RIGHTS OF NATURE AND WATER IN COLOMBIA: CHALLENGES FOR ENVIRONMENTAL JUSTICE IN LATINO-AMERICA

DERECHOS DE LA NATURALEZA Y EL AGUA EN COLOMBIA: DESAFÍOS PARA LA JUSTICIA AMBIENTAL EN LATINOAMÉRICA

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Abstract

The objective of this article is to analyze the existing tensions between the defense of nature's rights, the regulatory frameworks that protect the environment, and judicial decisions aimed at safeguarding ecosystems and community rights. The methodology employed is analytical and is based on a theoretical study of nature's rights and contemporary debates surrounding them, complemented by a review of the most relevant judicial decisions that have recognized these rights. Within this framework, a critical analysis is conducted on the coherence between current regulations, the needs of the populations, and the effective enforcement of judicial rulings. The results show that, in the Colombian context, as in other Latin American countries, there are still significant limitations in understanding and applying an ecocentric approach that harmonizes nature's rights with human rights. Instead, tensions prevail that hinder the realization of environmental justice from a legal perspective. In the final considerations, the article highlights the need for structural and institutional reforms within the legal framework to ensure the stability and integrity of the country's river ecosystems, as well as the right to water and basic sanitation.

Keywords: Colombian environmental law, fundamental right to water, river rights, public water policy and management, political ecology and rights of nature.

Resumen

El objetivo de este artículo es analizar las tensiones existentes entre la defensa de los derechos de la naturaleza, los marcos regulatorios que protegen el medio ambiente y las decisiones judiciales orientadas a la protección de los ecosistemas y los derechos

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de las comunidades. La metodología empleada es analítica y se basa en un estudio teórico sobre los derechos de la naturaleza y los debates contemporáneos en torno a ellos, complementado con una revisión de las decisiones judiciales más relevantes que han reconocido estos derechos. A partir de este marco, se realiza un análisis crítico de la coherencia entre la normativa vigente, las necesidades de las poblaciones y el cumplimiento efectivo de las sentencias judiciales. Los resultados evidencian que, en el contexto colombiano, al igual que en otros países de América Latina, persisten limitaciones para comprender y aplicar un enfoque ecocéntrico que armonice los derechos de la naturaleza con los derechos humanos. En su lugar, prevalecen tensiones que obstaculizan la realización de la justicia ambiental desde una perspectiva jurídica. En las consideraciones finales, el artículo propone la necesidad de reformas estructurales e institucionales en el marco legal con el fin de garantizar la estabilidad e integridad de los ecosistemas fluviales del país, así como el derecho al agua y al saneamiento básico.

Palabras clave: derecho ambiental colombiano, derecho fundamental al agua, derechos de los ríos, política y gestión pública del agua, ecología política y derechos de la naturaleza

Summary: 1. Introduction. 2. Pollution, degradation and contamination of rivers: Colombian case. 3. Existing regulatory framework for the protection of water sources 3.1. Changes in jurisprudence regarding the rights to nature. 4. Difficulties and tensions in judicial decisions. 5. Conclusions. 6. References.

1 INTRODUCTION

In the context of a transition that is taking place in Latin America regarding the introduction of the rights of nature in legal systems and therefore the need for the functioning of an environmental justice that protects and guarantees these rights, this article describes the tools that are being considered in the Colombian case, as well as the main problems for the implementation of environmental justice.

The tools' description reveals the existing tensions within the regulatory framework and also between the local practices of companies and communities with the rights of rivers. The article starts from the premise that nature must be understood as a whole in which there is a relationship of interdependence between living beings. There must be, therefore, a balance between society and the natural ecosystem, as the principles of ecocentrism would assert[3]. Its fundamental premise states that human beings are not the center of the global living planetary system, but a part of it. This should lead to a more harmonious and reciprocal relationship in which we accept that humans can only survive if an eco-systemic balance is

[3] The difference between eco-centrism and bio-centrism is that the former encompasses 'a set of ethics that believes in the inherent value of all of nature and considers morally and integrally each ecosystem, the biosphere and the Earth'. Biocentrism refers to a set of ethics that focus exclusively on the moral consideration of living beings. Different approaches have been developed around biocentrism: 1) Zoocentrism that reserves moral consideration for species that feel and for individuals with consciousness; 2) Strong or egalitarian biocentrism that argues for the respect of animal and vegetable species independent of their capabilities; 3) Moderate biocentrism that considers the value of life, with the caveat that not all beings enjoy the same moral consideration, since this depends on the complexity of each living system." C.E. TOCA TORRES, Claudia Eugenia. Las versiones del desarrollo sostenible. Sociedade e Cultura, v. 14, n. 1, 2011. Disponível em: <http://www.revistas.ufg.br/index.php/fchf/article/view/15703>. Acesso em: 24 ago. 2022.

maintained[4]. The introduction of the rights of nature implies understanding that we are part of a "network that interacts with nature" and our ethics, values and behaviors must be in harmony with it[5]. We also need an understanding of a relational ontology in which we are concerned not only with populations and species, but also with ecological communities[6].

The human-nature relationship is shaped by the valuation that the former makes of the latter, from which it takes a role as an object, subject, or resource[7]. Recognizing the rights of nature implies a revision of the form of life and the concepts that have shaped its configuration since the beginning of modernity and that threaten eco-systemic balance. In the Colombian case, the recognition of the rights of nature as well as the human rights creates tensions in their satisfaction that are evident in differences between the rules indicated by jurisprudence and the existing normative frameworks. Describing these tensions between legal forms can broaden the paths of justiciability for degradation, contamination, and privatization of rivers.

