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An Ecocentric Perspective on Climate Litigation: Lessons from Latin America

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Abstract

Based on the latest developments in ecological law in Latin America, including the recognition of the rights of nature, this article examines emerging climate-related cases that, challenging Western anthropocentric legal paradigms, address the climate crisis from an ecocentric perspective to protect both human and nature rights. Through novel arguments based on ecological law counter-narratives and a rights of nature perspective, these cases are giving way to the emergence of a new typology of climate litigation in which the intrinsic value and interests of all life forms and the legal status of nature are recognized. First, this article analyses the experience and current trends in the emerging field of ecological law in the region, including ecological and intergenerational dimensions of human rights and the legal and jurisprudential recognition of the rights of nature. Second, it reviews and compares some of the most relevant climate-related cases as well as recent, less known—some still pending—claims that incorporate an ecocentric approach, combining the protection of the rights of present and future generations and the rights of nature or exploring other arguments in the field of ecological law. These cases have the potential to contribute to the development of climate litigation with an ecocentric profile. Attention is given to the main arguments, characteristics, strengths, and shortcomings of these cases, as well as to potential barriers to the development of an ecocentric angle to climate litigation and the implementation of judicial decisions.

Keywords: climate change litigation; ecological law; Global South; Human Rights; Rights Of Nature

1. Introduction

Latin America is one of the world's regions most exposed to climate change, aggravated by high levels of poverty and inequality (IPCC 2022: 1695). This situation, combined with setbacks and omissions in the implementation of environmental and climate law, creates a context of major risk for people, nature, and their rights (IADB and World Justice Project 2020). Latin American countries are simultaneously exposed to the impact of predatory extractivism while territorial disputes over natural resources continue to rise (Garavito and Díaz 2020; Svampa 2019). The region is also the most dangerous for environment and

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human rights defenders, including indigenous people, in the protection of their territories, which include essential ecosystems for the climate system (Global Witness 2021). These environmental and socio-economic vulnerabilities are common patterns that threaten the rights of people and nature (Gligo et al. 2020: 12).

As a response to this context of the weakening rights in the face of environmental threats, climate litigation[1] has emerged in Latin America as a tool to promote climate action and to reinforce the protection of the environment and the rights of people and ecosystems (Auz 2022; Del Pilar García Pachón et al. 2021; Ferreira et al. 2021; Filpi 2021; Moraga Sariego 2021). Diverse voices, such as indigenous people, children, youth, future generations and ecosystems (including through the recognition of rights to nature)[2] have brought rights-based claims to national and supranational courts.[3] Latin American courts are issuing ground-breaking decisions that set important precedents for climate litigation in the region and beyond (Climate Litigation Platform for Latin America and the Caribbean 2022; Auz 2022; Filpi 2021; Beckhauser et al. 2021). This article identifies specific characteristics of Latin-American climate cases, aligned with innovative legal trends in the region and the representativeness of its socio-biodiversity and biocultural rights. As stated in the case *Center for Social Justice Studies et al. v. Presidency of the Republic et al.* (2016) T-622/16, Constitutional Court of Colombia (Colombia) (*Atrato River*), 'biocultural rights':

> result from the recognition of the deep and intrinsic connection that exists between nature, its resources, and the culture of the ethnic and indigenous communities that inhabit them, all of which are interdependent with each other and cannot be understood in isolation.

These characteristics are illustrative of the broader field of 'ecological law', an emerging perspective related to the legal innovations inspired by non-anthropocentric inputs, such as the recognition of rights to nature and the ecological dimension of human rights.[4] Ecological law essentially entails legal rules and interpretation that 'internalises the natural living conditions of human existence and makes them the basis of all law, including constitutions, human rights, property rights, corporate rights and state sovereignty' (ELGA 2016). It proceeds from ecocentrism, holism, and intra-/intergenerational and interspecies justice. Drawing on Latin America's developments in ecological law (Gudynas 2015; Capra and Mattei 2015; Garver 2021), this article examines several significant climate-related cases in Latin America that, challenging Western anthropocentric legal paradigms, envision and address the climate crisis from a more ecocentric perspective. The analysis is based on the research question of how Latin American experiences in climate litigation, inspired by ecological law, contribute to a more ecocentric approach among litigants, judges, scholars, and others that is better suited to the legal and socio-environmental specificities of the region. The cases were mapped in two climate litigation databases.[5] From the 24 cases

1 The litigation related to State's and private actors' climate obligations and their implications in terms of rights, referring both to cases that present climate arguments as a central issue and cases in which climate change is a transversal or peripheral theme. It applies to litigations before any national or supranational jurisdictional authority in process or concluded (Peel and Osofsky 2015 and the AIDA's Climate Litigation Platform for Latin America and the Caribbean (LAC) 2022).

2 The United Nations Harmony with Nature Platform includes all the cases where ecosystems had voice in recent judicial cases: http://harmonywithnatureun.org/ (referenced 11 August 2023).

3 Three petitions related to climate change have been submitted to the Inter-American Commission on Human Rights: the Inuit petition (2005, refused), the Athabaskan petition (2013) and the Children of Cité Soleil petition (2021), still pending.

4 On the distinction between environmental law, ecological law and earth system law, see Kotzé and Kim (2019).

5 The primary source was the Climate Litigation Platform for Latin America and the Caribbean (LAC), led by the Inter-American Association for the Defence of the Environment (AIDA), https://litigioclimatico.com/es (referenced 11 August 2023). As of May 2023, the database shows 52 cases. Other cases were identified at the Global Climate Change Litigation database, which refers to 62 cases from Latin America (http://climatecasechart.com/non-us-climate-change-litigation/ (referenced 11 August 2023)).

referenced in this article, 15 were selected for a more detailed analysis based on their relevance to answer the research question. These cases were selected according to the following criteria: i) reference to the rights of nature; ii) invocation of ecological law principles; and iii) other strategies and arguments contributing to an ecocentric approach to climate litigation. These criteria could reveal a strong or weaker ecocentric-climate nexus in the 15 cases discussed in detail. Section 2 deals with the region's experience and current trends in the emerging field of ecological law, including the rise of the rights of nature and the ecological and intergenerational dimensions of human rights. In section 3, selected climate cases—whether they are decided or still pending—are categorised as: i) cases in which a strong ecocentric-climate nexus is identified by the reference to the rights of nature and recognition of legal personality to ecosystems; and ii) cases including arguments and principles of ecological law, beyond the rights of nature, which contribute to a more ecocentric perspective in climate litigation. Based on this analysis, section 4 discusses the common features and the challenges of an ecocentric climate litigation in Latin America. These cases raise important issues and provide valuable lessons which may contribute to a global debate on the more-than-human centred possibilities of climate litigation.

