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Does Wildlife Have Legal Standing? — The Penguin Case in Patagonia

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The Magellan penguin populations in the Patagonian province of Argentina were recently threatened by a proposed joint Japanese-Argentine venture to exploit them on a massive scale. The firm, Hinode Penguin Argentina, wished to begin slaughtering what it termed "excess" penguins, and to process the dead birds into skins for the world market; the carcasses were to be converted to a protein extract for local consumption.

Upon learning about this venture, Argentine conservation groups mobilized their forces quickly—formulating and implementing media campaigns, soliciting scientific opinions from local and worldwide experts, and concocting legal strategies. The legal tactics alone, although initially successful, eventually floundered because of a weakness in Argentine law: citizens cannot bring "class action" suits to court—only the government has jurisdiction over any area considered to be in the general domain, like wildlife protection. So it was the judge's eventual decision to consult with the Argentine president that turned the tide for the penguins. Since the president needed popular support, he dared not contradict the massive body of public opinion that had been marshaled in favor of the penguins.

While the outcome in this case was favorable, because a whole spectrum of strategies, including economic arguments, was used to exert pressure on the court and Executive branch to halt the Hinode scheme, similar threats could be averted more easily and quickly if Argentines could gain the basic right to bring to court "popular" or "citizen" suits on behalf of wildlife.

Zusammenfassung

Die Magalhães Pinguin Populationen in der Patagonischen Provinz von Argentinien wurden vor kurzer Zeit bedroht, und zwar durch ein gemeinsames Japanisch-Argentinisches Unternehmen, das auf eine Ausbeutung der Pinguine in grandiosem Ausmass hinzielte. Die Firma "Hinode Pinguin Argentina" hatte die Absicht, mit dem Schlachten von dem, was sie als "Exzess"-Pinguine bezeichnete, zu beginnen und die Häute der getöteten Vögel zu bearbeiten, um sie auf den Weltmarkt zu bringen. Die Tierleichen sollten zu einem Protein Extrakt für den lokalen Konsum verarbeitet werden.

Sowie diese Absicht bekannt wurde, mobilisierten argentinische Naturschutzgruppen schnell ihre Streitkräfte, planten Media-Kampagnen und führten sie auch durch, holten wissenschaftliche Meinungen von lokalen und internationalen Experten ein und entwickelten eine Strategie für legale Aktionen. Die legalen Taktiken, obwohl zu Beginn erfolgreich, scheiterten schliesslich an einer Schwäche in der argentinischen Justiz: argentinische Staatsbürger können nicht Klagen aus "Klassen Aktionen" vor Gericht bringen. Nur die Regierung hat Jurisdiktion über Sachgebiete,

die im generellen Bereich liegen, wie Schutz von Wildtieren. So fiel der endgültige Richterspruch dahingehend aus, mit dem Präsidenten von Argentinien Rat zu pflegen, was der Sache der Pinguine zugute kam. Weil der Dräsident Unterstützung durch das Volk brauchte, wagte er es nicht, sich gegen die grosse Uebermacht der öffentlichen Meinung, die sich für die Pinguine ausgesprochen hatte, zu stellen.

Während diese Angelegenheit günstig auslief, weil ein ganzes Spektrum von Strategien, unter Einbezug wirtschaftlicher Elemente, ausgenutzt worden war, um Druck auf das Gericht und die Exekutivgewalt auszuüben, den Hinode Plan zu stoppen, so könnten ähnliche Bedrohungen leichter und schneller beseitigt werden, wenn Argentinier das Recht bekämen, "populäre" oder "Bürger" Klagen in Sachen Wildtiere vor Gericht bringen zu können.

Introduction

During early February of 1982, a local newspaper of Chubut, a Patagonian province of Argentina, published the details of a commercial project on the exploitation of the Magellan penguin, a bird that is of great cultural importance for the people of the area, as well as the general public of Argentina and the international conservation community. So the news initiated the most dramatic controversy ever to take place in Argentina concerning issues related to conservation.

The case is a particularly worthwhile one for analyzing just how local and foreign conservation groups can function to prevent such a project from succeeding. Yet it is also important to identify the tools that were *not* available for rectifying the situation within the legal system of the country, tools that are also missing from the legal apparatus of many other Latin American countries. In this particular case, the problem concerned penguins. However, in the future, the same sort of controversy might arise over the plight of other species or some environmentally valuable portion of nature. Therefore, the experience gained here should not be allowed to be forgotten, and must be sifted through carefully for the lessons that can be derived from it.

