Original articles

Of the nature (of water) and rights: the rivers as subjects of law[1]

Da natureza (da água) e dos direitos: os rios enquanto sujeitos de direito

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Abstract: This article contrasts the anthropocentric perspective predominant in environmental law with ecocentric approaches, particularly emphasising the physiocentric stance adopted by Ecuadorian and Colombian constitutionalism. The research sought to address how nature can be accommodated within contemporary legal rationality and to explore the relationship between the rights of nature and human rights. The general objective was to analyse the implications of legally recognising rivers as subjects of rights as a means of overcoming the anthropocentric paradigm. The specific objectives included discussing the rights of nature as an analytical category, examining the legal foundations underpinning the decisions involving the Vilcabamba and Atrato rivers, and assessing the impacts of these decisions on state planning, environmental protection, and the safeguarding of the rights of local populations. The methodology, grounded in a qualitative approach, involved a literature review and documentary analysis of legislative and jurisprudential frameworks related to the selected cases. The study demonstrates that the recognition of rivers as subjects of rights represents a paradigmatic shift inspired by the Andean cosmovision and the concept of *buen*

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vivir. However, it also reveals persistent practical challenges regarding the implementation of judicial decisions and the enforcement of environmental reparations. Nevertheless, the cases analysed constitute significant precedents for the consolidation of ecological law in Latin America.

Keywords: Andean cosmovision. Ecocentrism. *Buen vivir*. Rights of nature. Environmental law.

Resumo: Este artigo contrapôs a visão antropocêntrica predominante no debate ambiental às vertentes ecocêntricas, com destaque para a posição fisiocêntrica adotada pelo constitucionalismo equatoriano e colombiano. A pesquisa buscou responder como a natureza pode ser acomodada na racionalidade jurídica contemporânea e qual seria a relação entre os direitos da natureza e os direitos humanos. O objetivo geral foi analisar as implicações do reconhecimento jurídico de rios como sujeitos de direitos para superar o paradigma antropocêntrico. Os objetivos específicos incluíram discutir os direitos da natureza como categoria de análise, examinar os fundamentos jurídicos das decisões sobre os rios Vilcabamba e Atrato, e avaliar os impactos dessas decisões no planejamento estatal, proteção ambiental e defesa dos direitos das populações locais. A metodologia, de abordagem qualitativa, utilizou revisão de literatura e análise documental sobre os marcos legislativos e jurisprudenciais dos casos selecionados. O estudo destacou que o reconhecimento dos direitos dos rios reflete uma transição paradigmática inspirada pela cosmovisão andina e pelo conceito de buen vivir, mas enfrenta desafios práticos relacionados à implementação das decisões judiciais e à efetivação das reparações ambientais. Apesar disso, os casos analisados representam precedentes importantes para a consolidação de um direito ecológico na América Latina.

Palavras-chave: Cosmovisão andina. Ecocentrismo. Buen vivir. Direitos da natureza. Direito Ambiental.

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1. Introduction

The replacement of the integrative and inseparable view between humanity and nature by the idea of the supremacy of the former over the latter was consolidated with the strengthening of the capitalist system and the Industrial Revolution from the 19th century onwards. This shift took shape under the foundations of classical economics, reflecting an anthropocentric ethic that regards nature as a resource to be exploited to meet human needs (Câmara; Fernandes, 2018).

Since then, Western Environmental Law, including the Brazilian framework, has predominantly adopted an anthropocentric perspective. However, constitutionalist movements in South America, such as those that led to the 2008 Constitution of Ecuador (Ecuador, 2008), introduced a new paradigm Conforme Kuhn (2009), paradigmas são modelos ou padrões dominantes (conjuntos de práticas, crenças, valores, métodos) que guiam a pesquisa e definem a ciência em um determinado período. by recognising the rights of nature and the concept of *buen vivir*[4], inspired by the worldview of the Andean Indigenous peoples, who advocate for a harmonious coexistence between humans and the environment (Maliska; Moreira, 2017; Câmara; Fernandes, 2018).

Ecocentrism, therefore, offers a fundamentally different perspective, attributing intrinsic value to nature regardless of its utility to humankind. This paradigm is divided into biocentrism, which values all living beings, and physio centrism, which extends this valuation to natural elements such as water, air, rocks, and climate (Maliska; Moreira, 2017).

The legal recognition of the Vilcabamba River in Ecuador and the Atrato River in Colombia as subjects of rights challenges the prevailing anthropocentric paradigm. These rulings, issued by the Constitutional Courts of Ecuador and Colombia, respectively,

4 The *buen vivir/vivir bien* paradigm goes beyond a static concept. It represents a way of life that seeks to foster respect, harmony, and balance in everyday existence. Internalising this paradigm entails a rupture with the dominant anthropocentrism, in which the human being is regarded as the sole holder of active and passive subjectivity — the only entity capable of assuming obligations and defending itself against harm (Câmara; Fernandes, 2018).

reflect the Andean worldviews of *buen vivir* and *Pachamama* (Mother Earth) and suggest a transition towards a new civilisational paradigm. This article analyses these two landmark events, highlighting a significant precedent in international law and an emerging trend towards overcoming anthropocentrism.

