



**THE RIGHTS OF NATURE:  
RESTRUCTURING SOCIETIES TO  
STABILIZE THE ENVIRONMENT IN  
RESPONSE TO CORPORATE ABUSE**

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## **Executive Summary**

“The deepest cause of the present devastation is found in a mode of consciousness that has established a radical discontinuity between the human and other modes of being and the bestowal of all rights on the humans.

All human activities, professions, programs, and institutions must henceforth be judged primarily by the extent to which they inhibit, ignore, or foster a mutually enhancing human/Earth relationship.” –Thomas Berry<sup>i</sup>

Emerging as a response to environmental damage and destruction, the concept of a defense and protection of nature has entered the thoughts of humans around the globe. In 2007, as Ecuador’s Constitutional Assembly was initiating plans to create a new Constitution, environmentalists saw an opportunity to develop legislation protecting the environment. With help from the non-profit organizations the Pachamama Alliance and the Community Environmental Legal Defense Fund (CELDF), Ecuador’s Constitution included a chapter that allows nature to hold rights (“Rights of Nature”). The provision prohibits the interference of ecosystems’ natural cycles and elimination of endangered species, while promoting the mutual relationship between humankind and the Earth.

Despite the innovation and groundbreaking text within the Constitution, the Rights of Nature section is not yet accessible to the public for use in court. Its vague language along with its lack of guidelines implies that there is a long road ahead before the rights could realistically be implemented in Ecuador. Regulations must be established in the Constitution for Rights of Nature to have legal standing, and until then, local governments must take charge and develop their own way to effectively use the Articles.

In developed countries, corporations are given the same rights and protections as people, but do not suffer personal consequences for their negative actions. Developing countries are often the target of corporate exploitation, as they have few regulations and a limited ability to challenge such practices, have significant economic needs, and contain

important natural resources. This situation can translate into major impacts on human and non-human lives, devastating ecosystems and endangering the entire world.

If nature were to have legal rights comparable to those of corporations, corporate exploitation could be reduced and ultimately eliminated. As the first Constitutional provision to promote the legal standing of nature, these Articles are incredibly significant for Ecuador, as well as for the rest of the world. Thousands of advocates have gathered and declared their commitment to spread Rights of Nature, and, as a consequence, are starting to make real global change. In fact, there have already been ordinances implemented in towns throughout the United States that mandate the protection of ecosystems and place limits on corporate power.

After years of environmental destruction in Ecuador's Amazon, particularly the devastation caused by the Texaco Corporation, Rights of Nature will eventually prevent extreme harm from occurring throughout Ecuador's extensive network of ecosystems. With large groups of people promoting the Rights of Nature, this phenomenon is catching on rapidly and spreading to all parts of the globe.

## Introduction

“Science now agrees with indigenous knowledge that the earth is a living system and that our fossil fuel economies are causing irreversible climate chaos putting our own futures at risk.” –Atossa Soltani<sup>ii</sup>

As an absorber of carbon dioxide, the Amazon rainforest is the world's largest natural defense against global warming. Because it produces over 20 percent of the world's oxygen and acts as a “carbon sink,” the Amazon is crucial to the stabilization of the planet.<sup>iii</sup> Therefore, the loss of this natural balancer would undoubtedly increase global warming and have substantial unforeseen impacts.<sup>iv</sup> Not only are its trees useful to the planet, but by preserving the rainforest and harvesting its nuts, fruits, and plants, the Amazon Rainforest would also prove to have more economic value than if it were bulldozed over for industrial purposes.

A Smithsonian scientist coined the term “biodiversity deficit” to explain the concept that today's status is one where ecosystems and species are being terminated at a rate much faster than the Earth can replace.<sup>v</sup> Almost all governments in developed countries are planning a future that promotes aggressive profit-driven investment, resource exploitation, unregulated free trade agreements, privatization, and unlimited growth in every sector. These are unsustainable goals and will undoubtedly drive the planet to its demise.

Aquatic and land animals are diminishing, so much so that scientists have claimed that species extinction is occurring at a rate one thousand times the amount it did before humans existed.<sup>vi</sup> It is estimated that 137 plant, animal and insect species are lost every day because of rainforest deforestation, totaling up to 50,000 species a year.<sup>vii</sup>

Half of the world's tropical forests are depleted, ninety percent of the ocean's big fish are extinct, half of all wetlands on Earth have been destroyed, and eighty percent of

the world's rivers are either diminished or irreversibly polluted. The quantity of wastewater created every year is approximately six times greater than all of the water that exists in the world's rivers. Combined, the amount of sewage, industrial, and agricultural waste that is released into bodies of water equal two million tons, which is equal to the weight of the entire human population on Earth. If our destructive economies continue these patterns, by 2030, global demand for water will exceed supply by 40 percent, and all tropical forests will be devastated by 90 percent.<sup>viii</sup>

This thesis is a reflection and analysis of the way that nature is regarded in today's world. Beginning with a background of Ecuador and the basis for its recently established Constitution, the first part of this paper addresses the idea of prescribing rights to ecosystems and how that notion was generated. This development leads to the justification of Rights of Nature in the legal system and how it could be implemented in Ecuador, as well as globally. Social responsibility of corporations (or lack thereof) are a key element to this paper, as will be demonstrated in the review of how corporations first gained then executed their power. Sited are a few specific examples of corporate negligence in developing countries, particularly the Texaco disaster in Ecuador that partially fueled the development of Ecuador's Rights of Nature clause. The comprehensive concludes with a description of initiatives as well as suggestions for the future of Rights of Nature.

## **Chapter 1: Recognizing the Rights of Nature**

“What is proposed here is a broadening of value, so that nature will cease to be merely “property” and become a common-wealth... recognizing the intrinsic value of every ecobiotic component.” –Holmes Rolston<sup>ix</sup>

### **Ecuador**

Ecuador is home to approximately 14 million residents, 25 percent of whom are indigenous and mostly reside in the depths of the Amazon Rainforest.<sup>x</sup> The indigenous population of Ecuador has emerged as a political unit in the country in the past few decades as demonstrated by the establishment of the Confederation of Indigenous Nationalities of Ecuador (CONAIE) in 1986, which represents the approximately 3.5 million indigenous people of Ecuador.<sup>xi</sup>

Scientists describe Ecuador as a “megadiverse” country because it possesses more species and ecosystems than any other country in the world. Surrounded by two major oceans, Ecuador is blessed with biological diversity within its celebrated Galapagos Islands, high Andes mountains, and incredible Amazon Rainforest.<sup>xii</sup> However, Ecuador now contains more endangered species than any other country (approximately 2,600), due to oil contamination in Ecuador’s Amazon and a variety of environmental effects in the Galapagos.<sup>xiii</sup>

### **Ecuador’s Constitution**

For decades, Ecuador has been under pressure from multi-national corporations seeking to exploit the country’s vast natural resources. Despite the destruction they cause, oil companies have had a large influence on Ecuador in the past because of the revenue they generate for the developing country. Since one third of Ecuadorians live in poverty,

it is nearly impossible to deny the temporary employment and funding that large corporations offer.

Partially as a response to these powers and partially out of a desire for the country to develop, in 2007 the Ecuadorian government began the process of constructing the country's first Constitution. The new Constitution tries to advance the rights and respect of Ecuador in every sector. Through these initiatives, much more power is allocated to the government over areas including, but not limited to, health, education, water supply, energy production, and transportation.<sup>xiv</sup> Among its 444 articles, the social rights section is particularly comprehensive, including child labor laws, mandatory guidelines for medical and education systems, as well as the equal protection of heterosexual and homosexual partnerships.<sup>xv</sup>

Ecuador's new Constitution is so progressive that it has been regarded as one of the "most socially advanced constitutions on the continent."<sup>xvi</sup> Surpassing all of its cutting-edge regulations is a chapter that prescribes rights to nature so that it may regenerate naturally, be protected from destruction, preserve endangered species, and more. After a lot of effort, organization, and publicity, Ecuador's Constitution, and all of its groundbreaking contents, passed by a landslide in September of 2008 by popular vote.

### **“Rights of Nature”**

In almost all countries today, nature is treated as property and whoever owns that land can preserve or destroy it as they please. Developing countries are particularly vulnerable because they contain natural resources but do not have the power to set health

and environmental standards for corporations operating on their soil. These factors are particularly destructive to Ecuador because the country is encompassed with biodiversity and unique environments. Continuing the trend of eliminating Ecuador's ecosystems will not only lead to Ecuador's demise, but also the slow demise of the planet.

Environmental proponents and international organizations developed a strong and effective approach to convince Ecuador's Constitutional Assembly to incorporate ways to preserve Ecuador's environment into the new Constitution. Finally, a bill was proposed that prohibited the eradication of the environment by allowing nature itself to hold rights. Alberto Acosta, then president of the Constitutional Assembly, gave the proposition his full support and encouraged the rest of the Assembly to do the same. Soon enough, the majority of Ecuador was on board for this unique provision.

