



# **ACCESS TO JUSTICE IN SPAIN:**

## **THE CASE OF THE LEGAL PERSONALITY OF THE MAR MENOR AND ITS NEW LEGAL FRAMEWORK**



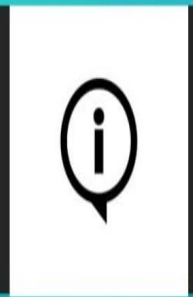


BEYOND AARHUS:  
GRANTING LEGAL PERSONALITY TO  
EMBLEMATIC AND PARTICULARLY  
SENSITIVE ENVIRONMENTAL AREAS:  
A NEW STEP TOWARDS PUBLIC  
PARTICIPATION?  
PROS AND CONS

# AFTER AARHUS. ESCAZU: SIX PILLARS



The Three Main Pillars of the Escazú Agreement



INFORMATION:  
  
Ensure that every person has access to timely and reliable information



PARTICIPATION:  
  
Can participate in the decisions that affects the environment



ACCESS TO JUSTICE:  
  
Have access to justice in environmental matters to safeguard the right to a healthy and sustainable environment

Capacity-building & cooperation

Protective mechanisms for environmental activists

The right to a healthy environment

Access to justice specially for citizens affected by resource exploitation

Access to environmental information

The right to public participation

# ¿CAN NATURE HAS GOT LEGAL RIGHTS?



- The notion that nature has legal rights was not new—it had already been enshrined in the **2008** Ecuadorian. Under Article 71 of **Ecuador's constitution**, nature has the right “to exist, persist, maintain and regenerate its vital cycles, structure, functions and its process in evolution.” Every person and community has the right to advocate on behalf of nature
- In 2010 it's also enshrined by the **Bolivian Constitution**.
- In 2017, the **Inter-American Court of Rights** in an advisory opinion stated, “this court considers it important to recognize that the right to a healthy environment is an autonomous right, and unlike other rights, it protects the components of the environment, such as forests, rivers, seas, and others, as legal interests in themselves, even in the absence of certainty or evidence about the risk to individual persons.”
- An April 2021 decision by the **Supreme Court of Pakistan** saw the court recognizing the need to protect the rights of nature, stating that “the environment needs to be protected in its own right.”
- The **United Nations General Assembly** voted overwhelmingly on **July 28, 2022**, to declare the ability to live in “a clean, healthy and sustainable environment” a universal human right. It also called on countries, companies and international organizations to scale up efforts to turn that into reality.
- This new legal status can be considered as a consequence of the principle “*in dubio pro natura*”.



# CASES STUDIES

In 2017, New Zealand passed a groundbreaking law granting personhood status to the **Whanganui River**. The law declares that the river is a living whole, from the mountains to the sea, incorporating all its physical and metaphysical elements.

The **Atrato River** has been granted legal personhood rights by the Constitutional Court in Colombia. T-622 of 2016 recognises the Atrato River as a subject of rights. This could be considered as a watershed moment for indigenous and environmental rights in Latin America. The Court explicitly recognised that it is taking an ecocentric approach, referring to the interconnectedness of nature and humans with nature and the superior interest of the environment and obligations to protect nature's rights.

In 2021, the Canadian government recognized the legal rights of the Mutesheku Shipu (**Magpie River**). The members of the Innu Council of Ekuanitshit, part of the alliance, will now be the river's guardians.

In a separate order in April 2017 the Indian High Court has recognised **Himalayan glaciers**, lakes and forests as «legal persons» in the mountainous state in a bid to curb environmental.

The Appellate Division of the Supreme Court of **Bangladesh** declared that the Turag River and all other rivers in the country are “**living entities**” with rights as “legal persons.”



# FAILED CASES

- The high court in Uttarakhand state in 2017 recognized the **GANGES AND YAMUNA** rivers as legal persons because of their "sacred and revered" status. The court named the state government as their guardians.
- But the state government of Uttarakhand, where the Ganges originates, argued that **the ruling simply was not practical and could lead to complicated legal situations**, even claims against the rivers in cases of flooding or drowning. They took those objections to the Supreme Court, which agreed and in July overturned the earlier ruling.
- **LAKE EIRIE**. Toledo, Ohio, voters passed the “Lake Erie Bill of Rights” (LEBOR) — designed to protect Lake Erie from pollution — via ballot initiative during a special election on February 26, 2019.
- Federal Judge Strikes Down ‘Lake Erie Bill of Rights’ on February 27, 2020 because in her opinion **it was unconstitutionally vague and exceeded Toledo’s municipal authority**. He found that the rights afforded to the lake were “aspirational” and lacked practical meaning.





# PARTICIPATION OF INDIGENOUS COMMUNITIES

Its growing relevance in contemporary environmental justice is intrinsically linked to the influence of indigenous ways of seeing the relationship between human beings and the world.

Local communities have played a key role in biodiversity conservation for centuries. There are obvious links among local communities and the defense of environment.

Lands inhabited by Indigenous Peoples contain 80% of the world's remaining biodiversity

Whanganui River (New Zealand) → Maorie Community.

