LUISS

Corso di laurea in Giurisprudenza

Environmental Personhood and the Mar Menor Case in a Comparative Perspective

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Table of Abbreviations

CARM	Comunidad Autónoma de la Región de Murcia
CCMM	Campo de Cartagena-Mar Menor
CODENPE	Development Council of Indigenous Nationalities and Peoples of Ecuador
CONAIE	Confederation of Indigenous Nationalities of Ecuador
ESIA	Environmental and social impact assessment
EU	European Union
GIS	Geographic Information Systems
ILP	Iniciativa de Legislación Popular
IPCC	Intergovernmental Panel on Climate Change
LEBOR	Lake Erie Bill of Rights
NEMA	National environmental management authority
NGO	Non-governmental organization
NNW-SSW	North-Northwest to South-Southwest
SACs	Special Areas of Conservation
SCI	Site of Community Importance
SCIs	Site of Community Importance
SNI	Site of National Interest
SNIs	Sites of National Interest
SPA	Special Protection Area for Birds
SPAs	Special Protection Areas for Birds
SPAMI	Special Protected Area of Mediterranean Interest

TIPNIS	Integral and Sustainable Development of the Isiboro Sécure National Park and Indigenous Territory
UNCED	United Nations Conference on Environment and Development
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNSDGs	United Nations Sustainable Development Goals

"The Earth does not belong to man; Man belongs to the Earth. This we know. All things are connected like the blood which unites one family. Whatever befalls the Earth befalls the sons of the Earth. Man did not weave the web of life, he is merely a strand in it. Whatever he does to the web, he does to himself."

— Chief Seattle

I. Introduction

1. Presentation of the Topic

The twenty-first century heralds an era of unprecedented environmental challenges, propelled by rapid industrialization, urbanization and the relentless pursuit of economic growth. In 2021, the Intergovernmental Panel on Climate Change (IPCC) revealed a worrisome acceleration in global surface temperatures: each of the past four decades has been progressively warmer than any previous decade since 1850. The estimated range of total human-caused global surface temperature increase from 1850–1900 to 2010–2019 is between 0.8°C and 1.3°C, with the best estimate being 1.07°C. This increase in temperature has profound implications, including rising sea levels, more frequent and severe weather events, and disruptions to ecosystems and biodiversity. [1]

Additionally, the IPCC reported unprecedented Arctic sea ice depletion and rising sea levels, which underscore the urgent need for collective action to address the climate emergency.[2] Melting polar ice caps contribute to sea level rise, threatening coastal communities worldwide. Extreme weather events, such as hurricanes, droughts, and heatwaves, have become more common and severe, causing widespread damage to infrastructure, economies, and human lives.[3]

Human activity is the main cause of the current environmental situation.[4] Since the Industrial Revolution, humans have significantly altered ecosystems, affecting their structure and function.[5] Overgrazing, urban expansion, deforestation, and changes in land use have led to grassland degradation, desertification, loss of water and soil, and impacts on biodiversity.[6] These activities have disrupted the natural balance, leading to the decline

[1] IPCC Report, Climate Change 2021: The Physical Science Basis (2021), p.5. Accessed 3 July 2024.

[2] Ibidem.

[3] Pain N & Pepper R, "Can Personhood Protect the Environment? Affording Legal Rights to Nature" (2021) 45 Fordham Int'l LJ 315, p.317. Accessed 15 June 2024.

[4] IPCC Report, Climate Change 2021: The Physical Science Basis (2021), p.6. Accessed 3 July 2024.

[5] Wang et al., "The influence of climate change and human activities on ecosystem service value" (2016) 87 Ecological Engineering, p.224. Accessed 3 July 2024.

[6] Ibidem.

of species and the degradation of natural habitats. The deforestation of the Amazon rainforest represents a critical instance of human impact on nature.[7]

These indicators underscore the urgent need for collective action to address the climate emergency. The adoption of the UN 2030 Agenda reflects a growing acknowledgement of the imperative to prioritize sustainability and resilience in environmental protection policies.[8] The agenda outlines 17 Sustainable Development Goals (SDGs), many of which are directly related to environmental sustainability, such as clean water and sanitation, affordable and clean energy, climate action, life below water, and life on land. These goals emphasize the need for a comprehensive approach to addressing environmental issues, integrating economic, social, and environmental dimensions.[9]

Countries worldwide are reacting differently to this situation. One significant response lies in the concept of environmental personhood, which advocates for recognizing nature as a legal entity entitled to rights and protection.[10] The emergence of this concept aims to reimagine our relationship with the natural world beyond human-centered jurisprudence, promoting inclusive environmental governance.[11] Environmental personhood shifts the perspective from viewing nature as a resource for human exploitation to recognizing its intrinsic value and rights. This paradigm shift has the potential to transform how environmental laws are crafted and enforced.

Meanwhile, many environmental protection laws have been enacted worldwide since the mid-twentieth century. These laws typically emphasize that nature is an object of ownership or a recreational space for humans.[12] Traditional environmental laws often focus on regulating human activities to minimize harm to the environment, but they may

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[7] See Zemp D C, "Deforestation effects on Amazon forest resilience" (2017) 44 Geophysical Research Letters. Accessed 3 July 2024.

[8] United Nations, "Transforming our world: the 2030 Agenda for Sustainable Development" (25 September 2015) <https://sdgs.un.org/sites/default/files/publications/21252030%20Agenda%20for%20Sustainable%20Development%20web.pdf> accessed 3 July 2024.

[9] Ibidem.

[10] The so-called rights of nature; Tolulope N. Ogboru, "Recognising the rights of nature: How have the courts fared?" (2022) European Law Journal, p.1. Accessed 13 June 2024; The question arises for liability, as underlined by Christopher Stone; Stone C, "Should Trees Have Standing? Toward Legal Rights for Natural Objects" (1982) p.481. Accessed 13 June 2024.

[11] Pain N & Pepper R, "Can Personhood Protect the Environment? Affording Legal Rights to Nature" (2021) 45 Fordham Int'l LJ 315, p.375. Accessed 15 June 2024.

[12] Ibidem, p.322.

not fully address the need for proactive and restorative measures. Environmental personhood, on the other hand, aims to provide nature with a voice and legal standing, enabling more robust protection and restoration efforts.

Advocates of environmental personhood argue that this idea contests the flawed anthropocentric nature of environmental protection laws, prioritizing human interests, needs and benefits over those of nature. Alexander Lillo perceives disrupting the anthropocentric nature of traditional environmental law as the most significant advantage of granting rights to nature.[13] In 1999, Thomas Berry was the first to characterize the perceived superiority of humans over all other entities within the Earth system as "anthropocentrism".[14] He defined it as the root cause of the current environmental crisis, arguing that recognizing the rights of nature is essential for creating a sustainable and just world.[15]

Another rationale supporting environmental personhood is improving environmental outcomes. Traditional environmental protection laws usually aim to prevent damage. However, after the damage occurs, they prioritize bringing violators into compliance rather than restoring contaminated ecosystems.[16] Environmental personhood, by granting legal rights to nature, could shift the focus towards prevention and restoration, ensuring that ecosystems are protected and rehabilitated.

The European Union (EU)'s legal framework does not recognize the concept of environmental personhood. However, specific directives, such as the Habitats Directive (Directive 92/43/EEC) and the Birds Directive (Directive 79/409/EEC), are crucial for preserving ecological balance, promoting sustainable practices and safeguarding natural ecosystems and species. Nevertheless, the discourse on environmental personhood has recently gained attention in European Union countries. This growing awareness

[13] Lillo A, "Is Water Simply a Flow? Exploring an Alternative Mindset for Recognizing Water as a Legal Person" (2018)ResearchGate, p.170 <https://www.researchgate.net/publication/337144873_Is_Water_Simply_a_Flow_Exploring_an_Alternative_Mindset_for_Recognizing_Water_As_a_Legal_Person> accessed 30 May 2024.

[14] Pain N & Pepper R, "Can Personhood Protect the Environment? Affording Legal Rights to Nature" (2021) 45 Fordham Int'l LJ 315, p.322. Accessed 15 June 2024 (referring to Thomas Berry, "The great work. Our way into the future" (1999)).

[15] Ibidem.

[16] Bilof N, "The Right to Flourish, Regenerate, and Evolve: Towards Juridical Personhood for an Ecosystem" (GGU Law Digital Commons) p.120 <https://digitalcommons.law.ggu.edu/gguelj/vol10/iss1/6/> accessed 30 May 2024.

underscores the urgent need to safeguard vulnerable ecosystems and mitigate the impacts of climate change.

Spain is a pioneering instance, with the adoption of Law 19/2022 recognizing legal personality for the Mar Menor Lagoon and its basin.[17] The Mar Menor, Europe's largest saltwater lagoon, has suffered significant ecological degradation due to agricultural runoff, urban development, and other human activities. The recognition of its legal personality marks a significant step towards protecting and restoring this vital ecosystem. This law allows the Mar Menor to be represented in court and to have its rights defended, setting a precedent for other regions in Europe and beyond. Notably, Spain is the first country to have granted legal personality to nature.

Efforts to recognize the legal personality of natural entities are gaining momentum in several European countries. For example, in France, there have been discussions and proposals to grant legal rights to the Loire River to protect it from pollution and overuse.[18] Similarly, in Scotland, campaigns have emerged to recognize the legal rights of certain landscapes, reflecting a growing awareness and commitment to environmental protection.[19] Additionally, in the Netherlands, the municipaluty of Eijsden-Margraten in Limburg has given a voice to local wildlife, such as deer, buzzards, and trees, by allowing them to be represented in environmental decision-making processes.[20] These efforts across Europe indicate a shifting perspective towards the intrisic rights of nature, influenced by environmental advocacy and the need for sustainable management. Spain's recognition of the Mar Menor's legal personality is a significant milestone in this evolving dialogue on environmental rights within Europe.

This thesis aims to explore the concept of environmental personhood and its implications for environmental protection and governance. It will examine the historical development, key principles, and legal significance of recognizing nature as a legal entity.

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[17] Ley 19/2022 (ES). Accessed 27 May 2024.

[18] The Water Code Staff, "Anche i fiumi hanno dei diritti" (The Water Code, 14 March 2024) <https://thewatercode.it/featured-news/anche-i-fiumi-hanno-dei-diritti/> accessed 29 July 2024.

[19] "Giving nature a voice through legal rights?" (ERCS Justice for people and the envrionment, December 2020) <https://www.ercs.scot/blog/giving-nature-a-voice-through-legal-rights/> accessed 29 July 2024.

[20] Orkun Akinci, "Reeën, buizerds en bomen krijgen een eigen stem in Limburgse gemeente", Trouw (13 November 2023) <https://www.trouw.nl/duurzaamheid-economie/reeen-buizerds-en-bomen-krijgen-een-eigen-stem-in-limburgse-gemeente~bfb0d598/?referrer=https://www.dutchnews.nl/> accessed 16 July 2024.

The focus will be on the global context of environmental personhood, analyzing significant international examples and comparing legislative frameworks. The case of the Mar Menor in Spain will be studied in detail, assessing the motivations, legislative processes, challenges, and opportunities in its implementation. Additionally, a comparative analysis with other European cases will highlight similarities and differences in environmental protection laws and their implications.[21]

Relevance of the Research, Methodology and Structure

This thesis addresses a critical issue in global environmental governance and legal innovation by exploring the concept of environmental personhood, with a focus on the Mar Menor in Spain. As environmental degradation and climate change accelerate, innovative legal frameworks that recognize natural entities as legal persons have gained prominence. This study aims to examine the transformative potential of such legal innovations and their effectiveness in enhancing environmental protection and governance.

The research highlights the shift from anthropocentric legal frameworks, which primarily view nature as a resource for human use, towards an ecocentric approach that recognizes nature's intrinsic value and legal rights. This paradigm shift is exemplified by Spanish Law 19/2022, which grants legal personality to the Mar Menor, empowering communities and environmental advocates with legal tools to protect and restore ecosystems. The study's focus on both theoretical and practical applications of environmental personhood offers insights into how these frameworks can be operationalized within legal, institutional, and financial contexts.

Aligned with international efforts, including the United Nations Sustainable Development Goals (UNSDGs), the research contributes to the discourse on legal innovations that support global environmental objectives. A comparative analysis with international cases from New Zealand, Bolivia, and Ecuador highlights best practices and

[21] See the analysis of the Orbetello Lagoon case in chapter V.

challenges in integrating environmental personhood into various legal systems worldwide.

To explore these themes, the thesis employs a comprehensive legal research methodology combining descriptive, comparative, and evaluative approaches. Primary sources such as Spanish Law 19/2022, relevant EU directives, and international legal frameworks are examined alongside secondary literature, including policy documents, academic studies, and reports. This approach provides a thorough understanding of the legal landscape and the specific context of the Mar Menor.

The descriptive component outlines key concepts and rationales behind environmental personhood, setting the stage for further analysis of its potential benefits. Comparative analysis contrasts the Spanish model with international examples, identifying similarities, differences, and unique aspects of each framework. The evaluative approach assesses the effectiveness of these legal mechanisms in achieving their intended environmental protection goals, considering factors like enforcement, resource allocation, and stakeholder roles.

The thesis is structured to guide the reader through a comprehensive examination of environmental personhood. It begins with an introduction to the research objectives and methodology, followed by chapters defining environmental personhood and exploring the Mar Menor's ecosystem and legal protections. Subsequent chapters delve into the specifics of Spanish Law 19/2022, compare it with other global legal frameworks, and summarize the potential and challenges of environmental personhood as a tool for improving environmental governance.

In conclusion, this research provides a critical evaluation of the legal concept of environmental personhood, emphasizing its potential to transform environmental governance while also addressing the complexities of implementation. The findings offer valuable recommendations for policymakers and practitioners seeking to adopt similar legal protections in other regions, highlighting the need for robust enforcement, government commitment, and meaningful inclusion of local and Indigenous perspectives.

II. Exploring the Concept of Environmental Personhood

1. Introduction

This chapter explores the concept of environmental personhood, which is foundational for understanding the recent legislative developments concerning the Mar Menor. The chapter defines environmental personhood, examining its key concepts, and discussing its potential impacts.

Section 2 defines environmental personhood and highlights three key rationales: the shift towards ecocentric environmental justice, the improvement of environmental outcomes, and the empowerment of Indigenous custodial arrangements

Specifically, sub-section 2.1 delves into the Anthropocene era, emphasizing the significant human impact on Earth's ecosystems. It argues for a paradigm shift towards ecocentric environmental justice, where nature's intrinsic value is recognized. By granting rights to nature, the goal is to address ecosystem degradation and ensure comprehensive legal protection for the environment.

Sub-section 2.2 examines how environmental personhood can enhance environmental outcomes by enabling more effective legal actions focused on ecosystem restoration. It critically assesses the potential benefits and limitations, emphasizing the need for robust legal frameworks and genuine governmental commitment to achieving meaningful environmental improvements.

Sub-section 2.3 explores how environmental personhood can recognize and empower Indigenous custodial arrangements. It analyzes case studies from New Zealand, highlighting the role of Indigenous communities in managing ecosystems granted legal personality. The section discusses the potential benefits and challenges of integrating Indigenous perspectives into environmental governance frameworks, emphasizing the importance of meaningful consultation and engagement with Indigenous peoples.

Finally, the concluding section synthesizes the core arguments presented in the discussion on environmental personhood, emphasizing its relevance and challenges. It highlights the paradigm shift towards ecocentric justice, noting the intrinsic value and legal rights of nature to address ecosystem degradation. The section also assesses the

potential benefits and limitations of environmental personhood, stressing the need for robust legal frameworks and genuine governmental commitment. Furthermore, it explores the empowerment of Indigenous custodial arrangements, using New Zealand's statutes as examples, and underscores the importance of meaningful consultation with Indigenous communities. This conclusion sets the stage for evaluating the practical implications and controversies surrounding the legislative developments concerning the Mar Menor in the subsequent chapters.

2. Definition and Key Concepts of Environmental Personhood

2.1. The Anthropocene: Shifting Paradigms and the Call for Ecocentric Environmental Justice

We live in a new geological era called "Anthropocene", where humans significantly impact the Earth's ecosystem.[22] This term was coined in 2000 by Dutch chemist and Nobel laureate Paul Crutzen.[23] The concept of Anthropocene was introduced to capture the shift in the relationship between humans and the global environment. The term suggests that the Earth is moving out of the geological epoch called the "Holocene" and that human activities are the primary cause of this transition, making humanity a major geological force.[24]

The Holocene can be defined by its atmospheric CO^2 concentration variability and its distinction from the Anthropocene, particularly in the context of natural carbon cycles and human influence on the environment.[25] This shift from the Holocene, which began about 11,000 years ago, was confirmed by thirty-five scientists at the last International

[22] Steffen W et al., "The Anthropocene: conceptual and historical perspectives" (2011) The Royal Society, p.842. Accessed 30 May 2024.

[23] Pictet per Te, "Antropocene: benvenuti nell'era dell'umanità che domina la natura" (Pictet Asset Management, 2019) <https://am.pictet/it/blog/articoli/sviluppo-sostenibile/antropocene-benvenuti-nell-era-dell-umanita-che-domina-la-natura> accessed 19 May 2024.

[24] Steffen W et al., "The Anthropocene: conceptual and historical perspectives" (2011) The Royal Society, p.843. Accessed 30 May 2024.

[25] Ibidem, p.849.

Geological Congress in South Africa. We are now awaiting official recognition from the International Union of Geological Sciences.[26]

As early as 1864, George Perkins Marsh warned that human activity was harming nature and the planet, risking their survival.[27] Unless a natural disaster interrupts human dominance, scholars predict that impacts on the surrounding environment will continue.[28]

The Anthropocene is a key focus across all scientific fields. Notably, social sciences are rethinking the relations between humans and the environment. Public authorities must adapt environmental strategies to mitigate humans' disruptive role.[29] Recognizing the scale of our impact is crucial for finding ways to reverse or lessen the damage to biodiversity and ecosystems. The alterations caused are of such a magnitude that the Earth has ceased to be the planet that *homo sapiens* found.[30] Humankind has transformed it into another planet with a largely anthropized nature.

Humans must reorder their relationship with the environment, taking responsibility for the new reality they have created. In many ecosystems, letting nature take its course is no longer possible. Humans must act as the janitor, the guardian of their planet. Granting rights to nature addresses these concerns by aiming to reverse ecosystem degradation where past environmental policies have failed. This idea is reflected in the Preamble of Spanish Law 19/2022, which recognizes the Mar Menor's rights to address the Anthropocene's needs.[31]

Personifying nature stems from an ecocentric conception of the relationship between human beings and nature. This view contrasts with anthropocentrism, which places humans at the center of all things. According to this doctrine, nature is a resource

[26] Pictet per Te, "Antropocene: benvenuti nell'era dell'umanità che domina la natura" (Pictet Asset Management, 2019) <https://am.pictet/it/blog/articoli/sviluppo-sostenibile/antropocene-benvenuti-nell-era-dell-umanita-che-domina-la-natura> accessed 19 May 2024.

[27] Marsh G P, "L'uomo e la natura ossia la superficie terrestre modificata per opera dell'uomo" (G. Barbera Editore, 1872), p. 3 <https://books.google.nl/books/about/L_uomo_e_la_natura_ossia_La_superficie_t.html?id=TIXaxgRNcNEC&redir_esc=y> accessed 19 May 2024.

[28] Tong S et al., "Current and future threats to human health in the Anthropocene" (2022) 158 Environmental International, p.1. Accessed 30 May 2024.

[29] Ibidem, p.9.

[30] Longhi S at al., "The First Outstanding 50 Years of "Università Politecnica delle Marche" – Research Achievements in Life Sciences" (Springer, 2020), p.635. Accessed 30 May 2024.

[31] Ley 19/2022, Preamble (ES). Accessed 30 May 2024.

to satisfy human interests, justifying actions benefiting human beings and disregarding nature's intrinsic value.[32]

This anthropocentric view shapes environmental policies to protect nature only when it benefits humans, aiming to prevent environmental damage affecting them or to ensure resource availability. [33] Traditional environmental protection laws usually focus on preventing or mitigating impacts on humans, often ignoring measures that do not directly benefit our species. This approach is evident in national legal frameworks, the European Union's, and international ones.

A relevant example is the Italian legal framework. Relevant are Articles 9 and 32 of the Italian Constitution.[34] Other Italian environmental laws, such as Framework Law on Protected Areas 394/1991, are also designed to balance environmental protection with human health and economic needs.[35] These laws focus on preventing pollution and managing natural resources to benefit public health and the economy. Moreover, Article 2, paragraph 3, of the Habitats Directive illustrates that while the directive aims to conserve natural habitats and species, it explicitly balances these goals with human economic and social interests, reflecting an anthropocentric approach to environmental protection.[36] Lastly, the Ramsar Convention is a crucial instance of the anthropocentric nature of environmental protection. Specifically, the Convention promotes the conservation of wetlands. It does so with a clear recognition of their value to human societies.[37]

In contrast, ecocentrism centers nature and its ecosystems, viewing humans as part of the natural order. This perspective values ecosystems and species for their intrinsic

[32] Lillo A, "Is Water Simply a Flow? Exploring an Alternative Mindset for Recognizing Water as a Legal Person" (2018) Vermont Journal of Environmental Law, p.170. Accessed 30 May 2024; Pain N & Pepper R, "Can Personhood Protect the Environment? Affording Legal Rights to Nature" (2021) 45 Fordham Int'l LJ 315, p.322. Accessed 15 June 2024 (referring to Thomas Berry, "The great work. Our way into the future" (1999)).

[33] Bilof N, "The Right to Flourish, Regenerate, and Evolve: Towards Juridical Personhood for an Ecosystem" (2018) GGU Law Digital Commons, p.120 <https://digitalcommons.law.ggu.edu/cgi/viewcontent.cgi?article=1151&context=gguelj> accessed 30 May 2024.

[34] Costituzione della Repubblica Italiana, Artt. 9 and 32, Part I (IT). Accessed 13 June 2024.

[35] See "Legge quadro sulle aree protette", Law 394/1991, Art.1, para.3, lett.b (IT). Accessed 13 June 2024.

[36] Habitats Directive 92/43/EEC, Art.2, para.3. Accessed 13 June 2024.

[37] See "Ramsar Convention on Wetlands of International Importance Especially as Waterfowl Habitat" (adopted 2 February 1971, entered into force in 1975), Artt. 3 and 4. Accessed 13 June 2024.

worth, not just their utility to humans.[38] Ecocentrism offers a more holistic approach to environmental protection, emphasizing nature's inherent value and advocating for its preservation beyond human needs.

Professor Teresa Vicente describes ecological justice as providing both humans and nature with what they need for their development and dignity.[39] Consequently, the first rationale for environmental personhood stems from ecocentrism, which aims to achieve ecological justice by ensuring nature's full legal protection. The following section examines the second rationale, exploring how legal personhood can lead to better environmental governance and outcomes and giving practical examples.

2.2. The Improvement of Environmental Outcomes

Another rationale behind environmental personhood is to improve environmental outcomes. Current efforts to combat climate change need enhancement to address the climate emergency effectively.[40]

Environmental law scholars Louis Kotzé and Paola Villavicencio Calzadilla argue that to achieve better environmental outcomes, "*lawyers, politicians and academics, among many other role players*", must embrace "*alternative, potentially progressive, and possibly more effective juridical framings that focus on preserving Earth system integrity*".[41]

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[38] Latour B, "We Have Never Been Modern" (Harvard University Press Cambridge, 1993), p.6. Accessed 30 May 2024.

[39] Giménez T V, "El nuevo paradigma de la justicia ecológica y su desarrollo ético-jurídico", in "Justicia ecológica en la era del Antropoceno" (Trotta, 2016), p.11. Accessed 19 May 2024; Giménez T V, "Hacia un modelo de justicia ecológica", in "Justicia ecológica y protección del medio ambiente" (Trotta, 2002), p.13. Accessed 19 May 2024.

[40] UN Environment Programme, "Global Climate Litigation Report. 2020 status review" (2020), p.4. Accessed 20 May 2024; Walley H, "Two Arguments for Extending Legal Personhood to Nature" (University of Mississippi, 2019), p.39. Accessed 20 May 2024.

[41] Kotzé L J and Calzadilla P V, "Living in Harmony with Nature? A Critical Appraisal of the Rights of Mother Earth in Bolivia" (2018) Cambridge University Press, p. 424 <https://www.cambridge.org/core/journals/transnational-environmental-law/article/living-in-harmony-with-nature-a-critical-appraisal-of-the-rights-of-mother-earth-in-bolivia/C819E1C4EE0848C3F244EFB0C200FE65> accessed 20 May 2024.

As anticipated, traditional environmental legislation focuses more on bringing offenders into compliance than restoring ecosystems.[42] In 1972, Stone highlighted this inadequacy, noting that even if a plaintiff wins a suit for water pollution, no funds go directly to repairing the stream. Even court-issued injunctions can be compromised if plaintiffs decide to settle.[43]

Plaintiffs have historically struggled to obtain adequate remedies in environmental protection disputes. In the United States, many of these actions are dismissed due to lack of standing, preventing them from being judged on their merits.[44]

Attorney Kaitlin Sheber argues that granting rights to nature would enhance environmental protection by allowing more lawsuits to proceed, reducing dismissals due to lack of standing. Successful actions would direct compensation towards repairing environmental damage rather than benefiting human or corporate plaintiffs.[45] At the very least, granting rights to nature increases the likelihood of obtaining favorable court decisions.

Dutch ecologists recently considered the potential effectiveness of granting personhood to rivers.[46] They concluded that while it could address the importance of healthy rivers for current and future generations, it would not necessarily improve rivers' health. They emphasized that environmental personhood must be accompanied by enforceable legislation on priority setting and the custodian's role across various jurisdictions and institutional levels.[47]

However, these findings indicate conflicting evidence regarding the argument that granting environmental personhood improves environmental outcomes. While proponents like Sheber argue that it would enhance protection by enabling more legal

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[42] Bilof N, "The Right to Flourish, Regenerate, and Evolve: Towards Juridical Personhood for an Ecosystem" (2018) GGU Law Digital Commons, p.120 <https://digitalcommons.law.ggu.edu/gguelj/vol10/iss1/6/> accessed 30 May 2024.

[43] Stone C, "Should Trees Have Standing? Toward Legal Rights for Natural Objects" (1982) p.462. Accessed 13 May 2024.

[44] Esty D, "Should Humanity have standing? Securing environmental rights in the United States" (2022) 95 S Cal L Rev 1345, p.1366. Accessed 14 June 2024.

[45] Sheber K, "Legal Rights for Nature: How the Idea of Recognizing Nature as a Legal Entity Can Spread and Make a Difference Globally" (2020) Hastings Environmental Law Journal, p.166 <https://repository.uclawsf.edu/cgi/viewcontent.cgi?article=1582&context=hastings_environmental_law_journal> accessed 20 May 2024.

[46] Wuijts S et al., "An Ecological Perspective on a River's Rights: A Recipe for More Effective Water Quality Governance?" (2019) Water International, p.662. Accessed 20 May 2024.

[47] Ibidem.

actions and focusing on repairing environmental damage, the Dutch ecologists caution that without robust and enforceable legislation, the mere granting of personhood may not suffice to improve environmental health.

Blake argues that the effectiveness of environmental personhood depends on how much harm is required to invoke these rights. If substantial harm is needed for recognition, these rights might be ineffective. Blake believes environmental personhood will only lead to better outcomes if a dedicated protective body is established to oversee ecosystem health and is empowered to take legal action to protect the ecosystem.[48]

Conversely, Darpö argues that environmental personhood will likely face the same challenges as traditional environmental protection frameworks, including prioritizing economic growth, weak enforcement, and lack of funding.[49] These issues are particularly relevant in states with high poverty rates, where natural resource extraction is a primary means of economic development.[50]

For instance, in Ecuador, environmental exploitation persists despite successful litigation based on the state's constitutional rights to nature.[51] Esperanza Martinez, the founder of the environmental organization Acción Ecológica, recently noted that while Ecuador has made progress regarding the rights of nature and environmental discussions have influenced government entities, the push for resource extraction persists.[52] In 2014, approximately 39 percent of Ecuador's greenhouse gas emissions came from

[48] Pain N & Pepper R, "Can Personhood Protect the Environment? Affording Legal Rights to Nature" (2021) 45 Fordham Int'l LJ 315, p.325. Accessed 15 June 2024.

[49] Darpö J, "Can nature get it right? A study on Rights of Nature in the European Context" (European Union, 2021), p.60 <https://www.europarl.europa.eu/RegData/etudes/STUD/2021/689328/IPOL_STU(2021)689328_EN.pdf<ù> accessed 20 May 2024.

[50] Kotzé L J and Calzadilla P V, "Living in Harmony with Nature? A Critical Appraisal of the Rights of Mother Earth in Bolivia" (2018) Cambridge University Press, p. 400 <https://www.cambridge.org/core/journals/transnational-environmental-law/article/living-in-harmony-with-nature-a-critical-appraisal-of-the-rights-of-mother-earth-in-bolivia/C819E1C4EE0848C3F244EFB0C200FE65> accessed 20 May 2024.

[51] Lalander R, "Rights of Nature and the Indigenous Peoples in Bolivia and Ecuador" (2014) Stockholm University, p.149. Accessed 20 May 2024.

[52] Paz Cardona A J, "For Ecuador, a Litany of Environmental Challenges Awaits in 2020" (Mongabay, 2020) <https://perma.cc/H9HG-AAKL> accessed 20 May 2024.

deforestation and land use practices, primarily for oil extraction.[53] By 2020, Ecuador had the highest annual deforestation rate in the Western Hemisphere.[54]

Similarly, Bolivia has granted rights to nature but continues to expand its extractive industry.[55] Supreme Decree 2366/2015 legalized exploratory drilling in over sixty of Bolivia's protected areas and twenty-two national parks.[56]

In 2019, Bolivia experienced an unusually destructive fire season, losing 50,000 m² of forest. Experts attribute this extensive destruction to agricultural expansion driven by the government's pro-development agenda.[57] These findings have prompted some scholars to question whether recognizing environmental personhood was primarily intended to enhance Bolivia's ethnoecological image on the global stage rather than genuinely protecting the environment.

Finally, Uganda's government, like Ecuador and Bolivia, has a history of prioritizing national economic growth over ecological preservation, despite recent statutory implementation of nature's rights.[58] Under Uganda's statutory personhood program, the environment minister has broad discretion to designate conservation areas where wilderness rights apply.[59] However, this discretion is concerning given the government's extractive ambitions.

After implementing rights of nature, Uganda has continued developing oil fields in the Albertine Rift, impacting the ancestral lands of the Bagungu people.[60] In April 2021, agreements were finalized to extract about 1.7 billion barrels of oil, including from areas

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[53] Stevens C et al., "Ecuador Shows Why Communities and the Climate Need Strong Forest Rights" (World Resources Institute, 2014) <https://perma.cc/Z27G-J533> accessed 20 May 2024.

[54] Martínez Sánchez J C, "USAID Ecuador" (2020), p.8 <https://pdf.usaid.gov/pdf_docs/PA00Z79Z.pdf> accessed 20 May 2024.

[55] Ibidem.

[56] Supreme Decree 2366/2015 of Constitutional President of the Plurinational State of Bolivia of 20 May 2015. Accessed 20 May 2024.

[57] Praeli Y S, "Conservationists Urge Reforms in Bolivia after Environmental, Political Crises" (Mongabay Environmental News, 2020) <https://news.mongabay.com/2020/03/conservationists-urge-reforms-in-bolivia-after-environmental-political-crises/> accessed 21 May 2024.

[58] Hopewell M W, "The Rights of Nature in Uganda: Exploring the Emergence, Power and Transformative Quality of a 'New Wave' of Environmentalism" (2019), p.4 <https://indisproject.org/wp-content/uploads/2020/11/Matthew-Hopewell-Rights-of-Nature-UG-Dissertation.pdf> accessed 21 May 2024.

[59] "The National Environment Act" 5/2019, Art.4, para.4 (UG). Accessed 21 May 2024.

