, damaged and degrading resources.

However, the anthropocentric model is currently triumphing. This model is based on the exclusive recognition of the human being as a subject of law, and nature is considered as an object for unlimited exploitation. In recent years, the recognition of the ecocentric perspective, based on the recognition of inseparable relationships between human beings and the natural environment with nature being considered as an entity with rights, has emerged in the Law and Jurisprudence. The case we have analyzed in the previous section, the Judgment of the Constitutional Court of Colombia and the Atrato River, was set in the Jurisprudence context. The case that we are going to analyze next, the Law of Te Awa Tupua, the Whanganui River, approved on March 20 by the Parliament of New Zealand, is set in the Law context.

The Parliament of New Zealand approved the Te Awa Tupua Law (Whanganui River Claims Agreement) on March 20, 2017. This Law declared the Whanganui River a legal entity and converted into Law an Agreement that resolves the historical claims of the Māori Whanganui Iwi tribe. The Whanganui River, Te Awa Tupua for the Maori, is located south of the North Island and runs for 290 kilometers from an altitude of 600 meters to the Tasman Sea. This is the third longest river in New Zealand and the first navigable.

The Agreement is the result of many years of struggle by Whanganui iwi for the recognition of serious breaches by the Crown of its obligations under the Treaty of Waitangi. On February 6/1840, the Treaty of Waitangi (Te Tiriti or Waitangi) was signed by British Crown and by Maori chiefs of the Whanganui tribes (Whanganui Iwi); and this Treaty is considered the foundational point of New Zealand as a nation. Through this Treaty, the Crown guaranteed the Maori the unconditional exercise of its leadership over its lands, villages and all its treasures. Complaints have been addressed through of the Waitangi Court proceedings, where a standing commission investigates the Maori's claims that the Crown's laws, policies, acts or omissions are incompatible with the principles of the Waitangi Treaty. The Court has the power to recommend reparation, which is then the subject of negotiations between the New Zealand government (the Crown), and iwi and hapū.

The initial date of the Framework Agreement is August 30, 2012, when the New Zealand government announced that it had reached an agreement of principles in the negotiations with Whanganui Iwi for the solution of its long-held claim on the Whanganui River, where it indicates the commitment to grant legal personality to the Whanganui River and the legal representation of said legal personality in the physical person of the guardian or guardian, that is, the guardian of Te Awa Tupua: Te Pou Tupua. Following the signing of the Agreement,

negotiations continued and on August 5/2014 the New Zealand Government announced that a Deed of Liquidation had been signed by the negotiators and ratified. On May 2/ 2016, Draft Law of Te Awa Tupua (Whanganui River Claims Agreement) was introduced in the New Zealand Parliament, and eventually became Law in March 2017.

The Deed of Liquidation includes two documents: the first, Ruruku Whakatupua: Te Mana or Te Awa Tupua, relate to the recognition of the Whanganui River as a legal entity; and the second, Ruruku Whakatupua: Te Mana or Te Iwi or Whanganui, which contains all other elements and documents of the agreement.

Te Awa Tupua Law (Whanganui River Claims Settlement) 2017

The Whanganui River, as of the entry into force of the Te Awa Tupua Act, has rights, powers, duties and legal responsibilities, and may be represented in court by a delegate of the Crown and a delegate of the Whanganui iwi minority: Te Pou Tupua.

In the Law, the Whanganui River bed means the land space that covers the waters of the Whanganui River at its maximum flow without exceeding its banks; and includes the subsoil, the plants attached to the bed, the space occupied by the water and the air space above the water.

The Law establishes a legal framework focused on the recognition of Te Awa Tupua as "an indivisible and living whole, comprising the Whanganui River from the mountains to the sea, incorporating all its physical and metaphysical elements". The Law declares that Te Awa Tupua is a legal person and establishes the office of Te Pou Tupua, which will be the human face of Te Awa Tupua and will act on its behalf. Te Pou Tupua's office is composed of two people with interests in the Whanganui River, one to be nominated in the name of the Crown and another to be nominated by Whanganui iwi.

In this Law, Whanganui Iwi means the collective group that includes each individual that descends from a person who, at any time after February 6, 1840, exercised customary rights and responsibilities with respect to the Whanganui River.

Whanganui iwi, groups of indigenous descent, take their name, their spirit and their strength from the great river that flows from the mountains of the north central island to the sea. The largest political group in pre-European Maori society was the iwi (tribe). The Iwi generally consisted of several related hapū (clans or offspring groups). The hapū of an iwi could sometimes fight each other, but would unite to defend the tribal territory against other tribes. The hapū, as named divisions of Maori iwi (tribes), have membership determined by genealogical descent. A Maori person can belong or have links to many different hapū.

A. The legal personality declared for the Whanganui River: Te Awa Tupua.

Te Awa Tupua is an indivisible living entity, and includes the Whanganui River from the mountains to the sea, incorporating all its physical and metaphysical elements. Te Awa Tupua is a legal personality and has all the rights, powers, duties and responsibilities of a legal person. The rights, powers and duties of Te Awa Tupua - in relation to the Whanganui River, or an activity within its basin that affects the river - must be exercised or executed, and the responsibility must be assumed by Te Pou Tupua on behalf of Te Awa Tupua as provided in this Law.

The purpose of Te Pou Tupua is to be the human face of Te Awa Tupua and act and speak for and on behalf of Te Awa Tupua, to promote and protect the health and well-being of Te Awa Tupua. To provide advice and support to Te Pou Tupua in the performance of its functions, the Law has established an advisory group known as Te Karewao; which is composed of 1 (one) person designated by the trustees, and 1 (one) person designated by the relevant local authorities; and in the case that Te Pou Tupua performs a function in a part of the river, it can also include 1 (one) person designated by the iwi and hapū with interests in that part of the river, but only for the purpose of providing advice and support on that function. In addition, Te Pou Tupua can invite other people to assist it or Te Karewao.

The Law has also established a strategy group for Te Awa Tupua: Te Kōpuka, whose purpose is to act to improve the health and well-being of Te Awa Tupua. Te Kōpuka is made up of a maximum of 17 members, representatives of people and organizations with interests in the Whanganui River, including iwi (maximum six), relevant local authorities, state departments, commercial and recreational users and environmental groups. The main function of Te Kōpuka is to develop and approve Te Heke Ngahuru (river strategy), monitor its implementation and review it; the purpose of Te Heke Ngahuru is to provide for the collaboration of people with interests in the Whanganui River, to address and improve the health and well-being of Te Awa Tupua, identify relevant issues, provide a strategy to deal with problems and recommend actions for their solution. It also has other functions, such as providing a forum for the discussion of issues related to the health and well-being of Te Awa Tupua, performing any function that may be delegated by a local authority, and performing any other action deemed appropriate to achieve its purpose and perform its functions. The legal status of Te Kōpuka is that of a permanent joint committee for the administrative purposes of the Manawatu-Wanganui Regional Council, the Ruapehu District Council, the Stratford District Council, and the Whanganui District Council. The relevant local government legislation does not apply to Te Kōpuka. If at any time the Regional Council of Manawatu-Wanganui adopts, under any legislation, a collaborative planning process to develop a political statement or plan related to the management of fresh water in the Whanganui River Basin, Te Kōpuka will be the group designated for such a process.

B. The human face of the Whanganui River, to act and speak for and on behalf of Te Awa Tupua (legal representation): Te Pou Tupua.

The Te Pou Tupua office, the guard, consists of 2 "high-level" persons appointed by the nominators as established in the Law. The nominators must jointly designate the 2 (two) persons, taking into account the capacity of the nominees to fulfill the purpose and perform the functions of Te Pou Tupua. One person must be collectively nominated by the iwi with interests in the Whanganui River, who after February 6, 1840 exercised the rights and responsibilities in relation to the use and the occupation of the river, and another person designated by the Crown. Once appointed, Te Pou Tupua acts collectively.

