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Judgment No: 10332202000418

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Date: Thursday, October 22, 2020

TO: TERAN VALDEZ ANDREA

Dr / Ab .: JUAN CARLOS BENALCAZAR GUERRON

**MULTICOMPETENT JUDICIAL UNIT WITH HEADQUARTERS IN THE  
COTACACHI CANTON**

In Special Trial No. 10332202000418, there is the following:

Cotacachi, Wednesday October 21, 2020, at 4:37 p.m.

**SEEN:** The undersigned, Dra. Carmen Jaramillo Cevallos, Judge of the Multicompetent Judicial Unit of the Cotacachi canton, issues the corresponding judgment in the cause of action for constitutional protection with precautionary measures, No. 10332-2020-00418, presented by ANDREA TERÁN VALDEZ , against the Ministry of the Environment and Water and the State Attorney General's Office, represented by their representatives: PAULO ARTURO PROAÑO ANDRADE and Dr. IÑIGO SALVADOR CRESPO, Minister of the Environment and Water, and State Attorney General, respectively, according to the motivation that follows:

**I BACKGROUND**

**1.1 Fundamentals exposed in the application.-** In his request for constitutional precautionary measures, ANDREA TERÁN VALDEZ states, in the main: That his request for precautionary measures is proposed to avoid the serious and imminent threat that the rights of nature, enshrined in the

Articles 71 and 73 of the Constitution of the Republic of Ecuador, which are: a) the right to full respect for their existence and the maintenance and regeneration of their vital cycles; and b) the right to apply precautionary and restriction measures in the event of endangered species;

That these rights of nature are threatened in an imminent and serious way by the activities related or that are intended to be carried out or are being carried out within the mining concession with a code or cadastre That these rights of nature are imminently and seriously threatened by the activities related or that are intended to be carried out or are being carried out within the mining concession with mining code or cadastre number 403001, and with the environmental license granted by the Ministry of the Environment and Water (hereinafter MINISTER OF THE ENVIRONMENT AND WATER), through of Resolution No. 864, of December 16, 2014, as well as the imminent exploration, without considering the animal and plant species at risk; Therefore, the concession title has been granted, with mining code or cadastre No. 403001, dated November 17, 2011, by the Vice Minister of Mines of the Ministry of Non-Renewable Resources, in favor of the National Mining Company EMPRESA NACIONAL MINERA EP (hereinafter EMPRESA NACIONAL MINERA), to carry out advanced exploration of metallic minerals in the area of Llurimagua, located on the southern flank of the Western Cordillera, specifically, in the Cordillera de Toisán, located in the García Moreno and Peñaherrera parishes, within the Cotacachi canton, Imbabura province; and that, through Resolution No. 864, an environmental license was granted regarding this first phase of advanced exploration within the mining concession in Llurimagua, a phase that would have concluded at the end of 2018; (hereinafter EMPRESA NACIONAL MINERA), to carry out advanced exploration of metallic minerals in the Llurimagua area, located on the southern flank of the Western Cordillera, specifically, in the Toisán Cordillera, located in the García Moreno and Peñaherrera parishes, within the Cotacachi canton, Imbabura province; and that, through Resolution No. 864, an environmental license was granted regarding this first phase of advanced exploration within the mining concession in Llurimagua, a phase that would have concluded at the end of 2018; (hereinafter EMPRESA NACIONAL MINERA), to carry out advanced exploration of metallic minerals in the Llurimagua area, located on the southern flank of the Western Cordillera, specifically, in the Toisán Cordillera, located in the García Moreno and Peñaherrera parishes, within the Cotacachi canton, Imbabura province; and that, through Resolution No. 864, an environmental license was granted regarding this first phase of advanced exploration within the mining concession in Llurimagua, a phase that would have concluded at the end of 2018; Imbabura province; and that, through Resolution No. 864, an environmental license was granted regarding this first phase of advanced exploration

within the mining concession in Llurimagua, a phase that would have concluded at the end of 2018; Imbabura province; and that, through Resolution No. 864, an environmental license was granted regarding this first phase of advanced exploration within the mining concession in Llurimagua, a phase that would have concluded at the end of 2018;

That these events represent a risk for animal species, which is determined according to the information contained in the Complementary Study to the Ex Ante Environmental Impact Study and Environmental Management Plan, Advanced exploration phase of metallic minerals in the Llurimagua Mineral Area of 2018 (hereinafter ECEIA), and these same species found in the area are on the red list of Ecuador prepared by the International Union for the Conservation of Nature (hereinafter IUCN), and which would be the following: A) MAMMALS: 1. Critically endangered *Ateles fusciceps*, or brown-headed spider monkey; 2. *Sturnina bidens*, or "yellow-shouldered two-tooth bat"; 3. *Fistulata Anoura*, or Long-lipped Yellowtail Bat ", and; 4. *Tajacu Peccary*, or Collared Peccary" .- B) AMPHIBIANS: 13, in total 8 threatened (62%): 3 almost threatened; 4 in danger; 1 Critically Endangered: 2. *Rhinella alata* Co. Ec, Pa NE, Endangered; 3. *Centrolene lynchi* Co, Ec CR, Critically Endangered; 4. *Hyloscirtus alytolylax* Co, Ec NT,