Based on these cases, the research engaged with the following dilemmas: what is the place of nature within contemporary legal rationality, and how can it be accommodated, particularly considering experiences that enshrine the rights of nature? This qualitative research, guided by historical and dialectical methods, involved literature review, document analysis, and case study methodology, focusing on the first two instances of rivers being recognised as legal subjects in the Latin American context — the Vilcabamba and Atrato cases, which represent legal-historical milestones grounded in the Andean cosmovision.

Broadly, this study discusses the interfaces between human rights and the rights of nature, with an emphasis on the pathways for the effective implementation of the latter. More specifically, it seeks to understand the rights of nature as an analytical category and as the foundation for judicial decisions, through an examination of the cases that recognised rivers as legal subjects and the respective consequences for the broader system of rights protection.

To this end, the article is structured into three sections. The first, entitled *"Upstream: the rights of nature under debate"*, discusses the theoretical framework concerning the relationship between society and nature, focusing on critiques of the anthropocentric paradigm and the emergence of ecocentrism, while also analysing the role of law in recognising nature as a subject of rights. The second section, *"Midstream: the pathways of water as human rights"*, addresses the historical and normative evolution of the human right to water, highlighting international instruments and the role of Latin American constitutions in recognising both the right to water and the rights of natural entities.

Finally, the third section, *"Downstream: the Atrato and Vilcabamba rivers as subjects of rights"*, offers an in-depth analysis of these two emblematic cases that marked the history of recognising rivers as legal subjects, detailing the legal grounds, impacts, and challenges associated with the practical implementation of the judicial decisions. This structure seeks to articulate the theoretical, normative, and practical foundations of the subject under study.

2. Upstream: the rights of nature under debate

Nature may be approached in various ways by different actors. For this reason, the importance of *place* is emphasised in the analysis of development, culture, and environmental issues, as well as in the imagination of new contexts for policy-making, knowledge, and identity. The defence of nature can thus be associated with a diverse range of groups — from social movement activists to historical archaeologists, ecological anthropologists, environmental psychologists, and ecologists (Escobar, 2005).

In this regard, Escobar (2005) highlights how cultural hybridisation[5] in Latin America has been essential for analysing discourses surrounding cultural, ecological, and economic differences within the context of globalisation and development. Although local models of nature vary widely among different groups, they often share certain characteristics, revealing a complex view of social life in which the natural world is not separated from the social world but integrated into it. This occurs through intricate connections between symbolic-cultural systems and productive relations. Consequently, a local model of nature may involve categorisations — such as human versus non-human, domestic versus wild, and distinctions between what is man-made and what is natural (Escobar, 2005).

5 Néstor García Canclini, in his book *Culturas Híbridas* (1989), defines cultural hybridisation as a process of blending and interaction that results in the creation of new cultural forms. He argues that, in modernity, cultures no longer exist as isolated and pure entities but are in constant dialogue and exchange, mutually influencing one another. In this sense, he rethinks the heterogeneity of Latin America as a complex articulation between multiple — and unequal — forms of tradition and modernity, where diverse logics of development coexist. Hybridisation, therefore, is a complex phenomenon that not only unites but also transforms cultures, generating new forms of expression and social organisation (Canclini, 1989).

In modernity[6], economic development and science promised to improve nature but ultimately ended up confining it, creating the illusion that it is possible to live separately from it (Marés, 2017). Environmental destruction has always existed; however, awareness of the risks posed by human activities is relatively recent, only emerging in the 20th century (Marés, 2017), when environmental protection became a global concern and environmental issues began to receive greater attention (Mendonça; Mamed; Almeida, 2023).

According to Santos (2006), the human domination of nature through the irrational exploitation of what are termed *natural resources* has significantly contributed to the global environmental crisis. Humanity has constructed its own environment, violently expelling nature, which, in turn, responds with catastrophes, resulting in an environmental crisis manifest in events such as floods, droughts, hurricanes, pandemics, and climate change (Marés, 2017). In light of population growth and economic development, there has been a growing demand for the proper management of natural goods, with water standing out as a crucial element (Marques Júnior, 2016). The mistaken perception of nature as an inexhaustible resource — particularly water — has led to unrealistic assumptions about its finite availability (Ribeiro, 2008; Barlow, 2001; Souza Filho, 2021). Against this backdrop, it is essential to highlight the importance of water rights, given that various forms of land and water exploitation generate distinct territorialities and conflicts.

