



Pitfalls in Promoting Environmental Rights

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Outline

- Absence of rights means the environment cannot compete with other interests
- Rights as an obstacle to environmental gains
 - example of UK nature conservation
- Potential and weaknesses of environmental rights
 - “operational” rights
 - constitutional rights
 - rights for nature?
- Are rights the answer?



Nature Conservation & Property

- Reluctance to impose restrictions on land use
 - compensation
- Voluntary agreements and ability only to delay operations
- Eventually stronger controls
- Rights-based challenges
 - Procedural
 - *R (Aggregate Industries UK Ltd) v English Nature* [2002] EWHC 908
 - Substantive
 - *R (Trailer & Marina (Level) Ltd v Secretary of State for the Environment, Food and Rural Affairs* [2004] EWCA Civ 663
 - *R (Mott) v Environment Agency* [2018] UKSC 10
- Chilling effect – engrained respect for rights



Environmental Rights

- Operational rights
 - rights within existing legal frameworks with an environmental focus
- Constitutional (human) rights
 - individual right to a good/healthy environment
- Rights for nature
 - Constitution of Ecuador
 - conflicts with other rights and enforcement



Operational Rights

- Operate within existing legal frameworks
 - more level playing-field as environmental interests recognised
- Recognition of ecosystem services
- Conservation covenants/easements

- Definition
- Rights-holder and role for public interest
- Remedies



Constitutional (Human) Rights

- Anthropocentric and individual
- Status of rights within constitutions
 - only indirect role in ECHR
 - no individual right under EU Charter
- Formulation
- Causation
- Remedies



Rights for Nature

- The environment as a legally recognised stake-holder
- Legal personality of rivers
- Constitutional rights
 - Nature, or Pacha Mama, where life is reproduced and occurs, has the right to integral respect for its existence and for the maintenance and regeneration of its life cycles, structure, functions and evolutionary processes.
 - Constitution of Ecuador 2008, art 71
- Who acts to protect such rights?
- How do these rights relate to other constitutional rights that place demands on the environment?



Are rights the answer?

- Struggle to get environmental rights to compete on an equal basis with more established legal rights
- Even strengthened rights will not provide ecological sustainability
 - cannot satisfy all rights within the limited capacity of the Earth
- Inherent and overriding qualifications to all rights to ensure environmental welfare?
- Derogation on basis of “emergency threatening the life of the nation” (ECHR, art. 15)?



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