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The right to the city and the rights of nature: an analysis of their relationship from the blue-green ordinance

Derecho a la ciudad y derechos de la naturaleza: análisis de su relación desde la ordenanza verde-azul

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ABSTRACT

The central objective of this research is to illustrate the connection between the right to the city and the rights of nature, highlighting the blue-green ordinance as a means of managing, preventing, building and redressing these rights. The relationship between the right to the city and the rights of nature in its guarantee is decisive in the construction of equitable, resilient, sustainable and environmentally friendly urban spaces. This paper provides a conceptual and legal basis for the right to the city and the rights of nature, outlining their fundamental principles and their evolution in the urban context. It also addresses analyses of sustainable urban planning policies that emerge in the applicability of the principle of interdependence between the right to the city and the rights of nature focused on safeguarding and restoring both ecological balance and social justice in cities. Finally, we reflect on how the actions or omissions of the public entities that make up a local government in their management have an impact on the enjoyment or violation of these "city-nature" rights, and explain the importance of the role played by decentralised municipal autonomous governments in the effectiveness of the development of their competences, especially in the area of

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environmental management, in line with the content of the Constitutional Court's ruling No. 2167-21-EP/22 "Monjas River".

RESUMEN

El objetivo central de esta investigación es ilustrar la conexión que existe entre el derecho a la ciudad y los derechos de la naturaleza, destacando a la ordenanza verde-azul como un medio de gestión, prevención, construcción y reparación de estos derechos. La relación de derecho a la ciudad y derechos de la naturaleza en su garantía conjugan decisivamente en la construcción de espacios urbanos equitativos, resilientes, sostenibles y considerados con el medio ambiente. El presente trabajo recoge bases conceptuales y legales del derecho a la ciudad y los derechos de la naturaleza, rotulando sus principios fundamentales y su evolución en el contexto urbano. De la misma manera aborda análisis de las políticas de planificación urbana sostenibles que surgen en la aplicabilidad del principio de interdependencia entre el derecho a la ciudad y los derechos de la naturaleza enfocados en salvaguardar y restaurar tanto el equilibrio ecológico como la justicia social en las ciudades. Finalmente, se reflexiona como las acciones u omisiones de las entidades públicas integradoras de un gobierno local en su gestión inciden en el disfrute o violación de estos derechos "ciudad-naturaleza", por lo que explicar la importancia del papel que cumplen los gobiernos autónomos descentralizados municipales en la efectividad del desarrollo de sus competencias y especialmente en la que tiene que ver con la de gestión ambiental se tratará en aras del contenido del dictamen de la Corte Constitucional en su Sentencia No. 2167-21-EP/22 «el río Monjas».

Keywords / Palabras clave

right to the city, right to nature, urban law, green-blue ordinance

derecho a la ciudad, derecho a la naturaleza, derecho urbano, ordenanza verde-azul

Introduction

The right to the city and the rights of nature are intrinsically related. In the context of Ecuadorian constitutionalism, since its recognition in the Supreme Norm of 2008, it has allowed us to understand its impact on the promotion of sustainable urban development in harmony with the environment for the materialisation of the good life of its citizens.

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The relationship between the right to the city and the rights of nature corresponds to one of the fundamental principles of human rights called the "principle of interdependence", which means that "these rights" cannot be fully enjoyed without each other. Environmental degradation obstructs the enjoyment of human rights and the exercise of these rights favours the protection of the environment and leads to sustainable urban development.

Consequently, it has been the constitutional justice through its highest organ of administration and control through the relevance given to the "Monjas River" case in its sentence No. 2167-21-EP/22 as it states: "(...) to allow the development, in a State that protects the environment and recognises rights to nature, of the protection of water basins and their relationship with sustainable development and the right to the city".

In the specific case ruled by the Constitutional Court with the filing of the extraordinary action for protection and whose reference is linked to the initial filing of an action for protection in which the plaintiffs point out that the "responsibility of the municipality in provoking and tolerating the environmental and soil contamination that has been generated in the Monjas River for years is considerably affecting the quality of life of the people" and that this "reflects two clear violations of constitutional rights by the Municipality and its authorities. The first is in relation to the right of all citizens to live in a healthy and pollution-free environment, which by its magnitude and scope is directly related to the right to life, health, housing and property".

Therefore, in order to analyse the problem of the Monjas River, the Constitutional Court in its ruling did so from a holistic perspective, developing and invoking the application not only of the right to nature and others but also the right to the city under the use of the principle iura novit curia, known as "the judge knows the law", which allows a judge to determine the law applicable to a dispute without deference to the rules invoked by the parties, which since the filing of the constitutional actions that have been mentioned in this case did not point it out under objectivity.

The antecedent facts of the problem raised in this case, is given in the basin of the Monjas River located to the north of the city of Quito, along it are located several rural and urban parishes. The Monjas River is polluted because the domestic and industrial wastewater produced

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by the neighbourhoods in the north-west of Quito is discharged directly and without treatment into the Monjas River.

In addition to these difficulties, there is water erosion, the rainwater that the river receives, the lack of good water management in the city (rainwater and sewage are not separated), and the two are joined by the same sewer and flow together into the rivers, urban sprawl and settlement cements the soil and makes it impermeable, and the city's soil has little capacity to precollect water, all of which leads to an increase in the flow of rivers and streams and changes in the hydraulic behaviour of the natural course of the stream.

In view of this, the Municipality of the Metropolitan District of Quito has drawn up several plans and studies which have not been sufficient, because in the public mandate not only the intention, the wording and the lyricism count, but the execution of effective management, its measurement and evidence in works and/or services translated into the satisfaction and enjoyment of rights by the citizens.

Among all these circumstances, the lack of urban planning as a vital instrument in the construction of the guarantee of the right to the city translates into the transgression of the rights of people and nature, which is why it is more than the responsibility and commitment of local authorities to fulfil their functions, attributions, powers and competencies described constitutionally and legally in the Ecuadorian legal system, whether these are exclusive or concurrent, in cooperation with other levels of government for the benefit of the common good.

Under these references, the Constitutional Justice, through its ruling in the "Monjas River" case, in order to rehabilitate and not repeat these events, ordered the Municipality of Quito to take three compulsory reparation measures: 1) the execution of works aimed at stabilising the riverbed in the La Esperanza section and protecting the Hacienda Patrimonial house; 2) the definition and execution of a public policy, which is materialised in the elaboration of a complementary plan for the Monjas River, and which must contemplate short, medium and long term measures; 3) the issuing of a 'blue-green' ordinance.

