Humans as Those Who Must Care and Act: Mobilizing Rights of Nature in Anti-Mining Struggles in Ecuador

Laura Affolter
Hamburg Institute for Social Research, Hamburg

Abstract: This article follows Mihnea Tănăsescu's (2022) call for critical scholarship on rights of nature to examine empirically how and why such rights are used. It does so using the example of resistance to mining in the Ecuadorian Íntag region. Drawing on fieldwork among communities within the area of influence of the Llurimagua copper mining project and with other anti-mining, environmental and human rights activists, I argue that while in academic debates around rights of nature questions of 'being' and ontology take centre stage, these issues do not really seem to matter to those who mobilize action to secure these rights. On the contrary, despite the portrayal of rights of nature as posthuman or as more-than- human law, the article shows how, in mobilizing in favour of rights of nature, the human is retained as an important 'category of analysis and action' (Zenker and Wolf 2024) as those who (must) care and can be made responsible.
[rights of nature, anti-mining struggles, justice, anthropocentrism, responsibility]

Introduction

Rights of nature have become a global trend: in June 2021, Alex Putzer et al. identified 409 rights of nature initiatives worldwide (Putzer et al. 2022:90). They are put forward as a 'legal revolution that could save the world' (Boyd 2017) and are celebrated for reconceptualizing 'nature', it being claimed that their revolutionary potential derives from their break with the anthropocentric bias in law (see Adloff and Hilbrich 2021:180; Gutmann and Morales Naranjo 2021:331–332; Tabios Hillebrecht 2017:19). Rights of nature are claimed to turn away from conceptualizations of nature as a resource and thus from nature as something that can be appropriated, exploited and instrumentalized, instead recognizing its intrinsic value(s). This epitomizes a shift towards care for nature and non-human others irrespective of their usefulness for humans. But many rights of nature proponents go further still, arguing that such rights overcome so-called 'Western' dualisms between humans and non-humans, subjects and objects, nature and culture. They do so by associating the idea of rights of nature with what are referred to as 'Indigenous philosophies', 'thought', 'cosmovision' or 'ontologies' (see Adloff and Hilbrich 2021:174; Kauffman and Martin 2014; Knauß 2018). Rights of nature are thus depicted as a form of more-than-human law and celebrated as a move

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towards epistemic justice, since they are claimed to derive from and build on 'non-Western' knowledge. Often the 'Indigenous origin story' is simply taken as a given and mentioned in passing, with rights of nature being assumed to be 'rooted in indigenous lifestyles and perspectives on nature and the environment' (Viane 2024:300). This uncritical rendition of the 'Indigenous origin story' has been criticized by several authors. On the one hand, based on empirical research on how rights of nature emerged in policy- and law-making, scholars have argued that this story is not true and that in many places rights of nature efforts 'have taken the form of an elite proposition in search of a grassroots' (Tănăsescu 2022:16) or that they are the outcome of tough negotiations and should be regarded as 'hybrid constructs' (see Gutmann 2021), for example. On the other hand, several authors have pointed to the essentializing danger arising from the assumed association of rights of nature with 'indigenous lifestyles and perspectives on nature and the environment' (Viane 2024:300). Not only does this discourse about rights of nature risk essentializing indigeneity and reinforcing the image of the so-called 'ecological native' (see Tănăsescu 2020:436; Viane 2022:199): it also essentializes 'the West'. That is, it cements a new dualism 'between Western and non-Western modes of thought' (Martin 2020:359), a dualism that is historically inaccurate (see Graeber and Wengrow 2021) and that risks downplaying or even ignoring doubts, disagreements, ambiguities and 'shifting perspectives' within these two huge 'groups' (Martin 2020). Finally, some scholars have addressed 'implementation' problems, showing how the language of rights of nature itself – working as a 'legal ornament', as María Ximena González-Serrano (2024) calls it – conceals power asymmetries, leads to the criminalization of local subsistence practices, and does nothing to 'dismantle the private law "legal arrangements" that provide stability to extractive projects and interests' (2024:1; see also Melo-Ascencio 2024).

