



UNIVERSAL JURISDICTION

PAULO TAVARES

Excerpts from interview with Esperanza Martinez, ecologist and author, member of NGO Acción Ecológica, Quito ? Feb 2012.

At that time one of the tensest issues between development and environment was the question of territorial rights of the indigenous peoples, because their claims to territory ran parallel to the environmental crisis. The 90s witnessed those great marches, which were mostly about territorial recognition. But which also served to make the subject visible?the subject of the political claim that was the indigenous peoples. And then there are certain advancements in the area of international law? and reasons such as disasters and other occurrences, some more visible than others, new illnesses, pesticide alerts and so on that start surfacing. But what I believe to be important is the emergence of a new social actor. For Latin America this is very important.

Latin America inherited the revolutionary visions of Marxism from Europe, and the idea that the social subject of change was the proletariat. But then one arrives here and says ?where is the proletariat if we don't have any factories?? The only workers who qualified as proletarians were the workers of the oil industry, who had very good salaries, so? it is a paradox. When the indigenous started emerging, originally they emerge as rural workers, but they are not really rural works? and in fact they emerge as a distinct paradigm. It was difficult for the left to assume that the indigenous were not rural workers, because this challenged the grounds of some classic notions of emancipation.

I think stories have been paid off with time and there is much less 'torture' now, and I believe Latin America was fundamental to form this new comprehension of the indigenous peoples as actors of processes of emancipation.

When we approved the rights of nature in the Constitution, this process implied a reflection about on what exactly is nature? Because for science it is one thing, for the indigenous people is other, for law it is another one, and for capitalism another.

For capitalism nature is environment: a place where one extracts resources within certain limits. The indigenous people have a distinct notion: nature is not only other species, not only the ecosystem, but also spiritual beings. So we are not speaking of the same. In the case of biological sciences, it depends from which scientific paradigm you depart: are human beings included inside nature or not? Is there hierarchy in nature according to which some beings are less or more important than others?

When we decided to adopt the term ?Pachamama?, it was foremost an act of acknowledging the wise of who are so closely tied to the earth. It was also a critical act in relation to the classical notions of environment and nature. It was an act of openness, of opening to diversity, that is to say, of knowing that there must be an effort of interpretation about what we understand as nature. If modernity has adopted a single paradigm, one single rationality, one sole model of nature, what we are saying is that there is not only one. There are many, and they have some general principles that we have to be able to attain.

Paulo Tavares: Modernity is said to have one nature and various cultures, right? But what you are saying is different, that there is not only one but many natures.

Precisely. As many as there are cultures

With the recognition of the Rights of Nature, we established nature in a superior level. It acquires a position that goes beyond a functional condition. Its purpose is no longer to satisfy development, but it acquires rights of existence in itself. The Rights of Nature also raises the question of who is at its defence. For example, it is not a question of fourteen families defending their particular interest in a particular place, but turns towards defending the environment as a subject.

In both the Ecuadorian and the global context, the cases of defending nature as a subject will become an increasingly disputed arena, because it is not about people defending a particular territory but a fundamental right. In this sense, it is an interesting political tool. The State of Ecuador ended up granting amnesty to people fighting in the name of nature. It was not only about the defending their territory, but something much bigger. It is beneficiary to everyone. It is a way of elevating local issues to national or even global interest.

After the disastrous spill in the gulf in the Gulf of Mexico, we start thinking what could be an instrument to educate society in relation to the limits imposed by extreme natural disasters such as the BP case, and how to start building a formative basis on those

issues. And at the same time, the concern was developing the rights of nature, which we already have established in Ecuador. So we proposed to some key national and international activists that we should present a legal demand. We invited people like Vandana Shiva, Nnimmo Bassey, and the principal indigenous leaders of Ecuador, the president of CONAIE, ECUARUNARI and other local organizations. Initially we submitted the lawsuit under the principle of Universal Jurisdiction based on the ideal that the rights of nature themselves would not be protected by anyone if we didn't start bringing them forth.

When we say that there is a difference with the rights of nature, we do so it because in fact in the US there were many demands regarding the effects on coastal communities and fishing communities for what the lawyers call the "loss of earnings" from the sea. But no one was thinking about the sea itself. And the sea is something magical no? If there is a symbol of life itself that is the sea. So it was a bit perverse to think that the only solution for this case would be defined on the basis of "loss of earnings" from the sea.

So we propose to define the lawsuit according to some basic conditions. First, it was not seeking for economic compensation. Obviously, the indenisations and compensations given to the ones that were affected are just, but this doesn't solve the problem. The lawsuit was designed to introduce the basic three rights that are recognized to nature in Ecuador. One first right --- which come before those three --- is the recognition that nature exists. Once recognized that nature exists, the Ecuadorian Constitution grant nature with basically three rights: precaution, reparation and protection.

As for the right to precaution, we demonstrated that there was already warns that it was dangerous to exploit oil at this depth. There were many evidences demonstrating that they should not have been operating under those conditions.

As for reparation, the Ecuadorian Constitution recognizes the principle "integral reparation", which has several components that were developed through human-rights international conventions. So there is a parallel. In that case what we asked for BP was proper reparation of the area. One of the elements of reparation is compensation. But because our demand was not seeking economic compensation, we therefore proposed an idea of compensation in relation to what has caused the damage itself, for example: if BP has spilled 5 million barrels of oil in the sea, the BP has to commit itself to leave 5 million barrels of oil on the ground in another part of the planet. This is a mechanism of compensation, and compensation is part of the right to reparation.

And as for the third right, the right of protection, the idea was to build an international network and from Ecuador assume a position of "international citizens", of "citizens of the planet", so to say? That is why we thought to need someone like Nnimmo Bassey from Africa, or Vandana Shiva from India, because the oil-spill also affected those

areas? So the idea was to create not a representation of each region but to create a notion that the defence of the rights of nature are distributed around the planet, and that insofar as there are not other tribunals that can accept such claim, this case should be accepted at the Constitutional Court of Ecuadorian under the principle of Universal Jurisdiction. When we talk about the oil-spill as a violation of the rights of Pachamama, what we are saying is that the principle of nature that the Ecuadorian Constitution recognizes is not limited to the geographical borders of Ecuador and its trees and plants, but of Pachamama. It is not exactly the same to the idea of Universal Jurisdiction, which was formulated in relation to crimes against humanity, but also allows reflecting critically upon those crimes that affect not only the whole of humanity, but existence itself, the entire planet.

Cluster: Non-human Rights

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