Indeed, the objective of this qualitative research under the structure of case analysis will be to show how rights to the city and rights to nature are connected, highlighting the use of the blue-green ordinance as a means to manage, prevent, build and restore these rights. As a result, this article describes the conceptual and legal foundations of the right to the city and the rights of nature, outlining their fundamental

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principles and their evolution in the urban context. It also recounts how the Constitutional Justice recognises the violation of the right to the city and the rights of nature and orders their redress.

Right to the City

Conceptually, various international and national authors approach the study of the right to the city. In this sense, it is from the 1970s in France where the philosopher Henri Lefebvre appears, forging the definition of the origin of this right.

The right to the city, defined by Lefebvre as "...the right of urban inhabitants to build, decide and create the city, and to make it a privileged space of anti-capitalist struggle", building his hypothesis of seeing the right to the city "...as the possibility and the capacity of urban inhabitants and mainly of the working class, to create and produce the city", so that (Molano, 2016, p. 4) says that he describes the right to the city as "the right of urban inhabitants to build, decide and create the city, and to make it a privileged space of anti-capitalist struggle". 4) says that he describes the central elements of the right to the city as "...autonomous construction and collective work in the face of capital and the state".

On the other hand, David Harvey of British origin influenced by Marxist social theory assumes the right to the city "as a social possibility of struggle and anti-capitalist theory, which makes urban territory a scenario for the construction of alternatives of appropriation and political and spatial participation, on the way to a society that overcomes capitalism" (Molano, 2016, p. 5).

The right to the city for Jordi Borja, a Spanish urban planner and politician, "includes the right to housing and to a meaningful and beautiful public space, to the preservation and improvement of the environment and heritage, to permanence in place and to change of residence, to mobility and centrality, to socio-cultural identity and visibility, to accessibility and monumentality, to the democratic government of the metropolitan city and to decentralised or proximity management, to continuous training and to a citizen salary, to security and shelter. The right to the city implies the political-legal equality of all residents and universal access both to goods and services of general interest and to participation in the elaboration and management of public policies" (Borja, 2012, p. 58).

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Manuel Moreno, assistant professor and doctor of administrative law at the University of Malaga, conceives of the right to the city "as an emerging human right comprising all internationally recognised human rights, which find in the city the proper sphere for their realisation. It would come to be, therefore, the right of city dwellers to satisfy their social, political, economic, cultural and environmental needs and aspirations" (Moreno, 2022, pp. 313-314).

Then Edward Soja, an American researcher for whom "the right to the city is not restricted to anti-capitalist struggle, but articulates forms of ethnic, gender and cultural resistance, as an expression of the diversity of urban experiences" (Molano, 2016, p. 5).

Alicia Ziccardi, a researcher at the Institute for Social Research of the National Autonomous University of Mexico, addresses the right to the city from the perspective of urban policies and its links to the notion of this right as a collective appeal that has historically changed its content, but which fundamentally alludes to a profound urban transformation led by social movements with the intention of counteracting the capitalist processes that generate socio-spatial inequality and urban segregation, and to produce better living conditions for the citizenry as a whole (Ziccardi, 2019, p. 61). 61).

For his part, Pablo Slavin, PhD in Law with a specialisation in political science from Argentina, makes a critical analysis of the thinking of three authors that he considers key to understanding the right to the city and the relevance of the functioning of the capitalist mode of production: Lefebvre, Soja and Harvey; he reflects on the phenomenon of urbanisation and its problems and explains the importance of building a social movement that offers alternatives to the neoliberal hegemony that is currently imposed at a global level.

In this framework, he conceives the right to the city as associated with the right to citizenship, and to a special type of citizenship: liberating, egalitarian, inclusive, creator of new rights, transformative and simultaneously a tool for reform and for revolution; he thinks of the right to the city as an integrality, contrary to the fragmentation of space, so we must understand space and its reasoned production as a totality (Slavin, 2021, pp. 36,40).

On the other hand, in the national sphere since its definition, few researchers have dealt with the right to the city, but from their critical perspectives it has been addressed from different approaches such as:

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The contribution of Daniela Ayala who develops research and debate on the content of the right to the city from the approach of mobility, observing the growth of modern cities, the effect of industrialisation that brings with it several problems that are difficult to foresee, pointing out the space demanded for the automobile, the privatisation of public space, air pollution and pressure on natural resources.

He considers the need to generate public policies to make cities viable as places where it is possible to live well, defining the right to the city as:

(...) the possibility of good urban living, both for life in cities to be sustainable in the medium and long term; and for cities to be transformed into truly habitable places for people. For cities to be the place where we want to live and not where we have to live (Ayala, 2017, p. 58).

Jaime Breilh, an Ecuadorian doctor and researcher, has approached the right to the city from an analysis focused on the relationship between urban space, health and equity. Breilh argues that the right to the city implies guaranteeing access to a healthy, equitable and sustainable urban environment, where human rights are respected, citizen participation is promoted and socio-spatial inequalities are eradicated. With this Breilh (2009) argues:

That is why we say that there is a relationship between health, environment and society. And of course, legally speaking, it is clear that the right to health encompasses more than the right to the goods that make adequate curative care feasible, but rather that the right to a healthy life is linked to the validity of other rights of the good life. Our struggle together with multiple organisations in the constituent stage, as part of the Network for the Right to Health, achieved that the new constitution establishes this relationship: Art. 32.- Health is a right guaranteed by the State, whose realisation is linked to the exercise of other rights, including the right to water, food, education, physical culture, work, social security, healthy environments and others that support the good life (Breilh, 2009, p. 264).

The authors (Llop & Vivanco, 2017) distinguished the right to the city from the analysis of urbanism for intermediate cities in Ecuador and synthesised it into two basic statements and concluded:

"The right not to be excluded and to live in dignity without discrimination of any kind, regardless of gender, age, the community

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to which one belongs or social, economic, educational, cultural or any other issues. To fulfil this right means that the model of exclusion must be countered by an inclusive model of social and territorial integration, equal opportunities to enjoy the goods, services and resources that cities offer, making the real exercise of rights possible" (p. 18).

"One of the prerogatives of the City is the right to Plan, where Urban Planning is a necessary condition in the construction of cities. Every extended reality of today's world generates the reflection of how to act in networks, which are not stable and visible elements for everyone. Therefore, they must be thought of in a special and spatial way so that they can be part of the contents of education and urbanism. Cities have less visible networks in the aspects of communication and management actions and the new urban economy. New communication technologies create new virtual spaces that are more difficult to see in the management of the transformations of life in society" (p. 94).