In order to develop the argument thus stated, the first part will describe the problems related to pollution, degradation and usurpation of water sources. We will revise the existing regulatory frameworks that establish a relationship between humans and nature based on the control of discharges into rivers, concentrating on the regulation of the right to water and sanitation and the affectation of water sources. The rights to rivers have not been introduced in the existing regulatory frameworks. The second part will present the jurisprudence of the High Courts in cases related to the problem of river pollution, where there is a clear argument in favor of the rights of rivers, and finally the difficulties and tensions present in the judicial decisions issued by the country in this regard.

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4 It is an understanding based on relational ontologies of nature and humans. Modern ontology, Escobar points out, is dualistic, based on the separation between 'the human and the non-human, nature and culture, individual and community, "us" and "them", mind and body, the secular and the sacred, reason and emotion, etc.), this modernity has appointed itself as with the right to be "the" World (civilized, free, rational) at the expense of other existing or possible worlds'. Relational ontology 'can be defined as one in which nothing (neither humans nor non-humans) pre-exists the relations that constitute us. We all exist because everything exists'. ESCOBAR, Arturo. Territorios de diferencia: la ontología política de los "derechos al territorio". Cuadernos de Antropología Social, n. 41, p. 25–38, 2015. Disponível em: <https://dialnet.unirioja.es/servlet/articulo?codigo=5281928>. Acesso em: 31 jan. 2025.

5 CASTILLO-ÁVALOS, Yerko; CEBERIO-DE-LEÓN, Iñaki. Hacia un contractualismo ecocentrista. Gestión y Ambiente, v. 20, n. 1, p. 105–112, 2017. Disponível em: <https://revistas.unal.edu.co/index.php/gestion/article/view/64100>. Acesso em: 31 jan. 2025.

6 ECKERSLEY, Robyn. Environmentalism and political theory: toward an ecocentric approach. London New York: Routledge, 2003; ECKERSLEY, Robyn. Ecological Intervention: Prospects and Limits. Ethics & International Affairs, v. 21, n. 3, p. 293–316, 2007. Disponível em: <https://www.cambridge.org/core/product/identifier/S0892679400004810/type/journal_article>. Acesso em: 31 jan. 2025.

7 GUDYNAS, Eduardo; *Derechos de la naturaleza*: ética biocéntrica y políticas ambientales, Lima: Programa Democracia y Transformación Global, 2014.

2 POLLUTION, DEGRADATION AND CONTAMINATION OF RIVERS: COLOMBIAN CASE

Pollution has been legally defined as an alteration of nature by substances or forms of energy produced by human activity in concentrations, levels or quantities capable of interfering with the welfare and health of people, threatening the flora and fauna, degrading the quality of the environment or affecting resources (as defined by the Law 23 of 1973)[8]. It assumes that the equilibrium of nature is modified in such a way that it loses the optimal conditions for the uses for which it was intended, presenting physical, chemical or biological alterations that prevent it from fulfilling its ecological functions[9].

The main sources of pollution due to human activities are the discharges of urban and agricultural wastewater; dumping of livestock farms' residues; industrial discharges; and dumping of polluting compounds by mining operations, motor boats and the construction of dams[10]. Several studies indicate that although Colombia is rich in water, surface waters are highly polluted[11]; such is the case of the following rivers: Bogotá; Chicamocha; Medellín; Cauca; Suárez; Pasto; Chinchiná, Otún and Atrato[12]. This pollution is caused by the discharge of untreated or inadequately treated wastewater and by the residues left by mining, industrial and agricultural activities in the bodies of water[13]. This affects the rights of the rivers and the human and other living populations that are supplied by them in the territory[14].

Water quality is affected by waste from mining and oil exploitation, but also from industrial and land activities such as iron and steel works, tanning, cattle ranching, and certain agricultural activities. Another factor is the absence of adequate sanitation systems, which is evidenced by the measurement of the quality of water consumed by the population through the Water Quality Risk Index

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8 The norms and jurisprudence described in this article pertain to Colombia, produced by the country's legislature and high courts.

9 GARCÍA RODRÍGUEZ, Manuel. "La hidrosfera. El ciclo del agua. La contaminación del agua. Métodos de análisis y depuración. El problema de la escasez del agua". In: Biología y Geología. [s.l.]: Cen Oposiciones, 2009.

10 INSTITUTO NACIONAL DE SALUD. Informe Nacional del índice de Riesgo de la Calidad del Agua Potable -IRCA urbana y rural por municipio 2020 – 2023. Bogotá: Instituto Nacional de Salud, 2023. Disponível em: <https://www.ins.gov.co/BibliotecaDigital/informe-nacional-irca-urbano-y-rural-por-municipio-2020-2023-version-2.pdf>.

11 COLOMBIA. Decreto 1076 (2015). Sector Ambiente y Desarrollo Sostenible – Gestor Normativo. <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=78153>.

12 ARCGIS. Homepage. <https://www.arcgis.com/apps/MapTour/index.html?appid=b63768a5854c47328 036d2eff414f5d5>.

13 Colombia has 1,122 municipalities; most of them cannot evaluate water risk. Ministerio de Vivienda; Ministerio de Salud y Protección Social; Instituto Nacional de Salud. Informe Nacional de calidad del agua para consumo humano INCA. 2019. Disponível em: <https://www.minvivienda.gov.co/sites/default/files/documentos/informe-calidad-de-agua-2019.pdf>.

14 *Ibid*.

(IRCA)[15], which for 2019 indicated that there was no risk in 116 municipalities while the risk was high in 147 municipalities of rural characteristics[16].