Facts About Penguins

The Magellan penguin (*Spheniscus*

magellanicus) is found mainly on the Patagonian shore of Argentina (Fig. 1 and 2). Although biological data on the species are very scarce, two migratory routes have been observed: one reaches the Uruguayan shore, and the other touches the southern coast of Brazil. Nineteen colonies of birds have been counted; the two main groups are located at Punta Tombo and Cabo Dos Bahias. Both sites are protected as marine reserves that were established by the provincial (state) law of Chubut.

The Punta Tombo reserve is the best studied of the penguin colonies. It is the largest colony of its kind, comprising 1 to 1.2 million individuals. According to estimates made between 1974 and 1980, the population has remained stable. Smaller colonies are also developing within the same area, but no one has yet teased out the causal factors that promote new-colony development. Perhaps they are a result of food limitations in other areas, oil spills, or overall population increases in the species. Very little information is available on the Cabo Dos Bahias reserve, which also belongs to the Province of Chubut. However, the total estimated population of the penguins does not exceed 4 million for the entire Patagonia area.

The diet of the penguins consists of fish, mainly anchovies, along with other marine species such as squid. But the dietary habits of the birds still need to be studied more thoroughly. Their repro-

ductive habits are curiously "nest-site specific." This means that, in general, the same individuals will breed as a pair year after year, at the same site as the previous year. The reproductive cycle begins between the ages of 5 and 8 months. Reproduction occurs once a year, and two eggs are laid each time. Death rates for the offspring vary between 40 and 50 percent.

The primary predators of Magellan penguins are several varieties of sea gulls, which prey on the chicks and destroy eggs (these gull species include *Larus dominicanus*, *Stercorarius skua*, *Leucophaeus scoresbii*, and *Chonis alba*). Secondary predators include sea mammals, such as the sea lion (*Otaria flavescens*) and the orca (*Ornicus orca*), and land mammals such as the red fox (*Duscycion culpaeus*) and the peludo (*Chatopractus villosus*). However, predation by marine mammals has only a very minor impact on the penguin population, because they do not attack the birds very often. Predation by the red fox occurs only at the periphery of the colony, and fox attacks are subject to counterattacks by adult penguins whenever the foxes try to penetrate too far into the central area of the colony. Both the red fox and the peludo attack the young and destroy eggs as well.

Many Argentine newspapers have written about the effects of the oil spills that have occurred in the Southern Sea of Patagonia. (A major oil transport route has been developing in this region ever since the Panama Canal was closed to supertankers.) Oil pollution has become the most important threat to marine wildlife conservation in the area. (Five types of threats are usually considered in wildlife conservation: overexploitation, introduction of exotic species in local habitats, habitat destruction, pollution, and barriers to free movement or migration.) Thick oil slicks have been observed on the Patagonian Sea that reach, in many cases, the

valuable coastline of the region. In fact, counts of oiled penguins on the Peninsula Valdes indicate that many thousands of individuals die every year. For example, two wardens, Carlos Passera and Graham Harris, observed 487 dead oiled penguins along 1 km of shoreline at Punta Tombo on December 1981.

Apart from the threat caused by pollution, the human population in Argentina has, by and large, been very respectful of the penguin population of Patagonia. But the case reported in this article should alert Argentines to the reality that the possibility of facing another occasion of threat/overexploitation remains quite strong. Fortunately, in this instance, the potential for destruction was outweighed by the incredible affection that is felt for the birds by so many individuals and organizations, who have thus confirmed their traditional sense of respect for all wildlife.

Wildlife Conservation Law

In Argentina, two separate legislative systems coexist — there are both federal and provincial systems. But many of the federal laws can also be incorporated into provincial law, after special agreements have been made regarding adherence to particular federal laws by the province. However, most of the various conservation acts have not been incorporated into provincial statutes — instead, these laws have been passed by the federal government, but not subsequently accepted by the provinces. It is also important, for our analysis, to make note of several areas for which the federal government retains exclusivity in passing legislation. The Argentine National Constitution establishes that the international and interprovincial trade of goods, any matter related to the sea, and all areas of criminal legislation be vested solely in the federal government. In addition, only the federal government



FIGURE 1

may grant new and fundamental rights to Argentine citizens. Once granted, though, such rights apply equally to all citizens throughout the country. With this general information kept in mind, the analysis of the penguin case can be set within the proper specific legal framework.

