

Assisting the Ecuador Constitutional Assembly Draft Rights of Nature ■

In 2007, Ecuador began the process of writing a new Constitution for the country. Of particular concern to elected Delegates to the Constitutional Assembly is the ongoing and increasing pressure from multinational corporations to exploit the country's oil reserves and biodiversity.

As in the U.S., Ecuador's current structure of law puts the interests of corporations over those of nature and communities, allowing the best interests of ecosystems to be overridden.

At the request of the Pachamama Alliance – an Ecuador-based foundation – the Legal Defense Fund is now advising Assembly Delegates. Staff traveled to Ecuador in both November 2007 and February 2008 to meet with elected Delegates.

Of particular interest to them is our work assisting local communities to pioneer a new form of jurisprudence recognizing legally enforceable Rights of Nature, and challenging a system of law which grants corporations constitutional "rights" and protections.



Current law in Ecuador, as in the U.S., grants corporations "rights" which are routinely used to override local, democratic decision making. In addition, there, as here, nature is treated as property under the law, and efforts to protect it are subordinate to the interests of property and commerce.



In February, we met with the Constitutional Assembly in Montecristi where the Constitutional Convention is underway. We presented to a number of different *Mesas*, or

committees, comprised of Delegates, on our work with local communities in the U.S. In addition, we met with the **Constitutional Assembly President Alberto Acosta** and held a separate meeting with the **Assembly Vice President Aminta Buenaño**.

Nature as Property: English and Spanish Structures of Law

Under both English and Spanish structures of law, ecosystems and natural communities are treated as articles of property. That means that ownership of land carries with it the right to destroy ecosystems and natural communities that depend upon the land for their existence. We explained how even the best environmental laws treat ecosystems as private property or as “common property,” attempting to regulate activities that damage the environment, but failing to establish a rights-based structure under which liability arises in response to the violation of the rights of ecosystems.

Governments attempt to protect ecosystems through environmental regulation that legalizes certain activities that endanger the natural environment, while attempting to limit the degree of harm that can be inflicted upon the natural environment.

For instance, mining corporations are issued permits to extract coal and those permits establish legally permissible levels of pollution for the corporation. Unfortunately, the regulatory limitations established by the system are usually written by the corporations themselves through governing legislation. Thus, citizen efforts to protect the environment through those regulatory frameworks have generally failed.

We explained to Delegates how recognizing legally enforceable Rights of Nature in the Constitution would enable governments, organizations, and people to take action on behalf of ecosystems and communities to defend them against projects that would interfere with their integrity, existence, and functioning.

While under existing law, people defending ecosystems can only recover damages based on an individual’s loss of use of that ecosystem, a legal system of ecosystem rights would guarantee that the ecosystem’s right to exist and flourish could not be impaired. Damages would be measured not by people’s loss of use of the ecosystem, but by the damage inflicted on the ecosystem itself.

Proposed Language for the Constitution: Rights of Nature

At the request of Assembly Delegates, we drafted Rights of Nature language – based on Ordinances we’ve developed for municipalities in the U.S. The language recognizes that ecosystems and natural communities possess independently enforceable legal rights to exist and flourish. Recognition of those rights enables governments and communities to enforce those rights to protect the natural environment. The proposed language is below:

Natural communities and ecosystems possess the inalienable right to exist, flourish, and evolve within Ecuador. Those rights shall be self-executing, and it shall be the duty and right of all Ecuadorian governments, communities, and individuals to enforce those rights. Suits brought to enforce those rights shall be filed in the name of the natural communities or ecosystem whose rights have been violated, damages shall be awarded to fully restore the natural communities or ecosystems, and awarded damages shall be applied exclusively towards returning the natural community or ecosystem to its previous state.