The IDEAM (Institute of Hydrology, Meteorology and Environmental Studies)[17] reveals in its study on the main factors affecting water quality that the generation of pollutants comes mainly from the domestic sector, the industrial sector (as the largest contributor of net organic load discharged to water flows) and the coffee processing industry, finding that in the year 2016 (i) the net biodegradable organic load discharged to surface water flows was 1.174.362 t/year; (ii) the total net chemical oxygen demand load discharged to water systems was 2.906.555 t/year; (iii) the net solids load discharged to surface watercourses was 1.364.660 t/year; (iv) the net total nitrogen load discharged to surface watercourses was 144.989 t/year; and (v) the net PT load discharged to surface watercourses was 33.165 t/year.

In relation to the discharge of quicksilver by gold and silver processing operations, the IDEAM[18] notes that in 2016 it was estimated at 183 tons going to ground and water sources, finding that the subareas with greater impact from this kind of dumping were directly the rivers Magdalena (Brazo Morales), Guaitara, Mira, Bajo Nechí (md), Cimitarra, Iscuandé and Telembí.

The consequences of the pollution situation are worrying, in addition to the actual environmental impact. UN (2019)[19] makes clear the potential reduction of economic growth and people's health impairment due to pour water sources, being specially alarming that, according to Gómez-Duran[20] an estimated 64% of the population is at risk of contaminated water consumption in Colombia, affecting rural areas in greater proportion, specifically the Pacific and the Amazon regions.

Among the groups that are most affected by pollution are women and the poorest population, but also minors due to the early stage of their body-organ

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15 INSTITUTO NACIONAL DE SALUD. Informe Nacional del índice de Riesgo de la Calidad del Agua Potable -IRCA urbana y rural por municipio 2020 – 2023. Bogotá: Instituto Nacional de Salud, 2023. Disponível em: <https://www.ins.gov.co/BibliotecaDigital/informe-nacional-irca-urbano-y-rural-por-municipio-2020-2023-version-2.pdf>.

16 MINISTERIO DE VIVIENDA; MINISTERIO DE SALUD Y PROTECCIÓN SOCIAL; INSTITUTO NACIONAL DE SALUD. Informe Nacional de calidad del agua para consumo humano INCA. 2019. Disponível em: <https://www.minvivienda.gov.co/sites/default/files/documentos/informe-calidad-de-agua-2019.pdf>.

17 INSTITUTO DE HIDROLOGÍA, Meteorología y Estudios. Reporte de Avance del Estudio del Agua 2018. Bogotá, D.C: [s.n.], 2018. Disponível em: <http://www.ideam.gov.co/documents/14691/125678471/Estudio+Nacional+del+Agua+2018_Cartilla+de+avance.pdf/995f9d15-740c-4e46-9aa5-8d8b5c199f29?version=1.0>.

18 *Ibid*.

19 (2019). Homepage. <https://news.un.org/es/story/2019/08/1460891>.

20 GÓMEZ-DUARTE, Oscar. Contaminación de agua en países de bajos y medianos recursos es un problema de salud pública global. *Revista de la Facultad de Medicina*, v. 66, n. 1, p. 7–8, 2018. Disponível em: https://revistas.unal.edu.co/index.php/revfacmed/article/view/70775. Acesso em: 31 jan. 2025. Disponível em: <https://revistas.unal.edu.co/index.php/revfacmed/article/view/70775>. Acesso em: 31 jan. 2025.

development[21], which not only manifests itself in recurrent diarrhea, but also in acute and chronic malnutrition, and alterations in psychomotor development[22].

Given that human supply comes mainly from surface water and among these, from rivers as the main source of water intake, their contamination aggravates the situation of poverty and generates the displacement of multiple rural communities that have a close relationship with the territory to carry out their life projects[23] .

At the national level, the Ministry of Housing, City and Territory and the Ministry of Health have a system for reporting the effects of pollution on rivers called the Information System for Monitoring the Quality of Water for Human Consumption-SIVICAP[24]. In the 1,122 municipalities of the country. Unfortunately, in 633 of those municipalities there is no information on the risks to water quality. This is due to the fact that the health authorities in these municipalities do not report on water quality using the SIVICAP system[25]. application that allows all the municipal health authorities to report data on water quality surveillance, based on their inspection, surveillance, and control activities in their territory[26]. This water quality report would make it possible to build a risk map[27] which is essential for the formulation of a public policy for the protection, conservation, maintenance and restoration of the rivers that are in charge of the State at all levels and for all the communities. It is also essential for the formulation of a public health policy that responds to the needs of the population due to the presence of waterborne diseases such as Acute Diarrheic Diseases-EDA, Hepatitis A, Typhoid and Paratyphoid Fever and Foodborne Diseases ETA[28].

Monitoring the institutional response to the situation of water pollution in the country, we observe that not enough information is available to know the situation in the country's rivers, nor the level of risk of the water consumed by the inhabitants of the territory. The IRCA (Water Quality Risk Index) only reflects a partial reality of the situation because it does not have data for the whole country and only evaluates those water resources already treated by treatment systems, without examining the

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21 MINISTRO DE AMBIENTE Y DESARROLLO SOSTENIBLE. Diagnóstico Nacional de Salud Ambiental. 2012. Disponível em: <https://www.minsalud.gov.co/sites/rid/Lists/BibliotecaDigital/RIDE/INEC/IGUB/Diagnostico%20de%20salud%20Ambiental%20compilado.pdf>.

22 GÓMEZ-DUARTE, Oscar. Contaminación de agua en países de bajos y medianos recursos es un problema de salud pública global. Revista de la Facultad de Medicina, v. 66, n. 1, p. 7–8, 2018. Disponível em: <https://revistas.unal.edu.co/index.php/revfacmed/article/view/70775>. Acesso em: 31 jan. 2025.

