

A NEW FORM OF ENVIRONMENTAL JUSTICE? THE ENVIRONMENT'S EVOLVING STATUS AS A RIGHTS-BEARING ENTITY¹

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The notion of environmental justice has been developed over the last several decades and has been at the heart of a discernable confluence of the international human rights and environmental fields. Interestingly enough, environmental justice as it has come to be understood does not focus on the protection of or “justice” for the environment itself, as its name might suggest, but rather on the “fair treatment for people of all races, cultures, and incomes, regarding the development of environmental laws, regulations and policies.”² Thus it signifies the involvement of marginalized and often vulnerable groups such as women, children and minorities in the law-making process with respect to the environment, ensuring their full participation and access to information and, as a result, their protection. This is an *anthrocentric*, rather than an *ecocentric*, approach to environmental protection; protection of the environment *per se* is secondary to the protection of humans.

However, what if there was a shift in what the term environmental justice could, or probably should, mean, toward protection of the environment for its own sake? What would “justice” for the environment look like if human harm was not a necessary factor to seek restitution? These questions may now be more relevant than previously anticipated in light of the September 2008 passage of the Ecuadorian Constitution, which recognized the environment as an independent bearer of rights and with it the guarantee of its protection without the need to prove human harm. This makes Ecuador the first country in the world to elevate the rights of the environment to this status.³ Does this suggest an evolution toward a literal definition of “environmental justice” as “justice for the environment?”

The language of the Ecuadorian law recognizes the rights of the environment in a manner similar to the recognition of the rights of humans in international human rights treaties. But does the environment deserve such an elevated status? Both history and reality suggest that it does. Generally, environmental destruction does not adversely impact humans alone – the species that live in the underlying ecosystem are also directly affected. It is axiomatic that humans need a sustained environment in order to survive, and the world's ecosystems are extremely delicate. Consequently, detriment to humans tends to track the degree of environmental degradation closely. But unlike the human rights field, the environmental legal field does not have established mechanisms in the form of courts, commissions and other adjudicating bodies to enforce such rights.

This paper examines the historical development of the fields of international environmental law and human rights law, analyzing whether the human rights discourse

¹ This analysis is an excerpt from a larger study in the process of being researched and written by the author and is by no means exhaustive. The larger piece discusses the elements of author's arguments in more detail and covers other issues in which there is not the space to do here. The author anticipates that the larger study will be available by the end of 2009.

² This is the United States Environmental Protection Agency's definition of environmental justice. [United States Environmental Protection Agency](http://www.library.uiuc.edu/envi/envirjust.htm). 15 March 2009. <<http://www.library.uiuc.edu/envi/envirjust.htm>>.

³ Similar legislation has been passed in Pennsylvania, Virginia and New Hampshire, but this is only at the state, not country, level. This is discussed in the larger study.

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should be looked to in order to inform the development of “rights of” and “justice for” the environment. In addition, the changing role of the environment in these conventions is analyzed. The paper then considers what the Constitution of Ecuador indicates or represents with respect to this field: is it a step toward universal recognition of the environment as a rights-bearing entity (and more important, a bearer of rights just because it exists – its enforcement not dependent upon demonstrating a negative effect on humans)? Finally, the paper analyzes whether an international legal framework similar to that of the human rights field, including its enforcement mechanisms, should be developed to ensure full enjoyment of the rights of the environment, or whether domestic state action will continue to be the only viable option.⁴

Evolution of Environmental Law

It is only over the last century that international environmental law has truly taken shape. Prior to 1900, there were few environmental treaties or agreements. It was not until after the 1960s, and in particular the United Nations Conference on the Human Environment in Stockholm, Sweden, in 1972 (which led to the creation of the United Nations Environment Programme), that the modern international environmental law era was born.⁵ This does not suggest that no other agreements⁶ existed prior to this, or that customary international norms as they relate to the environment were not forming.⁷ But this is the point at which a proliferation of international legal instruments, both binding and non-binding, were signed and codified. The scope and language of these documents represented a shift in regulating environmental harm, from a trans-boundary and resource protection issue (usually to protect the states’ interests) to one that established protection of the environment, wildlife, species and ecosystems (all entities that were the property of no one but were to be shared among everyone – what has come to be known as the “global commons”) as its primary focus. Several socioeconomic and political factors such as the threat of nuclear war and destruction of flora and fauna during the Vietnam War, and a growing realization that issues such as global warming, over-fishing, and water pollution needed to be actively addressed, all greatly contributed to the growing number of international environmental treaties. Moreover, the notion that protection of natural resources for future generations was ethically and morally necessary was established. The plea of developing nations that could not economically flourish and at the same time meet their obligations to protect global and natural resources that lay within their borders led to the concept of sustainable development.