2. The law's ecocentric turn in Latin America: current trends in the emerging field of ecological law

2.1 The legal and jurisprudential development of the rights of nature

In recent decades, Latin America has seen important innovations in environmental law along with longstanding discussion on the possibility of extending rights to nature and recognizing nature as a subject of rights emerging from indigenous peoples' perspectives and socio environmental movements. This issue, debated in environmental and animal philosophy and ethics and forming part of the longstanding practice of indigenous communities, has seen contributions from jurists from different parts of the world (Hermitte 1988; Stone 1972; Stutzin 1984) and, in particular, from the Global South after the adoption of the Constitution of the Republic of Ecuador in 2008 (Martinez and Acosta 2017; Ávila Santamaría 2011; Kotzé and Villavicencio Calzadilla 2017). The Ecuadorian Constitution renewed these discussions and gave rise to a proliferation of regulations that take some distance from an anthropocentric perspective. Bolivia soon joined this process, recognizing the rights of Mother Earth in 2010 through the approval of a national law (Villavicencio Calzadilla and Kotzé 2018).

The Ecuadorian Constitution's in its preamble celebrates nature, *Pacha Mama*, of whom we are a part and who is vital for our existence. In its seventh chapter entitled 'Rights of Nature' the Constitution states that 'Nature, or *Pacha Mama*, where life is reproduced and occurs, has the right to integral respect for its existence and for the maintenance and regeneration of its life cycles, structure, functions, and evolutionary processes' (Article 71). It also determines that any person, community, people, or nationality has standing in representation of nature, which implies a broad legitimacy to assert these rights.

The 2009 Constitution of the Plurinational State of Bolivia also refers in its preamble to Mother Earth, qualified as sacred. The country's explicit recognition of the rights of nature can be seen in the Mother Earth Rights Act and the Framework Act on Mother Earth and Holistic Development to Live Well adopted in 2010 and 2012 respectively. The former law sets out several specific rights of Mother Earth (Article 7), while the latter contains references to the relationship between this extension of rights and its potential to combat climate change. For example, it recognizes a series of principles such as climate justice (Article 4) and it creates a Plurinational Plan on Climate Change to Live Well (Article 53).

The 2010 Mother Earth Rights law defines Mother Earth as a dynamic living system made up of the indivisible community of all life systems and living beings, interrelated, interdependent and complementary, sharing a common destiny (Article 3), which is followed by

the recognition of a series of principles and rights: Mother Earth has the right to life, to the diversity of life, to water, to clean air, to balance, to restoration and to live free of pollution (Article 7). The adoption of this law is directly related to the World People's Conference on Climate Change and the Rights of Mother Earth, an event that took place in Tiquipaya, Bolivia in 2010 as a response to the failure of the 2009 Copenhagen Summit on Climate Change.[6] At this event, which was presented as a parallel option to the official climate negotiations, the Universal Declaration of the Rights of Mother Earth[7] was sealed and approved by 35,000 people who attended.[8] In its preamble, the Declaration engages with the links between the rights of nature and climate change, by:

Recognizing that current economic models are not in harmony with Mother Earth, produce depredation, exploitation, and abuse, and have caused great destruction, degradation and alteration of Mother Earth, placing life as we know it today at risk, as a result of phenomena such as climate change.

Acknowledging the seriousness of the crisis the planet is going through, it makes an urgent call for collective action to 'transform the structures that cause climate change and other threats to Mother Earth' (Preamble).

The Ecuadorian and Bolivian experiences on the recognition of nature's rights have been followed by similar initiatives at both national and local level in other countries. In Argentina, since 2015, a draft national law (No. 6118-D-2020) has been promoted that aligns with an ecocentric approach in that it seeks to protect the rights of nature. Also, the Chilean constituent debate incorporated the recognition of nature's rights in its final document, though this recognition was not approved in a referendum.[9] In Mexico, the rights of nature were approved by the Congress of the State of Guerrero in 2014 (Article 2 of the political constitution of the free and sovereign State of Guerrero) as well as throughout the Constitution of Mexico City in 2017 (Article 18). In Colombia, the Department of Nariño became the first to recognize the rights of nature in 2019 (Decree 348-2019). Local initiatives are increasing, showing the permeability of this innovative perspective in States with different regulatory levels. For example, several municipalities in Brazil have joined the rights of nature initiative.[10]

In addition to expanding rights to protect nature through the enactment of laws, a series of court cases is emerging in which nature or ecosystems are recognized as subjects of rights, even in legal systems that do not explicitly entrench these rights in their constitutions or other legislation. In Ecuador, where rights of nature are constitutionally entrenched, 64 cases with the rights of nature as a central argument were identified.[11] In Colombia, the case *Center for Social Justice Studies et al. v. Presidency of the Republic and others* (2016) T-622/16, Constitutional Court of Colombia (Colombia) (*Atrato River* case) recognized the river as a subject of rights despite the legal system not recognizing rights of nature explicitly. Five years later, more rivers, natural parks, moorlands and the Colombian

6 The Copenhagen Summit (COP15) is considered a failure since it concluded with a political document (the Copenhagen Accord) that, while recognizing the need to keep the global average temperature rise below 2 °C above pre-industrial levels, did not include legally binding emission reduction targets.

7 Available at: https://pwccc.wordpress.com/support (referenced 11 August 2023).

8 The World People's Conference on Climate Change and the Rights of Mother Earth was a global gathering of civil society and governments hosted by the Bolivian government, with more than 35,000 participants from 140 countries. The debates were organized into 17 Working Groups addressing topics, such as Indigenous People and Mother Earth Rights. The latter was in charge of discussing and agreeing on the project of a Universal Declaration of Mother Earth Rights. Information available at: https://pwccc.wordpress.com/ (referenced 11 August 2023).

9 The rejected draft constitution is available at: https://www.chileconvencion.cl/ (referenced 11 August 2023).

10 Amendment to the Organic Laws of the Municipalities of Bonito (Article 236) and Paudalho (Article 182), State of Pernambuco, Florianópolis (Article 133), State of Santa Catarina and Serro (Article 157), State of Minas Gerais.