Near threatened; 5. *Pristimantis appendiculatus* NT, Near Threatened; 6. *Pristimantis* aff. *crenunguis* NT, Endangered. 7. *Pristimantis* aff. *Duellmani* Co, Ec NT, Near Threatened; 8. *Pristimantis* aff. *floridus* Ec EN. In danger; 9. *Pristimantis w-nigrum* Endangered.- C) BIRDS: 6 species: 1. *Andigena laninirostris* NT, Near threatened; 2. *Boreo boreo* NT, Almost threatened; 3. *Contopus cooperi* NT, Near Threatened; 4. *Semnornis raphastinus* NT, Near Threatened; 5. *Patagioenas subdinace* VU. Vulnerable; 6. *Odontophorus melanonotus* VU. Near Threatened.- D) REPTILES: 1. *Riama unicolor* NT, Near Threatened; 2. *Anolis* aff. *Aequatorialis* NT, Near Threatened.- E) FISH: 1. *Astroblepus fissidens* Pregnant NT Near Threatened; 2. *Astroblepus* aff. *Theresidae* Pregnant NT, Near Threatened; 3. *Astroblepus* aff. *Ubidiai* Preñadilla CR. Critical danger;

That this list of threatened species does not include the 5 species of plants in danger of extinction identified during the monitoring carried out during the 2015-2017 periods; one of which is critically endangered (*Daphnopsis occulta*);

That, the Environmental Impact Study (EIA) and Complementary Environmental Management Plan LLURIMAGUA Mining Concession, Code 403001, for the Advanced Exploration Phase of the Llurimagua mining concession, presents the following important information to account for the biodiversity or biotic component in the area: a) The vegetation in the exploration area corresponds to secondary forest, it indicates that a species of fern is included in Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), because its ornamental exploitation places it in danger; and, b) from the interviews carried out with people from the communities, it records the existence of the spectacled bear, which is a species considered in danger of extinction;

That the extract from the Environmental Impact Study and Complementary Environmental Management Plan of LLURIMAGUA Mining Concession, Code 403001, for the Advanced Exploration Phase, warns in relation to amphibian species that: "Of the registered species, four species are found under a Threat category: one Critically Endangered (CR), *Centrolene lynchi* "Lynch's Glass Frog", and three Endangered (EN) *Pristimantis* aff. *crenunguis* "Giant Cutin", *Pristimantis* aff. *floridus* "Sigchos Cutin", and *Pristimantis w-nigrum* "Cutin Qualita";

That those species in the category 'Critically endangered' (CR), face a high risk of extinction;

That in addition, in March 2019, the State Comptroller General's Office published the final report within the Special Exam it carried out regarding the first phase of exploration in the Llurimagua Mining Project (with No. DNA6-0001-2019), by the

period between January 1, 2012 and December 31, 2017, identifying the following irregularities in the development of the exploration project: A) The MINISTER OF THE ENVIRONMENT AND WATER approved the impact study and environmental management plan without having all the elements required by the Constitution, the legal system and with incomplete information. In addition, that it did not take into account constitutional norms regarding the restriction of activities that can lead to the extinction of species, nor the precautionary principle, in accordance with the principle of application of the rights enshrined in article 11, *ibid.*, Relative to the direct and immediate application of constitutional norms (11.3), and the application and interpretation of more favorable norms that favor the effective enforcement of rights (11.5). - B) The detection limits for the analysis of water and soil did not allow to quantify the presence of elements; In addition, the reported values exceeded the permissible limits.- C) EMPRESA NACIONAL MINERA EP failed to comply with the provisions established in the environmental license, creating social and environmental effects.- D) EMPRESA NACIONAL MINERA EP intervened in the Junín river micro-basin without guaranteeing the use of water and ecological flow and without having a conservation plan. This, in clear contradiction to the constitutional norm enshrined in article 411, which establishes as the responsibility of the State, to ensure and conserve the hydrographic basins and the ecological flows associated with the hydrological cycle. It should not be forgotten that, according to this same rule, the sustainability of ecosystems and human consumption are priorities in relation to the use of water.- E) EMPRESA NACIONAL MINERA EP did not have the certification of not affecting bodies of water in order to protect the stability, quality and environment of the water resources, nor did it comply with the flow authorized in the SENAGUA Resolution. F) EMPRESA NACIONAL MINERA EP used 258,607.6 m<sup>3</sup> of water collected from natural water sources without authorization for 973 days, also collected water for human consumption from a point intended for industrial use.- G) ARCA (Agency for Quality Regulation de Agua) did not carry out inspections to verify compliance with the provisions of Resolution 00I-14Cs Sv of SENAGUA, which provides that a micro-basin conservation plan should be initiated, which was never initiated,