[60] Losh J, "Uganda Joins the Rights-of-Nature Movement but Won't Stop Oil Drilling" <https://perma.cc/3UX5-36AK> accessed 21 May 2024.

within a national park and adjacent to a United Nations Educational, Scientific and Cultural Organization (UNESCO) wetland site.[61]

Naomi Karekaho, spokesperson for the National Environment Management Authority, commented on the balance between nature's rights, human rights, and development aspirations, highlighting the complexity of the issue: "*Nature definitely has its own rights. But so do people and so does development*".[62]

On the contrary, granting rights to nature can enhance and safeguard the environment where governments fail to protect natural resources adequately. History has shown that legal systems and governments often fail to preserve the environment upon which civilization relies. In such a system heavily reliant on adversarial processes for justice, granting nature the ability to advocate for itself can be logical, particularly when governments and corporations, historically significant adversaries to nature, wield significant legal power. [63]

Justice William O. Douglas of the U.S. Supreme Court famously referenced Stone's argument for environmental personhood in his dissenting opinion in Sierra Club v. Morton in 1972.[64] The Sierra Club, a nonprofit environmental organization, sought to prevent the development of a large resort complex in the Sierra Nevada mountains. Despite the Sierra Club's argument that their expertise and longstanding concern qualified them as public representatives, they ultimately failed.[65] However, Justice Douglas emphasized that those who intimately understand and are connected to the natural environment being harmed should be considered its legitimate representatives. He highlighted concerns about powerful interests manipulating environmental advocates through advisory committees or "*friendly working relations*", underscoring the importance of recognizing nature's intrinsic value and allowing it to have a voice in legal proceedings.[66]

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[61] Ibidem.
[62] Ibidem.
[63] Bilof N, "The Right to Flourish, Regenerate, and Evolve: Towards Juridical Personhood for an Ecosystem" (2018) GGU Law Digital Commons, p.133 <https://digitalcommons.law.ggu.edu/gguelj/vol10/iss1/6/> accessed 30 May 2024.
[64] Sierra Club v. Morton, [1972], U.S. Supreme Court, no 70-34, p.405. Accessed 21 May 2024.
[65] Ibidem.
[66] Ibidem.

Similarly, scholars argue that developing the environmental personhood doctrine is essential in India to combat the government's repressive tactics against environmental activists.[67]

As the examples above show, the effectiveness of environmental personhood in enhancing environmental protection will largely hinge on the robustness of the legal framework and the government's commitment to environmental conservation. A third rationale behind environmental personhood is that it may also advance Indigenous sovereignty. The following section will address this issue.

2.3. Recognition of Indigenous Custodial Arrangements

Some scholars suggest that by granting rights to nature and incorporating Indigenous perspectives into environmental personhood frameworks, Indigenous communities could gain more authority over their ancestral lands.

Two statutes enacted in New Zealand exemplify this idea. In 2014, the Te Urewera protected area was granted legal personality, transitioning from a national park. The Te Urewera Act of 2014 acknowledged Te Urewera as a place of spiritual significance with its own *mana* and *mauri*, recognizing its identity and deep connection to the Tuhoe people.[68] The law established the board of trustees of Te Urewera, with four members appointed by Tuhoe Te Uru Taumatua and four by the Crown.

Under the Te Urewera Act, ownership of Te Urewera land belongs to Te Urewera itself, rather than its representative entity or the Tuhoe people. This approach was aimed at avoiding the contentious issue of ownership and reassuring non-Indigenous New Zealanders that ownership of Te Urewera should not be vested in any single group.

Tanasescu highlights the Te Urewera Act's limited incorporation of Maori terminology in its operative provisions, contrasting this with the prevalence of Western

[67] Pain N & Pepper R, "Can Personhood Protect the Environment? Affording Legal Rights to Nature" (2021) 45 Fordham Int'l LJ 315, p.328. Accessed 15 June 2024.

[68] "Te Urewera Act 2014" 51/2014, Part 1, Sub-part 1, Art.3 (NZ). Accessed 21 May 2024.

bureaucratic structures.[69] In contrast, Gordon defends the Te Urewera law as a radical departure from a human-centered rights regime, emphasizing its rejection of treating nature as property.[70]

The Te Urewera Act empowered Tuhoe peoples to manage Te Urewera in line with their traditional practices. Previously managed as a national park by the Department of Conservation, toxic spray was commonly used to control the possum population.

However, after the Te Urewera Act, Tuhoe hunters began trapping and hunting possums to manage their population sustainably, reducing reliance on toxic bait.[71] These activities not only provided a sustainable livelihood for Tuhoe families through the sale of possum fur and consumption of possum meat but also helped maintain ecological balance.

In an interview with Craig Kauffman, Tuhoe hunters expressed a sense of responsibility in managing the possum population to prevent ecosystem imbalance. Kauffman concluded that the Tuhoe's role in the forest's food web contributes to the sustainability of the forest ecosystem.[72]

In 2017, the Te Awa Tupua Act became the second law in New Zealand to declare an ecosystem a legal person.[73] It recognized the status of Te Awa Tupua, which encompasses the Whanganui River from its source in the mountains to its mouth, including all its physical and metaphysical aspects.[74]

The Act defines Te Awa Tupua as an indivisible and living whole, incorporating intrinsic values such as "*Ko te Awa te mātāpuna o te ora: the River is the source of*

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[69] Tanasescu M, "Rights of Nature, Legal Personality and Indigenous Philosophies", in "Transnational Environmental Law" 9 (Cambridge University Press, 2020), p.429. Accessed 21 May 2024.

[70] Gordon G J, "Environmental Personhood" (2018) Columbia Journal of Environmental Law, p.52 <https://journals.library.columbia.edu/index.php/cjel/article/view/3742/1549> accessed 21 May 2024.

[71] Kauffman C M, "Managing People for the Benefit of the Land: Practicing Earth Jurisprudence in Te Urewera, New Zealand" (2020), p.21 <https://academic.oup.com/isle/article-abstract/27/3/578/5901250> accessed 21 May 2024.

[72] Kauffman C M, "Rights of Nature: Institutions, Law, and Policy for Sustainable Development" (Oxford University Press, 2018), p.12. Accessed 21 May 2024.

[73] "Te Awa Tupua (Whanganui River Claims Settlement) Act 2017" 7/2017 (NZ). Accessed 21 May 2024; Collins T and Esterling S, "Fluid Personality: Indigenous Rights and the TeAwa Tupua (Whanganui River Claims Settlement) Act 2017 in Aotearoa New Zealand" (2019) 20 Melbourne Journal of International Law, p.198. Accessed 21 May 2024.

[74] "Te Awa Tupua (Whanganui River Claims Settlement) Act 2017" 7/2017, Part 2, Subpart 2, para.12 (NZ). Accessed 21 May 2024.

spiritual and physical sustenance" and "*Ko au te Awa, ko te Awa ko au: I am the River and the River is me*".[75]

The River's representative entity, Te Awa Tupua, is tasked with upholding the status of both Te Awa Tupua and Te Awa Kawa. This entity comprises one representative appointed by the Whanganui iwi and one by the Crown, with support from an advisory group called Te Karewao.

Under that Act, a strategy group called "Te Köpukana Te Awa Tupua" was established. This group comprises stakeholders like Whanganui iwi, local and central government officials, and representatives from the tourism, conservation, recreation, and game sectors. The law also established a contestable fund.[76]

However, despite the transfer of parts of the Whanganui Riverbed to Te Awa Tupua, owned by the Crown, this does not entail an ownership interest in the water for its representative entity or the Whanganui iwi.[77] Moreover, the consent of Te Pou Tupua, the representative entity, is not required to use water from the river. Critics argue that this setup does not adequately empower the Whanganui iwi to manage the river effectively.

Although these statutes restored Maori stewardship over the ecosystems they affected, they were enacted because the Crown refused to grant ownership of the ecosystems to the Tuhoe and Whanganui iwi. Moreover, neither statute grants substantive property rights to the traditional custodians of these resources.

Some have suggested adapting New Zealand's rights of nature model to the Australian context. However, Virginia Marshall argues that securing rights to nature conflicts with the cultural obligations of Aboriginal and Torres Strait Islander peoples to care for their custodial lands. She sees environmental personhood as a new tool of colonization that could disrupt Indigenous ontological relationships and laws, undermining their inherent obligations to manage and care for the environment.[78]

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[75] Ibidem, para. 13.

[76] O'Donnell E L and Talbot-Jones J, "Creating Legal Rights for Rivers: Lessons from Australia, New Zealand, and India" (2018) Ecology Law Quarterly, p.4 <https://www.jstor.org/stable/26799037> accessed 21 May 2024.

[77] Hutchison A, "The Whanganui River as a Legal Person" (2014) Alternative Law Journal, p.181. Accessed 21 May 2024.

[78] Pain N & Pepper R, "Can Personhood Protect the Environment? Affording Legal Rights to Nature" (2021) 45 Fordham Int'l LJ 315, p.332. Accessed 15 June 2024.

Moreover, the nature rights movement can challenge the diverse property rights to land and water granted to Indigenous communities by various Australian laws at the federal, state, and territorial levels.

Dr. Marshall emphasizes that the solution to inadequate government policies and laws is not to resort to legal personhood. Instead, she advocates for meaningful consultation and engagement with Indigenous communities, granting them a significant and central role in the management of Australia's land, waters, and resources.[79]

There is abundant evidence that conferring rights to nature may not necessarily favor Indigenous interests. Despite the inclusion of Indigenous concepts into Bolivia's legal framework of personhood, the exploitation of Indigenous custodial lands persists in the state. In August 2017, the government of Evo Morales enacted the "Law of Protection, and Integral and Sustainable Development of the Isiboro Sécure National Park and Indigenous Territory" (TIPNIS), overturning a previous law that prohibited the construction of transportation infrastructure on the traditional lands of the Tsimanö, Yuracarö, and Mojeno-Trinitario peoples.[80]

In 2018, TIPNIS deemed the protection law invalid due to inadequate consultation with Indigenous peoples before its enactment.[81] This decision considered Bolivia's legal framework regarding personhood, protections for Indigenous peoples in the Bolivian Constitution, and Supreme Court jurisprudence.

TIPNIS ordered the Bolivian government to halt construction of the infrastructure immediately. However, this has not occurred yet. Moreover, the Bolivian minister, Carlos Romero Bonifaz, has publicly rejected TIPNIS's authority.

While environmental personhood can sometimes bolster Indigenous sovereignty, it is crucial not to overstate the alignment between nature rights and Indigenous interests. Prior consultation with Indigenous communities is vital before implementing nature rights frameworks.

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[79] Ibidem.

[80] "Law of Protection, and Integral and Sustainable Development of the Isiboro Sécure National Park and Indigenous Territory", Act 266/2017 (BOL). Accessed 22 May 2024.

[81] Case of the Isiboro Sécure National Park and Indigenous Territory, (2018), International Tribunal for the Rights of Nature, p.23. Accessed 22 May 2024.

2.4. Future Generations and Intergenerational Justice

This study also considers the ethical dimensions of environmental issues, emphasizing the consequences for future generations. As temporary stewards of the Earth, those living today have the responsibility to either preserve or degrade the planet before passing it on to future generations.[82] This concept emphasizes the ethical responsibility to preserve conditions that ensure a livable and meaningful future. It underscores the obligation to consider the well-being of future generations, especially those who will live after the current population has passed away, by maintaining an environment conducive to life.[83]

Consequently, intergenerational equity refers to the ethical principle that current generations have a duty to manage natural resources responsibly, ensuring that future generations inherit an environment that allows for a quality of life similar to or better than that enjoyed today. As articulated in the Stanford Encyclopedia of Philosophy, intergenerational justice argues that our obligations extend beyond our contemporaries to include those who will inhabit the Earth after us, imposing moral and legal duties to preserve environmental health and biodiversity for future generations.[84]

The concept of intergenerational justice is particularly relevant in environmental law, where the consequences of ecological degradation are often long-lasting and disproportionately affect future generations. Recognizing ecosystems as legal persons addresses these concerns by embedding the rights of future generations within legal systems. This approach not only provides a mechanism for protecting the environment today but also serves as a safeguard for the rights of those yet to be born.

Recognizing the Mar Menor as a legal entity embodies the idea that natural environments possess intrinsic value and rights that must be respected and protected. This legal status extends beyond environmental protection as a present-day concern and into intergenerational justice. It reinforces the notion that the right to a healthy

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[82] Barry B, "Sustainability and Intergenerational Justice" (1997), 45 Theoria 89, pp. 43-65. Accessed 29 August 2024.

[83] Ibidem.

[84] Lukas Meyer, "Intergenerational Justice", The Stanford Encyclopedia of Philosophy (Fall edn, 2021) <https://plato.stanford.edu/entries/justice-intergenerational/> accessed 29 August 2024.

environment, enshrined in Article 45 of the Spanish Constitution, is a fundamental human right that extends to future generations.[85] This constitutional right underscores that environmental protection is not merely a policy choice but an ethical imperative linked to broader human rights such as the right to life, health, and personal integrity.[86]

When environmental harm is framed as an ethical problem and linked to human rights, the scope of constitutional protections is broadened, reinforcing the duty to prevent environmental degradation. Environmental personhood amplifies this duty by granting nature the legal standing to demand restoration and protection, thereby ensuring that current actions are scrutinized not just for their immediate impacts but also for their long-term consequences.

It is crucial to recognize that when the interest of future generations is embedded within fundamental laws, such as the constitution, it not only allows but also compels legislators to adopt a long-term perspective. This involves crafting environmental policies that ensure the sustained coexistence—and perhaps the very survival—of humanity within ecosystems and the biosphere as a whole, extending well beyond the current generations. This principle resonates deeply with the unique aspects of environmental protection and ecosystem balance, inherently requiring an intergenerational approach. Such an approach mandates that environmental policies be envisioned over the medium to long term, surpassing the duration of electoral mandates and extending beyond the lifespans of currently living or politically active generations.

Furthermore, a constitutional reference to the "*interest of future generations*" can serve as a powerful legal constraint for legislators, as illustrated by the German Federal Constitutional Court's ruling on 24 March 2021.[87] This decision addressed the Federal Climate Change Act of 12 December 2019 (Bundes-Klimaschutzgesetz – KSG) by applying the "*responsibility toward future generations*" clause in Article 20a of the Basic Law.[88] Such a constitutional reference can provide a significant legal standard that enriches the decision-making processes in environmental policymaking and strengthens

[85] Constitución Española, Art.45, Part 1 (ES). Accessed 17 June 2024.

[86] Barry B, "Sustainability and Intergenerational Justice" (1997), 45 Theoria 89, pp. 43-65. Accessed 29 August 2024.

[87] Ginzky H et al., "International Yearbook of Soil Law and Policy" (Springer, 2022), p.35 <https://link.springer.com/chapter/10.1007/978-3-031-40609-6_2> accessed 31 August 2024.

[88] Ibidem, p.38.

the judicial oversight of these policies, highlighting the potential for a robust framework that guides and validates long-term environmental governance.

In conclusion, embedding the interests of future generations within constitutional and legal frameworks marks a crucial shift towards sustainable environmental governance. As in the case of the Mar Menor, recognizing ecosystems as legal persons embodies a profound commitment to intergenerational justice by granting nature the rights needed to safeguard its integrity beyond the present. This legal innovation not only challenges traditional anthropocentric views but compels policymakers to adopt a long-term perspective that prioritizes ecological balance over immediate gains. The principle that today's actions must consider the well-being of future generations transforms environmental protection from a policy option into a binding ethical and legal duty, resonating with broader human rights such as the rights to life and health. As demonstrated by international precedents like the German Federal Constitutional Court's application of the responsibility toward future generations, integrating these principles into legal structures provides a powerful tool for guiding and validating sustainable environmental policies, ensuring that our stewardship is not limited by the narrow interests of the present but committed to the enduring survival of humanity and the natural world.

3. Conclusion

The exploration of environmental personhood within this chapter highlights a profound shift in legal and ethical perspectives, emphasizing nature's intrinsic value and its recognition as a legal subject. This transformation is more than a mere theoretical evolution; it signals a broader movement towards redefining human-environment interactions in a way that acknowledges and respects the rights of natural entities.

However, the implementation of environmental personhood presents a myriad of challenges. As observed, the success of this legal innovation largely hinges on the robustness of the supporting legal frameworks and the commitment of governing bodies to enforce these rights effectively. Case studies from New Zealand, Ecuador, and other

jurisdictions underscore the complexities involved, where symbolic recognition often falls short of achieving substantial ecological protection due to weak enforcement, conflicting economic interests, and insufficient funding.

Moreover, while environmental personhood offers potential avenues for empowering Indigenous communities, as seen in the New Zealand examples, it also risks perpetuating colonial structures if not carefully designed with genuine consultation and partnership. The inclusion of Indigenous perspectives is not merely a legal requirement but a moral imperative that honors the longstanding stewardship roles of these communities.

The recognition of environmental personhood also aligns with the broader principles of intergenerational justice, mandating that current actions are scrutinized for their long-term impacts on future generations. This aspect is crucial in framing environmental harm as an ethical issue that extends beyond immediate economic gains, urging policymakers to adopt sustainable approaches that prioritize ecological integrity.

In conclusion, while the concept of environmental personhood offers a bold reimagining of environmental governance, its effectiveness as a tool for ecological justice depends on the careful crafting and enforcement of supportive legal frameworks. It necessitates a paradigm shift not only in law but in societal values, requiring a collective commitment to the principles of ecocentrism and intergenerational equity. As the discussion moves forward, particularly in examining the case of the Mar Menor, the practical implications of this innovative legal approach will be further scrutinized to assess its potential in driving meaningful environmental change.

The following chapters will delve into the practical implications and controversies surrounding environmental personhood, focusing on the recent legislative developments concerning the Mar Menor. These analyses will be crucial in evaluating whether granting legal personhood to the Mar Menor can lead to concrete environmental improvements and sustainable protection.

III. The Case of the Mar Menor

1. Introduction

This chapter provides a comprehensive overview of the Mar Menor and its ecosystem, examining both natural features and human impacts.

Section 2 describes the Mar Menor Lagoon, detailing its geographical location, physical characteristics, climate, and biodiversity. It highlights the lagoon's unique environmental significance, the coastal dynamics of La Manga del Mar Menor, and the various sediment types and habitats within the lagoon.

Notably, sub-section 2.1 delves into the tourism and recreational uses of the natural coastal space around the Mar Menor. It discusses the region's transformation into a major tourist destination, the environmental challenges posed by tourism development, and the efforts required to promote sustainable tourism practices.

Sub-section 2.2 focuses on the landscape changes and environmental effects due to intensive agriculture in the Campo de Cartagena-Mar Menor region. It examines the shift from traditional farming to modern intensive agriculture, the environmental impacts of greenhouse agriculture, and the need for sustainable agricultural practices.

Moreover, section 3 explores the various legal frameworks established to protect the Mar Menor, starting with the international and European Union's frameworks and then moving to the national framework.

Specifically, sub-section 3.1 delves into the international legal framework protecting the Mar Menor, including its designation as a Ramsar site and a Specially Protected Area of Mediterranean Importance (SPAMI) under the Barcelona Convention.

Sub-section 3.2 examines the European Union’s legal framework, highlighting the role of the Birds Directive, the Habitats Directive, and the Natura 2000 Network in protecting the Mar Menor.

Sub-section 3.3 focuses on the national legal framework, discussing the measures taken prior to the enactment of Spanish Law 19/2022, including the Decreto-Ley 1/2017 and the implementation of the Natura 2000 Network. It will conclude by introducing the

transformative impact of Spanish Law 19/2022, which grants legal personhood to the Mar Menor, marking a significant shift in its protection framework.

The concluding section of this chapter synthesizes the insights gained from analyzing the Mar Menor's ecosystem and the legal frameworks designed for its protection. By examining the natural features, human impacts, and the multifaceted legal approaches at the international, EU, and national levels, we gain a comprehensive understanding of the challenges and potential solutions for safeguarding this unique lagoon. The introduction of Spanish Law 19/2022, granting legal personhood to the Mar Menor, marks a significant yet controversial step. The conclusion critically evaluates whether this innovative approach will yield tangible benefits for the lagoon, setting the stage for the next chapter's in-depth exploration of its practical implications and effectiveness.

2. Description of the Mar Menor and its Ecosystem

Despite its name meaning "The Minor Sea", the Mar Menor is Europe's largest saltwater lagoon. Situated in southeastern Spain, this hypersaline coastal lagoon covers an area of 135 km² between the latitudes of 37°38' and 37°50' north and the longitudes of 0°43' and 0°57' west. La Manga, a 22-km-long sandy barrier island, separates the lagoon from the Mediterranean Sea. Five channels connect the lagoon to the open sea, though not all are fully functional. The Mar Menor has a maximum depth exceeding 6 m. Its unique natural setting, characterized by shallow, hypersaline waters and a temperate climate, has made it one of the most significant coastal lagoons in Europe and the Mediterranean region.[89]

The coastal dynamics of La Manga del Mar Menor are influenced by several factors. Wind and wave action, particularly from the east, produce the highest waves, dividing the coastline into two sections around Isla Grossa based on orientation and bathymetry. East winds align isobaths with the coastline normally, while southeast winds cause wave

[89] "The Lagoon Mar Menor – Spanish Dead Sea" (Apartment Costa Blanca, 2021) <https://www.costablancaapartment.eu/attractions/the-lagoon-mar-menor-spanish-dead-sea/> accessed 17 June 2024.

funneling between Punta del Pedruchillo and Isla Grossa, sharply impacting Punta Seca. Isla Grossa causes lateral wave expansion between Punta de Matas Gordas and Punta Seca, forming two currents that flow almost North-Northwest to South-Southwest (NNW-SSW). Southwest of Isla Grossa, wave refraction erodes the area between it and Punta del Estacio, creating steep slopes and arched coastlines with receding beach ridges due to strong waves and wind action displacing sand into the lagoon.[90]

Sediments in this area come from adjacent abrasion, especially north of El Mojón, and fluvial contributions.[91] Additionally, organic detrital sediments from shallow water marine fauna and flora provide significant nutrients for the infralittoral area and La Manga.[92]

Marine agents and processes create a relatively broad morphological diversity in the barrier, despite its apparent monotony in the landscape. On one hand, the beaches form a continuous perimeter with varying widths, depending on their orientation towards either the Mar Menor or the Mediterranean. On the other hand, the dunes, now almost entirely destroyed, once formed a continuous field from El Estacio to Cabo de Palos, primarily oriented towards the east. Among these different unit groups, storm penetration channels can be recognized, with their lower ends hosting diverse deposition lobes (Punta El Bolondo, Punta El Pedrucho, Punta El Pedruchillo, Punta del Galán), which constitute the internal facade of La Manga. These penetration channels play a crucial role as sediment transport pathways, helping to stabilize and maintain the dynamic equilibrium of La Manga.[93]

The region exhibits a semi-arid Mediterranean climate, characterized by warm and dry conditions. The mean annual temperatures range between 17°C and 21°C, with mild winters averaging 10–13°C and summer temperatures exceeding 25°C. The area receives less than 300 mm of precipitation annually, primarily during autumn and winter storm events. July and August experience minimal rainfall, coinciding with peak evaporation

[90] Lillo Carpio M J, "Geomorfologia litoral del Mar Menor" (1978-1979) 8 Papeles de Geografía, p.9 <https://revistas.um.es/geografia/article/view/48161> accessed 13 July 2024.

[91] Ibidem.

[92] Conesa H M et al., "The Mar Menor lagoon (SE Spain): A singular natural ecosystem threatened by human activities" (2007) 54 Marine Pollution Bulletin 839–849, p.842. Accessed 13 July 2024.

[93] "La Manga" (Turismo región de Murcia) <https://www.turismoregiondemurcia.es/en/la_manga/> accessed 13 July 2024; Girona M and Rosa M, "Proceso de configuración y planificación territorial de un espacio turístico y de ocio, la Manga del Mar Menor" (Facultad de Geografía e Historia, 1997), p.43. Accessed 13 July 2024.

rates. Wind patterns in the region display a distinct seasonal variation: westerly winds prevail in autumn and winter, whereas northeast and southeast winds are dominant during spring and summer.[94]

According to the classification of major sediment types and the presence of primary macrophyte species, five major habitat types can be identified in the Mar Menor Lagoon: muddy sediments, sandy sediments, Cymodocea nodosa meadows, Caulerpa prolifera in shallow areas, and Caulerpa prolifera in deep areas. Muddy sediments dominate the deeper areas of the lagoon, covering most of its surface. Rocky habitats, although present, are scarce and primarily located near the islands. Sandy sediments form a narrow band along the lagoon's perimeter, becoming wider in La Manga, the sandbar that isolates the lagoon from the adjacent Mediterranean Sea. The Cymodocea nodosa habitat is confined to small patches in the shallowest areas, with a density of 800 to 1500 shoots per square meter and a positive net recruitment. Caulerpa prolifera covers approximately 90% of the lagoon's bottom, forming a dense monospecific bed. Its biomass is around 18,000 tonnes in dry weight, with a distribution of about 100–150 g DW m^2. Shallow areas exhibit lower biomass per area, while deeper areas display higher biomass. These differences also lead to notable variations in sediment characteristics and invertebrate communities within these habitats.[95]

The biodiversity of the Mar Menor Lagoon, with its varied habitats, is vital for maintaining the lagoon's ecological balance. They support unique species, contributing to the lagoon's health and resilience. Preserving this biodiversity is essential due to its role in water purification, sediment stabilization, and support for fisheries.

In this context, it is crucial to examine the tourist-recreational uses and the intensive agriculture that have been developed for the coastal area, which was in its natural state until a few decades ago.[96] Understanding these factors is crucial for identifying the legal and environmental challenges that have contributed to its degradation, and for developing effective strategies for its restoration and protection.

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[94] Lillebø A I et al., "Coastal Lagoons in Europe: Integrated Water Resource Strategies*"* (IWA Publishing, 2015), p.41. Accessed 13 July 2024.

[95] Ibidem, p. 169.

[96] García-Ayllón S, "GIS Assessment of Mass Tourism Anthropization in Sensitive Coastal Environments: Application to a Case Study in the Mar Menor Area" (2018) 10 Sustainability 1344, p.1 <https://www.mdpi.com/2071-1050/10/5/1344> accessed 13 July 2024.

2.1. Tourist and Recreational Use of the Natural Coastal Space

The Mar Menor has transformed into a significant tourist hub since the mid-1950s.[97] This unique coastal area, spanning a 70 km perimeter, has seen an influx of tourists attracted to its sandy beaches, mild climate, and opportunities for water sports. While tourism has brought economic benefits, it has also introduced numerous environmental challenges that require careful management.[98]

The development of tourism in the Mar Menor began in earnest during the mid-20th century, coinciding with broader trends in mass tourism across the Mediterranean. The construction of hotels, marinas, and recreational facilities has facilitated a steady growth in visitor numbers.[99] However, this rapid development has often outpaced environmental planning and regulation, leading to significant ecological impacts. Urbanization has encroached upon natural habitats, and the construction of infrastructure has disrupted the natural sedimentary dynamics and water quality of the lagoon.[100]

The anthropogenic pressures on the Mar Menor have been substantial. The increase in built-up areas has led to the loss of native vegetation and degradation of dune systems, which play a crucial role in coastal protection and biodiversity. Moreover, the construction of port infrastructures has altered water flow and sediment transport, exacerbating coastal erosion in some areas while leading to sediment accumulation in others. Pollution from agricultural runoff, untreated sewage, and recreational boating activities has further stressed the lagoon's ecosystem, leading to issues such as algal blooms and hypoxia.[101]

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[97] Ibidem.

[98] Ibidem, p.5.

[99] Garcia-Ayllon S, "Geographic Information System (GIS) Analysis of Impacts in the Tourism Area Life Cycle (TALC) of a Mediterranean Resort" (2016) 18 International Journal of Tourism Research, 186–196. Accessed 13 July 2024.

[100] Martínez-López J et al., "Wetland and landscape indices for assessing the condition of semiarid Mediterranean saline wetlands under agricultural hydrological pressures" (2014) 36 Ecological Indicators 400-408 <https://doi.org/10.1016/j.ecolind.2013.08.007> accessed 13 July 2024.

[101] García-Ayllón S, "GIS Assessment of Mass Tourism Anthropization in Sensitive Coastal Environments: Application to a Case Study in the Mar Menor Area" (2018) 10 Sustainability 1344, p.2 <https://www.mdpi.com/2071-1050/10/5/1344> accessed 13 July 2024.

Addressing these challenges requires a shift towards sustainable tourism practices. Effective waste management systems are essential to reduce pollution. Efforts to restore and protect natural habitats, such as replanting native vegetation and rehabilitating dunes, can help mitigate some of the environmental impacts. Regulating construction and enforcing environmental laws are also critical steps in ensuring that new developments do not further harm the ecosystem.

Promoting eco-tourism and raising awareness among visitors and residents about the importance of conserving the Mar Menor's unique environment can foster a culture of sustainability. Activities such as bird watching, guided nature walks, and educational programs can enhance tourists' appreciation of the lagoon's ecological value while minimizing their impact.

Local communities play a vital role in the sustainable management of tourism in the Mar Menor. Engaging residents in conservation efforts and decision-making processes can lead to more effective and locally tailored solutions. Policymakers must prioritize the integration of environmental considerations into tourism planning, ensuring that economic benefits do not come at the expense of ecological health.

The study by Salvador García-Ayllón (2018) provides valuable insights into the extent of anthropization in the Mar Menor and underscores the need for comprehensive management strategies. Utilizing Geographic Information Systems (GIS) to monitor environmental changes and inform policy decisions can help manage the delicate balance between tourism and conservation.[102]

In conclusion, The Mar Menor represents a microcosm of the broader challenges faced by coastal tourist destinations worldwide. Balancing economic development with environmental sustainability is crucial for the long-term viability of tourism in the region. By adopting sustainable practices, engaging local communities, and implementing informed policy measures, it is possible to preserve the Mar Menor's natural beauty and ecological integrity for future generations.

[102] Ibidem, p.1.

2.2. Landscape Changes and Environmental Effects due to Intensive Agriculture in the Campo de Cartagena-Mar Menor

The Campo de Cartagena-Mar Menor (CCMM) region in Murcia, Spain, has undergone substantial landscape changes due to intensive agriculture and urbanization. This area, characterized by a vast plain adjacent to the Mar Menor Lagoon, saw significant agricultural modernization and the beginning of tourism along its shores in the early 20th century. These activities have drastically transformed the landscape.[103]

Since the early 20th century, the CCMM region has seen a shift from traditional dry farming to modernized intensive agriculture. The arrival of the Tajo-Segura water transfer project in 1978 was pivotal, providing essential water resources that enabled the transition from traditional rain-fed agriculture to intensive irrigated farming.[104] The volume allocated for agricultural irrigation from the Tajo-Segura transfer is 400 hm^3, with approximately 53% designated for new irrigated areas and the remaining portion for the reallocation of traditional irrigated lands. According to the concession processing in mid-2009, the irrigable areas of the post-transfer cover a nominal surface area of 132,724 hectares, of which 82,257 hectares (62%) are located in the Region of Murcia.[105]

One of the most notable changes has been the widespread adoption of greenhouse agriculture. Initially, greenhouses were introduced in the 1970s and rapidly expanded in the following decades. By 2011, the region had 3,032 hectares of greenhouses, a significant increase from the 535 hectares in 1981. These greenhouses have altered the landscape by creating large, continuous fields covered with plastic.[106]

Municipalities such as Torre Pacheco and San Javier have seen the most significant increase in greenhouse coverage, with over 1,000 hectares each. This expansion has led

[103] Morales Gil A, "Aspectos Geográficos de la Horticultura de Ciclo Manipulado en España" in Lección Inaugural Curso Académico 1997-1998 (University of Alicante, 1998), p.129 <https://web.ua.es/es/protocolo/lecciones/lecciones/leccion-inaugural-1997-1998.pdf> accessed 13 July 2024.

[104] Martínez Menchón M, "El agua en el Campo de Cartagena" (2007) 14 Revista murciana de antropología, p.47 <https://revistas.um.es/rmu/article/view/107651/102291> accessed 13 July 2024.

[105] Soto García M et al., "El regadío en la Región de Murcia. Caracterización y análisis mediante indicadores de gestión" (Sindicato Central de Regantes del Acueducto Tajo-Segura, 2014), p.49. Accessed 13 July 2024.

[106] Caballero Pedraza A et al., "Cambios paisajísticos y efectos medioambientales debidos a la agricultura intensiva en la Comarca de Campo de Cartagena-Mar Menor (Murcia)" (2015) 76 Estudios Geográficos, p.484. Accessed 13 July 2024.

to a radical transformation of the landscape, replacing the traditional mosaic of arid land and scattered irrigated fields with extensive plastic-covered areas.[107]

The environmental impacts of these changes are profound. Intensive greenhouse agriculture consumes vast amounts of water, often leading to the overexploitation and salinization of aquifers. The use of pesticides and fertilizers in these greenhouses results in significant runoff, contaminating nearby water bodies, including the Mar Menor Lagoon. This runoff has led to nutrient enrichment, causing algal blooms and other ecological problems in the lagoon.

The impermeable nature of the plastic coverings in greenhouses has also increased the risk of flooding. These coverings prevent water infiltration, leading to greater surface runoff during heavy rains. This, combined with the improper disposal of agricultural waste in waterways, exacerbates the risk of flooding in the region.[108]

Moreover, the large-scale conversion of land to greenhouse agriculture has resulted in the loss of biodiversity. The isolated nature of greenhouses limits their interaction with the surrounding environment, turning what were once integrated ecosystems into agro-industrial zones.[109]

Despite the environmental challenges, intensive agriculture has brought economic benefits to the region. It has increased agricultural productivity and provided significant employment opportunities.[110] However, the sustainability of this agricultural model is questionable, given its environmental costs.