23 SUELT COCK, Vanessa. Dimensiones territoriales de la transición colombiana a la luz de vulneraciones de DDHH por parte de las empresas transnacionales mineras. In: Responsabilidad empresarial, derechos humanos y la agenda del derecho penal corporativo. 1a. Valencia: Tirant lo Blanch, 2021, p. 309-329.

24 COLOMBIA. Decreto 1575 (2007). Por el cual se establece el Sistema para la Protección y Control de la Calidad del Agua para Consumo Humano. <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=30007>.

25 *Ibid*.

26 Homepage. <https://www.ins.gov.co/sivicap/paginas/sivicap.aspx>.

27 COLOMBIA. Decreto 1575 (2007). Por el cual se establece el Sistema para la Protección y Control de la Calidad del Agua para Consumo Humano. <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=30007>.

28 INSTITUTO NACIONAL DE SALUD. Enfermedades Vehiculizadas por Agua-EVA e Índice de Riesgo de la Calidad-IRCA. Colombia 2014. Colombia: Instituto Nacional de Salud, 2015.

quality of the water sources. SIVICAP on the other hand, depends on reports made by the environmental authorities and the providers of domestic public utilities without means of enforcing this reporting which therefore remains fragmentary.

3 EXISTING REGULATORY FRAMEWORK FOR THE PROTECTION OF WATER SOURCES

The international legal system has regulated the protection of environment and natural resources through various binding and *soft law* instruments related to the rights to rivers and the protection of water sources.

In the previous section we described the critical situation of river pollution in Colombia, which shows how water sources are affected and how river rights are insufficiently guaranteed. We saw how this contamination affects the fundamental right to water, being the rivers the main human source of surface water intake. This situation is recurring despite the fact that the country has ratified various instruments for the protection of rivers and water sources from 1979 to the Agenda for Sustainable Development Goals 2030.

Among the most important binding instruments are the Tratado de Cooperación Amazónica[29] the Convention on Wetlands of International Importance especially as Waterfowl Habitat[30]; the adoption of the Strategic Plan for Biodiversity 2011-2020[31] where one of its 20 targets is the conservation of biodiversity through effectively and equitably managed systems; the Convention on Biological Diversity ratified in 1997[32] whose emphasis is on the conservation and rational management of wetlands and their recognition for their economic, cultural, scientific and recreational value, the loss of which would be irreparable as regulators of hydrological regimes. The Decision 523 of 2002 of the Andean Community of Nations is a regional strategy for the protection of biodiversity in the countries of the Andean tropics. This decision refers to the need for sectoral policies and development projects with subregional impact to incorporate the sustainable use of

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[29] This treaty was incorporated into Colombian legislation through Law 74 of 1979, which calls for joint actions for the preservation of the environment and the conservation and rational use of the natural resources of the Amazon due to the eco-systemic importance of the Amazonian rivers in the process of economic and social development of the region. In 1998, the Amazon Cooperation Treaty Organization was created through an amendment to the ATT, which was approved by Colombia through Law 690 of 2001. COLOMBIA, Congreso de Colombia, Ley 74 de 1979, Por medio de la cual se aprueba el trabajo de cooperación Amazónica. 1979. Disponível en: <https://www.macia sabogados.com/es/docs/668-ley-74-de-1979/>. Acesso em: 5 fev. 2025.

[30] COLOMBIA. Congreso de Colombia, Ley 165 de 1994, Por medio de la cual se aprueba el "Convenio sobre la Diversidad Biológica", hecho en Río de Janeiro el 5 de junio de 1992. 1992. Disponível em: <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=37807>. Acesso em: 3 fev. 2025.

[31] CONVENIO SOBRE LA DIVERSIDAD BIOLÓGICA. Plan Estratégico para la Diversidad Biológica 2011-2020. Disponível em: <https://www.cbd.int/undb/media/factsheets/undb-factsheet-sp-es.pdf>.

[32] COLOMBIA. Congreso de Colombia, Ley 357 DE 1997, Por medio de la cual se aprueba la "Convención Relativa a los Humedales de Importancia Internacional Especialmente como Hábitat de Aves Acuáticas", suscrita en Ramsar el dos (2) de febrero de mil novecientos setenta y uno (1971). 1997. Disponível em: <https://www.suin-juriscol.gov.co/viewDocument.asp?ruta=Leyes/1658710>. Acesso em: 3 fev. 2025.

biodiversity and its conservation[33]. The Agenda 2030 for Sustainable Development that in its 6th objective states that countries must ensure the availability and 'sustainable management of water and sanitation for all'. Its targets include ensuring the conservation, restoration and sustainable use of inland freshwater ecosystems and the services they provide, particularly wetlands and related ecosystems.

Other relevant instruments for the interpretation of binding instruments in Colombia are the Stockholm Declaration (1972); the Mar del Plata Action Plan which contains a series of recommendations on water resources assessment; the Dublin Declaration which recognizes as a serious threat to sustainable development and environmental protection the scarcity and abusive use of freshwater as a finite resource. The Agenda 21 of the 1992 United Nations Conference on Environment and Development, includes in its chapter 18 the '*Protection of the quality and supply of freshwater resources: application of integrated approaches to the development, management and use of freshwater resources*'[34].

In accordance with the international regulatory framework, Colombia has developed a series of regulations that seek to enforce the international norms. Thus, the Decree-Law 2811 of 1974 (National Code of Renewable Natural Resources and Environmental Protection – hereinafter CNRNR-), and the 1991 Constitution contain various provisions aimed at the regulation, protection and defense of natural resources.