That also, with respect to the same "first phase of exploration" in Llurimagua, the Autonomous Decentralized Municipal Government of Cotacachi, together with the Junín Community Monitoring Group, documented and reported contamination of the sector's water sources, specifically in the River Junín and Las Gemelas Waterfalls, and in the La Fortuna creek, a tributary of the Junín river; according to studies by the Cantonal Autonomous Decentralized Government of Cotacachi, this contamination is the result of advanced exploration activities for metallic minerals carried out within the framework of the Llurimagua mining project;

That likewise, the Autonomous Decentralized Municipal Government of Cotacachi, verified that in the execution of this "first phase the terms of reference (TORs), and the ExAnte Environmental Impact Study and Environmental Management Plan for the advanced exploration phase of metal minerals from LLURIMAGUA Mining Area (Code 403001), thus, evidenced the misuse of forest resources, felling of ancient trees, opening of trails over 1.5 meters wide and damage to the soil, forest and water, due to construction Y

operations of camps and platforms for drilling, as stated in the Comptroller's report;

That in the present case the requirements set forth in articles 87 of the Constitution of the Republic, and 27 of the Organic Law of Jurisdictional Guarantees and Constitutional Control, for the granting of constitutional precautionary measures are met. This, inasmuch as the events reported show the existence of an imminent and serious risk that constitutional rights of nature will be violated and, in particular, that the rights to full respect for their existence and the maintenance and regeneration of nature are violated. their vital cycles, enshrined in Article 71 of the Constitution; and the right to apply precautionary and restriction measures in the event of endangered species, recognized in article 73 of the Constitution; Y,

That in order to avoid the violation of the aforementioned rights, it is essential that suitable and proportional precautionary measures be granted, which in this case cannot mean anything other than ordering the immediate suspension of all administrative proceedings and all activities leading to the exploration or extraction of metallic minerals within the Llurimagua mining concession (code 403001), until it is proven that all endangered species have been taken into account in the Environmental Impact Studies, and sufficient precautionary measures are in place to avoid an impact negative on the species and their habitats, including their possible extinction. Likewise, it is essential that the aforementioned measures remain in force until it is verified, without the

There is less doubt, via an independent entity, such as the Ombudsman's Office, that the proposed mining activities, and those subsequent to advanced exploration, would not contaminate the water resource or the felling of native forest would occur as already occurred in the first phase of advanced exploration in the Llurimagua project, as verified by the General Comptroller of the State.

**1.2 Claims of the plaintiff.-** By virtue of the foregoing, invoking Arts .. 71, 72, 73 and 87, of the Constitution of the Republic, and Arts .. 26; 27; 31 and 32 of the Organic Law of Jurisdictional Guarantees and Constitutional Control, stating that in order to avoid the damage and imminent danger described, due to the threat that the described animal and plant species may be victims, it requests as precautionary measures, the immediate suspension of all administrative process and / or activities initiated or leading, related to the exploration or extraction of metallic minerals in the Llurimagua area, until:

a) It is demonstrated that all endangered species have been taken into account within the Environmental Impact Studies and sufficient precautionary measures have been established to avoid a negative impact on the species and their habitats, including their possible extinction;

b) It is demonstrated that all the observations made in the Special Examination carried out by the General Comptroller of the State to the Llurimagua Mining Project DNA6-0001-2019 have been met;

c) It is demonstrated that sufficient precautionary measures have been taken to prevent the extinction of the snout harlequin and rocket frog, and other critically endangered species;

d) It is scientifically and independently demonstrated that mining activities Proposals and those subsequent to advanced exploration, will not pollute the water resource or reduce the ecological flows of the water bodies within the mining concession or destroy the terrestrial habitat essential for the survival of critically endangered and / or endemic species. .

**1.3 Admission for processing.-** Knowledge of the petition was advocated, by virtue of the legal draw, and ordering to clarify and complete it, it has not been complied with as required; that is, specifying the violating act or omission that is intended to be avoided or stopped, by virtue of the fact that in the initial petition the existence of a firm administrative act and another in expectation has been referred; and in order to guarantee the rights of the procedural parties, in accordance with numerals 1 and 2 of the

without considering the animal and plant species at risk; Therefore, the concession title has been granted, with mining code or cadastre No. 403001, dated November 17, 2011.

Thus correcting the omission of the plaintiff, the proposed action for autonomous precautionary measures has been accepted for processing, but as a protection and precautionary measure, provided for in the Organic Law of Jurisdictional Guarantees and Constitutional control.

After the authorities are summoned, of which the procedural records are based, a public hearing has been called, which will be discussed later.

## **II PUBLIC HEARING (ANSWER TO THE DEMAND)**

**2.1 Appearances.-** The public hearing was attended by the petitioner, biologist ANDREA TERÁN VALDEZ, with her sponsoring lawyer.- By the acting authority, Paulo Arturo Proaño Andrade, in his capacity as Minister of the Environment and Water, through the lawyers: Dr. JUAN ANDRÉS DELGADO GARRIDO, General Coordinator of Legal Advice and delegate of the Minister of the Environment and Water; Ab. Pablo López Vaca, Director of Judicial Sponsorship and Dr. María Fernanda Manopanta.-

The Delegate of the Attorney General of the State has not appeared in the first phase of the hearing, but Dr. Roberto has been reinstated for the final allegations phase.