To address these challenges, it is crucial to implement sustainable agricultural practices. Measures such as improved water management, reduction in pesticide and fertilizer use, and proper waste disposal are essential. Additionally, promoting eco-friendly agricultural techniques and restoring natural habitats can help mitigate some of the environmental impacts.

Engaging local communities and stakeholders in these efforts is vital. Educational programs and policy initiatives aimed at sustainable agriculture can foster a more

[107] Ibidem, p.483.
[108] Ibidem, p.491.
[109] Ibidem.
[110] Pérez-Parra J et al., "Situación actual y tendencias de las estructuras de producción en la horticultura almeriense" (2002) 2 Mediterráneo Económico, p.265. Accessed 13 July 2024.

balanced approach, ensuring that economic gains do not come at the expense of environmental health.

The Campo de Cartagena-Mar Menor region illustrates the complex interplay between agricultural development and environmental sustainability. While intensive agriculture has driven economic growth, it has also posed significant environmental risks. Balancing agricultural productivity with ecological preservation is essential for the future of this region. By adopting sustainable practices and promoting community involvement, the CCMM region can achieve a harmonious relationship between agriculture and the environment.

3. Legal Frameworks Protecting the Mar Menor

The Mar Menor Lagoon represents one of the most distinctive and extensively studied environments in the region. Its biodiversity value has been acknowledged through various protection schemes. The following sections will thoroughly examine the legal frameworks established to safeguard the lagoon, with particular emphasis on the innovative approach of environmental personhood, which has been conferred upon the Mar Menor.

3.1. International Legal Framework Protecting the Mar Menor

The Mar Menor has been designated as a Ramsar International site since 1994. The provisions of the Convention are aimed at protecting wetlands. Generally, wetlands are understood to include swamps, lagoons, and marshes. These are vulnerable environments.[111]

[111] "Ramsar Convention on Wetlands of International Importance Especially as Waterfowl Habitat" (adopted 2 February 1971, entered into force in 1975). Accessed 13 July 2024.

The Ramsar Convention imposes several obligations on its Contracting Parties, including the mandatory designation and conservation of at least one site as a Wetland of International Importance, and the adoption of the "*wise use*" approach to wetlands.[112]

First, according to Article 2 of the Ramsar Convention, each Party "*shall designate suitable wetlands within its territory for inclusion in a List of Wetlands of International Importance*", with clearly defined and precisely described boundaries.[113] These wetlands should be selected based on their international significance "*in terms of ecology, botany, zoology, limnology or hydrology*".[114] To clarify which wetlands should be included in the list for their international importance, the Ramsar Parties established nine criteria in 2005 for identifying a Ramsar site, depending on the types of wetlands and other aspects concerning their species and ecological communities.[115]

Once the Contracting Parties select their Ramsar site(s), they are required to develop a plan to promote the conservation of these wetlands on the List, as well as the "*wise use*" of all wetlands within their territory.[116] The Parties must also endeavor to increase waterfowl populations on appropriate wetlands through proper management.[117] Each Contracting Party must be informed of any potential changes to the ecological character of any of its wetlands on the List and must report this information to the Bureau, which is the International Union for Conservation of Nature and Natural Resources.[118] If a Party to the Convention deletes or restricts the boundaries of a wetland on the List, it must create additional and adequate nature reserves to compensate for the loss.[119] The implementation of the Convention is reviewed by a Conference of the Contracting Parties, which meets at intervals of no more than three years.[120] The Ramsar Convention also

[112] Gardner R C and Davidson N C, "The Ramsar Convention" in "Wetlands" (Springer, 2011), p. 190. Accessed 13 July 2024.

[113] "Ramsar Convention on Wetlands of International Importance Especially as Waterfowl Habitat" (adopted 2 February 1971, entered into force in 1975), Art. 2(1). Accessed 13 July 2024.

[114] Ibidem, Art. 2, para. 2.

[115] Gardner R C and Davidson N C, "The Ramsar Convention" in "Wetlands" (Springer, 2011), p. 192. Accessed 13 July 2024.

[116] "Ramsar Convention on Wetlands of International Importance Especially as Waterfowl Habitat" (adopted 2 February 1971, entered into force in 1975), Art. 3, para. 1. Accessed 13 July 2024.

[117] Ibidem, Art. 4, para. 4.

[118] Ibidem, Artt. 3, para. 2, and 8.

[119] Ibidem, Art. 4, para. 2.

[120] Ibidem, Art. 6, para. 1.

encourages research, the exchange of data and publications concerning wetlands, and the training of personnel skilled in these fields.[121]

As stated in Article 3, paragraph 1, the Ramsar Convention advocates for the promotion, "*as far as possible*", of the "*wise use*" of wetlands within the territories of the contracting states.[122] This concept, which may initially seem abstract, was defined by the Parties in 1987 during the 3rd Meeting of the Conference of the Contracting Parties as the "*sustainable utilization for the benefit of humankind in a way compatible with the maintenance of the natural properties of the ecosystem*".[123] This includes creating plans for wetland conservation, as well as policies integrating wetland management practices with coastal zone and river basin plans, involving local communities, and implementing restoration projects.[124] Article 5 of the Ramsar Convention, which focuses on international cooperation, warrants special mention. This article establishes an obligation for Contracting Parties to consult with one another and coordinate their future policies and regulations in cases where wetlands or water systems are shared.[125]

Furthermore, the Mar Menor Lagoon is considered a Special Protected Area of Mediterranean Interest established by the Barcelona Convention in 2001.[126] The Convention highlights the importance of cooperative regional efforts and the inclusion of various maritime zones and internal waters for comprehensive ecological protection and sustainable development.

The Preamble of the amended Barcelona Convention introduces a commitment to sustainable development, referencing the 1992 United Nations Conference on Environment and Development (UNCED) held in Rio de Janeiro, Brazil, and various cooperation agreements on sustainable development. It reaffirms the recognition of the Mediterranean Sea's vulnerability, along with its unique ecological and cultural significance, and emphasizes the need for regional cooperation to preserve it for current and future generations. The geographical scope of the convention, defined as the

[121] Ibidem, Art. 4, paras. 3 and 5.

[122] Ibidem, Art. 3, para. 1.

[123] Ramsar Convention on Wetlands, "3rd Meeting of the Conference of the Contracting Parties" (27 May - 5 June 1987, Regina, Canada), p.25. Accessed 13 July 2024.

[124] Gardner R C and Davidson N C, "The Ramsar Convention" in "Wetlands" (Springer, 2011), p. 191. Accessed 13 July 2024.

[125] "Ramsar Convention on Wetlands of International Importance Especially as Waterfowl Habitat" (adopted 2 February 1971, entered into force in 1975), Art. 5. Accessed 13 July 2024.

[126] Barcelona Convention for the Protection of the Mediterranean Sea Against Pollution (adopted 16 February 1976, entered into force 12 February 1978). Accessed 13 July 2024.

"*Mediterranean Sea Area*", encompasses all maritime waters, including gulfs and seas, from approximately the Strait of Gibraltar to the Dardanelles.[127]

The general obligation to take all appropriate measures, individually or jointly, in accordance with the Barcelona Convention and its protocols to abate, combat, and - introduced by the 1995 amendment- eliminate to the fullest extent possible pollution in the Mediterranean Sea Area has been strengthened with the phrase "*so as to contribute towards its sustainable development*".[128] The protection of the Mediterranean Sea Area, including the Mar Menor, must now be an integral part of the development process.

As in the 1976 version, Parties are urged "*to take appropriate measures to prevent, abate, and to the fullest extent possible eliminate pollution*" caused by dumping (now including incineration), pollution from ships, pollution resulting from the exploration and exploitation of the continental shelf and the seabed and its subsoil, and pollution from land-based sources.[129] The latter now contains a special reference to substances that are toxic, persistent, and liable to bioaccumulate, and includes indirect sources like canals and other watercourses, as well as pollution from land-based sources transported by the atmosphere. The provision on pollution emergencies has remained unchanged, but new articles have been introduced on the conservation of biodiversity and the transboundary movements of hazardous wastes and their disposal.[130]

The Mar Menor's protection under both the Ramsar Convention and the Barcelona Convention highlights the international commitment to preserving this unique and vulnerable lagoon. These frameworks mandate comprehensive measures for sustainable use and conservation, integrating local, national, and regional efforts. As the analysis moves forward, it is crucial to explore the additional protection and support provided by the European Union to the Mar Menor. The next section will delve into the EU's legal instruments and initiatives aimed at safeguarding this critical habitat, emphasizing how European policies complement and enhance the international efforts described above.

[127] Barcelona Convention for the Protection of the Mediterranean Sea Against Pollution (adopted 16 February 1976, entered into force 12 February 1978), Preamble. Accessed 13 July 2024.

[128] Ibidem, Art.4, para.1.

[129] Ibidem, Artt.5-8.

[130] Ibidem, Artt.9-11.

3.2. European Union's Legal Framework Protecting the Mar Menor

In this section, three significant instruments within the European Union that impact the protection of the Mar Menor Lagoon will be examined: the Birds Directive, the Habitats Directive, the "Natura 2000" Network, and the Nature Restoration Law.[131]

"Natura 2000" is the main instrument of the European Union's policy for the conservation of biodiversity. As part of the Natura 2000 network, the Mar Menor is protected under the Habitats Directive and the Birds Directive. They require EU member states to adopt measures for the conservation, maintenance, and restoration of natural habitats and wild bird species.[132] While these directives mandate significant protection efforts, they do not grant the environment legal personhood. Instead, they impose obligations on member states to implement specific conservation measures and ensure compliance with environmental standards.

The Habitats Directive specifies that these measures can be "*statutory, administrative, or contractual*", reflecting a general and ongoing obligation to protect.[133] The determination of these measures is left to the states, following the principle of subsidiarity. The directive provides examples: management plans specific to the site or integrated with other development plans (Article 6, paragraph 1) and impact assessments for any plan or project that could significantly affect the site, even if not directly connected to its management (Article 6, paragraph 3).

Management plans are not mandatory, as indicated by the expression "*if need be*".[134] However, they help ensure adequate implementation of the directives, as they can facilitate the dissemination of information and active participation of stakeholders and provide a solid foundation for defining regulatory, administrative, and contractual measures.

Recently, the European Commission adopted a specific communication titled "Managing Natura 2000 Sites - The provisions of Article 6 of the Habitats Directive

[131] Birds Directive 2009/147/EC. Accessed 30 May 2024; Habitats Directive 92/43/EEC. Accessed 30 May 2024; Regulation (EU) 2024/1991. Accessed 29 August 2024.

[132] Birds Directive 2009/147/EC, Art.3, paras.1-2. Accessed 30 May 2024; Habitats Directive 92/43/EEC, Art.6, paras.1-2. Accessed 30 May 2024.

[133] Ibidem.

[134] Ibidem, para.1.

92/43/EEC", guiding member states on interpreting critical concepts related to the application of Article 6 of the Habitats Directive.[135] This guidance results from an effort to incorporate and harmonize European Court of Justice rulings, Commission guidance documents, and the outcomes of consultations with national nature protection authorities and other stakeholders.

One of the critical points addressed is the definition of "*necessary conservation measures*", emphasizing their obligatory nature, which excludes any discretion for the competent authorities.[136] These measures are relational and consequential to the definition of conservation objectives for habitats and species and the determination of the site's ecological requirements. Examples of "*statutory, administrative, or contractual*" measures are also provided, such as agri-environmental agreements and forest-environmental measures.[137]

Concerning plant and animal species, the Habitats Directive (and the Birds Directive for wild bird species) does not merely leave it to the member states to define the necessary measures to ensure a "*system of strict protection*" for the species.[138] It also directly introduces prohibitions and usage limitations, which influence the protection regime defined at the national level. For animal species, these include bans on deliberate capture or killing, deliberate disturbance during the breeding period, destruction or collection of eggs, deterioration of breeding sites or resting areas, and the possession, transport, and commercialization of specimens.[139] For plant species, the prohibitions include the collection, cutting, uprooting, destruction of specimens, and their possession, transport, and commercialization.[140]

Member states have additional responsibilities. Firstly, they must monitor the conservation status of habitats.[141] Moreover, they have to report on the implementation of the directives periodically.[142] States must also promote the necessary research and

[135] European Commission, "Managing Natura 2000 Sites - The provisions of Article 6 of the Habitats Directive 92/43/EEC" COM (2018) 7621 final. Accessed 30 May 2024.
[136] Ibidem, p.11.
[137] Ibidem, para.2.4.2.
[138] Habitats Directive 92/43/EEC, Art.12, para.1; Art.13, para.1. Accessed 30 May 2024.
[139] Ibidem, Art. 12, paras.1 and 2; Birds Directive 2009/147/EC, Artt.5 and 6, para.1. Accessed 30 May 2024.
[140] Habitats Directive 92/43/EEC, Art.13. Accessed 30 May 2024.
[141] Ibidem, Art.11.
[142] Ibidem, Art.17.

scientific activities to achieve the directive's objectives.[143] Finally, they have to encourage education and public awareness.[144]

The European Commission also has specific duties. First of all, it must provide economic support for implementing the necessary measures for site protection (specifying that co-financing authorizes the Commission to define "*essential measures*" for site maintenance or restoration).[145] Moreover, it must conduct periodic evaluations of the "Natura 2000" network's contribution to biodiversity conservation.[146] The Commission has to ensure proper information exchange between states, and promote research projects and scientific initiatives.[147] Lastly, it must compile a report on the directive's implementation based on the reports from member states.[148]

Notably, the operationalization of "Natura 2000" is detailed within the Habitats Directive itself. The objective of this network is to maintain or restore selected habitats within the EU, aligning with the ambitions of the Habitats Directive.[149] Each Member State is responsible for designating sites as Special Areas of Conservation (SACs), based on the criteria established in the Annexes and the available scientific information. This includes specifying the habitat types listed in Annex I and the species listed in Annex II that are native to their territories.[150]

Additionally, member states are required to implement measures to prohibit all forms of deliberate capture or killing of certain animal species and the destruction of certain plant species in the wild, as listed in Annex IV. This includes restrictions on their transport and trade, along with the establishment of a monitoring system for these activities.[151] However, member states are allowed to derogate from these provisions under strictly defined conditions: for the protection of wild fauna, flora, and their habitats; to prevent damage to crops, livestock, forests, fisheries, water, and property; for reasons of

[143] Ibidem, Art.18.
[144] Ibidem, Art.22.
[145] Ibidem, Art.8.
[146] Ibidem, Art.9.
[147] Ibidem, Art.14.
[148] Ibidem, Art.17.
[149] Ibidem, Art.3, para.1.
[150] Ibidem, Art.4, para.1.
[151] Ibidem, Artt. 12 and 13.

public health and safety, including socio-economic factors; and for purposes of research and education.[152]

Within the supervisory powers granted to both EU and national authorities, there is a provision for the downgrading of a "Natura 2000" site.[153] This can be initiated by the European Commission upon notification from member states when a site has suffered irreparable degradation, either natural or anthropogenic, making it permanently unsuitable for the network's objectives. Suppose a member state fails to propose such downgrading. In that case, it might continue to waste resources on managing a site that no longer contributes to conserving natural habitats and species. Moreover, retaining sites in the Natura 2000 network that no longer contribute to its goals undermines its quality standards.[154] Similar provisions are found in the Birds Directive (Articles 10-17).[155]

The European Union's legal framework for protecting the Mar Menor has evolved significantly with the adoption of Regulation (EU) 2024/1991, which introduces binding restoration obligations for ecosystems across the EU, including coastal lagoons such as the Mar Menor. This regulation, part of the broader EU Biodiversity Strategy for 2030, reinforces the need for structured, legally binding measures to restore and protect vital ecosystems. Article 4 of the regulation establishes binding targets for restoring degraded habitats, explicitly including coastal and lagoon ecosystems, which are crucial for biodiversity conservation and climate resilience.[156] This provision mandates EU Member States to ensure that specific restoration measures are implemented for at least 30% of degraded marine habitats by 2030, progressively reaching 100% by 2050.

Article 5 further emphasizes the requirement for national restoration plans, compelling member states to develop comprehensive strategies that integrate ecosystem restoration into national policy frameworks.[157] This article outlines the need for clear timelines, measurable outcomes, and effective monitoring systems to ensure compliance

[152] Ibidem, Art.16, para.1.
[153] Ibidem, Artt. 4,9,11.
[154] Case C-301/12 Cascina Tre Pini s.s. v Ministero dell'Ambiente e della Tutela del Territorio e del Mare, Regione Lombardia, Presidenza del Consiglio dei Ministri, Consorzio Parco Lombardo della Valle del Ticino, Comune di Somma Lombardo [2014] OJ C 159/3, para. 28. Accessed 30 May 2024.
[155] Birds Directive 2009/147/EC, Artt.10, 17. Accessed 30 May 2024.
[156] Regulation (EU) 2024/1991, Art.4. Accessed 29 August 2024.
[157] Ibidem, Art.5.

with restoration targets. The inclusion of the Mar Menor within these plans would necessitate targeted actions, enhancing its ecological health and resilience.

Article 8 introduces enhanced monitoring and reporting obligations.[158] It requires member states to report on the progress of their restoration measures every two years, ensuring transparency and accountability. For areas like the Mar Menor, this means more rigorous assessments of ecosystem health, pollution levels, and the effectiveness of restoration efforts, providing the EU Commission with the necessary data to enforce compliance.

Article 11 explicitly focuses on integrating restoration objectives into broader environmental and climate policies, promoting a holistic approach to ecosystem management.[159] It mandates that restoration efforts be aligned with the EU's climate adaptation goals, thereby supporting the Mar Menor's resilience against climate-related impacts such as rising sea levels, increased temperatures, and extreme weather events.

The protection of the Mar Menor under the European Union's legal framework is extensive and multifaceted, involving the application of the Birds Directive, the Habitats Directive, the Natura 2000 Network, and the recent Nature Restoration Law. These instruments mandate significant conservation efforts but rely heavily on the compliance and implementation by member states. In next section, which discusses the national protection measures for the Mar Menor, it is crucial to consider both the pre-existing national legislation and the transformative impact of the recent Law 19/2022. This new law, designed to address the specific needs of the Mar Menor, marks a significant shift in the legal landscape, enhancing the protection and restoration efforts for this vulnerable lagoon.

3.3. National Legal Framework Protecting the Mar Menor

3.3.1. Prior to the Enactment of Spanish Law 19/2022

[158] Ibidem, Art.8.
[159] Ibidem, Art.11.

The significant concern caused by the noted eutrophic manifestations in the Mar Menor coastal lagoon led to the enactment of Decreto-Ley 1/2017, which introduced urgent measures to ensure environmental sustainability in the Mar Menor area.[160]

The preamble of the Decree-Law emphasizes that the Mar Menor is one of the largest coastal lagoons in Europe and the largest in the Iberian Peninsula. It possesses unique environmental values that have led to its designation as a Wetland of International Importance (Ramsar) and a Specially Protected Area of Mediterranean Importance (SPAMI). Additionally, the Mar Menor has been recognized as a Protected Landscape of the Open Spaces and Islands of the Mar Menor, the Regional Park of Salinas and Arenales of San Pedro del Pinatar, a Site of Community Importance (SCI) "Mar Menor", and a Special Protection Area for Birds (SPA) "Mar Menor".[161]

In compliance with Council Directive 91/676/EEC, which was incorporated into Spanish law by Real Decreto 26/1996, a significant portion of the Campo de Cartagena was declared a nitrate vulnerable zone.[162] It was evident that it was necessary and urgent to intensify protection measures, ensuring greater environmental sustainability of activities around the Mar Menor. In line with this, the Decree-Law is divided into five chapters, complemented by five additional provisions, one transitional provision, one repealing provision, and two final provisions.

Chapter I (Articles 1-2) defines the purpose of the Decree-Law and its scope of application, which corresponds to the catchment area and includes the municipalities within this region.

Within the catchment area, three zones are identified to establish conditions ensuring the environmental sustainability of agricultural operations in the Campo de Cartagena, as detailed in Chapter II (Articles 3-11). These conditions aim to preserve the natural resources and environmental values of the Mar Menor, particularly the habitats

[160] Decreto-Ley 1/2017 (ES). Accessed 13 July 2024.

[161] Natura 2000 sites are selected based on national lists proposed by the Member States. For each biogeographical region, the European Commission adopts a list of Sites of Community Importance (SCIs), which are subsequently integrated into the Natura 2000 network. These SCIs are then designated at the national level as Special Areas of Conservation. Special Protection Areas (SPAs) are designated under the Birds Directive 79/409/EEC. These areas are strategically selected to protect the most threatened bird species; Decreto-Ley 1/2017, Preamble (ES). Accessed 13 July 2024.

[162] Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources; Real Decreto 26/1996 (ES). Accessed 13 July 2024.

leading to the designation of the SCI "Mar Menor" and the SPA "Mar Menor". Zone 1, the closest to the Mar Menor, imposes stricter conditions, including additional requirements for barrier vegetation structures and proper crop orientation to minimize runoff. Zone 2 covers the vulnerable areas of the Quaternary and Pliocene aquifers, while Zone 3 extends to the rest of the catchment area.

Chapter III (Articles 12-13) addresses the control of discharges into the Mar Menor, generally prohibiting such discharges. Rainwater discharges are allowed only when no other elimination methods are viable, with municipalities required to invest in achieving this goal, supported financially by the Autonomous Community as specified in the third additional provision. Chapter IV (Articles 14-16) includes measures for prioritizing and expediting actions related to the law's objectives, clarifying when environmental assessments are required for agricultural activities, and facilitating the compulsory expropriation of affected properties. Chapter V (Articles 17-22) ensures the effectiveness of these limitations through a sanctioning and control regime. Additionally, two important measures, applicable region-wide, are included as additional provisions: the approval of a new Agricultural Practices Code for the Region of Murcia (first additional provision) and a specific sanctioning regime for non-compliance with water protection regulations against nitrate pollution from agricultural sources (second additional provision). Moreover, the installation of a "green filter" to prevent nitrate discharges from agricultural activities is in an advanced stage.[163]

However, Comunidad Autónoma de la Región de Murcia (CARM) is progressing slowly with the implementation of the Natura 2000 Network. The approval of the second and third Management Plans for the Natura 2000 Network came with Decreto 11/2017, declaring the Special Conservation Area of the Mula and Pliego Rivers and approving its management plan, and Decreto 13/2017, declaring the Special Conservation Areas of the Celia Mines and the Cueva de las Yeseras and approving their management plan.[164]

[163] "Orden por la que se resuelve el expediente de información pública para la aprobación definitiva del 'Proyecto básico para la ejecución de filtro verde en el entorno de la desembocadura de la Rambla del Albujón al Mar Menor' ", BORM No 63, 17 March 2017 <https://www.borm.es/services/anuncio/ano/2017/numero/1925/txt?id=755456> accessed 14 July 2024.

[164] "Decreto 11/2017, de 15 de febrero, de declaración de la Zona Especial de Conservación de los Ríos Mula y Pliego, y aprobación de su plan de gestión", BORM No 46, 25 February 2017 <https://www.borm.es/#/home/anuncio/25-02-2017/1353> accessed 13 July 2024; "Decreto 13/2017, de 1 de marzo, de declaración de las zonas especiales de conservación de las Minas de

The severe environmental crisis currently facing the Mar Menor is likely due to the inadequacy of the existing legal framework. Despite the implementation of significant regulatory measures over the past twenty-five years, the system has failed to address and mitigate the socio-environmental, ecological, and humanitarian issues. This failure has resulted in a catastrophic environmental collapse that could have been avoided with effective legal and regulatory action.[165] This underscores the urgent need for a more robust legal framework to protect and restore this critical ecosystem.

The national legal framework protecting the Mar Menor prior to the enactment of Spanish Law 19/2022 was primarily shaped by Decreto-Ley 1/2017. Despite its comprehensive scope and the establishment of numerous protective measures, the framework revealed significant shortcomings in practice. The Mar Menor's severe environmental crisis underscores these inadequacies, suggesting that the regulatory measures over the past decades were insufficient to prevent ecological degradation.

Firstly, the implementation and enforcement of the provisions in Decreto-Ley 1/2017 faced notable challenges. The segmentation into various zones with specific restrictions, while theoretically sound, encountered difficulties in practical application. Agricultural practices, particularly in Zone 1, continued to contribute to nutrient runoff, exacerbating eutrophication. The designated nitrate vulnerable zones under Real Decreto 261/1996, though critical in addressing agricultural pollution, did not achieve the necessary compliance levels, partly due to limited enforcement capabilities and ongoing agricultural pressures.

Furthermore, the control of discharges, although strictly regulated, suffered from loopholes and inadequate municipal investment in sustainable water management solutions. The provision allowing rainwater discharges in the absence of viable alternatives often led to continued nutrient loading into the Mar Menor. The financial support mechanisms from the Autonomous Community were insufficient to address the scale of required infrastructural changes.

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la Celia y la Cueva de las Yeseras, y aprobación de su plan de gestión", BORM No 64, 18 March 2017 <https://www.borm.es/#/home/anuncio/18-03-2017/1353> accessed 13 July 2024.

[165] National Geographic España, "El desastre del Mar Menor, historia de un colapso ambiental que pudo haberse evitado" (2021) <https://www.nationalgeographic.com.es/ciencia/desastre-mar-menor-historia-colapso-ambiental-que-pudo-haberse-evitado_17247> accessed 14 July 2024.

The slow progress in the implementation of the Natura 2000 Network also highlighted systemic issues within the regulatory framework. Although the approval of management plans for certain areas marked progress, the broader application and integration of these plans into local and regional policies lagged, diminishing their overall effectiveness. This slow progress and fragmented approach further weakened the protective measures intended to safeguard the Mar Menor.

In essence, the national framework prior to Law 19/2022, while establishing a solid foundation for environmental protection, failed to deliver the necessary outcomes due to implementation gaps, enforcement challenges, and insufficient integration of ecological principles into broader agricultural and urban policies.[166] The catastrophic environmental collapse of the Mar Menor thus necessitated a more robust, legally binding framework, culminating in the recognition of its legal personality under Spanish Law 19/2022. This legal evolution represents a critical shift towards more effective and enforceable environmental protection measures, aiming to rectify past inadequacies and ensure the lagoon's long-term sustainability. The following section will introduce Spanish Law 19/2022.

3.3.2. The Enactment of Spanish Law 19/2022

Granting nature legal personality elevates ecosystems from passive objects of protection into active subjects with legal rights. This transformation is exemplified in Article 1 of Spanish Law 19/2022, recognizing the legal personality of the Mar Menor Lagoon and its basin.[167]

The set of all Mar Menor's components -the characteristic biodiversity, the hydrogeological system with which it connects and which forms its catchment basin, the lagoon bed, the water and its salinity, and the coastal wetlands- has been suffering

[166] European Parliament, "PETI Fact-finding visit to Mar Menor, Spain 23-25 February 2022" (Briefing requested by the PETI committee, Policy Department for Citizens' Rights and Constitutional Affairs, Internal authors: Jos Heezen, Laura Fernández López, Directorate-General for Internal Policies, PE 729.054, February 2022), p.5 <https://www.europarl.europa.eu/cmsdata/245205/BRIEFING.pdf> accessed 29 August 2024.

[167] Ley 19/2022, Art.1 (ES). Accessed 30 May 2024.

pressures derived from the intensification of uses.[168] These factors, combined with the inadequacy of previous legal protection, prompted the adoption of Law 19/2022, acknowledging the legal personality of Mar Menor and its basin.

This law results from citizens' initiative under Article 87 of the Spanish Constitution.[169] The growing awareness of the excessive environmental pressures on the Mar Menor Lagoon drove them.[170] Specifically, in response to the inaction of Spanish authorities, a group of lawyers, scientists, and activists, supported by the Legal Clinic of the University of Murcia, launched the *Iniciativa de Legislación Popular* (ILP) Mar Menor movement to protect the lagoon by drafting a bill.[171]

The initiative was admitted for consideration by the Congressional Board and processed as an urgent matter; the parliamentary groups voted in favor with little hesitation.[172] Recognizing the Mar Menor Lagoon and its basin as legal entities in the Spanish legal system represents a significant step towards an ecocentric approach to the relationship between law and nature.

Numerous examples exist worldwide where nature has been granted legal rights, ranging from state constitutions to regional and local regulations and Indigenous laws.[173] Analyzing the effects of such recognition reveals three critical legal consequences. Firstly, nature is affirmed as having a legal personality on par with other right-holders, such as individuals and corporations, implying the need for balancing tools to resolve conflicts between different right-holders. Additionally, certain human activities that violate nature's rights can be deemed illegal, leading to prohibitions and applicable sanctions.

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[168] Comité de Asesoramiento Científico del Mar Menor, "Informe Integral Sobre El Estado Ecológico del Mar Menor" (2017) p.40 <https://canalmarmenor.carm.es/wp-content/uploads/2020/07/Informe-Integral-sobre-el-estado-ecol%C3%B3gico-del-Mar-Menor.pdf> accessed 13 May 2024.

[169] Constitución Española, Art.87, Part 3 (ES). Accessed 17 June 2024.

[170] This citizen's initiative, one of the very few that have gone this far in Spain, was carried out in the midst of the COVID-19 pandemic and, despite this, had the support of more than 600,000 voter signatures, an achievement indicative of the overwhelming popular support it received.

[171] Clemente Álvarez, "The race to make Spain's Mar Menor a legal person", (El País, 2021) <https://english.elpais.com/society/2021-08-04/the-race-to-make-spains-mar-menor-a-legal-person.html> accessed 29 August 2024.

[172] Giménez T V et al., "La iniciativa legislativa popular para el reconocimiento de personalidad jurídica y derechos propios al Mar Menor y su cuenca" (2022) 13(1) Revista Catalana de Dret Ambiental 1, p.4. Accessed 14 July 2024.

[173] See Chaper V.

Finally, if actions contrary to nature's rights occur and cause damage, nature (as a whole or in specific elements) is entitled to prompt repair and restoration.

In Spain, the constitutionality of this ecocentric shift is supported by the broader legal evolution towards environmental preservation and climate change mitigation, as well as the Spanish Constitution's explicit provisions for environmental protection.[174] Law 19/2022, recognizing the legal personality of the Mar Menor and its basin, leverages this constitutional foundation to pioneer ecological constitutionalism in Spain, aiming to provide more sophisticated and ethically sound legal responses to contemporary societal values.

Ensuring environmental personhood to the Mar Menor is an innovative legal approach that aligns with and potentially enhances compliance with the EU environmental framework. The Spanish legislator could have chosen to strengthen the regulatory framework for protecting natural ecosystems with traditional formulas. Instead, it has preferred to implement a new model of protection that is not exempt from controversy and by which the rights holder is recognized as a natural entity.

This new protection model involves an in-depth review of the traditional environmental protection scheme inspired by an anthropocentric vision of law and the regulation control mechanisms. Thus, while the EU directives provide a strong foundation for environmental protection, recognizing legal personhood for the Mar Menor builds on this foundation by offering a novel legal mechanism to safeguard the lagoon's ecological integrity.The following chapter will delve into an in-depth analysis of Spanish Law 19/2022, exploring its implications, the controversies it raises, and how it aims to strengthen the legal framework for protecting the Mar Menor.

4. Conclusion

The case of the Mar Menor underscores the intricate interplay between natural ecosystems and human activities, highlighting both the lagoon's unique environmental value and the challenges posed by tourism, agriculture, and inadequate regulatory

[174] Constitución Española, Art.45, Part 1 (ES). Accessed 17 June 2024.

frameworks. This chapter's exploration of the Mar Menor's natural features, human impacts, and the evolving legal protections provides a comprehensive understanding of the lagoon's current state and the urgent need for effective conservation strategies.

The introduction of Spanish Law 19/2022, granting legal personhood to the Mar Menor, represents a groundbreaking yet controversial approach to environmental protection. This legal innovation seeks to transcend traditional frameworks by recognizing the lagoon as a legal entity with rights, thereby shifting the focus from merely regulating human activities to actively safeguarding the ecosystem's intrinsic value. While this approach aligns with global trends towards ecocentrism, it also raises significant questions about its practical implementation and effectiveness in achieving meaningful environmental outcomes.

Despite the ambitious nature of Law 19/2022, the success of this legal framework will ultimately depend on the commitment of local and national authorities, as well as the active involvement of stakeholders, including local communities, tourists, and the agricultural sector. Effective enforcement, coupled with robust legal and institutional support, is crucial to translating this innovative legal recognition into tangible improvements in the Mar Menor's ecological health.