Thus, international aspirational documents such as the Rio Declaration, which created principles that realized that rich and poor nations have different responsibilities (the burden

⁴ This paper does not have the space to discuss the relationship between the environment and human development, in particular the notion of sustainable development, although the larger study does examine this. It is important to note that in this current framework the environment is considered in light of human development priorities.

⁵ “The Evolution of International Environmental Governance.” National Resources Defense Council. 28 January 2009 <<http://www.nrdc.org/international/fgovernance.asp>>.

⁶ For instance, see the 1902 Convention for the Protection of Birds Useful to Agriculture, the 1916 Convention for the Protection of Migratory Birds in the United States and Canada, the 1933 London Convention on Preservation of Fauna and Flora in their Natural State, the 1940 Washington Convention on Nature Protection and Wild Life Preservation.

⁷ See the Trail Smelter Arbitration in which the Arbitral Tribunal confirmed the principle that a state is responsible for environmental damage caused to another country due to actions within its borders. See “Reports of International Arbitral Awards: Trail smelter case (United States, Canada).” United Nations. 16 April 1938 and 11 March 1941, Volume III pp. 1905-1982 (2006), last visited 15 March 2009. <http://untreaty.un.org/cod/riaa/cases/vol_III/1905-1982.pdf>; or see “1937 Trail Smelter Case” <<http://www1.american.edu/TED/TRAIL.HTM>>.

should be on the developed nations) when it comes to development but this should be done in a way that is sustainable, and legally binding documents such as the Convention on Biological Diversity, the Law of the Sea (which focuses on the notion of protecting a global commons, the world's oceans) and the Convention on Migratory Species, to name just a few, were created. Today, there are over 1,000 treaties concerning protection of the environment,⁸ and this does not include domestic or regional agreements. This brief history illustrates the rate and vigor of the evolution of international environmental law. However, enforcement of these treaties has proven difficult, and many of them are disparate and piecemeal in their application. There is no environmental world court or other similar mechanisms.

Evolution of International Human Rights Law

Concurrently, the legal framework surrounding international human rights law was also rapidly developing through numerous international treaties, customary norms and standards, and national legislation and various state practices. The horrors of the Second World War and the Holocaust served as the impetus for strengthening the protection and rights of civilians, whether in times of war or peace. The “International Bill of Rights”⁹—which refers to the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights (ICESCR),¹⁰ and the International Covenant on Civil and Political Rights (ICCPR)¹¹ and its Optional Protocols—established standards, principles and norms of international human rights such as the right to life, liberty and security, and the right not to be tortured,¹² and affirmed the duty of states to provide victims with a remedy when these rights were violated.¹³ The regional institutions such as the European Court of Human Rights and the Inter-American Court of Human Rights have further deepened these rights, solidifying the legal duties of states and setting precedents in the law.¹⁴ The most recent milestone in the field of international human rights law has been the creation of the

⁸ “The Evolution of International Environmental Governance.” Op. cit.

⁹ See “Fact Sheet No. 2 (Rev.1), The International Bill of Human Rights,” United Nations Office of the High Commissioner for Human Rights, 28 January 2009. <<http://www.unhchr.ch/html/menu6/2/fs2.htm>>. This is the basis upon which the international human rights framework has been constructed, and these covenants enjoy almost universal ratification.

¹⁰ International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI), 21 U.N.GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force Jan. 3, 1976.

¹¹ International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976.

¹² See Articles 3, 5 & 8 of the Universal Declaration of Human Rights. The Universal Declaration of Human Rights was adopted by United Nations General Assembly Resolution A/RES/217 (10 December 1948), last viewed 23 January 2009. <<http://www.un.org/Overview/rights.html>>.