Iwi with interests in the Whanganui River includes, according to this Act: a) the iwi with interests in the Whanganui River; and b) the hāpa of those iwi, if those hāpa have interests in the Whanganui River. Iwi with interests in the Whanganui River includes the following Iwi, acting in relation to the Whanganui River or its catchment through their representative iwi organisations: Ngā Rauru Kītahi; Ngāti Apa; Ngāti Maniapoto; Ngāti Maru; Ngāti Rereahu; Ngāti Ruanui; Ngāti Tuwharetoa; Whanganui Iwi. Hapū de Whanganui Iwi. They are those included on the list that was presented by Hekenui Whakarake to the Royal Commission of Inquiry into the Bed of the Whanganui River in 1950: Ngā Paerangi; Ngā Poutama; Ngāti Hau; Ngāti Hāua; Ngāti Kura; Ngāti Pāmoana; Ngāti Patutokotoko/ Ngāti Pketuroa; Ngāti

Rangi; Ngāti Ruakā; Ngāti Tuera; Ngāti Tupoho; Ngāti Uenuku. Tūpuna rohe groups of Whanganui Iwi. The listed groups may also each consider themselves as iwi: Hinengakau; Tamaupoko; Tupoho; Tamahaki; Uenuku.

The list is not exhaustive; it reflects only the hapū that were active in those proceedings and highlights the connections amongst the hapū that are affiliated to a Whanganui Iwi. Other groups not expressly identified in the proceedings, such as Ngāti Tamahaki, also fall within the meaning of Whanganui Iwi for the purpose of this Act.

C. The rights and responsibilities in relation to the use and occupation of the Whanganui River. The *historical claims* of Whanganui Iwi (1840).

The *rights and responsibilities* in relation to the use and occupation of the Whanganui River have to be seen in the context of a vision of unity and equality with the natural world of the Maori world. The vision of the Maori world also requires an intergenerational approach: resources must be protected and improved for those generations that are not yet with us and with respect to those that have passed. These values with respect to the environment and future generations are collected and guaranteed in accordance with the Treaty of Waitangi 1840, the founding document of New Zealand, with a broad declaration of principles, on which the British Crown and 540 Maori chiefs made a pact to found a state and build a government in New Zealand.

Historical claims are all claims that Whanganui Iwi or a representative entity had on, before, or after the settlement date and that are founded on indigenous customary systems of values on law.

D. This Act binds the Crown: This Law, which is the Te Awa Tupua Act (Whanganui River Claims Agreement) of 2017, obliges the Crown, and entered into force the day after the date of receiving the royal consent. The purpose of this Act is to record the acknowledgments and apologies granted by the Crown to Whanganui Iwi, and to resolve the historical claims of Whanganui Iwi since those claims relate to the Whanganui River.

The law includes a government compensation to the Whanganui Iwi minority of 80 million New Zealand dollars, and 30 million dollars to improve the health of the Whanganui River.

The Crown recognizes that Te Awa Tupua is an indivisible and living complex, comprising the Whanganui River from the mountains to the sea, which incorporates its tributaries and all its physical and metaphysical elements: "E rere Kau mai te Awa nui, mai I Te Kāhui Maunga Ki Tangoroa".

The Crown acknowledges that, for the Whanganui Iwi, the enduring concept of Te Awa Tupua - the inseparability of the people and the River - underpins the responsibilities of the iwi and hapū of Whanganui in relation to the care, protection, management, and use of the Whanganui River. The Crown acknowledges and respects the intrinsic connection between the iwi and hapū of Whanganui and the Whanganui River reflected in the Whanganui pepeha, "Ko au te awa, ko te awa ko au". The Crown acknowledges the importance of the Whanganui River as a source of physical and spiritual sustenance for iwi and hapū of Whanganui.

The Crown acknowledges that the iwi and hapū of Whanganui, over many generations since 1840, have maintained the position that they never willingly or knowingly relinquished their rights and interests in the Whanganui River and have sought to protect and provide for their special relationship with the Whanganui River. The Crown acknowledges that since 1840 it has assumed control and authority over the Whanganui River. In particular, the Crown acknowledges that it promoted and implemented legislation during the nineteenth and early twentieth centuries that had little or no recognition of Whanganui Iwi interests in the Whanganui River and that had no provision for the involvement of Whanganui Iwi in the management of the River.

Doctrinal analysis of the Te Awa Tupua Law from the perspective of the new paradigm of ecological justice

The new ontological model based on the relations between human beings and the natural environment, which defends the paradigm of Ecological Justice, will open a new historical stage in the development of Law, Politics and Economics. This new conception of reality as a Humanity -Nature interaction is contained in the concept of "sustainable development".

It is important to point out the relationship between the model of Ecological Justice and the concept of "sustainable development": they include both future generations and the limits of the ecosystem (ecocentric concept). In 1991 the document *Caring for the Earth: Revision of the Global Strategy for Conservation*, elaborated by PNUMA, IUCN, WWF, completed the first definition of "Sustainable Development" contained in the Brundland Report *Our Common Future*, developed by the World Commission on Environment and Development in 1982. The new 1991 document contains a broader definition of "Sustainable Development", which consists of improving the quality of human life without exceeding the carrying capacity of the ecosystems. With this new concept of "Sustainable Development", which includes future generations, and the limits of the ecosystem, the 1992 United Nations Earth Summit was inaugurated.

The concept of "sustainable development", the principle of "sustainability" and "Ecological Justice" all work together as Klaus Bosselmanen[18] shows in his article *The Principle of Sustainability: Transforming Law and Governance* (2016). He defines the concept of Ecological Justice in relation to the Principle of Sustainability, as a higher instance capable of transforming Law and Politics. From the model of Ecological Justice it is not enough to take care of the human beings of today or those who will come tomorrow, since today the vital processes that sustain life are at risk, therefore, the justification must reach the extrahuman sphere. The ecosystem is the specific object of Ecological Justice and this is precisely what differentiates it from other concepts such as Climate Justice and Environmental Justice. From there, Bosselmanen says, that the legal personality of the river is a new feature that includes an ecocentric approach. Hence relevant legal issues arise, such as the content of the rights of a river; rivers may have specific rights such as "a fundamental right of the river would be the right to flow", because the ability to flow (given enough water) is essential for the existence of a river. This new understanding derives from the importance and purpose of the River System in the Máori conception.

The idea of sustainability that is contained in the concept of sustainable development provides a new approach; that is, sustainable development does not entail unlimited growth. This new idea forces Law, as well as Politics and Economy into a new phase, because this new idea starts from the higher sphere of Justice, as Melissa K Scalan[19] points out in her book *Law and Policy for a New Economy Sustainable, Just, and Democratic* (2017). She repeatedly insists that our human rights have individual and governmental responsibilities, and that this approach is insufficient to achieve a paradigm shift towards Earth-centered responsibility, rather than Human-centered. The law must go further and recognize our collective and individual

duties and responsibilities to protect nature, both for ourselves and for nature itself. This ecocentric approach to responsibility is exemplified in the Earth Charter document that establishes an ethical, legal, political and economic framework based on the interdependence of humanity and nature. This new framework allows for the extension of the responsibility for the common good to natural systems or ecosystems, and to recognize the rights of people and nature.

In the part of her work that Scalan dedicates to the New Zealand Law, the author highlights the Maori vision of the responsibility included in that Law, which recognizes the interdependence between the indigenous culture of the Maori and the responsibility of protecting nature as guardians from an ecocentric perspective. The author claims that New Zealand has adopted a novel method to defend human responsibility for nature: it has recognized elements of nature as a legal entity and has appointed a guardian to protect its interests. And it stops at two examples: a river (Te Awa Tupua: Whanganui River Settlement Agreement) and a forest (Te Urewera: Tuhoe Settlement Agreement).

As repeatedly pointed out, one of the biggest obstacles posed by the Ecological Justice model is to attribute rights to natural entities. The difficulty is that the value and self-interest of natural entities clashes with the concept of subjective law. To overcome such obstacles, the new paradigm of Ecological Justice appeals to the ecocentric vision, which proposes consideration of the natural entity or ecosystem as a vital entity. From this new perspective, as a premise or basis for its legal regulation, the guardianship model proposed is based on the category of fiction, which allows natural entities to have rights and, at the same time, allows us to see their status protected by a simple legal convention. Although for some it may seem strange to give legal personality to a natural resource, it is no less strange that a foundation, a mercantile company, or any other type of legal entity be given legal personality.