For the conservation and preservation of water, the CNRNR provides for measures to guarantee water quality and set that watercourses, water regime and quality may not be altered, nor may their legitimate use be interfered with, without the permission of the competent authority (Article 132). It also indicated that sources such as waterfalls, lakes and other water reservoirs or currents (natural or artificial) in areas declared worthy of protection, as well as waters intended for human and animal domestic consumption and food production or that are breeding grounds and habitats of crustacean, fish and other species requiring special management, are subject to special protection and control.

The regulations adopted since 1978[35] and in force today in Decree 1076 of 2015 prohibits the infringement of the aquatic environment through dumping of polluting substances or changes in flows without permit that affect water resources, flora, and fauna. The alterations of water flows for public and private water uses are regulated. There is a National Policy for the Integrated Management of Water Resources *that considers water as a factor of economic development and social welfare.*

The regulations point to the need to characterize and optimize the water supply, improve quality, and minimize water resource pollution, and to develop a comprehensive management of risks associated with water supply and its availability. These objectives have strategies that are developed by the National Water Plan.

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33 COLOMBIA, Corte Constitucional, Sentencia de Constitucionalidad no 227-99 de Corte Constitucional, 14 de Abril de 1999. Disponível em: <https://vlex.com.co/vid/43676320>. Acesso em: 3 fev. 2025.

34 (1999). Homepage. <https://www.gdrc.org/uem/water/agenda21chapter18.html>.

35 Articles 238 and 239 of Decree 1541 of 1978. COLOMBIA. Decreto 1541(1978). Por el cual se reglamenta la Parte III del Libro II del Decreto-Ley 2811 de 1974: "De las aguas no marítimas" y parcialmente la Ley 23 de 1973. <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=1250>.

Among the most relevant institutions are the Ministry of Environment and Sustainable Development, the Regional Autonomous Corporations, the National Authority of Environmental Licenses, research institutes, environmental secretariats in the municipalities and departments[36].

There is also a criminal regime that penalizes behaviors that affect natural resources. This regime was modified in 2021[37], and includes crimes such as the violation of borders for the exploitation or utilization of natural resources (Art. 329); damage to natural resources (Sec. 331): environmental pollution (Sec. 332), environmental contamination by exploitation of mining or oil deposits (Sec. 333), invasion of areas of special ecological importance (Sec. 337), usurpation of water bodies (Sec. 262), water pollution (Sec. 371).

The regulations and institutional framework described above show tensions between the mandates of international norms as an aspirational ideal and its development at the national level. Given the reality of rivers in Colombia, there is also a tension between the rights of rivers and human rights. Since the 1970s, regulations have approached rivers from the point of view of human consumption, not from the point of view of river care and restoration. This relationship of exploitation is reflected in the fact that the systems of institutions responsible for conserving and protecting the rights of nature do not have sufficient information on the reality of the rivers in the country, and therefore cannot implement a public policy for their care that protects the rights of rivers, and, recognizing the close relationship between them, the protection of communities dependent on its ecosystem.

3.1 Changes in Jurisprudence Regarding the Rights to Nature

The first ruling that established a river as a subject of rights and its relationship with the right to water was ruling by the Constitucional Court of Colombia T-622 of 2016, which raises the right to water as a water source to constitutional rank[38]. It also establishes the relationship between the contamination

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[36] COLOMBIA. Congreso de Colombia, Ley 99 de 1993, por la cual se crea el Ministerio del Medio Ambiente, se reordena el Sector Público encargado de la gestión y conservación del medio ambiente y los recursos naturales renovables, se organiza el Sistema Nacional Ambiental, SINA, y se dictan otras disposiciones. 1993. Disponível em: <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=297. Acesso em: 3 fev. 2025, COLOMBIA. Decreto 1076 (2015). Sector Ambiente y Desarrollo Sostenible – Gestor Normativo. <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=78153>, COLOMBIA. Decreto 3573 (2011). Por el cual se crea la Autoridad Nacional de Licencias Ambientales –ANLA– y se dictan otras disposiciones. <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=64920>, COLOMBIA. Congreso de Colombia, Ley 136 de 1994, Por la cual se dictan normas tendientes a modernizar la organización y el funcionamiento de los municipios. 1994. Disponível em: <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=329>. Acesso em: 3 fev. 2025.

[37] COLOMBIA. Congreso de Colombia, Ley 1453 de 2011,Por medio de la cual se reforma el Código Penal, el Código de Procedimiento Penal, el Código de Infancia y Adolescencia, las reglas sobre extinción de dominio y se dictan otras disposiciones en materia de seguridad. 2011. Disponível em: <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=43202>. Acesso em: 3 fev. 2025.

[38] COLOMBIA, Constitutional Court of Colombia. Judgment T-622 of 2016. Available at: <https://www.corteconstitucional.gov.co/relatoria/2016/t-622-16.htm>. This rulling take into account: The Declaration of Mar del Plata [1977], the Dublin Declaration [1992], the Declaration of Rio de Janeiro [1992],

of the Atrato River, its tributaries and surrounding territories with the violations of the rights to life, health, water, food security, a healthy environment, culture and territory of ethnic communities.

The Court notes that the contamination factors in the Atrato River due to illegal mining extraction have led to the dumping of toxic chemicals that represent a high risk to the river's biodiversity and to the life and health of the communities. The water is consumed directly by the communities and the river is their main source for their life projects. Consequently, it considered, from an eco-centric vision, that the contamination suffered by the river is an attack on its rights, as well as on the rights of the communities, insofar as there is a close relationship between the communities and the river. It recognizes in this relationship the connection between territorial rights and the cultural rights of ethnically differentiated communities, through the figure of biocultural rights defined as the 'profound and intrinsic connection that exists between nature, its resources and the culture of the ethnic and indigenous communities that inhabit them, which are interdependent and cannot be understood in isolation'.

