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## TRENDS

## Indigenous People File Suit Alleging Environment as a Human Right

by Denise Thomasson

A lucrative partnership is often formed when governments of developing nations look to multinational corporations to boost their lagging economies in exchange for unexploited natural resources, cheaper labor costs, and less governmental regulation. There is currently no system that holds governments and multinational corporations accountable for the environmental degradation resulting from their partnership. Recently, however, some environmental activists have begun to use the framework of human rights law to subject these activities to legal scrutiny.

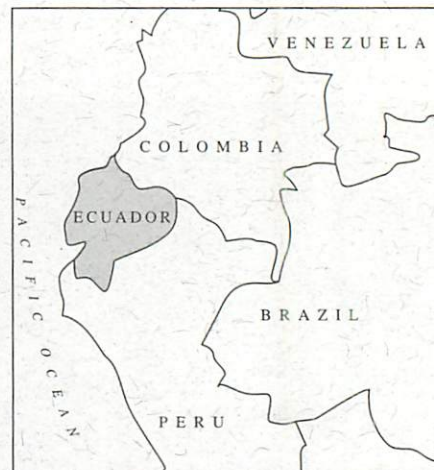
For example, environmentalists and indigenous groups have long complained of the unregulated development of oil in Ecuador's Amazon region, known as "the Oriente." In 1993, a class of 30,000 Ecuadoran citizens united to challenge the environmental and social damage resulting

had commenced. The plaintiffs in *Jota* also complain of damage to their communities resulting from Texaco's Ecuadoran operations. Although District Judge Broderick had originally agreed to consolidate the two cases, this has not yet taken place.

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Ecuadoran oil operations discharge 4.3 million gallons of toxic waste into the Oriente's environment every day, according to a 1991 estimate by the National Resources Defense Council. Until 1990, Texaco controlled 90 percent of these oil operations. This harm to the environment simultaneously impacts Ecuador's indigenous groups. According to a World Bank Report, as a result of contact with outsiders, loss of land, and environmental damage, the Cofan indigenous group "has suffered a process of social disorganization, rapid acculturation, and near cultural extinction." The *Jota* plaintiffs claim that Texaco's oil operations in Ecuador also have had an impact in Peru. The Center for Economic and Social Rights, an NGO based in New York, has found that oil-related contamination flowed into Peru via the rivers common to the two countries.

Oil development, on the other hand, is vital to Ecuador's economic stability. Oil revenues account for approximately half of the government's total revenue. According to Texaco officials, the Ecuadoran government has received \$24 billion dollars over the last 18 years as a result of Texaco's oil operations. As a result of this economic benefit, the government has been willing to overlook environmental damage.



This conflict in priorities is the focus of the *Aguinda* litigation. Before the merits of each side's case on this issue can be determined, however, the plaintiffs must overcome an immense procedural hurdle: they must establish that foreign plaintiffs alleging health and environmental damages in their country should be allowed to file suit in the United States against an American company.

In ruling on Texaco's motion to dismiss the claims alleging violation of the Alien Tort Claims Act, District Judge Broderick indicated the possibility that

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the Alien Tort Claims Act may grant the court jurisdiction over this case. Originally enacted in 1789, the statute provides, "The district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States." Suits brought under the Act usually allege human rights violations by government

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Ecuador's Amazon region, rich in oil and other natural resources, is the focus of controversy between developers and environmentalists.

from Texaco's continued exploitation of oil in the Oriente. *Aguinda v. Texaco, Inc.*, filed in the U.S. District Court for the Southern District of New York, attempts to use the Alien Tort Claims Act, 28 U.S.C. § 1350, to force Texaco to compensate the affected indigenous population. In addition, *Jota, et. al. v. Texaco*, another class action suit on behalf of 25,000 Peruvians, was filed a few days after the *Aguinda* litigation



Indigenous People, continued from previous page

officials, such as torture, but in *United States v. Arjona*, 120 U.S. 479 (1887), and *Nguyen Da Yen v. Kissinger*, 524 F. 2d 1193, 1201 n. 132 (9th Cir. 1975), the federal courts recognized that suits could be brought against non-governmental defendants.

Under the Alien Tort Claims Act, plaintiffs must establish misuse of hazardous waste of significant magnitude to amount to a violation of international law. Precedent must be followed, however, in establishing a violation. Environmental damage is recognized in the domestic law of the United States and is subject to legal restrictions. The United States has laws governing the disposal, treatment, and storage of hazardous waste. These laws may prohibit conduct harmful to the environment if carried out in the United States. U.S. commitment to international treaties or declarations to control such waste is highlighted by such laws. In *Amlon Metals v. FMC*, 775 F. Supp. 668 (S.D.N.Y. 1991), however, the court held that not all conduct which may be harmful to the environment, and not all transgressions of environmental laws, violate the law of nations. If the conduct occurs solely in the foreign country, using the Act may be difficult because the U.S. court system does not want to interfere with the sovereignty of a foreign government. In order for the plaintiffs to prevail under a cause of action created by the Alien Tort Claims Act, therefore, they must demonstrate that events initiated in the United States violated international law.