Following the example of the Whanganui Iwi, this obstacle only arises with the western model of western Law, based on an anthropocentric conception, a concept totally alien to the indigenous conception. For this reason, from the first moment of their colonization by Western culture and Law, the natives of New Zealand have defended their Ecocentric vision of the life, and they have vindicated the rights that correspond to the Whanganui River. The claims of Whanganui Iwi began from the day that the English made New Zealand a British colony, on February 6, 1840. More than a century and a half of negotiations with the British Crown followed, calling for the recognition of the river as a living entity based to his tradition, *tikanga*.

From the Western perspective, the initiative of the New Zealand Parliament to recognize the Whanganui River as a legal entity is a pioneer in the legal field. Along with it, other pioneering initiatives have recently emerged, such as that of the Constitutional Court of Colombia, the Sixth Review Chamber, which in its Judgment T-622/16, recognized the Río Atrato as an entity subject to rights, as analysed in the previous heading. So too in India, the Ganges River and its tributary Yamura have been attributed legal personality.

From the perspective of the indigenous peoples of New Zealand, the river is a living entity and is part of them as a completely organic whole. The Maori, the Polynesian indigenous peoples of New Zealand Aoteroa, arrived in New Zealand on several waves of canoe trips between 1320 and 1350. For centuries, the Maori have traveled the Whanganui River by canoe and fought for it, because they consider it part of themselves; people say: "Ko au te awa. Ko te awa ko au" (I am the river. The river is me). The Maori (iwi / hapū) relationship with the environment and natural resources, fresh water more specifically, is based on their belief that the two are indivisible.

Tikanga are traditional Maori practices or behaviors¸ "the Maori way of doing things" according to their culture, custom, ethics or tradition. The concept is derived from the Maori word 'tika' which means 'right', so, In Maori terms, acting in accordance with Tikanga is behaving in a culturally appropriate manner. The basic principles that support Tikanga are common throughout New Zealand, however, different tribes (iwi), sub tribes (hapū) and meeting places of the Maori community (marae) can have their own variations. All Maori tribes considered themselves as part of the universe, in union and equality with mountains, rivers and seas and, therefore, instead of being considered the owners of the natural world, consider that they are part of nature and want to live according to this common vision. For the Māori this starting point is not anti-development or an anti-economic use of the river, but begins with the idea that you are a living being, and consider your future from that central belief.

The Whanganui tribe (Whanganui Iwi) has gained recognition that the Whanganui River is a living entity that has rights. The Law declares the Whanganui River as a "living and integral entity", composed of many elements and communities, which work in common for the purpose of the health and well-being of the river and the communities that inhabit it: Te Awa Tupua in the Whanganui language. The Te Awa Tupua law expressly declares the intrinsic values of the Whanganui River, which represent its essence: the river is a source of spiritual and physical sustenance. In other words, the Whanganui River is an indivisible complex which exists from the mountains to the sea, composed of many physical, metaphysical and community elements, which work together to achieve the health and well-being of the vital group.

The case of New Zealand incorporates the Maori cosmovision according to Katie O'Bryan in her book *Indigenous Rights and Water Resource Management: Not Just Another Stakeholder* (2018).[20] In the Part III, the author studies the case of New Zealand as the first country to grant legal personality to a specific natural entity. The author says that although the doctrine considers this initiative as a model of guardianship that follows Professor Stone's proposal, this approach differs from Stone's model in the sense that the Te Awa Tupua Act incorporates the Maori cosmovision in which they see the river as the embodiment of their ancestors and, therefore, people are inseparable from the river: "Ko au te awa, Ko te awa ko au". This Whanganui saying, "I am the river and the river is me", underlies the responsibilities of iwi (tribes) and hapū (subtribes) of Whanganui in relation to the care, protection, management and use of the Whanganui River. The author concludes that, although the agreement granting legal personality to the Whanganui River is a Western legal construction, even if the Stone version applies these structures to natural entities, they were not previously the object of the Western model. However, the Whanganui River agreement could be seen as an attempt to sync the two different models or systems: it essentially takes a Western legal model, but gives it the characteristics of the Maori model. In this sense, it goes beyond Stone's initial vision that a river is a legal entity that is limited to protecting purely environmental characteristics.

The new geological era of the Anthropocene, where the ecological boundaries of the biosphere have been overcome by humanity's behavior, require a new understanding of our place in the world, and oblige us to rethink inherited political, legal and economic categories, as Daniel Matthews points out in his article *From Global to Anthropocenic Assemblages: Re-thinking Territory, Authority and*

Rights in the New Climatic Regime.[21] He says that *Gaia* is a theory about biogeochemical processes, not a postulation about some new age 'Goddess' or 'Mother Earth', *Pachamama*. For the author, the Gaia hypothesis, developed by James Lovelock in the early 1970s, is a forerunner to contemporary Earth System Science (ESS) and offering important contributions to our understanding of the planetary climate system in the Anthropocene Age. The Anthropocene thesis was popularized by Paul Crutzen and Eugene Stoemer in 2000, and subsequently taken up in a range of contexts. The author argues that the crucial contribution that the Anthropocene literature makes for legal and political thought is its ability to bring what he calls "earthly life" into view. This conception refers not to an understanding of human life at global or even planetary scales, but seeks to capture the human entanglement within the vast web of systems and processes that sustain the conditions for continued human habitation of the planet. In order to explain the meaning of "earthly life" in the new climatic regime, the author, basing his position in the cross-disciplinary field of Earth System Science (ESS – what Lovelock calls 'Gaia' - suggests that the totality of organisms (including, of course, humans)), surface rocks, oceans and the atmosphere are bound up in a series of feedback loops that regulate the surface conditions on earth. Lovelock was amongst the first to argue that without the intervention of living organisms, the chemical composition of the atmosphere, lithosphere and oceans would be radically different. In this way Lovelock's thesis suggests that organic life has the capacity to shape geochemical forces, rather than simply be subject to them.

The author when considering the subject, "*From Scales of Authority to Earthly Forms*", bases his argument in Sassen's analysis, 'authority' poses both questions of form and scale. He refers to Louis Kotze in his article, "*The Anthropocene's Global Environmental Constitutional Moment*" (2015), who argues that the aspirational project of an international environmental constitution lacks a sufficient 'global' or 'planetary' ethos that connects citizens to regimes of global governance. Matthews says that, as the planetary urban population continues to grow and cities become increasingly significant sites of legal and political authority, we need to understand the city as a distinct socio-bio-geo-chemical form that plays a very important role within the earth system in shaping planetary life. If, as Louis Kotzé has argued, the aspirational project of an international environmental constitutionalism lacks a sufficient 'global' or 'planetary' ethos that connects citizens to regimes of global governance, it is within contemporary urban forms that such an ethos might well be nurtured. In this respect, it is the emerging role of the city as an earthly form that deserves our attention. This would entail a move away from a bifurcated analysis that stresses either the national and the global in an effort to understand the contemporary political scene in our cities´ urban population forms.

In the context of rights for nature, the impetus behind this movement has been reflected in recent legal and jurisprudence developments. The formalization of these rights can be found in the *'Universal Declaration of the Rights of Mother Earth'*, adopted by the Peoples World Conference on Climate Change and the Rights of Mother Earth in April 2010. Regarding the question of legal personality, in New Zealand, for instance, the legal personality of *Te Awa Tupua* (Whanganui River) has recently been recognized and a statutory framework established by which the rights of the river can be represented and defended. For the author, this approach, while seemingly radical, is really a continuation of one of the central tenets of the modern approach that sees the institutionalization of a justiciable right as a fundamental goal of political action.

Finally, it is also important to analyze the historical and legal context in New Zealand in which legal personality was attributed to the Whanganui River in particular, rather than transfer of it as Crown property to the indigenous people. In the claim´s agreements under the Treaty of Waitangi before 2014, Maori interests in national parks and rivers had already been recognized in several ways, where the Crown also ruled out the transfer of conservation lands to Maori as part of a settlement agreement.

In negotiations with the Crown, Whanganui iwi claimed ownership of the river, and they were supported by the recommendations of the Waitangi Tribunal. Legal claims based on customary title were possible, although uncertain. Negotiations with Whanganui iwi were complicated by two Crown starting points: first, the Crown asserts that under common law no one owns water and second, the Crown claims the right to allocate water resource. These points are heavily contested and Maori claims to freshwater are the subject of continued legal conflict.