Despite the existence of numerous international measures and treaties, environmental challenges persist, as evidenced by the ongoing depletion of natural resources (Mendonça; Mamed; Almeida, 2023). According to Pompeia and Marques (2018), there

6 "What does it mean to be modern?" (Canclini, 1989, p. 31). According to the author, modernity can be understood through four main movements: (a) an emancipatory project, which involves the secularisation of culture, self-expressive production, and social rationalisation, fostering individualism in large cities; (b) an expansive project, which seeks to extend knowledge and mastery over nature, driven by capitalist profit and by scientific and industrial advancement; (c) a renewal project, focused on continuous improvement and innovation, as well as on the reformulation of symbols worn out by mass consumption; and (d) a democratising project, which relies on education and the dissemination of culture to foster rational and moral progress.

is no scientific, philosophical, or political justification for the human arrogance of considering itself exceptional within the web of life. They argue that our very survival depends on the ecosystem, suggesting that human rights are merely one aspect of the broader rights of nature.

The biodiversity crisis and the climate emergency underscore the urgent need to shift the dominant conception of the relationship between society and nature. In this sense, Isaguirre-Torres, and Andrade (2023) advocate for a democratic and participatory approach to understanding the rights of nature and the role of the State in formulating and implementing socio-environmental public policies.

According to Ost (1997), the distinction between subject and object — fundamental to modernity — is inadequate for the interactive reality of the environment, as the relationship between humans and nature does not fit neatly within such concepts. Ost highlights the limitations of traditional legal methods, such as appropriation, contractualization, or regulation. Moreover, he argues that the division between the public and private spheres must also be transcended to adequately address environmental issues.

In this context, Ost explains that it is necessary to conceive a legal statute for the environment that aligns with the ecological paradigm, characterised by globality ("everything constitutes a system in nature") and complexity. This legal framework must be consistent with the dialectical nature of the human-nature relationship, avoiding any reduction of this interaction to a unilateral domain. An environmental statute that provides legal form to the concept of sustainable *de-development* (*des-envolvimento sustentável*) should guide modes of production and consumption towards preserving the regenerative capacity of natural goods and

maintaining the local and global cycles, processes, and balances essential for life (Ost, 1997, p. 351).

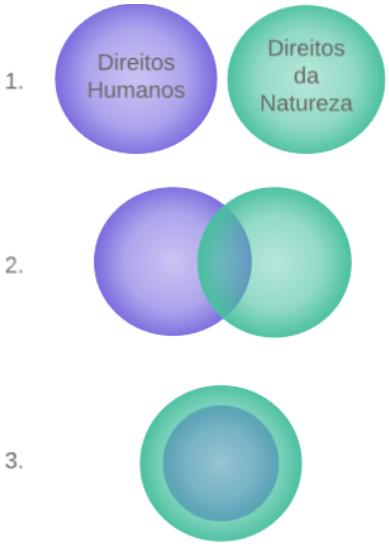
In this regard, Garcia (2014) emphasises the importance of multidisciplinary dialogue between law and other sciences in addressing environmental issues. The author suggests that the complexity of human rights demands a constructivist perspective, treating human rights as discourses that vary according to the system that observes and shapes them.

Isaguirre-Torres and Andrade (2023) highlight the process of constitutionalising environmental rights — closely linked to human rights — that has been underway in South America since the 1970s. The authors explain that between the 1980s and 1990s, reforms to environmental legal frameworks occurred in almost all South American countries, promoting the protection of nature as a fundamental asset, though not yet as a subject of rights. They clarify that despite the inclusion of environmental rights in their constitutions, extractivism continued to threaten nature in these countries. In response, constitutional processes emerged in Bolivia, Venezuela, and Ecuador, proposing transformations in the relationship between humans and nature, including discussions on the rights of nature.

It is evident from the foregoing that there is a shift in scientific, moral, philosophical, and political thinking, which interprets human rights in various ways in relation to the rights of nature. Human rights are thus viewed alternately as separate, as complementary, or as a subset within the broader category of the rights of nature, considering humanity as an integral part thereof.

This shift in the perception of human rights in relation to the rights of nature reflects a transformation in thought, evolving from a complete separation between humans and nature (1), through a unilateral and violent domination (2), to the current perception that human rights are part of the rights of nature (3) (see Figure 1).

Figure 1 – Shift in the perception of the relationship between human rights and the rights of nature



Source: Prepared by the authors, 2024.

In this context, the recent attempt to personify nature seeks to recognise its rights *per se*, and not merely as resources for human benefit. This reflects a transformation in contemporary thought, by extending the concept of rights to those who cannot claim them directly.

Considering this shift, new ways of viewing and resolving environmental conflicts have emerged. Regarding water — the thematic focus of this article — it is well established that the State has the responsibility to ensure access[7] through effective public policies, particularly for those in situations of vulnerability (Soares, 2020). Consequently, the prevailing practice of unequal water distribution at the global level demands both national and international policies for its equitable management (Rocha; Khoury; Damasceno, 2018).