Moreover, the Mar Menor's case highlights the broader challenges of balancing economic development with environmental sustainability. The region's reliance on tourism and intensive agriculture has brought economic benefits but at a substantial ecological cost. This situation exemplifies the pressing need for integrated management approaches that harmonize economic activities with the imperative of preserving natural ecosystems.

The recognition of the Mar Menor as a legal entity also reflects a broader societal shift towards embracing more holistic and ethical considerations in environmental governance. By embedding the rights of nature within legal structures, Law 19/2022 seeks to redefine the human-environment relationship, advocating for a stewardship model that respects the intrinsic value of natural ecosystems.

In conclusion, while Spanish Law 19/2022 offers a promising new direction for the protection of the Mar Menor, its success will hinge on effective implementation, enforcement, and the continuous adaptation of legal and policy measures to address emerging challenges. As the next chapter delves deeper into the practical implications and

controversies surrounding this law, it will be essential to critically assess whether granting legal personhood can genuinely deliver the ecological benefits envisioned or if further refinements are necessary to achieve the desired environmental outcomes.

The following chapter will spotlight the practical implications of this new legal status, examining its effectiveness and potential in safeguarding the Mar Menor's ecological integrity.

IV. Unveiling Spanish Law 19/2022: A Legal Revolution for Environmental Personhood

1. Introduction

This chapter examines Spain's innovative legal approach in granting legal personality to the Mar Menor Lagoon and its basin through Law 19/2022. This legal innovation aims to provide a more robust framework for protecting this vulnerable ecosystem, aligning with global priorities for preserving biodiversity and combating climate change.

Section 2 provides a comprehensive analysis of the law, detailing its preamble, articles, and provisions. It will explain how the law grants legal personality to the Mar Menor and its basin, enumerates the rights afforded to these entities, and outlines the organizational framework established to oversee and enforce these rights. This section sets the foundation for understanding the law's intent and scope.

Section 3 critically assesses the law, focusing on its constitutional and practical challenges. It is divided into two sub-sections.

The first sub-section explores potential constitutional issues, such as the misalignment with the distribution of competences between the state and autonomous communities, and the law's infringement on the principles of legal certainty and the prohibition of arbitrary action.

The second sub-section discusses the practical difficulties in implementing the law. It highlights the economic resources allocated for restoration efforts, the need for effective representation and enforcement mechanisms, and the importance of collaboration among public administrations and private stakeholders.

The final section summarizes the key points discussed in the chapter. It reiterates the innovative yet challenging nature of Spanish Law 19/2022, emphasizing the need for a more precise legislative framework and robust implementation strategies to ensure effective protection of the Mar Menor.

By examining these sections, the chapter aims to provide a thorough understanding of Spanish Law 19/2022, its groundbreaking approach to environmental personhood, and the significant hurdles it must overcome to achieve its goals.

2. An In-Depth Look at Spanish Law 19/2022

Spanish Law 19/2022 consists of a preamble, seven articles and four provisions, one derogatory and three final provisions. The law opens with a declaration of the legal personality of the body of water and its hydrological basin, which in the literary field could be described as anthropomorphic personification. This resource facilitates the identification of the reader with the person "*Mar Menor and its basin*".[175] This is also a metaphor that allows justifying, from a philosophical point of view, the rights of nature as correlative to the duties, obligations and prohibitions that the positive legal system establishes and whose compliance must be ensured by all public authorities and the citizens themselves through the legal instruments that the law contemplates.[176]

The preamble begins by outlining the pragmatic reasons behind the popular legislative initiative, designed as an exceptional measure to address the deplorable state of the Mar Menor lagoon. The reasons for the enactment of this law are twofold: Firstly, the severe socio-environmental, ecological, and humanitarian crisis affecting the Mar Menor and the inhabitants of its surrounding municipalities. Secondly, the inadequacy of the current legal protection system, despite the significant regulatory measures and instruments implemented over the past twenty-five years.[177] The inadequacy of the current legal framework has already been addressed in the previous chapter.[178]

The law begins by declaring the legal personality of the Mar Menor Lagoon and its basin, recognized as subjects of rights.[179]

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[175] Łaszewska-Hellriegel M, "Environmental Personhood as a Tool to Protect Nature" (2022) Springer, p.1372. Accessed 17 June 2024.
[176] Ibidem.
[177] Ley 19/2022, Preamble (ES). Accessed 14 June 2024.
[178] See sub-section 3.3.1, Chapter III.
[179] Ley 19/2022, Art.1 (ES). Accessed 14 June 2024.

Article 2 of Law 19/2022 grants the Mar Menor and its basin the rights to protection, conservation, maintenance, and, where appropriate, restoration by governments and riparian inhabitants. Additionally, it recognizes the right of the Mar Menor to exist as an ecosystem and to evolve naturally, encompassing all natural characteristics of the water, communities of organisms, soil, and the terrestrial and aquatic subsystems that form part of the Mar Menor Lagoon and its basin.[180]

To have these rights effectively applied, Article 3 the law establishes an organizational framework with three central bodies: the Committee of Representatives, the Control Commission, and a Scientific Committee. [181] These bodies are responsible for proposing actions, overseeing rights, disseminating information, and providing expert advice.

Moreover, Article 4 of the law stipulates that any conduct violating the rights recognized and guaranteed by this law, by any public authority, private entity, individual, or legal entity, will incur criminal, civil, environmental, and administrative liability, and will be prosecuted and sanctioned according to the relevant legal norms in their respective jurisdictions.[182] Reinforcing this norm, Article 5 states that any act or action by any Public Administration that violates the provisions of Law 19/2022 will be considered invalid and will be reviewed through administrative or judicial channels.[183]

Additionally, Article 6 acknowledges the public right of action for any natural or legal person to uphold the rights and prohibitions established by this law and its implementing provisions before the Administration and courts. This public action, erroneously termed judicial by the law, provides special guarantees, anticipating significant litigation. The law states that individuals who succeed in such actions are entitled to recover all litigation costs, including legal fees and are exempt from procedural costs and bonds for interim measures.[184]

Article 7 outlines additional obligations imposed on Public Administrations at all territorial levels and through their authorities and institutions. Among the five established obligations, the first three are generic guidelines, while the last two are specific and

[180] Ibidem, Art.2.
[181] Ibidem.
[182] Ibidem, Art.4.
[183] Ibidem, Art.5.
[184] Ibidem, Art.6.

involve the exercise of prohibition and limitation powers. These include immediately restricting activities that may lead to species extinction, ecosystem destruction, or permanent alteration of natural cycles; and prohibiting or limiting the introduction of organisms and organic or inorganic material that could definitively alter the biological heritage of the Mar Menor.[185]

The sole repealing provision states that all provisions contrary to those contained in this law are repealed.[186] The first final provision empowers the Government to approve any necessary regulations for the application, execution, and development of this law within its competence.[187] The second final provision stipulates that the law is enacted under the exclusive State competence outlined in Article 149, paragraph 1, sub-paragraph 23, of the Constitution concerning basic environmental protection legislation, without prejudice to the autonomous communities' ability to establish additional protective measures.[188] The third final provision specifies that the law comes into effect on the day of its publication in the Official State Gazette, which is 3 October 2022.[189]

From this analysis, it is obvious how Spanish Law 19/2022 marks a groundbreaking shift in environmental legislation by conferring legal personality on the Mar Menor Lagoon and its basin. This innovative approach moves beyond traditional conservation measures, framing the lagoon as a subject of rights with an intrinsic value and agency. By doing so, the law challenges conventional anthropocentric legal frameworks and opens the door to a more biocentric perspective, where nature is granted rights similar to those of humans and corporations.

One of the key strengths of this law lies in its holistic and integrated approach to environmental protection. The recognition of the Mar Menor's rights to protection, conservation, maintenance, and restoration underscores a commitment to sustainable and long-term ecological health. This is particularly significant in light of the persistent and severe environmental degradation that has plagued the lagoon, suggesting that piecemeal and reactive measures are insufficient.

[185] Ibidem, Art.7.
[186] Ibidem, Disposición derogatoria única.
[187] Ibidem, Disposición final primera.
[188] Ibidem, Disposición final segunda.
[189] Ibidem, Disposición final tercera.

The establishment of a robust organizational framework, comprising the Committee of Representatives, the Control Commission, and the Scientific Committee, is another notable feature. This multi-tiered governance structure is designed to ensure that the rights of the Mar Menor are actively monitored, protected, and promoted. However, the effectiveness of these bodies will be contingent upon the adequate allocation of resources, genuine political will, and the involvement of local communities. Without these, the law risks becoming a symbolic gesture rather than a transformative tool.

Furthermore, the law's provision for stringent sanctions against violators reflects a strong stance on environmental accountability. By holding individuals, entities, and public authorities liable for actions that harm the lagoon, the law aims to create a deterrent effect and foster a culture of environmental responsibility. This could serve as a model for other regions grappling with similar ecological crises.

Despite its innovative aspects, the law faces potential challenges. The practical implementation of the Mar Menor's rights will require significant coordination among various stakeholders, including local governments, environmental organizations, and the general public. There is also the challenge of ensuring that the legal and administrative frameworks are robust enough to handle the anticipated increase in litigation, given the public right of action enshrined in the law.

Moreover, while the law empowers the Mar Menor, it simultaneously places substantial demands on the existing legal and regulatory systems. Ensuring that all public administrations comply with the new provisions and effectively integrate them into their operational procedures will be a complex task. The success of the law will hinge on continuous oversight, adaptive management practices, and the willingness of all involved parties to prioritize environmental integrity over short-term economic gains.

In conclusion, Spanish Law 19/2022 represents a pioneering step in environmental jurisprudence by granting legal personality to the Mar Menor Lagoon. It sets a precedent for recognizing the intrinsic rights of natural entities and underscores the urgent need for comprehensive and proactive environmental governance. The law's ambitious framework offers a promising avenue for addressing ecological degradation, but its success will depend on effective implementation, enforcement, and the sustained commitment of all stakeholders.

This section has provided a detailed description of the contents of Spanish Law 19/2022. The next section introduces the transformative legal recognition of the Mar Menor's rights and its ability to act independently in court, highlighting the novel procedural mechanisms that allow ecosystems to defend their own interests..

3. Nature's Voice in Court: The Mar Menor's Legal Standing

As anticipated, the Spanish Parliament's adoption of Law 19/2022 granted the Mar Menor and its basin the status of a legal person, allowing it to act in court independently. Article 2 of the law explicitly defines the Mar Menor as a legal person, empowering it to own property, enter into contracts, and, crucially, engage in legal proceedings. This legal recognition allows the Mar Menor to sue and be sued in its own name, thus transforming it from a passive subject of environmental regulations into an active participant with enforceable rights.[190]

Procedurally, the law introduces a system where the Mar Menor is represented by a board of custodians composed of local government officials, environmental organizations, and scientific experts. This board acts as the legal representative of the lagoon, managing its legal and financial interests. Article 3 outlines the composition and responsibilities of these custodians, emphasizing their duty to act in the best interest of the Mar Menor, including taking legal action against polluters or other entities that threaten its ecological balance.[191] This procedural mechanism is innovative, as it creates a legal pathway for the lagoon to defend itself, effectively bypassing traditional legal barriers such as the need for environmental organizations to prove standing in court.

The legal empowerment of the Mar Menor to act and resist in court is particularly significant in a procedural context. Article 6 grants the lagoon the right to initiate legal actions to defend its rights, including the right to be restored after environmental damage.[192] The ability of the Mar Menor to be a plaintiff is a direct consequence of its

[190] Ibidem, Art.2.
[191] Ibidem, Art.3.
[192] Ibidem, Art.6.

legal personhood, allowing it to seek compensation and enforce restoration measures directly, without intermediaries.

Article 7 further reinforces the Mar Menor's procedural capacity to resist harmful actions, granting it the right to oppose developments or activities that could negatively impact its ecological health.[193] By asserting this right, the Mar Menor can effectively participate in legal and administrative processes, ensuring that environmental considerations are not only considered but prioritized.

In contrast, many countries do not recognize environmental personhood and reflect a fundamentally different procedural approach to environmental protection. For instance, Italian law, including Articles 9 and 32 of the Constitution, provides robust protections for the environment but primarily does so to safeguard human health and public welfare.[194] This anthropocentric perspective limits the legal standing of natural entities, as they cannot act as plaintiffs in their own right. In Italy, environmental litigation is generally pursued by environmental groups, governmental bodies, or affected individuals who must demonstrate a direct interest or harm, which can often be procedurally complex and restrictive.

The absence of environmental personhood in Italy highlights significant procedural limitations. For example, Italian environmental laws, such as the Framework Law on Protected Areas (Law 394/1991), focus on managing and protecting natural areas but do not empower these ecosystems to assert their rights in court.[195] Legal actions for environmental harm in Italy are therefore constrained by procedural hurdles, such as establishing standing and proving direct damage, which can impede effective legal recourse for ecological restoration. Unlike in Spain, where the Mar Menor's custodians can act directly on behalf of the lagoon, Italian environmental cases often rely on third-party representation, which may not always adequately reflect the ecosystem's interests.

In particular, in Italy, the legal framework for addressing environmental harm is governed primarily by Law 349/1986, which established the Ministry of the Environment and sets out the procedural mechanisms for environmental protection through legal and

[193] Ibidem, Art.7.

[194] See section 6.1 of chapter V to read more about the Italian legal framework in environmental matters; Costituzione della Repubblica Italiana, Artt. 9 and 32, Part I (IT). Accessed 13 June 2024.

[195] "Legge quadro sulle aree protette", Law 394/1991 (IT). Accessed 13 June 2024.

administrative means.[196] This law outlines who has the standing to act in court on environmental matters, with a particular focus on the roles of public authorities and recognized environmental associations.

Article 18 of Law 349/1986 grants recognized environmental associations the right to intervene in judicial proceedings concerning environmental damage and to challenge unlawful administrative acts in administrative courts. These associations, identified under Article 13 of the same law, must meet specific criteria established by the Ministry of the Environment, including having environmental protection as a primary objective and demonstrating a significant presence in environmental advocacy. Recognition by the Ministry allows these associations to act as representatives of environmental interests in legal proceedings, providing them with the standing to intervene in cases where environmental damage has occurred or where administrative decisions have contravened environmental laws.

However, legal actions for environmental harm in Italy are constrained by procedural hurdles that can complicate and sometimes impede effective legal recourse for ecological restoration. One significant challenge is the requirement to prove direct damage. Article 2043 of the Italian Civil Code establishes the general principle of tort liability. [197] According to this article, anyone who causes unjust damage to another through willful misconduct or negligence must provide compensation for that damage. In environmental harm, this principle requires the plaintiff -typically a recognized environmental association or public authority under Law 349/1986- to prove that the damage occurred and that there is a direct causal link between the defendant's actions and the environmental harm. This burden of proof is particularly onerous in environmental cases due to the diffuse nature of harm, which often involves multiple contributing factors and long-term impacts. For instance, proving that a specific pollutant from a particular source has directly caused damage to a water body or ecosystem can be technically challenging and costly, especially when environmental harm is cumulative and involves multiple sources over extended periods.

Additionally, Article 18's requirement for standing means that recognized associations must not only prove environmental damage but also justify their involvement

[196] Legge 349/1986 (IT). Accessed 30 August 2024.
[197] "Codice Civile", Law 262/1942, Art. 2043 (IT). Accessed 30 August 2024.

in the case by demonstrating a direct interest in the issue.[198] This procedural requirement can limit the ability of associations to pursue broader ecological claims that do not have immediately apparent or easily identifiable impacts. These procedural constraints often lead to delays and increased litigation costs, which can impede timely and effective environmental restoration efforts. Furthermore, the reliance on third-party representation introduces the potential for a disconnect between the specific needs of the environment and the legal strategies employed by human representatives, who may face limitations in terms of resources, expertise, or strategic focus.

In contrast, jurisdictions that recognize environmental personhood, such as Spain with the Mar Menor, streamline the process by allowing ecosystems to directly assert their rights and seek redress without establishing third-party standing or proving direct damage through a representative. This approach reduces procedural barriers and allows for more direct and immediate legal action to protect and restore the environment.

Overall, Italy's reliance on human intermediaries -recognized associations and public authorities- to act on behalf of the environment reflects a more traditional legal approach that prioritizes human agency over direct ecological representation. This system poses significant procedural challenges, particularly the requirements to prove direct damage and establish standing, which can hinder effective legal recourse for ecological restoration. These constraints highlight the limitations of Italy's current legal framework in fully addressing the complex and diffuse nature of environmental harm, underscoring the potential benefits of more innovative approaches that empower ecosystems to defend their own rights independently.

Furthermore, recognizing the legal personality of the Mar Menor also raises complex issues regarding patrimony and financial responsibility. Article 6 of Law 19/2022 introduces the "polluter pays" principle, establishing that those responsible for environmental damage are liable for restoration costs.[199] This provision ensures that the financial burden of ecological recovery is placed on the polluters rather than on public funds. However, it also creates legal patrimony for the Mar Menor, which its custodians manage. This patrimony must be carefully administered to ensure compensation funds are used solely for environmental restoration.

[198] Legge 349/1986 (IT), Art.18. Accessed 30 August 2024.
[199] Ley 19/2022, Art.6 (ES). Accessed 14 June 2024

The recognition of the Mar Menor as a legal person under Law 19/2022 raises complex issues related to environmental responsibility, accountability, and reparations management and implementation. Although the law does not explicitly create a designated financial patrimony for the Mar Menor, it establishes a framework that empowers the lagoon to hold polluters accountable and seek restoration for environmental harm through legal mechanisms.

A significant demonstration of these principles occurred in a notable court case where the Mar Menor was directly involved, applying its newfound legal rights for the first time. In 2023, a judge in Cartagena applied Law 19/2022 in a legal dispute involving agricultural companies accused of polluting the Mar Menor with nitrates and other harmful substances. The court recognized the lagoon's right to be restored and mandated that the polluters undertake remedial measures specifically aimed at addressing the ecological damage they had caused.[200]

This case illustrates the law's practical application. The Mar Menor, through its custodians, actively engaged in litigation against the polluters. The decision marked the first judicial acknowledgment of the lagoon's capacity to demand accountability directly without relying on third-party advocacy. This empowers the Mar Menor to pursue compensation and enforce corrective actions tailored to its ecological needs, reinforcing the "polluter pays" principle embedded in Spanish environmental law.

The court's ruling required the responsible agricultural companies to implement measures such as reducing nitrate discharge, modifying harmful farming practices, and investing in sustainable agriculture to prevent future damage. These requirements were explicitly tied to the ecological restoration of the Mar Menor, emphasizing the court's recognition of the lagoon's rights as a legal person.

While the court mandated specific actions to mitigate environmental harm, the case also highlighted the challenges in managing reparations effectively. The custodians oversee the enforcement of court orders and ensure restoration measures directly benefit the Mar Menor. However, unlike some traditional legal entities, the Mar Menor does not manage a separate financial fund designated solely for reparations. Instead, the financial and practical responsibility for environmental restoration falls squarely on the shoulders

[200] Murcia, Spain Case Recognizing the Legal Personality of Mar Menor (Consolidated Case 2022) [2023] ECOJURISP 1. Accessed 29 August 2024.

of the polluters, who are required to implement the necessary measures under the oversight of the custodians.

This approach presents a unique procedural challenge: ensuring that the ordered reparations are not only paid but are also effectively translated into concrete environmental improvements. The custodians' role is crucial in this respect: they must monitor compliance, report on the progress of restoration efforts, and, if necessary, take further legal action to enforce compliance with court rulings.

In contrast to Mar Menor's legal framework, Italy's approach to environmental accountability often involves broader governmental oversight, where fines and reparations do not directly feed back into the affected ecosystems. For example, when environmental harm occurs in Italy, the fines imposed on polluters typically enter the state budget or are allocated according to administrative decisions rather than being directly linked to specific restoration activities benefiting the harmed environment. This disconnect can weaken the direct impact of legal accountability and create challenges in ensuring that financial penalties result in tangible ecological improvements.

Specifically, in Italy, the approach to environmental accountability is governed by the Environmental Code (Legislative Decree 152/2006), which outlines the principles, procedures, and responsibilities related to environmental protection and remediation.[201] Unlike the Mar Menor's legal framework in Spain, which grants legal personhood to the ecosystem and ensures that reparations directly benefit the affected environment, Italy's system involves broader governmental oversight where fines and compensatory payments do not necessarily feed directly back into the impacted ecosystems.

Under the Italian Environmental Code, particularly in Article 311, it is stipulated that the costs of environmental restoration must be covered by the parties responsible for the damage, adhering to the "polluter pays" principle.[202] However, the financial penalties and compensations collected from polluters are managed by public authorities, such as the Ministry of the Environment or regional governments, rather than being allocated directly to specific restoration activities. These funds are often absorbed into the general state budget or used for broader environmental programs based on administrative decisions that may not directly address the specific site of damage.

[201] "Codice dell'ambiente", Legislative Decree 152/2006 (IT). Accessed 30 August 2024.
[202] Ibidem, Art.311.

This system reflects a more traditional and centralized approach to environmental governance, where the management and allocation of funds are determined by state entities rather than being directly tied to the ecological restoration of the harmed environment. As a result, there is a disconnect between the imposition of fines and their actual use for tangible ecological improvements. This disconnect can weaken the effectiveness of legal accountability, as the penalties do not always translate into direct or immediate remediation efforts for the specific ecosystem affected by the environmental harm.

The procedural framework established by the Environmental Code emphasizes the role of state intervention and administrative discretion in handling environmental damages. Article 299 outlines the competences related to managing environmental damage, specifying that public authorities are responsible for evaluating harm, determining necessary remedial actions, and ensuring compliance with environmental laws.[203] However, the decision-making process on how fines and compensations are utilized is mainly administrative, which can result in funds being directed towards general environmental initiatives rather than the specific restoration of the damaged ecosystem.

This contrasts sharply with Spain's approach, where the Mar Menor's legal personhood ensures that compensations are directly reinvested into the ecosystem's health and restoration, closely aligning legal accountability with ecological outcomes. In Italy, the broader governmental oversight and the administrative allocation of funds can lead to challenges in ensuring that financial penalties serve their intended purpose of tangible ecological restoration, underscoring the current system's limitations in directly addressing environmental harm.

The Mar Menor case highlights the potential advantages of recognizing environmental personhood. By allowing the ecosystem to directly engage in legal proceedings, the Mar Menor can ensure that reparations are not merely symbolic but practically implemented to restore its health and integrity. The custodians' role in overseeing these processes ensures a direct line of accountability and reinforces the idea that legal protections for nature must be effectively enforced.

The Mar Menor's ability to hold polluters accountable and seek direct restoration efforts through the court system illustrates the transformative potential of environmental

[203] Ibidem, Art.299.

personhood. However, it also underscores the procedural and practical challenges of managing these responsibilities effectively. The case serves as an essential example of how legal recognition of natural entities can drive more focused and impactful environmental governance, setting a precedent that challenges traditional accountability models and offering a pathway for other jurisdictions to consider similar legal innovations.

4. Evaluating the Challenges of Spanish Law 19/2022

Many doubts exist regarding the constitutionality of Spanish Law 19/2022 and the practical difficulties in its implementation. As a result, it currently functions more as a declaration of intent rather than an operational legal instrument.

The inconsistencies are evident right from the preamble. The law specifies the area covered by the proposal as the entire maritime lagoon ecosystem of the Mar Menor, with an area of 135 km².[204] However, this stated object of protection does not align with Article 1, which extends legal personality and rights not only to the lagoon but also to its basin, defined as a biogeographical unit constituted by a large inclined plane of 1600 km², according to detailed coordinates.[205]

The preamble of the law also contains a series of ecotheological arguments to justify the shift from an anthropocentric to an ecocentric approach to the environment, stating that the category of subject of rights must be expanded to natural entities, based on evidence provided by life sciences and earth system sciences. However, the sole legal basis presented for this paradigm shift is a Supreme Court ruling from 1990. This ruling cannot serve as a legal foundation to overturn the existing legal system. The Supreme Court explains the anthropocentric approach of criminal law as the basis for

[204] Ley 19/2022, Preamble (ES). Accessed 14 June 2024..
[205] Ibidem, Art.1.

distinguishing between harms affecting human health and risks damaging other animal or plant species and the environment. [206]

With such a weak legal foundation, the preamble seems to aim at modifying Article 45 of the Spanish Constitution, which does not recognize the environment as a fundamental right enforceable through legal action, but as a guiding principle designed to protect a collective good or interest for the community's direct benefit.[207] While ecocentric theories are highly respectable, it is problematic for a law to attempt, through its preamble, to invoke these theories to change the constitutional basis for environmental protection.

According to the *Diccionario panhispánico del español jurídico* by the Real Academia, a legal person is defined as an institution with its own independent personality and full capacity to fulfill its purposes, created by laws or in accordance with them.[208]

The issue lies in whether such legal recognition is justified or useful. In the case of natural spaces like the Mar Menor, granting legal personality does not inherently enhance their protection. The critical factor is the effectiveness of legal protection established and directed by humans, regardless of whether existing legal techniques or the ethical recognition of certain rights are used.

From a technical standpoint, no matter how many rights are granted to a lagoon, these rights cannot be exercised directly or indirectly by the ecosystem itself. Therefore, to strengthen its protection procedurally, it might suffice to recognize public action for its defense. This recognition is already encompassed in the Spanish legal system, as environmental defense associations are granted such rights under Spanish Law 27/2006, which regulates access to justice in environmental matters (Article 23). [209]

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[206] The case involved the interpretation of Article 347-bis of the Spanish Criminal Code. This article pertained to environmental crimes, specifically addressing the unlawful discharge of pollutants into water bodies. The court's ruling highlighted the anthropocentric nature of Spanish environmental law; Tribunal Supremo, Sala de lo Penal, [1990] RJ 8427. Accessed 14 July 2024.

[207] Constitución Española, Art.45, Part 1 (ES). Accessed 17 June 2024; Tribunal Constitucional 233/2015, Sala Segunda, [2015], p. 117156. Accessed 14 July 2024.

[208] Real Academia Española, "Diccionario panhispánico del español jurídico (DPEJ)" <https://dpej.rae.es/lema/persona-jur%C3%ADdica> accessed 14 July 2024.

[209] Ley 27/2006, Art.23 (ES). Accessed 14 June 2024.

Spanish Law 19/2022 does not merely recognize the Mar Menor's procedural capacity to act in its name. It confers a series of rights, according to Article 2.[210] However, the definition provided by the precept for these rights refers to obligations, limitations, or mandates imposed on the Governments and the riparian inhabitants.

The right to exist and evolve naturally refers to obligations on the part of authorities and residents to respect this ecological principle, ensuring the ecosystem's balance and regulatory capacity against human-induced pressures. The right to protection imposes duties to limit, halt, and not authorize activities harmful to the ecosystem. The right to conservation entails obligations for the preservation of species and habitats and the management of natural spaces. Finally, the right to restoration requires post-damage repair actions in the lagoon and its catchment area, aiming to restore natural dynamics, resilience, and associated systemic services.[211]

In conclusion, while Spanish Law 19/2022 aims to protect the Mar Menor by granting it legal personhood, significant constitutional and practical challenges must be addressed. The next section will delve into these potential constitutional incompatibilities, analyzing whether the law's provisions align with the broader Spanish legal framework.

4.1. Constitutional Challenges to Spanish Law 19/2022

There are various potential constitutional challenges that could affect this law, which, despite being a well-intentioned popular initiative, is not well-founded in its legal content. Many of these issues could have been addressed if the popular initiative had been processed through the ordinary legislative procedure.

One of the main constitutional questions is whether the law respects the distribution of competences between the state and autonomous communities. The second final provision of the law states that the law is enacted under the exclusive State competence to legislate on basic environmental matters, without prejudice to the autonomous

[210] Ley 19/2022, Art.2 (ES). Accessed 27 May 2024.
[211] Ibidem.

communities' ability to establish additional protective measures, outlined in Article 149, paragraph 1, sub-paragraph 23, of the Spanish Constitution. However, could it be argued that Law 19/2022 contains provisions that, following the Constitutional Court's doctrine, should fall under the state's exclusive competence in procedural legislation? Specifically, the recognition of the legal personality of the Mar Menor and its basin in Article 1, as this entails the capacity to be a legal party, and the regulation of public action to enforce the law through judicial channels, might be seen as encroaching on competences traditionally reserved for the autonomous communities. .[212]

Given these considerations, it might be questioned whether the state holds sufficient constitutional competence to declare and manage the Mar Menor and its basin as a legal person, especially since the basin lies within the Region of Murcia and the lagoon's ecological continuity with the terrestrial natural space further complicates jurisdictional boundaries. This raises doubts about whether the law fully aligns with Article 149, paragraph 1, sub-paragraph 23, of the Spanish Constitution and the Constitutional Court's doctrine on the division of competences regarding protected natural areas. Further, there are concerns about whether Spanish Law 19/2022 respects the constitutional principles of legal certainty and the prohibition of arbitrary action under Article 9, paragraph 3, of the Spanish Constitution. .[213] This infringement could be seen in the law's overextended interpretation of legal personhood, which may covertly establish a protected natural area that exceeds state competence, combined with the complete lack of definition for the supposed rights, limitations, and prohibitions applied to this newly defined legal space.

Regarding the vagueness of the rights, stating that the Mar Menor Lagoon has the right to exist and evolve naturally and that this right means respecting ecological law, could be considered excessively vague. Similarly, the right to protection and right to conservation are equally indefinite. This lack of clarity might infringe upon the principle of legal certainty. A similar law in the United States was annulled for similar reasons. The Lake Erie Bill of Rights (LEBOR), granted legal personality to the lake, allowing Toledo

[212] The Judgement of the Constitutional Court 15/2021 addresses the issue of constitutional distribution of competencies, particularly the distinction between environmental legislation and procedural legislation under Spanish law. The ruling explains that recognizing the procedural capacity of certain entities and the regulation of public action to enforce environmental laws fall under the state's exclusive competence in procedural matters (Article 149.1.6 of the Spanish Constitution). This decision underscores the importance of distinguishing between substantive and procedural environmental regulations to ensure compliance with the constitutional framework; Tribunal Constitucional 15/2021, Sala Segunda, [2021]. Accessed 14 July 2024.

[213] Constitución Española, Art.9, para.3, Part 1 (ES). Accessed 17 June 2024

(Ohio) residents to bring legal actions on its behalf. However, the Northern District of Ohio Western Division declared the law invalid.[214] The court ruled that the law violated the Fourteenth Amendment of the United States Constitution, which protects due process rights. The court noted that a crucial component of due process is the clarity of the law and that vague laws violate the Constitution because they fail to inform citizens of their obligations and are likely to result in arbitrary enforcement.[215] The court specifically addressed the law's recognition of the irrevocable rights of the Lake Erie ecosystem to "*exist, flourish, and naturally evolve*", determining that this provision was unconstitutionally vague because the law did not specify what conduct would violate this right.[216]

Could similar criticisms apply to Spanish Law 19/2022? There is no concrete definition of what conduct might infringe the lagoon's right to exist and evolve naturally, leaving such determinations to the discretion of the courts on a case-by-case basis, at the behest of any individual. Could this further suggest that the law potentially violates the constitutional principles of legal certainty and the prohibition of arbitrariness under Article 9, paragraph 3, of the Spanish Constitution due to the total indefiniteness of the restrictions and prohibitions that Public Administrations may apply within this space and the lack of coherence with existing regional environmental legislation and protected natural areas? Spanish Law 19/2022 innovatively grants legal personality to the Mar Menor Lagoon and its basin, aiming to bolster environmental protection. Despite its progressive intent, the law seems to face significant constitutional and practical challenges.

Firstly, the law potentially violates the constitutional distribution of competences between the state and autonomous communities. Although it claims to fall under the state's exclusive authority over basic environmental matters (Article 149, paragraph 1, sub-paragraph 23, of the Spanish Constitution), it also delves into procedural legislation and management of protected areas, traditionally under regional jurisdiction. This overreach could lead to the law's invalidation due to infringement on autonomous community powers, particularly since the Mar Menor is located in the Region of Murcia.

[214] Drewes Farms P'Ship v City of Toledo, ND Ohio, [2020], no 3:19 CV 434. Accessed 14 July 2024.
[215] Ibidem, p.825. Accessed 14 July 2024.
[216] Ibidem, p.823. Accessed 14 July 2024.

Additionally, the law's provisions might suffer from vagueness, particularly regarding the rights of the Mar Menor to exist and evolve naturally. This lack of clarity would lead to a violation of the constitutional principles of legal certainty and prohibition of arbitrary action (Article 9, paragraph 3, of the Spanish Constitution). The undefined terms could also cause inconsistent enforcement and arbitrary judicial decisions, undermining the law's effectiveness. A similar issue led to the annulment of the Lake Erie Bill of Rights in the United States, where the court deemed the law unconstitutionally vague.