Carlos Vizcarra Torres.- The following persons have also appeared as amicus curiae: Doctor Caterine Andrade, Imbabura Provincial Delegate of the Ombudsman's Office; The Ecuadorian Committee for the Defense of Nature and the Environment; and Marcia Ramírez, who identifies herself as a resident of the Chalguayaco Alto community, García Moreno parish of the Cotacachi canton.

**2.2.- Argument of the plaintiff.-** Ratifying in the initial petition, the petitioning party expresses: The claim was filed as precautionary measures, to avoid damage to nature, with a very negative history in the exploitation



mining for a concession that would operate in the LLurimagua sector, having become a protection action; but which remains on the grounds of the claim, also referring to any attack that may have been necessary for the decision;

That the immediate antecedent to the request for precautionary measures is the mining concession to the National Public Mining Company, by the Vice Minister of the Ministry of Non-renewable Resources, on November 7, 2011, with the concession title with Mining Cadastre 403001, to the National Mining Company, for advanced exploration of metallic minerals in the Llurimagua area, which is located on the southern flank of the Western Cordillera, Toisán, located in the Peñaherrera and García Moreno parish of the Cotacachi canton, Imbabura province.-

That, subsequently, on November 16, 2014, the Minister of the Environment and Water granted an environmental license, regarding this first phase, and for the advanced exploration phase, an environmental license, at the end of 2018.

That the Office of the Comptroller General of the State, in a document that appears in the record, issued at the request of the Autonomous Decentralized Municipal Government of Cotacachi, a special examination for this project; report for the period from January 1, 2012 to December 31, 2017, in which it detects a series of irregularities on environmental management such as: That the Minister of the Environment and Water did not take into account constitutional norms regarding the description of natural species , which can generate the extinction of species and did not consider the precautionary principle as: one of the rights of nature guaranteed in the Constitution of the Republic Arts. 71 to 74.- That Art. 73 of the Constitution of the Republic provides: The State will apply precautionary and restriction measures for activities that may lead to the extinction of species, the destruction of ecosystems or the permanent alteration of natural cycles, and that the Constitution of the Republic provides that only the suspicion of a possible danger to the natural balance so that the precautionary principle is taken into account.- That the Comptroller General The State, which is the highest control body, determines irregularities such as that in the environmental impact study carried out to grant the concession, two species of frog were not taken into account; Among them, the frog *atelopus longirostris*, called a rocket whose peculiarity is that they have been rediscovered, since they were considered extinct in 2016; They hadn't been heard from in thirty-five years; not having taken into account mammals, such as the brown-headed spider monkey and other species of fish,

That frogs are amphibians, that they need water, and if a mining concession alters

the pH of the water, this very rare, endemic species, which is only found in Ecuador, in the Llurimagua area, will simply disappear; and having been rediscovered, since it was considered extinct, it represents an ecological and scientific interest of great magnitude; and, in fact, an attempt is being made to rescue this species, of which an individual has been brought to the courtroom of the judiciary;

That the Comptroller General of the State detected that these two species of frog and other species that are in serious danger of extinction, such as mammals, fish and reptiles, are omitted; that the Comptroller General of the State observes, in summary, the mediocrity of the environmental impact study report and, in short, that it is an incomplete report and that it has not complied with all the restrictions and conditions related to water management;

That when the first phase of exploration of the concession ended, there had been great events such as the felling of ancient trees, human waste in water that was deposited in the water; Las Gemelas waterfalls are found in a part of the mining concession, they had changed the color of their waters and were acidic; this, only in the first stage, with three drilling rigs.- Thus, the State Comptroller General's Office has detected a total irresponsibility of the State in the management of the environment, and insufficient measures to repair and mitigate environments; In other words, the antecedent of a deficient study determined that when the first stage of exploration was completed, some aspects had been destroyed and the water had been altered, putting these species of frogs at risk.

Currently, an attempt is being made to start a second stage and there is an environmental impact study, and a more advanced phase of mining exploration is already being sought, comprising ten water drilling rigs; and in the second stage, there is a complementary study for an advanced phase, with ten drilled, 240 people on site, which implies, among other things, transporting between 600 and 800 liters of diesel per day to feed the drills, handling of two hundred and forty in the site and the perforations that will necessarily pour chemicals into the water, putting these animals in danger of extinction; and that the Autonomous Decentralized Municipal Government of Cotacachi has also detected that during this first phase of exploration, due to the irresponsibility of the Minister of the Environment and Water, disasters had been caused and only with three drilling rigs.