Water continues to be underestimated, resulting in its improper use, which has led to growing global concern (Barreiro, 2017). As a result, the recognition of human rights — including the right to water — has been driven by historical struggles against

7 Access to water is not limited to the continuous and sufficient supply for basic needs; it also requires adequate quality and equitable distribution (Barreiro, 2017).

oppression, highlighting the urgent need for an ethical shift in water consumption practices (Soares, 2020). Therefore, water, which is essential across social, cultural, environmental, political, and economic dimensions, demands the active participation of various sectors of society, combined with a disruptive legal conception, to ensure its preservation and conservation (Silva; Silva; Ribeiro, 2023).

Given the foregoing, and considering that the construction of water as a right remains under dispute, the following sections will focus on the human right to water by analysing how this element emerges within international human rights instruments, particularly in relation to the recognition of rivers as subjects of rights.

3. In the course: the pathways of water as a human right

From the 18th century onwards, discussions on human rights intensified, resulting in key documents such as the *United States Declaration of Independence* (1776), the *Declaration of the Rights of Man and of the Citizen* (1789), and the *Universal Declaration of Human Rights* (1948). These documents, influenced by liberalism and natural law theories, carry inherent limitations and reflect the specific historical contexts in which they were produced (Pompeia; Marques, 2018).

Although the *Universal Declaration of Human Rights* (1948) holds significant importance, it has faced numerous criticisms, including: (a) the absence of binding legal force and enforcement mechanisms, relying instead on the goodwill of States[8]; (b) its reflection of a Western model of liberal democracy and welfare, which may not be fully applicable to all cultures and political contexts; and (c) its focus on first-generation (civil and political) and second-generation (economic, social, and cultural) rights, with

8 According to Crawford (2012), state sovereignty is not extinguished by the recognition of human rights. Even when a State violates its obligations, it retains the prerogative to implement the adverse decision, thereby exercising its responsibility. Since human rights treaties generally do not specify the precise conduct required, it is for the State to determine how to comply. Thus, human rights qualify but do not replace sovereignty, and, paradoxically, they reinforce state authority by focusing on the compliance of States.

the absence of any reference to environmental rights standing out as a major criticism, given their growing relevance[9].

At present, science does not recognise any "natural" human right that would legitimise the violation of ecosystem laws. Nonetheless, the anthropocentric view continues to dominate environmental law. Social relations, increasingly marked by new forms of fundamentalism and global violence, cast doubt on the effectiveness of legal techniques that mould the human being as an object of both power and law (Pompeia; Marques, 2018).

At the international level, competition for essential natural goods, such as water, remains a major concern. Historically, access to water was not recognised as a fundamental human right, although global debates and international instruments have progressively addressed this issue (Barreiro, 2017). Due to its vital importance and finite nature, water has transitioned from being regarded as *res nullius* to being recognised as a *common good*, leading to the development of a legal approach that incorporates the socio-environmental and economic values attributed to water (D'Isep, 2019), with international instruments playing a crucial role in the informal recognition of the human right to water (see Table 1).

Table 1 – Main international treaties that recognise the human right to water, either explicitly or implicitly

Instrument	Content
United Nations Water Conference, held in Mar del Plata, Argentina, March 1977.	The first specialised UN conference addressing water-related issues. Its *Action Plan* was considered the most comprehensive reference document on water resources until the drafting of the specific water chapter of *Agenda 21*. It already recognised the content of the human right to water and set targets to ensure universal access to water and sanitation by 1990.

9 The *Universal Declaration of Human Rights*, 1948, inaugurated international human rights law and consolidated the contemporary conception that integrates civil and political rights — developed since the 18th century — with social, economic, and cultural rights, which were driven by labour movements in the 19th and 20th centuries (Trindade, 2011). In this way, human rights gained international prominence with the *Universal Declaration*, while environmental law, as a human right, emerged particularly after the *Stockholm Conference* in 1972 (Portela, 2013). The *African Charter on Human and Peoples' Rights*, adopted in 1981, was the first international instrument to recognise the right to a balanced environment as a human right. In 1988, the Inter-American Human Rights System also incorporated this right through the *Protocol of San Salvador*, under Article 11 (Carvalho, 2011). Consequently, it is evident that the environmental agenda only became a priority for the international community after the *Earth Summit* (ECO-92) in 1992, by which time most of the human rights treaties within both the Global and Inter-American Systems had already been established (Portela, 2013).