11 See the Observatorio Jurídico de los Derechos de la Naturaleza's website: https://www.derechosdelanaturaleza.org.ec/ (referenced 12 July 2023).

Amazon were considered as subjects of rights by the courts,[12] such as in the case *Future Generations v. Ministry of the Environment et al.* (2018) STC4360-2018, Supreme Court of Colombia (Colombia) (*Future Generations* case). In addition, there are recent decisions of the Supreme Court of Argentina that, although they do not recognize ecosystems as legal subjects, do incorporate an ecosystemic vision, that is one that recognizes the dynamics within ecosystems such as the interrelationships among individual entities and the broader ecosystem.[13]

Above, we have demonstrated the emergence and expansion of ecological law in the region. The normative and jurisprudential developments aim to transform human-nature relationships based on non-anthropocentric worldviews linked to indigenous people's knowledge and values. As discussed in section 2, connections among rights of nature and climate litigation have emerged. Based on an ecocentric perspective that sees all life on Earth as having intrinsic value, the legal status of nature and non-human elements as rights-holders are being invoked by plaintiffs and courts.

2.2 The ecological and intergenerational dimensions of human rights in the context of the climate crisis

The emergence of ecological law in Latin America pushes for the development of ecological and intergenerational dimensions of human rights, influenced by the demands of indigenous people, and contextualized from their worldview and intrinsic connection to nature. For example, the Inter-American Court of Human Rights (IACtHR) has incorporated these dimensions to the right to property, recognizing the traditional territories as a spiritual and immaterial cultural patrimony to be transmitted to future generations, adapting this right to common territories where human and nonhuman beings are indissociable in a unique identity and dignity (Cavedon-Capdeville 2020).[14]

The discussion on the ecological dimension of human rights is not new (Taylor 1998; Kotzé 2014), but it has received new impetus and scientific interest with the rise of ecological law and the discussions around the rights of nature, leading to a critical revision of human rights (Cavedon-Capdeville 2020; Kobylarz 2022; Giacomini 2022). The transition from an environmental to an ecological dimension of human rights encompasses different moments in the Latin American context: i) the attribution of an environmental dimension to human rights, such as the rights to property,[15] life,[16] and physical integrity[17] by the IACtHR; ii) the recognition of autonomous environmental rights;[18] iii) the understanding of

12 See the repository of the UN Harmony with Nature Platform on rights of nature law and policy: http://www.harmonywithnatureun.org/rightsOfNature/ (referenced 12 July 2023).

13 *Provincia de La Pampa v. Provincia de Mendoza s/Use of Waters* (2017), Supreme Court of Justice; *Majul, Julio Jesús v. Municipalidad de Pueblo General Belgrano* (2019), Supreme Court of Justice; *Equística Defensa del Medio Ambiente Aso. Civ. v. Santa Fe, Provincia de and Others* (2020), Supreme Court of Justice; *Saavedra, Silvia Graciela and Others v. Administración Nacional de Parques Nacionales Estado Nacional and Others* (2021), Supreme Court of Justice.

14 *Mayagna (Sumo) Awas Tingni Community v. Nicaragua* (2001) C-79, Inter-American Court of Human Rights (*Awas Tigni* case); *Community Yakye Axa of the People Enxet-Lengua v. Paraguay* (2006) C-125, Inter-American Court of Human Rights (Yakye Axa case); *Kichwa Indigenous People of Sarayaku v. Ecuador* (2012) C-245, Inter-American Court of Human Rights (*Sarayaku* case); *Kaliña and Lokono Peoples v. Suriname* (2015) C-309, Inter-American Court of Human Rights.

15 The jurisprudence on indigenous peoples and traditional communities recognizes a common right to their territories, that includes the integrity of the environment in its material aspect, as the basis of subsistence and way of life, and in its immaterial aspect as an element of spirituality and worldview, since the *Awas Tingni* case to the *Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina* (6 February 2020) (ser. C) No. 400, Inter-American Court of Human Rights (*Lhaka Honhat*).

16 On the concept of dignified life, see *Yakye Axa* case; *Community Xákmok Kásek v. Paraguay* (2010) C-214, Inter-American Court of Human Rights (*Xákmok Kásek* case) and *Sarayaku* case.

17 *Xákmok Kásek* and *Sarayaku* cases.

18 As the recognition of the right to the environment in Advisory Opinion OC-23/17 Requested by the Republic of Colombia (15 November 2017) 23/17, Inter-American Court of Human Rights (Advisory Opinion OC-23/17) and in the case *Lhaka Honhat*. See also Tigre and Urzola (2021) and Tigre (2021).

the subject of rights status of humans as members of the Earth's community of life, embedded in an environmental context from which their rights cannot be dissociated;[19] iv) the overcoming of limits of ownership, time and space, extending the protection to collectives, future generations and nature itself,[20] and encompassing global issues beyond the limits of power and territory, such as the extraterritorial dimension of human rights obligations;[21] and v) the development of common environmental rights for humans and nature, boosted by the ecological dimension of the right to the environment developed by the IACtHR and the Inter-American Commission on Human Rights (IACHR), and the connection between these rights in climate litigation (Cavedon-Capdeville 2020).

At the same time, human rights have been consolidated as a central argument in climate litigation (Savaresi and Setzer 2022; Garavito 2022; Savarezi and Auz 2019; Peel and Osofsky 2017) and as a trend in Latin America (Tigre, Urzola and Goodman 2023; Auz 2022; Beckhauser et al. 2021).[22] The centrality of human rights in Latin American climate litigation is related to both legislative and jurisprudential advances in human rights and the environment, in connection with new developments on ecological law, as well as accumulated experiences in strategic litigation on rights and policy implementation. The experience of litigation on economic, social, environmental and indigenous peoples' rights, and the tradition of judicializing policies related to the implementation of rights can be mentioned (Auz 2022; Auz 2021; Beckhauser et al. 2021).