The allegation continues the biologist ANDREA TERÁN VALDEZ, exercising her material right of defense with the consent of her lawyer for saying that she does not know technically the problem, saying the petitioner: That she is a biologist and has worked in the area since 2016, on biodiversity issues, carbon and ecological restoration;

that since 2019 he has been coordinating a project in the Junín area, aimed at amphibian research and conservation; that since he began his work he knew the area in depth and had deep concern about the mining activities that are going to be carried out in the area, because having worked in the area, they found a frog that was extinct, and they work with amphibians having as a background that the first vertebrates to come out of the water, which gives them unique characteristics such as having three breathing mechanisms, one of them is through the skin, so their skin is always wet and which allows them to live in various environments; but it also makes them vulnerable and susceptible to changes that occur in the environment; so much so that it has led them to a critical conservation situation; than amphibians, In the field of Biology, they are bioindicators due to their sensitivity, and to get an idea, 41% of amphibian species worldwide are threatened; being the most threatened group of vertebrates on the planet; that the latest Red List update, published two weeks ago, places 57% of amphibians in some category of risk; 15% in Ecuador are considered extinct; ten of them are of the atelopus genus, which is a very sensitive group and which are the reason for this cause: the longirostris harlequin frog, of the ten species that were considered extinct for more than thirty years, without being observed until it was found in a patch in Junín; he resurrected the frog and this was a stir in the scientific sectors, media publications that made known the rediscovery of the frog; that studies began trying to conserve it in a regional initiative in which several Latin American countries are involved, which should be considered to take into account the importance of the species; that in their work they have a small ex situ population, in a laboratory, as it is at such critical risk that it is necessary to reproduce the frog in order to recover its population;

That while the study of this frog was being carried out, they have found the wonderful surprise that is the encounter of another species of frog, the rocket frog atelopus confusus, and this is like having found a dinosaur, since it is a very ancient species, evolutionarily, which makes it a unique species, and it is so rare, that nothing is known about it, being totally unknown to science and its studies are just beginning in Junín; having, in fact, been found in one of the Twin Falls, which are identical by that name, and one of them is now contaminated by the exploration activities of the first phase, being that the frog is in the other waterfall ;

That this leads us to analyze the impacts of mining and why they are of such concern, since there are no studies on it in Ecuador; in Ecuador there is no mining

Great Scale, but in the South where it has begun; and there are no studies of the impact on amphibian communities; But from studies in other countries that already have these problems, it is known that it is not only water pollution but also an increase in the amount of metals in soil and water, which has led to a reduction in amphibian communities; that their diversity, the number of individuals and species of amphibians decreases because, in general, this increase changes the conditions and micro-habitat of frogs, their resources, and humidity;

That the contamination of the water worries deeply, because, being the frogs so susceptible by their cutaneous respiration, any small change affects them; But a change in the pH of the water causes an irreversible effect on them, being many times lethal, and when it is not, it is seen that there is a problem in the development of the tadpoles, those that suffer anomalies or become smaller, which as adults, it reduces their ability to survive in the environment, and which is going to translate into a smaller and more vulnerable population that, obviously, increases their risk of extinction; and the frogs are already being affected; They are populations vulnerable to climate change, and if all these pressures are added, their fate is probably their extinction;

That, what is done in the face of these impacts and to mitigate, in mining the first thing that is done is environmental impact studies and there is the greatest concern for frogs, which is what worries the most because as responses in the environmental impact study out of 1018 certain measures are proposed that do not respond to impacts. For example: For the alteration of the quality of water and / or soil, the measure is to establish a security perimeter to contain the spill, the indicator being the number of areas where the perimeter was established; indicator that does not say about the impact on the amphibian community and there is no link with the environmental impact study mechanism; since the indicator to establish whether or not there is affectation is a monitoring of species and a monitoring of the quality of the soil and water that have been affected,

Above all, it makes one doubt that in the 2014 study the species is not reported, since the confused ectopoglossus is a species that stands out, being a small community it is easy to find it in the place and it is not reported even as a similar species for the case they had been confused with another species, which raises doubts about the methodology used in the environmental impact study; That in the environmental impact study of 2018, despite the fact that the longirostris harlequin frog had already been reported by studies and in the press, it was not included in the study, not even as a precautionary measure, since the

Environmental impact studies are obliged to look for secondary sources of information, calling attention to the fact that they have been based on interviews but are not based on scientific information; So they omit valuable information;

That also draws attention in the environmental impact study that mitigation measures include the rescue and immediate relocation of species, despite the fact that it has already been many years of study without having successful reintegration of species, with few successes in the world; It is not that you come across a frog when you casually walk through the forest, take it and put it somewhere else; That frog is there because of certain conditions that that environment has, of resources, of humidity; environmental resources for which it is in that place and not in another; then, it is not easy to propose as a mitigation measure to take a frog and put it in another place;