In this article, I critically approach rights of nature from yet another angle. Like Mihnea Tănăsescu, I understand that critically reflecting on rights of nature is not about rejecting or embracing them per se, but about taking a step back and empirically examining 'how and why [and by whom] they are used' (2022:15) in specific contexts (see also Viane 2024:307). My focus is thus not on the origins of these rights, but rather on their practical mobilization and 'application'. The case study through which I examine this is resistance to the Llurimagua copper mining project which intersects with four rural *mestizo* communities, Junín, Chalguayacu Alto, Cerro Pelado and Barcelona, in the Ecuadorian Íntag region. As part of this resistance, two constitutional lawsuits were brought against the Ministry of Environment and ENAMI EP, the holder of the Llurimagua mining concession. I call these the Llurimagua lawsuits. In some parts of the article, I also draw on another lawsuit against mining in the Íntag valley that came to have a big impact on the Llurimagua lawsuits: the Los Cedros lawsuit. Both cases argued at least partly with reference to rights of nature, which are enshrined in the Ecuadorian constitution. Thus, nature has 'the right to integral respect for its existence and for the maintenance and regeneration of its life cycles, structure, functions and evolutionary processes' (Art. 71, Ecuadorian Constitution), as well as 'the right to be

restored' (Art. 72, EC).[1] Furthermore, the constitution mandates 'the state' to 'apply preventive and restrictive measures on activities that might lead to the extinction of species, the destruction of ecosystems and the permanent alteration of natural cycles' (Art. 73, EC).

My observation – and argument – from studying the mobilization of rights of nature in the Llurimagua case is that, while in academic debates around rights of nature questions of 'being', of ontology, of how to (re)define humans, nature, non-human others and the relationships between them take centre stage, these issues did not really seem to matter to the people I have worked with. In particular, I did not witness discussions and concerns around the (non-)demarcation between humans and non-human others. This may be partly due to my research design and interests. My focus was mainly on law-based acts of resistance. And yet there seems to be more to it than that. My fieldwork shows that for the people mobilizing rights of nature, humans remain an important 'category of analysis and action' (Zenker and Wolf 2024:202). On the one hand, humans are those who need to (and do) care for nature and non-human others and who act on behalf of them or, given our relationality, on behalf of both humans and non-humans. On the other hand, humans remain important as those agents that can and should be held responsible. The depiction of rights of nature as posthuman or more-than-human law, I argue, is thus at best misleading, but it might also be harmful.

A Short Note on Fieldwork and Methodology

My ethnographic material derives from four field-stays and a total of ten months of fieldwork between July 2018 and January 2023. In 2018 and 2019, I spent several weeks in Junín and Chalguayacu Alto, two of the communities intersecting with the Llurimagua copper mining project. There I sometimes stayed with a family in Junín and sometimes at a cabin belonging to the *Reserva Comunitaria Junín*, a collective of local inhabitants that set up a project of 'eco-tourism' as a viable alternative to the income-earning opportunities created by mining. I spent my time talking to local inhabitants – mostly those opposed to mining – and accompanying them to events they attended, such as resistance strategy meetings, press conferences or 'information events' organized by the Ministry of Environment and the mining companies. I also conducted interviews with regional and national environmental organizations, activists, officials and lawyers involved in the Llurimagua and Los Cedros cases and resistance to mining in the area in general. Furthermore, I conducted interviews with (ex-)employ-

1 All translations of the Ecuadorian constitution that I quote in this article are taken from Georgetown University's Political Database of the Americas: Georgetown University: Republic of Ecuador Constitution of 2008. *Political Database of the Americas*. https://pdba.georgetown.edu/Constitutions/Ecuador/english08.html, accessed July 10, 2024.

ees of the national constitutional court and academics or academic activists working with and/or on rights of nature, as well as representatives of the defendants' side, such as mining companies' lawyers or employees of the Ministry of Environment.

Besides interviews, my fieldwork consisted of (participant) observation. When possible, I tried to accompany my interaction partners to 'happenings'. Some of these have already been mentioned above; other examples are meetings between local mining opponents and their lawyers, a meeting between mining opponents and representatives of the Ministry of Environment, a roadblock in Cerro Pelado – a village in the area of influence of the Llurimagua mining project – and the second-instance court hearings in the Los Cedros case. Finally, in my analysis I also draw on publicly available documents from the Llurimagua and Los Cedros cases. Empirical data is presented in an anonymised way. Wherever possible without making people identifiable, I make use of descriptive features such as institutional affiliation or profession. Where this is not possible, I refrain from it.