Moreover, the potential misalignment with existing regional environmental regulations and the lack of a clear framework for restrictions and prohibitions might further complicate the law's practical implementation. This discordance could create operational conflicts and hinder effective enforcement.

The constitutional challenges outlined have recently culminated in a significant legal development: a collective action of unconstitutionality was accepted by the court, brought forward by hundreds of farmers.[217] The issue revolves around whether the law infringes upon the constitutional distribution of competences between the state and the autonomous communities, as well as the principles of legal certainty and prohibition of arbitrariness.

The collective action questions the legality of the law, particularly regarding its overreach into areas traditionally reserved for regional authority.[218] The court's acceptance of this collective challenge indicates a serious consideration of the constitutional concerns raised, emphasizing the potential legal and jurisdictional conflicts inherent in Spanish Law 19/2022.

The farmers' lawsuit argues that the law disrupts the balance of competences between the state and Murcia's autonomous community by granting the Mar Menor and its basin a legal status that affects regional legislative and administrative powers. This

[217] Redacción, "El TSJ admite la demanda colectiva presentada por cientos de agricultores por la inconstitucionalidad de la ley del Mar Menor" (Cartagena Actualidad, 18 March 2024) <https://www.cartagenaactualidad.com/articulo/region/tsj-admite-demanda-colectiva-presentada-cientos-agricultores-inconstitucionalidad-ley-mar-menor/20240318185040145714.html> accessed 29 August 2024.

[218] Ibidem.

development underscores the practical difficulties and constitutional ambiguities that the law faces, aligning with the thesis's analysis of the potential grounds for its invalidation.

The recent acceptance of a collective action of unconstitutionality by the court, driven by hundreds of affected farmers, underscores the ongoing constitutional crisis surrounding Law 19/2022. The court's willingness to entertain these arguments reflects the gravity of the potential legal overreach and the unresolved tension between state and regional powers. As the case progresses, it remains uncertain whether the law will withstand judicial scrutiny or be deemed an unconstitutional encroachment on regional autonomy and principles of legal governance.

Ultimately, these developments suggest that Spanish Law 19/2022, while pioneering in its environmental ambitions, may not be fully aligned with constitutional standards. This raises critical questions about whether a more carefully crafted and constitutionally coherent approach is necessary to achieve the law's environmental objectives without infringing on established legal norms. The law's future now hinges on the judiciary's interpretation of these constitutional conflicts, leaving its ultimate legality and enforceability in a state of profound uncertainty.. The next sub-section will address the practical insights on implementing Spanish Law 19/2022.

4.2. Practical Challenges on Implementing Spanish Law 19/2022

Significant economic resources have been allocated to the Mar Menor in 2024 for pilot experiments to restore its flora and fauna.[219] This funding is part of the "2024 Action Plan", the primary instrument of the Autonomous Community Region of Murcia for implementing projects outlined in the budget, with provisions for monitoring the

[219] "CARM.es - La Comunidad invierte 8 millones de euros en la retirada de biomasa del Mar Menor" <https://www.carm.es/web/pagina?IDCONTENIDO=118314&IDTIPO=10&RASTRO=c$m122,70> accessed 27 May 2024; "CARM.es - La Comunidad invierte 730.627 euros en la recuperación ambiental de las zonas de baño de las playas del Mar Menor" <https://www.carm.es/web/pagina?IDCONTENIDO=118257&IDTIPO=10&RASTRO=c$m22640,70> accessed 27 May 2024.

execution of each action.[220] The Action Plan encompasses one-hundred-thirty-nine budgeted projects totaling 115,934,363 euros, focusing on environmental restoration and socioeconomic recovery.[221]

While these efforts aim to restore ecosystems, their effectiveness hinges on addressing ongoing threats and ensuring robust legal frameworks. Recognizing intrinsic rights and legal personhood for the Mar Menor is a critical step, but it requires effective representation and enforcement mechanisms to be impactful. Representatives for personified ecosystems must act on behalf of these entities, safeguarding their rights and ensuring compliance with legal protections.[222] This setting necessitates specific legal representative bodies, ideally involving civil society and scientific advice, to provide balanced and informed oversight.

Public authorities should clearly define who represents personified ecosystems through regulation or court rulings. This concept parallels the private law institution of guardianship for minors and the mentally disabled, as evident in statements like those in the Mar Menor law referring to the representatives as "*the protection of the Mar Menor*".[223] However, ecosystem representatives should not manage the ecosystem directly but complement existing administrative bodies, avoiding overlap and conflicts.

As anticipated above, Article 3 of Spanish Law 19/2022 establishes the Committee of Representatives, the Control Commission, and a Scientific Committee. [224] However, the law lacks clarity on how legal representation is exercised and the decision-making processes within these bodies, leading to potential ambiguities in enforcement. Further clarity is needed regarding the selection, term, and appointment process for the

[220] "CARM.es - Gobierno regional y Ministerio, 'con paso firme' en la protección del Mar Menor" <https://www.carm.es/web/pagina?IDCONTENIDO=118551&IDTIPO=10&RASTRO=c$m122,70> accessed 27 May 2024.

[221] "CARM.es - El Gobierno regional invierte 115,9 millones de euros para llevar a cabo las 139 medidas del Plan de Acción para el Mar Menor 2024" <https://www.carm.es/web/pagina?IDCONTENIDO=118018&IDTIPO=10&RASTRO=c$m122,70> accessed 27 May 2024.

[222] Ayllón Díaz-González J M, "El ecocentrismo en el contexto internacional: el programa de las Naciones Unidas 'Armonía con la naturaleza'", in "Actualidad Jurídica Ambiental" 138 (2 October 2023), p.21 <https://www.actualidadjuridicaambiental.com/wp-content/uploads/2024/05/2023_10-Recopilatorio-138-Octubre-AJA.pdf> accessed 27 May 2024.

[223] Ley 19/2022, Art.3 (ES). Accessed 27 May 2024.

[224] Ibidem.

Committee of Representatives. This clearness is crucial to ensure that representation remains effective and accountable over time.

Notably, the bodies overseeing the Mar Menor Protectorate are not public entities. The Mar Menor is a unique legal entity under private law. Consequently, guardianship is more than managing the lagoon or exerting administrative authority.

The dichotomy between the Mar Menor's status as a private law legal entity and the public law bodies tasked with its representation remains largely unaddressed in legal doctrine, with no significant rulings or pending cases in the Constitutional Court. The primary concerns have focused on other aspects of implementing Spanish Law 19/2022, as detailed in the previous sub-section. This gap reflects broader uncertainties surrounding the law, where the fusion of private legal status with public representative roles can create interpretative challenges and conflicts in its application. The ambiguity arises from the innovative yet untested regulatory framework, which has led to concerns about the effective implementation and enforcement of the law. Article 3's language seems ambiguous when it suggests the Guardianship Office will handle not only representation but also governance of the lagoon. This provision indicates that the lagoon's personification does not affect the public administration's responsibilities as owners of various state properties in the area. Public administrations will still manage the Protected Natural Areas and implement territorial and urban planning tools, particularly those outlined in Spanish Law 3/2020, for the Mar Menor's recovery and protection.[225]

Effective governance of the entire area, including the Marine Protectorate, requires extensive cooperation among various public administrations. Without support from these authorities, fulfilling basic tasks will be challenging. This collaboration must extend to private individuals engaged in economic activities on the land, including agricultural practices that have contributed to the disaster.

Legal standing granted to any person to defend the ecosystem's rights represents a significant step in promoting collective responsibility and access to justice. This new setting broadens traditional notions of popular action, allowing civil jurisdiction

[225] Ley 3/2020, Section III (ES). Accessed 17 June 2024.

involvement and empowering individuals to take legal action against entities causing harm to the ecosystem.[226]

Article 6 of the Mar Menor Act explicitly allows any natural or legal person to defend the ecosystem's rights through legal action, extending beyond actions against public administrations to include civil proceedings. This expansion ensures that successful litigants are reimbursed for legal expenses, removing economic barriers to justice and promoting equitable access.[227]

In summary, Spanish Law 19/2022 recognizes rights for personified ecosystems, aiming to safeguard their life cycles and evolutionary processes, particularly in degraded environments like the Mar Menor. Sustainable development principles must guide these efforts to prevent further ecological degradation.

Despite substantial funding through the 2024 Action Plan, which includes over 115 million euros for restoration and socioeconomic projects, the success of these initiatives hinges on addressing ongoing threats and establishing clear legal and governance frameworks. The law's recognition of the Mar Menor's intrinsic rights is progressive, but it lacks clarity on legal representation and decision-making processes, potentially hindering effective enforcement.

Effective governance requires extensive cooperation among public administrations and private stakeholders to address challenges from agricultural and economic activities contributing to the lagoon's degradation. Without this collaboration, achieving the law's objectives will be difficult.

The law's provision for legal standing to any person to defend the ecosystem's rights is a significant step towards collective responsibility and access to justice. Article 6 empowers individuals to take legal action against entities harming the ecosystem, ensuring litigants are reimbursed for legal expenses and promoting equitable access to justice.

The obligation for restoration requires public administrations to actively revive and restore the ecosystem's vitality, fulfilling their duties through specific plans and actions.

[226] Rego Blanco M D, "La acción popular en el Derecho Administrativo y en especial, en el Urbanístico" (2004), p.41 <https://www.juntadeandalucia.es/export/drupaljda/publicacion/19/09/Texto_Completo_Accion_Popular.pdf> accessed 28 May 2024.

[227] Ley 19/2022, Art.6 (ES). Accessed 17 June 2024.

Judicial protection is crucial in upholding these rights, with courts playing a key role in resolving conflicts and enforcing the law.

In conclusion, while Spanish Law 19/2022 is a pioneering effort to protect the Mar Menor, its success depends on clarifying implementation mechanisms and ensuring effective collaboration among all stakeholders. The law's ambitious framework offers a promising path for ecological recovery, but practical, clear, and cooperative implementation is essential for its effectiveness.

5. Conclusion

Spanish Law 19/2022 marks a daring leap towards redefining environmental protection, shifting from an anthropocentric legal framework to an ecocentric one by granting legal personality to the Mar Menor Lagoon and its basin. This move, while innovative and emblematic of a growing global recognition of nature's rights, is fraught with both bold potential and profound challenges that could undermine its intended impact.

The law's promise lies in its radical reimagining of nature as a subject of rights rather than a mere object of human use. By empowering the Mar Menor to act independently in court, it challenges traditional legal boundaries and offers a novel approach to ecological governance. This shift could serve as a catalyst for other jurisdictions, pushing the envelope on how environmental harm is addressed in legal systems worldwide. However, the road from conceptual innovation to practical reality is perilous, strewn with constitutional pitfalls and procedural ambiguities that threaten to derail its ambitions.

The law's foundations are precarious, anchored in a preamble that ventures into philosophical justifications without firmly grounding itself in solid legal precedent. Its reliance on vague ecotheological arguments to justify a shift from anthropocentrism to ecocentrism, and its attempt to redefine constitutional principles through legislative means, border on the speculative. This raises serious questions about its legal solidity and the robustness of its constitutional footing. Such a fundamental shift in legal thinking

demands not just bold vision but rigorous legal craftsmanship, which appears inconsistently applied here.

From a practical standpoint, the law's effectiveness hinges on an intricate web of stakeholders and governance structures that are still vaguely defined and potentially at odds with existing legal frameworks. The law envisions a collaborative governance model involving local authorities, scientific experts, and civil society, but the lack of clear delineation of roles, accountability, and operational protocols leaves much to be desired. Without precise guidelines on the functioning of the representative bodies and their decision-making processes, there is a risk that the law could devolve into a bureaucratic maze, with competing interests stymieing effective action.

Moreover, the constitutional hurdles are not merely theoretical but have already manifested in significant legal challenges. The collective action of unconstitutionality brought forward by farmers illustrates the contentious nature of the law's jurisdictional overreach and the ambiguities in its provisions. These legal battles underscore a critical flaw: the law's broad and often imprecise language opens it up to interpretations that could paralyze its enforcement or lead to inconsistent judicial outcomes, potentially undermining the very protections it aims to establish.

The practical implementation of the law also faces steep challenges. The significant financial resources earmarked for the Mar Menor's restoration are a step in the right direction, but money alone cannot resolve the underlying systemic issues of environmental degradation. The law's effectiveness will ultimately depend on overcoming entrenched economic and political interests that have historically prioritized short-term gains over long-term ecological sustainability. Achieving meaningful change will require not just legal innovation but a fundamental shift in the socio-political landscape surrounding the Mar Menor.

In essence, Spanish Law 19/2022 is both a visionary and precarious endeavor. It dares to reimagine the relationship between law and nature, yet its current form reveals a law that is as much a declaration of ideals as it is a functional legal instrument. The challenge now lies in whether it can transcend its symbolic aspirations to become a tangible force for ecological protection. As it stands, the law teeters on a knife's edge, poised between revolutionary potential and constitutional collapse. Its future, and that of the Mar Menor, will depend on the ability to navigate these challenges with clarity, precision, and unwavering commitment to the principles it espouses.

V. Exploring Rights-Based Environmental Protection

1. Introduction

This chapter delves into the concept of rights-based environmental protection, examining how different legal frameworks around the world recognize and enforce the rights of nature. The analysis spans various jurisdictions, comparing broad, universal rights granted to nature as a whole with specific legal personhood rights attributed to particular natural entities. The goal is to understand the effectiveness of these approaches in preserving ecosystems and biodiversity.

Section 2 introduces the fundamental distinction between all of nature rights and narrow personhood rights. It highlights the increasing recognition of environmental personhood, emphasizing the need to legally protect nature by acknowledging its intrinsic value. This section explores how broad rights, granted universally to nature, differ from the more specific personhood rights afforded to individual natural entities like rivers or forests. The section also discusses the implications of these rights for environmental protection, emphasizing the balance between human activities and the preservation of ecosystems.

Section 3 focuses on all of nature rights, providing detailed case studies from Ecuador, Bolivia, and Uganda.

In particular, sub-section 3.1 examines Ecuador's pioneering constitutional recognition of nature's rights in 2008. It discusses the motivations behind this legal framework, the specific rights granted to nature, and the challenges faced in implementing these rights, particularly in the context of conflicting economic development goals.

Sub-section 3.2 explores Bolivia's approach through its 2010 Law of the Rights of Mother Earth, which operationalizes nature's rights within the broader framework of sustainable development and *vivir bien* (living well). The discussion highlights the legal principles underpinning this framework and the practical challenges in enforcing these rights.

Finally, sub-section 3.3 looks at Uganda's 2019 National Environment Act, which recognizes nature's rights in the context of the country's transition to an extractive-based

economy. It emphasizes the importance of environmental and social impact assessments in safeguarding these rights and examines key legal cases that reinforce the Act's provisions.

Section 4 examines narrow personhood rights, with a particular focus on New Zealand's innovative legal frameworks.

Specifically, sub-section 4.1 discusses New Zealand's recognition of Te Urewera and the Whanganui River as legal entities. It details the governance structures established to represent these natural entities and the collaborative efforts between the government and indigenous communities to manage and protect these ecosystems.

Section 5 addresses the unique case of the Mar Menor in Spain, which combines both all of nature rights and narrow personhood rights. The Mar Menor Act grants the lagoon broad rights to exist, be protected, and be restored while also establishing specific legal mechanisms for its representation and governance. This section explores how this comprehensive approach provides a robust framework for environmental protection.

Moreover, section 5.1 draws lessons from the experiences of Ecuador, Bolivia, Uganda, and New Zealand, focusing on enforcement mechanisms, stakeholder involvement, clear definitions of rights and responsibilities, institutional support, economic development balance, public awareness, and climate change adaptation.

Section 6 highlights the general absence of environmental personhood within most European Union countries, which typically adhere to anthropocentric legal frameworks. These frameworks prioritize economic development and regulate human activities to balance development with conservation. The section examines why EU countries have not widely adopted nature's legal personhood and discusses the potential implications of Spain's pioneering recognition of the Mar Menor's legal personhood.

Particularly, sub-section 6.1 provides an analysis of the Orbetello Lagoon in Italy, aligning with the broader EU approach. It discusses the lagoon's environmental challenges and the existing legal frameworks aimed at protecting it without granting legal personhood. This case study offers insights into how effective environmental protection can be achieved within the traditional EU legal context.

In summary, this study investigates various approaches to rights-based environmental protection, comparing broad, universal rights with specific legal

personhood rights. By examining case studies from different jurisdictions, the study aims to highlight the strengths and challenges of each approach and provide a comprehensive understanding of how legal frameworks can effectively safeguard nature's intrinsic value and ensure ecological sustainability.

2. All of Nature Rights vs. Narrow Personhood Rights: General Insights

As this study showed, rights-based environmental protection has become widely recognized over the past decades. Environmental personhood stems from the need to provide legal protection to nature that recognizes its intrinsic value and ensures its preservation. While the protection afforded to human beings and corporations are fundamentally different, the concept of environmental personhood seeks to establish a framework where nature can be defended in its own rights, similar to how human and corporate rights are defended.[228] The rights granted to the environment are not intended to be directly comparable to human rights but are tailored to the specific needs and functions of ecosystems.

Noteworthy is that the effectiveness of human rights is clearly pivotal to environmental protection. Human agency is responsible for historical environmental degradation and its unintended consequences, impacting society, bio-physical cycles, natural entities, and non-living natural elements.[229] Thus, the symbiotic relationship between the enjoyment of human rights and a healthy environment -where a healthy environment is a precondition for such enjoyment- becomes evident when the social and economic consequences of environmental degradation are accounted for in law and policymaking.

[228] Gordon G J, "Environmental Personhood" (2018) Columbia Journal of Environmental Law, p.62 <https://journals.library.columbia.edu/index.php/cjel/article/view/3742/1549> accessed 21 May 2024.

[229] Steffen W et al., "Earth System Dynamics in the Anthropocene (2004)" in Benner S et al., "Paul J. Crutzen and the Antrhopocene: A New Epoch in Earth's History" (Springer, 2021), p. 75. Accessed 20 July 2024.

Various types of rights are conferred on nature, with differences depending on the jurisdiction.[230] All of nature rights encompass broad, universal rights granted to nature as a whole.[231] These rights are typically enshrined in constitutions, national statutes, or international declarations. They include rights such as the right to exist, flourish, and be restored.[232] These rights are holistic and apply to entire ecosystems or the environment without specific reference to individual natural entities. For instance, Ecuador's Constitution recognizes the rights of nature (Pachamama) to exist, persist, maintain, and regenerate its vital cycles, structure, functions, and processes in evolution.[233] Similarly, Bolivia's Law on the Rights of Mother Earth provides a comprehensive framework that includes the right of nature to life, diversity, water, clean air, and balance.[234] Uganda's 2019 National Environment Act follows this trend by recognizing nature's rights to exist, persist, and regenerate its vital cycles, structures, functions, and evolutionary processes.[235]

The broad scope of all of nature rights means that any individual or entity can invoke these rights on behalf of nature. This liberal approach allows for widespread participation in environmental protection efforts, ensuring that many stakeholders defend nature's rights. For example, in Bolivia, the mentioned law explicitly allows individuals and communities to take legal action to defend the rights of nature.[236] This inclusive mechanism helps to ensure that the rights are not just theoretical but actively protected and enforced.

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[230] For a helpful comparison regarding the scope and strength of global personhood regimes, see the table provided in Kauffman C and Martin L P, "Comparing Rights of Nature Laws in the U.S., Ecuador, and New Zealand: Evolving Strategies in the Battle Between Environmental Protection and 'Development'" (2017), p.20 <http://files.harmonywithnatureun.org/uploads/upload472.pdf> accessed 22 May 2024.

[231] Pain N & Pepper R, "Can Personhood Protect the Environment? Affording Legal Rights to Nature" (2021) 45 Fordham Int'l LJ 315, p.334. Accessed 13 May 2024.

[232] Bilof N, "The Right to Flourish, Regenerate, and Evolve: Towards Juridical Personhood for an Ecosystem" (2018) GGU Law Digital Commons, p.111 <https://digitalcommons.law.ggu.edu/cgi/viewcontent.cgi?article=1151&context=gguelj> accessed 30 May 2024.

[233] See section 3.1 of this chapter.

[234] "Ley de derechos de la Madre Tierra", Law 71/2010, Chapter III (BOL). Accessed 30 May 2024.

[235] "The National Environment Act" 5/2019 (UG). Accessed 21 May 2024.

[236] Ibidem, Art.9.

On the other hand, narrow personhood rights are granted to specific natural entities, such as rivers, forests, or lagoons. [237] These rights are analogous to the legal rights of persons, meaning that the specific ecosystem or natural feature is recognized as a legal entity with its rights. These rights might include the right to be free from pollution, the right to flow (for rivers), and the right to be restored if damaged. This category of rights is more narrowly defined and often involves specific legal provisions that apply to identified natural entities. An instance is the Whanganui River in New Zealand, where the river is recognized as a legal person with rights and interests that appointed guardians represent.[238]

Recognizing narrow personhood rights involves establishing a representative entity or guardian to act on behalf of the natural entity in legal and administrative matters. This setting ensures that the specific rights of the natural entity are upheld and that there is a precise mechanism for advocacy and enforcement. For example, the Te Awa Tupua (Whanganui River Claims Settlement) Act 2017 established a legal framework where the river is represented by two guardians, one appointed by the local Māori iwi and the other by the Crown, ensuring that the river's interests are actively represented and defended.[239]

The distinction between all of nature and narrow personhood rights also extends to how these rights are enforced. All of nature rights tend to adopt a more liberalized approach, allowing any individual or entity to assert these rights in court. This broad standing is crucial for ensuring that various actors can address environmental harms promptly and effectively.

In contrast, narrow personhood rights often restrict standing to specific representatives or guardians, creating a more controlled and focused mechanism for enforcement. However, some jurisdictions use liberalized rules to protect nature's interests without granting explicit rights. For instance, in 2018, the Royal Court of Justice of Bhutan established the Green Bench and developed a Bench Book allowing any person to bring environmental protection actions as a "*trustee*" of nature.[240] Similarly, the Rules

[237] Pain N & Pepper R, "Can Personhood Protect the Environment? Affording Legal Rights to Nature" (2021) 45 Fordham Int'l LJ 315, p.334. Accessed 13 May 2024.

[238] "Te Awa Tupua (Whanganui River Claims Settlement) Act 2017" 7/2017, Part 2 (NZ). Accessed 21 May 2024.

[239] Ibidem.

[240] Cyrus R. Vance Center for International Justice, Earth Law Center and International Rivers, "Rights of Rivers" (2019), p.47 <https://www.internationalrivers.org/wp-

of Procedure of the Supreme Court of the Philippines 2010 enable any citizen, including minors or future generations, to file actions to enforce environmental laws.[241]

Each personified ecosystem follows a distinct process and carries unique meanings. However, upon closer examination, common patterns emerge. Firstly, these ecosystems are conceived as identifiable ecological units, such as rivers, lagoons, or forests, where all components are interconnected, metaphorically resembling a single living organism. Geographical boundaries mark the extent of their physical reality, although these may not always be clearly defined, as the focus is on protecting functionality rather than just the area itself.

Secondly, these ecosystems are emblematic due to their environmental significance, whether through the habitats they support, the biodiversity they harbor, unique abiotic elements, or the ecosystem services they provide. Embodying specific ecosystems underscores their importance and the necessity for extraordinary measures. Factors like global uniqueness, acting as refuges for endangered species, presence of primary forests, or provision of essential resources highlight their significance. Aquatic ecosystems, like the Mar Menor, often become the focus of such embodiments, given their exceptional qualities.

In conclusion, rights-based environmental protection has seen significant development, distinguishing between all of nature rights and narrow personhood rights. Given this background, the following section will delve into key instances of countries where these types of rights are recognized, focusing on the primary examples to illustrate their diverse approaches and implications.

3. All of Nature Rights

3.1. Ecuador

content/uploads/sites/86/2020/09/Right-of-Rivers-Report-V3-Digital-compressed.pdf> accessed 22 May 2024.

[241] Ibidem.

In 2008, Ecuador became the first country to enshrine the rights of nature in its Constitution.[242] The drafting of a new Constitution was motivated by a political desire to curtail neoliberal policies that had led to environmental destruction, and political and economic instability.[243] In 2006, President Rafael Correa was elected on a populist agenda promising to transform Ecuador's political and economic systems.[244] Correa's election was heavily reliant on the support of Indigenous groups, particularly the powerful Confederation of Indigenous Nationalities of Ecuador (CONAIE). Their influence led to the adoption of the principle of *sumak kawsay* (good living), the recognition of the rights of nature, and the declaration of Ecuador as a plurinational state.[245]

Specifically, the Preamble of the Constitution states that Ecuador seeks to build a society that lives in harmony with nature.[246] Nature's rights are outlined in Articles 71-73 of the Constitution, in which nature is defined as Pachamama, where life is reproduced and occurs.[247] Moreover, Article 71 specifies that nature has three substantive rights: the right to integral respect for its existence, the right to maintain its integrity as an ecosystem, and the right to the maintenance and regeneration of its life cycles, structure, functions, and evolutionary processes.[248]

Article 72 addresses nature's right to restoration, placing the positive obligation on the state.[249] It mandates the government to provide restoration and implement measures to mitigate environmental impacts in cases of severe or permanent harm.[250] However, the Constitution does not define the threshold for "severe" harm or specify the level of restoration required. These specifications could be interpreted as the points at which nature can or cannot access its Article 71 rights. The Constitution also mandates both

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[242] Constitución de la Republica del Ecuador, Artt.71-73 (EC). Accessed 30 May 2024.

[243] Becker M, "Correa, Indigenous Movements, and the Writing of a New Constitution in Ecuador" (2011) 38 Latin American Perspectives 1, p.47 <https://www.yachana.org/research/lap2011.pdf>. Accessed 20 July 2024.

[244] Ibidem.

[245] Plurinationalism recognizes that indigenous groups possess distinct ethnicities, cultures, and histories, as well as specific political rights. These include legal rights to ancestral territories and the establishment of separate lawmaking and governmental structures within the broader federal government framework; Bainbridge E, "Indigenous Mobilization in Ecuador – The Emergence of CONAIE" (Modern Latin America) <https://library.brown.edu/create/modernlatinamerica/chapters/chapter-6-the-andes/moments-in-andean-history/indigenous-mobilization-in-ecuador/> accessed 21 July 2024.

[246] Constitución de la Republica del Ecuador, Preamble (EC). Accessed 30 May 2024.

[247] Ibidem, Art.71.

[248] Ibidem.

[249] Ibidem, Art.72.

[250] Ibidem.

immediate and long-term governmental measures, such as providing incentives to organizations and communities to protect and promote respect for nature.[251]

Article 73 requires the state to apply preventative measures regarding activities that might lead to the extinction of species, the destruction of ecosystems, and the permanent alteration of natural cycles, including the introduction of invasive species.[252] This duty encompasses both *ex post facto* evaluation and the prevention of environmental harm, although the Constitution does not specify how such harms must be evaluated.

Furthermore, the Ecuadorian Constitution does not establish a hierarchy of rights, meaning that the rights of nature are not considered superior to any other category of rights conferred by the document.[253] Moreover, no regulation can restrict the content of any constitutionally entrenched right without justification.[254] However, the Constitution provides no guidance on what constitutes "justification".

Additionally, Article 71 empowers all individuals, communities, peoples, and nations to call upon public authorities to enforce nature's rights, ensuring the protection and preservation of the natural environment, reflecting that the rights of nature are inherent to all of nature.[255] Consequently, claims for nature's rights are not limited to Ecuador's jurisdiction.

Article 11, paragraph 3, of the Constitution asserts that rights are fully enforceable.[256] It specifies that the lack of a legal regulatory framework cannot be used to justify their violation or ignorance, to dismiss proceedings resulting from such actions, or to deny their recognition.[257] This Article guarantees that the mentioned provisions are directly justiciable.

Shortly after Ecuador's 2008 Constitution was adopted, President Rafael Correa initiated a public campaign to pass a mining law aimed at expanding mining operations to finance poverty reduction and social welfare programs. Indigenous and environmental activists strongly opposed the law, arguing that it violated both the rights of nature and

[251] Ibidem, Art.71.
[252] Ibidem, Art.73.
[253] Kotzé L J and Calzadilla P V, "Somewhere between Rhetoric and Reality: Environmental Constitutionalism and the Rights of Nature in Ecuador" (2017) Transnational Environmental Law, p.23. Accessed 20 July 2024.
[254] Constitución de la Republica del Ecuador, Art.11 (EC). Accessed 30 May 2024.
[255] Ibidem, Art.71.
[256] Ibidem.
[257] Ibidem.

the constitutional rights of indigenous communities to prior consultation. Correa dismissed the critics by labeling them as "*childish environmentalists*".[258]

The enactment of the 2009 Mining Law led to nationwide protests involving tens of thousands of indigenous, community-rights, and environmental activists.[259] In response, the Ecuadorian government cracked down on the dissent, and by 2011, nearly 200 Indigenous leaders had been arrested and charged with terrorism for protesting mining activities.[260] The government also shut down several organizations leading the protests, including the Development Council of Indigenous Nationalities and Peoples of Ecuador (CODENPE).[261] Additionally, a non-governmental organization (NGO) prominent in advocating for the rights of nature, Fundación Pachamama, was closed.[262] In summary, efforts to implement the rights of nature in Ecuador occurred in a highly politicized context. The government strongly opposed these efforts due to its plan for development driven by extractive industries.

Ecuador's first rights of nature lawsuit, filed in 2009, challenged the constitutionality of the 2009 Mining Law.[263] The lawsuit argued that the law violated

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[258] Dosh P and Kligerman N, "Correa vs. Social Movements: Showdown in Ecuador" (NACLA, 2017) <https://nacla.org/article/correa-vs-social-movements-showdown-ecuador> accessed 21 July 2024.

[259] "Ley de Minería", Law 45/2009 (ECU). Accessed 21 July 2024.

[260] EFE, "En Ecuador 189 indígenas están acusados de terrorismo y sabotaje, dice ONG" (ABC Color, 2011) <https://www.abc.com.py/internacionales/en-ecuador-189-indigenas-estan-acusados-de-terrorismo-y-sabotaje-dice-ong-285128.html> accessed 21 July 2024.

[261] CODENPE, established in 1988, promotes sustainable development for Ecuador's diverse nationalities and peoples. It includes representatives from indigenous communities, Afro-descendants, and other traditional groups, working with the state. The organization formulates policies, allocates resources, and facilitates dialogue to support these communities. It represents various nationalities like the Awa, Chachi, Waorani, and Kichwa. Currently, CODENPE is transitioning to become the "National Council for Equality of Peoples and Nationalities", emphasizing its commitment to equality and development; "Development Council of the Nationalities and Peoples of Ecuador (CODENPE)" (Latinno) <https://latinno.net/en/case/8080/> accessed 31 July 2024.

[262] Fundación Pachamama, based in Ecuador and Peru, promotes the conservation of the Amazon rainforest and supports the self-determination of indigenous peoples. It focuses on sustainable development, climate justice, and the protection of indigenous rights. The organization fosters viable alternatives for Amazonian communities, emphasizing bio-enterprises, ecotourism, and biodiversity; Fundación Pachamama, "Inicio - Fundación Pachamama" (Fundación Pachamama) <https://www.pachamama.org.ec/> accessed 1 August 2024; "Ecuador: Clausuran a organización de derechos ambientales e indígenas" (Human Rights Watch, 2013) <https://www.hrw.org/es/news/2013/12/06/ecuador-clausuran-organizacion-de-derechos-ambientales-e-indigenas> accessed 21 July 2024.

[263] "Ley de Minería", Law 45/2009 (ECU). Accessed 21 July 2024.

articles of the Constitution granting rights to nature, including explicit rights to water, as well as several Indigenous and community rights, such as the right to prior consultation.[264]

The lawsuit presented scientific evidence, including studies by the mining company, showing that the open-pit mine would completely remove various ecosystems, likely causing the extinction of endangered endemic species, thus violating the rights of nature.[265] It also highlighted the catastrophic contamination of surface and groundwater with heavy metals and toxic substances, threatening surrounding watershed ecosystems.[266] Article 73 of Ecuador's Constitution mandates the state to apply preventive and restrictive measures against activities that might lead to species extinction, ecosystem destruction, and permanent alteration of natural cycles.[267] The precautionary principle requires that activities likely to cause these outcomes be stopped and redesigned.[268] Given these considerations, the Constitutional Court declared the unconstitutionality of the 2009 Mining Law.[269]

In conclusion, Ecuador is a pioneering example of constitutionalizing the rights of nature. The 2008 Constitution enshrines these rights, driven by the desire to counter neoliberal policies and supported by Indigenous groups. Articles 71-73 detail nature's rights, emphasizing protection, restoration, and preventive measures.[270]

However, the 2009 Mining Law sparked significant conflict, with activists arguing it violated constitutional rights. The government's crackdown on dissent highlighted the political challenges in enforcing these rights. Despite legal provisions, Ecuador 's efforts to balance development and environmental protection remain complex and contentious.