That the individual of the species, produced in the laboratory, has been presented at the time of the hearing and she is one of thousands of individuals that are the production target, since that is what the amphibian reintroduction studies indicate; that it cannot be a single individual, since their mortality rate is so high, that they must be thousands to measure their survival and after that do extensive monitoring, which is quite expensive, to be able to know if they are surviving; that one of the indicators of relocations is photographic records of rescues; which does not say that the frog is surviving in the place where it was relocated, and it is very likely that the frog does not survive in the place where it has been relocated, since actions are being taken at random; and in the rescue plan that is being attached, which in fact is a Northern Fruit Plan not even specified in this environmental impact study, they say that they attach that a re-adaptation of the place is made before the reintroduction, and they speak of the reintroduction of fauna in a general way, although to reintroduce a monkey it is very different than reintroducing a frog; but in truth it is not understood how a forest is readapted to be able to introduce a frog, this being a disconcert for scientists, since it is not known how they are going to do it;

What are these generalities that indicate that the risk of extinction is extremely high and, it is most probable that these frogs become extinct due to the contamination of water and soil; that it cannot be said that we put them in the laboratory and reintroduce them when it is finished, since things do not work that way; You cannot work alone in the laboratory or do your work in vain since restored habitats are required, habitats suitable for reintroduction;

What happens if we lose a frog or two frogs, in the end they are few, nothing happens. The importance of them is immense, not only for their intrinsic value of existence, but also

for all the economic and human benefits they can bring. On the one hand, there are all the international funds dedicated to the conservation of frogs; regional, national and global initiatives for its conservation, which is in our hands; You cannot miss this second chance to have rediscovered these species;

What is just a frog, what does it matter if we lose it. But we have the example of a frog under study for medicine on its skin, which is very powerful, the epibatidine frog, *epipedobates anthonyi*, which is two hundred times more powerful than morphine and is not opioid; The opioid is the problem that the United States has due to addiction, which is enormous and, suddenly, this medicine that is not opioid, that is, it is not addictive, is found in this frog; For this reason the pharmaceutical companies are very interested in this frog and are already exploiting it, not as epibatidine, but as other derivatives; and even the same molecule was isolated with an early marker for Alzheimer's for its early detection; that we do not have the figure of the money that the pharmaceutical companies generate with this medicine, but they are not negligible values;

That there is a frog with studies in recent years, and *crusio septina*, whose molecule is a very powerful antifungal, and more advanced studies for other therapeutic applications have been isolated; and what would have happened if that frog was lost; the opportunity to know that medicine and give that medicine to humans would have been lost; so it's not just losing a frog;

That if a frog is lost, which is a bioindicator, it means that something else is being lost in the ecosystem; the frog only indicates his own loss; but behind it ecosystem services are lost; So the next steps are not to lose ecosystems, but to strengthen their habitats and populations; and you cannot continue working on the species if you cannot ensure that the frog will have a habitat in the future; This cannot be assured with mining, since mitigation measures are very lax and not scientifically based; For example, in the event of spills there is no relocation of species, which they say they will do when there is a clearing of vegetation and they find a frog or another species of flora or fauna and relocate it; But when faced with a spill, they do not even propose a relocation of species;

That in the case of water contamination the edge effects of percent are measured

fifty meters, but when talking about a connected basin, one cannot speak of these very limited effects, since these will be transmitted throughout the basin and in the water that is essential for amphibians;

That because of the frog, benefits are being generated, such as tourism; Since it is paid to see a monument in Rome, foreigners pay to come to see the frog and go to Junín; they call to see it; the BBC London is interested in filming endangered and mining-affected species; so that much more than one or two frogs will be lost, and seeing the impacts generated by mining and the few measures to save them, it is worrying the other species that are reported in the environmental impact study as threatened, as well like those that are not reported; Y,

The petitioner concludes by requesting that her claim to suspend any administrative or practical activity in the Llurimagua sector, which consists of mining exploration, be granted until there is a technical team competent enough to determine the mitigation and protection of the environment by virtue of of Arts .. 71 and 73 of the Constitution of the Republic;

**2.3.- Arguments of the activated entity.-** For its part, the affected entity has answered the demand and has made an exception stating: That on August 24, 2020, the plaintiff requests autonomous precautionary measures, indicating that there is an alleged threat of violation of the rights of nature contained in Arts. 71 and 73 of the Constitution of the Republic, which refer to the rights of nature to full respect for its existence and to precautionary and restriction measures for activities that may cause the extinction of species;

That on August 26, 2020, the plaintiff has been requested to complete the petition in accordance with the last paragraph of Article 10 of the Organic Law of Jurisdictional Guarantees and Constitutional Control, its claim, punctually: that it specifies the violating act or omission and that it is intended to prevent or stop, that a circumstantial account of the facts is made and the provisionality of the requested measures is determined; However, by means of a qualification car of September 1 of this year, it has been expressly established that knowledge of the cause has been advocated and that it has been ordered to clarify and complete it without compliance with the requirements, and that by the iura novit curia principle, and based on the facts alleged in the application, an acceptance of the action is made as protective with precautionary measures; that in the order it is indicated because there has been within the lawsuit an alleged violation of the rights of nature by the Minister of the Environment and Water;

That, however, it is emphasized that from the reading of the demand and the order of