The Mining Conflict in Junín and Chalguayacu Alto

The mining conflict in Junín and Chalguayacu Alto is nothing new. ENAMI EP, the Ecuadorian state mining company currently in possession of the Llurimagua mining concession is already the third owner of the concession. Although on a national level mining was 'only' declared a strategic economic sector in 2009 by the Rafael Correa government, partly in order to compensate for the increasing loss of oil revenues, in the area surrounding Junín and Chalguayacu Alto initial exploration work had already started in the early 1990s as part of PRODEMINCA, a project to carry out a nationwide survey of mineral resources, which was financed by loans from the World Bank and the British, Swedish and Japanese governments (Kuecker 2007:98). The concession was, at that time, granted to the Japanese company Bishi Metals, a subsidiary of Mitsubishi. I was often told that, while at the beginning there was no local opposition, and villagers supported the mining company in their exploration work by clearing paths, carrying heavy equipment and providing accommodation, things changed when the first signs of water pollution became visible, several local employees of Bishi Metals were fired, and especially when the Environmental Impact Assessment that was carried out by the company became publicly known. Bishi Metals' environmental impact study showed that the planned copper mine would lead to large-scale deforestation, pollution of rivers with mercury and cyanide, desertification and changes to the local climate. Furthermore, it indicated that about one hundred families would have to be relocated (Kuecker 2007:101–102; Murillo and Sacher 2017:54). In 1997, a group of local residents burnt down the Bishi Metal camp, whereupon the Japanese company abandoned the project. The second holder of the concession, the Canadian mining company, Ascendant Copper, had their concession withdrawn by the Ecuadorian gov-

ernment in 2007 after violent conflicts arose between its private security personnel and local residents, especially after local residents managed to disarm and hold the security personnel hostage for several days in the local church. In 2011, the concession was granted to the Ecuadorian state mining company ENAMI EP, which in turn formed a partnership with the Chilean state mining company Codelco. In 2014, when ENAMI EP and Codelco first entered the concession, they arrived in the company of approximately three hundred police and military officers as well as government officials, with the police remaining in the villages for several weeks. Furthermore, shortly before ENAMI EP, Codelco and the police arrived in Junín and Chalgauyacu Alto, Javier Ramírez, who was the village head of Junín at the time, was arrested and spent ten months in pre-trial detention, while his brother was forced to go into hiding for several years.[2] They were accused of 'rebellion', which became a criminal offence through a revision of the penal code in 2014 (see Acosta et al. 2020:109).

In the interviews I conducted with local inhabitants opposed to mining, I was repeatedly told that, while in the 1990s and 2000s their communities had been fairly united in their resistance to mining, this had changed with the arrival of ENAMI EP and Codelco. 'We are so few now', is something I heard often, referring to the fact that many of the local residents had in some capacity started working for the companies: as labourers creating paths through the thick cloud forest or carrying heavy machinery, as *muleros* (muleteers), *lavanderas* (washerwomen) or by cooking for the miners, for example. In 2018 and 2019, everyone was either a *minero* – those supporting mining regardless of whether they worked for the companies or not – or an *ecologista* – those who did not, with hardly anybody escaping this labelling (see also Weydt 2023).[3]

In recent years, and in line with a global trend, there has been a shift towards law-based forms of political resistance, particularly towards constitutional lawsuits. The 2008 constitution not only introduced new rights, such as rights of nature or a right to the *consulta ambiental* (environmental consultation),[4] which have both come to play an important role in the resistance to mining, it also introduced a new form of constitutional action called *acción de protección*. The former constitution of 1998 already recognised a similar form of constitutional action, the *acción de amparo*, but in comparison the *acción de protección* is supposed to make the threshold for taking legal action even lower. It is no longer necessary for one's own subjective rights to have been violated – it can be a matter of someone else's subjective rights too, as in the case of nature, for

2 See Frontline Defenders: Case History. Darwin Javier Ramirez Piedra. Frontline Defenders. https://www.frontlinedefenders.org/en/case/case-history-darwin-javier-ramirez-piedra, accessed April 22, 2024.

3 Such positionings are, however, not fixed, as people sometimes change sides. Yet at the same time, in line with David Kneas' (2021) analysis, I experienced family ties as having a strong impact on such positionings.

4 The *consulta ambiental* states that '[a]ll state decision or authorization that could affect the environment shall be consulted with the community, which shall be informed fully and on a timely basis' (Art. 398, EC).

example. The rights violations no longer have to be of a certain severity, and anyone can file an *acción de protección*, not only lawyers. Furthermore, the *acción de protección* not only allows judges to suspend certain activities for the protection of constitutional rights, it also gives them the ability to order reparation measures (see Ávila Santamaría 2011). The Llurimagua and Los Cedros cases both involved *acciones de protección*. For the sake of simplicity, I here refer to them simply as constitutional lawsuits.