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), adopted by the United Nations General Assembly on 18 December 1979.	Established a set of objectives, notably the obligation of States to ensure women adequate living conditions, particularly in the areas of housing, sanitation, electricity, and water supply. In Brazil, under Decree No. 4.377 of 13 September 2002, the Convention promotes the non-discrimination of women in rural areas by requiring adequate water and sanitation services.
Convention on the Rights of the Child, adopted by the UN General Assembly on 20 November 1989.	Incorporated into Brazilian law on 21 November 1990 through Decree No. 99.710, this instrument obliges States to make efforts to ensure that no child is deprived of sanitation services, particularly access to safe drinking water, using appropriate technologies and sanitation solutions.
United Nations Conference on Environment and Development, held in Rio de Janeiro in 1992 (Earth Summit, Rio-92, or Eco-92).	This event resulted in Resolution A/RES/47/193, which declared 22 March of each year as *World Water Day*. One of its main outcomes was the approval of *Agenda 21*, which encouraged States to commit to public policies ensuring access to water and sanitation services for impoverished populations, with a focus on reducing water-related diseases.
General Comment No. 15 (2002), issued by the Committee on Economic, Social and Cultural Rights (CESCR), a division of the UN Economic and Social Council.	Although a non-binding document, it represents a watershed moment by affirming that the human right to water is indispensable for a life in dignity and is a prerequisite for the enjoyment of all other human rights. Furthermore, it asserts that water should not be treated as an economic commodity but as a socio-cultural good that must be managed sustainably.
United Nations General Assembly Resolution A/RES/64/292, adopted in July 2010.	The culmination of the process affirming the human right to water and sanitation. This resolution recognises the right to water (safe, potable, and clean) and sanitation as essential human rights for the full enjoyment of life and all other human rights (Item 136), while also calling upon States and organisations to coordinate efforts to reduce the global deficit in water access (Item 237).
United Nations Conference on Sustainable Development (Rio+20), held in 2012.	The final declaration of the Conference, entitled *The Future We Want*, includes a section dedicated to water and sanitation. It recognises that water is at the core of sustainable development and reaffirms the commitments to implement the human right to safe and potable water and sanitation.

2030 Agenda, adopted by the United Nations General Assembly in 2015.	A global pact signed by 193 UN Member States, establishing 169 targets distributed across 17 Sustainable Development Goals (SDGs). SDG 6 specifically aims to ensure availability and sustainable management of water and sanitation for all. On this occasion, water and sanitation were recognised as interdependent yet autonomous human rights. It is noteworthy that Brazil internally added 8 additional targets to the SDG indicators, totalling 175 national targets.

Source: Prepared by the authors (2024), adapted from Barreiro (2017), Carvalho, Rosa and Miranda (2020), Melo (2018), and Soares (2020).

As observed, water was only partially recognised as a human right — specifically regarding its potability — in 2010 by the United Nations, through a non-binding *soft law* instrument. Nevertheless, major corporations continue to pursue its privatisation, posing significant challenges to sustainability (Barreiro, 2017; Melo, 2018). South America, despite its vast freshwater reserves, faces substantial challenges in water management due to deep economic and social disparities (Melo, 2018). In response, Latin American scholars advocate for a new legal perspective on water, which includes recognising the rights of nature (Câmara; Fernandes, 2018).

In this context, Latin American Constitutionalism proposes that nature be recognised as a subject of rights, inspiring a more ecocentric legal approach. The Ecuadorian Constitution, for instance, expressly enshrines the rights of nature, while the Bolivian Constitution delegates the regulation of such rights to infraconstitutional legislation (Mendonça; Mamed; Almeida, 2023). Some South American countries, such as Uruguay, Bolivia, and Ecuador, have incorporated the right to water into their Constitutions, recognising both the protection of water resources and the rights of nature (Carvalho; Rosa; Miranda, 2020).

However, according to Mendonça, Mamed, and Almeida (2023), achieving effective environmental protection in Latin America requires transcending anthropocentric paradigms and embracing a form of constitutionalism that promotes justice and social equity

while recognising the intrinsic value of nature. The analysis of landmark cases, such as the Vilcabamba River in Ecuador and the Atrato River in Colombia, can serve to illustrate the practical effects of recognising the rights of nature

4. Downstream: the Atrato and Vilcabamba rivers as subjects of rights

As previously discussed, environmental law generally adopts an anthropocentric perspective, whereby nature is regarded as a secondary resource to be exploited for economic production to meet exclusively human needs (Maliska; Moreira, 2017). Consequently, the current ecological and civilisational crisis is attributed to a distorted perception of humanity's role within the universe, resulting in exploitative and unequal relationships between different peoples and species (Câmara; Fernandes, 2018).

In contrast to the anthropocentric model, two landmark cases of judicialisation of environmental conflicts stand out, in which the claimants were not human beings, but rivers themselves. This was made possible by the recognition of nature as a subject of rights within the legal systems of Ecuador and Colombia. As a result, these cases represent a direct challenge to the modern paradigm, as they entail a reorientation of the relationship between humans and nature within the established legal orders

4.1 The Vilcabamba river case, Ecuador

In the context of critiques directed at the Western Eurocentric model and multiculturalism, a pioneering case of judicialisation stands out, in which the claimant was not a human being, but rather the Vilcabamba River itself. This was made possible by a new understanding of the relationship between humanity and nature, aligned with the philosophy of deep ecology, which combines environmental preservation with the attribution of rights to nature as a subject, within a multicultural and pluralistic paradigm (Maliska; Moreira, 2017).

