BEYOND THE HUMAN
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Excerpts from interview with Mario Melo, lawyer and writer, member of NGO Fundación Pachamama, Quito ? Feb 2012.

Towards the end of the nineties, it became apparent that the sustainable development approach was turning into a crisis. ?Sustainability? arose as the necessity that the ruling nations of the world had to guarantee the possibility of future generations to have access to natural resources, at least to the same extent as the previous generation. Yet this approach/paradigm hasn?t been able to be realized.

2007 is a key year for ?environmentalism?. First of all, the effects of climate change are becoming more and more evident, and on the other hand there is public and media frenzy around Al Gore?s documentary. This coincided with a moment when social and political change was high on the agenda in Ecuador. The governments that had been in place since 1987 proved unable to guarantee neither the rights of its citizens nor the continuity of democracy. So there was a strong demand for change in the juridical and political spheres, and perhaps the most revolutionary proposition that was made was set in the scene of the Montecristi Constitutional Assembly: the recognition of nature as a subject of rights.

We had various inspirations for the formulation of a proposition for the recognition of the rights of nature. From a juridical point of view, perhaps one of the most interesting was a famous case that happened in the US in the 70s known as ?SIERRA CLUB v. MORTON?. The company Disney had set out to develop an adventure park in a zone that is especially important from a natural standpoint, specially because of the presence of the sequoias, those immense trees that represent and symbolize the Californian identity and that are very important from a biological perspective. The US-NGO Sierra Club undertook legal action to impede the realization of the project. At the end, the Supreme Court of the US ruled against Sierra Club, arguing that without patrimonial claims to the forest, they could not impede the development. As Sierra Club was neither the owner of the forest nor of any of the trees, they could not held the juridical claim since they would not suffer injury. But one of the judges, William O.Douglas, made a significant intervention questioning why the trees themselves could not claim justice, according to their own interests and their own rights.

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SIERRA CLUB v. MORTON

U.S. Supreme Court

405 U.S. 727 (1972), Argued November 17, 1971

William O.Douglas: *?The critical question of "standing" would be simplified and also put neatly in focus if we fashioned a federal rule that allowed environmental issues to be litigated before federal agencies or federal courts in the name of the inanimate object about to be despoiled, defaced, or invaded by roads and bulldozers and where injury is the subject of public outrage. Contemporary public concern for protecting nature's ecological equilibrium should lead to the conferral of standing upon environmental objects to sue for their own preservation. Inanimate objects are sometimes parties in litigation. A ship has a legal personality, a fiction found useful for maritime purposes. The corporation sole - a creature of ecclesiastical law - is an acceptable adversary and large fortunes ride on its cases. The ordinary corporation is a "person" for purposes of the adjudicatory processes, whether it represents proprietary, spiritual, aesthetic, or charitable causes. So it should be as respects valleys, alpine meadows, rivers, lakes, estuaries, beaches, ridges, groves of trees, swampland, or even air that feels the destructive pressures of modern technology and modern life. The river, for example, is the living symbol of all the life it sustains or nourishes - fish, aquatic insects, water ouzels, otter, fisher, deer, elk, bear, and all other animals, including man, who are dependent on it or who enjoy it for its sight, its sound, or its life. The river as plaintiff speaks for the ecological unit of life that is part of it. Those people who have a meaningful relation to that body of water - whether it be a fisherman, a canoeist, a zoologist, or a logger - must be able to speak for the values which the river represents and which are threatened with destruction?*

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From a juridical perspective, many lawyers and colleagues found it unthinkable that a non-human being could have rights, which resulted in a juridical debate. Well, in our western system there are entities that are not human, that do not even have a real existence, but that have rights, like juridical persons. Corporations have some rights, they are defined by law as ?fictitious persons", which is in fact just an amount of capital. So if these fictitious persons have rights, why should nature not, whose existence is indisputable.

But beyond the juridical debate, there was a political discussion. To consider nature as

a being, as a person, as someone worthy of protection, tend towards dismantling an economic-political system based on extraction. Extraction is none other than betting all the possibilities of development of a country on the exploitation of its natural resources at the highest possible velocity, in the largest possible extension and with the least possible costs. This model has resulted in environmental disasters throughout the world. In Ecuador there was the disaster in the Amazon caused by oil-exploration conducted by Texaco between the 60s and the 90s. Therefore it was necessary to dismantle this vision of the country. The rights of nature contribute to form a new way of conducting the economy and public policies.

Cluster: Non-human Rights