Despite widespread support for the bill throughout the country and the Assembly, Ecuadorian President Rafael Correa initially did not endorse this bill. There were many news articles circulating that claimed President Correa was adamantly behind Rights of Nature; however, in an interview with Bill Twist, a respected non-profit leader, Twist revealed that Correa was actually very reluctant about Rights of Nature. From his inauguration as President, Correa has had plans to generate money from oil and mining corporations using Ecuador's land and he was fearful that this provision would prevent him from achieving those goals. However, once the public and other government officials identified their full support for the bill, Correa agreed to promote it.

Surprisingly, the indigenous community was also reluctant about Rights of Nature, for they viewed it as the government being arrogant, trying to dominate nature. Once they realized that the chapter would recognize nature's inherent rights (as opposed

to establishing new ones), the indigenous movement CONAIE began supporting it.<sup>xvii</sup> Twist used the term “undoing the abstraction,” meaning changing the current law to be more consistent with how people, and particularly indigenous cultures, view nature and the priority society needs to give it.<sup>xviii</sup>

By using Ecuador’s new bill for nature in a courtroom setting, the damages done to nature would be assessed not by the loss of use for the person or corporation who owned that resource, but by the harm imposed on the environment itself. As a country that has been manipulated and abused by corporations seeking its resources, Ecuador’s Rights of Nature clause does not tolerate the irreparable destruction of ecosystems. Below is the Rights of Nature chapter of Ecuador’s 2008 Constitution.

<p>Title II Fundamental Rights</p> <p>Chapter 1 Entitlement, Application and Interpretation Principles of the Fundamental Rights</p> <p>Art. Rights Entitlement. Persons and people have the fundamental rights guaranteed in this Constitution and in the international human rights instruments.</p> <p>Nature is subject to those rights given by this Constitution and Law.</p> <p>Chapter: Rights for Nature</p> <p>Art. 1. Nature or Pachamama, where life is reproduced and exists, has the right to exist, persist, maintain itself and regenerate its own vital cycles, structure, functions and its evolutionary processes.</p> <p>Any person, people, community or nationality, may demand the observance of the rights of the natural environment before public bodies. The application and interpretation of these rights will follow the related principles established in the Constitution.</p> <p>Art. 2. Nature has the right to be completely restored. This complete restoration is independent of the obligation on natural and juridical persons or the State to compensate people or collective groups that depend on the natural systems.</p> <p>In the cases of severe or permanent environmental impact, including the ones caused by the exploitation of nonrenewable natural resources, the State will</p>
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establish the most efficient mechanisms for the restoration, and will adopt the adequate measures to eliminate or mitigate the harmful environmental consequences.

Art. 3. The State will motivate natural and juridical persons as well as collectives to protect nature; it will promote respect towards all the elements that form an ecosystem.

Art. 4. The State will apply precaution and restriction measures in all the activities that can lead to the extinction of species, the destruction of the ecosystems or the permanent alteration of the natural cycles.

The introduction of organisms and organic and inorganic material that can alter in a definitive way the national genetic heritage is prohibited.

Art. 5. The persons, people, communities and nationalities will have the right to benefit from the environment and form natural wealth that will allow wellbeing.

The environmental services cannot be appropriated; its production, provision, use and exploitation, will be regulated by the State.<sup>xix</sup>

This chapter of the Constitution empowers nature by giving it legal rights in Ecuador. The Articles not only state that nature has the ability to maintain its own life cycles, but it also elaborates that anyone can defend these rights on behalf of nature. The “complete restoration” mentioned in Article 2 is a critical piece that is sure to play out in the future of Ecuador. Because there has already been considerable damage done to ecosystems in Ecuador by resource extraction companies, the enforcement by the State of complete restoration is crucial to the overall stability of Ecuador’s environment. The chapter goes on to explain how Ecuador will continue to encourage the acceptance and respect of nature’s rights, whether that is in Ecuador or beyond. Article 4 addresses an incredibly sensitive concern: the growing number of endangered species. The inclusion of this article is absolutely necessary for the health of Ecuador’s biodiversity. Finally, the chapter closes with a statement that promotes the interconnectedness and mutual relationship between humans and nature.

## **Subsequent Developments**

Ecuador is blessed with an abundance of natural resources that have not yet been developed. For example, Ecuador's oil resources are the third largest in South America, yet an insignificant amount of oil is extracted daily.<sup>xx</sup> Similarly, miners have discovered large deposits of copper, silver and gold, which have yet to profit the developing nation.

President Correa seeks to develop these resources in a way that gives Ecuador more control than it has had in the past. He is determined to provide the Ecuadorian government with more authority and partnership in these endeavors and, in fact, he has abruptly cancelled some existing contracts that he deemed to be unfair. In partnership with Venezuela and Bolivia, a state-owned mining company is being formed to take over some of these sites; this company would be in control of projects extracting everything from cement to gold.<sup>xxi</sup>

To implement these changes, Correa's administration has redrafted Ecuador's mining and petroleum laws to be consistent with the provision in Ecuador's Constitution that declares state control over the country's natural resources, insisting that private miners form partnerships with state companies to fulfill mining projects.<sup>xxii</sup> On January 29<sup>th</sup>, 2009, Ecuador's new mining law was passed. The law includes a 5% royalty payment to be made to Ecuador, which advances Ecuador's control and power over the operations.<sup>xxiii</sup> In addition, the law requires that communities located close to drill sites must be consulted before the projects begin; however, the community's consent is not required.<sup>xxiv</sup>

By implementing a system of “economically responsible mining that pays taxes, respects employees, and involves social and environmental responsibility,” Correa has redirected the control and operations of mining in a way that protects Ecuador while attempting to maintain good relationships with the companies involved.<sup>xxv</sup> Mining advocates say that the new law manages the system more evenly by reinvesting some of the money generated back into communities.<sup>xxvi</sup>

The new law and Correa’s efforts have not been received kindly. Many believe that in his quest to bring new revenues to Ecuador he has not respected the Rights of Nature chapter in the Constitution. Some of the complaints include:

- A significant amount of pollution is expected to occur despite claims by Correa that the Canadian mining firms he is negotiating with use environmentally friendly techniques.
- The mining law will permit large-scale, open pit metal mining throughout the Andes and Amazon.
- The new law does not prohibit industrial mining in areas containing endangered species.
- Dumping heavy metals into natural waterways is not prohibited.

Consequently, protests and outrage continue to be expressed by many citizens, particularly the indigenous people whose land is the target of most mining operations.<sup>xxvii</sup>

Clearly, the promise reflected in the Rights of Nature chapter of the new Constitution has hit some stumbling blocks as President Correa’s resource development initiative is being implemented. As will be discussed further in Chapter 2, recognizing

the Rights of Nature in Ecuador's Constitution was an extraordinarily important accomplishment, but implementing those rights will neither be automatic nor easily achieved.

## Chapter 2: Implementation Process

“The fact is, that each time there is a movement to confer rights onto some new ‘entity’ the proposal is bound to sound odd or frightening or laughable. This is partly because until the right-less thing receives its rights, we cannot see it as anything but a thing for the use of ‘us’—us being, of course, those of us who hold rights.” –Christopher D. Stone<sup>xxviii</sup>

### Legal Standing

Some readers may be thinking that the notion that nature could have rights is inapplicable, for ecosystems cannot defend themselves nor can they recognize the rights

#### Inauguration of Natural Rights

<i>Rights-Holder</i>	<i>Establishment</i>
<i>English Barons</i>	<i>Magna Carta, 1215</i>
<i>American Colonists</i>	<i>Declaration of Independence, 1776</i>
<i>Slaves</i>	<i>Emancipation Proclamation, 1863</i>
<i>Women</i>	<i>Nineteenth Amendment, 1920</i>
<i>Native Americans</i>	<i>Indian Citizenship Act, 1924</i>
<i>Laborers</i>	<i>Fair Labor Act, 1938</i>
<i>Blacks</i>	<i>Civil Rights Act, 1957</i>

of others. Roderick Nash proposes to “identify a minority that is oppressed by denial of its rights.”<sup>xxix</sup> He says by doing so that

you will immediately develop a strong argument for its freedom.

Imagine when slaves were considered property and many white slave owners never thought it would be possible for slaves to gain rights or even personhood. Over time, through mobilization, conflict, policy, and social change, people were able to shift their

way of thinking and slaves eventually became rights-bearing citizens. The same type of paradigm shift can apply in this situation.

Giving legal rights to nature does not mean that the environment will hold all of the rights that people do, as many of them would not be relevant. A specific set of rights would be determined that protect the subject in a relevant way with specific, place-based knowledge.

Although ecosystems cannot go to court to defend themselves, neither can corporations, children, incompetents, or educational institutions: they have representation. And by having legal representation, these people or entities are able to assert their rights and seek justice. The same idea would apply to nature. By

representing nature in defense of an affected ecosystem, justice could be served to the environment that could help repair and restore it.