¹³ The Human Rights Committee, the main interpreting body of the ICCPR, which is binding in nature, has identified specific types of remedies, such as the obligation to effectively investigate the facts of human rights violations under the Covenant, to bring to justice persons found to be responsible for such violations and to pay compensation to the victim(s) or to his (her) family. See for instance *Guillermo Ignacio Dermig Barbato and Hugo Haroldo Dermig Barbato v. Uruguay*, Communication No. 84/1981. The Human Rights Committee was of the view that the State Party was under an obligation to take effective steps to establish the facts of the death, to bring to justice any persons found to be responsible for the death and to pay appropriate compensation to the family. See also *Elena Quinteros Almeida and Maria del Carmen Almeida de Quinteros v. Uruguay*, Communication No. 107/1981; *John Khemraadi Baboeram et al. v. Suriname*, Communication No. 146/1983 and 148-154/1983.

¹⁴ The Inter-American Court's judgment in the *Velásquez-Rodríguez* case, which is considered a landmark decision in the area of state responsibility for human rights, found that all states have four fundamental, or minimal, obligations in the area of human rights: to take reasonable steps to prevent human rights violations; to conduct a serious investigation of violations when they occur; to impose suitable sanctions on those responsible for the violations; and to ensure reparation for the victims of the violations. *Velásquez-Rodríguez* case, Inter American Court of Human Rights, 29 July 1988, Series C No. 4.

International Criminal Court (ICC), which assigns individual criminal responsibility for war crimes, crimes against humanity and genocide.¹⁵ It has also been dubbed the court of last resort, as it will only step in when a country is unwilling or unable to prosecute individuals who committed crimes under its jurisdiction.

The Relationship between International Environmental Law and Human Rights

It is clear that the international environmental and human rights fields have grown substantially over the last half century. Ostensibly disparate, they are inextricably linked in many ways. Although the Universal Declaration and the Covenants do not mention environmental protection being important for a human being's full enjoyment of his or her rights, a number of later human rights and humanitarian treaties make direct reference to it. For example, Article 11 of the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights states that "everyone shall have the right to live in a healthy environment...States Parties shall promote the protection, preservation, and improvement of the environment";¹⁶ and Article 24 of the African Charter declares that "all peoples shall have the right to a general satisfactory environment favorable to their development."¹⁷ Environmental treaties have also begun to refer to human rights, such as the Stockholm Declaration (although non-binding in nature), which states that "both aspects of man's environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights, the right to life itself."¹⁸

These fields intersect when human rights are violated because of environmental destruction, in particular in times of war.¹⁹ For instance, severe and widespread environmental destruction is among the gravest of human rights abuses and can violate the most basic human right (one from which there may be no derogation): the right to life. Such severe destruction of the environment does not allow humans full enjoyment of their rights and their quality of life is compromised. There are a number of human rights mechanisms that deal with these human rights abuses,²⁰ but what about the rights of the environment that were also violated? Although there is no comprehensive treaty that discusses violations of environmental rights, there has been somewhat of an evolution with respect to environmental

¹⁵ See Article 5 of the Rome Statute of the ICC. "The Rome Statute of the International Criminal Court." The International Criminal Court. 16 March 2009. <http://www.icc-cpi.int/NR/rdonlyres/EA9AEFF7-5752-4F84-BE94-0A655EB30E16/0/Rome_Statute_English.pdf>.

¹⁶ "Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights, 'Protocol of San Salvador,' " adopted November 17, 1988, OAS Treaty Series No. 69, Multilateral Treaties, Organization of American States. Department of International Law. Washington, D.C. Last visited 23 March 2009. <<http://www.oas.org/juridico/English/treaties/a-52.html>>.

¹⁷ "African [Banjul] Charter on Human and Peoples' Rights," adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force Oct. 21, 1986. University of Minnesota. Last visited 31 January 2009. <<http://www1.umn.edu/humanrts/instreet/z1afchar.htm>>.

¹⁸ "Declaration of the United Nations Conference on the Human Environment (16 June 1972)." United Nations Environment Programme. Last visited 25 March 2009. <<http://www.unep.org/Documents.Multilingual/Default.asp?DocumentID=97&ArticleID=1503>>.