Federal Act 22.421/81, the Fauna Conservation Act, has not been accepted as a provincial statute by the province of Chubut. Yet, as discussed above, some of the norms it establishes are compulsory for Chubut. For example, according to the first article of the federal act, every citizen of the country has a duty to protect all wildlife within the Argentine territory. However, readers from other countries should not confuse this obligation with the sort that grants standing in court to individuals, or groups of individuals, interested in wildlife conservation (through citizen, popular, or class-actions suits). Like the norms set forth in this statute, those of the crimi-

nal provisions are in force throughout the nation. Yet, what is defined as criminal depends upon each province's particular permit system (*i.e.*, a crime would be committed only when the taking of wildlife is expressly forbidden by a particular province; it is not a criminal act when a permit for such an action has been issued for the killing of wild animals).

Federal Decree 1216/74 is also applicable to the whole country; however, it is limited solely to the protection of *marine* wildlife. As was noted above, the federal government retains absolute and exclusive authority to legislate on marine matters. Its statutes are uniformly compulsory; there is no need for any provincial approval of its decisions. The most relevant federal provision prohibits any taking of marine wildlife before a thorough study of the species's physiology and behavior has been conducted and analyzed.

To ensure environmental protection of the sea and shore, Argentina rati-

fied the 1972 Convention for the Prevention of Marine Pollution by dumping of waste and other matter. The ratification of this convention does not require provincial approval. Thus, its norms must be complied with throughout the entire Argentine territory. To foster wildlife conservation, the convention includes an article that obligates the participating countries to prevent any dumping of waste or other matter into the sea, if this material is likely to harm "living resources and marine life." However, there has always been a possibility that Argentina might engage in an international trade in penguins for products and by-products derived from them. Although Argentina has ratified CITES (Convention on the International Trade of Endangered Species), the Magellan penguin is not listed in any of the Annexes of the Treaty, so the federal government has sole responsibility for regulation of any proposed trade in these penguins. (Conversely, two other penguin species are listed in CITES: *Sphenious humboldti* and *Sphenicus demersus*.)

To complete a summary of the applicable law concerning Magellan penguins, it is important to recall that this animal is not protected by provincial law outside the two reserves of Punta Tombo and Cabo Dos Bahias, even though penguins receive *federal* protection. The uncertain nature of the relationship between federal and provincial law therefore clouds the waters in the penguin case, but one is still compelled to conclude that Federal Decree 1216/74 should be applicable throughout the entire country.

The Commercial Project

Hinode Penguin Argentina, a commercial enterprise, presented a proposed project for the exploitation of the Magellan penguin. One can infer, from the name of the firm and from the name of one of its executives—Yoshinobu Nake-

mura—that the firm was jointly owned by Japanese and Argentine entrepreneurs. The president of the firm, Gustavo Larrea, asserted that it belonged entirely to local Argentines. Yet, it was interesting to discover that Larrea was involved at the same time in another company, Hinode SRL, a well-known Japanese import-export firm. This fact is of immense importance in this analysis, because some of the by-products to be derived from the penguins were specifically targeted for the world market. The project included the installation of the two plants. One was to be at Puerto Camarones. Here, the skinning and boning would be done after the birds had been killed in nearby areas. It was not projected that the killing would take place at any of the protected reserves. The other was to be located at Trelew, where protein would be extracted from the penguin meat. The final extract would then be marketed to the local people as a highly nutritional product. However, the skins were to be sold abroad, for the manufacture of gloves, handbags, and shirts. It was hoped that penguin-skin goods would be considered very sophisticated in many of the Western fashion markets. The project managers estimated that an initial investment of \$120,000 would be necessary for the first 2 years, including installation and subsequent operation costs. Labor requirements were expected to involve about 30 to 40 workers.

In order to achieve their projected goals, Hinode hoped to kill 48,000 birds a year during these first 2 years. This initial venture was considered only a pilot experiment; Hinode claimed that continuation of commercial exploitation of the penguins would serve to demonstrate the conservationist attitude of the firm. Since the idea of massive slaughter of penguins was associated in the minds of Patagonians with the earlier inhumane methods used in sealing and the killing of other sea animals by the British, the firm of-

ferred instead several new techniques that, it hoped, would not be considered repugnant to the several humane societies of the country. These included the use of electric-shock devices with special prods and cords, or the injection of "a certain chemical" that would kill the birds in less than 5 seconds (the precise nature of this chemical was never disclosed to the public).