The classification does not reveal anywhere the violating acts or the rights that the Minister of the Environment and Water has allegedly violated, but the only thing that is pointed out is that there is an alleged violation of the rights of nature by three actions: 1. That the mining activities in the Llurimagua mining concession located in the Cotacachi canton; 2. by the granting of resolution 864 of December 16, 2014, by the then Ministry of the Environment, and 3. Because a mining concession title has been granted with code 403001;

That in this regard, in accordance with Article 40 of the Organic Law of Jurisdictional Guarantees and Constitutional Control, for a protection action to proceed, three requirements are required: 1. The violation of a constitutional right; 2. The action or omission of a public authority; 3. The inexistence of any other judicial mechanism that is effective to protect the violated right; this rule being quite clear when determining that the three requirements must be met. However, in this case, neither in the complaint nor in the qualification car it is established what is the act that the Ministry of the Environment supposedly carried out to violate these rights or what are the rights that the Minister of the Environment and Water has allegedly violated; only, within the same file there is a brief presented by the plaintiff herself, on September 4, 2020, where it expressly and emphatically states that, "considering what is mentioned in the ruling, it is clarified that to date it has not existed", already in consideration of the plaintiff, although there is negligence in the mining activities so far carried out, the frogs and animals to be saved by means of these measures have not suffered extremely serious damage at this time; In other words, the plaintiff itself is acknowledging that there is no violation of constitutional rights, which is why the action is rendered inadmissible; The frogs and animals that are intended to be saved through these measures have not suffered extremely serious damage at this time; In other words, the plaintiff itself is acknowledging that there is no violation of constitutional rights, which is why the action is rendered inadmissible; The frogs and animals that are intended to be saved through these measures have not suffered extremely serious damage at this time; In other words, the plaintiff itself is acknowledging that there is no violation of constitutional rights, which is why the action is rendered inadmissible;

That additionally, the qualification car indicates that, apparently, this violation of rights is precisely due to these three acts mentioned, 1. granting of the mining concession; 2. granting of the environmental license in Resolution 864; and 3. Because of the mining activities that are being carried out in the area. But it is clarified that mining activities are not carried out by the Minister of the Environment and Water, but by the operator, in this case, the National Mining Company, who have not been summoned or are part of this action so that they can exercise their right to the defense. That the mining concession has not been granted by the Minister of the Environment and



Water, since it has no competence to do so, being an act that at the time was issued by the Ministry of Non-Renewable Resources,

competence to pronounce on how that mining concession was granted;

That Resolution 864, which was issued in 2014, refers to the environmental license issued for the execution of the Llurimagua mining project; and to that effect, it points out that in order for an environmental license to be granted for any project or activity, operators must previously present an environmental impact study, which is a technical instrument, which also has an environmental management plan, in which establish the measures that must be adopted for a project to be developed, considering that all types of human activity generates an impact that can be positive or negative and, precisely, for these negative impacts is that mitigation measures are established to prevent these impacts turn into environmental damage;

That in this sense, the National Mining Company, in 2014 presented the environmental impact study, which is reviewed by the then Ministry of the Environment and, as a consequence of the revision of the correction of the observations that the Ministry of the Environment, and for having complied with all the stages of environmental regularization, through official letter MINISTRY OF THE ENVIRONMENT AND WATER -SCA-2014-2901, of November 11, 2014, which is based on a technical study of November 7, 2014 , which in due course will also be considered as evidence, it is established that the environmental impact study as of that date already complies with what is established by the regulations and is granted a favorable ruling, and as a consequence of said ruling, resolution 864 of December 16, 2014, granting the environmental license for this activity;

That, as a consequence of this environmental license, it is the responsibility of the operator and the authority to control and monitor compliance with all the obligations contained in this environmental license; and as a result of them, the technical areas have been requested to issue a report on how the obligations contained in this environmental license are being fulfilled and, effectively, on September 4, 2020, the National Directorate for Environmental Regulations and Control issues a technical report where it is established that until that date, the operator Empresa Nacional Minera is complying with the obligations in accordance with the provisions of the license;

That a summary of the means of control and monitoring of the terms of reference for the preparation of the audits that are the means of controlling an environmental license as established by the regulations, as follows: For the year 2014-2015, the National Mining Company has submitted the terms of reference that are approved by the Minister of the Environment and Water.- By December 2015 to

December 2017, they are also approved by the Minister of Environment and Water.- For December 2017 to December 2019, also approved by the Minister of Environment and Water;

That as a consequence of such terms of reference, it is responsible for presenting the compliance audits, which has been done as follows: For the period December 2014 to December 2015, the Minister of the Environment and Water has already approved, and the audit is prepared by a consulting firm that establishes what measures have been adopted and whether the approved management plan for the operator has been complied with; This audit has also been approved for the year 2017 by the Minister of the Environment and Water;

That for the audit for the period 2015 - 2017, at the moment, in the role of the Minister of the Environment and Water, as the governing body in environmental matters, has observed said audit because it still does not meet the parameters that must be observed; Observations dated April 30, 2020 for correction by the operator; That for the audit that corresponds to the period 2017-2019, since the terms of reference were approved in 2020, they are still being prepared.