Many humans believe that the world was created for their disposal—that nature exists as a resource for humankind. Unfortunately, this notion is directly reflected in law, which allows for the depletion of necessary resources at a rate that is impossible to regenerate. As regulations are in most countries around the world, if someone wins a lawsuit regarding

pollution, the plaintiff receives damages, yet nothing goes to the

actual affected environment. Additionally, if someone seeks justice for an abused

ecosystem or species, they do not have legal standing unless they demonstrate a direct

physical harm to themselves. These situations are leaving the environment permanently damaged, eliminating all of its resources and destroying its functionality in communities.

## Players

Two organizations, the Pachamama Alliance and the Community Environmental Legal Defense Fund (CELDF), have been invaluable players in achieving legal rights for nature.

### *The Pachamama Alliance*

*If Justice Douglas has his way  
 O Come not that dreadful day  
 We'll be sued by lakes and hills  
 Seeking a redress of ills  
 Great Mountain peaks of name prestigious  
 Will suddenly become litigious  
 Our brooks will babble in the courts  
 Seeking damages for torts  
 How can I rest beneath a tree  
 If it may soon be suing me?  
 Or enjoy the playful porpoise  
 While it's seeking habeas Corpus?  
 Every beast within his paws  
 Will clutch an order to show cause  
 The Courts besieged on every hand,  
 Will Crowd with suits by chunks of land.  
 Ah! But vengeance will be sweet  
 Since this must be a two-way street.  
 I'll promptly sue my neighbour's tree  
 For shedding all its leaves on me.  
 -John Naff, Esq. (Sierra Club vs. Morton)*

Figure 1: <http://www.australianhumanitiesreview.org/archive/Issue-November-2010/burdon.html>

Established in 1997, the Pachamama Alliance (San Francisco) and its counterpart Fundación Pachamama (Quito, Ecuador) have sought to create a balance between the modern and native worlds. Bill and Lynne Twist founded the organizations with the help of John Perkins, best-selling author and founder of the non-profit organization “Dream Change.” Through forming a partnership with the Achuar, one of Ecuador’s largest indigenous tribes, the organization began a long journey of helping the “Global South” sustain their land and natural way of life, while gaining insights and spreading cultural knowledge and sustainable solutions to the transforming “Global North.”

The Pachamama Alliance has pursued these goals through a variety of venues. First, its on-the-ground work with the Achuar has been critical in the maintenance of the tribe and their land. Providing legal services and consultations to indigenous people promotes education and strength as they fight against encroaching corporations. Training in mapping and land titling helps the communities protect their land and secure their stake over it. As partners in the construction of the Kapawi Ecolodge and Reserve, the organization helped build the tribe a sustainable alternative to being bought out by oil and mining companies. Slowly, the Achuar are learning how to operate and facilitate everything at the 100 percent sustainable Ecolodge, with a plan to make it employed and operated solely by tribe members in the next few years. This initiative is comprehensive in its application and even includes enabling some tribe members to earn their pilot licenses, as the only way to visit their territory is by plane. The Pachamama Alliance has also made possible for a group of Achuar to enroll as university students to earn a degree in eco-tourism management. Soon enough, the tribe will be handling every aspect of this

thriving enterprise, and the goal is for the tribe to gradually lose its reliance and need for the Pachamama Alliance.<sup>xxx</sup>

In return, the organization hosts rainforest journeys where people (primarily from the U.S.) can travel to Ecuador and learn from the Achuar. These trips are meant to enlighten the travelers to the wisdom of the rainforest, while learning first-hand of the devastation that the rainforest has suffered, and acknowledging the need for the Western world to help preserve what ecosystems they have left.

#### *Community Environmental Legal Defense Fund*

Thomas Linzey and Stacey Schmader established CELDF in 1995 operating as a not-for-profit public interest law firm. Based in Pennsylvania, its primary function is to assist communities seeking assistance in asserting their right to a local self-government. These communities are typically seeking justice for their neighborhoods and protection of their environment from industrial corporations who attempt to extract the land's resources.<sup>xxxi</sup>

CELDf has combined the Rights of Nature provision into all of their other ordinances and is concentrated on promoting local laws that recognize the importance of ecosystems within communities, and encourage the enforcement of these rights by the communities themselves. They believe that laws must be passed that restrict property owners from “interfering with the functioning of ecosystems and natural communities that exist and depend upon that property for their existence.”<sup>xxxii</sup>

The organization has dealt with issues including coal and uranium mining, factory farming, hydraulic fracturing, and much more. Actions they take for successful

protection from corporations involve community organizing, educating, and developing legal strategies and ordinances for local governments. By initiating strong, democratic discussions, CELDF has helped approximately 110 communities and over 350,000 people in the northeast United States gain control of their land.

Some of the organization's efforts have been criticized because they have made efforts to target individual corporations. This strategy is due to the fact that they are given cases by communities who are fighting against specific corporations. Lawrence Mitchell, author of Corporate Irresponsibility, believes that "activists' energy would be better spent on reforming state laws to make corporations more accountable."<sup>xxxiii</sup> Nonetheless, CELDF has made incredible progress prioritizing ecosystems and their neighboring communities in the United States.

#### *Drafting the Provision*

Once the Pachamama Alliance began to work with Ecuador on drafting its new Constitution, they invited CELDF to get involved and provide insight for the Rights of Nature Articles. CELDF's practical experience in writing ordinances to promote the rights of ecosystems in the U.S. provided a substantial and knowledgeable base for the Articles. Most importantly, both organizations pushed the idea that the country should preserve its natural resources in order to sustain the progress of the country and its biologically diverse land. Members of CELDF were concerned whether the Ecuadorian Constitutional Assembly would be receptive to a provision that would recognize the environment's rights. To their surprise, Alberto Acosta, who, in addition to being the President of the Constitutional Assembly is the former minister of energy, immediately

shared his view that nature was treated like a slave and must be protected. This similar perspective made the Pachamama Alliance and CELDF's job much more constructive, as they could get past the "why" and focus on the "how."<sup>xxxiv</sup>

### **Implementation in Ecuador**

In 1966, the Endangered Species Protection Act (ESPA) was passed in the United States in an effort to preserve the country's wildlife. The Act sought to protect native vertebrates and promote America's wildlife refuges. However, the text of the legislation was obscure and unclear and created no new power or program, thereby rendering it relatively meaningless. Although its passing pleased environmentalists, the ESPA's effect has been incredibly minimal to this day.<sup>xxxv</sup>

On the surface, Ecuador's Constitution has made possible for a type of incredible protection potential for nature. Because the country is financially poor yet rich in natural resources, protected partnership with corporations is crucial for the development of the country. Questions remain, including: how can the implementation of this bill differ from the failed implementation of the ESPA and, if successful, how will it affect the lives of Ecuadorians and their legal system?

The critical issue regarding the effectiveness of this bill is analyzing the way in which nature will be protected. Though these articles appear revolutionary, the actual text is quite vague. By saying that nature has the "right to be completely restored" or by forbidding the "permanent alteration of the natural cycles" leaves room for interpretation.

Could that imply that damage can be done to the environment so long as it does not destroy nature indefinitely? The constitutional provision specifically states that anyone can enforce nature's rights, but without a specific entity monitoring effects on the environment, ready to legally protect it at any time, it is not reasonable for Ecuador to ensure that this bill will in fact protect the environment as a whole. The articles outlining Rights of Nature seem to be more of a directive towards the government rather than a self-executing proposal.<sup>xxxvi</sup>

Though many regard this clause as a significant leap for environmental rights, it will only be meaningful if these rights can be enforced. Because of this, individuals must have access to the judicial system so they can assert their constitutional rights and defend the environment. There is a separate provision in the Constitution that gives individuals the right to access the courts:

Article 75. Every person has the right to free access to justice and the effective, impartial and expeditious protection of their rights and interests, subject to the principles of immediate and swift enforcement; in no case shall there be lack of proper defense. Failure to abide by legal rulings shall be punishable by law.<sup>xxxvii</sup>

When read together, the Rights of Nature Articles and Article 75 have no overlap or clear way of how the two specific rights can interact. Going to trial in itself is a difficult task, especially for the poor or middle-class people who make up most of Ecuador's population. However, defending nature remains a challenge in itself, and it could take years or even decades before anyone in Ecuador could use it for his or her own purposes. To make Rights of Nature more effective, Ecuador must establish a system for people to defend nature without the kinds of excessive barriers that might be imposed.

In order to fulfill its intention and not have a result similar to the ESPA, two options seem possible: the trickle down effect or executing it at the local level. With the

trickle down approach, the bill will eventually get passed down through the legal system through use in court until it appears and is accessible to the public. Alternatively, the local level approach will begin with proactive communities asserting the rights of their local governments, thereby promoting the defense of nature to everyone.

### *Trickle Down*

Whether or not this right can be enforced depends on Ecuador's standing doctrine, but because Ecuador's constitutional standing on this issue has yet to be systematized or litigated, the provision has the possibility of either being expanded or limited.<sup>xxxviii</sup> As mentioned earlier, the first approach could be a type of “trickle down” system where regulations would be implemented at the national level, which would then give more and more citizens access to it over time.