Magpie River (Canada) → Innu Community.

Atrato River (Colombia) → Afro-Colombian and indigenous communities





# MAR MENOR: AN ECOLOGICAL DISASTER

The Europe's largest saltwater lagoon. It's a biodiversity hotspot, an international Ramsar Site, as well as a Special Protected Area of Mediterranean Interest (SPAMI) and is included in the Natura 2000 Network.

In 2016, an extreme eutrophication – a massive growth of algae– turned the water green and killed 85% of the seagrass. Thousands of fish were beached on the shore. Comprehensive report on the ecological status of the Mar Menor, prepared by the Mar Menor Scientific Advisory Committee and published on 6 February 2017. Scientific studies point to the need to work for at least 25 years to begin to halt the virtually irreversible process. The ecological disaster is conveniently reflected in the European Parliament's report of 25 October 2022





# REASONS FOR THE ENVIRONMENTAL DISASTER (PERFECT STORM)

- POOR SEWAGE SYSTEMS.
- AGRICULTURAL PRACTICES: FERTILIZERS.
- MINING ACTIVITIES.
- INTENSIVE FARMING.
- EXORBITANT URBAN SPRAWL.
- POLLUTANTS.



## CITIZENS' REACTION

POPULAR DEMONSTRATION OF 55,000 PEOPLE IN CARTAGENA ON 30 OCTOBER 2019.

CITIZENS' INITIATIVE IN ORDER TO INTRODUCE A NEW LEGAL SYSTEM WITH 640,000 SIGNATURES (ONLY 500,000 SIGNATURES ARE NEEDED TO GET A BILL THROUGH PARLIAMENT).

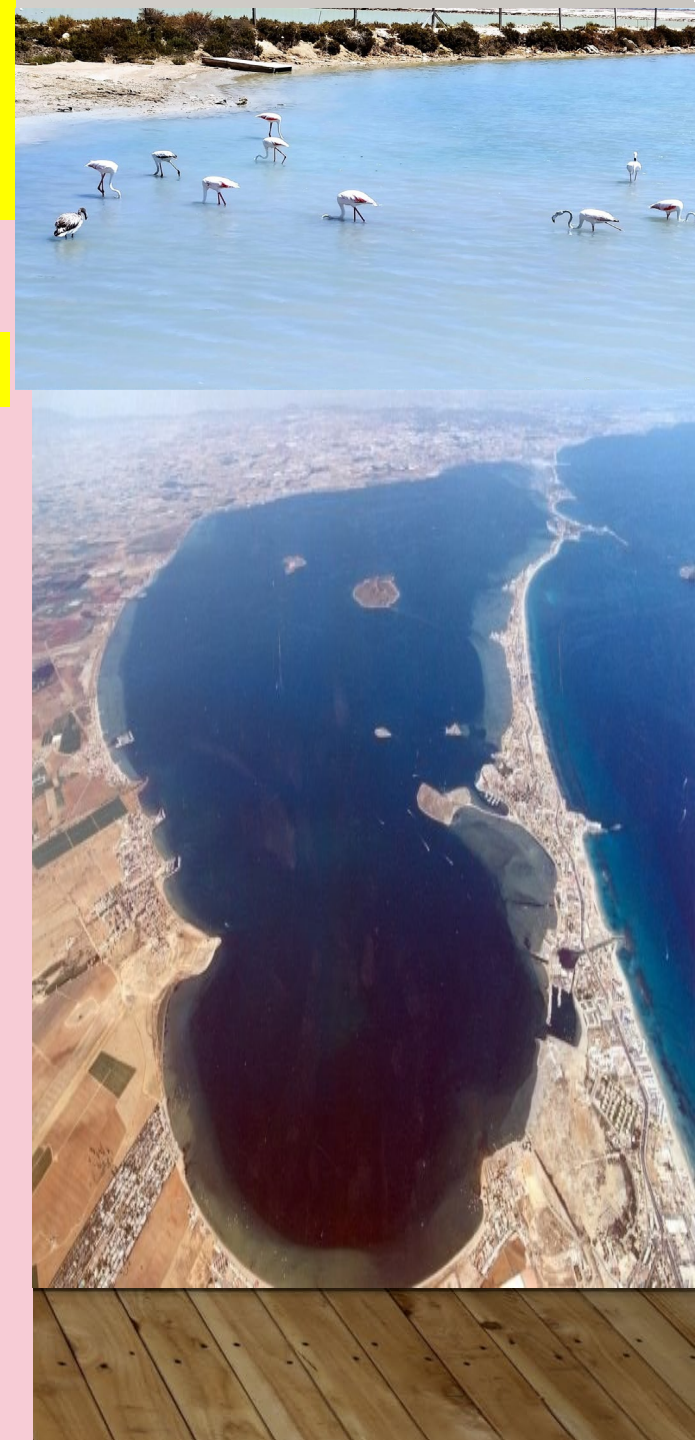






# MAR MENOR ACT 2022

- On 30th September, the Spanish Parliament has completed the 'Recognition of the legal personality and rights of the Mar Menor and its Basin Act' (ley 19/2022, of 30 September), granting legal personality to the lagoon of the Mar Menor and its basin.
- It is the first legal text in Europe which gives rights and legal standing to a natural body.
- Under a new law passed in Spain, any individual can now bring legal action to defend the ecosystem.
- This new legal label should not be seen as a panacea or a philosopher's stone, but simply as a new tool in the environmental toolbox with pros and cons.