¹⁹ Although not discussed in this paper, but in the larger version, an important element to note is that countries without basic human rights cannot generally afford environmental protection, and usually will commit human rights abuses to continue to destroy the environment, especially for natural resources which carry with them a great deal of wealth. For example, Ken Saro-Wiwa of Nigeria and eight other activists were hung for raising concerns about environmental destruction caused by the Royal Dutch Petroleum company in drilling for oil. For more information see <http://www.remembersarowiwa.com/>.

²⁰ For instance the Inter-American Court of Human Rights, the European Court of Human Rights, the Human Rights Commission, the ICC, etc.

protection and environmental crimes, and in particular recognition that the environment can be the sole object of a war crime. However, since the international environmental framework does not provide for enforcement mechanisms to adjudicate these crimes, the international human rights framework has had to be used.²¹

The development of the definition of war crimes is an important step in an ecocentric approach to environmental protection. Environmental destruction in wartime was almost the norm, and it was not the concern of the international community unless it harmed human beings.²² It was not until the Vietnam War that military attacks that damaged the non-human environment were criminalized. For instance, Article 55 of Protocol I to the Geneva Conventions of 1949, Protection of the Natural Environment, states that “care shall be taken in warfare to protect the natural environment against widespread, long-term and severe damage. This protection includes a prohibition of the use of methods or means of warfare which are intended or may be expected to cause such damage to the natural environment and thereby to prejudice the health or survival of the population.”²³ Although not binding, Principle 24 of the Rio Declaration affirms this, stating that “warfare is inherently destructive of sustainable development. States shall therefore respect international law providing protection for the environment in times of armed conflict and cooperate in its further development, as necessary.”²⁴ While the Optional Protocol is an important step in addressing destruction of the environment, countering unnecessary harm caused to the human population is still the objective. Moreover, Article 55 is not considered a “grave breach” under the Convention,²⁵ and these agreements impose state responsibility, which many states do not enforce.

However, the ICC has taken a huge step forward in holding individuals criminally responsible for the conduct of crimes against the environment. The Rome Statute of the ICC defines a war crime to include “intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated” (Article 8[2] [b] [iv]). This text is groundbreaking in that it assigns direct individual criminal responsibility for crimes against the environment. The “or” in the text is important to note since no direct harm to the environment AND humans must be found. This adjudicating body is the first example of an institution that guarantees environmental protection and assumes a truly ecocentric approach. Furthermore, the ICC is considered a court of last resort and steps in if the country is unwilling or unable to prosecute the individual, thereby insuring that non-state action is not an option.

²¹ Atapattu, Sumudu. “The Right to a Healthy Life or the Right to Die Polluted?: The Emergence of a Human Right to a Healthy Environment Under International Law.” *Tulane Environmental Law Journal* Vol. 16 (Winter 2002): 65-126.

²² Lawrence, Jessica C., and Kevin Jon Heller. “The First Ecocentric Environmental War Crime: The Limits of Article 8(2)(b)(iv) of the Rome Statute.” *Georgetown International Environmental Law Review* Vol 20 (Fall 2007): 61-95.

²³ “Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol 1),” adopted on 8 June 1977 by the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts; entered into force 7 December 1979. [United Nations Office of the High Commissioner for Human Rights](http://www.unhcr.ch/html/menu3/b/93.htm). Last visited 23 March 2009. <<http://www.unhcr.ch/html/menu3/b/93.htm>>.

²⁴ “Rio Declaration on Environment and Development (1992).” [United Nations Environment Programme](http://www.unep.org/Documents.multilingual/Default.asp?DocumentID=78&ArticleID=1163). Last visited 25 March 2009. <<http://www.unep.org/Documents.multilingual/Default.asp?DocumentID=78&ArticleID=1163>>.

²⁵ Violations of Article 53 of the 4th Geneva Convention are considered grave breaches.