The trend towards constitutional lawsuits since 2018 is remarkable (see also García Ruales 2024:5). In that year, one case was filed against the Río Blanco mining project and another against mining on the territory of the A'i Cofán of Sinangoe. These were followed by the Los Cedros case, a second case against the Mirador mine and mining in the canton of Nangaritza in 2019, the Llurimagua cases in 2020 and 2021, and the case against mining in the wetlands of Fierro Urco in 2022, and there might also be others. There seem to be various reasons for the shift towards constitutional lawsuits, although I cannot be entirely sure of the causal links. Firstly, it fits into a global trend towards the judicialization of politics that is particularly found in Latin America (see Sieder et al. 2005). As a result of the constitutional reforms that have taken place in nearly all Latin American countries since the mid-1980s, many of which introduced extensive socioeconomic and cultural rights and granted judges more interpretive power, 'courts and judges … [have] come to make or increasingly dominate the making of public policies that had previously been made by other government agencies, especially legislatives and executives' (Sieder et al. 2005:3). Thus, the existence of new rights in itself constitutes a reason for this shift towards constitutional lawsuits. These new rights fuel hopes, making resorting to the courts to advance one's political interests a more promising avenue for anti-mining activists.

I experienced this growing hope first hand during fieldwork in Junín and Chalguayacu Alto, when two constitutional lawsuits against mining projects in other areas of the country – the so-called Río Blanco and Sinangoe cases – were won. The lawyers I interviewed at the time were particularly enthusiastic about the transformative potential of the precautionary principle linked to the rights of nature and its potential to prevent future harm (see also Affolter 2020). Not only does the Ecuadorian constitution grant nature the right to 'respect for its existence' (Art. 71, EC) and 'to be restored' (Art. 72, EC), it also prescribes a duty on behalf of the state to 'apply preventive and restrictive measures on activities that might lead to the extinction of species, the destruction of ecosystems and the permanent alteration of natural cycles' (Art. 73, EC). As one lawyer from the Ombudsman's Office explained to me:

> When you argue with the violation of the right to prior consultation [another common argument in resistance to mining], that is something the Ministry of Environment can then carry out, and then the mining project will continue. But if you can get the courts to apply the precautionary principle, that is something that will never go away. (Interview, December 2018, my translation)

I encountered a similar hope in Junín and Chalguayacu Alto, one local activist, for instance, telling me:

> [W]e don't have to wait for damage to happen here. … Because if we can see that there is a possibility that an activity will cause [environmental] damage, then we have to do something. We do not have to wait and see whether the activity will contaminate. … Ever since the company arrived here [to do exploration work] and since the rights of nature were introduced [into the constitution] in 2008, I have said that we should prepare a lawsuit with the rights of nature. (Interview, November 2018, my translation)

This was precisely what happened with the Los Cedros case, where the highest Constitutional Court interpreted the precautionary principle very strictly, arguing that as long as it was not possible to determine with certainty what damage might result from mining in such a complex ecosystem, mining could not be carried out (see Gutmann 2022; Prieto 2021). The judges argued that, by allowing initial exploration activities to happen, despite this lack of (scientific) certainty, the state had violated its precautionary duty.

One reason for so many constitutional lawsuits only being filed since 2018, although the new constitution that introduced rights of nature came into force in 2008, seems to be the change of government in 2017. Many lawyers told me that now they were less afraid of political persecution and also felt that the courts – especially the Constitutional Court – had become more independent. Soon after the introduction of the new constitution, two constitutional actions had been taken: one was a lawsuit against the Mirador mine in 2013, the other an action of unconstitutionality brought against the 2009 Mining Law. However, both of them had failed.[5] As one lawyer explained to me, it was then a conscious decision to desist from further constitutional actions for a while in order to avoid setting anymore negative legal precedents. The lawyer explained the failure of these two actions with reference to the lack of independence of the courts during the Rafael Correa government and to the judges not being familiar enough with the new constitution and their newly strengthened role in interpreting it. This was a view shared by many of the lawyers I spoke to and led to many organizations refocusing their attention on the training of legal professionals. From 2018 onwards, however, this started to change.

5 The constitutional lawsuit against the Mirador mine was lost at first- and second-instance, with the judge arguing that 'civil society's efforts to protect nature constituted a private goal, while Ecuacorriente … [the mining company] was acting in favour of a public interest, namely development' (Kauffman and Martin 2016:6). In the case of the unconstitutionality of the Mining Law, 'the Constitutional Court upheld the Mining Law's constitutionality, noting that the law requires procedures designed to avoid environmental damages … [and ruling] that Article 407 of the constitution grants the State the authority to make exceptions to constitutional restrictions on mining in environmentally sensitive areas when the government declares this to be in the national interest' (Kauffman and Martin 2016:6).