The 2008 Ecuadorian Constitution (Ecuador, 2008) adopts a pluralist approach by integrating various local cultures, breaking away from European colonial domination and rejecting the anthropocentric worldview typical of capitalism. The *derechos de la naturaleza* and the concept of *buen vivir*, enshrined in this constitutional text, emerge as alternatives to the consumerist paradigm that intensively exploits natural resources, threatening both human and environmental survival (Maliska; Moreira, 2017)[10].

The first *leading case* to operationalise the rights of nature occurred in Ecuador through a lawsuit filed in 2010 and decided in 2011, based on the 2008 Constitution, which recognises nature, or *Pachamama*, as a subject of rights. This recognition granted the Vilcabamba River legal personality. In this context, the worldview of the Andean peoples was, for the first time, employed as a legal foundation in court proceedings, reinforcing the historical significance of the case (Moraes, 2013; Câmara; Fernandes, 2018).

During the construction of a road in 2008, debris was dumped into the riverbed, causing significant environmental damage to both the ecosystem and the human communities along its banks. Through an *Acción de Protección*, an innovative legal measure, the river was represented in court by two foreign nationals, Richard Frederick Wheeler and Eleanor Geer Huddle, landowners along the river who had moved to Ecuador in 2007 to pursue a sustainable lifestyle project. The defendants included engineer Carlos Espinosa González, Regional Director for Loja El Oro and Zamora Chinchipe, affiliated with the Ministry of the Environment, the Office of the Attorney General, and the National Water Secretariat (Maliska; Moreira, 2017; Silva; Ferreira; Mori, 2021).

10 The movement set forth by the 2008 Ecuadorian Constitution, reflected in the holistic concept of *buen vivir* (good living), not only grants legal personality to nature but also embraces multicultural and pluralistic coexistence among human beings. *Buen vivir* emerges as an alternative to the anthropocentric–mechanistic model, despite the challenges of fully incorporating Indigenous values into societies that remain heavily influenced by Eurocentrism, such as Brazil. Nevertheless, this does not diminish the prominence of the Ecuadorian constitutional movement. The ethics of *buen vivir* proposes a rupture with the dominant paradigm, which elevates Western capitalist values such as wealth accumulation, destructive competitiveness, domination, and subjugation. It rejects the disintegration and elimination of the *other*, including other species and living beings. This ethical framework is not exclusively Indigenous; rather, it seeks to promote a way of living well, in harmony and peace, preserving natural resources for the continuity of life — including human life. It proposes a new rationality in the relationship between humans and nature, offering an alternative to the dominant worldview of relentless exploitation and consumption (Maliska; Moreira, 2017).

The lawsuit was motivated by the environmental degradation of the Vilcabamba River, caused by the expansion of the Vilcabamba–Quinara road, under the responsibility of the Provincial Government. The plaintiffs alleged violations of the *derechos de la naturaleza* before the Ecuadorian judiciary, following unsuccessful attempts at administrative complaints and inspections. The legal argument was grounded in the preamble of the 2008 Constitution (Ecuador, 2008)[11], which honours *Pachamama* as a principle for citizen coexistence in harmony with nature and promotes a new development regime based on environmental responsibility and respect for the rights of nature. Initially, the action was dismissed on procedural grounds due to lack of passive standing and improper service of process, leading the plaintiffs to appeal to the Provincial Court (Maliska; Moreira, 2017).

The judges of the Provincial Court upheld the appeal, recognising the violation of the rights of nature based on several grounds: proper service of process upon the defendants; the effectiveness of the *Acción de Protección* in safeguarding these rights in the face of specific harm; the importance of environmental protection for both present and future generations; the application of the precautionary principle against potentially harmful activities; the reversal of the burden of proof, requiring the Provincial Government to demonstrate the absence of harm; the absence of an environmental licence for the works; and the necessity of compliance with environmental regulations in project implementation (*Acción de Protección* No. 11121-2011-0010).

Despite the success at second instance, a new lawsuit was filed in 2012 due to the Provincial Government of Loja (GPL) failing to comply with the court's ruling. Even after multiple judicial inspections, the GPL failed to present an environmental licence or a restoration and remediation plan for the river and

11 "We, the women and men, the sovereign people of Ecuador, RECOGNISING our age-old roots, forged by women and men from various peoples, CELEBRATING nature, *Pacha Mama* (Mother Earth), of which we are a part and which is vital to our existence, INVOKING the name of God and acknowledging our diverse forms of religion and spirituality, CALLING UPON the wisdom of all cultures that enrich us as a society, AS HEIRS to the struggles for social liberation against all forms of domination and colonialism, and with a profound commitment to the present and the future, hereby decide to build a new form of public coexistence, in diversity and in harmony with nature, in order to achieve *buen vivir, sumak kawsay* (...)" (Ecuador, 2008).

the areas affected by the debris. As a result, the only action taken was the publication of an apology in a local newspaper in June 2011 (Suárez, 2013).