There are some limitations to the statute's application, however. It states that the attack must be "widespread, long-term and severe." The "and" in this phrase suggests that the attack must meet all three of these requirements to be considered a war crime, and the definitions as to what these words mean are unclear. In addition, there is a high standard of proof in order to convict a defendant by demonstrating that, with scientific certainty, the attack would cause long-term effects, and that the harm was inflicted intentionally and with the knowledge that the attack would create such damage. Furthermore, the definition of the crime states that these are "other serious violations of the laws and customs applicable in international armed conflict," which means that the conflict must be international in character, and therefore attacks during intrastate conflict do not apply. This is hugely problematic when the majority of conflicts today are fought within a state's borders. Finally, the ICC has limitations with respect to both personal jurisdiction (only individuals, not states, corporations or institutions may be found culpable) and temporal jurisdiction (only crimes committed after July 1, 2002, are eligible for prosecution).

The Next Step in the Evolutionary Process: Ecuador and the Rights of Nature

As is demonstrated by the paragraphs above, the human rights discourse arguably has given international environmental advocates the framework to develop the "rights of" or "justice for" the environment. At the very least, it has provided mechanisms by which to prosecute environmental crimes. While the recent development with respect to war crimes in the ICC statute has been an extremely important milestone in environmental protection, there is much more to be done in this regard. Utilization of the international human rights field has been extremely valuable for the development of environmental rights and the advancement of environmental protection, but international human rights instruments will never shift their application to apply primarily to nature or the species that live within the various ecosystems. Humans will continue (and rightly so) to be the primary objectives and beneficiaries of these rights. It is therefore clear that in order to truly change the discourse surrounding environmental protection, there needs to be a shift in viewing the environment as primarily a resource for human development; the international community needs to begin thinking of the environment as an entity that has inalienable rights. This may be slowly becoming a reality.

For the first time in history, a law has been passed that recognizes the environment as the sole bearer of rights – there is no anthropogenic component whatsoever. In September of 2008, the government of Ecuador ratified its new Constitution. Approved by a large popular majority, the progressive document contains comprehensive rights and duties of the new government, including the right to water, the right to a healthy environment and the right to information.²⁶ Most important, the Constitution's text includes a "Rights of Nature" chapter under the "Rights" section. By including this right in the comprehensive rights section, the government of Ecuador effectively recognizes the right of nature as being on par with human rights. These rights have equal standing before the law. Specifically, Articles 71 through 74 of Chapter Seven deal with this issue. Article 71 is the most basic application of these rights and states:

²⁶ For the entire text of the Constitution see: <http://pdba.georgetown.edu/Constitutions/Ecuador/ecuador08.html>. "Republic of Ecuador, Constitution of 2008." Edmund A. Walsh School of Foreign Service: Center for Latin American Studies. Georgetown University. Political database of the Americas. 27 March 2009.

Nature or Pachamama,²⁷ where life is reproduced and exists, has the right to exist, persist, maintain and regenerate its vital cycles, structure, functions and its processes in evolution. Every person, people, community or nationality, will be able to demand the recognition of rights for nature before the public bodies. The application and interpretation of these rights will follow the related principles established in the Constitution.

The choice of language is extremely important for many reasons. First, it suggests a positive, rather than a negative, rights-based approach to protection of the environment. The Article states that nature has the *right to exist*, signifying that it is the primary object of the right – a rights-bearing entity. Harm to the environment does not have to occur before it becomes an issue – the state of Ecuador is now indicating that *proactive* rather than *reactive* care should be taken in protecting the environment. Second, the Article states that nature has the right to exist, persist, maintain and regenerate, suggesting that a cyclical approach has been applied: if the environment is destroyed at any part of its “vital cycle,” then it will not enjoy the “rights” of existing, maintaining, persisting and regenerating. Finally, the text allows for individuals or communities, regardless of their nationality, to bring a case before Ecuador’s public bodies. This provides for a form of recourse and a mechanism by which nationals (*and* non-nationals) can bring a case. Thus, like the ICC, protection of the environment has been codified in juridical tools. But unlike the ICC, the scope of its protection is not limited to war crimes and conflicts of an international character, the threshold of severe, widespread and long-term does not have to be met, and most important, this protection should occur in times of conflict and in peace.