For (Carrión F. M., 2019) architect and academic of the Department of Political Studies FLACSO-Ecuador has approached the right to the city from a perspective of urban policies and public space. He argues that the right to the city implies guaranteeing public space from the "city of quantity and expansion" to a "city of quality, open and diffuse" (p.192), in which the democratisation of municipal government is highlighted; public space becomes a citizen's right, "in the understanding that it is precisely there where citizenship is built, and therefore, the political community that is the city" (p.193); in which "urban planning must be organised on the basis of the public and not the private, of the collective and not the individual" (p.201); and in which the element of "representation of the collectivity where society is made visible" (p.202), with its active and meaningful participation of citizens in decision-making on urban development, in order to promote democratic and participatory urban governance.

Obando and Baeza (2023) Ecuadorian lawyers and researchers outline the right to the city from the study of urban law, stating "that it is indispensable to generate order, structure and balance in cities, which derives in legal security for citizens, and therefore, in a better quality of life in cities" (p.35); and they warn that urban law from the perspective of making a city should:

Respond with new regulations in all fields: transport, construction standards, urban development and housing, among others. Also, with

Received Febrary 08, 2024/ Approved May 25, 2024 Pages: 79-110
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regard to the environmental field, urban law is obliged to react in a resilient manner in order to guarantee a healthy and ecologically balanced environment, avoid environmental pollution and prevent irreversible consequences on the planet (Obando & Baeza, 2023, p. 36).

This being said by international and national authors regarding the definition of the right to the city, I understand that its guarantee in Ecuador would be configured as the materialisation of a set of rights that the Ecuadorian Constitution calls "rights of good living", which would be of no use if they are only written in a text (dogmatic part) when the institutional management (organic part) and that of public servants in the performance of their duties does not evidence the enjoyment of these rights for citizens.

Instrumental and legal framework at the international and national level of the Right to the City

Regarding the right to the city, it is stated that: "(...) it has been institutionalised and codified through a series of instruments adopted at the international and European level through the charters of the right to the city (...)", instruments that are considered indicative rather than normative (Moreno, 2022, p. 313).

In this sense, he points out different international instruments that have tried to define the right to the city and delimit its content, such as: the World Charter for the Right to the City, the European Charter for the Safeguarding of Human Rights in the City and the World Charter-Agenda for Human Rights in the City. Likewise, the New Urban Agenda - Habitat III also contains some reference to this concept.

One of the first initiatives in the framework of the World Social Forum, through which the creation of a "Charter" that contributes to institutionalising the theme of human rights in the city and the collective right to the city in various parts of the world was promoted, converged in dealing with the theme and the processes appropriate to the formulation of the "World Charter for the Right to the City", in whose Art. 1 specifies the right to the city:

(...) as the equitable use of cities within the principles of sustainability, democracy, equity and social justice. It is a collective right of city dwellers, especially vulnerable and disadvantaged groups, which gives them legitimacy of action and organisation, based on their uses and

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customs, with the objective of achieving the full exercise of the right to self-determination and an adequate standard of living.

Thus, over the years, the right to the city began to be addressed in Europe and from the juridical point of view in America in the cases of "Mexico, Brazil", and it is in 2008 in the Ecuadorian constitution where its recognition and guarantee is crystallised. The Ecuadorian Supreme Norm on the right to the city in Art. 31 states:

"People have the right to the full enjoyment of the city and its public spaces, under the principles of sustainability, social justice, respect for different urban cultures and balance between the urban and the rural. The exercise of the right to the city is based on the democratic management of the city, on the social and environmental function of property and the city, and on the full exercise of citizenship.

The aforementioned article has a great content, when it refers to the exercise of several rights due to its characteristic of being a collective right that seeks to guarantee "the full enjoyment of the city", understanding this as the Right to the City Agenda for the implementation of the 2030 Agenda for Sustainable Development and the New Urban Agenda (NUA):

The right of all inhabitants, present and future, permanent and temporary, to inhabit, use, occupy, produce, transform, govern and enjoy just, inclusive, safe, sustainable and democratic cities, towns and urban settlements, defined as common goods for a dignified life, to be shared and owned by all members of the community.

The right to the city means ensuring cities and human settlements (i) free of discrimination; (ii) with gender equality; (iii) integrating minorities and racial, sexual and cultural diversity; (iv) with inclusive citizenship; (v) with increased political participation; (vi) fulfilling their social functions, including recognising and supporting social production processes and habitat reconstruction; (vii) with diverse and inclusive economies; and (viii) with inclusive urban-rural linkages.

However, from the date of its drafting in the Magna Carta to the present day, the mere recognition of rights has not been enough, since the lethargy of public administration has made the rights to live well and the right to the city literally described in it a utopia. As irrefutable evidence of the universe of cases, I point out the case of the "Monjas River".

Received Febrary 08, 2024/ Approved May 25, 2024 Pages: 79-110
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Rights of nature

As one of its most important ideas, the 2008 Constitution enshrines the rights of nature in its preamble and in the seventh chapter of Title II. With this decision, as explained by (Wilhelmi, 2008, p. 21), the Constituent Assembly broke with some of the most dogmatic and conservative schemes in terms of the ownership of rights, as it understands it beyond human beings, thus opening up new perspectives on the very conception and function of rights.

This means that not only individuals, communities, peoples, nationalities and collectives are entitled to and will enjoy the rights determined in the supreme text, but also nature is named as a subject of those rights.

The prologue of the Constitution stresses that we have decided to build a new form of citizen coexistence, in diversity and harmony with nature, to achieve the good life, sumak kawsay translated from the Kichwa language means "ideal fulfilment in fullness and life". To achieve these ideals, according to the criteria of (Mármol, 2023, p. 58) a change of vision is fundamental, that is, to leave aside the previous androcentric vision, and assume the new biocentric vision (nature-humans) within a catalogue of rights, which implies the constitutional recognition under the title "Rights of Good Living" (Derechos del Buen Vivir).

Consequently, the Rights of Good Living are constitutionally catalogued in Title II as: water and food, healthy environment, communication and information, culture and science, education, habitat and housing, health, work and social security. For their materialisation and guarantee, these are linked to the regime of development and the regime of good living, the latter under the structure of systems: that of inclusion and equity, and that of biodiversity and natural resources.

It is clear that nature is a protected legal asset and thus the supreme text recognises it, expressing in its content: the integral respect for its existence; the maintenance and regeneration of its vital cycles, structure, functions and evolutionary process; that of its restoration; and, that of applying precautionary and restrictive measures for activities that could lead to the extinction of species, the destruction of ecosystems or the permanent alteration of natural cycles.