One approach is to adopt an *actio popularis* interpretation, which seems most similar to the text in Ecuador's Constitution.<sup>xxxix</sup> *Actio popularis* directly translates to “action to obtain remedy by a person or a group in the name of the general public, or other abstract entities such as morale, etc. without being [that entity] or directly in an authorized way representing the victim.”<sup>xl</sup> Under this interpretation, any individual would be able to defend the environment without indicating any direct personal harm or legal interest. Because Ecuador wants to universally protect all ecosystems, *actio popularis* would allow any person in the country, or possibly internationally, to pursue a legal case. Additionally, it could provide service to a poor affected community by allowing parties with greater resources to handle a case.

However, there are drawbacks to the openness of this standing. For one, groups with ulterior motives may propose a case that promotes their interests under the guise of promoting the interests of the environment. Because plaintiffs would not have to justify their standing, the court could approve their cases while the country suffered its repercussions. For instance, corporations could begin a lawsuit to “defend nature,” despite their true goal of manipulating the system to justify their actions. Furthermore, a case could involve plaintiffs who are not fit or knowledgeable enough to defend the environment. The purpose of “seeking to protect nature” could mean a variety of things. Because “nature” is not defined in Ecuador’s Constitution, individuals would cast their own interpretation of the word that would project their goals and target. Once people begin utilizing this case, there may be a flood of cases, both legitimate and arbitrary, that comes into Ecuador’s courts.

Another vague aspect of the legislation is the second article of Rights of Nature, which highlights the right to restoration:

“Nature has the right to be restored. This restoration shall be apart from the obligation of the State and natural persons or legal entities to compensate individuals and communities that depend on affected natural systems.”<sup>xli</sup>

A rightful interpretation of this statement under *actio popularis* may be that people *can* damage the environment. Corporations seeking to extract resources from the environment could easily wield their power to successfully win a lawsuit arguing that their operations obey Rights of Nature because their actions do not restrict the environment’s natural restoration.

Another trickle down approach would be the use of a “sufficient interest” test to constitute legal standing.<sup>xlii</sup> This notion can initially be interpreted restrictively but could

broaden itself over time, if it is in the interest of Ecuador and its people. Because courts will have to judge whether or not a case contains sufficient interest, legislatures are able to use their own opinions on what outlook is best suited for the case. As a flexible position, sufficient interest could allow versatility in the spectrum of lawsuits that could arise from this clause.

However, this approach could be *too* flexible in that it allows wide interpretation and may not be applied properly. To lessen the openness of this stance, a “restrictive sufficient interest” could replace it, which limits the amount of cases sought on the basis of Rights of Nature by rejecting cases that do not hold a very significant amount of legal interest. Restricting access to the courts could potentially benefit the system by not having to handle arbitrary cases; however, it is likely that some cases that are well founded may unintentionally be weeded out. In this case, Ecuador would not be fulfilling its goal of universally protecting the environment.

### *Local Level*

As mentioned earlier, President Correa has made clear that Rights of Nature is not currently on his agenda. In fact, the following year, as Correa began moving forward with his mining initiatives, he was recorded saying, “How did that (Rights of Nature) get in there?”<sup>xliii</sup> Because he wants Ecuador to grow socially and financially, he believes that issues of poverty and social development are of the utmost importance. In order to improve the education, healthcare, and stability of Ecuador’s citizens, Correa seeks to promote mining and oil development throughout the country. He is confident that

establishing partnerships with large, wealthy corporations and building capital in Ecuador will generate very lucrative business for the struggling country.

Bill Twist, who is very familiar with Correa, believes that the President is much more of an economist than an environmentalist and is aware that the implementation of Rights of Nature could impair his plans for true economic growth: “The broad codification of the constitutional provision on Rights of Nature would be a barrier to his economic development plans.”<sup>xliv</sup> The execution of Rights of Nature will unquestionably impair Correa’s plans to extract natural resources from Ecuador. He is not afraid to pursue his goals despite their controversy with the new law, as most of the operations will occur in low-population areas where communities do not have much power. Therefore, despite its constitutional standing, Correa is not currently interested in implementing the rights awarded to ecosystems.

Because established constitutional standing for Rights of Nature does not seem possible under Correa’s administration, the Global Alliance (described in the following section) is seeking to implement the provision on a more local level. They are working with a group of lawyers in Ecuador who are encouraging local municipalities to adopt provisions for the implementation of Rights of Nature in their governing charters as the first step towards the follow through of the bill. These municipalities would develop and institute regulations for how the chapter that is described in the Constitution could be enforced at a local level.

This approach would begin by encouraging several small cities surrounding and within the Amazon to establish regulations regarding the implementation of Rights of Nature. Successful implementation would require engaging communities with high

indigenous populations, as the indigenous know first hand how precious the environment is. The Global Alliance's theory is that by the time the National Assembly begins discussing a way for citizens to access Rights of Nature, there will be a developing agreement within the country of how to properly and realistically implement it.

However, there is a significant chance that these local regulations could be overturned by national regulations, thereby eliminating their power and making them obsolete. In addition, some communities might take it upon themselves to draft their own regulations, which may then vary from city to city. If the municipalities are not connected and do not establish the same guidelines, the legality of the regulations could become very complicated and ineffective.

### **Global Spread**

Meanwhile, proponents of Rights of Nature have taken it upon themselves to make it a worldwide phenomenon. Thirty-two thousand people gathered in Cochabamba, Bolivia in April of 2010 for the People's World Conference on Climate Change and the Rights of Mother Earth. At that gathering, each participant pledged to promote the acceptance of its Rights of Nature Declaration ("Declaration") around the world, and specifically encourage the United Nations to adopt it.<sup>xlv</sup>

The Declaration that they drafted and signed at the conference highlights the fact that humans derive everything necessary for a prosperous life from their environment. Because of this relationship, the Declaration demands that humans cannot continue to pursue freedom and prosperity unless they respect and defend the Rights of Mother

Earth.<sup>xlvi</sup> One difference to note between the Declaration and Ecuador's Constitution is that the Declaration elaborates on what the term "Mother Earth" includes, which in this case is comprised of nature and non-human animals.

Below is an excerpt from the Declaration that enunciates the specific rights of nature:

Article 2. Inherent Rights of Mother Earth

(1) Mother Earth and all beings of which she is composed have the following inherent rights:

- (a) the right to life and to exist;
- (b) the right to be respected;
- (c) the right to continue their vital cycles and processes free from human disruptions;
- (d) the right to maintain its identity and integrity as a distinct, self-regulating and interrelated being;
- (e) the right to water as a source of life;
- (f) the right to clean air;
- (g) the right to integral health;
- (h) the right to be free from contamination, pollution and toxic or radioactive waste;
- (i) the right to not have its genetic structure modified or disrupted in a manner that threatens its integrity or vital and healthy functioning;
- (j) the right to full and prompt restoration for the violation of the rights recognized in this declaration caused by human activities;

(2) Each being has the right to a place and to play its role in Mother Earth for her harmonious functioning.

(3) Every being has the right to wellbeing and to live free from torture or cruel treatment by human beings.<sup>xlvii</sup>

The Declaration is meant to shift the paradigm that current generations of the modern world have grown up in, believing that nature is property that is available for our use, and promote the respect of nature as a living system that should co-exist with the human race.

A similar agenda was developed in September 2010 when the Global Alliance for Rights of Nature (“Global Alliance”) was formed with the intention of creating a worldwide network of individuals and organizations that seeks the advancement of Rights of Nature around the world. The Global Alliance gathering was organized in Patate, Ecuador by The Pachamama Alliance. The meeting consisted of a group of representatives from over a dozen countries including South Africa, Australia, Bolivia, Peru, Ecuador, and the United States, who have all been involved in promoting Rights of Nature. Within the Alliance, there are professionals in the legal system, governments, NGOs, non-profits, and other entities, who are all able to utilize their own skills and networks to promote the goals and ideas of the group. Specific key players in the Alliance currently include CELDF<sup>xlviii</sup> and Wild Law author Cormac Cullinan, an environmental attorney who has been a leading player in the movement for nature to gain rights.<sup>xlix</sup> The collaboration of such a diverse set of people generates the possibility for the rapid advancement of Rights of Nature.

During this gathering, the attendees all signed a pledge to join together to foster the growth and application of the Rights of Nature all over the world. In addition to producing their own Declaration, the group approved statutes, founding organizations, a founding council and executive committee, and specific groups such as the Communications and Learning Group and the Ancestral Knowledge Group.<sup>1</sup>

“Recognizing that exploitation, abuse, and contamination have caused the destruction, degradation and disruption of Mother Earth, putting all life at risk through phenomena such as climate change; the Global Alliance adverts a multidimensional crisis and collapse of an unsustainable system based on accumulation and disrespect for nature.”<sup>li</sup>

The Global Alliance believes fully that it has come time for the Earth and nature to be recognized and cherished. With an emphasis on spreading Rights of Nature within

the next four years, they seek to encourage and incorporate as many people, organizations, and governments as they can in order to achieve their goal of recognizing legal rights for nature across the world.

