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Battle of the heavyweights

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Jan Goodey reports on the legal bid to save the Amazon fringe that could set a worldwide precedent for forest protection.

In a defining moment for the Amazon and other forests, the Constitutional Court of Ecuador – the highest court in the land – has chosen to take on the Government over mining in nationally protected forests.

The Court announced it will hear the case of the threatened Los Cedros Protected Forest, using the Rights of Nature enshrined in the country's constitution.

In 2008, Ecuador was the first country to recognize the rights of nature under law, providing legal recognition for over 6 million acres of Protected Forests (*Bosque Protectores*). Although there had been previous attempts to enforce this via the courts, this case – which seeks to protect huge swathes of Los Cedros cloud forest, differs from previous ones where citizens have taken polluters to court or the Government has waded in on illegal gold miners.

This time it is a battle of the heavyweights: the Judiciary, in the guise of the Constitutional Court, taking on the Government in the guise of ENAMI – the state-registered mining company operating under the aegis of the Ministry of Mines, in cahoots with the Ministry of Environment.

As part of a rapid mining expansion, Canadian mining company Cornerstone Capital Resources was given a permit for exploration in collaboration with ENAMI. All this despite

the Ministry of Environment placing Los Cedros in its 'Areas of Priority for the Conservation of Biodiversity in Ecuador'.

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With the climate emergency, this landmark case has taken on added urgency: the absolute imperative being now that carbon and water sequestering forests, and the biodiversity that they contain, are protected and kept intact

The company was stripped of its operating permits after the Los Cedros Protected Forest authorities turned to the courts and won their case in June 2019. The government, working alongside the mining companies, subsequently appealed against the decision.

Meanwhile the mining company Cornerstone Capital Resources, despite overwhelming opposition in the region, continued exploration within the protected area, in direct contravention of the court order and without the appropriate permits.

In mid-May 2020, the Constitutional Court of Ecuador, agreed to hear the ENAMI appeal, saying that it hoped to set a precedent concerning mining in Protected Forests using the Rights of Nature. The Court specifically cited the biodiversity at Los Cedros, and the presence of the last populations of the spider monkey, as well as the endangered Andean (spectacled) bear.

Elisa Levy, of OMASNE (*Observatorio Minero Ambiental y Social del Norte del Ecuador*) a non-profit, mining watchdog group in northern Ecuador, explained the legal footing for the case, which will be heard later this year: 'In 2017, the Ecuadorian government announced new concessions for mining exploration on over 2.9 million hectares (6 million acres) of

land, a roughly 300 per cent increase. Many of these exploratory concessions are in previously Protected Forests and indigenous territories, as well in headwater ecosystems and biodiversity hotspots of global importance, like Los Cedros and they appear to be in violation of Ecuadorian law and international treaties.'

Los Cedros is part of the Chocó forest area which extends all the way up to Panama on the west coast of South America. The last remaining part is in Ecuador's far north; a remnant of the coastal forests that extended to the South of the country. Today less than 4 per cent of these forests exist. They are considered to be among the most biodiverse on the planet as well as the most threatened.

José DeCoux, manager of Los Cedros explained: 'We're very excited that the Constitutional Court has picked up this case, specifically because it is recognizing the importance of setting precedence for the Rights of Nature. We have been presenting arguments that mining in protected forests is a violation of the legal status of declared Protected Areas, the collective rights of indigenous peoples, the Rights of Nature and the right of communities to prior consultation before potential environmental damages, respectively.'

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Los Cedros in north western Ecuador is one of the most biologically diverse habitats in the world, with more than 4,800 hectares (nearly 12,000 acres) of primary cloud forest, and it safeguards the headwaters of four important watersheds. The forests are home to over 200 species with high extinction risk, five of which are regarded as critically endangered by the Ecuadorian government.

'The remoteness and high-quality of the habitat explain why there are six species of cats and three species of primate, including some of the last critically endangered brown-headed spider monkeys in the world, as well as the endangered Andean spectacled bear. New species are also being discovered every year,' said Dr Mika Peck from Sussex University.

The exploration and exploitation phases of mining decrease biodiversity primarily through road construction, deforestation, and associated river sedimentation and contamination.

With the climate emergency, this landmark case has taken on added urgency: the absolute imperative being now that carbon and water sequestering forests, and the biodiversity that they contain, are protected and kept intact. This case has implications not just for Los Cedros, but for all 186 Protected Forests in Ecuador. More than a third of these have been under imminent threat from mining since 2017, when a policy change within the Ecuadorian government allowed these protected lands to be included in mining concessions.

Edgar Merlo, who heads the legal team for Los Cedros put it this way: 'The [Constitutional] Court's ruling in this case would be a first in Ecuador: on the Rights of Nature, the right to prior consultation of communities, and the right to legal certainty, since concessions were granted without respecting the declaration of protective forests. The final judgment by the Constitutional Court in this case could change the legal focus in Ecuador, South America, and the entire world on the Rights of Nature and the rights of local communities, so that mining concessions are not granted in Protected Forests.'

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