The project was presented by the firm as a completely altruistic venture. In an interview featured in a local English-language newspaper, the Buenos Aires *Herald* (February 25, 1982), the president of the company asserted that his firm merely "want[ed] to make good protein available for the public." Concerning possible world demand for penguin skins, he declared that they had to "produce skins to pay for the production of proteins ...this venture is not intended for just profit making."

Official Presentation and Government Response

The presentation required for obtaining official authorization for the project was made to the relevant authorities from both the provincial and national administrations. After a meeting with the governor of the province of Chubut, Counteradmiral Niceto Ayerra, and the provincial Fishing Director, Jorge Riobop, the executives of Hinode Penguin declared to the press that they felt they had a 95 percent chance of having the project approved, principally because the federal authorities in Buenos Aires had already agreed to the terms of the project. (This pronouncement was published in *El Chubut*, a Patagonian newspaper.) The relevant federal authority for assessing this kind of issue is the Secretariat of Maritime Trade and Interests, which at the time was directed by Viceadmiral Ciro García.

Although there was approval of the Hinode scheme, there was a legal obstacle

— Federal Decree 1216/74— which prohibited any killing of penguins before a thorough scientific study of the species had been conducted. However, the same newspaper article mentioned above also noted that the federal and the provincial authorities had exchanged letters agreeing on the need to repeal the Conservation Decree. The article added that in the meantime Hinode would request a temporary permit, in order to begin construction work and subsequent operation of the plants, and thereby avoid any further delay in the implementation of the project.

In fact, the project was a welcome idea to the authorities involved: their official declarations on the issue demonstrate their wholehearted approval. At a news conference, the governor of Chubut asked (somewhat ironically): What kind of havoc would result if penguins were to begin invading their cities and towns because of "superpopulation." In addition, Mr. Zattera, spokesman for the secretariat of Maritime Trade and Interests, told the Buenos Aires *Herald* that lawyers in his department were already studying plans for having Decree 1216/74 declared unconstitutional, and thereby conveying to the provincial authorities the exclusive right to make a judgment in the matter. Such a change in jurisdiction would enable the governor of Chubut to permit the penguin exploitation to go forward.

Policy Process and Citizen Action

Once the nature of this commercial project had been publicly disclosed, however, there were all kinds of strong reactions. The first symptoms of public indignation were expressed by Chubut's local newspapers, which emphasized the spiritual values of the penguin population, and noted that economic benefits should not be the only factor considered in deciding on the future of the community's activities. In this particular case, they felt that preservation of the pen-

guins was more important than exploitation, since people's satisfaction and well-being had to be considered in any decision. And it seemed obvious, from the various statements made by the local inhabitants, that their affection for the birds outweighed their desire for any economic benefits that might accrue from the project.

At the same time, the conservation movement of Argentina began rapidly to mobilize its resources. Not all of the groups acted in concert, perhaps because of the present political situation: Argentines belong to an especially segmented society. Nevertheless, each of the groups played a significant role in the effort that was necessary to prevent penguin slaughter. Some of these groups focused their programs on the media, and concentrated on presenting scientific arguments. Other organizations used different methods, such as exerting pressure on governmental authorities at both federal and provincial levels. Finally, a few made

use of every possible international connection that they felt might be able to help exert a direct influence on the country. The three approaches were all highly appropriate and effective. Above all, they served to remove any intermediate obstacles, so that the final move, the legal presentation, was able to effect a positive outcome.

There were numerous private associations that intervened on behalf of the birds. Yet, only five of these were truly visible and active. These were the Plate Ornithological Society, the Argentine branch of the International Council of Bird Protection (ICBP), the Natura Association for Nature Conservation, the Argentine League for Animal Protection, and the Argentine Wildlife Foundation (FVSA). It was the Wildlife Foundation that played the most active part in stopping the penguin slaughter. They utilized all of the techniques described above, and were even able to counteract the



FIGURE 2

economic pressures that Hinode exerted on the governmental authorities. Among other things, they publicized the opinion of the most widely recognized ornithologist in the country, Dr. Klaes Olrog of the University of Tucumán in northwestern Argentina.