# A NEW CHANNEL FOR CITIZEN PARTICIPATION

## MAR MENOR TUTORIAL





# PROS AND CONS

## PROS

NEW LEGAL REMEDY

EFFECTIVE POWERS ARE GIVEN TO THE COMMUNITY TO STOP ILLEGAL ACTIVITIES

CITIZENS' ACCESS TO JUSTICE IS STRENGTHENED

## CONS

NOT IN ACCORDANCE WITH THE EXISTING LEGISLATIVE FRAMEWORK. IT IS A STRANGE FIGURE THAT DOES NOT FIT IN WELL WITH THE REST OF THE LEGAL SYSTEM.

INADEQUATE INTEGRATION WITH OTHER PUBLIC ADMINISTRATIONS.

THE LAW DOES NOT ESTABLISH EFFECTIVE POWER TO REHABILITATE THE AREA AND REPAIR THE DAMAGES.

THE LAW IS UNCLEAR AND LACKS LEGAL CERTAINTY.

# ACCESS TO JUSTICE: ART.6 OF THE NEW LAW

Any natural or legal person is entitled to defend the ecosystem of the Mar Menor, and may enforce the rights and prohibitions of this law and the provisions that develop it through an action filed in the corresponding Court or Public Administration. Such legal action shall be brought on behalf of the Mar Menor ecosystem as the real interested party.

The person who brings such an action and who has his claim upheld shall be entitled to recover the full cost of the litigation undertaken, including, inter alia, the fees of lawyers, solicitors, experts and witnesses, and shall be exempt from the costs of the proceedings and from the bonds in the case of precautionary measures.



# MAIN PRINCIPLES OF THE NEW LAW

- **INTERGENERATIONAL JUSTICE.**
- **IN DUBIO PRO NATURA.**
- **ECOCENTRIC APPROACH: THE HUMAN BEING IS INTEGRATED IN THE ENVIRONMENT.**
- **ECOLOGICAL JUSTICE: THE ENVIRONMENT MOVES FROM BEING AN OBJECT OF PROTECTION TO A SUBJECT OF PROTECTION.**
- **NATURE KNOWS BEST**
- **EVERYTHING IS CONNECTED TO EVERYTHING ELSE.**



# CONCLUSIONS

- 1) GRANTING LEGAL PERSONALITY TO SENSITIVE ENVIRONMENTAL AREAS IS A NEW LEGAL INSTRUMENT THAT ALLOWS TO REINFORCE THE DEFENSE OF AREAS THAT HAVE BEEN UNDER HUMAN CONTROL.
- 2) IT ALLOWS TO GIVE AN IMPORTANT ROLE TO THE LOCAL COMMUNITIES THAT HAVE COEXISTED FOR THOUSANDS OF YEARS WITH THE ENVIRONMENT AND ARE THE MAIN STAKEHOLDERS IN ITS DEFENCE. IN PARALLEL, THE OPINION OF THE SCIENTIFIC COMMUNITY IS BEING THE OTHER MAIN PILLAR IN THIS NEW ENTITY.
- 3) IF THESE LEGAL ENTITIES IN DAMAGED AREAS WERE ABLE TO FUNCTION PROPERLY, THEY COULD ATTRACT PUBLIC AND PRIVATE FUNDS, NATIONAL AND INTERNATIONAL, NECESSARY FOR THEIR REPAIR.
- 4) IT IS NOT ENOUGH TO CONFER LEGAL PERSONALITY, IT IS ALSO NECESSARY TO BUILD A SOLID LEGAL FRAMEWORK. THE REGULATION HAS TO BE INTERLINKED WITH EXISTING LEGAL STRUCTURES.
- 5) THIS ACKNOWLEDGEMENT IS THE OTHER SIDE OF THE COIN OF THE RECENTLY RECOGNIZED HUMAN RIGHT TO LIVE IN A HEALTHY ENVIRONMENT BY THE UNITED NATIONS.
- 6) THE WORK OF THE COURTS IN THE GRADUAL CONSTRUCTION OF THESE NEW SPHERES OF ENVIRONMENTAL PROTECTION HAS BEEN VITAL. HOWEVER, MAINLY DUE TO THE TECHNICAL COMPLICATIONS MENTIONED ABOVE, THIS NEW LEGAL STATUS HAS BEEN OVERTURNED BY THE SUPREME COURTS OF SOME COUNTRIES (I.E. USA AND INDIA).



An aerial photograph of a dense, vibrant green forest. In the center of the image, there is a circular clearing that contains a small, calm body of water, possibly a pond or a small lake. The water reflects the surrounding greenery and the sky. The text "Thank you for your attention!" is overlaid in a large, bold, blue font across the middle of the image.

# Thank you for your attention!

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