Human and nature rights have been operating jointly in climate litigation in Latin America, reinforcing the perception of coexistence and co-violation of these rights when members of the Earth's community of life are affected by the climate crisis, as presented in section 3. This connection is especially present when related to ecosystems that are vital to the climate system, and at the same time have their ecological processes and vital cycles affected by climate change, limiting the realization of humans' and non-humans' common life projects. For example, the environmental services of páramos ecosystem in mitigating climate change in *Alberto Castilla et al. v. Colombia* (2016) C-035/16, Colombia Constitutional Court (Colombia) (*Páramo* case), as well as the Amazon Forest in *PSB et al. v. Brazil* (on Amazon Fund) (2020) ADO 59/DF, Federal Supreme Court (Brazil) (*PSB v. Brazil re Amazon Fund* case), and *PSB et al. v. Brazil* (on Climate Fund) (2020) ADPF 708, Federal Supreme Court (Brazil) (*PSB v. Brazil re Climate Fund* case).

For instance, in the *Future Generations* case the court emphasized the impossibility of dissociating human rights from their environmental context, recognizing the connectedness among all the inhabitants of the planet. The judgement includes the unborn and nature in the rights' circle of protection. The basis of the future generations rights is the intrinsic value of nature, and the ethical duty of solidarity between species and human solidarity with nature. Thus, the Colombian Amazon Rainforest was recognized as a subject of rights, consolidating the articulation between human and nature rights for tackling the climate crisis.

The development of the ecological and intergenerational dimensions of human rights in climate litigation was reinforced by the interpretation of the right to the environment by the IACtHR in the Advisory Opinion OC-23/17 Requested by the Republic of Colombia (15 November 2017) 23/17, Inter-American Court of Human Rights (Advisory Opinion OC-23/17) (Tigre and Urzola 2021). The court attributed

19 The interpretations of the IACtHR on indigenous peoples' rights or the recognition of biocultural rights based on the interdependence between nature and humans in the *Atrato River* case.

20 As the IACtHR interpretation of the right to the environment in the Advisory Opinion OC-23/17. Also, the Escazú Agreement states the right of present and future generations to live in a healthy environment.

21 The extraterritoriality of human rights obligations related to the environment was developed by the IACtHR in Advisory Opinion OC-23/17 and by the IACHR's Resolution 3/2021.

22 As of May 2023, AIDA's Climate Litigation Platform for LAC, reports 41 cases that use the right to the environment as grounds, 25 cases that invoke other human rights, 35 cases that have human rights violations as their main theme and five cases related to the rights of nature.

a three-dimensionality to this right, represented by collective, individual and ecological dimensions. In its collective dimension, the environmental right is of universal and intergenerational value, fundamental to the existence of humanity. The individual dimension emphasizes the relationship with other human rights, resulting in substantive rights (whose enjoyment is especially vulnerable to environmental degradation) and procedural rights (whose exercise contributes to the improvement of environmental policies). In its ecological dimension, the right to the environment applies to all beings and elements of nature, protected as legal interests in themselves. The environment is protected not only because of its utility to human beings or the effects of its degradation on human rights, but also for its importance to other living organisms (§ 62). The Advisory Opinion OC-23/17 is mentioned in 10 of 40 climate cases in Latin America based on the right to the environment and its ecocentric interpretation of the right to the environment was integrated, for example, in the decision of the Supreme Federal Court of 28 June 2020 in the *PSB v. Brazil re Climate Fund* case.

The ecological dimension of the right to the environment has been applied in the context of climate change by the IACHR's Resolution 3/2021 on climate emergency (IACHR 2021). IACHR emphasized that climate change is a threat to the enjoyment of human rights of present and future generations, to all species that inhabit the planet, and that a healthy environment is an essential right to ensure the existence of all forms of life. The Resolution provided that the right to the environment protects components of nature as a legal interest, even in the absence of certainty or evidence about the risk to persons. The right to the environment, as stated in the Advisory Opinion OC-23/17 and Resolution 3/2021, in connection with other human rights, confronts the transboundary nature of climate change by making evident the extraterritorial application of States' human rights obligations. Considering the ecocentric approach in both documents, these obligations apply to ecosystems and other living beings that, even outside the territory of a State, are affected by damages to the climate system caused by it or by activities under its control.

A safe climate is also a substantive element of the right to the environment (UN Human Rights Council 2019). A climate change clause in national constitutions to recognize the right to a safe climate or an extended interpretation of constitutionally recognized right to the environment to integrate the climate dimension could be an important strategy to strengthen environmental constitutionalism as a legal response to climate change (Ayala 2022; Jegede 2018; May and Daly 2019). The right to the environment and the rights of nature protect nature's cycles and the climate system itself and could be violated due to the alteration of the carbon cycle, as argued in *Baihua Caiga et al. v. PetroOriental SA* (2021) N° 22201202000469, Family, Women, and Children Judicial Unit from Francisco de Orellana Canton of Ecuador (Ecuador) (*Baihua Caiga* case). The right to a safe climate, in its ecological dimension, applies to nature, guaranteeing the realization of its ecological functions, essential to the balance of the climate system and necessary for the realization of human rights.

The elements highlighted in this section on ecological law, the ecocentric perspective of law, and the ecological and intergenerational dimensions of human rights serve as inputs for the analysis of specific climate cases that integrate these perspectives, discussed next.

3. The development of an ecocentric perspective on climate litigation in Latin America

Based on the elements highlighted in section 2, this section briefly analyses selected cases (see Figure 1 below) to propose a categorization of the cases based on the legal arguments that align with or may contribute to the development of an ecocentric perspective in climate litigation.