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The right to nature recognised by the Constitution, which includes access for all people to live in a healthy and sustainable environment, was declared a human right by the UN Human Rights Council on 18 October 2021. Grijalva (Grijalva, 2023, pp. 43,45) does not explain how human rights have long been conceived without regard for nature, and why there is still resistance to recognising the rights of nature.

Along these lines, the author explains how the rights of nature are related to human rights, such as health, water, work, a healthy environment, housing and food. In fact, he says, the Ecuadorian Constitution expressly includes these rights in several of its articles, in a sort of greening of human rights.

And he cites (Grijalva, 2023, pp. 45,46) some examples in which the Supreme Law relates environmental and natural rights with various human rights, among which he cites: property, the right to the city, the right to health, prior consultation, housing, economic freedom, participation, dignified life, food sovereignty, the right to water, the right to free time, effective judicial protection, among others.

In short, constitutionally establishing the rights of nature places the state under the obligation: to guarantee a sustainable model of development, environmentally balanced with the needs of present and future generations in mind; to comply at its different levels of government with the application of environmental management policies that avoid negative environmental impacts; to guarantee the active and permanent participation of people in the planning, execution and control of any activity that generates environmental impacts. This state protection of the environment will go hand in hand with the co-responsibility of citizens in its preservation and will be articulated through a decentralised national system of environmental management.

Relationship between the right to the city and the rights of nature

Based on the constitutional premise of considering all principles and rights of equal hierarchy, it can be deduced that both the right to the city and the rights of nature in their guarantee sustain the quality of life of the inhabitants of a territory on an equal footing. It is therefore necessary to demand that the State assume its active role and promote policies aimed at achieving the good living that it advocates, framed in the promotion and protection of human rights.

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In this framework, both the exercise of the right to the city and the rights of nature are currently classified as "human rights".

Thus, (Slavin, 2021, p. 68) points out that the right to the city is categorised as an emerging human right, constituting that physical space where people live and coexist, and in which they struggle to achieve their full political, economic, social, cultural and ecological realisation.

In a related sense, city and nature combine in harmony with respect to the rights and guarantees of both, insofar as, as human beings, we need it to exist and it needs us to protect it. In view of this, and taking into account what is said by (Grijalva, 2023, p. 51) nature cannot defend itself, it is human beings who, through political participation processes, different types of consultation and legal actions, including constitutional ones, can and must defend it. In fact, environmental organisations and movements play a leading role in this defence, articulating these possibilities for action and raising public awareness.

Thus, for example, the relationship between the right to the city and the rights of nature, referring specifically to the right to a healthy environment, is illustrated by the Monjas River case, which was raised by several amici curiae in the two hearings held by the Constitutional Court, which is worth highlighting due to the interest of citizens in participating in this cause in defence of these rights, making it clear that: "The pollution of the Monjas river, the undermining of its bed and the erosion of its walls is not only a question of poor management of the use of the natural resource, but its origin is to be found in the very planning of the city " as I describe:

For Paola Romero who indicated "the case currently under consideration constitutes an opportunity for the Court to analyse...the application of the right to the city...from the facts it is clear that the excess of flows contributed to the Monjas River, a consequence of an absence of integral territorial planning, which guarantees a balance between the growth of the city with the capacity of the natural systems, has caused a risk to the lives of the inhabitants....

In the same way, Luis Germán Andrade in relation to the case stated that "...in the current situation, citizens are deprived of having their property and surroundings fulfil a social and environmental function due to the difficulty that residing in such places would entail due to the circumstances. All this makes this case a demographic and urban challenge for the present and the future".

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On the other hand, Daniel Rosero said: "I am moved to know that there is a social impact and an environmental impact and that we still believe that there is no one responsible for it, and this is because we are still lacking the empathy that we need for our ecosystems, so I call you to remember article 31 of the Constitution (...).)so you can see in this figure, we have paving, we have cementing of various areas to be able to improve our mobility and yet we have forgotten this social and environmental function of our city, that is to say I have the right to live in this, I can use the resources, but I also have a responsibility, and who is in charge of making it easier for me to fulfil this responsibility? , As you know.

From this participation, territorial and urban "planning" is seen as a key instrument for the management of national and local governance in cities so that their constituents can achieve sustainable development with environmental and social criteria in the medium and long term. The idea is from a collective position to adjust the rational use of resources under the characteristics of the principles of planning, efficiency, effectiveness, transparency, accountability and others to which the work of the sectional public administrations must be subjected.

Urban planning

One of the tools that allows the right to the city to be considered is planning, and within the different planning instruments, the "urban planning" instrument is highlighted, which should be aimed at establishing the conditions for cities to be resilient to issues such as climate change, natural disasters or natural phenomena. That is to say that, within a city, nature can maintain and regenerate its vital cycles.

Consequently, the United Nations as an international organisation in which a large number of countries in the world are part of in order to promote the improvement of living standards, social progress, protect the planet and human rights, in 2015 outlined the way to achieve sustainable development through the structuring of 17 goals (SDGs) in which number 11 corresponds to guidelines on "sustainable cities and communities", together with the Urban Agenda 2030 and its goals are the instruments that mark the course that cities should follow.

In short, planning a model that responds to the implementation of these goals is a way to build a better city and one that sectional bodies should consider in the exercise of their mandate.

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The New Urban Agenda is the most important global guide that provides clear guidance on how well-planned and managed urbanisation can be a transformative force for accelerating the achievement of the Sustainable Development Goals (SDGs), represents a paradigm shift based on the science of cities, and sets standards and principles for planning, building, developing, managing and improving urban areas across its five main pillars: national urban policies, urban legislation and regulations, urban planning and design, local economy and municipal finance, and local implementation.

It is undeniable that the municipal administration, as a State entity, is instituted to serve the community and through its management and under its competencies it is obliged to protect the natural and cultural heritage, to be a provider of efficient and quality public services that will translate into making good living a reality; without forgetting that in the urban fabric, citizen participation will be key in the decision making process of the development, planning and management of the city.

From what has been illustrated, the model of democratisation in the urban sphere as stated by (Obando & Baeza, 2023, pp. 176-177) are citizen participation, transparency and access to information, decentralisation and local autonomy, as well as equality and social justice. This model aims to promote more inclusive, participatory and accountable governance in cities, allowing citizens to be actively involved in the planning and development of their urban environment.