FVSA had a dramatic impact on the international conservation community as well. Their worldwide contacts resulted in an immediate response from major world organizations, which then took highly effective action. For instance, Dr. William Conway, Director of the New York Zoological Society, Bernardo Zentilli from the International Union for the Conservation of Nature, Dr. Claus König from the Deutscher Bund für Vogelschutz, and Dr. W. Engelhardt from the Deutscher Naturschutzring all wrote to express their scientific opinion on the proposed exploitation of penguins to the Argentine movement. In addition, concerned individuals from many countries, such as the well-known actress Bridget Bardot, voiced their sense of alarm about the project, to both public and private entities in the country. Furthermore, the action they undertook in their own countries served to focus the attention of the world media on Argentina's penguins.

All of these efforts, whether national or international in scope, were ultimately directed toward preventing the killing of the penguins by defeating the idea of repealing federal Conservation Decree 1216/74.

Opinions of Government Scientists

On February 5, 1982, Dr. Ricardo Bastida, from the National Institute of Fishing Research (INIDEP)—the official scientific research agency, declared in Telex 17 that the institute opposed the penguin exploitation project, based on an official position that had previously been taken by the agency on the matter (*Jornada*, February 6, 1982). His statements reassured both the conservationists and the tourist organizations. In addition,

the same article included a statement of opposition to the project from another scientific institution (also governmental), the National Patagonic Center.

Then, on February 1, 1982, INIDEP reversed its earlier position. The agency sent a second Telex (no. 20), signed by Navy Captain Alberto Casellas, who had been appointed director of the institute by the military government, which stated that INIDEP had never publicly declared its opposition to the penguin project, in regard to the feasibility of commercial exploitation of the birds.

One can see, from these two contradictory statements, issued by the same official institute, how scientific truth is often manipulated to satisfy powerful economic interests, which are in turn associated with governmental authorities. To a certain extent, this phenomenon happens everywhere in the world. Yet, in the particular instance of Argentina, one should remember that the country is ruled by a military dictatorship, so that any project, once approved by a few high-ranking military officers, becomes very hard to stop. But, at the same time, it is also common to find people working at the same official institutes who do not respond to politically inspired pressure. Dr. Bastida from INIDEP, for example, honestly expressed the policy that the institute had been following for years, before the situation created by the proposed Hinode project had arisen. But the public disclosure of INIDEP's scientific assessment was counterproductive to the interests of Hinode Penguin, as well as their official counterparts. As a result, Dr. Bastida was not permitted to clarify his position, after his director had made his own declaration in Telex 20.

Full recognition of this situation has taught those in the Argentine conservation movement that they must work in close harmony with those scientists in the official national organizations who have the right to disclose information and to express scientific opinions.

Arguments and Counterarguments

Different groups tended to emphasize different values in the battle for the preservation of the penguins. Some based their criticism on ethical grounds; others cited scientific evidence to counter that promulgated by backers; and others formulated sound economic and legal arguments to refute the supposedly beneficial and altruistic motives claimed by Hinode.

On ethical grounds, many claimed that Chubut was sufficiently rich to dispense with the idea that it was necessary to exploit penguins as a food resource. In addition, there was a general suspicion among the local population that the entire penguin deal was principally aimed at satisfying the world fashion market, by supplying penguin skins to the leather industry for fabricating elegant gloves, handbags, and shirts. These products seemed, to local sensibilities, to be too luxurious to justify an economically based war on a species that might result in its extinction. They realized that this threat arises every time commercial exploitation of wildlife begins in earnest. On the same basis, many rejected the whole idea of considering penguins solely as a potential food resource and thereby dismissing their value to those who enjoy watching wildlife; penguins are also economically important to the tourist industry.

For its scientific arguments, FVSA collated various opinions from leading national and international authorities, and were thus able to refute Hinode's scientific presentation. FVSA submitted a comprehensive document on the issue, which provided a detailed counterargument. This is summarized below.

1. Hinode justified the killing of the birds by asserting that it had estimated that there was an "excess" population of 12 million individuals, adding that 10 million of these were distributed outside the two provincial reserves. FVSA, in turn, reminded Hinode that, until the

present, the only extent studies had shown that, at most, the penguin population was approximately 4 million; 1.2 million were counted at the Punta Tombo reserve. They noted further that the reserve includes the largest penguin colony in the world. In any case, they distrusted Hinode's penguin population data because the time spent collecting it was too brief for a careful study of population dynamics (since the firm's activities had only recently begun, there could not have been sufficient time for rigorous investigation). Regarding Hinode's contention about a possible penguin "invasion" of towns and cities (due to "superpopulation"), any educated reader can easily guess FVSA's reply, based on simple principles of ecology.

