

# Nature's Right to Restoration Upheld in the Face of Pressure from Ecuador's Shrimp Industry

**By Maya Pardo**

On October 5 2023, the Constitutional Court of Ecuador denied a Presidential proposal to award ownership ('adjudicar' in Spanish) of 65,000 Hectares of a publicly owned beach area to industrial shrimp farmers, citing Ecuador's constitutional rights of nature along with the fact that, while the area is important to the shellfish industry, it is also important to artisanal fishermen and community members, who rely on the area for their livelihoods. This was the first time the Court has addressed the protection of beach areas from a constitutional law perspective on rights of nature [175 – 188], confirming that beach areas will remain bienes públicos (in the public domain) for years to come. The case is also significant because Ecuador is a top shrimp exporter, and the shrimp industry is an important part of the national economy. Therefore, this decision could be seen as an indication of the seriousness with which the Court regards the rights of nature when balanced against real and no doubt, powerful, economic pressures.

## **Background**

The situation regarding Shrimp farming was complicated because the Shrimp farmers had been granted licenses some decades ago to the 65,000 hectares of public land that were the subject of the case. Arguably, the industry practices have already had a negative effect on the area's natural ecosystem, interrupting the natural tide-washing cycle, so the area has become degraded. Industrial shrimp farmers were concerned about their livelihoods because of the El Niño phenomenon, which was expected to be very bad between December '23 and February '24. (Interestingly, as of March 2024, the El Niño effects turned out to be mild.) Consequently, they proposed to be granted the land outright and own the ti-

tle deeds of the beach area so that they could mortgage the land and gain access to credit to help them through potential emergencies. Under constitutional powers relating to economic emergencies, the President issued a draft decree allowing the shrimp farmers to be granted the public land, arguing that it had already been degraded and lost marine influence. The question for the 9 members of the Constitutional Court was whether the draft decree was legal.

## **Rights of Nature arguments**

Rights of nature are robustly protected in Chapter 7 of Ecuador's constitution. In Ecuador, Nature is referred to as 'mother earth' and referred to as 'her' rather than 'it'. In keeping with this distinction, we will refer to nature as 'her' in the Ecuadorian context in this post. Mother nature has both a right to integral respect for her existence and life cycles and a right to be restored. There is also an obligation on the state to prevent species extinction and destruction of ecosystems, and a prohibition on the appropriation of environmental services and development, which are regulated by the state. Finally, the constitution states that nature is to be available so all people can "enjoy the good way of living."

Martha Natalia Molina Moreira PhD, a marine biologist and specialist in coastal ecosystems, submitted an amicus curiae in support of the beach area's right of restoration. She was represented by Hugo Echeverria, who also participated in the well-known case about Estrellita the monkey, which established an individual animal as a subject of the rights of nature. He also acted as amicus in the Mangroves case. In the Industrial Shrimp Farmers case, Echeverria identified the mangroves, salt flats, and wetlands all as complex coastal ecosystems which are classified as fragile, threatened, and



highly susceptible to human intervention, and therefore subject to special protection in accordance with Article 406 of the constitution and environmental law. He reminded the court of the state's obligation to prevent degradation, as well as nature's right to be restored, drawing on jurisprudence in the Los Cedros and Mangroves cases. His arguments can be viewed at 2:32:45 of the public hearing before the Constitutional Court of Ecuador.

The presiding judge of the court, Judge Alí Lozada Prado, summarized the claimants' arguments against the draft decree as follows: "the draft decree law does not contemplate the rights of nature, including the right to respect for her existence and restoration. It should be considered that ecosystems are resilient and that the loss of beach and bay area status 'is not the only or decisive criterion to determine that this area has lost its status as a coastal marine zone ecosystem'" [178.5].

## Decision

The Constitutional Court denied the presi-

dential proposal on social and labor considerations (many people; not just the shrimp industry, depend upon beach areas – artisanal fishermen, and crab and shellfish farmers for example). In his reasoning, he also cited the right of nature to have her existence and regeneration respected, as well as the need to consider that the area might be capable of being restored [at 182].

## Rights of Nature and Animal Rights perspectives

From a rights of nature perspective, the case affirmed the constitutional rights of nature to be protected, even in the face of economic pressure. Importantly, the judgement also opened the door to juridical debate in Ecuador about restoration of nature and recuperation of degraded areas.

An interesting question remains: what would have happened if the 65,000 hectares were mortgaged to the hilt and the shrimp industry went bankrupt? The land would in effect be owned by creditors and who is to say what

would have happened to it in the long term. Environmentalists will argue that it would be better to protect nature and focus on a more sustainable economic strategy, through regenerative farming methods and a circular economic model, rather than focusing on short-term gains for one industry.

From an animal rights perspective, this case may have implications for future judgements in favor of nature over industrialized agriculture, where the latter has a negative environmental impact.

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The full judgement in Spanish can be read here: [http://esacc.corteconstitucional.gob.ec/storage/api/v1/10\\_DWL\\_FL/e2Nhcn-BldGE6J3RyYW1pdGUnLCB1dWlkOidmN-TAyYjBjNS02NjAoLTQyMzUtYjg5ZC02Y-WE3MjE0NWZjY2EucGRmJ30=](http://esacc.corteconstitucional.gob.ec/storage/api/v1/10_DWL_FL/e2Nhcn-BldGE6J3RyYW1pdGUnLCB1dWlkOidmN-TAyYjBjNS02NjAoLTQyMzUtYjg5ZC02Y-WE3MjE0NWZjY2EucGRmJ30=)

### **Author biography**

Maya Pardo is an American former professional opera singer who recently completed her Postgraduate Diploma in Law and Professional Practice from King's College London. She is co-author of Rights of Nature Toolkit: How to Protect Rivers in England and Wales and is passionate about animal rights.