Are Rights of Nature Working?

The Impact of the Los Cedros Ruling in Ecuador

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Legal initiatives recognizing the rights of nature have transformed from a trickle to a cascade. As of January 1, 2024, a total of 493 proposals of this sort – including constitutional clauses, laws, municipal ordinances, policy instruments, judicial decisions, and nonbinding declarations – have been pursued in 44 jurisdictions and international venues like the United Nations, according to figures compiled by the Eco Jurisprudence Monitor. Approximately three-fourths have been approved. These initiatives doubled between 2011 and 2016 and then again between 2016 and 2021.

More-than-human rights

This trend is part of a growing interdisciplinary interest in ecocentric approaches to what philosopher David Abrams calls the "more-than-human world": the web of life that includes humans and nonhumans alike. In the legal field, this has resulted in the proliferation of conceptual and doctrinal debates on "more-than-human rights", as César Rodríguez-Garavito has proposed to call rights of nature in a recently published volume. Given the complexity and recency of this debate, many key questions remain open: Who counts as a subject of rights? Should more-than-human rights be limited to animals, or should they also include other kingdoms of life? Should legal protection be granted to individuals, species or whole ecosystem? Who, if anyone, speaks for nature? What rights should be accorded to nonhumans? A growing and vibrant literature is examining these and other issues.

However, less attention has been paid to the impact of more-than-human rights, especially of court rulings that have recognized the legal personhood of nonhumans – from animals to forests and rivers. Have those judicial decisions effectively protected nature or is their *impact* primarily symbolic?

The Los Cedros ruling

To contribute to answering this question, the More-Than-Human Life (MOTH) Project and the Earth Rights Research and Action (TERRA) Clinic at New York University School of Law conducted a systematic study on the implementation of one of the most sophisticated and prominent decisions of this sort. In 2021, the Constitutional Court of Ecuador ruled in favor of the Los Cedros Forest, a highly biodiverse cloud forest between the Chocó and the Tropical Andes regions of Ecuador. Invoking the pioneering recognition of the rights of nature in the 2008 Ecuadorian constitution, the case had been filed in response to mining licenses that had been granted by the government for exploratory work within the bounds of the Forest Reserve. It ultimately landed in front of the Constitutional Court, which found that mining activities would cause environmental degradation in clear violation of the right to a healthy environment, the right to water, and the rights of nature – specifically, the rights of the Los Cedros Forest and its species to exist and to regenerate via healthy life cycles. The Court held that the violations of fundamental human rights and constitutional rights of nature required an annulment of the mining permits. It declared the environmental registration void and held that activities threatening the rights of nature – including mining and all types of extractive activities – were prohibited within the Los Cedros Protected Forest.

The Court's decision contains a broad range of orders providing reparation measures – remedies implemented to address harm, damage, or injustice – and guarantees of non-repetition – assurances put in

place to prevent the recurrence of human rights violations in the future. Specifically, the orders required action from government bodies and mining companies formerly operating in Los Cedros, such as Empresa Nacional Minera (ENAMI) and its Canadian partner Cornerstone.

Evaluating compliance

Our report, written in collaboration with TERRA NYU students Bridgette Keane and Jeremy Zullow, evaluated the implementation and level of government and corporate compliance with the Constitutional Court's orders in the *Los Cedros* ruling as of June 2024.

The assessment is based on a combination of qualitative methods, including two field visits to Los Cedros (in October 2022 and May 2024) and a systematic review of primary and secondary sources, as well as interviews with key actors in the enforcement of the ruling. Compliance scores were assigned to evaluate the current level of implementation of each court order. Each score is accompanied by an analysis of the factors that make up each order's implementation status.