The Court upholds the superior interest and protection of nature in the legal system, which from an eco-centric conception, conceives nature as a subject of rights, which must be recognized by the State. The protection of rivers will be in charge of representatives of the different communities, recognizing their plural worldviews. Starting from the premise that the Earth does not belong to humans, but it is the other way around, so the human species is not the owner of the other species or of the resources or destiny of the planet, the Court establishes that biocultural diversity in this eco-centric perspective implies the recognition of the link and interrelation between culture and nature, so that respect for nature must be based on a system of thought that is based on the conception of the human being as an integral part of nature and not as a dominator who uses and exploits it, thus recognizing the role of the human being in the circle of life.

The judgment recognizes that there are complex relationships between rivers and those who inhabit the territory, one of them is the quality of water, which can affect the rights to life, health and food security. Judgment T-201/17, according to General Comment No. 15 indicates that

> *(...) water must be free of microbes and parasites, as well as chemical and radiological substances, which may constitute a threat to human health. Water should also be of an acceptable color, odor and taste, so that people do not resort to other sources that may appear more attractive but are contaminated.*

To this end, the State is responsible for the protection of water resources. This protection is materialized through

> *(...) environmental public policies; issuance of social policy. It must also outline the guidelines for their protection in the National Development Plan, which should be*

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the Action Plan of the United Nations International Conference on Population and Development [1994], and the New Agenda for Sustainable Development [2015]. The CIDH (Inter-American Court of Human Rights) jurisprudence in the cases of the Sawhoyamaxa Community v. Paraguay [2006] and Xákmok Kásek Community v. Paraguay [2010].

articulated with the planning of sectional and local development, as well as land use planning at the local level[39].

Other rulings have recognized the right of rivers having as a reference the Ruling T-622 of 2017. Among them, a ruling by the Administrative Court of Tolima recognized the Coello, Combeima and Cocora rivers, their basins and tributaries as 'individual entities, subject to rights to protection, conservation, maintenance and restoration by the State and the communities'[40]. Other are the decision of the Superior Court of Medellín that recognized the 'Cauca River, its river basin and its tributaries as an entity subject to the rights of protection, conservation, maintenance and restoration by the Empresa de Servicios Públicos de Medellín E.S.P [EPM] and the State'[41]; the first instance judgment of the First Criminal Circuit Court of Neiva[42] that recognized the 'Magdalena River, its basin and tributaries as an entity subject to the rights of protection, conservation, maintenance and restoration by the State, Enel-Emgesa and the community'; the judgment of the State Council that in a second instance judgement recognized the Quindío River, from its source, its basin, tributaries and up to its mouth, '[as] a subject of rights to protection, conservation, maintenance and restoration by the State'[43].

Those recent sentences, in addition to recognizing the rivers as subjects of rights, establish routes for the protection, conservation and restoration of rivers that imply articulation and coordination of the national, sectional and municipal order. It also attributes surveillance responsibilities to the organizations that are constituted as guardians of the rivers, which are interinstitutional and community organizations, as well as to the supervisory bodies. The responsibilities of the municipal companies in the operation of the Wastewater Treatment Plants -PATR- are expressly indicated; as well as obligations by the Ministries of Environment and Sustainable Development and of Housing, City and Territory to provide technical assistance to the municipalities involved in order to make the -PTAR- feasible and carry out technical studies on environmental risks. The departmental authorities are also responsible for representing the interests of the river and for achieving its protection and conservation through the construction of -PTARs-. It is also important to note the responsibility attributed judicially to the national order for the Departmental Water Plans, to the Autonomous Corporations, to the companies and to the local secretariats which have the competence in a territory, given the fact that these plans have not been effective to protect the rivers.

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39 COLOMBIA, Constitucional Court, Judgement T-201-2017, Available at: <https://www.cortecon stitucional.gov.co/relatoria/2017/t-201-17.htm>.

40 COLOMBIA. Tribunal Administrativo del Tolima (Tribunal of Tolima), Radicado 73001-23-00-000-2011-00611-00. 2019.

41 COLOMBIA. Tribunal Superior de Medellín (Tribunal of Medellín), Radicado 2019-00071-01. 2019.

42 COLOMBIA. Juzgado primero penal del circuito con funciones del conocimiento Neiva- Huila (Judge from Neiva), Radicado 41001-3109-001-2019-00066-00. Available at: <https://es.scribd. com/document/434890313/Fallo-tutela-rio-magdalena>.

43 COLOMBIA. Consejo de Estado (Administrative Hight Court). (2019).Case 63001-23-33-000-2019-00024-01: M.P Roberto Augusto Serrato Valdés. 2019.

Several rulings have stated that environmental justice[44] includes a component of distributive justice and a component of participatory justice, which must be interpreted in accordance with international instruments[45]. Distributive justice refers to the need for an equitable distribution of environmental benefits and burdens among the subjects of a community, eliminating discriminatory factors based on ethnic origin, race, gender or socioeconomic condition. Participatory justice represents the demand for citizens' participation in decisions, particularly from those who will be potentially or effectively affected by the execution of a given activity. It implies the creation of spaces for participation in decision-making related to the

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[44] The distributive fairness component of environmental justice, in relation to the implementation of development projects, enshrines the following rules (i) The ecological, social, cultural and economic sustainability of development projects, which incorporates the requirement that they be fair 'within and between generations' Judgment T-574 [1996]. (ii) The persons and communities affected by the implementation of development projects have the right to have their status recognized at the time the corresponding impact is manifested and to obtain adequate compensation for the damages Judgment T-135 [2013]. (iii) The "tutela" action (popular action) is the appropriate instrument to obtain recognition of the status of affected person and to be included in the corresponding censuses Judgment T-135 [2013], but not to obtain the effective payment of the compensation that derives from such status. For the latter, ordinary mechanisms or other constitutional actions provided for this purpose must be resorted to, unless the subsistence or the minimum vital of the claimant may be imminently compromised Judgment T-574 [1996], Judgment T-194 [1999], Judgment T-447 [2012]. Judgment T-294 [2014] para. 24.