### Chapter 3: Corporate Power

“Corporation, (n) – An ingenious device for obtaining individual profit without individual responsibility.” –Ambrose Bierce<sup>lii</sup>

#### The History of Corporate Personhood

In 1819 a case was brought to the Dartmouth Supreme Court that dealt with the right to privacy and protection based on contractual obligations. This case specifically dealt with the Contract Clause, which prevents States from imposing any law that retroactively undermines contract rights.<sup>liii</sup> As one of the first major cases that dealt with the Contract Clause, it established a precedent for how this legislation would be used and implemented throughout the country. The court ruled “‘private’ business corporations were allowed constitutional protection from government interference in internal governance.”<sup>liv</sup> By confirming corporate security, this court ruling served as the first stepping-stone for companies to consolidate their power.

The U.S. Supreme Court was faced with the case of Santa Clara County vs. Southern Pacific Railroad in 1886, which challenged the railroad company’s refusal to pay all of its taxes as demanded by the state of California. The final decision of the case was unanimous and concurred with Southern Pacific Railroad that it was not required to pay all of the taxes.<sup>lv</sup> With this ruling, the judge signified that corporations were as much protected under the Fourteenth Amendment as people were, thereby granting businesses all basic civil and political rights. Below is the Court’s statement:

"The court does not wish to hear argument on the question whether the provision in the Fourteenth Amendment to the Constitution, which forbids a State to deny to any person within its jurisdiction the equal protection of the laws, applies to these corporations. We are all of the opinion that it does."<sup>lvi</sup>

Not only does the Court demonstrate that corporations are protected in the same way that citizens are and have the same rights, but it also does not even care to debate the

issue, as it seems so obvious to the Court that it is fact. “Corporate Personhood” is the term that has arisen which describes the debate of whether or not corporations have the same rights as people. Some of these aspects, such as the right to free speech, remain important to maintain a free market system and democratic economy. Legal academic Kent Greenfield argues, “If for-profits didn’t have First Amendment rights, then Congress could pass a law requiring every retailer to fly an American flag out front.”<sup>lvii</sup> That being said, these laws have not been evaluated since they were established over 120 years ago.

### *U.S. Environmental Policy*

The U.S. established the Environmental Protection Agency (EPA) forty years ago and adopted the first ever, nation-wide environmental policy. Yet, efforts to reduce pollution are still profit-driven endeavors and part of the current environmental crisis. For example, the Clean Air Act and Clean Water Act authorize environmental harms because they legalize the pollution of the environment. By setting limits on the amount of pollution or destruction a company can produce, the government is legally recognizing and accepting pollution.

The Commerce Clause presides over all U.S. environmental laws, which promotes the idea that nature is property. Because current law in U.S. states that nature is a material good, whoever owns the land has the power to promote or destroy the existing ecosystems. If these laws are not altered to promote the interests of ecosystems, environmental protection can never be achieved.

## **Corporate Social Responsibility**

Corporate legal status has insulated companies from consequences when they have damaged people and nature. A thorough investigation conducted by UK-based Trucost in 2010 claimed that the world's major corporations cause approximately \$2.2 trillion worth of environmental damage every year. Calculations demonstrate that these large companies would lose approximately one-third of their profits if they were required to pay for all of the damage they cause.<sup>lviii</sup> Oil giants BP and Shell have annual profits of approximately \$25 billion; however, the social and environmental cost of their work amounts to around \$46.5 billion, massively outweighing profits.<sup>lix</sup>

In 2010, a report by researchers at the Political Economic Research Institute was issued that named the one hundred most air-polluting corporations in the world. Two of the top five air polluters are oil companies (#2: Exxon-Mobil and #3: Sunoco).<sup>lx</sup> Conclusions were based on the analysis of the amount and toxicity of numerous chemicals released from company factories.<sup>lxi</sup> In addition, the scientists factored in the number of people exposed to the pollutants.

In the evaluation of people at risk from these operations, analysts discovered that despite minorities constituting only 32 percent of the U.S. population, the majority of people exposed to toxic pollutants were minorities, at 65 percent. This number explicitly demonstrates the locations that large companies choose to situate their factories. Land in lower-income minority communities is not only less expensive, but is also assumed to be less troublesome, as fewer minority residents are likely to challenge large corporations. This strategy goes far beyond the United States, as the highest percentage of people

subject to environmental impacts live in developing countries. Ironically, the only areas responsible for the pollution and irreversible damage to the environment are in the Western world.<sup>lxii</sup>

Developing countries, though they want to participate in the global marketplace, are incredibly vulnerable to multi-national corporations because they lack the infrastructure needed to maintain large-scale technological and industrial operations. These countries are able to attract large corporations by offering them cheap labor, access to markets, and overall low costs. Because these countries do not establish a secure system for maintaining safety and health regulations, corporations are allowed to operate with little regard to the human or environmental risk. To further complicate the problem, minimal investment in safety equipment and technology, as well as little to no communication between the corporation and the government, make the situation even more unstable. Most people do not believe that there is a possibility to challenge massive corporations in their regions, and as a result corporate power dominates communities.

### **Corporate Abuses**

Ecological disasters in Bhopal, India and the Niger Delta demonstrate how the combination of corporate legal protections and corporate power in under-developed countries has resulted in significant environmental damage.

*Bhopal, India*

Founded in 1917, Union Carbide is a U.S.-based corporation that specializes in the production of chemicals and polymers that are used for paints, packaging, cable, pharmaceuticals, automotive, agriculture, oil, gas, and more. As one of the largest chemical companies in America, Union Carbide has been able to establish multiple plants around the world.<sup>lxiii</sup>

In the 1960's, the government of India decided to revitalize their agriculture to increase the productivity of crops as well as become agriculturally self-sufficient. India chose to execute this goal by installing a manufacturing plant that produced pesticides that could be sold in the Indian market. The site they chose was Bhopal, which intersected with India's main railway, contained a large water source, and was developed enough to provide stable electricity and labor force. In 1969, Union Carbide constructed a small plant in Bhopal known as Union Carbide India Ltd. (UCIL).<sup>lxiv</sup>

Until it began to manufacture its own in 1979, UCIL imported a chemical known as methyl isocyanate (MIC) from Union Carbide. MIC is a powerful chemical that aids in the process of formulating pesticides and has the power to react with a variety of substances, including water acids and metals. In 1984, a dangerous chemical reaction occurred at UCIL that began with a leak from a tank that was reported by factory workers. Unfortunately, supervisors refused to address the issue until it was out of control. Approximately 40 tons of MIC were released from the tank into the nearby environment and through a city of over 900,000 residents. Inhabitants were contaminated instantly, resulting in 4,000 deaths and around 400,000 impaired people. The victims were almost all the poorest members of the population.<sup>lxv</sup>

Of the surviving victims, contact with MIC caused direct damage to the eyes and lungs, and generated chronic gastrointestinal problems, neurological disorders, psychiatric, musculoskeletal, and gynecological problems. Despite these incredible findings, Union Carbide maintained that exposure to MIC caused only mild throat and ear irritation.<sup>lxvi</sup>

There are multiple sources to blame when analyzing the disaster that occurred at UCIL. Of utmost significance is the sub-standard technological equipment that Union Carbide installed in order to save money. Had better tanks, temperature and pressure gauges, and MIC neutralizers been in place, this accident could have indisputably been

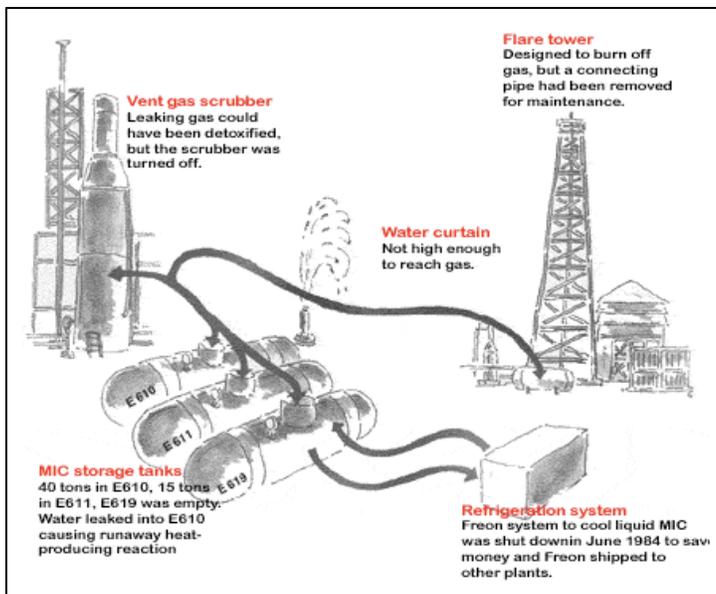


Figure 2: <http://www.lenntech.com/environmental-disasters.htm>

avoided. Documents revealed after the disaster proved that Union Carbide regularly operated untested technology in the Bhopal factory.<sup>lxvii</sup> In fact, a report from 1982 claims that Union Carbide and UCIL had inadequate standards for their equipment, operations, and maintenance and predicted that if the plant did not

increase their safety measurements, MIC releases would occur. In addition, the residents nearby the plant were minimally informed about the toxic chemicals that existed there, and never given details as to the risk associated with an accident at the plant. Moreover, there were no safety measures put in place for the community and no knowledge mentioned to have residents construct an emergency disaster plan for themselves. In

regards to the long-term effects of the community and those who survived, no systems were established (before or after the disaster) to voluntarily assist or make reparations to the victims.<sup>lxviii</sup>