Tensions heightened because of the Crown's reluctance to address directly Maori claims to political authority. Also, tensions arose from having to address the relationship between land and political authority in proprietary terms. In Western legal forums the idea of ownership means the relationship between land and political authority. In the Maori Tikanga the power to "make decisions over land" is conveyed by the English expression "land ownership".

These settlements should be understood in the context of New Zealand's history and legal culture, as Katherine Sanders[22] argues in her article *Beyond Human Ownership? Property, Power and Legal Personality for Nature in Aoearoa New Zealand* (2018): At one level, the granting of legal personality to the Whanganui River is deeply embedded in Aotearoa New Zealand's legal culture, including in tikanga Maori, indigenous customary systems of values and law. At this level there is a symbolic reframing of relationships between people and the environment. But the author also argues that the granting of legal personality in New Zealand responds to a distinct legal problem. At another level, Sanders argues that the reasons for the innovation are complex that these settlements seek to focus decision-making about the land and the river around a new set of agreed principles and purposes.

Sanders analyses the granting of legal personality declared to the Whanganui River as part of a process that seeks to acknowledge wrongs by colonial powers, and the competing claims of the Crown and the indigenous descent groups (property and power). The granting of legal personality to the land (2014, Te Urewera) and the river (2017 Whanganui river), can also be considered as new frameworks for further relationships between people and the environment.

The author enquires into why ownership of the land and river was not transferred, and the non-ownership model adopted. She records that settlements of claims under the Treaty of Waitangi prior to 2014 had recognized Maori interests in national parks and rivers in a number of ways. The Crown ruled out the transfer of conservation estate land to Maori as part of a Treaty settlement, and also continues to assert ownership of the beds of navigable rivers under the Coal Mines Act Amendment Act 1903 and, while arguing that no one owns water under common law, claims the ability to allocate rights to freshwater under the Resource Management Act 1991.

Spain. The Popular Legislative Initiative that has given legal personality and its own rights to the Laguna del Mar Menor and its basin. Law 19/2022, of September 30 (BOE October 3, 2022)

Citation: Giménez TV. The rights of Nature: the legal revolution of the 21st century. *MOJ Eco Environ Sci.* 2023;8(3):97–115.
DOI: 10.15406/mojes.2023.08.00280

The Mar Menor has an area of 135 square kilometres and a maximum depth of 7 meters. It is a marine ecosystem separated from the Mediterranean Sea by La Manga, a 22 kilometre-long sandy bar, with five volcanic islands. This lagoon communicates with the Mediterranean Sea through three channels or *golas*. This relative isolation of the Mar Menor, the little rain and high temperatures, gave rise to a salinity significantly higher than that of the Mediterranean Sea, a characteristic that together with its extreme temperatures and different salinity only allowed life to certain species of flora and fauna, which adapted to such drastic and demanding conditions. Until recently, the waters of the Mar Menor have been oligotrophic, that is, low in nutrients, and its transparency has been one of its most notable characteristics.

The coastal lagoon of the Mar Menor is connected superficially and underground with the Mar Menor basin, a biogeographic unit made up of a large inclined plane of approximately 1,600 square kilometers in a Northwest-Southeast direction, limited to the north and northwest by the mountain ranges. This biogeographic unit includes the water basin and its drainage networks (ravines, riverbeds, wetlands, crypto-wetlands, etc.), and the aquifers that may affect the ecological stability of the coastal lagoon.

The area of influence of the Mar Menor covers the coastal municipalities of Cartagena, Los Alcázares, San Javier and San Pedro del Pinatar, as well as those of Torre Pacheco, Fuente Álamo, La Unión and Murcia, in the basin and without a direct limit to the lagoon, occupying 11% of the territory of the Autonomous Community of the Region of Murcia and 56% of its coastal space.

The damage caused to the Mar Menor has to do with a development model based on the exploitation and domination of the lagoon and its basin without taking into account the adaptation to the times and the ecological needs of the ecosystem. Historical causes have contributed to the degradation of the Mar Menor, such as the mining industry of the sixties and seventies, the mining waste that continues to reach the lagoon after the rains from the mountains of Cartagena and La Unión, unlimited urbanism, the proliferation of marinas, and the creation of artificial beaches. In addition, in recent years, the nitrate contamination of the Mar Menor, which is leading it to collapse, is largely caused by intensive agricultural and livestock activities installed in the catchment basin in recent decades.

The industrial paradigm conflicts with the ecological paradigm when it destroys nature. Vandana Shiva[23] in his work *Earth Democracy. Justice, Sustainability and Peace* (2005) says: "The competition between these two paradigms of food is the competition between two ideas, between two organisational principles". One paradigm is based on the Law of Exploitation and the Law of Domination, which starts with wars and is rooted in violence. The other has to do with agroecology and living economies, and is based on the Law of Devolution: what is given back to society, to small farmers and to Earth.

Ecological justice and rights of nature in the Mar Menor Lagoon.

The new geological era we face as humanity is known as the Anthropocene, a term proposed by the biologist Eugene F. Stoermen and adopted in 2000 by Nobel laureate in chemistry Paul J Crutzen.[24] In other academic circles, the current era is known as the Capitalocene, a term proposed by the historian Jason Moore[25] in his work "Capitalism in the Web of Life" (2015).

The Anthropocene or Capitalocene have highlighted the high degree of error of the Western legal paradigm in which Nature has been conceived as an object for human benefit, and priority has been given to a model of production and consumption that has turned humans into the planet's main geological agent.

We need a radical response to the ecological disaster caused by humans on the planet, we need to rethink our anthropocentric model in favor of a new ecocentric model based on the relationships between humans and Nature, which recognizes ecological Justice as a new paradigm that has its roots in ecological awareness and ecological ethics. Ecological Justice implies epistemological changes, which link culture to ecology, both in the scientific and artistic fields, and methodological changes, based on interdisciplinarity.

Recognition of Ecological Justice implies a transcendental legal change, but it is also necessary to urgently open a new stage in the history of philosophy and the theory of Law. This is the advance from human rights to the rights of nature, as the foundation of the proposal for an ecological Rule of Law for the 21st century, which implies the transition from the nineteenth-century model of the modern Rule of Law, and the traditional concept of citizenship, towards a new ecological citizenship, which includes not only social and ecological human rights, but also the rights of nature. The recognition of the rights of Nature and the ecocentric vision brings to the law, economy and political reality the advance from a society on the human being to a society centred on Earth.

The new model of Ecological Justice causes changes in the Theory of Justice and in the Theory of Law. In the field of Theory of Law this is turn generates changes in positive Law, thus considering the new generation of rights: the rights of Nature and, in the field of the Theory of Justice, promoting ecological justice. The mass mortality disaster in the Mar Menor in October 2019 and the strong environmental awareness that arose in the riverside population gave me the opportunity to draft a bill to recognize legal personality and rights of the salty coastal lagoon. I had just finished my stay at the University of Reading (UK) to study the cases of the Atrato River and the Whanganui River and I was ready for the study of the bill of rights to recognize rights to the Mar Menor. The initial study was carried out at the proposal of my students in the last year of the Faculty of Law and we carried it out within the Legal Clinic of the University of Murcia.

The bill of rights for the recognition of legal personalitiy and rights to the Mar Menor and its basin have been brought about in Spain by a social movement which promoted the Popular Legislative Initiative (PLI) claiming the rights of Nature for an ecosystem of great ecological value are in danger. The reasons to propose a Popular Legislative Initiative that recognizes the legal personality of Mar Menor lagoon and its basin in order to grant its own rights are the serious ecological damage that Mar Menor has suffered, the ineffectiveness of the current legal norms that pretend their protection, the inactivity of administration and public powers and the empowerment of civil society to make participation in environmental matters effective.