3.2. Bolivia

[264] Judgement no 001-10-SIN-CC, Corte Constitucional, [2010], p.3. Accessed 21 July 2024.

[265] Ibidem, p.6.
[266] Ibidem.
[267] Ibidem, p.16.
[268] Ibidem.
[269] Ibidem, p.57.
[270] Constitución de la Republica del Ecuador, Artt.71-73 (EC). Accessed 30 May 2024.

While Bolivia's 2009 Constitution provides a human right to a healthy, protected, and balanced environment, it does not constitutionally enshrine the rights of nature like Ecuador's.[271] Instead, the document aligns more closely with environmental rights aimed at benefiting present and future generations.[272]

The most notable aspect of this legal text is that it authorizes any individual, either personally or on behalf of a group, to initiate legal actions in defense of environmental rights (Article 34).[273] This provision is similarly present in the Ecuadorian Constitution.[274]

The rights of nature in Bolivian legal framework are articulated in the Law 71/2010 on the Rights of Mother Earth. [275] The Framework Law operationalizes these rights within the context of development for *vivir bien* (living well).[276]

The Rights of Mother Earth was developed following the adoption of Bolivia's Constitution and was directly linked to international responses to the global climate crisis. In 2010, the World's Peoples Conference on Climate Change and the Rights of Mother Earth in Cochabamba, Bolivia, with 35,000 participants from over 100 countries, drafted the Proposal for a Universal Declaration of Rights of Mother Earth.[277]

This Declaration emphasizes that all beings are part of an indivisible, living community and that recognizing only human rights disrupts this balance.[278] It asserts that the inherent rights of Mother Earth are inalienable, arising from the same source as existence, and that all beings, organic and inorganic, have rights specific to their roles within their communities.[279]

The rights recognized for Mother Earth and all its constituent beings include the right to life and existence, respect, regeneration of biocapacity, and the continuation of

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[271] Constitución Política del Estado, Art.33 (BOL). Accessed 21 July 2024.
[272] Ibidem.
[273] Ibidem, Art.34.
[274] See section 3.1 of this chapter.
[275] "Ley de derechos de la Madre Tierra", Law 71/2010, Chapter III (BOL). Accessed 30 May 2024.
[276] Kotzé L J and Calzadilla P V, "Living in Harmony with Nature? A Critical Appraisal of the Rights of Mother Earth in Bolivia" (2018) Cambridge University Press, p. 399 <https://www.cambridge.org/core/journals/transnational-environmental-law/article/living-in-harmony-with-nature-a-critical-appraisal-of-the-rights-of-mother-earth-in-bolivia/C819E1C4EE0848C3F244EFB0C200FE65> accessed 20 May 2024.
[277] Universal Declaration of Rights of Mother Earth (adopted 22 April 2010).
[278] Ibidem, Art.1.
[279] Ibidem.

vital cycles free from human disruptions.[280] These beings have the right to maintain their identity and integrity as distinct, self-regulating, and interrelated entities.[281] Additional rights encompass access to water, clean air, integral health, freedom from contamination and pollution, protection from genetic modification, and full and prompt restoration.[282]

The Declaration was presented to the UN and the climate change negotiation process, and, by the end of 2010, its text was incorporated and adopted as Law 71 of the plurinational state of Bolivia.[283]

The title of the law immediately highlights its reference to "*Mother Earth*" rather than simply "nature". This choice reflects a profound concept rooted in indigenous cultures: the Earth is the source of life and the mother of all beings.[284] Mother Earth is not depicted as a destructive and dominating masculine entity that separates herself from those she supports. As expressed in the preamble of Bolivia's Constitution, Mother Earth is celebrated as a sacred and powerful maternal force: "*with the strength of our Pachamama, the Bolivian people have found Bolivia anew*". This statement signifies her revered status as a nurturing and empowering presence.[285]

The rights of Mother Earth are underpinned by several legally binding principles.[286] The first principle, "harmony", requires that human activities achieve a dynamic balance with the cycles of Mother Earth. The second principle, "collective good", prioritizes societal interests within the framework of these rights, potentially leading to ethical tensions. The third principle, "guarantee of regeneration of Mother Earth", emphasizes protective stewardship, ensuring that living systems can absorb damage and regenerate. Additional principles include respect for the rights of Mother Earth, non-commercialization of living systems, and multiculturalism, which acknowledges the

[280] Ibidem, Art.2.
[281] Ibidem.
[282] Ibidem.
[283] Kotzé L J and Calzadilla P V, "Living in Harmony with Nature? A Critical Appraisal of the Rights of Mother Earth in Bolivia" (2018) Cambridge University Press, p. 404 <https://www.cambridge.org/core/journals/transnational-environmental-law/article/living-in-harmony-with-nature-a-critical-appraisal-of-the-rights-of-mother-earth-in-bolivia/C819E1C4EE0848C3F244EFB0C200FE65> accessed 20 May 2024.
[284] Ibidem, p.407.
[285] Constitución Política del Estado, Preamble (BOL). Accessed 21 July 2024.
[286] "Ley de derechos de la Madre Tierra", Law 71/2010, Art.2 (BOL). Accessed 21 July 2024.

contributions of indigenous peoples in environmental governance.[287] These principles aim to integrate ecological integrity and holistic approaches into legal frameworks.

The Law of the Rights of Mother Earth regards Mother Earth as a dynamic living system, consisting of an indivisible community of all living systems and organisms. These components are interrelated, interdependent, and complementary, sharing a common destiny.[288] Furthermore, all human communities and natural entities collectively interact as a functional unit under the influence of climatic, physiographic, and geological factors.[289]

The Law of the Rights of Mother Earth establishes the legal status of Mother Earth as a collective public interest entity. It grants Mother Earth and all its components, including human communities, the inherent rights recognized in the law.[290] These rights include life, diversity of life, water, clean air, equilibrium, restoration, and a pollution-free environment.[291] The exercise of these rights considers the specificities and particularities of its various components and does not limit the existence of other rights of Mother Earth.[292]

The exercise of the rights established in the Law of the Rights of Mother Earth is entrusted to all Bolivians, who are recognized as part of the community of beings that form Mother Earth.[293] This implies that Bolivians should act not as detached advocates, but in their own and Mother Earth's collective interests. The language underscores that all Bolivians are integral to the community of beings comprising Mother Earth, emphasizing their interconnectedness and shared responsibilities.[294]

[287] Ibidem.
[288] Ibidem, Art.3.
[289] Ibidem, Art.4.
[290] Ibidem, Art.5.
[291] Ibidem, Art.7.
[292] Ibidem, Art.5.
[293] Ibidem, Art.6.
[294] Kotzé L J and Calzadilla P V, "Living in Harmony with Nature? A Critical Appraisal of the Rights of Mother Earth in Bolivia" (2018) Cambridge University Press, p. 409 <https://www.cambridge.org/core/journals/transnational-environmental-law/article/living-in-harmony-with-nature-a-critical-appraisal-of-the-rights-of-mother-earth-in-bolivia/C819E1C4EE0848C3F244EFB0C200FE65> accessed 20 May 2024.

A significant advancement in Bolivian law regarding the Rights of Mother Earth is the creation of the Ombudsman of Mother Earth (*Defensoría de la Madre Tierra*), tasked with overseeing the enforcement of these rights.[295]

To date, there has been no significant litigation in Bolivia based on the Rights of Mother Earth laws. It is highly unlikely that an individual filing a case to protect Mother Earth would succeed, especially considering that the major violations of these laws come from the government, which currently has substantial influence over the judiciary.[296]

In conclusion, Bolivia exemplifies the recognition of the rights of nature through its legal framework. Unlike Ecuador's Constitution, Bolivia's 2009 Constitution does not explicitly enshrine these rights but focuses on environmental rights for human benefit. The 2010 Law of the Rights of Mother Earth operationalizes these rights, viewing Mother Earth as an interconnected, living system. The law grants rights to life, diversity, water, clean air, and more, emphasizing collective stewardship by all Bolivians. However, significant litigation under these laws has been absent, largely due to government influence over the judiciary and its own legal violations.

3.3. Uganda

In a continent like Africa, where economic growth is a primary development goal, the right to a clean and healthy environment could serve as a crucial legal benchmark for assessing projects and development schemes. In this context, the 1995 Constitution of Uganda serves as the supreme legal framework, establishing broad principles for environmental protection, conservation, and sustainable management.[297] It mandates the state to protect key natural resources and guarantees every Ugandan's right to a clean and healthy environment. It includes National Objectives and Directive Principles of State

[295] "Ley de derechos de la Madre Tierra", Law 71/2010, Art. 10 (BOL). Accessed 21 July 2024.

[296] Muñoz L, "Bolivia's Mother Earth Laws: Is the Ecocentric Legislation Misleading?" (ReVista, 2023) <https://revista.drclas.harvard.edu/bolivias-mother-earth-laws-is-the-ecocentric-legislation-misleading/#:~:text=This%20draft%20law%20distinctively%20kept,friendlier%2Dto%2Dearth%20sources.> accessed 21 July 2024.

[297] Constitution of the Republic of Uganda (UG). Accessed 29 August 2024.

Policy, such as Principle XIII, which requires the state to safeguard natural resources like water, wetlands, minerals, oil, fauna, and flora on behalf of the people of Uganda.

Principle XXI mandates the state to implement effective water management at all levels, while Principle XXVII addresses sustainable environmental management. Article 39 enshrines the right of every Ugandan citizen to a healthy and clean environment, including clean air, water conservation, pollution prevention, and protection from diseases linked to poor sanitation and environmental conditions. Article 245(a) mandates Parliament to enact laws aimed at preventing environmental abuse, pollution, and degradation, and managing the environment for sustainable development. Article 17(1)(11) imposes a participatory duty on every Ugandan citizen to create and maintain a clean and healthy environment; however, the enforcement of this duty is often undermined by the struggle for basic livelihoods.

However, what truly matters in the context of environmental personhood is the National Environment Act, as it extends legal protection to natural entities, acknowledging their intrinsic value beyond human utility.[298] It marks a significant shift towards an ecocentric legal framework, embracing environmental personhood as a cornerstone of sustainable governance in Uganda.

In March 2019, the government of Uganda revised the National Environment Act, recognizing nature's rights to exist, persist, maintain, and regenerate its vital cycles, structures, functions, and evolutionary processes (Article 4, paragraph 1).[299]

This legal protection for the rights of nature comes as Uganda plans to transition to an extractive-based economy. This change is particularly important given the country's history of prioritizing economic growth over ecological integrity, often resulting in environmental injustices, including forced evictions and the disregard of indigenous knowledge.[300]

Provisions on the right to a clean and healthy environment, as outlined in Article 3, include the following: every person is entitled to a healthy environment and has a duty to

[298] "The National Environment Act" 5/2019 (UG). Accessed 21 May 2024.

[299] Ibidem, Art.4, para.1 (UG)..

[300] Carmody P and Taylor D, "Globalisation, Land Grabbing, and the Present-Day Colonial State in Uganda: Ecolonization and its Impacts" (2016), 25 Environment & Development, p.100. Accessed 21 July 2024.

maintain and enhance it.[301] This provision encompasses the obligation to inform authorities about activities that significantly impact the environment. Authorities or local environment committees are entitled to bring an action against individuals whose activities have, or are likely to have, significant environmental effects.[302] This framework highlights that achieving the right to a clean and healthy environment necessitates responsibilities from both the state and individuals, emphasizing the collective efforts required for environmental protection.

According to the Act, the Ugandan government established a Policy Committee on Environment to provide strategic policy guidance. This Committee is composed entirely of government ministers.[303]

Moreover, Article 111 of the Act mandates that an environmental and social impact assessment is required for any project likely to have significant environmental impacts.[304] This article outlines that the project developer must conduct an environmental and social impact assessment (ESIA), prepare a project brief, and submit it to the national environmental management authority (NEMA) for approval before proceeding. The assessment must evaluate potential environmental effects and propose mitigation measures to ensure that the project complies with environmental standards and safeguards the right to a healthy environment.[305]

In the case Water and Environment Network (U) Limited and 2 Others v National Environmental Management Authority and Anor [2021] UGHCCD 30, the plaintiffs challenged the approval of an ESIA for a sugarcane project.[306] The High Court ruled that the approval process violated the National Environment Act, emphasizing that environmental rights, such as the right to a healthy environment.[307] The ruling highlighted the importance of adhering to legal standards that protect environmental rights in development projects.[308]

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[301] "The National Environment Act" 5/2019, Art.3 (UG). Accessed 21 May 2024.
[302] Ibidem.
[303] Ibidem, Art.6.
[304] Ibidem, Art.111.
[305] Ibidem.
[306] Water and Environment Network (U) Limited and 2 Others v National Environmental Management Authority and Anor (Consolidated Miscellaneous Cause No. 239 of 2020) [2021] UGHCCD 30. Accessed 21 July 2024.
[307] Ibidem, p.19.
[308] Ibidem, p.25.

In conclusion, the integration of the right to a clean and healthy environment within Uganda's legal framework represents a significant advancement in balancing economic development with ecological preservation. By revising the National Environment Act to recognize nature's rights and mandating environmental and social impact assessments for development projects, Uganda is taking crucial steps towards sustainable development. These legal provisions are essential in a continent like Africa, where economic growth is often pursued aggressively, sometimes at the expense of environmental integrity.

The case of Water and Environment Network (U) Limited and Others v National Environmental Management Authority underscores the critical role of judicial oversight in ensuring that development projects adhere to environmental laws. The High Court's decision to rule against the approval of an ESIA for a sugarcane project, due to non-compliance with the National Environment Act, exemplifies the judiciary's role in upholding environmental rights.

However, the effectiveness of these legal frameworks depends heavily on their implementation and enforcement. The creation of a Policy Committee on Environment, composed entirely of government ministers, suggests a top-down approach to environmental governance. While this can ensure policy alignment at the highest levels, it also risks marginalizing local and indigenous perspectives, which are vital for holistic environmental management.

The duty placed on individuals to report activities that significantly impact the environment indicates a shift towards collective responsibility. This provision fosters a participatory approach to environmental governance, encouraging community engagement and vigilance. However, the success of such measures requires robust public awareness and accessible reporting mechanisms.

Uganda's legal recognition of the rights of nature and the right to a clean and healthy environment sets a precedent for other nations in Africa and beyond. It underscores the necessity of embedding environmental considerations into the core of development planning. As Uganda transitions to an extractive-based economy, these legal safeguards will be crucial in preventing environmental degradation and ensuring that economic growth does not come at an unsustainable cost.

4. Narrow Personhood Rights

4.1. New Zealand

As mentioned in section 2.3 of chapter 2, in 2014, the Te Urewera protected area transitioned from a national park to a legal entity under the Te Urewera Act. This act recognized Te Urewera as a place of spiritual significance with its own *mana* and *mauri*, acknowledging its unique identity and profound connection to the Tuhoe people.[309]

Specifically, the Act designates Te Urewera as a legal entity endowed with the rights, powers, duties, and liabilities of a legal person.[310] However, these functions are exercised exclusively by its representative entity, the Te Urewera Board, which consists of four members appointed by the trustees of Tuhoe Te Uru Taumatua and four appointed by the Crown.[311] This governance structure, comprising equal representation from the trustees of Tuhoe Te Uru Taumatua and the Crown, ensures a balanced approach to managing Te Urewera. It highlights a collaborative effort between the indigenous Tuhoe people and the government, aiming to respect and integrate Maori cultural values and perspectives into the legal and administrative framework of environmental stewardship. This arrangement is a notable example of co-governance and shared responsibility in environmental law.

Similarly, the Te Awa Tupua Act designates Te Awa Tupua as a legal person with all the rights, powers, duties, and liabilities of a legal person.[312] The representative entity, Te Pou Tupua, is responsible for exercising these functions. The Te Pou Tupua is appointed jointly by the Crown and the Whanganui Iwi.[313] This dual appointment ensures that the interests of both the government and the indigenous Maori community are represented in the management of Te Awa Tupua.

These statutes are seldom invoked in New Zealand, likely due to their bipartisan support and relatively uncontroversial implementation. Additionally, the representative

[309] "Te Urewera Act 2014" 51/2014, Part 1, Subpart 1, Art.3 (NZ). Accessed 21 May 2024.
[310] Ibidem, Subpart 3, Art.11.
[311] Ibidem, Part 2, Subpart 1.
[312] "Te Awa Tupua (Whanganui River Claims Settlement) Act 2017" 7/2017, Part 2, Subpart 2, Art.14 (NZ). Accessed 21 May 2024.
[313] Ibidem, Part 2, Subpart 3.

entities established to protect the interests of these ecosystems have not yet faced significant challenges.[314]

In conclusion, the transformation of Te Urewera and Te Awa Tupua into legal entities exemplifies the concept of narrow personhood rights, where specific natural entities are granted legal personhood. This legal recognition, under the Te Urewera Act and the Te Awa Tupua Act, acknowledges these entities' spiritual significance and unique identities, particularly in relation to the Maori people.

The Acts confer rights analogous to human legal rights, such as the right to exist, regenerate, and be free from pollution. These rights are upheld by representative entities: the Te Urewera Board and Te Pou Tupua, which include members appointed by both the indigenous communities and the government. This governance structure ensures that the natural entities' interests are actively represented and defended, balancing Maori cultural values with statutory responsibilities.

The successful implementation and bipartisan support of these statutes demonstrate their effectiveness in protecting the rights of specific natural entities. By establishing clear legal provisions and representative entities, New Zealand has created a precise mechanism for advocacy and enforcement of the entities' rights.

These frameworks highlight the importance of integrating indigenous wisdom into environmental governance and offer a model for other nations to follow. The recognition of narrow personhood rights ensures that natural entities are protected and respected within legal systems, promoting sustainable and holistic stewardship of the environment.

5. What About the Mar Menor?

The study showed that the Mar Menor Act grants the lagoon and its basin both all of nature rights and narrow personhood rights.[315] On the one hand, the law acknowledges

[314] Cyrus R Vance Center for International Justice, Earth Law Center and International Rivers, "Rights of Rivers" (2019), p.17 <https://www.internationalrivers.org/wp-content/uploads/sites/86/2020/09/Right-of-Rivers-Report-V3-Digital-compressed.pdf> accessed 22 May 2024.

[315] See chapter IV.

the Mar Menor's right to exist, to be protected, and to be restored-broad rights that reflect the universal nature of all of nature rights.[316] This recognition ensures that the Mar Menor is protected for its own sake, emphasizing its intrinsic value and ecological importance.

On the other hand, the law also establishes specific mechanisms for the lagoon's legal representation and governance, reflecting the principles of limited personal rights.[317] The Mar Menor Act creates a Committee of Representatives, a Control Commission, and a Scientific Committee to oversee the implementation and protection of the lagoon's rights. This structure ensures that the Mar Menor's interests are represented and that there are dedicated bodies responsible for monitoring and enforcing its rights.

The establishment of these representative bodies parallels the narrow personhood rights seen in other legal contexts, such as the Te Urewera and Te Awa Tupua Acts in New Zealand.[318] These acts designate specific natural entities as legal persons with rights, powers, duties, and liabilities exercised through representative entities. Similarly, the Mar Menor Act's provision for legal representation through its various committees ensures that the lagoon's specific interests are actively managed and protected, fulfilling the criteria for narrow personhood rights.

The law also allows for public action, enabling any natural or legal person to defend the Mar Menor's rights through legal means.[319] This combination of broad and specific rights, along with inclusive and focused enforcement mechanisms, highlights the comprehensive approach adopted in Spain to protect the Mar Menor. This dual approach encapsulates both the holistic protection seen in all of nature rights and the specific, actionable protections characteristic of narrow personhood rights, making the Mar Menor Act a robust and pioneering legal framework for environmental protection.

In conclusion, the Mar Menor Act effectively combines all of nature rights and narrow personhood rights to protect the lagoon. By acknowledging the Mar Menor's intrinsic value and establishing specific governance mechanisms like the Committee of Representatives, Control Commission, and Scientific Committee, the Act ensures active monitoring and enforcement of its rights.[320]

[316] Ley 19/2022, Artt.1-2 (ES). Accessed 30 May 2024.
[317] Ibidem, Art.3.
[318] See section 4 of this chapter.
[319] Ley 19/2022, Art.6 (ES). Accessed 30 May 2024.
[320] Ibidem, Art.3.

This framework provides structured advocacy and empowers public action, involving both the state and citizens in the lagoon's protection. The Mar Menor Act serves as a pioneering model for future environmental legislation, demonstrating how innovative legal mechanisms can safeguard vulnerable ecosystems.

The subsequent sub-section will delve into the unique opportunities and challenges associated with implementing environmental personhood for the Mar Menor under Spanish Law 19/2022. By drawing on lessons from the experiences of other jurisdictions, including Ecuador, Bolivia, Uganda, and New Zealand, this analysis will focus on the critical aspects of enforcement mechanisms, stakeholder involvement, clear definitions of rights and responsibilities, institutional support, balancing economic development with environmental protection, raising public awareness, and addressing the impacts of climate change.

5.1. Lessons and Challenges: Implementing Environmental Personhood in Spain

Implementing environmental personhood for the Mar Menor, as established by Spanish Law 19/2022, presents unique opportunities and challenges.[321] By examining the experiences of other jurisdictions such as Ecuador, Bolivia, Uganda, and New Zealand, valuable lessons can be derived to guide the effective implementation of this legal innovation in Spain.

Effective enforcement mechanisms are essential for environmental personhood to succeed. In Ecuador and Bolivia, despite having strong legal frameworks recognizing the rights of nature, enforcement has been inconsistent.[322] Ecuador's pioneering 2008 constitutional amendments faced challenges in enforcement due to economic pressures and limited resources. Similarly, Bolivia's Law of the Rights of Mother Earth has struggled against the backdrop of the country's economic reliance on resource extraction.[323] For Spain, establishing robust enforcement mechanisms is crucial to ensure compliance with the rights granted to the Mar Menor. Spanish Law 19/2022 outlines

[321] Ley 19/2022 (ES). Accessed 27 May 2024.
[322] See sections 3.1 and 3.2 of this chapter.
[323] Ibidem.

several enforcement mechanisms to address this challenge, including criminal, civil, environmental, and administrative liability for violations.[324] The effectiveness of these measures will depend on rigorous application by designated bodies and the availability of sufficient resources, as emphasized by the 2024 Action Plan's dedicated fund of 115,934,363 euros.[325]

The involvement of local communities and stakeholders is another critical factor. New Zealand's approach included strong partnerships with the Maori, ensuring that traditional knowledge and practices were integrated into the management of the Whanganui River and Te Urewera.[326] In Spain, while there may not be a direct Indigenous population associated with the Mar Menor, involving local stakeholders -such as environmental groups, scientists, residents, and local businesses- in the decision-making process is essential.[327] This inclusive approach can enhance the effectiveness and legitimacy of environmental personhood initiatives by ensuring that the measures taken are informed by local knowledge and supported by those most affected. Establishing a management body similar to New Zealand's Te Awa Tupua entity, which oversees the Whanganui River, could ensure local participation and effective governance.[328] However, the Spanish Law 19/2022 needs further clarity on how legal representation is exercised and the decision-making processes within the Committee of Representatives, the Control Commission, and the Scientific Committee to ensure representation remains effective and accountable over time.[329]

Clear definitions of rights and responsibilities are crucial to avoid ambiguity and ensure effective implementation. Uganda's National Environment Act shows the importance of clear and actionable definitions.[330] Spanish Law 19/2022 provides a framework for the rights of the Mar Menor, but the practical application of these rights requires detailed guidelines. Specific criteria and indicators for protection, conservation,

[324] Ley 19/2022, Artt.3-6 (ES). Accessed 27 May 2024.

[325] See section 3.2 of chapter IV.

[326] See section 4.1 of this chapter.

[327] Effective governance necessitates extensive cooperation among public administrations and private stakeholders to tackle challenges stemming from agricultural and economic activities contributing to the lagoon's degradation. Spanish Law 19/2022 does not address this aspect, and without such collaboration, achieving the law's objectives will be difficult; See section 3.2 of chapter IV.

[328] See section 4.1 of this chapter.

[329] Ley 19/2022, Art.3 (ES). Accessed 27 May 2024; See section 3.2 of chapter IV.

[330] "The National Environment Act" 5/2019 (UG). Accessed 21 May 2024. See section 3.3 of this chapter.

maintenance, and restoration need to be developed to guide enforcement bodies effectively.[331] This will ensure that the broad definitions in the law translate into practical, actionable steps for conservation and restoration.

Institutional support and capacity building are vital for the practical implementation of environmental personhood. New Zealand established institutional frameworks, such as management boards and funding mechanisms, to support the legal entities.[332] Spain should consider creating similar structures, such as an independent body to oversee the protection of the Mar Menor, ensuring that it has the necessary resources and authority to fulfill its mandate. The mentioned 2024 Action Plan's dedicated fund can provide essential financial backing for these initiatives. Training programs for local authorities and stakeholders will also be essential to build the capacity required for effective implementation and enforcement.

Balancing economic development with environmental protection remains a significant challenge. Ecuador and Bolivia's experiences highlight the difficulty of balancing economic development with environmental protection. Bolivia's reliance on extractive industries and Ecuador's economic pressures highlight the need for strategies that balance economic activities with environmental protection.[333] For Spain, this could involve promoting sustainable tourism and agriculture practices that align with the ecological needs of the Mar Menor. Developing economic models that support conservation efforts while providing sustainable livelihoods for local communities will be crucial. Spanish Law 19/2022's provisions emphasize the need to restrict harmful activities, ensuring that economic development does not compromise environmental health.[334] Ensuring these provisions are effectively enforced will be key to achieving this balance.

Raising public awareness and fostering a sense of environmental responsibility is essential for the success of environmental personhood. Public education campaigns can help build support for the protection of the Mar Menor and encourage responsible behavior among residents, businesses, and visitors. Spain should invest in educational programs that highlight the importance of the Mar Menor's ecological health, the legal

[331] Ley 19/2022, Art.2 (ES). Accessed 14 June 2024.
[332] See section 4.1 of this chapter.
[333] See sections 3.1 and 3.2 of this chapter.
[334] See section 3.2 of chapter IV.

rights it now holds, and the role that individuals and businesses can play in its preservation. This can foster a culture of environmental stewardship that supports the law's objectives.

Addressing the impacts of climate change is another significant challenge. Climate change poses a significant threat by exacerbating existing environmental pressures on the Mar Menor, such as rising temperatures, changing precipitation patterns, and increased frequency of extreme weather events. Spain must incorporate climate resilience into its protection strategies for the Mar Menor, ensuring that the legal recognition of its rights includes measures to mitigate and adapt to the impacts of climate change. This will involve integrating climate change considerations into all aspects of the Mar Menor's management and protection.

By learning from the experiences of other jurisdictions and addressing the specific challenges outlined above, Spain can develop a robust framework that effectively protects this unique and valuable ecosystem. Ensuring robust enforcement mechanisms, involving local communities, clearly defining rights and responsibilities, providing institutional support, balancing economic interests with environmental protection, raising public awareness, and addressing climate change impacts are all essential steps for the successful implementation of environmental personhood for the Mar Menor.

6. The Absence of Environmental Personhood Within Many European Union Countries

In the European Union, most countries do not recognize the legal personhood of nature, adhering to anthropocentric legal frameworks that treat nature primarily as a resource. These frameworks typically aim to regulate human activities to balance development with conservation, rather than granting nature its own rights. This approach is deeply ingrained in historical, cultural, and legal contexts that prioritize human-centric governance and economic growth.

A significant reason for this approach is the emphasis on economic development. Industries such as agriculture, mining, and manufacturing are crucial economic drivers, and legal frameworks are designed to support these industries, often at the expense of

environmental sustainability. This economic focus results in policies that exploit natural resources while attempting to mitigate environmental damage. Governments are frequently more inclined to support initiatives that promise immediate economic benefits, even if they pose long-term risks to the environment.

Political and institutional resistance also plays a significant role. Legal and institutional inertia, combined with the complexity and potential economic implications of recognizing nature's legal personhood, make it challenging to adopt such progressive legal frameworks. Many lawmakers and policymakers are reluctant to introduce reforms that could disrupt existing economic activities or impose additional regulatory burdens. Additionally, many European societies view nature through an anthropocentric lens, valuing it primarily for its utility to humans. This cultural perspective reinforces resistance to legal frameworks that recognize the intrinsic rights of nature.

Furthermore, many EU countries believe that existing European and international regulations are sufficient for environmental protection. The already mentioned EU's Birds and Habitats Directives provide comprehensive frameworks for preserving biodiversity, protecting natural habitats, and ensuring environmental considerations in development projects. [335]

Additionally, international agreements such as the Ramsar Convention on Wetlands of International Importance influence EU member states' environmental policies.[336] These treaties underscore the importance of environmental protection but do not confer legal personhood to nature.

Despite these robust frameworks, the argument that they are sufficient for environmental protection often overlooks the intrinsic value of nature and the limitations of human-centered laws. While these regulations are essential for mitigating environmental harm, they do not inherently recognize nature's right to exist and flourish independently of human interests. This gap has led to calls for more radical approaches that acknowledge the intrinsic rights of natural entities.

In a notable departure from this trend, Spain has decided to take a pioneering step by recognizing the legal personhood of the Mar Menor Lagoon. By granting legal

[335] Birds Directive 2009/147/EC. Accessed 30 May 2024; Habitats Directive 92/43/EEC. Accessed 30 May 2024.

[336] "Ramsar Convention on Wetlands of International Importance Especially as Waterfowl Habitat" (adopted 2 February 1971, entered into force in 1975). Accessed 13 June 2024.

personhood to the Mar Menor, Spain differentiates itself from other EU countries and sets a precedent for exploring new legal mechanisms to enhance environmental protection.

The following subsection will analyze the case of the Orbetello Lagoon as a specific example of the impact of not recognizing nature's legal personhood.

6.1. The Orbetello Lagoon Case

Although it has followed a different path from Spain, Italy has a well-developed environmental legislation.[337] The primary purpose of the state's laws is to protect the environment as a common heritage. This objective is linked to safeguarding public health, following the path laid out by the Italian Constitution in Article 9 ("*The Republic [...] Protects the landscape and the historical and artistic heritage of the Nation*") and Article 32 ("*The Republic protects health as a fundamental right of the individual and interest of the community*").[338]

This anthropocentric outlook does not imply a lack of sensitivity to ecological issues. Italy's national parks, constituting 5.3% of the state's territory, are governed by Law 394/1991. The law emphasizes nature protection, including landscape preservation and the safeguarding of ecological and scientific values.[339]

However, the Italian regulatory framework aims to regulate the exploitation of natural resources and establish permitted pollution levels, seeking a balance between economic, public health and ecosystem protection needs.[340]

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[337] "Zaštita životne sredine: medijski prilozi o dobrim praksama Italije, Danske, Francuske - EU u Srbiji" (EU U Srbiji, 8 March 2023) <https://europa.rs/environmental-protection-media-reports-on-good-practices-of-italy-denmark-france/?lang=en%20https://europa.rs/environmental-protection-media-reports-on-good-practices-of-italy-denmark-france/?lang=en#> accessed 13 June 2024.

[338] See section 6.2 of this chapter to read more about the Italian Constitution's development in environmental matters; Costituzione della Repubblica Italiana, Artt. 9 and 32, Part I (IT). Accessed 13 June 2024.

[339] "Elenco ufficiale delle aree naturali protette | Ministero dell'Ambiente e della Sicurezza Energetica" <https://www.mase.gov.it/pagina/elenco-ufficiale-delle-aree-naturali-protette-0> accessed 13 June 2024; "Legge quadro sulle aree protette", Law 394/1991 (IT). Accessed 13 June 2024.

[340] Article 1 of Law 394/1991 shows that the overarching goal is to protect specific natural resources while also considering human interaction with the environment. Moreover, Article 3 of

The Orbetello Lagoon, spanning about 27 km^2, consists of two bodies of water: Laguna Ponente and Laguna Levante. These bodies are divided by a tombolo, which connects to the Monte Argentario promontory via a dam bridge that allows water exchange between the two lagoons. The lagoon system is separated from the Tyrrhenian Sea by the Giannella Tombolo to the north and the Feniglia Tombolo to the south. Laguna Levante communicates with the sea through the Ansedonia channel. At the same time, Laguna Ponente connects directly via the Nissa channel and indirectly through the Fibbia channel, which is linked to the Albegna River. The lagoon's average depth is about 1 m, with tidal excursions not exceeding 0.4 m. Limited seawater exchanges and high nutrient levels lead to algal blooms and varying degrees of dystrophies.[341]

The significance of the Orbetello Lagoon extends beyond its natural beauty. The lagoon is designated as a SCI and a SPA. It is also classified as a Wetland of International Importance under the Ramsar Convention.[342] The lagoon hosts the Orbetello Lagoon Animal Population State Nature Reserve, managed by WWF Italy and incorporated into the larger Regional Nature Reserve.[343]

However, the lagoon faces challenges, including algal blooms and dystrophies, attributed to limited seawater exchanges and elevated nutrient levels.[344] A robust legal framework at the European and national levels underpins efforts to address these issues. The Orbetello Lagoon falls under the scope of the Habitats Directive (92/43/EEC) and the Birds Directive (2009/147/EC), which aim to preserve biodiversity and mandate the establishment of conservation areas. Since the lagoon is part of the Natura 2000 network,

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Law 394/1991 shows that the application of management and environmental restoration methods is designed to integrate human activities with natural preservation. Law 394/1991, Artt.1 and 3 (IT). Accessed 13 June 2024.