This case constitutes a historic milestone and has inspired legislative reform movements in several countries, including the recognition of the Whanganui River in New Zealand as a legal entity, and the brief recognition of the Ganges and Yamuna rivers in India as "living entities", a decision later overturned (Maliska; Moreira, 2017; Silva; Ferreira; Mori, 2021).

The lawsuit exemplifies how the legal recognition of nature as a subject of rights can serve not only to protect natural elements but also to safeguard the rights and interests of human communities that depend on these natural assets. However, the legal battle surrounding the Vilcabamba River — marked by significant progress as well as persistent challenges — continues to this day, with the river's representatives still seeking the effective implementation of the environmental reparations ordered against the provincial authorities.

4.2 The Atrato River case, Colombia

In line with the first *leading case* in Latin America concerning the attribution of legal personality to a component of nature, another landmark case occurred in Colombia in 2016. This is the case of the Atrato River, in which a *tutela* action, filed by various civil society organisations, resulted in the river being recognised as a subject of rights. This decision was delivered through Judgment T-622 of 10 November 2016, reported by Justice Jorge Iván Palacio and unanimously supported by the Colombian Constitutional Court. On that occasion, sanctions were imposed on public authorities for their failure to address the environmental damage caused by contamination of the river basin and its tributaries, particularly in the Chocó region (Câmara; Fernandes, 2018). Subsequently, the recognition of this new legal status was extended by the Supreme

Court of Justice to the entire Colombian Amazon, which was likewise recognised as a subject of rights (Pachón; Cuesta, 2020).

The lawsuit in defence of the Atrato River was filed by the *Centro de Estudios para la Ciencia Social, Tierra Digna*, on behalf of local community councils such as the *Consejo Comunitario Mayor de la Asociación Campesina Integral del Atrato* (COCOMOPOCA), the *Asociación de Consejos Comunitarios de Bajo Atrato* (ASOCOBA), and the *Foro Interétnico Solidaridad Chocó* (FISCH), among others. The defendants included the Office of the President and various public agencies. The *Chocó Biogeográfico*, where the legal action originated, is one of Colombia's richest regions in terms of biodiversity and possesses remarkable ethnic and cultural diversity. This special conservation area comprises humid and tropical ecosystems, as well as national parks such as Los Katíos, Ensenada de Utría, and Tatamá. The Atrato River, as described in the judgment, is the most voluminous river in Colombia and the third most navigable in the country. Its basin is rich in gold, timber, and fertile land, supporting numerous communities along its banks (Câmara; Fernandes, 2018).

The legal action was motivated by the urgent need to halt illegal mining and logging practices, which involved the use of dredges and backhoes, as well as to combat contamination resulting from unlawful mining operations. Among the most severe environmental issues were mercury spills, cyanide leaks, and other highly toxic chemical discharges, posing serious health risks to the local communities. Within this context, the claim emphasised the importance of protecting not only collective rights but also the fundamental rights of the affected populations, including the rights to life, health, water, food security, a healthy environment, culture, and territory (Câmara; Fernandes, 2018).

Initially, the Administrative Tribunal of Cundinamarca dismissed the claim, holding that the interests at stake were collective in nature and therefore should be pursued through a public interest action (*acción popular*). Upon appeal to the Council of State, the decision was upheld, reaffirming the dismissal of the *tutela*.

Following the unsuccessful outcomes in the lower courts, the case was brought before the Colombian Constitutional Court. After gathering evidence from various institutions, conducting on-site inspections, and producing technical reports, the Review Chamber ruled in favour of the claim. The Court not only recognised the right to a healthy environment but also acknowledged the need to remedy state omissions in order to guarantee the fundamental rights of the affected ethnic communities. Most importantly, it conferred upon the Atrato River the status of a subject of rights, affirming its intrinsic value (Câmara; Fernandes, 2018).

The legal reasoning of the judgment drew upon the logic of *buen vivir*, albeit without explicitly naming it. By classifying nature as a subject of rights, the Court not only challenged the country's institutional structures but also comprehensively redefined the concept of the environment within the Colombian legal system (Pachón; Cuesta, 2020). This decision sought to establish new jurisprudence, as reflected in its reasoning:

> *[...]* ***CUARTO - RECONOCER*** *al río Atrato, su cuenca y afluentes* ***como una entidad sujeto de derechos*** *a la protección, conservación, mantenimiento y restauración a cargo del Estado y las comunidades étnicas, conforme a lo señalado en la parte motiva de este proveído en los fundamentos 9.27 a 9.32. (Republica de Colombia, 2016).*

The author of the judgment acknowledged the need to advance the interpretation of applicable legislation and the means of protecting fundamental rights, in light of the severity of the environmental degradation and the threat posed to the Atrato River basin. Within this context, the reasoning adopted a non-anthropocentric perspective, emphasising the necessity of a paradigm shift and its implications for nature-related claims, particularly through the lens of biocultural rights (Câmara; Fernandes, 2018).