The protection figures that have been added over the last twenty-five years for the conservation of the Mar Menor have only served to confirm the importance of the ecological values of this coastal lagoon, but not for its effective conservation. Starting with its designation as a wetland on the list of the Ramsar Convention - Convention on Wetlands of International Importance especially as Waterfowl Habitat (1973); later as a Specially Protected Area of Mediterranean Importance (SPAMI) under the 1995 Protocol on Specially Protected Areas and Biological Diversity at the Barcelona Convention for the Protection of the Mediterranean Sea against Pollution (1976); and finally, it was included in the Natura 2000 Network (first through two Special

Protection Areas for Birds and four Sites of Community Importance and, since October 2019, as a Special Area of Conservation) under Directives 92/43/EC and 79/409/EC. Thanks to these three figures, the Mar Menor enjoys the highest international recognition in terms of biodiversity conservation.

At a regional level, this maritime-terrestrial ecosystem has been declared a protected natural area through the figures recognised in Law 4/1992, of 30 July, on the planning and land protection of the Region of Murcia; Regional Park in relation to the Saltmines of San Pedro del Pinatar (protected since 1985) and Protected Landscape in the "Open spaces and islands of the Mar Menor" (Playa de la Hita, Cabezo y Marina del Carmolí, Saladar de Lo Poyo, Salinas de Marchamalo and Playa de Las Amoladeras, Coto del Sabinar, Cabezo de San Ginés, el Cabezo Gordo, and the five islands of the Mar Menor). In addition to the above, the Mar Menor has been classified as a Wildlife Protection Area in accordance with another regional regulation, Law 7/1995, of 21 April, on Wild Fauna in the Region of Murcia

The history of the popular legislative initiative to recognize rights of nature to the lagoon of the mar Menor and its basin: the first ecosystem in Europe with rights

The story that has turned the Mar Menor into the first ecosystem with its own rights in Europe is a success story of citizen participation in the process of ecosocial transition by a Popular Legislative lnitiative (PLI). It is a response to a historical social movement, in the context of the COVID-19 pandemic, which made it very difficult; it also made us more aware of the need to protect the biodiversity of the Mar Menor. Together with its environmental values, the Mar Menor is one of the main constituent elements of the cultural identity of the Region of Murcia and arises a strong emotional attachment in all the inhabitants from the Region of Murcia.

The social movement of the Popular Legislative Initiative advanced day after day with strong courage, in the midst of an unprecedented pandemic, without the support of previous structures, and without a rigorous organization. The adoption of this initiative has been a triumph of citizenship, which managed to overcome the minimum of 500,000 signatures required by the Popular Legislative lnitiative recognized in the Spanish Constitution (article 87.3) and exercised within the framework of Organic Law 3/1984 of 26 March 1984 (RCL 1984, 842), which regulates the popular legislative initiative. Its aim is to grant legal personality to the ecosystem of the Mar Menor lagoon in order to provide it, as a subject of law, with its own rights, based on its intrinsic ecological value and intergenerational solidarity, thus guaranteeing its preservation +for future generations.

On October 27, without the need to make use of the three months extension granted, we delivered 639.826 signatures to the Central Electoral Board of Madrid. It was processed by the urgent procedure and successfully went through the whole parliamentary process. The bill of rights for the recognition of legal personality to the Mar Menor lagoon and its basin had been approved by the Spanish Parliament -Congress and Senate- by a majority greater than the reinforced 2/3 at September 21, 2022, and became the Act 19/2022, dated on September 3, (Publication: Official Spanish Gazette BOE 3rd October, 2022, nº. 237).

The case of Mar Menor leads the European movement for the rights of Nature and has been defended before the General Assembly of the United Nations in New York on April 22, 2022, Earth Day. In the United Nations, it has been recognized by its Secretary in two reports on the United Nations "Harmony with Nature" Program: The report published on July 28, 2020 (A/75/266) and the report published on July 28, 2022 (A/77/244).

At the local level, different municipalities and countries, at the regional level of the European Union, the Economic and Social Committee of the European Union has a project to create a Charter of Fundamental Rights for Nature "Towards a Charter of Fundamental Rights of Nature in the EU" and, at the universal level of the United Nations, "Harmony with Nature Program", have been taking place the progressive abandonment of anthropocentrism in favor of an ecocentric vision.

At the Conference of the Parties to the Convention on Biological Diversity held in Montreal, Canada, from December 7 to 19, 2022, in which I participated as an observer of the rights of Nature, the terms "rights of Nature", "ecocentric", and "Mother Earth" were introduced in several paragraphs of the Global Frame work for biodiversity. The final document (CBD/COP/15/L.25, 18 December 2022) says in goal 19:

"Mother Earth Centric Actions: Ecocentric and rights-based approach enabling the implementation of actions towards harmonic and complementary relationships between peoples and Nature, promoting the continuity of all living being and their communities and ensuring the non-commodification of environmental functions of Mother Earth".

In the 21st century, the magnitude of the climate and ecological crisis has become a great threat of our time, it is time for the Universal Declaration of the Rights of Nature, because we know more now than we did fifty years ago, we know that all forms of life on Earth are threatened and we all, human and ecosystem, have the right to life and to enjoy a healthy environment. In the 21st century we are moving towards a Universal Declaration of the Rights of Nature. At the General Assembly of the United Nations, a resolution was approved in December 2022, opening the way to an *Earth Assembly* (A/77/443/Add.8):

"..the possible convening and scope of a high-level meeting with the provisional title of Earth Assembly, to be held on April 22, 2024, so that a non-anthropocentric or Earth-centered paradigm, in continuous evolution, continues to strengthen multilateralism through alternative holistic approaches based on diverse worldviews that can contribute to the implementation of the 2030 Agenda for Sustainable Development 17 and subsequent initiatives".

The Mar Menor has contributed to all these international advances, because with the recognition of its rights the European continent has completed the world map and today, all the continents, including Europe, have recognized the rights of Nature.

Annex: english translation of the law 19/2022, 30 th september, which recognise legal personhood for the mar menor lagoon and its basin.

Version in force on 3 October 2022

Granting Mar Menor and its basin status of a legal person

Act 19/2022, dated 30th September

The Sea and its beaches. Granting Mar Menor and its basin status of a legal person

Head of State

Citation: Giménez TV. The rights of Nature: the legal revolution of the 21st century. *MOJ Eco Environ Sci.* 2023;8(3):97–115.
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Publication: Official Spanish Gazette (BOE) 3rd October, 2022, nº. 237, [p. 135131, 4 pp.].

FELIPE VI

KING OF SPAIN

Know all men by these presents that: I hereby signify my assent to this Act as approved by the Spanish Parliament

PREAMBLE

The reasons for approving this Act are twofold: on the one hand, the serious socio-environmental, ecological and humanitarian crisis affecting the Mar Menor and the inhabitants of its coastal municipalities; on the other hand, the inadequacy of the current legal system of protection, despite the important regulatory figures and instruments that have been introduced over the last twenty-five years.

The proposal concerns the entire marine lagoon ecosystem of the Mar Menor, which covers an area of 135 km^2, being the largest coastal lagoon in the Spanish Mediterranean and one of the largest in the western Mediterranean. With an average depth of 4 m and a maximum depth of 7 m, it is separated from the Mediterranean Sea by a 22 km long and between 100 and 1,500 m wide strip of sand on rocky outcrops of volcanic origin (known as La Manga) which is crossed by five channels or shallow inlets to the Mediterranean Sea.

The Mar Menor and all of its components - the characteristic biodiversity (habitats, flora and fauna), the hydrogeological system with which it is connected and which forms its catchment area, the lagoon seabed, the water and its salinity, the coastal wetlands, all of them described in the Full report on the Ecological State of the Mar Menor, drafted by the Scientific Advisory Committee for the Mar Menor and published on 6 February 2017–, has been undergoing a number of pressures from land use intensification that have been taking place since the 1960s. The report identifies the confluence of different impacts on the Mar Menor.

On the other hand, together with its environmental values, the Mar Menor is one of the main constituent elements of the cultural identity of the Region of Murcia and arouses a strong emotional attachment in all the inhabitants from the Murcia Region. A proof of this is the creation of various citizen platforms that bring together neighbourhood associations, environmental organisations, professional groups, cultural foundations, etc., demanding measures to recover and protect this ecosystem, and who on 30 October 2019 held a massive demonstration in the city of Cartagena with more than 55,000 participants calling for measures to save the Mar Menor.