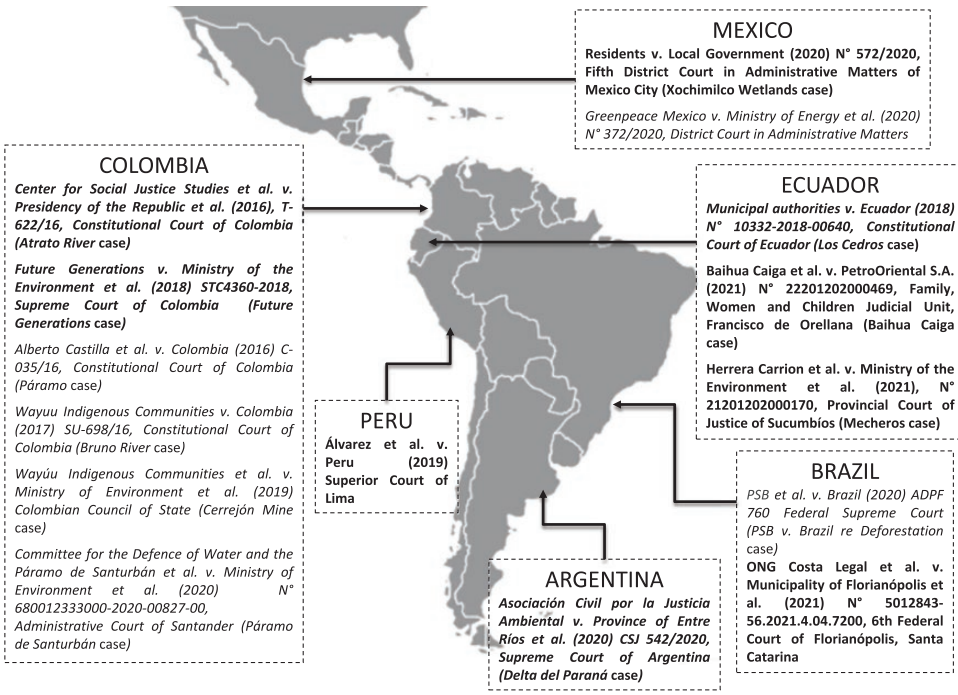

Figure 1. Map of selected Latin-American cases contributing to an ecocentric perspective in climate litigation (created by the authors)**Cases in bold explicitly refer to the rights of nature. Cases in italics include ecological law arguments, beyond the rights of nature. Cases in both bold and italics refer to the rights of nature and use ecological law arguments.

3.1 The rights of nature in climate litigation

Two distinct but interlinked avenues to the integration of rights of nature in climate litigation can be distinguished. The first one, typical of Ecuadorian jurisprudence, is based on rights of nature established in Ecuador's Constitution; and the second has its epicentre in Colombian jurisprudence, where natural entities have been declared subjects of rights from a pluralistic and ecocentric interpretation of environmental norms.[23] Regarding the first category, as Ecuador was the first country to grant the rights of nature a constitutional status, the way these rights have been claimed in climate cases is singular, arising from the country's constitutional provisions, especially articles 71, 72 and 73, in connection with human rights. We have identified three climate cases with this perspective.

The first one is the case *Municipal Authorities v. Ecuador* (2018) N° 10332-2018-00640, Constitutional Court of Ecuador (Ecuador) (*Los Cedros* case). The court highlighted the interdependence between nature and human rights, such as the right to a healthy environment and the right to water, all provided for in the Constitution (§§ 35, 171 and 242). A 'biocentric conception of the right to a healthy environment' is recognized (§ 245) and the right to water is considered as a right that articulates human and nature rights (§ 171). The duty to protect fragile ecosystems by precautionary and restrictive measures to avoid the extinction of species and permanent alteration of natural cycles is stated (§§ 118 and 124).

23 An embryonic stage of the rights of nature in climate litigation is identified in the Advisory Opinion N° 16-13-DTI-CC, Constitutional Court of Ecuador, that underlined the relationship between climate change and the constitutional provisions regarding rights of nature.

Considering the threats arising from climate change, the court reasoned that activities such as mining must respect the constitutional norms, including the rights of nature (§ 249).

Second, the *Baihua Caiga* case connects indigenous rights and the rights of nature, both constitutionally protected. The plaintiffs alleged that fuel extraction and gas flaring activities carried out by foreign companies affect climate stability and ecological balance, violating the right to a healthy environment, the rights of nature, as well as the territorial rights of indigenous communities. The case was dismissed in the lower court but sent to the Ecuador Constitutional Court for potential selection and revision and is still pending.

Third, in the *Herrera Carrion et al. v. Ministry of the Environment et al.* (2021) N° 21201202000170, Multicompetent Chamber of the Provincial Court of Justice of Sucumbíos of Ecuador (Ecuador) (*Mecheros* case), violation of fundamental rights was emphasized through an intergenerational and gender perspective (see Urzola 2023 in this issue). The youth girl plaintiffs, affected by diseases caused by GHG burning activities, adopted an innovative approach arguing that the carbon cycle itself or climate stability, as components of the natural order, should be protected based on rights of nature. The court ruled in favour of the plaintiffs and declared that the Ecuadorian State ignored their rights to health and to live in a healthy and ecologically balanced environment by promoting polluting activities, and by refusing to use environmentally clean and energy-efficient technologies (§ 9.9 VII).

The second category of climate cases linked to the rights of nature emerge from Colombian jurisprudence. The country's legal order does not expressly recognize nature as a rights holder. Yet, the Colombian courts have advanced rights of nature based on arguments inspired from biocultural rights and the ecocentric perspective of law. This approach has expanded to other Latin American countries, such as Brazil (see the case *ONG Costa Legal et al. v. Municipality of Florianópolis et al.* 2021) since the *Atrato River* case, wherein the Colombian Constitutional Court, for the first time, declared a natural entity as a subject of rights and named the State and local community representatives as guardians of the river, ordering them to set up a commission (*Comisión de Guardianes del Río Atrato*) to jointly exercise the legal representation of its rights (§§ 9.31 and 10.2.1). Rights of nature were considered from an ethical change of paradigm, incorporating traditional knowledge and voices of indigenous and Afro-Colombian communities, as well as future generations. The court pointed out the importance of a pluralistic and ecocentric interpretation of environmental norms, reaffirming the interactions between the ecological integrity of the river and the physical, cultural and spiritual existence of present and future generations (§§ 4.14, 5.3 and 9.17). However, rights of nature arguments are not recognized in all Colombian jurisprudence, as demonstrated by in the *Personería Municipal de Ibagué v. Ministry of Environment et al.* (2020) N° 73001-23-31-000-2011-00611-03(AP), Colombia Council of State (Colombia) (*Combeima River* case). In the court of first instance, the rivers Combeima, Cocora and Coello were recognized as subjects of rights, but not in the appeal process. On appeal, the court reasoned that the precedent of the *Atrato River* case was not applicable and declined to recognize the rights of the rivers. Nevertheless, recognizing the potential damage to these rivers, an assessment of mining activities was mandated, and the court required the use of an alternative method to protect the Combeima and Cocora rivers.

The rights of nature path was consolidated by the iconic *Future Generations* case where the court invoked a rights of nature strategy to cope with climate change. The court incorporated the pluralistic and ecocentric approach adopted in the *Atrato River* case. The plaintiffs linked the protection of the Colombian Amazon and the human rights of present and future generations with the government's commitments to reduce GHG emissions, especially to reduce deforestation. The court stated that a healthy environment is essential to the survival of subjects of rights and sentient beings in general, considering the interests of children and future generations (§ 2.5.2). It considered that the impacts of climate change have resulted from an anthropocentric and selfish model of consumption

and excessive exploitation of nature, an 'autistic' anthropocentrism that must be overcome (§ 2.5). Thus, adopting an ecological perspective toward the Constitution, the court recognized the Colombian Amazon as a subject with specific rights to protection, conservation, maintenance and restoration (§ 2.14). Moreover, the court ordered the implementation of coordinated plans, in different levels, with the participation of interested people, to halt the deforestation (§ 3).