According to Pachón and Cuesta (2020), the decision sought to establish a new legal category, based on a commendable argument in defence of biocultural rights. However, the authors note that no prior analysis was conducted regarding the consequences of such a construction, its scope, or its constitutive elements. Although the idea had been referenced in foreign jurisprudence and legal systems, the proposed recognition was considered superficial, failing to clarify how it could effectively contribute to the restoration and protection of the affected environment. While the ruling acknowledged certain environmental rights, it did not provide clear elements for understanding the new legal category or the proposed paradigm of protection.

Moreover, the Court's objective of protecting the environment and raising public awareness, while laudable, was insufficient to provide a sound legal basis for the creation of this new category. The judgment fell short in its engagement with theories on legal personality, the capacity to hold rights and duties, and the historical evolution of such concepts. It lacked a robust doctrinal foundation, which should have included classical theories — such as the fiction theory — as well as contemporary approaches grounded in economic and legal analysis. Thus, despite references to international instruments and environmental principles, no explicit national legal basis was established to support this reconfiguration.

Another significant critique concerns the absence of practical or technical tools capable of ensuring more effective care and restoration of the natural environment. Instead, the decision focused on theoretical debates regarding the legal definition of the environment and the perspectives of local communities, without offering concrete solutions to the challenges faced (Pachón; Cuesta, 2020).

The authors also identified a misapplication of the precautionary principle in the Court's reasoning. Although the intention to prevent future harm is commendable, the principle should be applied only in preventive contexts — that is, before

damage occurs. In the case of the Atrato River, the harm was historical, proven, and ongoing. Therefore, other principles — such as the principle of restoration at the source of harm — would have been more appropriate to justify the need to rehabilitate the affected environment and halt the damaging activities in the region (Pachón; Cuesta, 2020).

Finally, the authors questioned the effectiveness of the judgment in achieving its intended outcomes. Although it introduced a new legal device for recognising nature as a subject of rights within the Colombian legal system, the effectiveness of the measures was undermined by inadequate implementation. The new paradigm failed to include clear and precise indicators to assess and monitor actions, resulting in an illusion of change. Consequently, the lack of effective enforcement mechanisms created a trap of judicial non-compliance, ultimately compromising environmental protection and the guarantee of fundamental rights (Pachón; Cuesta, 2020)

5. Final considerations

This research aimed to understand the role of nature within contemporary legal rationality, particularly considering Latin American experiences that enshrine the rights of nature. The cases of the Vilcabamba River in Ecuador and the Atrato River in Colombia served as starting points for analysing the challenges and advances associated with recognising nature as a subject of rights. These experiences contributed to addressing the central questions of the research: how can nature be accommodated within a predominantly anthropocentric legal system, and what are the implications of such recognition for environmental protection and human rights?

The study demonstrated that the rights of nature can serve as an innovative legal category, providing the foundation for decisions that disrupt the prevailing anthropocentric logic. The analyses revealed that the examined cases have had significant impacts in strengthening eco centric paradigms, highlighting the importance of the Andean cosmovision and the concept of *buen vivir* as ethical-philosophical foundations for constitutional environmental law.

Furthermore, it was possible to identify the consequences of these decisions for both environmental protection systems and the rights of traditional communities, demonstrating that they may inspire ecological movements in other regions, including Brazil.

However, the research also revealed gaps and challenges that remain to be addressed. Firstly, the absence of practical tools for enforcing judicial decisions limits the effective implementation of environmental reparations. Additionally, the lack of legal procedures and mechanisms to operationalise the legal personality of nature poses a significant challenge to the consolidation of this new legal paradigm. Moreover, the improper application of the precautionary principle — after harm has already occurred, as seen in the analysed cases — highlights the need to improve preventive legal strategies.

Another critical issue identified was the insufficiency of mechanisms to monitor and assess the effectiveness of public and judicial policies concerning the rights of nature. This gap may result in decisions that, although innovative, lack tangible impact on environmental protection and the empowerment of local communities.

Finally, it is emphasised that the transition towards an eco centric legal model requires greater collective awareness and a democratic, participatory approach. It is essential that the State plays an active role in the formulation and implementation of socio-environmental public policies, ensuring that the rights of nature are not merely formalised within the legal framework but are also effectively integrated into governance practices and environmental protection measures.

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