For all these reasons, the time has come to make a qualitative leap and adopt a new legal-political model in line with the forefront of international law and the global movement for the recognition of the rights of nature.

The present Act is exercised within the framework of Organic Law 3/1984 of 26 March 1984 (RCL 1984, 842), which regulates the popular legislative initiative. Its aim is to grant legal personality to the ecosystem of the Mar Menor lagoon in order to provide it, as a subject of law, with its own rights, on the basis of its intrinsic ecological value and intergenerational solidarity, thus guaranteeing its preservation for future generations.

The recognition of the rights of the ecosystem of the Mar Menor lagoon and its basin means complying with our international commitments, such as the Paris Agreement of 2015 on Climate Change, and fulfilling the demands of the new geological period that our planet has entered, the Anthropocene. In the 21st century, the serious ecological damage caused by the human development model forces us to expand our responsibility to look after the environment. Granting rights to the natural entity of the Mar Menor, at the same time, strengthens and extends the rights of the people living in the lagoon area, which are threatened by ecological degradation: the so-called biocultural rights.

The great challenge facing environmental law today is to achieve the effective protection of nature and of the human cultures and ways of life that are closely associated with it, as in the case of the municipalities bordering the Mar Menor lagoon. In this respect, it is necessary to interpret the applicable law and the subjects worthy of legal protection in accordance with the serious ecological deterioration of the Mar Menor. Article 45 of our Constitution has been interpreted by the Supreme Court in the sense that Nature as an ecosystem is the unit that integrates the human being as a further element and, therefore, the one that allows the development of the person. In the judgement dictated by the Supreme Court, 2nd Chamber, of 30 November 1990, the connection between the natural environment and the fundamental rights to life and health of persons was made clear, and expressly refers to the human being as an integral part of nature and not as a being intended to dominate it in order to use it exclusively for their service:

The "differentiation between harms affecting human health and risks damaging other animal or plant species and the environment is due, to a large extent, to the fact that man does not consider himself part of nature but rather as an external force destined to dominate or conquer it in order to put it at their service. It should be remembered that nature does not admit unlimited use and that it constitutes a natural asset that must be protected" (Judgment dictated by the 2nd Chamber of the Supreme Court of 30 November 1990, number 3851/1990, Legal basis 17.2).

In accordance with the proposal of an ecocentric interpretation of our legal system, as pointed out both by the High Court and by some legal operators, the category of the subject of law must be extended to natural entities, on the basis of the evidence provided by the sciences of life and the earth system. These sciences make it possible to base a conception of the human being as an integral part of nature, and oblige us to confront the ecological degradation suffered by planet Earth and the threat that this entails for the survival of the human species.

The recognition of the Mar Menor and its basin as a legal person will allow autonomous governance of the coastal lagoon, understood as an ecosystem worthy of protection in itself, a legal novelty that enhances the treatment given up to now: the lagoon goes from being a mere object of protection, recovery and development, to be an inseparably biological, environmental, cultural, and spiritual subject.[26–37]

Article 1.

Legal personality to the Mar Menor and its basin shall be granted, being henceforth formally recognised as a subject of law.

For the purposes of this Act, the Mar Menor basin shall be understood to include:

a) The biogeographical unit, which is composed of a large inclined plane of 1. 600 km^2 in a northwest-southeast direction, bounded to the north and northwest by the last eastern foothills of the Betic mountain ranges formed by the pre-coastal mountains (Carrascoy, Cabezos del Pericón and Sierra de los Victorias,

El Puerto, Los Villares, Columbares and Escalona), and to the south and southwest by coastal mountain ranges (El Algarrobo, Sierra de la Muela, Pelayo, Gorda, Sierra de La Fausilla and the Cartagena-La Unión mining mountain range, with its last foothills at Cabo de Palos), and including the water basin and its drainage networks (dry riverbeds -called "ramblas"-, watercourses, wetlands, crypto-wetlands, etc.).

b) The following group of aquifers (Quaternary, Pliocene, Messinian and Tortonian) that may affect the ecological stability of the coastal lagoon, including the marine intrusion coming from the Mediterranean.

Article 2.

1) The Mar Menor and its basin shall be recognised as a legal entity with rights that require the ecosystem be protected, preserved, maintained or, where relevant, restored by regional and central governments and residents of the Mar Menor´s surroundings. The Mar Menor shall also have the right to exist as an ecosystem and to evolve naturally, which shall include all the natural characteristics of the water, the communities of organisms, the soil and the terrestrial and aquatic subsystems that form part of the Mar Menor lagoon and its basin.

2) The rights mentioned in the foregoing paragraph are as follows:

a. Right to exist and to evolve naturally: The Mar Menor is governed by a natural order or ecological law that enable its existence as a lagoon ecosystem and as a terrestrial ecosystem in its catchment area. The Mar Menor is governed by a natural order or ecological law that enables it to exist as a lagoon ecosystem and as a terrestrial ecosystem in its basin. The right to exist implies respect for this ecological law, in order to ensure the balance and regulation capacity of the ecosystem in the face of the imbalance caused by anthropic pressures coming mainly from the catchment area.

b. Right to protection: The right to protection implies limiting, stopping and not authorising those activities that pose a risk or harm to the ecosystem.

c. Right to conservation: The right to conservation requires actions to preserve terrestrial and marine species and habitats and the management of associated protected natural areas.

d. Right to restoration: The right to restoration requires, once damage has occurred, remedial actions in the lagoon and its catchment area that restore natural dynamics and resilience, as well as associated ecosystem services.

Article 3.

a) The representation and governance of the Mar Menor lagoon and its basin shall be made up of three bodies: a Committee of Representatives composed of competent representatives of the Public Administrations and the public of the coastal municipalities; a Monitoring Commission (the guardians of the Mar Menor Lagoon) and a Scientific Committee comprising an independent commission of scientists and experts, universities and research centres.

b) The three bodies referred to, the Committee of Representatives, the Monitoring Commission and the Scientific Committee shall be in charge of the guardianship of the Mar Menor.

c) The Committee of Representatives shall be constituted by thirteen members, three of whom shall be from the General State Administration, three from the Autonomous Community and seven from the citizens who shall initially be the members of the Promoting Group of the Popular Legislative Initiative. Among the functions of the Committee of Representatives shall be to propose actions for the protection, conservation, maintenance and restoration of the lagoon, as well as to supervise and control compliance with the rights of the lagoon and its basin, on the basis of the contributions from the Monitoring Commission and the Scientific Committee.

d) The Monitoring Commission (guardians) shall be formed by a representative and an alternate of each of the coastal municipalities or the municipalities bordering the Mar Menor basin (Cartagena, Los Alcázares, San Javier, San Pedro del Pinatar, Fuente Álamo, La Unión, Murcia and Torre Pacheco) appointed by the respective Town Councils and who shall be renewed after each municipal election period, as well as by a representative and an alternate of each of the following economic, social and environmental defence sectors: business associations, trade unions, neighbourhood associations, fishing associations, agricultural associations, livestock associations -with representation of organic and/or traditional agriculture and livestock farming-, environmental defence associations, associations for gender equality and youth associations.

e) These representatives, who must have previous experience in the defence of the ecosystem of the Mar Menor, shall be appointed by agreement of the most representative organisations of each of the aforementioned sectors, under the convening and supervision of the Promoting Group and for a renewable period of four years. The Monitoring Commission shall be constituted no more than three months after the publication of this Act.

f) The activities of the Monitoring Commission shall include -among others- the dissemination of information on the present Act, the monitoring and control of respect for the rights of the lagoon and its basin and periodic information on compliance with this Act, taking into account the indicators defined by the reports drawn up by the Scientific Committee to analyse the ecological state of the Mar Menor.

g) The Scientific Committee shall be constituted by scientists and independent experts specialised in the study of the Mar Menor proposed by the Universities in Murcia and Alicante Regions, by the Spanish Institute of Oceanography (Oceanographic Centre of Murcia), by the Iberian Ecological Society and by the Spanish National Research Council and shall serve for a renewable period of four years.

The following two conditions shall be met to ensure the independence of the Scientific Committee: recognised scientific prestige and unpaid work of members.