This ecocentric approach has been adopted in other climate cases in Peru, Argentina, Mexico, and Brazil, demonstrating an attempt at judicial dialogue among the courts. In the ongoing case *Álvarez et al. v. Peru* (2019), Superior Court of Lima (Peru), the plaintiffs pointed out that the only way to overcome the ecological crisis is from an ecocentric approach, whereby the Peruvian Amazon must be recognized as a subject of rights. In the Argentinean case *Asociación Civil por la Justicia Ambiental et al. v. Province of Entre Ríos, et al.* (2020) CSJ 542/2020, Supreme Court of Argentina (Argentina) (*Delta del Paraná* case) the plaintiffs ask the court to recognize the Paraná Delta as a subject of rights and an essential ecosystem to promote climate change mitigation and adaptation. The case *Residents v. Local Government* (2020) N° 572/2020, Fifth District Court in Administrative Matters of Mexico City (Mexico) (*Xochimilco Wetlands* case) also has intergenerational and ecocentric dimensions. The case was filed by children and youth claiming violations of the right to a healthy environment and the rights of nature itself. They indicate that the infrastructure project may affect the rights of present and future generations, as it was intended to be built in a wetland declared a protected area. The court ordered the suspension of the project. Lastly, the case *ONG Costa Legal et al. v. Municipality of Florianópolis et al.* (2021) N° 5012843-56.2021.4.04.7200, 6th Federal Court of Florianópolis, Santa Catarina (Brazil) is an example of Brazilian structural litigation. Although the analysis of the claim regarding the declaration of the lagoon 'Lagoa da Conceição' as a subject of rights is still pending, a Judicial Commission for its protection, requested by plaintiffs and granted by preliminary injunction, has among its objectives the designation of a guardian of the ecosystem.

Common elements can be identified among these cases: i) the reference to the rights of nature in connection with human rights for the protection of endangered ecosystems; ii) the perspectives of vulnerable groups, such as indigenous peoples and traditional communities or children and youth, giving rise to an appreciation of biocultural and intergenerational rights articulated with rights of nature; iii) through an intercultural dialogue, courts and plaintiffs introduce an interdisciplinary approach which considers climate and ecological sciences, alongside traditional communities' knowledge; and iv) multi-level and thematic legal arguments, with reference to both national and international laws, such as the Ramsar Convention on Wetlands and the Convention on Biological Diversity (*Xochimilco Wetlands* case, *Delta del Paraná* case and, *Mecheros* case), the Escazu Agreement (*Delta del Paraná* case), the Convention on the Rights of the Child and other human rights treaties (*Delta del Paraná* case, *Álvarez et al. v. Peru* and *Future Generations* case).

3.2 Ecological law arguments that can contribute to an ecocentric perspective on climate litigation

Beyond the rights of nature, other features of ecological law are identified in Latin-American climate cases, which also contribute to the development of an ecocentric perspective, such as the notion of 'Ecological Constitutionalism' or the principles of *in dubio pro natura* and ecological integrity. These arguments align with and have been made alongside rights of nature arguments, presented in section 3.1.

The reference to 'Ecological Constitutionalism' is found in Colombian cases such as the *Future Generations* case and the *Atrato River* case. The relationship between the constitution and the environment is dynamic, constantly evolving and can be interpreted through

an ecocentric approach, as highlighted in the *Atrato River* case. The Constitutional Court emphasized that the environment is a cross-cutting issue of the constitutional order, and its importance also lies in relation to the other living organisms, which are understood to be worthy of protection in themselves. Moreover, the court mentioned the importance of indigenous knowledge and culture to this constitutional interpretation (§ 5.10). This argument is also discussed by the Brazilian Federal Supreme Court, such as in the case *PSB et al. v. Brazil* (on deforestation and human rights) (2020) ADPF 760, Federal Supreme Court (Brazil) (*PSB v. Brazil re Deforestation* case), ruling in favour of an ecological rule of law (§§ 22–23). The decision has a specific topic on ecological rule of law, understood as a contemporary constitutional paradigm based on an integrative conception of the environment and its systematic protection, that considers not only human interests.

The *in dubio pro natura* principle implies that in cases of doubt, matters shall be resolved in a way most likely to favour the protection of nature (Coelho 2008; Bryner 2015; IUCN 2016; Ayala and Coelho 2020). This principle is related to the rights of nature argument in climate cases such as *Delta del Paraná* and *Los Cedros*. In this last case, the Ecuadorian court also mentioned the principle of favourability *pro natura* which corresponds to the application and interpretation of law that most favours the effective enforcement of rights and guarantees, including rights of nature (§ 40). In the case *Committee for the Defence of Water and the Páramo de Santurbán et al. v. Ministry of Environment and Sustainable Development et al.* (2020) N° 680012333000-2020-00827-00, Contentious Administrative Court of Santander (Colombia) (*Páramo de Santurbán* case) the plaintiffs invoked the principle to protect this high mountain ecosystem, including by the creation of an on-site mega mining exclusion zone, aiming to avoid more serious scenarios for an ecosystem already vulnerable to climate change. Another example is *Greenpeace Mexico v. Ministry of Energy et al.* (2020) N° 372/2020, District Court in Administrative Matters (Mexico), in which the court invoked the principle to declare that energy sector legislation and policy violate the right to a healthy environment.

Another essential principle in climate cases invoking rights of nature is the ecological integrity, considered as a key principle of ecological law (Bridgewater et al. 2014; Kim and Bosselmann 2015). The protection of ecological integrity, which corresponds to the conservation, maintenance and restoration of its essential elements and services, has been among nature's specific rights recognized by the courts. The Colombian Constitutional Court highlighted the protection of ecological integrity in *Alberto Castilla et al. v. Colombia* (2016) C-035/16, Colombia Constitutional Court (Colombia) (*Páramo* case) which mentions the State's duty to ensure broad and special protection to the páramo ecosystem and to ensure its integrity, which plays an important role in regulating the carbon cycle.