It is also interesting that Ecuador is the first country in the world to codify this right at the national level. The country contains some of the world’s most diverse and rich natural ecosystems, including the Galapagos Islands and the Amazon rainforest. It is also in the middle of a billion-dollar lawsuit in which 30,000 Ecuadorians have accused Chevron, formerly Texaco, of dumping more than 18 billion gallons of toxic materials into unlined pits and rivers from 1972 to 1992, causing irreparable damage to the local rainforest and increasing the risk of cancer in the population.²⁸ The passage of the new Constitution is therefore also a major step toward ensuring that multinational corporations can no longer enter the country and wantonly pollute the environment without repercussion. The individuals most affected by their activities, generally the local indigenous populations, now have a system of recourse. In addition, harm to the environment is now enough; action can be taken immediately without the necessity of demonstrating that such activities cause human harm. The burden of proof has shifted.

So what does this development indicate? Is this the culmination in an evolutionary process in which the environment will now begin to be considered a universally accepted rights-holder? Or is this simply a law contained within the new Constitution passed by President Rafael Correa’s administration, a new administration that will itself have to overcome its own set of challenges and obstacles? It remains to be seen whether the

²⁷ Pachamama is a goddess revered by indigenous Andean peoples whose name roughly translates into “Earth Mother” or “Mother Earth.” For more information see: “Pachamama.” *Encyclopedia Britannica*. 2009. Encyclopedia Britannica Online. 31 March 2009 <<http://www.britannica.com/EBchecked/topic/437487/Pachamama>>.

²⁸ “Texaco faces \$1bn lawsuit.” BBC News. October 22, 2003. Last visited 31 March 2009. <<http://news.bbc.co.uk/go/pr/fr/-/1/hi/world/americas/3212698.stm>>.

government of Ecuador will or even can truly enforce this right. The law states that a case may be brought before Ecuador's public bodies, but are these bodies able to adjudicate violations of these rights? Do they have the capacity to do so, or will they be bogged down by other pressing matters? If the violator is a multi-national corporation with its own economic interests to promote and deep pockets and time to spare to litigate a lawsuit, the task can be daunting. Furthermore, there is no indication of what the remedy for environmental destruction will be. Will those who bring the case before the country's public bodies be entitled to some form of compensation, whether it be financial or symbolic? How is the environment to be "repaired?" Finally, has Ecuador set a trend in this regard? Will other nations look to it when thinking about how they deal with environmental protection within their own borders? Or is Ecuador's far-seeing action an anomaly?

What is important to note is that a precedent has been set and Ecuador has established a framework. International law is inherently dictated by nations' domestic legislation, and the state is also the basic implementer. However, since vulnerable environmental entities such as the air, water and ecosystem all cross national boundaries, environmental issues do not strictly follow state lines and thus cross-border collaboration and cooperation are necessary. For instance, environmental degradation can spread across Ecuador's borders, affecting Peru and Colombia, and environmental degradation within those countries can affect Ecuador. Therefore, the regional level may in fact be the best level at which to establish an environmental rights treaty. Neighboring countries can work together to enforce these rights. While an international treaty and with it an international regulating body should be the end goal, domestic and by extension regional action may be the most influential and effective.

Conclusion – What Next?

The fields of international human rights and environmental law have been mutually reinforcing in the past, and in many ways the human rights field has given the environmental field the tools and mechanisms with which to effect change. Elevation of the status of the environment was achieved initially by tying damage to the environment to damage to humans, thus providing the necessary justifications for protecting the environment. That approach served its purpose, but the time has come to abandon the difficult necessity of proving a causal nexus. Ecuador has taken the necessary next step, which is to recognize the inherent value of its environment and to protect it accordingly, without reference to coincidental human activity. Its capacity to do so is rooted in its sovereign status to dictate the use, and control the abuse, of the natural environment within its territorial jurisdiction. Other countries should follow suit.

Enough is known about the detrimental effects of environmental damage that the negative impact, including on the human population of an affected area, should now be accepted as given. An international environmental court may never come to fruition, but that may not be necessary. The passage of Ecuador's law of nature may well be the true realization of "environmental justice," because there is no need for a "human component" and hence independent of a "human rights" rationale. However, it may well be both. The most vulnerable and marginalized communities are generally the most affected by environmental degradation. Today, in Ecuador, humans do not have wait until harm is caused, and then assume the heavy burden of proving it, before action may be taken. There is a form of recourse available to all individuals, thus allowing everyone the ability to participate in the process. The paradigm shift in thinking about the environment that has occurred there may have much larger

repercussions in other national contexts than originally anticipated.

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