The functions of the Scientific Committee shall include advising the Representative Committee and the Monitoring Committee, identifying indicators on the ecological status of the ecosystem, the risks to it and appropriate restoration measures, which shall be reported to the Monitoring Committee.

Article 4.

Any conduct that may violate the rights recognised and guaranteed by this Act, by any public authority, private law entity, natural person or legal entity, shall give rise to criminal, civil, environmental and administrative liability, and shall be prosecuted and sanctioned in accordance with the criminal, civil, environmental and administrative regulations in their respective jurisdictions.

Article 5.

Any act or action of any of the public administrations that violates the provisions contained herein shall be considered invalid and shall be subject to administrative or judicial review.

Article 6.

Any natural or legal person shall be entitled to defend the ecosystem of the Mar Menor and may enforce the rights and prohibitions of this Act and the provisions herein by means of an action brought before the corresponding Court or Public Administration.

Such legal action shall be brought on behalf of the Mar Menor ecosystem as the Party concerned. The person who brings such an action and whose claim is granted shall be entitled to recover the full cost of the litigation undertaken, including, among others, the fees of lawyers ("abogados" and "procuradores), experts and witnesses, and shall be exempted from the costs of the proceedings and from the bonds in the case of precautionary measures.

Article 7.

The Public Administrations, at all territorial levels and through their authorities and institutions, shall have the following obligations:

a) To develop public policies and systematic actions for prevention, early warning, protection, precaution in order to prevent human activities from leading to the extinction of the biodiversity of the Mar Menor and its basin or the alteration of the cycles and processes that guarantee the balance of its ecosystem.

b) To promote social awareness campaigns on the environmental dangers faced by the Mar Menor ecosystem, as well as to educate on the benefits that its protection brings to society.

c) To carry out periodic studies on the state of the Mar Menor ecosystem, and to draw up a map of current and possible risks.

d) To immediately restrict those activities that could lead to the extinction of species, the destruction of ecosystems or the permanent alteration of natural cycles.

e) To prohibit or limit the introduction of organisms and organic and inorganic material that could permanently alter the biological heritage of the Mar Menor.

Sole repealing provision. - Final provision [Article I] Established regulations.

All provisions contrary to the provisions of this Act shall be hereby repealed.

Final provision [Article I] Established regulations

The Government shall be hereby authorised, within the extent of its competences, to approve as many provisions as may be necessary for the application, execution and implementation of the provisions of this Act.

Final provision [Article II]. Legislative authority

This Act is enacted by virtue of the exclusive competence of the State provided for in Article 149.1.23ª of the Constitution of basic legislation on environmental protection, without prejudice to the powers of the Autonomous Communities to establish additional rules of protection.

Final provision [Article III].

This Act shall enter into force on the same day of its publication in the Official Spanish Gazette (BOE).

Conclusion

Ecological justice, environmental justice and climate justice

The concept of **environmental justice**, which originates from the environmental claims of the sixties and seventies, has as its object the environmental problems and the problematic situations that environmental damage causes to people and all their human rights, as well as the problems of Law and Environmental Jurisprudence.

The concept of **climate justice** has progressively been shaped by states through both international instruments on climate change and human rights, such as the United Nations Framework Convention on Climate Change and the Paris Agreement, which are binding and therefore mandatory. Climate Justice has as its objective the guaranteeing of an adequate climate, through the reduction of greenhouse gas emissions, the transition from fossil energies to renewable energies, and mitigation and adaptation measures to climate change. All these climatic actions try to comply with the principles of precaution and prevention, in order to promote sustainable development.

Both models of Justice complement and integrate into the broader concept of **ecological justice**. It is a type of Justice that aims at the interrelationships of the ecosystem that include the relationships of human beings with each other and with the environment. In this respect, *the indubio pro natura* principle plays a fundamental role in interpreting and applying environmental and non-environmental standards, seeking ways to best guarantee the sustainability and resilience of ecological systems and full, fair and full satisfaction of environmental human rights.

Ecological ethic and ecological justice

The classic justice formula of "giving everyone their own" means that in the light of a new planetary ecological ethic, a new model of Ecological Justice is needed, which should have as its central axis the principle of distribution, the principle of conservation and the principle of prevention, to achieve the objectives and goals of ecological sustainability, efficiency and economic prosperity and social equity, intra and intergenerational solidarity and restoration of ecosystem integrity, as well as maintaining and improving the resilience of socio-ecological systems.

At the same time, a new planetary **ecological ethic** requires the incorporation of a temporal dimension into the concept of Justice, with the present and future generations as recipients, assuring them of the effective protection and satisfaction of the cast of environmental human rights, both substantive and procedural. Current generations no longer have an exclusive or central character in legal regulations, but instead emerge as subjects responsible for enjoying the environment and then bequeathing it in reasonable condition to those who will succeed them

A new planetary ethic imposes on **ecological justice** a requirement to expand its list of recipients to all those species with which the human being shares the planet. Under this rationale, every human being, as well as other living beings, have the right to the conservation, protection and restoration of the health and integrity of ecosystems, to the extent that nature has an intrinsic right, independent of its human value, to exist, prosper and evolve. It is intended to guarantee the

quality of the environment in ecosystem terms and regardless of the satisfaction they produce to the occasional inhabitants of the planet.

Sustainable development and ecological justice

The term **sustainable development** expresses a new measure of Sustainability that includes both the Social Development of present and future generations, as well as the limits of the ecosystem. The evolution of the concept of Development, from Human Development (Stockholm Conference of the United Nations of 1972) to Sustainable Development (Rio Summit of the United Nations of 1992), means the transit from the anthropocentric perspective to the ecocentric perspective. At first, the concept of Sustainable Development, which includes future generations, was the result of the scientific work of the World Environment Commission presented in the Brundtland Report *Our Common Future* of 1986. Five years later, in the document *Caring for the Earth: Revision of the World Conservation Strategy* of 1991 the concept of Sustainable Development also includes eco-system. This document was promoted by UNEP, IUCN and the CWWF. The new concept of Sustainable Development, which includes future generations and the ecological capacity of the Earth, is consolidated at the 1992 Earth Summit as the Principle of Sustainability.

Under the prioritization of the Principles of Sustainability, **ecological justice** aims to maintain the essential ecological processes, without exceeding the planetary limits.

The state of environmental law: substantive and procedural or access environmental human rights

The State of Environmental Law is understood as the legal framework of **substantive rights** and **procedural rights**. These **substantive and procedural environmental human rights** incorporate the Principles of Sustainable Development in the State of Law. The strengthening of the State of Law in environmental matters constitutes the key to the protection, conservation and restoration of environmental integrity. According to the *World Declaration of the International Union for the Conservation of Nature*, signed in Rio de Janeiro 2016.

The human rights related to the enjoyment of a safe, clean, healthy and sustainable environment are integrated by these two groups. On the one hand, **the procedural or access rights**: right of access to environmental information, public participation in decision-making and environmental justice. And on the other, **the substantive rights**, including: right to life, personal integrity, health, drinking water and sanitation, food, housing, property, peace, rights of indigenous peoples and local communities, rights of people in cases of catastrophes, rights of environmentally displaced persons and the rights of human rights defenders.

The so-called environmental human rights of access or procedural rights, derive from principle 10 of the Rio Declaration of 1992. The first specific treaty that develops this Principle 10 of environmental democracy, was drafted within the framework of the United Nations Economic Commission for Europe. It was the Convention on Access to Information, Participation of the Public in decision-making and access to justice in environmental matters, known as the Aarhus Convention, signed on June 25, 1998 and entered into force on October 30, 2001. The second specific treaty, after four years of negotiation, was adopted by the United Nations Economic Commission for Latin America (ECLAC), on March 4, 2018 in Costa Rica, under the Agreement Regional on Access to Environmental Information, Public Participation and Access to Justice in Latin America and the Caribbean, known as the Escazú Agreement. On September 27, 2018, the procedure for the signature, ratification, acceptance, approval and accession of the States at the United Nations headquarters in New York was opened until September 26, 2020.