Consequently, these authors further encourage the implementation of a human rights-based model of urban management, which involves incorporating human rights principles and standards into all stages of the process of planning, development and management of cities. It is an approach that seeks to ensure that every person, regardless of their origin or status, has access to a dignified life in the urban environment. To achieve this, it will be necessary to establish a legal and policy framework that recognises and protects human rights in the urban context (pp. 177-178).

Public policy, regulatory and institutional planning instruments in Ecuador

Prosperous, attractive and inclusive cities do not emerge spontaneously, a phrase that is reproduced by the Centre for the Future of Cities of the Tecnológico Monterrey and which is worth highlighting insofar as building cities entails the sum of processes of

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creation and application of a series of public policy instruments, regulations and executive roles of the different levels of government.

It should be noted that, when talking about planning in this research, we do so from the perspective of development planning "the universe" and urban planning "the species" of which I have generated a background or content above.

Development planning, according to a reference taken from the IAEN's New State Collection, which cites SEMPLADES, is fundamental for change, to organise the public function, to rescue its efficiency and legitimacy, and to orient private activity towards national objectives. Only integral coordination between state institutions, central government and sectional bodies will make the redistribution of wealth viable, which is indispensable for a fairer society, what has been called Buen Vivir, understood as the development of human capacities and talents and coexistence in harmony with the environment.

And at the local level, development plans constitute the main guidelines for decentralised autonomous governments with respect to strategic development decisions in the territory. These will have a long-term vision and will be implemented through the exercise of their competences assigned by the Constitution of the Republic and the Laws, as well as those transferred to them as a result of the decentralisation process (Zamora & Carrion, 2013, pp. 15-16).

The growth of the urban population is evident and, according to estimates developed by the UN by 2050, it will increase to the extent that the urban space will be violated, with great impact for future generations and for the management of local governments, which must prepare themselves to face the different economic, social and environmental problems that will arise.

A structured management system in which local regimes under the constitutional and administrative law principles of decentralisation, organisation, planning, accountability, transparency, evaluation and co-responsibility, to name but a few, are those that need to be implemented under a constitutional and legal regime that circumscribes actions related to territorial and urban planning between the different political and administrative entities of the State, be they central, provincial, cantonal or parish governments.

Received Febrary 08, 2024/ Approved May 25, 2024 Pages: 79-110
eISSN: 2600-5743

As instruments that reflect the results of the effective management of the appointing authorities of the local public administrations "mayors", there is the "planning". In a framework that can achieve sustainable development with a view to the present and future city, "urban planning" will allow from effectiveness (capacity to obtain what is proposed in the indicated time) and efficiency (to reach the objectives and goals with fewer resources) to build the guarantee of rights in favour of the citizens.

To this end, we ask ourselves whether Ecuador has regulatory and technical-institutional planning instruments.

The answer is positive, and we start from a constitutional reference taking into account the definition of the State that we currently advocate and that is described in Art. 1 of the Constitution, which describes us as a "constitutional State of rights (...)" whose characteristics derive from the following: 1) The Constitution is the Supreme Rule (Art. 424); 2) The Constitution has a normative character and binding force on its own (Art. 426 final clause); 3) The Constitution is of direct and immediate application by all judges, courts, authorities and public servants (Art. 426 final clause); 4) The Constitution is of direct and immediate application by all judges, courts, authorities and public servants (Art. 426 second clause); 5) The Constitution has a normative character and binding force on its own (Art. 426 second clause); 6) The Constitution is of direct and immediate application by all judges, courts, authorities and public servants (Art. 426, second paragraph); 4) The Constitution establishes a defined and broad set of Jurisdictional Guarantees; and, 5) Finally, a constitutional justice is defined as the highest and main instance for the resolution of conflicts arising from the violation of the constitutional rights and guarantees of citizens and nature, in the Ecuadorian case, through the establishment of the Constitutional Court, the body that administers Constitutional Justice (Art. 429 CRE).

In the constitutional organic sphere, the Supreme Charter developed the institutional infrastructure that refers to the organisation and functions of the organs of power, among them the recognition of the Municipal Decentralised Autonomous Governments with duly defined competences and attributions, and under the principle of co-responsibility hand in hand with the Central Government under national planning instruments such as the so-called National

Received Febrary 08, 2024/ Approved May 25, 2024 Pages: 79-110
eISSN: 2600-5743

Development Plan, which constitute the technical roadmap that must be followed by all the Public Administration in Ecuador.

From this constitutional analysis, there are various articles of the Supreme Charter whose content corresponds to the motivation for the development of planning within Ecuadorian territory and which support decision-making in the public administration of local authorities.

And in the infra-constitutional to be in tune with the Fundamental Law we have the Organic Code of Territorial Organization, Autonomy and Decentralization COOTAD published in the Official Register 303 on October 19, 2010 is that legal norm that regulates all the activity of the Decentralized Autonomous Governments GAD; the territorial decentralization of the different levels of governments and the system of competences; the procedures for the calculation and annual distribution of the funds that the GADs will receive from the General State Budget and will set the deadline for the creation of autonomous regions, which at that time, since the creation of the Constitution in 2008, would not exceed eight years, which for this last item has not been complied with this constitutional mandate.

On the other hand, the Organic Code of Planning and Public Finances (COPFP) published in the second supplement of the Official Gazette No. 306 on 22 October 2010. 306 on 22 October 2010 adds the Ecuadorian legal system towards development planning, with the aim of organising, regulating and linking the National Decentralised System of Participatory Planning with the National System of Public Finances, and regulating its functioning at different levels of the public sector, the exercise of planning powers and the exercise of public policy, within the framework of the development regime, the regime of good living, and constitutional guarantees and rights.

In essence, this body of law establishes the guidelines for development, which guide all levels of government in their actions, focusing among other things on contributing to the exercise of the guarantee of citizens' rights, the equitable allocation of public resources and management by results; fostering citizen participation and social control in the formulation of public policy; promoting territorial balance, within the framework of the unity of the State, which recognises the social and environmental function of property; and, through public policy, promoting harmonious coexistence with nature, its recovery and conservation.

Received Febrary 08, 2024/ Approved May 25, 2024 Pages: 79-110
eISSN: 2600-5743

In addition to all this, there is the Organic Law of Territorial Planning, Use and Management of Land (LOOTUGS) and its Regulations, which aim to establish the general principles and rules governing the exercise of the powers of territorial planning, use and management of urban and rural land, and their relationship with others that have a significant impact on the territory or occupy it, so that they can be effectively articulated, promote the equitable and balanced development of the territory and promote the exercise of the right to the city, to a safe and healthy habitat, and to adequate and dignified housing, in compliance with the social and environmental function of property and promoting an inclusive and integrating urban development for the Good Living of people, in accordance with the competencies of the different levels of government.