In Junín and Chalguayacu Alto, many of the people I spoke to told me how scared they were to speak up and take action out of a fear of persecution. 'With the state here, there is nothing we can do', I was often told, referring to the presence of police and military in the area, the fact that ENAMI EP is a state company, but also to the fact that mining was now being pursued so actively by the changing governments, with mining opponents being slandered 'unpatriotic' and as standing in the way of development (see van Teijlingen and Fernández-Salvador 2021:250).

> Those of us who are protecting nature have always been persecuted with threats and blackmail. … We can no longer take any 'de facto actions' like blocking roads because it would only mean more persecution for us if we try evicting the company. (Interview with a local activist in Junín, July 2018, my translation)

This fear and disillusion over not having achieved the desired goal, despite having engaged in resistance for so long – namely that the mining companies leave for good – thus seem to have contributed to the shift towards constitutional lawsuits and the mobilization of rights of nature too. While administrative claims were declared to be useless – here it was basically 'the state ruling over itself', several lawyers explained to me – constitutional lawsuits, and particularly the rights of nature, were ascribed more transformative potential.

The Llurimagua and Los Cedros Lawsuits: Subjects and Agents of Justice, and Those Who Care

The first constitutional lawsuit against the Llurimagua copper mining project was filed with the first-instance cantonal court in Cotacachi in February 2020 by the biologist Andrea Terán from the Jambatu Amphibian Research and Conservation Centre (*Centro Jambatu de Investigación y Conservación de Anfibios*), who had conducted research in the area of Junín and Chalguayacu Alto. Although the lawsuit was finally presented by Andrea Terán, several other organizations engaged in resistance to mining and rights of nature advocacy were involved in its making too – DECOIN, CEDENMA and GARN (Global Alliance for the Rights of Nature) – and the lawsuit passed through several lawyers' hands before it was finally presented. It was intentionally held back for a while to await the judgement in the Los Cedros case. The lawsuit presented by Andrea Terán argued solely with reference to the rights of nature (particularly Art. 71 and 73 EC), claiming that mining posed a threat to the many endangered and endemic species living in the area. This was argued in great detail for two endangered frog species that became protagonists in the lawsuit. One species had previously been unknown and was only discovered a couple of years prior to the lawsuit in the Llurimagua concession area: the *rana cohete resistencia de Intag* (Intag resistance rocket frog). The other

one was the *rana arlequín hocicuda* (harlequin longnose frog), which was thought to be extinct but was rediscovered in the Llurimagua concession in 2016. Andrea Terán criticized the environmental impact study commissioned by the mining companies as being inadequate, since many endangered species were not listed on it, and because the planned precautionary measures to prevent negative impacts on various species and their habitats were insufficient and would, in some cases, be impossible to implement. The first-instance judge ruled in favour of the plaintiffs. Among other things, she ordered that the authorization process for the environmental licence be suspended until the companies could demonstrate that they had taken all the necessary and adequate precautionary measures to avoid negative impacts on the different species living in the area and their habitats, and to avoid any possible extinction of those species. This is precisely what one of the lawyers who was temporarily involved in preparing this lawsuit had hoped to achieve, as he told me in an interview:

> With protection actions (*medidas cautelares*), there's a standard of risk. It is no longer a standard of harm. … And here the standard of proof is extremely lax. In other words, in this case, to prove that there is a risk, I just have to show that the environmental impact does not include this frog, … but that it does exist in this area. That should be enough to create a risk standard. I am not yet saying that there is a harm to the frog, am I? I'm not saying that today's operations are harming those animals. I am just asking the judge to fulfil his constitutional duty to protect nature. And if he does a reasonable job he will say, OK, let's stop everything until we have more evidence. … And this buys us time, it strengthens our position, it allows us to gather more evidence, to bring further actions. (Interview 2019, my translation)

However, this first-instance judgement was later overruled after disciplinary proceedings were initiated against the judge, and she was fired.[6] A new attempt was made in 2021, the plaintiffs this time being six inhabitants from the area of influence of the mining project – each represented by a different lawyer – and the provincial representative of the Ombudsman's Office. The plaintiffs argued with reference to the violation of nature's rights for the same reasons discussed above, as well as to the violation of the 'environmental consultation'.[7] For both arguments, they drew heavily on the Los Cedros case. While the first-instance judge rejected the lawsuit – claiming that this was not a constitutional but an administrative matter – the second-instance court ruled in favour of the plaintiffs, arguing that no 'environmental consultation' had been carried

6 I am not sure of the reasons, but from what I could find out, it seems that the judge returned the case to Andrea Terán, as it turned from a *medida cuatelar* into an *acción de protección*, whom she asked to resubmit the claim, specifying which rights had been violated.