The report shows that the enforcement of the rights of nature and rulings like *Los Cedros* can be effective tools to protect endangered ecosystems whose survival and flourishing are essential to addressing the triple ecological crisis of global warming, biodiversity loss, and pollution. Unlike many other forests and ecosystems that have succumbed to the pressure of mining and other extractive projects in different parts of the world, Los Cedros remains a source of water and life for humans and nonhumans. The study found that mining operations indeed stopped in Los Cedros the month after the ruling and no mining infrastructure remains in the area. As the evidence and evaluation offered in our report show, the ultimate outcome of interest is that Los Cedros is effectively free of mining operations and continues to serve as a biodiversity hot spot and a source of clean water, air, and well-being for humans and nonhumans alike. As site visits and conversations with a wide range of actors suggests, without the ruling, Los Cedros would in all likelihood have experienced the environmental deterioration and massive extinction of species as other forests turned into sites for mining have in the region, in Ecuador, and around the world.

However, the results of the implementation of other court orders have been mixed. The Court's reparation measures were largely directed at the Ministry of the Environment, Water, and Ecological Transition (MAATE, for its name in Spanish), which was tasked with overseeing the implementation of the Court's ruling. For example, MAATE was to prepare – and the Ombudsman's Office was to report on – a new management plan with the participation of local communities. While a new management plan was indeed published, MAATE has failed to enable community participation and has been slow in implementing it.

Regarding measures of non-repetition, while MAATE and the Ombudsman's Office conducted initial in-situ monitoring, from February 2022 until September 2023, of the Los Cedros territory and a training for public officials on the implications of the ruling, little has been done since mid-2023 to ensure that Ecuadorian governmental and judicial authorities uphold the rights of nature and environmental principles outlined in the ruling and the Ecuadorian Constitution. Additionally, MAATE has not taken significant actions to update broader legal and administrative processes, such as decision-making for environmental licenses, to better protect Los Cedros and the rights of nature in general as mandated by the Court. In contrast, the Ombudsman's Office has largely fulfilled its responsibilities, consistently accompanying and reporting on the compliance process and, at times, urging MAATE to adhere to the ruling.

In sum, the ruling has been remarkably effective in terms of its immediate and direct impact on the protection of the forest as a subject of rights vis-à-vis the threat of large-scale mining. It has been less effective, however, in terms of its indirect effects on local community involvement and the strengthening of regulation and administrative procedures on rights of nature writ large.

Shifting responsibility

The success in protecting the forest from mining does not mean, however, that the fate of Los Cedros and the case do not remain vulnerable. The report shows that, due to insufficient actions on the part of the Ecuadorian government, the burden of the protection of Los Cedros has been placed on other actors.

Specifically, a disproportionate burden of the implementation of the ruling has fallen on the scientists, advocates, and forest protectors of the Los Cedros Scientific Station. The Station has monitored the entirety of Los Cedros since 1988 and currently operates with significant resource and personnel constraints. With a team of twelve members and leveraging a camera trap program along with a satellite system, the Station has been solely responsible for monitoring wildlife activity and detecting intrusions by miners and hunters. The Station also provides comprehensive training for neighboring community members to act as forest rangers and guides, which has been essential for the protection of the forest. Despite these efforts, Station employees are the first ones to acknowledge that their capacity to adequately monitor and protect Los Cedros is grossly insufficient.

In order to address these challenges and consolidate the precedent of the *Los Cedros* ruling, urgent actions and continued involvement are needed on the part of a range of domestic and international actors. The Ecuadorian State bears paramount responsibility to make up for lost time by supporting the Scientific Station and enabling the participation of local communities who have helped protect the forest. Similarly, the continued engagement of domestic and international civil society and scientific and intergovernmental organizations will be crucial in shaping the fate of the case. The Los Cedros litigation involved biologists, environmental collectives, artists, celebrities, and online supporters who provided evidence to the Court, crafted campaigns in support of the lawsuit, disseminated the ruling, and turned Los Cedros into an icon of biodiversity protection. They and all others who have been inspired by it should keep their eyes on the implementation of the ruling.

This article builds on the report "The Impacts of the Rights of Nature: Assessing the Implementation of the Los Cedros Ruling in Ecuador" published by the MOTH project and the TERRA Program.

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