341 "Orbetello e la sua laguna - La Costa d'Argento della Maremma" (giglioinfo.it, 22 May 2023) <https://www.giglioinfo.it/maremma/orbetello-monte-argentario/orbetello/> accessed 29 May 2024; "The Lagoon of Orbetello" (quimaremmatoscana, 14 March 2019) <https://quimaremmatoscana.it/en/posts/la-laguna-di-orbetello#:~:text=The%20extension%20of%20the%20Orbetello,by%20the%20promontory%20of%20Argentario.> accessed 29 May 2024.

342 "Ramsar Convention on Wetlands of International Importance Especially as Waterfowl Habitat" (adopted 2 February 1971, entered into force in 1975).

343 WWF, "Laguna di Orbetello | Oasi WWF | Pagina ufficiale" (WWF Italia) <https://www.wwf.it/dove-interveniamo/il-nostro-lavoro-in-italia/oasi/laguna-di-orbetello/> accessed 29 May 2024.

344 "Laguna di Orbetello, allarme caldo. 'Morie di pesci e macchie anossiche estese'" (La Nazione, 17 July 2024) <https://www.lanazione.it/grosseto/cronaca/caldo-moria-pesci-laguna-orbetello-abd28617> accessed 21 July 2024.

the discipline examined for the Mar Menor also applies to the Orbetello Lagoon. Furthermore, Regulation (EU) 2024/1991 also applies to the Orbetello Lagoon because, like the Mar Menor, it is a coastal lagoon identified as a priority habitat for restoration under the regulation's provisions, particularly due to its ecological significance, vulnerability to degradation, and its role in maintaining regional biodiversity.

At the national level, Italy's Framework Law on Protected Areas (Law 394/1991) provides guidelines for managing and conserving natural habitats. The designation of the Orbetello Lagoon, the ex-Sitoco area, as a Site of National Interest (SNI) of Orbetello underscores its importance within Italy's conservation framework. This area was added by Article 14 of the Italian Law 179/2002 to the list of Site of National Interest (SNIs) ex Article 1, paragraph 4, of the Italian Law 426/1998.[345]

Moreover, as part of the 2014-2020 programming cycle of the European Regional Development and Cohesion Fund (ERDF), the Ministry of the Environment and Energy Security developed the operational plan "Interventions for the protection of the territory and water". This plan includes a section dedicated to priority interventions for the safety and remediation of Sites of National Interest, allocating approximately 38 million euros for the Orbetello SNI.[346]

Consequently, on 29 May 2018, the Program Agreement for implementing safety and remediation works at the Orbetello Site of National Interest, specifically the ex-Sitoco area, was signed between the Ministry of the Environment, the Tuscany Region, the Municipality of Orbetello, and the Municipality of Monte Argentario. The total value of this agreement amounts to 34,505,970 euros.[347] In this context, the Tuscany Region has been designated as the Single Implementer of the Agreement, responsible for coordinating and supervising its overall implementation.[348]

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[345] Ministero dell'Ambiente e della Sicurezza Energetica, "Orbetello area ex Sitoco" <https://bonifichesiticontaminati.mite.gov.it/sin-47/> accessed 29 May 2024. "Disposizioni in materia ambientale" 179/2002 (IT). Accessed 29 May 2024; "Nuovi interventi in campo ambientale" 426/1998 (IT). Accessed 29 May 2024.

[346] Ministero dell'Ambiente e della Sicurezza Energetica, "Piano Operativo per l'Ambiente" <https://www.mase.gov.it/pagina/piano-operativo-lambiente> accessed 29 May 2024.

[347] Ministero dell'Ambiente e della Tutela del Territorio e del Mare, "Accordo di Programma per la realizzazione degli interventi di messa in sicurezza e bonifica del Sito di Interesse Nazionale di Orbetello – area ex SITOCO" (2018), p.2 <https://www.mase.gov.it/sites/default/files/bonifiche/Orbetello/2018/apq/18_dd_329-sta_approvazione_adp_orbetello_adp_orbetello.pdf> accessed 29 May 2024.

[348] Ibidem, p.7.

However, significant delays in implementing these interventions necessitated reshaping the plans. The regulations governing the use of the Fund for Development and Cohesion in the 2014-2020 cycle required the achievement of legally binding obligations by 31 December 2022, which was unattainable. Thus, the government committed to ensuring financial coverage for the activities planned in the Program Agreement signed on 29 May 2018 as part of the programming of the resources of the ERDF for the 2021-2027 cycle.[349]

To address the ongoing challenges, the government proposed establishing a permanent management structure for the Orbetello Lagoon system through a consortium. This consortium will serve as a management body with legal personality involving the state, the Tuscany Region, the Province of Grosseto, and the municipal administrations of Orbetello and Monte Argentario.[350]

The proposed consortium represents a promising solution to these issues. By granting legal personality to this management body, the consortium can centralize decision-making, streamline enforcement of protective measures, and improve coordination among various stakeholders. This approach could significantly enhance the operational effectiveness of conservation efforts, ensuring that environmental protections are not only planned but also effectively implemented and enforced.

The Environment Committee of the Chamber of Deputies adopted a unified text of the proposed laws to establish the consortium for managing and safeguarding the Orbetello Lagoon.[351] On 23 April 2024, the Commission continued its examination of the unified text.[352]

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[349] Camera dei Deputati, "Bollettino delle Giunte e delle Commissioni parlamentari - Ambiente, territorio e lavori pubblici (VIII)", XIX Legislature (8 March 2023), p.157 <https://www.camera.it/leg19/824?tipo=A&anno=2023&mese=03&giorno=08&view=&commissione=08#data.20230308.com08.allegati.all00010> accessed 29 May 2024.

[350] Camera dei Deputati, "Interrogazione a risposta immediata in commissione 5/01586" (7 November 2023) <https://aic.camera.it/aic/scheda.html?numero=5/01586&ramo=camera&leg=19> accessed 29 May 2024.

[351] Camera dei Deputati, "Bollettino delle Giunte e delle Commissioni Parlamentari - Ambiente, territorio e lavori pubblici (VIII)", XIX Legislature (2024), p.140 <https://www.camera.it/leg19/824?tipo=A&anno=2024&mese=01&giorno=17&view=&commissione=08#data.20240117.com08.allegati.all00030> accessed 30 May 2024.

[352] These proposed laws are: AC. 400 Marco Simiani – PD, AC.1080 Francesco Battistoni - FI, AC. 1202 Fabrizio Rossi -FdI, and AC. 1286 Ilaria Fontana – M5S. The proposed law Nos. 400 and 1202 are essentially identical. In contrast, the proposed law No. 1286 has many differences; "Consorzio gestione laguna Orbetello: gli emendamenti in VIII Camera" (Nomos, 24

An analysis of this unified text shows that while the norms for safeguarding the Orbetello Lagoon are foundational, they need improvements for better operational effectiveness. Article 1 of the unified text establishes the consortium for managing and safeguarding the Orbetello Lagoon, outlining its purpose, founding members, and territorial jurisdiction. This article sets the foundation for unified management but lacks specific details on enforcement mechanisms or clarity on the roles and responsibilities of each member.[353]

Furthermore, Article 4 delineates the consortium's activities, ranging from facility management to algae collection and treatment.[354] This article provides a comprehensive list of tasks, ensuring clarity on the consortium's responsibilities. However, further details on coordination mechanisms among members and monitoring processes may be required to ensure efficient execution.

Article 5 addresses the annual plan of activities, specifying its preparation, approval, and reporting requirements.[355] It establishes a framework for planning and implementing activities, ensuring transparency and accountability. However, the effectiveness of this provision depends on the practicality of its implementation and the extent to which it aligns with the consortium's objectives.

Moreover, Article 9 deals with the appointment and responsibilities of the consortium's sole administrator.[356] It ensures clear leadership and representation of the consortium, which is crucial for decision-making and activity implementation. However, this provision's effectiveness depends on the appointed administrator's qualifications and performance.

Finally, Article 10 establishes the audit committee responsible for financial oversight.[357] The article ensures accountability and compliance with financial regulations,

April 2024) <https://www.nomoscsp.com/progetti-di-legge/consorzio-gestione-laguna-orbetello-gli-emendamenti-in-viii-camera.html> accessed 30 May 2024.

353 Camera dei Deputati, "Bollettino delle Giunte e delle Commissioni parlamentari - Ambiente, territorio e lavori pubblici (VIII)", XIX Legislature (2024), p.140 <https://www.camera.it/leg19/824?tipo=A&anno=2024&mese=01&giorno=17&view=&commissione=08#data.20240117.com08.allegati.all00030> accessed 17 June 2024.

354 Ibidem.

355 Camera dei Deputati, "Bollettino delle Giunte e delle Commissioni parlamentari - Ambiente, territorio e lavori pubblici (VIII)", XIX Legislature (2024), p.141 <https://www.camera.it/leg19/824?tipo=A&anno=2024&mese=01&giorno=17&view=&commissione=08#data.20240117.com08.allegati.all00030> accessed 17 June 2024.

356 Ibidem, p.143.

357 Ibidem.

which are crucial for effectively managing resources. However, its effectiveness hinges on the independence and competence of the committee members and the adequacy of audit processes.

Article 16 provides the financial backbone for its operations by earmarking a specific budget. This allocation ensures that the consortium possesses the financial means necessary to carry out its duty of managing and protecting the Orbetello Lagoon. Although this article establishes a basic financial framework, it could benefit from greater detail regarding long-term funding sources and mechanisms to ensure the consortium's ongoing financial stability. This is crucial as environmental preservation demands sustained and substantial investments.

Incorporating provisions for engaging the private sector, non-governmental organizations, and other stakeholders in financing and managing the consortium's endeavors would be advantageous. Embracing a collaborative approach and diversifying funding sources could enhance financial resilience and efficacy in achieving environmental conservation objectives. Lastly, the absence of explicit liability provisions highlights the need for clear legal frameworks to ensure accountability and effective environmental management.

To conclude, the absence of legal personality for the Orbetello Lagoon in Italy poses challenges and opportunities for implementing environmental protection measures under EU and national law. While the absence of legal personality presents challenges, establishing a consortium offers a promising opportunity to strengthen conservation efforts for the Orbetello Lagoon. However, clear objectives, adequate funding, community involvement, and accountability provisions are essential for the consortium's success in safeguarding this vital ecological area.

6.2. The Italian Environmental Awareness

Italy has recognized the need to protect the environment in recent decades, reflecting a profound shift in cultural attitudes towards nature. Historically anchored in an anthropocentric view focused on human utility, society has realized that survival is

inherently linked to environmental preservation. This awareness comes from reaching a limit where the relentless pursuit of comfort has led to environmental destruction and the gradual decline of human existence. This recognition has fostered the understanding that nature must be protected entirely, promoting an advanced awareness of balanced coexistence among all sentient beings.

Two years ago, with Constitutional Law no 1 of 11 February 2022, the protection of the environment and nature was incorporated into the Italian Constitution.[358] With an almost unanimous vote in Parliament, Articles 9 and 41 of the Constitution were reformed.[359]

Article 9 introduced, among the fundamental principles of the Constitution, the protection of the environment, biodiversity, and ecosystems, also "*in the interest of future generations*".[360] This language resonates with the Preamble of the Charter of Fundamental Rights of the European Union, which emphasizes duties and responsibilities toward humanity and future generations.[361]

Article 41 established the principle that while private economic initiative is free, it cannot be conducted in a way that harms the environment, and that both public and private economic activities must be directed and coordinated also to serve environmental purposes.[362] This necessary interaction between human and environmental health reflects a shift towards a more conscientious approach, recognizing that the well-being of humans is deeply interconnected with the broader ecological systems. This perspective encourages inclusive considerations of all living organisms sharing the Earth's resources, while still framing environmental protection as vital to human survival and prosperity.

This reform was significant as it confirmed an approach already outlined by the Constitutional Court and brought the Italian Constitution up to date, aligning it with other countries' most recent fundamental laws.

The overall analysis of this constitutional revision reveals both strengths and weaknesses. On the positive side, as will be discussed, certain normative elements are

[358] Legge Costituzionale 1/2022 (IT). Accessed 30 August 2024.
[359] Costituzione della Repubblica Italiana, Artt. 9 and 41, Part I (IT). Accessed 13 June 2024.
[360] Ibidem, Art.9.
[361] Charter of Fundamental Rights of the European Union [2012] OJ C326/391, Preamble <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12012P%2FTXT> accessed 29 August 2024.
[362] Costituzione della Repubblica Italiana, Art.41(IT). Accessed 30 August 2024.

worthy of appreciation. These elements not only reflect the emergence of positive statements consistent with the living constitutional law that has progressively matured through decades of consolidated jurisprudence but also present significant potential for the evolution of our constitutional system. These normative elements, considering their impact (at least in a "topographical" sense) on the fundamental principles of our Constitution contained in the first twelve articles, undoubtedly require a specific evaluation regarding their possible impact on the essential content of those "supreme principles" which, according to the well-known ruling No 1146/1988 of the Constitutional Court, constitute the limits of legitimacy for the power of constitutional revision.[363]

However, on the downside, even without giving excessive weight to the concerns raised by the incongruous provision of state law reserved generically for the regulation of methods and forms of animal protection, it seems impossible not to notice the many (and perhaps too many) omissions and gaps in the compromise reached by the parliamentary representatives. This leads to the perception that a revision of this nature represents a result of relatively limited scope, and thus, in essence, more of a missed opportunity than a truly groundbreaking step forward that could be genuinely decisive for the future of environmental policies.[364]

The first notable aspect when reading the new provisions introduced into the constitutional text is the apparent identification of a plurality of "new" objects whose protection is recognized as constitutionally relevant. Alongside the term "*environment*" - used, together with the adjective "*environmental*" found in the reformed Article 41, paragraph 3, across all three revised provisions- terms such as "*biodiversity*" and "*ecosystems*" are also introduced in the new paragraph 3 of Article 9.[365] The adoption of these terms suggests an intended conceptual distinction among them, which, at least from a strictly scientific perspective, could raise some concerns. It is indeed true that the term "environment" in the language of ecological and biological sciences (and more so in the language of normative legal practice, case law, and doctrine) is generally understood to

[363] Costituzione della Repubblica Italiana, Artt. 1-12, Part I (IT). Accessed 13 June 2024; Judgment No 1146/1988, Corte Costituzionale, [1988]. Accessed 2 September 2024.

[364] Cecchetti M, "La disciplina sostanziale della tutela dell'ambiente nella Carta repubblicana: spunti per un'analisi della riforma degli articoli 9 e 41 della Costituzione" (2022) 4 Istituzioni del Federalismo, p.797 <https://www.regione.emilia-romagna.it/affari_ist/rivista_4_2022/Cecchetti.pdf> accessed 30 August 2024.

[365] Costituzione della Repubblica Italiana, Artt. 9 and 41, Part I (IT). Accessed 13 June 2024.

encompass not only the landscape, seen as the visible and physically perceptible form of the territory and environment but also the entirety of ecosystems within which the elements of biodiversity develop. These elements are both a product and a factor of the balance of coexistence among various biotic species regarding climate and abiotic natural resources.[366]

Moreover, these conceptual concerns could lead to the potential effect of prefiguring (and fostering) a sort of unresolved conflict between different and, in theory, non-coincident objects (landscape, environment, ecosystems, and biodiversity), whose protective needs -as is widely known- do not always align uniformly. This often necessitates complex processes of mutual consideration and balancing, far more frequently than one might think, and these processes are both "internal" and conceptually "intrinsic" to the overarching goal of environmental protection.[367]

These concerns seem unwarranted and risk losing the broader purpose and function of constitutional norms by focusing too much on overly precise language. The constitutional legislator's decision to distinguish between "biodiversity" and "ecosystems" from the term "environment" while retaining the reference to "landscape" from the original text appears to be the most convincing approach for a reform.[368] This approach not only roots itself in established legal practices at both international and supranational levels, where these terms have been extensively used, but also aims to guide

[366] In the doctrine, see Predieri A, "Significato della norma costituzionale sulla tutela del paesaggio" in "Urbanistica, tutela del paesaggio, espropriazione" (Giuffré, 1969), p. 503 ss. Accessed 30 August 2024; Merusi F, "Article 9" in G Branca (ed), "Commentario della Costituzione" (Zanichelli-Il Foro Italiano, 1975), p.445. Accessed 30 August 2024; In the constitutional jurisprudence, see Judgment No 196/2004, Corte Costituzionale, [2004]. Accessed 30 August 2024; Judgment No 367/2007, Corte Costituzionale, [2007]. Accessed 30 August 2024; Judgment No 272/2009, Corte Costituzionale, [2009]. Accessed 30 August 2024.

[367] On the potential conflicts between instances of landscape protection and instances of environmental protection focuses the severe judgment on the reform, even in terms of "harmfulness", focuses Severini G, and Carpentieri P, "Sull'inutile, anzi dannosa modifica dell'articolo 9 della Costituzione" (2022) Giustizia Insieme, p.5 <https://www.giustiziainsieme.it/it/diritto-e-processo-amministrativo/1945-sull-inutile-anzi-dannosa-modifica-dell-articolo-9-della-costituzione> accessed 29 August 2024; *Contra*, in the sense of the proper "balancing of protections", without "predetermined hierarchies", see Morrone A, "L'«ambiente» nella Costituzione. Premesse di un nuovo «contratto sociale»" (2022) Alma Mater Studiorum Università di Bologna, p.104 <https://cris.unibo.it/handle/11585/905749> accessed 29 August 2024.

[368] In fact, these are notions that are so consolidated in legal-regulatory language that they are increasingly used in case law: among the most recent rulings, see Constitutional Court, nos 113, 86 and 21/2021, 117/2020 and 179/2019 (for the term "ecosystems"), as well as Constitutional Court, nos . 177, 144, 141, 86, 74/2021 and 281, 134 and 106/2020 (for the term "biodiversity").

public institutions and the broader community for decades to come. Constitutional texts, particularly those outlining principles, are intended to guide and orient.

While it is true that the concept of the environment can broadly encompass all aspects of ecosystems -whether physical or chemical, living or non-living, human-influenced or natural- the environment is inherently complex and multifaceted. It includes various elements, perspectives, and aspects requiring specific care, protection, and enhancement. Recognizing the complex nature of environmental protection also means acknowledging the potential conflicts between different, and sometimes conflicting, objectives within this broad goal. None of these objectives should be considered inherently more important than the others, reflecting the understanding that environmental protection is a balancing act that requires thoughtful consideration of all its dimensions.

Therefore, quite appropriately, the constitutional legislator has chosen to introduce into the Charter the explicit reference to the "*environment*" as a unitary and all-encompassing object, at the same time, however, taking care to define its main components, that is, on the one hand, leaving unchanged the traditional and very fruitful reference to the "*landscape*" contained in paragraph 2 of Article 9, on the other, introducing the now consolidated references to the protection of "*biodiversity*" and "*ecosystems*", thereby definitively overcoming also the anomaly of the formula contained in Article 117, paragraph 2, letter s), in which the matter of exclusive legislative power of the state is improperly indicated concerning the "ecosystem" declined in the singular. [369]

The new paragraph 3 added to Article 9 of the Constitution opens with a formula - the verbal expression "*Protection*"- which follows the logical-textual path of the two original paragraphs and which is connected, without any possibility of equivocation, to the same subjective reference: "*The Republic*". The most widespread thesis reads in the term Republic of Article 9 of the Constitution a precise reference to the state-system in

[369] Costituzione della Repubblica Italiana, Art. 9, para.2 and Art. 117, para.2, Part I (IT). Accessed 13 June 2024; Cecchetti M, "La disciplina sostanziale della tutela dell'ambiente nella Carta repubblicana: spunti per un'analisi della riforma degli articoli 9 e 41 della Costituzione" (2022) 4 Istituzioni del Federalismo, p.797 <https://www.regione.emilia-romagna.it/affari_ist/rivista_4_2022/Cecchetti.pdf> accessed 30 August 2024.

all its possible articulations, therefore to every public body without distinction to the extent and within the limits permitted by its own sphere of competence.[370]

Essentially, Article 9 introduces the idea of a "common task" assigned to multiple subjects, which creates the need for "*organizational and procedural participation structures*", even though it does not explicitly define roles and responsibilities. Instead, these roles and responsibilities are guided by the distribution of regulatory and administrative competences outlined in Articles 117 and 118 of the Constitution.[371] The 2022 constitutional reform was thus a deliberate and impactful choice. By assigning the protection of the environment, biodiversity, and ecosystems to the "*Republic*", the reform emphasizes the principle of a "common task" shared by all public bodies and institutions within the Republic while respecting the constitutional rules in Title V of Part II that govern the distribution of competences among these entities.[372]

This choice aligns well with the established view of environmental protection as a "cross-cutting" interest that the Supreme Court has recognized over the years. This perspective persisted even after the 2001 constitutional reform, which gave the state exclusive legislative power in environmental matters under Article 117, second paragraph, letter s).[373] Despite this, the Supreme Court has consistently allowed regional legislators to pursue environmental objectives -particularly those aiming at stricter protections- within the scope of their legislative powers. Thus, the constitutional change in 2022 reflects and formally recognizes this broader, collaborative approach to environmental protection, highlighting its significance across various levels of governance.

The first sentence of the new constitutional proposal added to Article 9 (but the observation is equally valid for the changes made to the text of Article 41) is particularly

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[370] Costituzione della Repubblica Italiana, Art. 9, Part I (IT). Accessed 13 June 2024; Montanari T, "Cultura e patrimonio nel progetto della Costituzione italiana: una lettura dell'articolo 9" (Università degli Studi di Padova, 2022), p.1 <https://www.unipd.it/scuolacostituzionale/documenti/Relazione_Montanari.pdf> accessed 1 September 2024.

[371] Costituzione della Repubblica Italiana, Artt. 117 and 118, Part II (IT). Accessed 13 June 2024; Cecchetti M, "La revisione degli articoli 9 e 41 della Costituzione e il valore costituzionale dell'ambiente: tra rischi scongiurati, qualche virtuosità (anche) innovativa e molte lacune*" (2021) Forum di Quaderni Costituzionali, p.302 <https://www.forumcostituzionale.it/wordpress/wp-content/uploads/2021/08/14-Cecchetti-FQC-3-21.pdf> accessed 1 September 2024.

[372] Ibidem.

[373] Legge Costituzionale 3/2001 (IT). Accessed 1 September 2024.

appreciated also under a further and decisive profile.[374] The formal heading of the "new" task to the Republic, together with its placement among the first twelve articles (which identify the fundamental principles) of the Constitutional Charter, makes unequivocal the choice of the legislator of revision to accept the configuration of the interest in environmental protection as a constitutional value, that is as a fundamental principle of an objective nature and entrusted to the care of specific "public policies", thereby avoiding the risk of a legal qualification in terms of a subjective situation and, in particular, to make it the object of a fundamental right with all-encompassing content. This is a genuinely significant point, because it clears the field of an alternative that often appears in public debate and has been proposed again in the many constitutional law proposals examined during the reform's approval process. [375]

In fact, among the various formulations put forward, a significant and fundamental difference emerged –distributed in almost equivalent terms– between those that were oriented to expressly qualify the protection of the environment and ecosystems as a "fundamental right of the person and the community" and those that maintained a qualification in objective terms, that is, as a "constitutional value" entrusted to public policies, on a par with the other public interests already contemplated in the original text of Article 9.[376]

The constitutional reform's choice is to be shared without reservations, not only for its intrinsic correctness but also for its absolute coherence with the jurisprudential practice of our Judge of the laws and the law of the European treaties.

It is well established in the leading doctrine that recognizing a fundamental subjective right to the environment, to ecosystems, or to the ecological balance of ecosystems would amount to little more than a rhetorical device. Such phrasing lacks legal precision and would be inappropriate in a normative text, offering minimal practical value in terms of enforceable environmental protections.[377] This perspective aligns with the fact that the Constitutional Court has only once, in a singular and outdated ruling,

[374] Costituzione della Repubblica Italiana, Artt. 9 and 41, Part I (IT). Accessed 13 June 2024.

[375] On the subject, Cozzi A O, "La modifica degli artt. 9 e 41 Cost. in tema di ambiente: spunti dal dibattito francese sulla Carta dell'ambiente del 2004 tra diritti e principi' (2022) DPCE Online 1429, p. 3421 <https://www.dpceonline.it/index.php/dpceonline/article/view/1429> accessed 1 September 2024.

[376] Ibidem.

[377] Grassi S, "Ambiente e diritti del cittadino" in AA VV, Scritti in onore di Giuseppe Guarino, vol II (Cedam 1998), p.1083. Accessed 1 September 2024.

characterized environmental protection as a "fundamental right of the person and a fundamental interest of the community", a stance that has never been reiterated in subsequent case law.[378]

Similarly, at the European level, environmental protection has not been recognized as a fundamental right, and this is not reflected in the Charter of Fundamental Rights of the European Union. Instead, Article 37 of the Charter emphasizes the principles of integration and sustainable development, adopting a policy-oriented approach rather than framing environmental protection as a matter of individual legal rights.[379] This distinction underscores a broader, strategic focus on embedding environmental considerations within policy-making rather than treating them as subjective legal entitlements.

Recognizing that the environment, particularly when viewed as a legally relevant object in its entirety, is not something that can be predefined or uniformly defined in the abstract but is instead unique, complex, diverse, and multifaceted, resulting from a delicate interplay of varied factors and elements, it follows that environmental protection must involve safeguarding the diverse and shifting balances and functions of each ecosystem. This perspective leads to the conclusion that the interest in environmental protection, understood as a whole, cannot be effectively classified as a subjective right in the strict legal sense.

Configuring a fundamental right to the environment for individuals or attributing a collective interest in environmental protection to a community is not legally feasible and does not represent a technically appropriate means of protection given the peculiarities of the environment. A critical issue arises: What would be the object of a legally enforceable claim under such a right? To which specific "environments", "ecological balances", or "services" of the numerous existing ecosystems could an individual or community be said to have a legitimate right? The inherent diversity and variability within ecosystems make defining a specific, actionable right that could uniformly apply to such a broad and dynamic range of environmental elements impractical.

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[378] Cecchetti M, "La disciplina sostanziale della tutela dell'ambiente nella Carta repubblicana: spunti per un'analisi della riforma degli articoli 9 e 41 della Costituzione" (2022) 4 Istituzioni del Federalismo, p.807 <https://www.regione.emilia-romagna.it/affari_ist/rivista_4_2022/Cecchetti.pdf> accessed 30 August 2024.

[379] Charter of Fundamental Rights of the European Union [2012] OJ C326/391, Art.37 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12012P%2FTXT> accessed 29 August 2024.

This does not imply that environmental protection ceases to be a crucial "precondition" guaranteeing individual rights (including fundamental rights) and the community's interests. Nor does it mean that genuine subjective rights or legally relevant interests that are specific and linked to individual aspects of public environmental protection efforts or particular facets of the human-environment relationship cannot exist.

For instance, rights related to the need for environmental information, the right to participate in decision-making processes or the right to a healthy environment that ensures the minimum conditions necessary for human health are relevant. Jurisprudence has long recognized the right to a healthy environment as a subjective right protected under Article 32 of the Constitution, acknowledging its importance in safeguarding individual well-being within the broader framework of environmental protection. [380]

Instead, the same premises regarding the intrinsic characteristics of the environment as an object of legal protection fully justify the point of arrival that both the majority doctrine and constitutional jurisprudence have long since reached (and which the revision examined here does nothing but confirm): the protection of the environment, as protection of ecosystems and their functionality, cannot but assume the objective connotations of a constitutional value (or of a fundamental principle in the technical sense), a qualification that is ideally in tune with the impossibility of providing an exhaustive and *a priori* definition of the object of protection. Therefore, environmental protection is not a complex right or interest subjectively attributable and aimed at a legal asset objectively definable in the abstract, but rather a constitutional value, that is an interest or requirement that cannot be predefined *a priori* but which must be identified from time to time in its contents and its implementations only in concrete terms (similar to what happens, for example, for other constitutional values or principles such as democracy, pluralism, equality, secularism, etc.) [381].

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[380] On the suitability of environmental protection understood as an objective principle to "*generate*" (and, therefore, to constitute the matrix of) legally significant subjective positions, see Cozzi A O, "La modifica degli artt. 9 e 41 Cost. in tema di ambiente: spunti dal dibattito francese sulla Carta dell'ambiente del 2004 tra diritti e principi' (2022) DPCE Online 1429, p. 3427 <https://www.dpceonline.it/index.php/dpceonline/article/view/1429> accessed 1 September 2024.

[381] Cecchetti M, "La disciplina sostanziale della tutela dell'ambiente nella Carta repubblicana: spunti per un'analisi della riforma degli articoli 9 e 41 della Costituzione" (2022) 4 Istituzioni del Federalismo, p.797 <https://www.regione.emilia-romagna.it/affari_ist/rivista_4_2022/Cecchetti.pdf> accessed 30 August 2024.

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This leads to an indisputable fact that unites all constitutional values and aligns with the "policy-based" approach that has long characterized the European Union's legal system concerning environmental protection: recognizing the priority role of public institutions, particularly legislators, over the judiciary. It is the legislators who are primarily entrusted with making fundamental decisions for the realization of constitutional values, especially in the realm of environmental protection. This involves not only identifying specific ecological balances and ecosystem functions to be preserved but also defining the policies, actions, and tools necessary to maintain or achieve those balances while considering other competing or conflicting values and interests.[382]

Therefore, in the realm of environmental protection, it is essential not only to identify specific ecological balances and ecosystem functions that need safeguarding but, more importantly, to establish the policies, actions, and tools necessary to maintain or achieve these balances. This process must also account for competing or conflicting values and interests, such as economic and social considerations.

The Italian constitutional framework clearly emphasizes the role of public institutions, mainly through legislative policies and administrative actions, in pursuing environmental goals. This approach suggests that environmental protection is not primarily achieved through individual rights or legal claims enforced by courts, as is common in other legal areas. Instead, it prioritizes a governance model where legislative and administrative measures are the primary mechanisms for achieving environmental objectives.

This perspective aligns with the broader constitutional intent, as reflected in Article 41, paragraph 2, which limits the freedom of private economic initiative to ensure it does not harm the environment.[383] This limitation is part of a broader effort to integrate environmental protection into the governance framework, reflecting principles that have

[382] The European Treaties, as is known, identify two distinct types of approach to environmental protection through the fundamental division between a "political" one in the field of the "*environment*", expressly contemplated among the concurrent competences in Art. 4, para. 2, letter e), of the TFEU and classifiable as such based on the "direct" pursuit of the objectives identified in para. 1 of art. 191 of the same Treaty, on the one hand, and the integration of "*environmental protection requirements (...) into the definition and implementation of the Union's policies and activities, in particular with a view to promoting sustainable development*" (as established by the general principle set out in Art. 11 of the TFEU, significantly confirmed by art. 37 of the Charter of Fundamental Rights), on the other; Treaty on the Functioning of the European Union [2012] OJ C326/47, Artt. 4 and 191. Accessed 1 September 2024.

[383] Costituzione della Repubblica Italiana, Art. 41, Part I (IT). Accessed 13 June 2024.

evolved within the "living Constitution". This approach uses concise legal formulations to explicitly incorporate these principles into the text of the Constitutional Charter, emphasizing the role of public policy in safeguarding the environment.

As mentioned, the text of the reform limits itself to introducing, among the limits above, the explicit reference to "*damage to health*" and "*damage to the environment*", thus imposing that freedom of enterprise must always be measured also with the interests of protecting health and the environment, as well as with the other primary interests and values of the person (freedom, security and human dignity), as well as with the clause of social utility.[384] Such a change does not seem to bring any substantial novelty with respect to the conclusions that have long been matured in constitutional jurisprudence, which, as has been punctually observed in doctrine, make the need for a balance between the proclaimed free economic initiative and the limitations on productive activity (also in the name of restrictions imposed by health and environmental protection standards) an element that "belongs to our constitutional history" and which can be considered "by now rooted in the interpretation of Article 41 and the limits to private economic initiative provided for therein". [385]

Moreover, it should be considered that any attempt to hypothesize that the modification of paragraph 2 of Article 41 could potentially lead to the emergence, in a general and abstract way, of a sort of "hierarchy" of values of (and among) the limitations conditioning private economic initiative –at the top of which today should be considered to be placed precisely "health" and the "environment" in a position of "supremacy" not only with respect to freedom of enterprise but also with respect to the other primary interests and values of the person contemplated therein *ab origine* (i.e. "*security*", "*freedom*" and "*human dignity*")– is destined to reveal itself to be little more than a chimera, not only because no hierarchical order has ever been abstracted accreditable about the three previous limits, but above all because of the granite-like negative orientation of the Constitutional Judge, as carved in the very famous passage of the

[384] Ibidem.