In addition to the hurdles the *Aguinda* plaintiffs must clear to use the

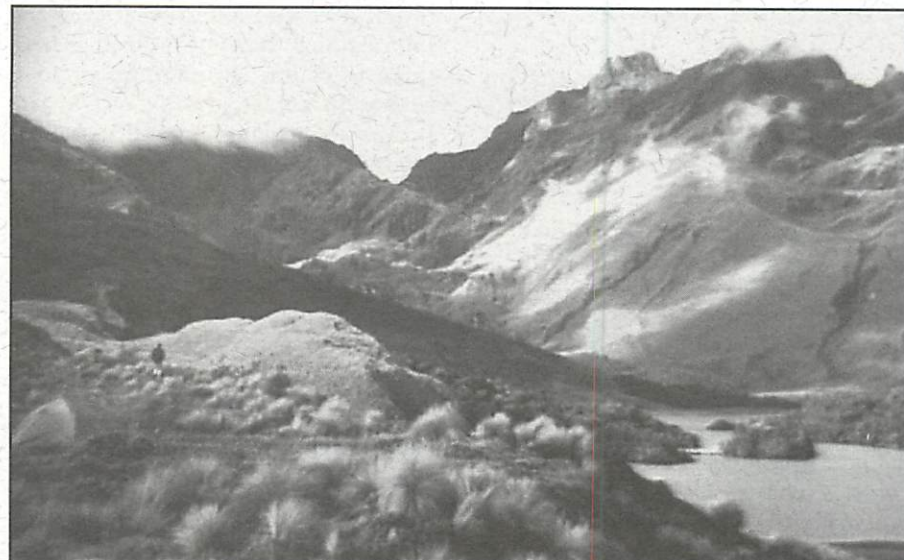


Photo courtesy of Mark Hendley

Alien Tort Claims Act, they face several other obstacles. Texaco had also attempted to dismiss the complaint based on *forum non conveniens*. This doctrine requires the judge to balance the hardship to the defendant caused by the forum, against the interest of

In the event that the court grants jurisdiction, citizens of developing countries may gain a tool with which to protect their human rights when their national government is unable or unwilling to do so.

the plaintiff in obtaining effective adjudication of the dispute. Although Judge Broderick recognized the significant problems associated with adjudicating the case in New York, he ruled that the suit would only be dismissed for inconvenience if Texaco proved that effective adjudication could take place in Ecuador and it would submit to Ecuadoran jurisdiction.

On December 22, 1994, Texaco submitted to the court a "Memorandum of Understanding" between the company and the Ecuadoran government. The Government of Ecuador filed an amicus brief in support of Texaco's motion to dismiss, arguing that any exercise of jurisdiction in this area would be a disincentive to American firms considering investment in Ecuador. Without the consent of the plaintiffs, it is unclear whether Judge Broderick will consider the memorandum as sufficient grounds for dismissal of the suit.

He did, however, grant Texaco a temporary stay of discovery while the company sought a settlement with the Ecuadoran government.

*Aguinda* is a prototype of possible litigation in the United States using the Alien Tort Claims Act to address environmental and human rights violations by a non-state actor. In the event that the court grants jurisdiction, citizens of developing countries may gain a tool with which to protect their human rights when their national government is unable or unwilling to do so. This would be a step towards the development of a system to hold multinational corporations and the governments which encourage them accountable for the environmental and social damage resulting from their partnership. The question of whether multinationals should be treated as private citizens or as entities with public responsibilities must be studied further. In the future, human rights groups must re-examine

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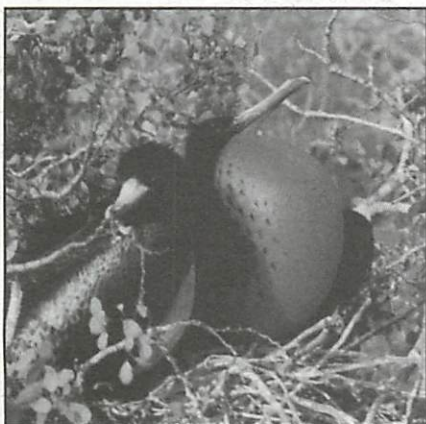


Photo courtesy of Dorn Moore

Indigenous people believe Texaco's operations are threatening the region's environment and wildlife.