Ecological integrity has also been invoked in connection with indigenous rights. In *Wayuu Indigenous Communities v. Colombia* (2017) SU-698/16, Constitutional Court of Colombia (Colombia) (*Bruno River* case) the court ruled in favour of Wayúu plaintiffs, pointing out that impact of a mining project was not properly considered, including irreversible damages in the ecosystem and its integrity—represented by changes in the course of the Bruno stream—which affect indigenous rights, besides its sacred sites. Therefore, it highlights the interdependence of essential ecological services, linked to ecological integrity, with the maintenance and adaptation capacities of the Wayúu communities (§§ 1.5.7 and 3.8.1). This argument is also discussed in the pending case *Wayúu Indigenous Communities et al. v. Ministry of Environment et al.* (2019) N° 11001032400020190010700, Council of State (Colombia) (*Cerrejón Mine* case), wherein the impact of coal mining activities on ecosystems threatens the rights of indigenous and Afro-Colombian communities. The claim brings the protection of ecological integrity as an important avenue to cope with forced displacement and adverse effects of climate change.

4. The possibility of ecocentric climate litigation: common features and challenges

4.1 Common features of Latin-American ecocentric climate litigation

Some trends emerge from climate litigation in the region, especially from the cases analysed in section 2. The first one is the focus on ecosystems essential to the climate balance, considering their ecological functions, especially as carbon sinks, as well as their climate change vulnerability, including unique Latin-American ecosystems such as the Páramos (*Páramo* case and *Páramo de Santurbán* case) and the Amazon Forest. Several cases deal with the Amazon Forest, most of them in Brazil, such as *Instituto Socioambiental et al. v. IBAMA and the Federal Union* (2020) ACP 1009665-60.2020.4.01.3200 7th Federal Environmental and Agrarian Court of the Judiciary Section of Amazonas (Brazil); *PSB v. Brazil re Deforestation* case; *Instituto de Estudos Amazônicos v. Brazil* (2022) Nº 5048951-39.2020.4.04.7000, Federal District Court of Curitiba (Brazil) and *Labor Party (PT) v. Brazil* (2020) ADPF 746 Federal Supreme Court (Brazil). The focus on ecosystems, their integrity and its relation to human and nature rights leads to the integration of ecocentric and other ecological law arguments in climate litigation.

The pursuit of intergenerational and interspecies equity and solidarity is also a trend observed in this analysis. From the 11 cases related to children, youth and future generations in the Climate Litigation Platform for Latin America and the Caribbean, 5 cases, analysed in section 3.1, mention the rights of nature. An intergenerational equity perspective, even if it can be considered a global phenomenon (Parker et al. 2022; Donger 2022), is approached in Latin America from an ecocentric perspective, through cases that articulate an intergenerational perspective of rights with rights of nature, mentioned in section 3. The perspective of children, youth and future generations and the recognition that they share rights and a project of the future with nature, threatened by climate change, is recurrent. Thus, climate litigation in the region integrates an extended temporal spectrum, considering the future implications of the climate crisis for all living beings.

As outlined in section 3.1, the recognition of the legal personality of ecosystems threatened by climate change and the linking of human and nature rights is a unique feature from Latin America's climate cases, demonstrating a contextual approach to litigation strategies. While some cases focus on a co-violation of human and nature's rights, both legally recognized, others raise the issue of the recognition of legal personality and rights to ecosystems. Principles of ecological law were also identified, as the principles of *in dubio pro natura* and ecological integrity. The ecocentric perspective of the right to the environment, recognizing that this right constitutionally protects all forms of life, is also an argument that could boost the ecocentric perspective in climate litigation, such as in *PSB v. Brazil re Deforestation* case.

The development of new governance structures to address socio-ecological problems including climate change is identified to bridge the gap between legal innovations, such as the recognition of legal personality for ecosystems, the intergenerational and biocultural perspectives, and traditional environmental management structures. The creation of 'intergenerational pacts' and 'guardianship mechanisms' to protect the rights of ecosystems and to address the effects of climate change, such as in the *Atrato River* ; *Delta del Paraná* and *Future Generations* cases, reveals the emergence of new governance structures that require cooperation across multiple actors to guarantee nature and human rights. They go beyond legal provisions on participation, through structures developed for specific ecosystems, considering their recognized rights as well as the representativeness of the socio-biodiversity of the region.

The cases analysed demonstrate that arguments are elaborated with reference to different levels of norms and variated thematic areas, as pointed out in section 3, coordinating legal environmental and human rights instruments on biodiversity and ecosystems protection,

rights of groups most affected by climate change as indigenous people and children, and the climate agenda. A dialogue among courts is also identified, with national courts making reference to jurisprudence of other countries, such as the mention of the *Atrato River* case in *Álvarez et al. v. Peru* (2019), or the reference to the *Future Generations* case in the *Delta del Paraná* case, and regional decisions from the IACtHR (that is *PSB v. Brazil re Deforestaion* case) to support an ecocentric approach. Courts and plaintiffs rely on interdisciplinary knowledge, including climate and ecological sciences, as well as on knowledge and understandings of traditional communities (*Atrato River* case and *Labor Party (PT) v. Brazil* (2020) ADPF 746 Federal Supreme Court (Brazil)). These perspectives contribute to a decolonial and contextualized perspective on climate litigation in the region (Rodriguez 2020: 86).

4.2 Challenges for an ecocentric climate litigation: effectiveness of decisions and contributions to tackling the climate crisis

This section reflects some of the challenges of ecocentric climate litigation in Latin America, particularly those related to the implementation and enforcement of rulings emerging from climate cases.

While favourable decisions are of great significance for people and ecosystems, they neither imply immediate and effective protection of human or nature's rights, nor ensure the prompt and comprehensive tackling of the climate crisis. It further remains unclear what the real implications of recognizing ecosystems as rights-bearing subjects are. For instance, will such recognition be limited to a symbolic effect, or will it generate practical changes in the governance of these ecosystems or in the current development model of the region's countries based on the exploitation of natural resources? The enforcement of laws and court rulings recognizing rights of nature still faces challenges in jurisdictions where this paradigm emerged as, for example, in Bolivia (Villavicencio Calzadilla and Kotzé 2018).