Union Carbide attempted to distract the public from its poor safety and maintenance by claiming that a “disgruntled employee” caused the leak. A lawsuit followed and Union Carbide eventually settled out of court to pay \$470 million to the affected Indian citizens.<sup>lxix</sup>

Union Carbide has proved to be a negligent company even in the U.S. with regard to the health and safety of its workers and the communities that surround the facilities. In addition, the National Toxic Campaign and the International Council on Public Affairs issued a scientific report four years before the Bhopal disaster, which claimed that Union Carbide generated over 300 million pounds of hazardous waste. When comparison studies were performed between Union Carbide’s plants in Bhopal and West Virginia, the facilities looked identical except the safety standards at the Bhopal plant were far worse, thereby indicating a knowledgeable disregard for the worker’s safety.<sup>lxx</sup>

### *The Niger Delta*

The Niger Delta in Africa accounts for 40 percent of all crude oil supplied to the U.S. each year. Subsequently, it is also the world capital of oil pollution. An immense network of 40-year-old pipelines, rusting storage tanks, out-of-date pumping stations and wellheads, and damaged

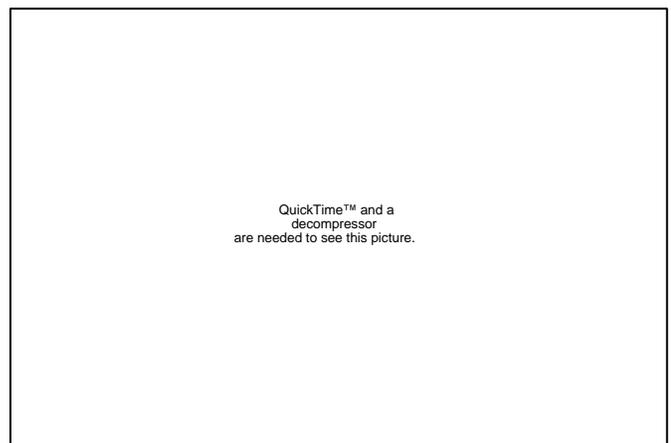


Figure 3: <http://www.jaguda.com/2010/06/30/oil-spills-in-louisiana-why-should-i-care-cnn-covers-oil-spills-in-nigeria/>

tankers and vessels have surrounded the region's 606 oilfields for numerous decades. Large multi-national corporations have operations in the delta, namely Chevron, Shell and Exxon-Mobil.<sup>lxxi</sup>

The operating oil companies as well as the Nigerian government purposefully do not release numbers regarding the amount of oil leaked each year in the delta so as to not attract attention. However, a report developed in 2006 by World Wildlife Fund-UK, World Conservation Union and representatives from Nigeria declared that up to 1.5 million tons of oil have been released into the Niger Delta over the past 50 years. More than 300 spills, ranging in volume, occur every year in the delta, yet little is done to prevent or clean up after the spills. In 2000, the Nigerian government released figures that indicated there were more than 7,000 significant oil spills over the past thirty years at approximately 2,000 major spill sites.<sup>lxxii</sup>

In May of 2010, an Exxon-Mobil pipeline was shown to have leaked over one million gallons of crude oil into the water before it was controlled. A few days later, thousands of barrels of oil began spilling into the delta out of a Shell pipeline. More than one thousand cases of oil spills have been attributed to Shell alone in the delta. Local operators of the rigs inform Shell of spills immediately, yet Shell has been shown to ignore the situation for over half of a year.<sup>lxxiii</sup>

Communities have attempted to gain reparations for their losses, but none have succeeded thus far. Even those who conduct peaceful, legal demonstrations against the company are attacked by security guards. A community leader reported, "In the past two years, we have experienced 10 oil spills and fishermen can no longer sustain their families. It is not tolerable." A spokesman for the country's oil spill detection and

response agency, Nodra, said "oil spills and the dumping of oil into waterways has been extensive, often poisoning drinking water and destroying vegetation. These incidents have become common due to the lack of laws and enforcement measures within the existing political regime."<sup>lxxiv</sup>

Unfortunately, it looks as if the worst is yet to come. Oil corporations with rigs located in the delta are preparing to extract oil from more remote areas. Therefore, when things go wrong, it may be even more complicated for companies to clean up their rigs as it will be much more costly and difficult to access and address its needs.<sup>lxxv</sup>

It is obvious that the infrastructure and resources of Nigeria are not adequate or stable enough to operate and control these massive situations, which makes it so remarkably easy for these multi-national corporations to ignore their problems with little repercussion. Because they face no consequences from Nigeria, companies like Chevron, Shell and Exxon-Mobil are able to carelessly run their operations without updating their technology, health, or safety standards.

As demonstrated in the cases of the Bhopal disaster and the Niger Delta, numerous corporations are known for maintaining the bare minimum of technological equipment and safety precautions in developing countries where they are not forced to meet higher, more educated standards. This effort to save costs often results in major damage to the environment and people within and around the site, but is of little consequence to the corporations themselves. Legal protections inherent in the corporate

structure allow companies to harm people and nature with minimal effect on their profits or global status.

## Chapter 4: The Oil Disaster

"The destruction of the world's rainforests is driven by a complex web of social and economic forces, many of these a logical result of modern society's worldview -- a view that, although rich in technological insight, is often ignorant of the value of nature's apparently free and limitless services. It is a view guided by maximum short-term financial gain while disregarding the long-term costs of ecological degradation." –The Pachamama Alliance<sup>lxxvi</sup>

### Texaco in Ecuador

The Texaco Corporation operated in Ecuador for almost thirty years and during that time, released approximately 18 billion gallons of contaminated wastewater into the Amazon Rainforest. The pollution that occurred in Lago Agrio, Ecuador is one of the worst oil-related catastrophes in the world and continues to be a burden on families decades later. The irreversible damage done to the surrounding ecosystems is not only devastating for the nearby residents, but also for the fate of Ecuador's rainforest. The ignorance and cruelty that Texaco engaged in is the epitome of corporate greed and negligence. The long and severe lawsuit that derived from it has provided fuel for enraged Ecuadorian citizens to push for the implementation of Rights of Nature into their Constitution.

From 1964 to 1992, the Texaco Corporation conducted oil drilling in the northeast region of the Ecuadorian Amazon. Covering over 1,500 square miles (larger than the size of Rhode Island), Texaco managed around 350 well sites and established the town "Lago Agrio," named after Texaco's founding town of Sour Lake, Texas. Multiple indigenous rainforest communities lived off the soil and water surrounding Lago Agrio. These communities had so far been untouched by Western civilization and were caught off-guard when the massive numbers of workers, tools, and technological equipment moved into their backyard.

Since no other corporation had successfully drilled for oil in Ecuador, the government was not sure what to expect. But Texaco's prominence and sophistication as a multi-national company assured the government that this step would be a lucrative opportunity for Ecuador's struggling economy.

In an effort to reduce costs, Texaco employed substandard operations and failed to control or mitigate the environmental impacts from its use and discharge of toxic chemicals and other pollutants. In the early 1990's, Ecuador's government was corrupt, and it was discovered that Texaco had paid off the government in order to not be held accountable when it ceased its operations within the Amazon. "[Texaco] employed a laboratory method that produced artificially low measurements of toxins that were used to induce the government to grant a release."<sup>lxxvii</sup> What nobody but the neighboring indigenous communities realized was that Texaco had abandoned approximately 1,000 open toxic waste pits which have released a continual stream of toxins over time. The contaminated waters have made living conditions unbearable for local residents, and studies have shown a dramatic increase of cancer rates and miscarriages in the area. Scientists have attributed at least 1,401 deaths in the region directly to Texaco's contamination.<sup>lxxviii</sup>

Evidence presented indicates that Texaco's former well sites are heavily polluted. The over 18 billion gallons of water that Texaco instructed its employees to disperse into the rainforest had a high temperature and contained substantial amounts of saline, heavy metals, and carcinogens and contained chemicals including benzene, toluene, xylene and Polynuclear Aromatic Hydrocarbons (PAHs).<sup>lxxix</sup>

Jhinsop Martinez Erraez, a former Texaco employee, recounts his time with the corporation, illustrating how he and his colleagues were instructed to systematically dispose the toxic water into the channels of the rainforest. “[T]he company abandoned hundreds of waste pits that piped toxic waste into rivers and streams relied on by the local inhabitants for their drinking water.”<sup>lxxx</sup> Documents found prove that Texaco instructed its employees to destroy records of oil spills and that they purposefully did not create an environmental response plan or pipeline maintenance program. To add insult to injury, Texaco never performed a health or environmental impact evaluation at its sites in Ecuador.<sup>lxxxi</sup>



Figure 4:<http://coto2.wordpress.com/2009/12/15/chevron-and-cultural-genocide-in-ecuador/>

Texaco testified that it implemented a system of oil extraction in Ecuador that led to the purposeful release of billions of gallons of “water of formation” into the Amazon.<sup>lxxxii</sup> Having said that, they insist that all of the water was treated and free of chemicals when it was dispersed. Unlike in Ecuador at the time, the U.S. has strict rules regarding the release of “produced water” that eliminate any chance of the toxic water contaminating local fresh water.<sup>lxxxiii</sup> But because Ecuador was new to the corporate, industrial world, Texaco was able to disperse the toxic water and still slip out of the country “legally.”