7 The Ecuadorian constitution recognizes and grants the right to two types of consultation. One is the right to 'environmental consultation' granted to any potentially affected person or community as laid down by Article 398 of the constitution. The other is the right to prior consultation for '[i]ndigenous communes, communities, peoples and nations' (Art. 57.7, EC).

out, neither before the concession, nor before the environmental licence was awarded. The court revoked ENAMI EP's environmental licence and ordered the suspension of all mining activities until 'ENAMI EP complies with all the mechanisms and guidelines foreseen for the environmental consultation in judgement 1149-19-JP/21 [the Los Cedros case], for the elaboration of an Environmental Impact Assessment and Environmental Management Plan'.[8] In May 2024, the constitutional court decided not to admit the appeal by the Ministry of Environment and ENAMI EP, hence rendering the second-instance ruling legally binding.

So far, I have focussed on the 'official arguments' of the plaintiffs. Besides plaintiffs and defendants, the figure of the *amicus curiae* gives other actors an opportunity to voice their arguments too.[9] In the Los Cedros case, numerous individuals and collectives became involved in this way, the hearing of all the *amici* alone lasting for almost seven hours. On the side of the plaintiffs, it was mainly biologists who got involved, many of whom had carried out research in the Los Cedros forest, as well as representatives of environmental and human rights NGOs and members of the local communities located within the area of influence of the mining project. The defendants were also supported by local inhabitants, as well as by the representatives of numerous transnational mining companies, of the Ministry of Finances and the Ministry of Non-Renewable Resources, the Chamber of Industry, the Chamber of Mining, and Women in Mining, for example. Through the *amici*, the different motivations and goals of the different actors involved in anti-mining struggles – local inhabitants, biologists, environmental, human and indigenous rights (grassroot) organizations, etc. – become visible.

For local inhabitants opposed to mining, getting the companies to leave and disallowing mining activities from taking place on their territory was the primary goal. They feared losing their means of subsistence, not only by having to relocate, but also due to water and soil contamination. In Junín and Chalguayacu Alto, most people are small-scale farmers who cultivate *naranjilla*, tamarillo (*tomate de* árbol), coffee and sugarcane, amongst other things, and tend cattle that they sell for meat. Local inhabitants, moreover, feared the negative effects that mining would have on their health and that of their children and animals, as well as losing the 'tranquillity' of their rural and somewhat secluded life. As one of my elderly interview partners said to me:

> The tranquillity we have here, we live in a paradise, [and] as I see it, this cannot be exchanged for anything. To have the tranquillity of having everything here, that

8 Corte Provincial de Justicia de Imbabura, 'Juicio No. 10332202100937', my own translation, https://www.derechosdelanaturaleza.org.ec/wp-content/uploads/2021/05/SENTENCIA-SEGUNDA-INSTANCIA-LLURIMAGUA-1.pdf, accessed April 22, 2024.

9 An *amicus curiae* is a 'person or organisation who/which is not a party to the proceedings … [but] set[s] out legal arguments and recommendations in a given case' mostly in the form of a written brief (ECCHR: Amicus curiae brief. *Glossary*. https://www.ecchr.eu/en/glossary/amicus-curiae-brief/, accessed July 12, 2024). In the cases I observed in Ecuador, however, the people were also heard orally.

> nobody steals the from an unlocked house […]. To be sent away from here, at my age, it's not right. (Interview, July 2018, my translation)

Other actors involved as *amici curiae* in support of the plaintiffs stressed rather the need for climate and environmental justice, emphasizing the importance of cloud forests for global climate and cautioning against the loss of so-called 'ecological services' due to the destruction of ecosystems. Several pursued the aim of changing the county's extractivist agenda for good, while others saw the legal cases as opportunities for recognizing the rights of non-human species, such as 'the Andean bear, the coffee-headed spider monkey, the white-headed capuchin monkey, the coastal howler monkey [or] the *pristimantis mutabilis* frog' (*amicus* brief Mónica Feria Tinta, my translation), without the effect on humans being an issue. This shows that in (strategically) mobilizing rights of nature, justice is claimed for both human and non-human subjects. In some cases, human subjects are silently included, while in other cases this is done more explicitly by mobilizing rights of nature in concert with other rights, such as the right to a healthy environment. Mobilizing rights of nature strategically with both human and non-human subjects in mind was not perceived as a contradiction, given their mutual dependence and relationality. Hence, many actors acting as *amici curiae* stressed humans' or humanity's dependence on nature for survival. The following quote by a representative of CONAIE (*Confederación de Nacionalidades Indígenas del Ecuador*), Ecuador's largest indigenous organization, whom I interviewed, illustrates this:

> The question is: Who is the holder of the rights of Mother Nature? Who defends the rights of Mother Nature? Mother Nature herself? A tree is not going to raise [its voice], a mountain is not going to raise [its voice], they are not going to say: 'Hey, respect my ownership'. It is the equilibrium that matters. For us, within the 21 collective rights [granted to indigenous people(s)], the most important right is the territory, the territory as a living entity, […] we are the ones who are living in the territory, the ones who have the ownership of the rights of Mother Nature, so if mining comes and we are not granted the right to free, prior and informed consultation, […] they are violating not only the rights of Mother Nature, but also of those of us who live with Mother Nature. [That is why] we have said that we are the ones who must defend the right of Mother Nature, as peoples and nationalities, but […] Mother Nature is not only for indigenous peoples, […] even if you are living here in the city, you need Mother Nature, if you do not find an equilibrium with nature, you will simply not be able to live anymore. (Interview, January 2023, my translation).

But not only does this member of the CONAIE directive stress humans' dependence on nature – regardless of whether 'they are indigenous' or 'live in the city' (an interesting dichotomy being made here) – he also makes it clear that, in the face of the Anthropocene crisis, nature or non-human others require humans to take action on their behalf, in this case, to take a stand for them and mobilize their rights. This obligation,

which at the same time is a necessity, results from mutual dependence, connectedness, and the idea of the territory as a living entity. This connectedness is also why, in the eyes of the CONAIE representative, rights of nature must necessarily be mobilized in concert with the right to political participation.

Apart from remaining an important 'category of analysis and action' (Zenker and Wolf 2024:202) in terms of who cares and needs to care, humans are also addressed as those that are 'responsible for ensuring that [different] subjects of justice get what is due to them' (Zenker and Wolf 2024:195). Since what I have analysed in this article are constitutional lawsuits, it is hardly surprising that the main actor to which responsibility is attributed is 'the state' (see also Affolter 2020). But the obligations that arise from constitutional rights also apply to others – 'individuals, communities, companies' (*amicus* brief Esperanza Martínez Yánez, my translation) – and were stressed in the constitutional lawsuits accordingly. That these are all humans is not something the people I have worked with dwelled on, simply taking it as a given. However, the *amicus* brief by the *Sociedad Ecuatoriana de Derecho Forestal y Ambiental* explicitly addresses this, stating that those who are made responsible must necessarily be humans, since 'the human being is the only species that has the capacity of discernment, the only one that can consciously bring about the destruction of the biosphere or contribute to its conservation' (*amicus* brief *Sociedad Ecuatoriana de Derecho Forestal y Ambiental*, my translation). In other words, humans are appealed to because of their capacity to act differently, and to understand that they need to do so (see also Zenker and Wolf 2024).

Embracing Anthropocentrism: Some Concluding Remarks

As shown above, rights of nature depend on humans as a 'category of analysis and action'. Though rather self-evidently, there is a shift in terms of who the *subjects of justice* are: these, in contrast to other environmental laws, do include non-human others as subjects, humans remain important as *agents of justice*, as those who are seen as 'responsible for ensuring that subjects of justice get what is due to them', and as *concerned agents*, those who care or, in other words, those who 'consider something to be due to someone (else)' in the first place (Zenker and Wolf 2024:195, 196). It could thus be argued that rights of nature, at least in theory, have the potential to overcome 'normative anthropocentrism' (Mylius 2018:159) – the assumption of human superiority – through their extension of care towards non-human others in the form of a new subject of rights and justice. However, they remain firmly rooted in 'descriptive anthropocentrism by separation', that is, the idea that 'human beings have some feature or capacity that 'separates' them from the rest of the universe (whatever that means)' (Mylius 2018:181). Or, in other words, the 'strict dividing line between humans and nonhumans' is not overcome (Schweitzer 2021:41). This leads me to two conclusions: first, that more conceptual clarity is needed when people writing about rights of nature

claim that they are breaking with 'anthropocentrism'; and second, that the denomination of rights of nature as posthuman or more-than-human is at best misleading, and potentially also harmful.