The *Future Generations* case has provided interesting lessons. As explained above, the Colombian Supreme Court granted the Amazon enforceable rights and ordered several measures to protect it and future generations. Four years later, the conclusions of the follow-up reports indicate that there have been no significant advances in the compliance with the orders handed down. Thus, it is pointed out that the government has not taken sufficient action to comply with the court's orders (Dejusticia, Comisión Colombiana de Juristas and Universidad de los Andes 2020). As a result, at the end of 2020, the Superior Court of Bogotá ordered the creation of two technical tables for monitoring compliance and for the implementation of the sentence.

The lack of broad and effective participation of the involved actors, especially from intergenerational and ethnic approaches, the insufficient coordination of government entities, and other structural problems have impeded progress and compliance with the court's orders (Dejusticia, Comisión Colombiana de Juristas and Universidad de los Andes 2020). The measures adopted by the government to give effect to the court order to halt deforestation are still not sufficient as deforestation continues to increase. In addition, these measures, which should have resulted from an inclusive and participatory process, have been taken unilaterally by the government, contributing to epistemic injustice (see Urzola 2023, in this issue). Thus, the latter has promoted the military defence of the forest, tasking the military forces with going after those responsible for deforestation in the Amazon. The military operations, which have included arrests and detentions, have targeted in particular the peasant population of the Amazon who have been left out of the ruling and its implementation. A military approach, which includes coercive actions against peasants—who are least responsible in the deforestation chain—but not against powerful agents responsible for deforestation, unjustly and disproportionately affects the rights of this population. The use of force has therefore prevailed over the inclusive and participatory process ordered by the court (Dejusticia 2018; Dejusticia, Comisión Colombiana de Juristas and Universidad

de los Andes 2020). If the rights of people and nature are to be protected, a more holistic approach to the problem and solutions arising from a court ruling is vital to reinforce the coordination and participation of all actors involved.

Moreover, novel institutional arrangements created to protect the rights of ecosystems as recognized by courts remain ineffective, as in the *Atrato River* case. As noted in section 3, the court ordered that the government and the affected indigenous communities in the Atrato region exercise joint guardianship and legal representation of the river.[24] The river's guardians (the Ministry of the Environment and the community guardians) should be supported by an advisory team composed of public, private, scientific and technical entities. Despite attempts to promote intra and inter-institutional support and cooperation between actors, the necessary means to operationalize guardianship tasks have not been provided. Thus, neither the expected level of coordination between the river's guardians and other actors has been achieved, nor has additional funding to support their duties been provided, especially in relation to indigenous and Afro-descendant communities. The community guardians claim that they were excluded from government-led protection initiatives and that they suffer threats for defending their rights and the rights of the river (Procuraduría General de la Nación, Defensoría del Pueblo, Contraloría General de la República 2020; Ávila 2018). While designating the State as a central guardianship authority raises doubts over its true commitment to protect the Atrato's rights—as it was precisely the government's inaction and its extractive policies that affected the river's ecological health—the rights of the Atrato as well as the community guardians remain unguaranteed and unprotected (Güesguán Serpa and Quintero Díaz 2021).

Lastly, the anthropocentric and neoliberal logic of development based on the exploitation of nature continues to be promoted by corporations and governments throughout the region, who are pushing for the expansion of extractive activities that are causing environmental destruction and socio-ecological conflicts (Svampa 2019; Gligo et al. 2020 Garavito and Díaz 2020). The extractivism that structures the economies of the region, along with the hyper-presidential constitutional design of many Latin American countries endowing presidents with too much power, as well as corruption and lack of independence of the judiciaries, threatens people and ecosystems and challenges the development and long-term effectiveness of climate litigation (Villavicencio Calzadilla 2021; Auz 2022). Added to this is the lack of protection of those who fight extractive activities in defence of their rights and nature. Latin America continues to be the most dangerous region for land and environment defenders (Global Witness 2021). While some defenders challenged this risky situation and took the lead in climate cases, criminalization and violence threaten their resistance actions.

5. Conclusions

Climate litigation in Latin America is being used as a powerful tool for addressing the climate crisis and for safeguarding the rights of present and future generations and of nature. As part of the emergence and development of ecological law in the region, a diversity of plaintiffs and courts are embracing an ecocentric approach for the effective protection of vulnerable people and ecosystems that are sensitive to climate disruption and play an important role in balancing climate systems.

Rights-based climate litigation is a trend in the region. As human rights were reshaped to remain useful arguments to face the climate crisis, they are also subject to a contextualized interpretation which follows the legal trends in Latin America, especially related to ecological law. The analysis of the human rights argument in the regional climate cases

24 In 2017, the Colombian government designated the Ministry of Environment as a guardian of the river. On the other hand, indigenous communities chose 14 (seven male and seven female) representatives coming from seven ethnic and social organizations to act as 'community guardians' (*guardianes comunitarios*) of the river. See www.guardianesatrato.co/quienes-somos (referenced 11 August 2023).

indicates an extensive interpretation that integrates a climate perspective and an ecological dimension, which recognizes the common human and nature right to exist and evolve in a healthy environment and a safe climate, based on intergenerational and interspecies equity.

Moreover, the development of an ecocentric perspective in climate litigation in the region can be perceived through the emergence of cases that: i) based on constitutional rights of nature, allege a co-violation of these rights and human rights, and those that ii) request the recognition of legal personality and rights to ecosystems essential to the balance of the climate system. Other cases, although not mentioning rights of nature, integrate ecological legal principles.

Common features were identified in the climate cases of the region, such as the focus on ecosystems protection, the intergenerational and interspecies solidarity (as the intergenerational dimension of rights is approached from an ecocentric perspective), the recognition of legal personality to ecosystems and the articulation of human and nature rights, the multi-level and multi-thematic legal argumentation, a dialogue among courts on ecocentric arguments, as well the consideration of interdisciplinary and traditional knowledge. Some challenges were also pointed out, especially those related to the implementation of favourable rulings.

This analysis shows that the connection of human and nature rights is important to guarantee a broad dignity for all forms of life in the context of the climate crisis. Even if the right to the environment, in its ecocentric dimension, protects elements of nature endowed with intrinsic value, the recognition of the legal personality of ecosystems essential to climate balance is a strong argument to advance their rights to preservation, existence, conservation, and restoration, and to fulfil their climate and ecological functions. Yet, the common protection of human and nature rights that depend on a safe climate for their realization requires participatory and multi-level climate governance structures aligned with the ecological integrity of Earth's ecosystems, reimagining existing systems and structures of decision.

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