For its part, the right to participation of the populations that directly receive the environmental consequences arising from the implementation or inadequate operation of infrastructure works includes "(i) The opening of spaces for participation, information and consultation, and not mere information or socialization, involving free and informed consent, at the time of the assessment of the impacts and the design of prevention, mitigation and compensation measures, so that local knowledge and the voice of those affected are incorporated Judgment T-348 [2012].(ii) Participation in the process of preparing the census of those affected and throughout the implementation of the project Judgment T-135 of [2013]. (iii) Compliance with the commitments agreed upon in the consultation forums Judgment T-194 [1999]. (iv) The financing of consultants required by the communities affected by the project, so that they can exercise their right to effective participation Judgment T-194 [1999]. (v) The participation of the communities affected by environmental damage in the monitoring and control activities Judgment T-574 [1996], Judgment T-294 [2012], para. 25.COLOMBIA, Constitutional Court, Judgment T-574- 1996, Available at: <https://www.corteconstitucional.gov.co/relatoria/1996/t-574-96.htm>; COLOMBIA, Constitucional Court Judgement T-574-1996, Available at: <https://www.corteconstitucional.gov.co/relatoria/1996/t-574-96.htm>; COLOMBIA, Constitutional Court, Judgment T-194-1999, Available at: <https://www.corteconstitucional.gov.co/relatoria/1999/t-194-99.htm>. COLOMBIA, Constitutional Court, Judgment T-447-2012, Available at: <https://www.corteconstitucional.gov.co/relatoria/2012/t-447-12.htm>; COLOMBIA, Constitutional Court, Judgment T-294-2014, Available at: <https://www.corteconstitucional.gov.co/relatoria/2014/t-294-14.htm>; COLOMBIA, Constitutional Court, Judgment T-194-1999, Available at: <https://www.corteconstitucional.gov.co/relatoria/1999/t-194-99.htm>; Ibid.; COLOMBIA, Constitutional Court, Judgment T-574- 1996, Available at: <https://www.corteconstitucional.gov.co/relatoria/1996/t-574-96.htm>; COLOMBIA, Constitutional Court, Judgment T-294-2014, Available at: <https://www.corteconstitucional.gov.co/relatoria/2014/t-294-14.htm>. Access in: 4 Feb. 2025.

[45] Articles 3 and 11 of the Protocol of San Salvador; articles 3 and 4 of the United Nations Framework Convention on Climate Change; article 14.1(a) of the Convention on Biological Diversity and the Basel Convention on the Control of Cross-border Movements of Hazardous Waste and its Disposal; principles 10 and 22 of the Rio de Janeiro Declaration, and the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Environmental Justice.

COLOMBIA. Congreso de Colombia, Ley 357 DE 1997, Por medio de la cual se aprueba la "Convención Relativa a los Humedales de Importancia Internacional Especialmente como Hábitat de Aves Acuáticas", suscrita en Ramsar el dos (2) de febrero de mil novecientos setenta y uno (1971). 1997. Available at: <https://www.suin-juriscol.gov.co/viewDocument.asp?ruta=Leyes/1658710>. Access in: 3 Feb. 2025.

implementation of projects and local evaluation of their impact as well as the establishment of measures of prevention, mitigation and compensation. For the realization of environmental justice through constitutional actions, the judges have developed concepts such as ecological Constitution, green Constitution, the obligatory nature of international commitments, the protection of the collective right to a healthy environment; sustainable development; the ecological function of property; the right to water; the right to institutional participation of communities in the protection of nature; the right to prior consultation of ethnically differentiated communities that has allowed the realization of environmental justice in Colombia.

According to these sentences, we can conclude that the environmental justice carried out by judges of the Constitutional Court, the State Council[46] and the Administrative Courts has transformed Colombia's legal system by recognizing another approach for the resolution of socio-environmental conflicts. In this aspect, the rights of nature, biocultural rights, the eco-centric and bio-centric approaches have been recognized. Those judges have also detailed how the national and local institutions should act to ensure that the guarantee of river and water rights is translated into the restoration of the ecosystems of which rivers are a part and secure a dignified life for its communities.

4 DIFFICULTIES AND TENSIONS IN JUDICIAL DECISIONS

Examining the jurisprudence, the protection of river rights has been a judicial order, of which to date there has been no relevant implementation that has implied a change in the functioning of the administrative structures of the national, departmental and local order. Nor has there been any evidence of changes in the levels of contamination in Colombia's rivers. We are just at the beginning of a process of transformation of the legal approach to the use and utility of water resources from an anthropocentric towards an eco-centric one.

We observe an increase in litigation on the subject which, in all cases, involves concepts of geography, ecology, environmental engineering, necessary for the correct application of environmental law. This represents a challenge for judges, who are no experts in these areas. To this, we must add the heterogeneity of subjects and causes, and the effects their decisions will have on the economy, politics and social welfare of communities and/or the country. On top of that there is the difficulty of judging how to apply binding international regulations and soft law to a specific case.