Another way Texaco took advantage of the government was by cutting corners in its already lax legal system, knowing that the corrupt government would not prosecute them.<sup>lxxxiv</sup> After many complaints from Ecuadorian natives and the introduction of the enduring lawsuit, Texaco returned in 1995 to conduct a clean up of the affected area;

however, this initiative turned out to be fraudulent, as the changes made were merely covering some of the open pits with dirt and burning off crude by-products. Despite these practices, crooked government officials gave Texaco a release from liability. Ecuador's national oil company, PetroEcuador, which owned the majority of the syndicate that Texaco was involved with in Ecuador, confirmed Texaco's remediation, allowing the corporation to end ties with Ecuador.<sup>lxxxv</sup>

### **The Lawsuit**

In 1993, a class-action lawsuit was filed in New York against the Texaco Corporation. The plaintiffs numbered more than thirty thousand and consisted of people from five indigenous nationalities and farmers who lived near Lago Agrio. Most of the plaintiffs have been relocated and continue to suffer from extreme physical side effects as a result from toxic waste that was dispersed into the rainforest by Texaco.

Texaco's approach to the lawsuit has been consumed with stalling, intimidation, and manipulation. Between 1993 and 2002, Texaco concentrated wholly on dismissing the case in the U.S. and having it tried in Ecuador. Arguing under *forum non conveniens* and international comity, Texaco submitted fourteen separate expert affidavits from Ecuadorian lawyers and scholars authenticating Ecuador's legal system. When this shift occurred, Texaco promised to obey any final judgment made in Ecuador.<sup>lxxxvi</sup>

In 2001, Texaco was acquired by the new leading US oil corporation: Chevron. This meant that Chevron inherited the lawsuit; one that Chevron executives thought would be dismissed quickly. However, even in 2011 there is no end in sight. For almost

two decades, Texaco/Chevron has done its best at prolonging and undermining the lawsuit against them. In 2006, Chevron attempted to exclude Ecuador from participating in the Andean Free Trade Agreement, and in 2008, Chevron threatened to withhold the renewal of the Andean Trade Preference Act. The Pachamama Alliance co-founder Bill Twist said that he believes Chevron's strategy is to drag out this lawsuit until the opponents surrender, since paying \$100 million in legal fees is far less than the potential \$17 to \$113 billion price tag that might result if Chevron ultimately loses the suit.<sup>lxxxvii</sup>

Beginning in 2009, the plaintiffs and their representatives have been secretly taped, spied on, and surrounded by investigators hired by Chevron. Bugging devices placed by the corporation's employees have revealed notions of a bribery scheme involving the former judge of the case, who was forced to resign because of the footage. In 2010, Chevron lawyers were able to convince U.S. judges to provide access to some of the plaintiff's private documents. From these records, Chevron has been working to expose fraudulent behavior on behalf of Ecuador's lawyers. The extra footage that Chevron obtained from the documentary *Crude* demonstrates Steven Donziger, one of the head lawyers for the plaintiffs, discussing a strategy for using the judicial system in their favor.<sup>lxxxviii</sup> Critics of Chevron who have reviewed these findings have said that there is no evidence of anything worth prosecuting: "nowhere on the tapes do any of the people accused by Chevron accept, much less, discuss a bribe."<sup>lxxxix</sup> Nonetheless, because of the cases of possible fraud that have arisen in the lawsuit, spectators are doubtful that Chevron would have to pay an extraordinary amount even if the company is eventually convicted.<sup>xc</sup>

As of February 1, 2011, the Chevron Corporation has filed a separate, U.S.-based lawsuit against the lawyers, clients, and spokeswoman of the 18-year-long case, of “conspiring to extort up to \$113 billion from the oil company.”<sup>xcii</sup> The lawsuit is filed under the Racketeer Influenced and Corrupt Organizations Act (RICO), which originated from lawsuits against mobsters. Critics of this new lawsuit say that it is a ploy to distract the public from recognizing Chevron’s guilt in the original case, as well as an attempt to disadvantage their opponents financially. Some are also calling this new case a SLAPP suit (Strategic Lawsuit Against Public Participation), which describes a lawsuit developed with the ulterior motive of financially burdening their opponent.<sup>xciii</sup>

Since January 2011, Chevron has refused to publish their findings and final arguments leading up to the most recent judgment.<sup>xciii</sup> On February 14<sup>th</sup> of 2011, Ecuadorian Judge Nicolás Zambrano convicted Chevron of polluting a section of the Ecuadorian Amazon and demanded that the corporation pay \$8.6 billion in reparations. This damage award, while it is less than the amount anticipated by the plaintiffs, is still a feat for this seemingly endless lawsuit, and according to environmental law expert David M. Uhlmann, “is one of the largest judgments ever imposed for environmental contamination in any court.”<sup>xciv</sup> In addition, the judgment included that Chevron pay the Amazon Defense Coalition (group representing the plaintiffs) 10% of their damages, which totals about \$860 million. The multi-billion dollar award is comprised of the following elements:

\$5.39 billion	To restore polluted soil
\$1.4 billion	To create a health system for the community
\$800 million	To treat sick people affected by pollution
\$600 million	To restore polluted sources of water
\$200 million	To recover native species
\$150 million	To transport water from other sites to supply communities
\$100 million	To create a community cultural reconstruction program
Total: \$8.64 billion <sup>xcv</sup>	

As evidenced by the distributions, over \$6 billion of the \$8.64 billion is going directly towards the revitalization of the environment. This verdict marks the first major ruling that requires the person or group convicted to pay for the long-term restoration of the affected ecosystem. Instead of only repaying the impacted indigenous people, this judgment forces Chevron to pay an incredible amount of money directly towards the regeneration of the Amazon.

Once the verdict was publicized, the plaintiffs asked Chevron to settle and negotiate a fair agreement that could end this prolonged lawsuit once and for all. Chevron dismissed that notion, saying that the company is “not paying and we’re going to fight this for years if not decades into the future.”<sup>xcvi</sup> Chevron representative, Kent Robertson, has stated that the company refuses pay the damages and will immediately appeal the verdict. In addition to their appeal, Chevron plans to prevent the enforcement of this ruling in U.S. courts. They will be able to do this because the company no longer has any assets in Ecuador, so the enforcement of the judgment must be in the U.S.<sup>xcvii</sup> Advisors to the plaintiffs have said that they will pursue Chevron through other means, specifically by joining forces with countries that do hold Chevron’s assets. These include

some South American countries, as well as the Philippines, Singapore, Australia, Angola, and Canada.<sup>xcviii</sup> Opponents of Chevron are supporting the prosecution of the corporation in other countries where they operate as well. Chevron currently has several plants around the world, and countries interested in taking Chevron to court include: Venezuela, Brazil, Argentina, Nigeria and Thailand. The governments of each of these five countries have signed an international treaty that promotes the enforcement of legal rulings.<sup>xcix</sup>

On the other side of the debate, the plaintiffs have stated their happiness over the verdict; however, they are also preparing an appeal. The Ecuadorians do not believe that \$9 billion satisfies their needs and will continue to pursue as much as \$113 billion from Chevron.<sup>c</sup>

Bill Twist argues that pressure from the public as well as organizations such as Rainforest Action Network or Amazon Watch might force Chevron to end the lawsuit once and for all. Chevron has put forth a lot of effort to not let itself or the lawsuit become too exposed, so opponents agree that if more motivated Americans fully understood the trial, Chevron might feel obligated to end it as to not ruin their reputation or income in the U.S.<sup>ci</sup>

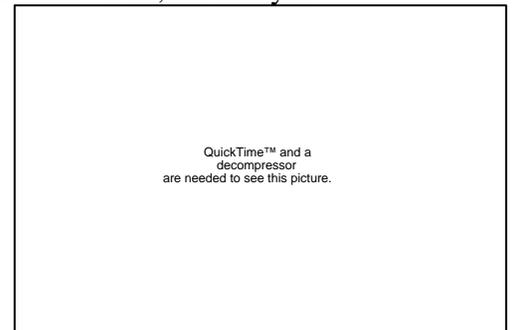
Findings show that Texaco knowingly released 18.5 billion gallons of toxic waste into Ecuador's rainforest, which translates into about 4 million gallons per day for over 20 years.<sup>cii</sup> The catastrophe in Ecuador, by every calculation, far outweighs any other major oil disaster in history, including the recent BP oil spill. However, it is not often categorized on the list of disasters because it was a purposeful act rather than an accident. The appalling and poisonous acts that Texaco took part in have affected thousands of

Ecuadorians, thereby intensifying the citizens' desire to protect themselves and their land from profit-driven corporations through the establishment of Rights of Nature.

