

Don't kill the bee! Legal insights to combat the biodiversity crisis

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PANEL 1. Diagnosis of the current biodiversity crisis

Resisting Midas' Curse: A constitutional ethnography of environmental rights in Costa Rica

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According to legend, Midas died of starvation due to his desire for unlimited quantities of gold. Midas' Curse reminds us to consider the consequences of unfettered pursuit of mineral wealth at the expense of all else, lest we inadvertently bargain away that which is irreplaceable. Nowhere is this dilemma more apparent than within the context of mining, where developers are literally engaged in the pursuit of gold or other valuable commodities. Yet, how do we strike the appropriate balance and resolve normative questions about what is worth saving and what is not? These questions are often at the heart of socio-environmental conflicts over resource development. In seeking to prioritise certain values over others, local communities are increasingly relying upon constitutional environmental rights to challenge environmentally destructive activity. Where the right to a healthy environment is constitutionally guaranteed, public stakeholders may assert a 'healthful' environment as an important value to be prioritised. This has become an increasing trend to resist mining, as in the case of the Las Crucitas gold mine in Costa Rica.

The Las Crucitas deposit is valued at nearly USD 1 billion, but it lies within the UNESCO Agua y Paz Biosphere Reserve, in one of the country's largest biodiversity hot spots. A 2008 presidential decree authorised the removal of over 600 acres of yellow almond trees that provide a habitat and food source for the endangered green macaw, to develop the gold mine. This placed the fragile ecosystem at risk. Concerned about habitat destruction and the risks of environmental contamination associated with cyanide use in the mining process, protesters demanded that the executive degree be revoked and that a moratorium be declared on open-pit mining. Some groups also challenged the permits granted to the mining company in court. These groups were successful in their efforts, and the company was unable to proceed with the mine project. This case study demonstrates that, although anthropocentric in nature, constitutional environmental rights can offer strong protection for ecosystems at the domestic level, when implemented correctly.