2. Hinode claimed that the reason for the supposed increase in the penguin population was the reduction in numbers of its natural predators—among them, seals, sea elephants, orcas, skuas, whales, and red foxes. FVSA responded by noting that neither seals nor sea elephants have any more than occasional encounters with the penguins of that area, so that any change in the population counts of these mammals is irrelevant to an evaluation of penguin population dynamics. Regarding the orca, scientists have found that its population has remained stable over time. Although it is true that red fox numbers have diminished, this animal only preys upon the peripheral areas of penguin colonies, attacking chicks and destroying eggs, and thus has only a relatively small impact on the penguin population. The skua, however, is an active predator of penguins. Yet, in contradiction to Hinode's claim, its population has actually been increasing recently, along with several other sea gull species. Finally, and somewhat ludicrously, FVSA had to remind Hinode that baleen whales do not feed on penguins for obvious biological reasons (their diet consists mainly of krill).

3. Hinode argued that the Magellan penguin consumes, on a yearly basis,

720,000 tons of anchovies, thus devastating fishery operations and jeopardizing the marine ecological balance. FVSA refuted this by stating that no known study supported such an inflated figure; even the highest estimates of the amount of anchovies consumed by penguins did not exceed 370,000 tons. Hinode also declared that humans are placed in a disadvantageous position in competing with penguins for anchovies. FVSA simply replied that, to their knowledge, there is no species in nature that can successfully compete with modern human fishing techniques.

4. Regarding the killing methods to be used by Hinode, FVSA declared that this issue was an irrelevant consideration, since their main objection was directed at the killing of penguins *per se*, regardless of how it was done. Considering Hinode's "scientific approach" of only taking "unmated birds," "widows," and lone individuals found at the periphery of the colonies, FVSA rejected this consideration because of the lack of scientific data to support such a proposal.

The most important group to argue against the Hinode plan on economic grounds was the tourist industry of Chubut. Tourist industry representatives insisted that, because of the penguin colonies in the province, about 300 people visited the area each day and asserted that this rate had been increasing steadily. For example, during January 1982, 7,886 tourists had visited the region, as compared with 5,884 for the same month in the previous year. The tourists who visited the region not only paid a fee for observing the birds, but also participated in many other kinds of activities in the province. The tourist organizations showed that Hinode's investment of \$120,000 was a negligible sum, when compared with the multi-million-dollar tourist industry in the area.

Dr. William Conway offered another consideration, which was useful for macroeconomic analysis of the whole pro-

vince. He said that any authorization for a penguin-processing industry, under the present regulatory system, would obviously require a strict system of control. The added costs for the requisite scientific supervision and oversight of the area would thus outweigh any taxation income to the province that might accrue from the penguin industry. Instead, money spent on improving the tourist infrastructure and wildlife preservation would result in greater revenues for the provincial government.

The most effective legal tactic was employed by the filmmaker Juan Schroeder, with the help of two attorneys who are now specializing in wildlife issues, Alberto Kattan and Luis Marga. They invoked their right to be heard in court, based on the statute-dictated duty of every citizen in the country to protect local and native wildlife (Article 1, Law 22.421). In addition, based on the hypothesis that both national and provincial authorities were trying at the time to repeal Conservation Decree 1216/74, they requested an injunction against any possible action aimed at setting up an industry to process slaughtered penguins, before the necessary biological studies had been completed (an obligation compelled by law). Moreover, they argued that the right to human life was guaranteed by the National Constitution, and then asserted that penguin and human life are intertwined, in a complex way, in the ecosystem perspective of life on earth. Surprisingly, the court did not reject their claim, and thus proceeded accordingly—at least at the outset of the proceedings.

Finally, most of the conservationist groups in the country informed those in Chubut about the excellent international reputation that the province enjoyed because of its local conservation policy. They added that, if Hinode's project were initiated, such prestige would quickly decline, and that it would then become very difficult to re-polish a tar-

nished image throughout the world. They also reminded Chubut that the province is renowned for having created the first marine sanctuary in the world.

All of the actions summarized above played a fundamental role in the outcome of the case; none could have achieved its dramatic impact without the collaboration of the others. But the terrible uncertainty about the penguins, which caused such terrible anxiety, was only relieved for good when the legal case (which eventually came to involve even the president of Argentina) was decided favorably.