[385] See Cassetti L, "Riformare l'art. 41 della Costituzione: alla ricerca di "nuovi" equilibri tra iniziativa economica privata e ambiente?" (2022) Federalismi.it, p.188 <https://www.federalismi.it/nv14/articolo-documento.cfm?Artid=46676> accessed 1 September 2024; Moreover, p. 195 significantly recalls Constitutional Court no. 127/1990 and the consolidated interpretation of the general clause of "social utility", repeatedly linked by constitutional jurisprudence to interests connected with environmental protection (*ex plurimis* , rulings nos 190/2001 and 196/1998).

motivation of sentence no 85/2013 regarding the risk –which must always be avoided– of the so-called "tyranny" of constitutional values, from which arises the essential nature of the "*continuous and reciprocal balancing between fundamental principles and rights (even when they are qualified as «primary values»), without claims of absoluteness for any of them*".[386]

The constitutional reform introduces some significant and potentially transformative elements, most notably the explicit connection between environmental protection and the "interest of future generations". This inclusion subtly but powerfully directs policymakers, especially legislators, to develop environmental policies that ensure humanity's long-term coexistence -and perhaps even the survival- within ecosystems and the broader biosphere. Significantly, this directive extends beyond immediate concerns to encompass future generations, reflecting a forward-looking obligation embedded within the Charter.

The word "*also*" in this context is particularly insightful, as it emphasizes the inseparable link between the environmental goals and the interests of both current and future generations. Before the "*also*", the focus is on the environment, biodiversity, and ecosystems, implicitly considering the interests of present generations. After the "*also*," it explicitly includes future generations, underscoring that these interests remain centered on the objective of protecting the environment, biodiversity, and ecosystems.

Thus, the constitutional revision does not strictly adopt an anthropocentric approach that prioritizes human interests over ecological ones. Instead, it maintains a balanced and open-ended framework that allows for the coexistence of both anthropocentric and ecocentric approaches to environmental policy. This nuanced stance fits constitutional principles, acknowledging that adequate environmental protection can be grounded in various perspectives, reflecting both human and nature-centered values. By keeping this

[386] Cassetti L, "Riformare l'art. 41 della Costituzione: alla ricerca di "nuovi" equilibri tra iniziativa economica privata e ambiente?" (2022) Federalismi.it, p.153 <https://www.federalismi.it/nv14/articolo-documento.cfm?Artid=46676> accessed 1 September 2024; Ramajoli M, "Attività economiche, poteri pubblici e tutela dell'ambiente nel nuovo art. 41 della Costituzione" (2022) AIR Università degli Studi di Milano, p.172 <https://air.unimi.it/handle/2434/950851> accessed 2 September 2024; instead, in support of the configurability of both an "internal hierarchy" in Article 41 and an "external hierarchy" (at least with reference to the values contained in Article 9), see Morrone A, "L'«ambiente» nella Costituzione. Premesse di un nuovo «contratto sociale»" (2022) Alma Mater Studiorum Università di Bologna, p.108 <https://cris.unibo.it/handle/11585/905749> accessed 29 August 2024.

duality open, the constitutional reform supports a flexible and inclusive approach to environmental governance, ensuring that policies are robust enough to accommodate a range of ethical considerations and long-term objectives.

The principle under consideration aligns closely with the unique characteristics of environmental protection and ecosystem management, which inherently involve an intergenerational perspective. This principle emphasizes the need for environmental policies that extend beyond the short-term timelines typical of electoral cycles and the lifespans of current generations, including those actively involved in politics. It suggests that effective and efficient environmental governance requires a medium to long-term outlook considering future generations' needs and rights.

This intergenerational approach carries an implicit yet significant prescriptive effect on the fundamental principles enshrined in Articles 2 and 3 of the Italian Constitution, which outline the catalogue of fundamental rights and duties and the Republic's commitment to ensuring the person's full development.[387] By framing environmental protection within this broader constitutional context, the principle implicitly extends its influence over both the objective and subjective dimensions of these rights and duties, reinforcing that safeguarding the environment is integral to the overall development and well-being of both present and future generations.

Therefore, incorporating this principle into environmental governance reflects a more profound constitutional commitment to sustainable development. It highlights the necessity of policies that not only address immediate environmental concerns but also anticipate the needs of those yet to come, thereby ensuring the continuity and stability of ecosystem balances. This approach underscores the fundamental role of public institutions in crafting and implementing environmental policies that transcend generational boundaries, ensuring that future citizens' ecological rights and interests are protected alongside those of the current population.

The explicit constitutional acknowledgment of the "*interest of future generations*" establishes a foundational legal principle influencing legislative and judicial environmental protection approaches. This principle's impact, which includes shaping long-term policy and enhancing judicial scrutiny, has already been exemplified by the German Federal Constitutional Court's ruling on the Federal Climate Change Act

[387] Costituzione della Repubblica Italiana, Artt. 1 and 2, Part I (IT). Accessed 13 June 2024.

(*Bundes-Klimaschutzgesetz* – KSG), as previously discussed.[388] This reference underscores the importance of integrating intergenerational responsibility into constitutional and legislative frameworks, reflecting a broader shift towards sustainable governance.

In other words, explicitly mentioning the "*interest of future generations*" introduces a new constitutional duty focused on intergenerational responsibility. This reference elevates it to a significant standard of constitutional legitimacy, with practical implications for constitutional law. It requires lawmakers and public authorities to make decisions with a legal obligation to consider the long-term impacts of their actions. This duty mandates that policy choices be carefully evaluated, balanced, and assessed for their long-term effects. It also broadens the scope of judicial review beyond simply avoiding "manifest unreasonableness" or "arbitrariness". Instead, it allows for applying more rigorous suitability, necessity, and proportionality tests to ensure that measures align appropriately with this constitutional principle.

The other significant novelty, though subtle in the text, lies in modifying the third paragraph of Article 41 of the Constitution, which now includes the term "*environmental*" alongside "*social purposes*" that economic activities must serve through the appropriate programs and controls set by law.[389] This addition is far from a mere acknowledgment of the *status quo*. Some commentators suggest it signals a transformative shift in public policy concerning economic development. Previously, "environmental purposes" were viewed as potential justifications for public economic intervention. However, they are now seen as specific objectives that can justify and legally mandate such intervention. This change is expected to steer all economic legislation towards an ecological transition, reflecting a broader constitutional commitment. The amended Article 41 is thus seen as laying the groundwork for a new economic model, shifting from the concept of the welfare state to that of a "circular state" or "environmental state", where economic development is intrinsically linked with environmental sustainability.[390]

[388] See section 2.4 of chapter II.

[389] Costituzione della Repubblica Italiana, Art. 41, Part I (IT). Accessed 13 June 2024.

[390] De Leonardis F, "La transizione ecologica come modello di sviluppo di sistema. Spunti sul ruolo delle amministrazioni" (2021) SIARI UniMc, p. 797 <https://u-pad.unimc.it/handle/11393/294645> accessed 2 September 2024; De Leonardis F, "Il diritto dell'economia circolare e l'art. 41 Cost" (2020) Rivista Quadrimestrale di Diritto dell'Ambiente, p.163 <https://u-pad.unimc.it/handle/11393/294645> accessed 31 August 2024; A Moliterni, "La

Moreover, from this last point of view, a textual element of the amendment could take on a meaning that is anything but secondary, where the legislator of revision, instead of adding (juxtaposing them) the "environmental purposes" to the "*social purposes*" already present in the original formulation of the statement, has opted for the sole introduction of the adjective "*environmental*", linking it to the other adjective with the simple conjunction "*and*".[391] Therefore, the two categories of purposes do not appear separate from each other, as if economic activities could be freely directed and coordinated towards the first type and/or the second. The task assigned to the legislator is to pursue them together, necessarily harmonizing one with the other and vice versa.

Environmental goals cannot stand as independent objectives; they must be pursued alongside social goals. This ensures that the ecological transition, which is shaping the direction of economic development, progresses in tandem with social advancement, paying close attention to justice, fairness in the distribution of costs, and substantial equality. Ultimately, the principle embodied in the new constitutional formula reflects a vision of great foresight: the public policies mandated by the Constitution to realize the value of environmental protection must be designed as "policies of complexity", which intricately intertwine economic, environmental, and social development. This integrated approach ensures that progress in one area does not undermine but instead supports advances in others, reflecting a holistic commitment to sustainable and equitable development.

As mentioned in the introduction, a specific consideration pertains to the placement of the new provision in Article 9 among the fundamental principles of the Constitution.[392] While it is true that this revision marks the first in the history of the Republic to alter the first twelve articles, this fact alone does not suffice to suggest a potential conflict with the limits imposed on the power of constitutional revision -specifically, the supreme principles which, as established by the Constitutional Court in its ruling No 1146/1988, cannot be subverted or modified in their essential content even by laws of constitutional revision or other constitutional laws.[393]

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transizione alla «green economy» e il ruolo dei pubblici poteri**"** (2020) Rivista quadrimestrale di diritto ambientale 1, p. 5. Accessed 2 September 2024.

[391] Costituzione della Repubblica Italiana, Art. 41, Part I (IT). Accessed 13 June 2024.

[392] Ibidem, Art.9.

[393] Judgment No 1146/1988, Corte Costituzionale, [1988], p.4. Accessed 2 September 2024.

From this perspective, the mere formal aspect of the "topographical" location of the amendment holds no decisive relevance. It is important to note that the "*supreme principles*" referenced in the ruling above are not limited to those explicitly listed as absolute constraints on constitutional revision, such as the republican form of government, but also encompass principles that are inherently part of the supreme values underpinning the Italian Constitution, as specified by the Constitutional Court.[394] Therefore, assessing the constitutional legitimacy of the exercise of power under Article 138 of the Constitution cannot rely on formal or simplistic automatisms that equate the first twelve articles of the Charter directly with the supreme principles of the constitutional system.[395] These principles, unless explicitly designated as limits to revision, are identified through complex interpretative efforts aimed at discerning the essence of the founding values of the Constitution.[396]

Consequently, the substantive examination of the reform's content assumes greater significance, especially given its interaction with the realm of the supreme principles. This interaction is particularly relevant because the reform acknowledges in the constitutional text a primary value that has long been recognized and defined as such by decades of jurisprudence. According to some interpretations, this positive "integration" into the catalogue of primary constitutional values (and therefore into the material content of the supreme principles) could elevate the environment and other assets protected by Article 9 of the Constitution to a "meta-value" -a kind of "arché", or first principle, capable of re-orienting other fundamental values. This perspective posits that human health and the environment possess an intrinsic constitutional tone' that renders their protection a categorical imperative, necessitating corresponding hierarchies.[397]

Based on these considerations, one might argue, in light of ruling no. 1146/1988, the revision in question may be seen as not necessarily "subverting" the supreme

[394] Ibidem.

[395] Costituzione della Repubblica Italiana, Art. 138, Part II (IT). Accessed 13 June 2024.

[396] Cecchetti M, "La disciplina sostanziale della tutela dell'ambiente nella Carta repubblicana: spunti per un'analisi della riforma degli articoli 9 e 41 della Costituzione" (2022) 4 Istituzioni del Federalismo, p.797 <https://www.regione.emilia-romagna.it/affari_ist/rivista_4_2022/Cecchetti.pdf> accessed 30 August 2024.

[397] Cecchetti M, "La revisione degli articoli 9 e 41 della Costituzione e il valore costituzionale dell'ambiente: tra rischi scongiurati, qualche virtuosità (anche) innovativa e molte lacune*" (2021) Forum di Quaderni Costituzionali, p.221 <https://www.forumcostituzionale.it/wordpress/wp-content/uploads/2021/08/14-Cecchetti-FQC-3-21.pdf> accessed 1 September 2024.

principles of the constitutional order but at least modifying their essential content.[398] However, this view is not universally shared for two key reasons. First, the constitutional legislator of 2022 judiciously decided not only to introduce a normative formula that has been implicitly associated with Article 9 of the Constitution (in conjunction with Article 32 of the Constitution) within living constitutional law but also to preserve the original text of the two existing paragraphs.[399] This decision ensured that the unified interpretation with a "circular trajectory," which represents the core of the principle expressed in the essential normative content of Article 9 as initially approved in 1947 -namely, the "aesthetic-cultural value"- remains unaffected and intact.[400]

Therefore, concerns about any diminishment, "dequotation", or "trivialization" of the fundamental principle of landscape protection, and more broadly, the aesthetic-cultural value expressed in Article 9, are unfounded with respect to this reform. Regarding the argument that seeks to elevate environmental protection to the status of a "meta-value", hierarchically superior to all other constitutional values (even primary ones), it is crucial to recognize that the concept of "ecological primacy" -understood as the need to ensure the integrity, functionality, sustainability, and health of ecosystems, as well as the survival of all life forms- aligns entirely with the inherent and undeniable characteristics of contemporary environmental challenges.[401]

This notion of ecological primacy is rooted in and seamlessly integrates with supreme principles already firmly established within our constitutional framework, such as the fundamental right to life in its most basic form, which can be seen as a "claim to preserve one's own existence." Thus, the reform does not introduce new "hierarchies" of values but instead explicitly affirms the equal constitutional standing of ecological protection as a value with its own intrinsic importance. This value has long been derived from the provisions of Articles 9 and 32 of the Constitution. As it always has, its implementation continues to depend on a balanced and harmonious integration with all

[398] Ibidem.
[399] Costituzione della Repubblica Italiana, Artt. 9 and 32, Part I (IT). Accessed 13 June 2024.
[400] Ibidem, Art.9.
[401] Consider, for instance, the theory of the "Planetary Boundaries", already adopted in 2013 by the European Union's VII Environment Action Programme. On this theory, Rockström J et al., "A Safe Operating Space for Humanity" (2009) 461 Nature, p. 472. Accessed 2 September 2024; Steffen W et al., "Planetary Boundaries: Guiding Human Development on a Changing Planet" (2015) 347 Science 1259855. Accessed 2 September 2024; For subsequent updates and a comprehensive set of references, see Stockholm Resilience Centre, "Planetary Boundaries" (Stockholm Resilience Centre, 2024) <https://www.stockholmresilience.org/research/planetary-boundaries.html> accessed 31 August 2024.

other constitutional values, whether explicitly stated or implied, without asserting any abstract "primacy" or "tyranny" over them.

While acknowledging the reform's positive aspects and future potential, this perspective also highlights its limitations, particularly when considering what might have been appropriate and necessary in a constitutional text that aspires to be truly forward-thinking in environmental policy. While laudable, the reform falls short of fully addressing the challenges posed by the current millennium, leaving a gap between its aspirations and the comprehensive measures required to confront contemporary environmental issues effectively.

Despite the insightful textual references to the "interest of future generations" and "policies of complexity" (as previously discussed), it appears that the constitutional legislator has demonstrated a degree of "short-sightedness". The reform merely "confirms" the role of public authorities in developing and implementing environmental policies, guided only by the principles of intergenerational responsibility and the integrated approach linking the economy, environment, and social development. However, it fails to provide further substantive or formal-procedural specifications that are critically needed in this context.[402]

Such specifications are essential to appropriately "juridicize" political discretion, ensuring it aligns with the most effective pursuit of environmental protection goals. In other constitutional frameworks, and especially within the European Union system, these detailed guidelines play a pivotal role in structuring and limiting the discretion of public powers to safeguard environmental interests more robustly. [403] The absence of similar detailed provisions in this reform misses an opportunity to impose stronger legal

[402] For similar observations, see Cozzi A O, "La modifica degli artt. 9 e 41 Cost. in tema di ambiente: spunti dal dibattito francese sulla Carta dell'ambiente del 2004 tra diritti e principi' (2022) DPCE Online 1429, p. 3399 <https://www.dpceonline.it/index.php/dpceonline/article/view/1429> accessed 1 September 2024; as well as Severini G, and Carpentieri P, "Sull'inutile, anzi dannosa modifica dell'articolo 9 della Costituzione" (2022) Giustizia Insieme, p.2 <https://www.giustiziainsieme.it/it/diritto-e-processo-amministrativo/1945-sull-inutile-anzi-dannosa-modifica-dell-articolo-9-della-costituzione> accessed 29 August 2024.

[403] As for the European treaties, the reference is to the principles of integration, precaution, prevention, rectification at source and "the polluter pays", but also to the "parameters" of environmental policy referred to in paragraph 3 of art. 191 TFEU, as well as to the indefectibility in this matter of decision-making tools such as strategic planning and public participation; Treaty on the Functioning of the European Union [2012] OJ C326/47, Art. 191. Accessed 1 September 2024.

constraints and standards that could better direct the development of coherent and effective environmental policies.

Suppose it is accepted -as argued and correctly assumed by the constitutional reform- that the primary responsibility for ensuring adequate environmental protection lies not with the judiciary (which is naturally tasked with safeguarding the effectiveness and enforcement of rights and subjective legal situations) but with legislation and public administrations. In that case, the decisions of legislators and administrators can only be legally scrutinized by judges if adequate regulatory standards are in place to assess the validity of their actions. Without such standards, judicial review -whether by constitutional or ordinary judges- would be limited to evaluating whether those choices are manifestly unreasonable or arbitrary rather than engaging in a more thorough examination of their substance.

From this perspective, it is evident that a constitutional-level legal framework, or any framework superior to ordinary legislation, is crucial in environmental matters. If legislative decisions are not to be left solely to the minimal standard of judicial review for non-manifest unreasonableness, it becomes essential -not just advisable- that these decisions be directed, guided, limited, and constrained by higher-ranking rules.

These rules would provide a robust legal structure, ensuring that environmental policies are not merely subject to broad political discretion but are aligned with well-defined constitutional principles that safeguard the legitimacy and effectiveness of legislative actions in the realm of environmental protection. They would serve as safeguards of legality and legitimacy and, more importantly, as positive guarantees for the correct pursuit of environmental protection objectives. Such rules would provide a basis for judicial review of these decisions' validity (in the technical-legal sense), allowing courts to assess and, if necessary, sanction those choices.

This underscores why the goal of environmental protection, especially when entrusted to public authority policies, requires a regulatory framework that stands above ordinary legislation. The more precise and detailed this higher-level discipline is in providing legislators with the foundational guidelines and constraints -both substantive and procedural- for crafting environmental policies, the less these choices will be subject to purely political, or worse, merely ideological considerations influenced by public opinion or voters. They will also be less susceptible to the lenient standard of non-manifest unreasonableness in judicial review.

These considerations highlight the challenges in making an unequivocally positive assessment of the constitutional reform in question. On closer inspection, and paradoxically due to its many merits, the reform appears more as a "missed opportunity" or as an initiative that still leaves significant needs unaddressed rather than as the "green turning point" for the Italian constitutional system that it was hailed to be by Parliament, political forces, and many early commentators as being of "epochal" significance. [404]

In conclusion, the Italian constitutional reform marks a significant step in acknowledging the environment as a critical component of the legal landscape. While this shift incorporates a broader recognition of the environment's intrinsic value, it still reflects a careful anthropocentric approach, emphasizing the importance of protecting nature primarily for the benefit of human health and well-being. The amendments to Articles 9 and 41 of the Constitution encourage a more balanced coexistence between human activities and environmental preservation, promoting the idea that sustainable economic and social practices are essential for the long-term health of both people and the planet.[405] However, the challenge remains to further develop these principles into comprehensive laws and policies that not only mitigate harm but actively enhance the protection of all ecosystems, recognizing their value beyond human use and ensuring that environmental considerations are integrated into all levels of decision-making.

6.3. Comparing the Orbetello Lagoon and the Mar Menor legal protection

In comparing the legal protections of the Orbetello Lagoon in Italy and the Mar Menor in Spain, a comparative approach reveals significant insights into the strengths and weaknesses of each framework and how these impact the effectiveness of environmental governance. Both lagoons are ecologically significant, yet their legal protections differ substantially, reflecting broader national and regional approaches to environmental law and policy.

[404] Cecchetti M, "La disciplina sostanziale della tutela dell'ambiente nella Carta repubblicana: spunti per un'analisi della riforma degli articoli 9 e 41 della Costituzione" (2022) 4 Istituzioni del Federalismo, p.797 <https://www.regione.emilia-romagna.it/affari_ist/rivista_4_2022/Cecchetti.pdf> accessed 30 August 2024.

[405] Costituzione della Repubblica Italiana, Artt. 9 and 41, Part I (IT). Accessed 13 June 2024.

The Mar Menor, one of Europe's largest saltwater lagoons, has faced severe ecological degradation due to pollution, urban development, and intensive agriculture. In response, Spain enacted Spanish Law 19/2022, which grants the Mar Menor and its basin legal personhood. This law marks a radical shift in environmental protection by recognizing the lagoon as a subject with rights, including the right to protection, conservation, and restoration. The law establishes a governance framework comprising a Committee of Representatives, a Control Commission, and a Scientific Committee to oversee these rights and ensure compliance. This legal innovation aims to move beyond traditional regulatory approaches by directly involving the ecosystem in legal and administrative processes, allowing it to sue and be sued independently through its custodians.[406]

In contrast, the Orbetello Lagoon's legal protection is grounded in a more conventional framework that reflects Italy's broader approach to environmental governance. The Orbetello Lagoon is protected under multiple layers of legislation, including the EU's Birds and Habitats Directives, which are implemented through national laws such as Law 157/1992 on wildlife protection and Law 394/1991 on protected areas. Additionally, the Orbetello Lagoon is designated as a Special Protection Area and a Site of Community Importance under the Natura 2000 network, which imposes obligations on Italy to maintain and restore the lagoon's natural habitats and species. However, unlike the Mar Menor, the Orbetello Lagoon does not benefit from legal personhood; its protection relies on the enforcement of existing environmental regulations by public authorities and the participation of local stakeholders.[407]

The most striking difference between the legal frameworks for the Mar Menor and the Orbetello Lagoon lies in the concept of legal personhood and the implications this has for environmental governance. The Mar Menor's legal status as a person allows it to act independently in legal matters, represented by its custodians, who are tasked with defending its rights in court. This model addresses some of the procedural limitations commonly found in traditional environmental protection, where standing to sue often rests with third parties, such as environmental organizations or affected individuals. By contrast, the Orbetello Lagoon's protection is subject to the usual procedural challenges

[406] See chapters III and IV.
[407] See section 6.1 of this chapter.

of proving direct harm or establishing standing, which can hinder timely and effective legal recourse.

Furthermore, Spanish Law 19/2022 explicitly aligns the Mar Menor's protection with broader goals of ecological integrity and sustainability, imposing stringent obligations on public authorities and private entities to prevent further damage. This approach is in line with the principle of intergenerational equity, as emphasized by the inclusion of future generations' interests in the constitutional amendments and legal provisions underpinning the Mar Menor's protection. The Orbetello Lagoon, while protected by robust EU directives, lacks this explicit recognition of future generations' rights and the direct legal mechanisms to enforce such considerations. Instead, its protection relies on the broader, but less targeted, application of EU environmental principles such as sustainable development and precaution.

A comparative analysis also highlights the challenges each framework faces in implementation. For the Mar Menor, the novelty of legal personhood introduces complexities in governance, representation, and enforcement. The effectiveness of this model depends heavily on the functionality and accountability of the custodial bodies, as well as the willingness of courts and public authorities to recognize and enforce the lagoon's rights. Additionally, there are ongoing constitutional challenges to the law, particularly concerning the distribution of competences between national and regional authorities, which could impact its long-term viability.

In the case of the Orbetello Lagoon, the reliance on conventional regulatory frameworks presents a different set of challenges. Although the Natura 2000 designation and related national laws provide a strong legal basis for protection, the effectiveness of these measures is often undermined by enforcement gaps, limited resources, and competing land-use interests. The governance of the Orbetello Lagoon involves multiple public authorities, including regional and local administrations, which can lead to fragmented decision-making and inconsistencies in the application of environmental laws.

Both lagoons also face similar environmental pressures, including pollution from agricultural runoff, urban encroachment, and climate change impacts. However, the legal responses to these challenges diverge significantly, reflecting different legal cultures and policy priorities. The Mar Menor's legal framework attempts to address these issues through an innovative rights-based approach that empowers the ecosystem itself, while

the Orbetello Lagoon continues to rely on traditional regulatory tools and the discretionary powers of public authorities.

In conclusion, the comparative analysis of the legal protections for the Orbetello Lagoon and the Mar Menor underscores the evolving landscape of environmental law. The Mar Menor's legal personhood represents a bold experiment in granting nature rights, aiming to overcome some of the limitations of conventional environmental governance. In contrast, the Orbetello Lagoon's protection remains rooted in established regulatory frameworks that prioritize compliance with EU directives and national conservation laws. While each approach has its merits and challenges, the comparison highlights the potential for cross-jurisdictional learning and the need for adaptive legal strategies to effectively safeguard vulnerable ecosystems in the face of mounting environmental threats.

7. Conclusion

The comparative analysis of rights-based environmental protection frameworks reveals significant advancements and ongoing challenges in recognizing the legal rights of nature. The cases of Ecuador, Bolivia, Uganda, and New Zealand illustrate a diverse range of approaches, from the broad, all-encompassing rights granted to nature in its entirety to more focused legal personhood rights attributed to specific natural entities like rivers or forests. These frameworks collectively demonstrate a global trend towards acknowledging the intrinsic value of ecosystems and their critical role in sustaining human and non-human life.

One of the key insights from this exploration is the transformative potential of recognizing nature's legal rights, both in enhancing the effectiveness of environmental protection and in reshaping the relationship between human societies and natural ecosystems. By moving beyond the traditional, anthropocentric frameworks that prioritize human utility, rights-based approaches strive to create legal mechanisms that safeguard the environment for its own sake, reflecting a more ecocentric view of legal and ethical responsibilities. However, this shift is not without its complexities. The diverse experiences of the jurisdictions studied underscore the importance of context-

specific approaches that account for cultural, social, and economic factors, as well as the practicalities of implementation and enforcement.

The comparison between broad rights for all of nature and narrow personhood rights reveals both opportunities and limitations. Broad rights, as seen in Ecuador and Bolivia, offer a holistic approach that captures the interconnectedness of entire ecosystems, making it possible to address environmental harm at a systemic level. However, these frameworks often face challenges in terms of enforcement and conflict with economic development priorities. Conversely, narrow personhood rights, exemplified by New Zealand's legal recognition of specific natural entities like the Whanganui River, provide a more targeted and actionable approach, with clear governance structures and representation mechanisms that can more effectively advocate for the rights of these entities. Yet, these models also raise questions about scalability and the potential for uneven application across different ecosystems.

The Mar Menor case in Spain represents a hybrid approach that combines elements of both broad and narrow rights, offering a comprehensive legal framework that could serve as a model for other regions. This dual strategy addresses some of the enforcement gaps seen in broader rights-based approaches while maintaining a strong emphasis on the ecological integrity of the lagoon. However, the effectiveness of this approach will depend on robust governance, clear legal definitions, and the active involvement of local communities and stakeholders, as well as on addressing the broader systemic challenges of economic pressures and climate change impacts.

The absence of environmental personhood in many European Union countries, including the case of the Orbetello Lagoon in Italy, highlights the persistence of traditional, anthropocentric legal frameworks that focus on regulating human activities rather than recognizing the intrinsic rights of nature. While EU directives provide robust protections and have significantly advanced biodiversity and habitat conservation, the lack of legal personhood for natural entities may limit the scope and depth of environmental governance, particularly in addressing complex, multifaceted ecological challenges.

The Orbetello Lagoon's protection relies heavily on established regulatory frameworks under EU and national laws, which prioritize compliance and conservation but do not grant the lagoon a voice of its own in legal or administrative matters. This contrasts sharply with the Mar Menor's legal personhood, which empowers the ecosystem

to be an active participant in its own protection. This difference underscores the potential for rights-based approaches to provide more dynamic and resilient forms of environmental governance, capable of adapting to the evolving challenges of environmental degradation and climate change.

In conclusion, the exploration of rights-based environmental protection in this chapter has demonstrated the value of innovative legal frameworks that recognize the rights of nature. These approaches challenge conventional notions of environmental law and governance, offering new pathways to safeguard ecosystems in the face of global environmental crises. However, the success of these frameworks hinges on their ability to navigate the complex interplay of legal, social, and economic factors, and to foster a deeper cultural shift towards recognizing and respecting the intrinsic value of the natural world. As these legal experiments continue to evolve, they provide critical lessons and insights that can inform the ongoing development of environmental law, both within the European Union and globally.

VI. Conclusions

The concept of environmental personhood represents a transformative shift in legal and environmental governance, recognizing natural entities as legal persons with rights and protections. This approach challenges traditional anthropocentric legal frameworks, offering an ecocentric perspective that values nature's intrinsic worth. The thesis has explored the implementation of environmental personhood globally and within the specific context of the Mar Menor in Spain, providing a detailed analysis of its legal, social, and environmental implications.

The case of the Mar Menor, protected under Spanish Law 19/2022, exemplifies the potential of environmental personhood as a legal innovation. This law marks a significant step in recognizing the lagoon as a legal entity, aiming to address severe environmental degradation caused by agricultural runoff, urban development, and other human activities. The legal standing granted to the Mar Menor allows it to be represented in court, advocating for its protection and restoration, and setting a precedent for other regions in Europe and beyond.

Through comparative analysis with international examples, such as New Zealand's Te Urewera and Te Awa Tupua Acts, as well as frameworks in Ecuador and Bolivia, the thesis has highlighted both the potential benefits and the challenges of implementing environmental personhood. While these legal recognitions have often been symbolic, they serve as critical tools in reshaping environmental governance, promoting intergenerational justice, and empowering Indigenous custodial arrangements.

The analysis reveals that while environmental personhood offers promising avenues for enhanced environmental protection, its efficacy depends on several factors, including robust legal frameworks, effective enforcement, and genuine governmental commitment. Without these elements, the rights of nature risk being reduced to mere symbolism, insufficient to address the complex ecological challenges of the Anthropocene.

Specifically, environmental personhood is a powerful legal innovation that holds significant promise for transforming environmental governance. By granting rights to natural entities, this concept provides a legal mechanism to protect ecosystems proactively, shifting the focus from human-centered exploitation to the recognition of

nature's intrinsic value. However, its effectiveness in practice is contingent on several key factors.

For environmental personhood to achieve its intended outcomes, it must be supported by strong legal and institutional frameworks that ensure enforceability. This includes clear definitions of the rights of natural entities, the establishment of dedicated guardians or trustees, and mechanisms for legal accountability. The success of environmental personhood depends on its integration into broader legal systems that can effectively uphold and enforce these rights.

The commitment of governments is crucial in translating the legal recognition of nature's rights into meaningful environmental protection. This requires not only the enactment of laws but also the allocation of resources for enforcement, monitoring, and restoration efforts. Without governmental commitment, environmental personhood may struggle to move beyond symbolic recognition.

One of the significant challenges of environmental personhood is balancing the rights of nature with competing economic interests. In regions where economic activities such as agriculture, mining, or urban development pose significant environmental risks, the effectiveness of environmental personhood will depend on how well these interests are managed. Policies must aim to reconcile economic development with environmental sustainability, ensuring that the rights of nature are not sidelined.

The involvement of Indigenous and local communities is essential for the success of environmental personhood. These communities often have deep-rooted connections to their natural environments and possess valuable traditional knowledge that can enhance environmental governance. Genuine consultation, respect for Indigenous sovereignty, and the inclusion of local perspectives are critical to ensuring that environmental personhood aligns with broader goals of social and environmental justice.

Environmental personhood also requires a cultural shift towards ecocentrism, where society values nature beyond its utility to humans. Public education, advocacy, and community engagement are essential in fostering this shift. As legal recognition alone may not suffice, a broader societal commitment to environmental stewardship and sustainability is necessary.

In conclusion, while environmental personhood offers a transformative approach to environmental governance, its success hinges on comprehensive legal, institutional, and

societal support. It represents a vital step towards recognizing the intrinsic rights of nature and promoting sustainable coexistence with our environment. However, realizing its full potential will require dedicated efforts to address the challenges of enforcement, economic conflicts, and the inclusion of diverse perspectives. If effectively implemented, environmental personhood could serve as a cornerstone for a more just and sustainable future, ensuring that natural entities are protected not just for their benefit, but for the well-being of all life on Earth.

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