With the normative, technical and institutional tools of national planning, the decentralised autonomous governments must, under legal mandate (COFP), elaborate and align their Territorial Development and Planning Plans (PDOT).

The (PDOT) is defined as (...)the planning instruments that contain the guidelines of these levels of government with respect to strategic development decisions and that allow for the concerted and articulated management of the territory. They also aim to organise, make compatible and harmonise strategic development decisions regarding human settlements, economic and productive activities and the management of natural resources according to territorial qualities, through the definition of guidelines for the materialisation of the desired territorial model, established by the respective level of government. Its minimum contents will contain a diagnosis, a proposal and a management model.

The elaboration of the (PDOT) is based on the knowledge and analysis of the characteristics of each territory, the interests and needs of its population; it is complemented by the proposal of the elected authorities, contained in their work plan and will contain a Land Use and Management Plan (PUGS), whose technical norm and regulation will be issued by the Technical Council of Land Use and Management.

To operationalise the purpose of the PUGS, the following must be considered: 1) The work plan of the elected authorities. 2) The exclusive competences of the municipality or metropolitan district. 3) Strategies of articulation with other levels of government and civil society actors; and 4) Budgetary viability.

Received Febrary 08, 2024/ Approved May 25, 2024 Pages: 79-110
eISSN: 2600-5743

The Land Use and Management Plan (PUGS) will be made up of the long-term contents that respond to the development objectives and the desired territorial model as established in the municipal or metropolitan development and territorial planning, and the provisions corresponding to other scales of territorial planning, ensuring the best use of the potential of the territory in terms of harmonious, sustainable and sustainable development, based on the determination of the urban-rural structure and the classification of the land. The PUGS will be in force for a period of twelve years, and may be updated at the beginning of each management period.

And from the institutional point of view, under the aforementioned constitutional and legal basis, we have systems and technical infrastructure with the capacity to guide and evaluate the planning processes at the national and local level in Ecuador, based on the creation of the National Decentralised System of Participatory Planning with several entities such as: 1. the National Planning Council; 2. the Technical Secretariat of the System; 3. the Planning Councils of the Decentralised Autonomous Governments; 4. The Sectoral Public Policy Councils of the Executive Function; 5. The National Equality Councils; and, 6. The participatory bodies defined in the Constitution of the Republic and the Law, such as the Citizens' Councils, the Consultative Councils, the participatory bodies of the Decentralised Autonomous Governments and special regimes and others that are created for the exercise of participatory planning; and 7. The Planning and Development Council of the Amazon Special Territorial District.

These legal, technical and institutional instruments are of great relevance in urban management, as they constitute powerful legal and systematic tools at the national and local levels that guide and determine the decision making of those in charge of the public commission in order to materialise the sustainable and sustainable development of the city in balance with the natural heritage, reflected in the effective guarantee of the rights of its inhabitants under the regime of good living.

It is within this constitutional, legal and institutional framework delimited under the "Monjas River" case that the Constitutional Justice has prevailed with its ruling No. 2167-21-EP/22 when it ordered integral reparation to the Metropolitan District Government, which includes the issuing of a "green-blue" ordinance in the municipal normative context.

Received Febrary 08, 2024/ Approved May 25, 2024 Pages: 79-110
eISSN: 2600-5743

Based on the above, and under the legislative power of the sectional governments, the Court ordered the construction of this normative act under the "blue-green" characteristics. According to the Court, this is one of the most effective ways to promote "non-repetition" with the creation of this ordinance, which aims to "establish the principles and rules, taking into account the rights developed in this sentence, so that the Monjas river basin and other similar basins in the Quito canton are restored and treated in an integrated manner".

Seen in this way, the creation of the green-blue ordinance should be an instrument that should "(...) value, respect, protect and restore nature in its interrelations with the city and its inhabitants ("green"), and the conservation and restoration of the sources, training, treatment, supply, design, efficient use and sanitation of water and its ecosystems ("blue")".

In the content of this local regulation, the Autonomous Decentralised Government of Quito conceives the need to create an entity with financial and administrative autonomy under the name of the Metropolitan Directorate, which will be in charge of organising all the processes provided for in this regulatory act. In compliance with the ruling issued by the Constitutional Court and in the exercise of the legislative power held by the Quito Metropolitan Council, it approved the blue-green infrastructure ordinance on 4 July 2023.

Blue-green infrastructure

This term is not new, as a precedent the European Commission in 2013 publicly officialised the European Green Infrastructure Strategy (Green Infrastructure-Enhancing Europe's Natural Capital, European Commission, Brussels, 6.5.2013) with the purpose that Green Infrastructures are taken into account in land use planning at regional, national or local level.

In this document, the European Strategy defines Green Infrastructure as "a strategically planned network of natural and semi-natural areas and other environmental features designed and managed to deliver a wide range of ecosystem services. It includes green spaces (or blue spaces in the case of aquatic ecosystems) and other physical features in terrestrial (natural, rural and urban) and marine areas".

As a tool, Green Infrastructure (GI) contributes to the realisation of not only environmental, but also economic and social benefits from nature itself through healthy ecosystem services that in urban areas

Received Febrary 08, 2024/ Approved May 25, 2024 Pages: 79-110
eISSN: 2600-5743

support the well-being and health of their inhabitants, integrating in a balanced way into spatial planning and territorial development.

Having healthy ecosystems within cities will mitigate the effects of climate change, slow down erosion, reduce the carbon footprint, control flooding, improve air quality, reduce the rise in temperature in urban environments and reduce the "urban heat island" effect.

In addition, Green Infrastructure helps to avoid dependence on infrastructure that is costly to build when nature can often provide cheaper and more durable solutions. In contrast to grey, single-purpose infrastructure, Green Infrastructure brings multiple benefits. It does not constrain territorial development, but promotes natural solutions if they are the best option.

Municipalities in favour of environmental improvement and the habitat of citizens living in the cities they manage, within their management are obliged to rethink the construction and transformation of more resilient cities and in tendency to put architecture in contact with nature "biophilic design", through the implementation of a favourable political, legal and economic framework to promote public policies and regulatory instruments that promote the application of green-blue infrastructure for the benefit of sustainable urban development.

Thus, from the technical and legal point of view, for example, the blue-green infrastructure is defined by the Metropolitan Development and Land Use Plan of the Municipal District, the Land Use and Management Plan of the Metropolitan District, the Organic Law Reforming the Organic Code of the Environment and the Code of Territorial Organisation, Autonomy and Decentralisation.