### **International Promotion of Rights of Nature**

In April of 2010, British Petroleum's (BP) rig in the Gulf Coast exploded, killing eleven workers, endangering approximately four hundred species of animals, polluting the sea, the air, and neighboring shores. The cause of the explosion was due to efforts to cut costs on equipment and installation. In addition to the enormous amount of oil that spilled into the Gulf, BP used high amounts of toxic chemicals in an attempt to cover up the spill.

BP has created a \$20 billion response fund to compensate those hurt by the spill.<sup>ciii</sup> Because the oil reached all the way to the Southern U.S. coast, many residents' livelihoods were threatened, as fishing and tourism came to a halt. However, BP has yet to mention anything regarding the damage to the water, species, and nearby ecosystems. Clean-up efforts have been futile, and none of the \$20 billion is meant to go towards the revitalization of the damaged environment.



On November 26 of 2010, a case defending the Rights of Nature was brought to British Petroleum by an international coalition. The plaintiffs, based in Ecuador, argued that Ecuador's legislation giving rights to nature is universal, and therefore, justice must be sought in the Gulf. Their claim that nature has common rights is what they say provides the legal basis of the lawsuit. The plaintiffs are not seeking compensation;

however, they are seeking public access to all data regarding the ecological destruction of the spill, as well as requesting that BP extract less oil underground than they spilled in the Gulf.<sup>civ</sup>

Upon evaluation, lawyers from the Global Alliance as well as from Fundación Pachamama believe the lawsuit needs to be recast for the plaintiffs to have a legitimate case. Because Ecuador was not directly affected by the spill, there is little reason for a judge to hear the case in Ecuadorian court. Bill Twist, who is associated with many of the members of the plaintiffs, believes that the case is a risky move because it does not have much of a legal basis, and therefore has the possibility of backfire from public reaction.<sup>cv</sup> Twist suggested that this case against BP might simply be publicity for Ecuador and its Rights of Nature provision.<sup>cvi</sup>

Spreading the word is a key strategy to all proponents of Rights of Nature, and this is possibly one step in that direction. By making more people aware of Rights of Nature, environmentalists believe that it will influence like-minded individuals all over the world. Nonetheless, this strategy may not have been the most sound way to publicize Rights of Nature, as its lack of legal standing will inevitably draw criticism.

It is obvious that the BP disaster was not intentional, but Chevron's disaster was a deliberate action to cut costs. Had Chevron taken a respectable stance at any time during the lawsuit and been willing to be accountable for its actions, terrible accidents such as the BP oil spill could have been prevented. By proving that corporations are not invincible, companies would be more likely to take precautions, as BP failed to do when it constructed the Gulf Coast drilling site.<sup>cvii</sup>

## Conclusion

“The economic policies that have yielded the extraordinary growth in the world economy are the same ones that are destroying its support systems.”

–Cormac Cullinan<sup>cviii</sup>

The Rights of Nature movement is gaining momentum and legitimacy worldwide. Though there have not been many cases proving the effectiveness of the concept, implementation has been starting at the local level in the U.S. for a few years. In 2006, Tamaqua Borough in Pennsylvania was the first U.S. local government to establish legal rights protecting nature with the help of CELDF.<sup>cxix</sup> Since then, over a dozen more neighborhoods and townships have legally recognized these rights and successfully protected their land from encroaching corporations.

Pittsburgh, Pennsylvania is the first major city in the United States to ban natural gas drilling, strip corporations of personhood, and recognize the Rights of Nature.<sup>cx</sup> CELDF worked with Pittsburgh citizens to draft the ordinance. Within it, citizens “remove[d] the ability of corporations to wield the Commerce and Contracts Clauses of the U.S. Constitution to override community decision-making.”<sup>cxii</sup> Not only will this provide safer and healthier communities in the city, but it also leads the way for other cities to recognize nature’s rights, and promotes the growth and maintenance of America’s natural ecosystems.

This inspired action is continuing throughout the United States and reaching larger cities and groups of people. As demonstrated in Pennsylvania, people are beginning to fight back against powerful companies in an effort to assert their natural and communal rights. As citizens start to recognize the irreparable harm corporations have been exerting to their environment, they are beginning to fight back in an effort to assert their natural and communal rights.

As Nepal is writing its first constitution, CELDF is encouraging them to take the same leap for environmental rights that Ecuador took in 2008.<sup>cxii</sup> The Nepalese culture promotes the inclusion of environment in all facets of life, so it is natural that they would provide it with a right-withholding status. Gagan Thapa, Nepal Constituent Assembly Member, was quoted saying: "Without talking about environment, social justice is impossible."<sup>cxiii</sup> Nepal is set to finalize its Constitution and include a chapter promoting the Rights of Nature in the summer of 2011.

Similarly, Bolivia has publicized definite plans to install "The Law of Mother Earth" into its Constitution. By establishing eleven new rights given to nature, Bolivia seeks to protect its land and restore it from past environmental destruction. The law will allow nature to be shielded from "mega-infrastructure and development projects that affect the balance of ecosystems and the local inhabitant communities." This right is controversial, as corporations have extracted everything from tin to gold in the country, and generate approximately \$500 million a year for Bolivia.<sup>cxiv</sup> The government is also planning to establish a "Ministry of Mother Earth," to appoint an ombudsman, and to promote the rights of communities. Bolivian representatives have said that the new law and structure of government will improve the efficiency of the Bolivian government and encourage transparency and communication throughout the country.

As for implementation in Ecuador, the most immediate and effective way to enact Rights of Nature would be to take the local level approach. By generating great interest and momentum from citizens and local governments, the execution of Rights of Nature

will not only happen faster than if it was left to the government, but it will also create a powerful grassroots movement within Ecuador. Fundación Pachamama and Global Alliance members are working diligently to make Rights of Nature effective by getting numerous Ecuadorian communities involved to gain strength.

Albert Einstein once said, “Problems cannot be solved by the same level of thinking that created them.”<sup>cxv</sup> If our species continues to concentrate all of its energy and focus on destroying the environment and promoting consumerism, then we are undeniably compromising the health of our planet and ourselves. Experts from multiple fields believe that a complete restructuring of the human system is necessary to promote the Earth’s life. These experts agree that the most effective and necessary way to take this step is by altering our legal system to make it more accountable for human-made degradation.



Figure 6: <http://www.greenpeace.org/international/en/news/features/hot-year-for-exxon-planet300106/>

Members and proponents of CELDF argue that the current structure of law grants rights to corporations, which then easily override local decision making: “The regulatory limitations established by the system are usually written by the corporations themselves through governing legislation.”<sup>cxvi</sup>

The current system makes it nearly impossible for individuals to stand up against large corporations, and founder and executive director Thomas Linzey recognizes that. He insists that the law must be revised to assure that people have a say over what happens in their communities.

Linzey fights daily for the restructuring of U.S. law and believes that the key to reshaping the economy is to prevent environmental damage from occurring at all: "...to move environmental law from being end of the pipe to being preventative in nature; prohibiting those activities which will inevitably cause damage."<sup>cxvii</sup> The current legal structure authorizes pollution by regulating the environmental impact that can occur; however, the goal is to prevent environmental devastation from happening at all. Scientists from the National Oceanic and Atmospheric Administration in Colorado go further in advising that politicians must not only offset current pollution, but also past pollution in order to have a stable Earth.<sup>cxviii</sup>

In regards to non-human species, even America's dedication to national parks and forests may not suffice to keep the nation's wildlife safe. Population geneticists argue that even these "expansive" protected areas are not adequate for natural evolutionary processes to operate normally.<sup>cxix</sup>

Thomas Berry, the late cultural historian, viewed law as a subtle influence on people's perception of their surroundings. By establishing the Rights of Nature, people may begin to shift their outlook on the way our societies treat nature and the amount of respect it is given. Using the term "Earth Jurisprudence," Berry promoted the prioritization of nature over human interests, based on the presumption that humanity cannot function without nature.<sup>cxx</sup> Twist described how Rights of Nature is meant to shift the thought of the public and provide a "healthy evaluation of assumptions" that humans, particularly Westerners, have established. He argues that the way the system is organized is not the way the world is, going on to proclaim that the current structure of countries is unsustainable.<sup>cxxi</sup>

In order to protect the environment from massive, irreversible degradation, countries must follow Ecuador's lead and immediately put systems in place that prohibit the destruction of ecosystems and species. Despite the controversies over the implementation and direction of the constitutional chapter, Ecuador has set an example for the world to follow in the hopes of reviving our planet and living in harmony with nature.

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