Judges issue orders to national and local authorities to address river degradation and contamination. However, according to the Colombian state design, the ministries (national level) formulate public policy for environmental protection and conservation, while its implementation remains mainly in the hands of the municipalities and the companies that provide public utilities. The former does not

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[46] Other crucial ruling of the State Council is Ruling No. 25000-23-27-000-2001-90479-01(AP), [2014], since it constitutes a milestone in the jurisprudential protection of water sources by judging on the accumulation of popular action lawsuits (action that protects collective rights) related to the situation of the Bogotá River, in which the dumping of sewage and wastewater, and other types of substances was presented as factual support. COLOMBIA, Administrative Tribunal of Bogotá, Judgment 25000-23-27-000-2001-90479-01:2014. Available at: <https://cajica.gov.co/sentencia-25000-23-27-000-2001-90479-01-de-2014-rio-bogota/>. Access in: 5 Feb. 2025.

have the resources to adequately address the problem and the latter have a commercial approach to water. In the jurisprudence of the Administrative Courts, Ministries involved in litigation request their removal from the processes of *tutela* or popular actions, arguing that they have acted in accordance with the law and that therefore do not have administrative jurisdiction in the facts that conforms the action, insofar as it is a matter of non-compliance with administrative functions that are the sole responsibility of the territorial entities of municipal and departmental order. Thus, in the responses to the lawsuits, the responsibility at the national level to formulate public environmental and water policy is observed, but the contamination suffered by the rivers remains in the hands of municipalities.

The orders issued in the sentences urge a coordination, articulation and harmonious functioning between the public administrators and the communities that are represented by them, especially given that the extension of the rivers and their basin is wide, for example the Atrato River is 750 km long and involves 2 departments; the Cauca River is 1350 km long and crosses 7 departments; the Magdalena River 1558 km long involves 20 departments[47]. The latter involves more than half of the country. This extension and heterogeneity makes necessary the involvement of the entire institutional framework, as well as the interaction of the communities organized to protect those rivers and the inhabitants of the territory.

The protection of river rights and access to the fundamental right to water varies substantially if the municipality is rural or urban. In the former, there are almost no institutions responsible for the protection, conservation and restoration of rivers, however, there is a close connection between nature, its resources and the culture of the communities. In the case of water rights, the provision of the service is fundamentally the responsibility of the water companies or of organized communities, which must guarantee a minimum of access to the resource in order not to affect human dignity. In administrative terms, it can be pointed out that the rivers and water rights cannot be protected if there is not sufficient infrastructure for sanitation and discharge control, as well as wastewater treatment plants. It is also necessary to have authorities at the local level that monitor and control deforestation and carry out concrete reforestation actions near springs and micro-watersheds. We also need a transformation in the mentality of some communities and institutions on the valuation of nature as a living being that must be restored.

In relation to the formulation and implementation of the wastewater treatment system that must include a wastewater treatment plant -PTAR-, it is a competence that is in charge of the municipalities and its implementation in the companies that operate in that territorial area. This competence is essential for the protection and conservation of rivers. From judgment T-622 of 2017 to judgment 2019-00024 of the State Council, which recognizes rights to the Quindío River, one of the fundamental arguments is that the treatment system and the control of discharges should properly carried out at the municipal level. These sentences dictate orders to the various authorities of all orders to carry out this competence. However, there are deficits in coordination, articulation and joint work among institutions and a lack of resources. There is also a lack of control over discharges, non-compliance by the

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[47] Colombia is divided into 32 departments and has a total area of 2,070,408 square kilometers, comprising 1,141,748 km² of continental territory and 928,660 km² of maritime areas. View in: <https://geoportal.dane.gov.co/servicios/atlas-estadistico/src/Tomo_I_Demografico/1.1.-el-territorio-colombiano.html?utm_source=chatgpt.com>. Access in: 4. Feb. 25.

service providers, and treatment plants that do not function[48] These deficits can be attributed, among other reasons, to the existing tensions between the market schemes of the public water service, which is the use and utility of the rivers and an eco-centric approach.

5 CONCLUSIONS

The normative approach in Colombia since the 1970's is fundamentally anthropocentric and proposes a vision of exploitation, consumption and control over rivers that constitutes a limiting factor in the transformation of the relationship between communities and nature, as well as the restoration of rivers. The current regulations do not alleviate the situation of river pollution or the access to water and sanitation of rural communities.

The role of judges has been fundamental in the transformation of this anthropocentric vision to an eco-centric one and in the understanding and recognition of biocultural rights. In the Colombian legal system, the anthropocentric normative framework and eco-centric jurisprudence coexist. In this sense, the role of judges is also limited because they issue orders that cannot be complied with by the national and local authorities due to the limitations of the normative framework, the lack of resources at the local level, and the absence of articulation between entities responsible for avoiding the contamination of rivers and for attending to the right to water.

This situation lets us conclude that in Colombia there are limitations in the legal structures (laws, budgets, state competences) to realize the rights of nature, which prevent the ecological restoration of rivers and the fundamental right to water of all living beings. There is an absence of recognition, in the legal regulation and institutional responsibilities, of the relationships and mutual dependencies of humans and nature, although some jurisprudence recognizes rivers as subject of rights. This implies that we should have an eco-centric approach that cuts across all the legal structures and institutions at different levels that addresses the stability and integrality of river ecosystems in the country. This would finally allow to comply with the concepts and orders issued by the judges.

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[48] In 989 localities in the country, areas with less than 30,000 inhabitants, 78% do not have any wastewater treatment at all. According to CONPES (National Council of Economic and Social Policy), 'report No. 3177' (2002) there were 237 domestic wastewater treatment plants in 235 municipalities, which treated 8% of the sewage discharges of these municipalities, with deficiencies such as low capacity, incomplete processes or no operation. MINISTERIO DEL MEDIO AMBIENTE. CONPES 3177: Acciones prioritarias y lineamientos para la formulacion del plan nacional de manejo de aguas residuales. 2022. Disponível em: <https://www.minvivienda.gov.co/normativa/conpes-3177-2002>. Acesso em: 3 fev. 2025.

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