Green-Blue Ordinance

The issuing of a blue-green ordinance by a local government is considered by the Constitutional Court to be a reparation measure, aimed at rehabilitation and non-repetition in the "Monjas River" case.

Against this background, the local administration considered this normative framework identified as "Metropolitan Ordinance No. 0602023" as one that should value, respect, protect and restore nature and its interrelations with the city and its inhabitants ("green"), and the conservation and restoration of the sources, catchment, treatment,

Received Febrary 08, 2024/ Approved May 25, 2024 Pages: 79-110
eISSN: 2600-5743

supply, design, efficient use and sanitation of water and its ecosystems ("blue").

Likewise, in its content this ordinance gives importance to natural ecosystems, especially related to water, within a city vision in which the Green-Blue Infrastructure is a central component of the planning for shared action between the authorities and the population in accordance with the instruments in force and in adherence to the operational strategies identified in the strategic objectives 2 and 3 of the Metropolitan Development and Land Use Plan 2021-2023.

The explanatory memorandum provides a technical rationale for the creation of the ordinance, which in summary details Quito as one of the geographic areas of Ecuador that contains the greatest variety of ecosystems and organisms. Its important biodiversity maintains complex life support systems that have been the basis for the development of human populations for thousands of years. Human settlements have been located in areas as disparate as the lowlands and quality of the northwest or the cold of the paramos, which has allowed the emergence of diverse cultures. In recent decades, population growth has led to the expansion of the urban sprawl and an increase in land use changes for urbanisation, agriculture and/or natural resource extraction.

In terms of content, the ordinance begins by detailing the Blue-Green System as general considerations of this, its infrastructure from the organisation, planning, integrated management (management and regulation of the blue-green infrastructure; management of slopes, rivers, streams and slopes; management of vegetation cover; sustainable urban drainage systems; risk management), the organisation, planning, integrated management (management and regulation of the blue-green infrastructure; management of slopes, rivers, streams and slopes; management of vegetation cover; management of sustainable urban drainage systems; risk management), the institutional framework of the Blue-Green System; citizen participation; training, promotion and dissemination of the Blue-Green System; financing and incentives of the Blue-Green System; the sanctioning regime (infractions, fines, mitigating and aggravating circumstances); general, transitory, reformatory, derogatory and final provisions.

In short, the Blue-Green Infrastructure will be articulated in a Blue-Green System, which in its context the ordinance indicates:

Received Febrary 08, 2024/ Approved May 25, 2024 Pages: 79-110
eISSN: 2600-5743

Article 6. The Blue Green System. - The Blue Green System allows the coordination, articulation and integration of the actions of the municipal institutions of the district with the citizenry, through local policies, planning and management instruments, programmes, projects and norms, which aim at the comprehensive management of the blue green infrastructure of the Metropolitan District of Quito.

Article 7. Blue-Green Infrastructure. - The Blue-Green Infrastructure of the Metropolitan District of Quito is a living, functional and biodiverse structure, organised as a multi-scale network, with all the natural, semi-natural and built, terrestrial and aquatic spaces that make up the landscape. Managed to ensure the provision of ecosystem services that increase the resilience of the District's population to climate change, reducing the risk of disasters due to hydro-meteorological phenomena and mass movements; and to provide opportunities for environmental, social and economic benefits to the inhabitants, both at rural and urban levels.

The green matrix is composed of corridors and elements such as protected areas; protective forests; sustainable production areas; green spaces found in public and private spaces; parks; squares; buildings; heritage trees; and green corridors; streams, stream territory, micro-watersheds, reservoirs, water sources, wetlands, and geographical features at high non-mitigable risk.

Green elements and corridors may be established between public, private and community owned areas.

The blue matrix comprises those natural and built components at the landscape and city scale, such as rivers, streams, lakes, estuaries and wetlands, as well as other elements designed to capture and infiltrate rainwater, such as Sustainable Urban Drainage Systems.

The Green-Blue Infrastructure will be managed at three territorial scales: urban, urban-rural and rural, which will be determined in the corresponding technical norm, and will be in accordance with the Metropolitan Development and Land Use Plan and the Land Use and Management Plan.

Environmental responsibility and competences of the Municipal governments

In any State governed by a Constitution (Larrea, 2019, pp. 5,6), which establishes a representative and republican government, all those who

Received Febrary 08, 2024/ Approved May 25, 2024 Pages: 79-110
eISSN: 2600-5743

exercise public functions are accountable for their actions. In view of this, all officials must faithfully comply with the positive rules of the legal system and in the case of transgression or omission of their obligations, responsibility arises, which implicitly carries the correlative sanction whether in the sphere of Administrative, Constitutional or Criminal Public Law or even in the Political sphere when it is a dignitary.

In the same vein, the author cites (Bielsa, 1961, p. 281) when he states that "The legal basis of liability lies in the violation of a legal duty, and as the legal duty only exists for imputable subjects; and the civil servant is one, it follows that his liability is based on the aforementioned principle.

At this point, we highlight the strict liability for environmental damage, constitutionally recognised in Ecuador, which specifies the obligation to restore ecosystems, to abide by sanctions that require full reparation and even the power of the State to take legal action against public servants who, within their functions, by action or omission, cause the damage. In the same sense, the Organic Environmental Code urges public administrations to govern their activities according to environmental principles, highlighting that "the polluter pays".

Due to the facts analysed, for the case at hand, although the sectional public administration claimed to have carried out several studies to address the problem of the "Monjas River", which evidences the diligent role of its authorities, it was not enough. As the Constitutional Court states "(...) The scope of the rights does not depend on the capacity of the municipal authorities to execute their competences to guarantee them", but on their effectiveness and efficiency in the results that demonstrate the guarantee of rights.

The plaintiffs in the constitutional guarantee of extraordinary action of protection presented before the Constitutional Court and from which the content of Ruling No.2167-21-EP/22 "el río Monjas" originated, alleged:

"(...) that the technical studies and planning have remained mere documents and mere proposals that have not been executed by the authorities. That is to say, those studies, far from becoming a supposed protection of constitutional rights, in practice are proof of such a violation, since they precisely establish the serious level of contamination that exists in the area due to the municipality's own irresponsibility in the management of wastewater, as well as the urgent

Received Febrary 08, 2024/ Approved May 25, 2024 Pages: 79-110
eISSN: 2600-5743

need to take definitive measures in accordance with the magnitude of the problem and the damage caused (...).