Doris Schweitzer (2021) criticizes the fact that rights of nature do not overcome the 'dividing line between humans and nonhumans' as a shortcoming. I choose not to do so, not only because the people I have worked with did not, but also for normative reasons. Yet, before turning to these normative reasons, I would like to remark that this does not equal fully embracing rights of nature and disregarding their shortcomings and/or silencing and racializing downsides. Both María Ximena González-Serrano (2024) and Diego Melo-Ascencio (2024) have shown how rights of nature can in practice be mobilized against subalterns, leading to the criminalization of local subsistence practices, for example, or to the silencing of (re)distributive justice claims. These critiques are not something I can discuss in detail here, because it would go beyond the scope of this article and because I still need to carry out more research on the 'implementation' of the court judgements and their effects. Nevertheless, I would like to share an observation from my fieldwork that speaks to these critiques and needs to be investigated and reflected on further. At a meeting I attended to discuss strategies on how to act towards the announced 'socialization events'[10] by ENAMI EP and Codelco, mainly attended by members from villages outside the direct area of influence of the mining project, an elderly man rose to his feet. He was visibly annoyed, stating right at the beginning that he is not in favour of mining.[11] But, he continued,

> whenever we farmers kill an animal or burn a bit of forest or sell a bit of wood, they put us behind bars, they give us fines, but the [mining] companies can do whatever they please. And the *ecologistas* just sit behind their desks, not understanding anything about [our] reality. (Field notes, January 2019)

Another man added in support: 'I don't support either of the two sides [*bandas*]. Neither the *mineros* nor the *ecologista*s are here for us. Nobody helps us. They don't support us when our crops are destroyed and we are forbidden to kill the creatures responsible' (field notes January 2019). The fieldwork episode implicitly illustrates that, although sometimes rights of nature are strategically mobilized for both human and non-human

10 Information events by the Ministry of Environment and/or mining companies are often referred to as *socializaciones*. In the cases against mining projects, the Ministry of Environment and mining companies have repeatedly argued that such *socializaciones* comply with the requirements of executive decree 1040 from May 2008, leading to the granting of social participation rights. Mining opponents, on the other hand, claim that these *socializaciones* and executive decree 1040 do not fulfil the specifics of the right to prior consultation, nor of the right to 'environmental consultation'. This argument was, for instance, also taken up by the second-instance court in the Llurimagua case.

11 This 'third position' between being an *ecologista* or a *minero* is not something I encountered often in Junín and Chalguayacu Alto, where mining had been an issue for a long time. However, in communities that had been less affected by mining still – like the community where this socialization event took place – it was more common.

subjects of justice, their respective needs being deeply entangled due to connectedness and mutual dependence, this must not always be the case. Claims to (re)distributive and ecological justice can also relate to each other in an antagonistic manner.

Each in their own way, Peter Burdon (2020), Alf Hornborg (2020) and Olaf Zenker and Anna-Lena Wolf (2024), take a stand towards embracing anthropocentrism, but with humility. This does not mean assuming human superiority over other beings in terms of values, or whom we should care for. Nor does it mean holding humans everywhere equally responsible for the Anthropocene crisis. And it does certainly not mean assuming that humans have the power to change everything according to their will with nature being designated 'the powerless other'. It merely implies acknowledging the fact that as a species, humans have the power to destroy the planet for us and many of its other inhabitants, as well as the ability – even if this is limited – and responsibility to act against this. If I choose not to regard holding on to the human as an important 'category of analysis and action' in rights of nature mobilization as a flaw, I do it in this sense.

As Zenker and Wolf argue in their introduction to this Special Issue (2024), whether one chooses to flatten the difference between humans and non-humans – to assume that there is something specific about human agency or not – is not provable and, thus, ultimately a question of belief. In making the choice to embrace anthropocentrism but with humility, I thus acknowledge and recognize this limitation. This choice is not meant to discredit the knowledges and beliefs of others – understood here not in a dualistic sense – but to take the 'recognition of our common limitations' (Graeber 2015:28) – the fact that ultimately we do not know – as a starting point to think together about what mutual care could and should look like, what obligations derive from this mutual care, and how to make these binding, instead of dwelling on questions of 'essence' or ontology. Therefore, the more pressing questions I think we need to address are first, whether in and with our legal systems, obligations reach far enough to address the root causes of the Anthropocene crisis, in which powerful policy-shaping actors in the age of global fossil capitalism remain 'beyond law's conceptual grasp' (Eckert and Knöpfel 2020:2), and second, what we need to do to change that.

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