Outcome

Judging from the story as it has been narrated here, it would be easy to assume that the battle for the penguins was won solely and simply because the cause of true justice was able to outweigh any other kind of interest. In fact, at one point, the judge wanted to dismiss the legal claims made on fundamentally formal grounds. The judge asserted that Argentine citizens do not have standing in court whenever the question at issue relates to the public domain. Accordingly, a citizen may not press for relief of a grievance unless his own property or person is adversely affected. He added that, even if the law imposed upon citizens the duty to protect wildlife, such an obligation was solely generic, and did not in itself grant standing in court. (Popular or citizen actions are unknown under the Argentine legal system.)

The judge also questioned the legitimacy of the request for an injunction, because he thought it was based on a purely conjectural situation. In fact, no penguins had as yet been killed, nor had the Conservation Decree been repealed. Thus, the court could not exercise any control on the Executive branch before any administrative act had actually taken place. So the idea of relief did not really make much sense, considering that there had not yet been any action that would

constitute the necessary precondition for the injunction.

But in light of the fact that the penguin situation had become a major issue in the country, the judge did initially accept the validity of the claim, and therefore sent official notice of his decision to the president of Argentina, General Leopoldo Fortunato Galtieri. He requested that the president, as the highest administrative authority in the Executive branch, notify him if he intended to repeal Conservation Decree 1216/74 or the amendment to Fauna Conservation Law 22.421, which required completion of biological studies of the targeted wildlife species by the National Directorate of Fauna prior to any killing.

The subsequent presidential reply was an extremely important victory for the Argentine conservation movement. At the time, General Galtieri badly needed popular support; he could not afford to disappoint a large segment of the population just to appease a single commercial enterprise. Thus, he informed the court that there were no plans to repeal or to amend the national wildlife conservation program. His response was widely disseminated by the media and marked the happy ending to the battle for the penguins.

Conclusions and Recommendations

This battle was won on political, not legal grounds. The legal case was but one tool used by an interest group as one means of exerting pressure on the government authorities. In fact, it was only through *combined* pressure that the highest authority in the country was forced to confirm the applicability of the existing conservation law. This decision halted any further attempt of Hynode to continue work on its project.

The case taught Argentines that concerted action can achieve positive results in conservation and environmental protection. Yet, it also revealed to them that they lack a very special and valua-

ble right, a right which they have never enjoyed but that could provide an important tool for future similar situations. When the judge reminded the claimant that "popular" or "citizen" actions were not part of the current legal code, many of those in the conservation community found this judgment unfair. Suddenly, it became obvious that the movement had somehow to gain that right. With standing in court, conservationists could act more effectively as protectors of nature.

Who can say what would have happened if the conservation groups had found out about the project too late, and had therefore been unable to work with the media so as to give the penguin's plight the publicity it deserved? Would the judge have reacted as he did if, after all, he had not been obliged to notify the president about the case (assuming that there had been no sort of other political pressure)?

To reiterate, in this case, the legal process only served as a political tool—it could not function by itself to resolve an unjust situation.

Under Argentine law, those matters that pertain to general concerns or the public domain come under the protection and control of the government. Yet, this function may not be shared with the citizens, beyond simple denouncements of unlawful events. Accordingly, when a crime threatens wildlife (penguins, in this case), only the government can take action. However, a problem arises whenever the governmental authorities become vulnerable to a course that strays

from its previous commitments. As a result, wildlife may well be left to its own fate. This is a situation that Argentines must change.

At one point, a local Buenos Aires magazine published a drawing of a penguin saying, "Prevent my death—I can't." This caption drives home the point that penguins do not have the standing in court that may be necessary for protection of their lives. And it is unfortunate that in Argentina, as well as in many other Latin American countries, citizens, too, are denied the basic right to defend the penguins against very powerful economic interests.

It would be useful if the world conservation movement would become more aware of this fact, and assist those countries in which conservationists still need more effective tools to protect nature. The penguin case has amply demonstrated this need. Perhaps, with that cooperation, Latin American citizens may become able to preserve not only penguins, but also the entire sphere of nature, which is under severe pressure from the aggressive methods of development that serve only to satisfy the North, while exhausting the South. In the end, was protecting the lives of the penguins in Patagonia a sufficient learning experience for Argentina, or would it have been a more instructive (though harsher) lesson if Argentines had been compelled to supply the fashion market of the world with beautiful and sophisticated gloves for delicate ladies?