The ecologization of human rights: The biocultural rights and the rights of nature

The legal operator must find the confluence between **the right to the environment** and the rest of **environmental human rights**. Through the application of the comprehensive approach to environmental human rights with the right to the environment, it would be possible to conduct **the ecologization of human rights**. This comprehensive approach to environmental human rights refers to the interrelation and interdependence between the triad of procedural environmental human rights and their application, in a balanced manner, realizing substantive environmental rights, and enjoy a safe, clean, healthy and sustainable environment.

The ecologization of human rights refers to a broader vision of the rights of people that allows both the recognition of the rights of ethnic communities in relation to their natural and cultural environment, which has been called **"*biocultural rights*"** as the recognition of the **rights of nature** (environmental personhood).

The central element of this approach is the existence of an intrinsic link between nature and culture, between the ecosystem and the human species.

Ecological state of law and ecological justice

Justice in the Ecological State of Law endorses the content of **the environmental state of law** in environmental matters, provided for in the World Declaration of the International Union for the Conservation of Nature (IUCN), and under the values and principles of a new planetary ecological ethic, respects the natural laws that govern ecosystems and the maintenance of planetary boundaries.

In order to achieve the objectives of Ecological Justice, **the ecological state of law** must guarantee the human rights related to the enjoyment of a safe, clean, healthy and sustainable environment, guaranteeing, at the same time, the maintenance of essential ecological processes without exceeding planetary limits.

The Ecological State of Law is focussed on the ecosystem relationships of which human beings are a part. The objective of the Ecological State of Law is to achieve ecological justice between states, and solidarity between generations and between species. In short, the rationality that presupposes the State of Law is no longer anthropocentric, but ecocentric. The State of Ecological Law aims to respond to the ecological, social and economic problems of the geological era of the Anthropocene, where economic efficiency and social justice are only possible within the limits of local, regional and planetary ecological systems.

Contributions of the Andean constitutionalism to the western constitutionalism: the "ecological constitution"

Some legal systems, at constitutional, legal and jurisprudential levels, are begining to recognize rights of nature, giving nature legal personality, as well as diverse ecosystems. In this respect, the Constitution of Colombia of 1991, allows this consideration based on the recognition of the ecocentric conception, as the object of study has shown; the Constitution of Ecuador of 2008, expressly recognizes nature as a subject of rights, admitting its intrinsic value regardless of its usefulness; and the 2009 Constitution of Bolivia recognizes

nature as a subject of rights. The key of the Andean and indigenous conception contributions is the new concept of the relationship between the human being and the ecosystem.

On the other hand, the cultural and spiritual development of the Western world has not fundamentally integrated nature. Nature has been considered an infinite resource that belongs to the human being for its exploitation without limits. The overcoming of such erroneous approaches now raises the need for a synthesis that transcends the differences between nature and culture. In this rethinking of knowledge as a requirement of the climate and ecological crisis, the ecocentric vision defended from the Andean constitutionalism and the indigenous vision can serve as an example.

Challenges of ecological justice in the 21st century

In the Anthropocene era, Ecological Justice defends the relations between human beings and nature. In the 21st century, the new Justice model faces a series of challenges related to its objective of maintaining the fundamental processes that sustain life on Earth, within the planetary limits. Ecological Justice must find the right balance between ecological integrity, economic efficiency and social equity, as required by the new sustainable development model, which must be reinterpreted in light of the principles of ecological sustainability and resilience.

This new ecological rationality, integrated into the concept of Ecological Justice, has a woman's face. Women are the part of humanity that suffers most from the consequences of climate and ecological injustice and, at the same time, women were and are at the forefront in the fight for climate and the defense of nature.

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References

1. Leopold A. *A sand country almanac and sketches here and there*. New York: Oxford University Press; 1949.
2. Darwin C. *The descent of man*. Murray, London; 1874.
3. Wilson EO. *Half-earth: our planet's fight for life*. Liveright, New York. 2016.
4. Baxi U. Toward a climate change justice theory? *Journal of Human Rights and the Environment*. 2016;7(1).
5. Wedy G. *Litigios Climáticos*, Editoria Juspodivm, Brasil. 2019.
6. Vicente T, Ramírez L. *Justice and Ecology: scientific presuppositions for the Development of an ecological Justice*. Nau Llibres, Valencia. 1997.
7. Vicente T. *The new paradigm of ecological Justice and its ethical-legal development*. In: Teresa Vicente, editor. "Ecological justice in the era of the Anthropocene". Trotta, Madrid. 2016.
8. Stone C. *Should trees have standing? Toward legal rights for natural objects*. Law Review n°45, Southern California. 1972.
9. Birnbacher D. *Ecology and ethics.* Philipp Reclam jun, Stuttgart. 1980.
10. Spaemann R. *Technical interventions in nature as a problem of political ethics*. In: "Ökologie und Ethik", Dieter Birnbacher, editors. Philipp Reclam jun., Stuttgart. 1980:180–206.
11. Tribe LH. *What speaks against plastic trees?* In: "Ökologie und Ethik", Dieter Birnbacher, editors. Philipp Reclam jun., Stuttgart. 1980:20–71.
12. Jonas H. *The principle of responsibility. Test of a ethics for technological civilization*, Herder, Barcelona; 1995.
13. Mount N. *Can a river have legal rights? I visited the jungles of Colombia to find out*. The Conversation, United Kingdom; 2017.
14. Fraser N. *Redefining the concept of justice in a globalized world, Analysis of the Francisco Suárez Chair*. 2005;39.
15. Dobson A. *Ecological citizenship, Isegoría Journal of Moral and Political Philosophy*. 2005;32.
16. Barry B. *Circumstances of justice and future generations*. In: Richard I Sikora, Brian M Barry, editors. "Obligations to Future Generations", Cambridge: White Horse Press; 1978.
17. Hison C. *Republican ecological citizenship in the 2015 Papal Encyclical on the environment and climate change. Critical Review of International Social and Political Philosophy*. 2018;21(6).
18. Bosselmanen K. *The Principle of Sustainability: Transforming law and governance*. Routledge, London; 2016.
19. Scanlan MK. *Law and policy for a new economy sustainable, just, and democratic*. United Kingdom: Edward Elgar Publishing; 2017.
20. O'Bryan K. *Indigenous rights and water resource management: not just another stakeholder*. Routledge, London; 2018.
21. Matthews D. *From global to anthropocenic assemblages: re-thinking territory, authority and rights in the new climatic regime. ModernLaw Review*. 2019;82(4).
22. Sanders K. *Beyond human ownership? Property, power and legal personality for nature in Aotearoa New Zealand.* 2018.
23. Shiva V. *Manifesto for a democracy of the earth: justice, sustainability and peace*. Paidós, Barcelona. 2006.
24. Crutzen PJ, Stoermer EF. *The Antropocene* (2000). In: Dans L Robin, Sorlin S, Warde P, editors. *The Future of Nature*. New Haven: Yale Univesity Press; 2013:479–490.
25. Moore JW. *Capitalism in the Web of Life*. London & New York: Verso; 2015.
26. Carson R. *Silent spring*. United States: Houghton Mifflin Harcourt; 1962.
27. Lovelock J. *Gaia, a vision of life on Earth*. Hermann Blume, Barcelona; 1983.
28. Margalef R. *Ecology*. Omega, Barcelona; 1974.
29. Marshall T. *Prisoners of geography: ten maps that tell you everything you need to know about global politics*. London: Elliott &Thomson Limited; 2016.
30. Peña Gascón M. *Ecological justice in the 21st century. Environmental Law Magazine n°57.* Thomson Reuters, Argentina. 2019.
31. Peña Gascón M. *Greening of Human Rights. Comments to the constitutional sentence.* Derechoaldía.com. 2018.
32. Quirico Q, Bounghar M. *Climate change and human rights*. Routledge, London. 2016.
33. Royal S. *Manifesto for Climate Justice.* Editions Plon, París. 2017.
34. Salazar E. *Access to environmental justice from the Aarhus Convention*, Thomson Reuters Aranzadi, España. 2019.

35. Shiva V. Earth democracy. justice, sustainability and peace. Berkeley: North Atlantic Books; 2015.

36. Vicente T. *From climate justice to ecological justice: the rights of nature. Revista Catalana De Dret Ambiental*. 2020.

37. Zaffaroni R. *The Pachamama and the human, Editorial Colihue, Argentina.* 2012.

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