In this sense, the responsibility of the municipal governments cannot be evaded; due to their competencies, the entities that make up the local autonomous regime in their management must establish, among their prevention and control activities, effective mechanisms to protect the environment and care for the water basins. In the development of activities generated by the sectional administrations, their actions or omissions will have repercussions on the enjoyment, enjoyment or violation of the rights of the inhabitants living in the cities.

Therefore, the State, through its different levels of government and public institutional infrastructure, including the local regime, has the duty to protect the environment, nature, water basins and their inhabitants, which corresponds to sustainable development and the right to the city.

In the search for a synthesis between environment and development, for an adequate (cyclical) management of resources and greater governance of conflicts, what we now call sustainable development is placed, which for cities is a development capable of sustaining their growth with more homeostatic models of resource use, compatible with more and more human qualities of life for all inhabitants (ECLAC & United Nations, 2022, p. 55).

Sustainability, as stated by (Grijalva, 2023, p. 46) refers to the intergenerational continuity of resources, and it is here that the Constitution enriches the concept by relating it to good living, which includes not only such continuity but also a balanced relationship between human beings and nature.

In this context, the role of local governments and their responsibility in the materialisation of rights to the city and to nature is fundamental, as the proximity they maintain with their inhabitants and the urban environment they administer allows them to know their needs up close.

And in terms of guaranteeing under their governance the so-called rights of good living, in which the right of people to live in a healthy, ecologically balanced and pollution-free environment is immersed, the municipalities under their tutelage have the constitutional decentralisation of the competence of environmental management, which allows them to concurrently establish the appropriate policies

Received Febrary 08, 2024/ Approved May 25, 2024 Pages: 79-110
eISSN: 2600-5743

and means to comply with the constitutional and legal mandates for the well-being of the community and of nature as a whole.

Materials and Methods

The methodological approach is qualitative and focuses on a case analysis design based on the theoretical and legal aspects of the right to the city and the rights of nature. It is necessary to analyse the right to the city in its entirety, as it derives from it the protection of various rights, including the rights of nature and others that are linked to the environment.

Theoretical methods applicable to the qualitative model are: the historical, analytical, case study and hermeneutic methods.

The historical approach is based on the exhaustive description of the characteristics of the phenomena that have attracted attention in the content and analysis of the case under review, as well as the reality of public management in the materialisation of the development of its competences, observing the legal-constitutional evolution that sustains good living and the guarantee of its rights.

From the data obtained in the historical context, through the analytical method from the particular to the general, the cause-effect of the phenomena are examined in order to answer research questions that allow the development of solid proposals that strengthen local authorities in the construction of the right to the city.

The hermeneutic method focuses on the study and critical analysis of the legal, constitutional, legal and regulatory norms that regulate the materialisation of the right to the city and rights of nature. It also examines the constitutional jurisprudence in which the highest body of constitutional control recognises the violation of the right to the city and the right to nature and orders its reparation.

Results

The research, in correspondence with the formulated objectives, provides theoretical, normative and methodological foundations that shape the right to the city and the rights of nature, superimposing the

Received Febrary 08, 2024/ Approved May 25, 2024 Pages: 79-110
eISSN: 2600-5743

importance of the role of local governments in the guarantee of rights and the responsibility of public management with the fulfilment of constitutional and legal precepts aimed at contributing to the effectiveness of the so-called principle of good public administration in favour of cities, citizens and nature.

In the development of this work, it has become pertinent to question the following:

How can Constitutional Jurisprudence be considered a tool of legal hermeneutics, which imposes local governments to comply with the legal system in order to guarantee rights, including the right to the city and the right to nature?

How does effective public management, based on responsibility, ethics and legality, transcend decision-making in the development of its competencies for the benefit of the city, citizens and nature?

Conclusions

Right to the City and Rights of Nature are intrinsically related and are also considered human rights. People need nature for our existence and nature needs us to protect, conserve and care for it.

The ecological declaration of the human right to a healthy environment in which people want to live is connected with that of cities under this same quality because of their interdependence. Therefore, their practical economic, social, cultural and environmental function in the city must be made effective.

There are various constitutional, legal, technical and institutional instruments available to us for the exercise of the right to the city and the rights of nature, aimed at building the city we want to live in. It is therefore inconceivable that having a Supreme Norm guaranteeing the rights of people, the city and nature, a legal system and instruments that guide public action in favour of guaranteeing the good life, the results are contrary to what is proclaimed.

The municipal mandate must be implemented under the vision of an urban-ecological local government in which, with the technical application of its planning instruments, human beings and nature can coexist in balance in their environment, under a resilient and just city transformation approach that takes into account the rights of its inhabitants.

Received Febrary 08, 2024/ Approved May 25, 2024 Pages: 79-110
eISSN: 2600-5743

This reality must be reflected in the effective management of the dignitaries in local administrations, who have a fundamental role in the exercise of guaranteeing the rights of the city and of nature, and who must be subject to mechanisms of responsibility and sanctions from the political, administrative, civil or criminal point of view for the non-fulfilment of their duties focused on the service to the community and the environment. In this way, public power would be limited by the Constitution and the law.

It is also everyone's responsibility to take care of the cities where we live and where we wish to live in harmony with nature, which is why the protagonism and participation of civil society is imperative, because in this way the rights of citizens and nature become a link for the State, if they are not respected or are not fulfilled, the citizen and nature have the means available for constitutional justice to act expeditiously.

And although the Constitutional Justice in the last four years has had real protagonism in its jurisprudence regarding the right to the city and the rights of nature, referring to the "Monjas River" case, in its ruling, with the aim of rehabilitating and not repeating these events, it ordered the Municipality of Quito to issue a Green-Blue ordinance as a reparation measure, which as a normative act is an instrument of prevention that in its structure contributes to the achievement of ecological, social and economic benefits through procedures based on nature. In time and space it will be necessary to evaluate the effectiveness of this ordinance as a true instrument of redress that seeks to restore both ecological balance and social justice in urban contexts and not to create bureaucratic departments that waste the local budget without results.

Prior to the creation of the ordinance, the Constitution and the Law stress that Municipalities have concurrently the obligation to "regulate, prevent and control environmental pollution (...)" and have the competence to 1.)" and have the competence to 1) care for the streams and watersheds within their territory, and 2) to ensure water sanitation and stormwater treatment; i.e. within their executive and management they have the autonomy to make decisions on their intervention in the implementation of concrete public policies that improve the integration of the right to the city and the rights of nature in urban planning, including provisions to strengthen the implementation of the Green-Blue ordinance as an effective redress

Received Febrary 08, 2024/ Approved May 25, 2024 Pages: 79-110
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mechanism in the promotion of an urban environment in harmony with the environment.

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