

If the Frogs Should Win

The fate of some of Ecuador's last remaining cloud forests and hundreds of livelihoods rests on the outcome of a trailblazing Rights of Nature case concerning two tiny amphibians.

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Two frogs no more than four centimetres in length: they seem so insignificant. But much is riding on them, namely a constitutional court case that could stop mining development in most of Ecuador.

The Long Nose Harlequin Frog, last seen in 1989, was thought extinct until it was [rediscovered in the LLurimagua mining concession in 2016](#). The much rarer Confusing Rocket Frog, last spotted in 1985, was also written off until its rediscovery in the same mining concession in 2019. Both have been enlisted to stop a large-scale copper mining project that has been promoted by eight different Ecuadorian governments.

In years past, community opposition forced a Japanese and a Canadian mining company to abandon the project. Since 2014, Chilean-owned Codelco, the world's largest copper producer, has funded advanced exploratory activities. The company has the full support of the Ecuadorian government through Enami, Ecuador's state-owned mining company.

Tactics

This government support enabled the two companies to access the mining site in May of 2014. They did it with the help of nearly 400 members of three different elite police units backed up by the military, and by [occupying not only the mining site](#), but most of the Intag area.

Other [tactics](#) of intimidation included [incarceration](#) of a local opposition leader, plus an outrageous [smear campaign](#), spearheaded by then president Rafael Correa.

This is a only small sampling of the tactics used to try to neutralize the opposition to mining. And, if it sounds like fodder for a cinematic drama, it's because it is. Several documentaries have been made on the 25-year long struggle.

The issue, of course, is not only about frogs, although saving species from extinction shouldn't need further justification. The frogs live in some of the last remaining cloud forest on the western slopes of Ecuador's Western Andean range. Over 80 percent of these forests have been transformed into pastures, banana, cacao and oil palm plantations, sugar cane fields, and dismembered by illegal logging. Mining now severely threatens what is left.

Most people haven't heard of cloud forests, yet they are much more biodiverse and more threatened than the better-known Amazonian lowland forests. [Worldwide they make up less](#)

[than 2.5 percent of rainforests](#), but these forests also protect watersheds that give life to hundreds of rivers and thousands of streams, and provide safe drinking water and livelihoods to hundreds of thousands of Ecuadorians.

Rights

As important as species extinction and watershed protection are, Intag's struggle is also about defending collective and human rights.

A preliminary environmental impact study by Japanese experts in the mid-1990s predicted 100 families from four communities would have to be relocated to make room for what was then thought to be a small copper mine. Other impacts included heavy metal contamination of rivers, plus "massive deforestation" which would lead to a "process of desertification".

Today, Codelco suggests the ore deposit could be 53 times larger. If Codelco's estimate is confirmed, besides impacting more communities, the large-scale mine would generate anywhere from 3,829 million tons, to twice that amount of subsoil contaminated with heavy metals. All for just 17 million tons of pure copper.

The Confusing Rocket Frog and the Long Nose Harlequin are only the tip of the biodiversity iceberg. Hundreds of species on the IUCN and Ecuador's Red Lists depend on Intag's forests for continued existence. These include the Brown-headed Spider Monkey, the Spectacled Bear, the critically endangered Coastal Jaguar, several glass frogs, an extremely rare fish, and a tree so rare it has only been reported in another patch of forest hundreds of kilometers away. [The full list is depressingly long](#).

And the area hasn't even been properly studied. For example, just last month a [new species of mammal was discovered](#) close to the mining site.

Action

Lying beneath all this stunningly beautiful landscape lies a massive copper deposit. Intag's communities, supported by local, national and international organisations have done everything possible to prevent this environmental and social catastrophe from happening over the past 26 years.

We sued the Toronto Stock Exchange for human rights violations, created dozens of community- and local government-owned forest and watershed reserves, and got local environmental ordinances approved, all the while supporting sustainable economic activities.

The latest tactic, taken in August of this year, involved [presenting a Constitutional precautionary measure](#) to prevent mining activities from impacting the two endemic species' habitat.

We based the legal action on the inevitable violation of Ecuador's Constitutional Rights of Nature. To date, Ecuador's Constitution is the only one that recognises nature as a holder of rights independent from environmental rights that may benefit humans.

It's such a novel concept that I and others involved in the legal action had doubts the lower court judge would comprehend it. The judge not only grasped the concept but did so with a

clarity that should be heartening to people all over the world fighting for the adoption of the rights of nature.

Pressures

The win at the lower court set an important precedent for Ecuador. Other communities will be able to use this case to live their opposition to mining because the [country has over 2000 endangered species](#) in a territory the size of the US state of Nevada.

The defendants – in this case the Ministry of the Environment and the State Attorney General – immediately appealed. The case now proceeds to the Provincial Superior Court of Imbabura. But for the appeal several other heavyweights will join in, including lawyers from the Ministry of Energy and Non-Renewable Resources, CODELCO and ENAMI.

The appeal will likely take place at the start of the new year. However, the pressure to annul the decision before it gets to the higher courts has been mounting.

It shouldn't be difficult to imagine the kinds of pressure that judges hearing mining cases are being subjected to in countries like Ecuador, especially in times of pandemic. The government and companies paint apocalyptic scenarios: negative rulings will scare away foreign investments; they will break the economy more than it already is and rob the government of rents.

The companies will invoke international agreements that protect their investments and sue the country in International tribunals. And so on. My hat off to judges that can withstand these pressures and choose to uphold Constitutional Rights over thug intimidation, especially rights so novel as the rights of nature.

Energy

Here we come to an uncomfortable but key aspect of the issue. Copper is one of the basic metals for the “clean” energy transformation, so what are we to do if we don't mine enough of it?

Shouldn't the question be, how can we contain runaway climate crisis without being complicit in human rights violations, the devastation communities, and the decimation of forests harbouring threatened species?

Why aren't we carrying out an independent cost-benefit analysis of mining projects that may impact endangered species, water sources, indigenous and non-indigenous peoples as well as the rights of nature?

What will happen to ecosystems and the climate itself, if we keep placing a higher value to what is below ground than the richness above it? That wealth includes a region's clean water, productive lands, biodiversity, and cultural and social wealth. It is the type of wealth that can also help drive sustainable economic activities.

[The biodiversity crisis is just as critical as the climate crisis](#). It is upon us to act accordingly.

Winning

Exclusion zones can be set aside to keep mining out of places like Intag's forests and key

watersheds around the world. For exclusion zones to work, companies and government must include in their calculations all external costs to objectively determine a project's true benefits versus its social, environmental and cultural costs. These costs are normally undervalued or left out of equations all together.

Some of the guidelines should include zero extraction of minerals where endangered species are found, nor ore bodies exploited which can release heavy metals into the environment. Above all, mining companies and governments must respect a community's right to Free Prior and Informed Consent concerning activities that may impact their environment or their culture.

Given the expected increased demand for copper, cobalt, lithium and nickel, there will be a dangerous rush to find and exploit new mining sites. But, if on the way to solving one crisis we create a much more dangerous one, we will be guilty of unforgivable environmental crimes against nature and, thus, future generations.

If the frogs should win the appeals, a crucial precedent will be set. Preservation of wildlife and environments should always trump corporate interests. This precedent would mean that hundreds of families will not be forced off their lands or lose their livelihood. It will assure that the habitat of critically endangered species will not be decimated, and that pristine rivers and streams will not be poisoned.

Winning the upcoming appeals will go a long way to supporting a change of paradigm that just might help humanity save itself.

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