That with respect to the monitoring that are part of environmental management, the operator has complied with the presentation of the monitoring since 2015, the year in which the monitoring corresponding to the twelve months that are approved is presented.-For the year 2016 it presents the two monitoring that are approved by the then Minister of the Environment and Water.- Likewise, for the first semester of the year 2017 that is approved and the monitoring of the second semester is observed.- That for the years 2018, 2019 and 2020 they have The monitoring has been presented and it has been presented by the operator, and it has been observed, precisely, so that the regulations are complied with for the benefit of the rights of nature;

That, in this way, it is clear that the Minister of the Environment and Water, within its competence, has carried out all the activities and actions aimed at guaranteeing and safeguarding the rights of nature and that their existence is fully respected; there is no violation of constitutional rights for a protection action to proceed, and such action becomes inadmissible, since the plaintiff itself establishes that there is no type of violation;

That in her plea, the plaintiff is emphatic in ratifying that it is an action of autonomous precautionary measures; and for this purpose, the plaintiff indicates that there is a possible threat to the rights enshrined in Articles 71 and 73 of the Constitution of the Republic because the Minister of Environment and Water is

carrying out the complementary study to the environmental impact study and the environmental management plan for the advanced exploration phase of metallic minerals in the Llurimagua mining area, and in this regard it must be made clear that there is no type of violation;

What proceeds is the presentation of a complementary study, because within this activity it is intended to carry out activities complementary to the environmental license and to know what are the impacts of these activities and what are the measures that must be implemented for these activities is that the operator must carry out the complementary study; It is necessary to establish that, although the counterpart has indicated that this study is for the granting of a concession, this is not true, since the ministry does not carry out mining concessions; that corresponds to the governing body; The only thing that the Ministry of the Environment and Water is doing is to review the complementary study to the license that is already granted; which, being an administrative act, enjoys the presumption of legitimacy and enforceability,

That neither the environmental impact studies nor the complementary studies are carried out by the Minister of the Environment and Water, but rather checks that these complementary studies comply with the legal requirements according to each activity; and once the complementary study that was presented by the National Mining Company has been reviewed at the time, and it has been determined that it does not meet the technical and legal requirements in accordance with current regulations, the observations that are based have been issued, not only in observance of the constitutional norms in favor of nature, but also complying with the recommendations issued by the General Comptroller of the State when it carried out the special examination of this mining project;

That, the special examination of the General Comptroller of the State was not only carried out only to the Minister of the Environment and Water, but also to other institutions involved with the project within the scope of their powers; and that within the recommendations to the Minister of the Environment and Water, nowhere is it established that there are irregularities or a cause for the permit to be suspended or revoked by the Minister of the Environment and Water;

That within the recommendations that were established for the Minister of the Environment and Water, the Undersecretariat of Environmental Quality, the National Prevention Directorate and the Control Directorate at that time, that they adopt measures so that certain shortcomings that are had found in the approval of this study; specifically stating compliance with these recommendations, and as established by the Organic Law of the State Comptroller General, in May 2020, the State Comptroller is informed how the Minister of Environment and Water has been complying with these recommendations within this project and within the approval of all projects that are put into consideration by the Minister of the Environment and Water, so that the respective administrative authorizations are granted;

That a review of the complementary study is found by the Minister of the Environment and Water, a study that has not been approved, and that has been made known to the Ombudsman's Office, on May 27, 2020, with memorandum 2020-793, that this This study is still in the review phase from the technical area and therefore has not yet been approved;

That there are no grounds or requirements for a precautionary measure to proceed, and in this sense, the Constitutional Court, in judgment 24-13-SCM-VV, has established which are the rules constitutional judges must observe for cases of precautionary measures, such as Binding jurisprudence under sanction precautions, as a first rule, precautionary measures have a provisional nature, for which the time and of the same must be established in the resolution while the circumstances that motivated them exist; in the case of joint precautionary measures, these must last until the merits of the action are resolved; In this case, none of the budgets are met, since, as indicated, there is a study that has not yet been approved.

That all the observations were made known to the National Mining Company so that they can be corrected and the study is approved and, thus, there has been no

violation of constitutional rights, the protection action in this case is not appropriate; That the second rule established by the Constitutional Court for a precautionary measure to proceed is when there are threats, the object of which is to stop the occurrence of these events that are considered to violate the rights recognized in the Constitution of the Republic and the Minister of the Environment and Water has made known within this action, that there is no type of threat to the rights of nature; Furthermore, the present action does not include what rights have allegedly been violated by the Minister of the Environment and Water, nor what are the acts by which the alleged violation is incurred;

Another rule that is established by the Constitutional Court is that in the resolution that establishes the precautionary measures, it must be reasonable and justified, and for this purpose it must consider two basic rules: the danger of not adopting these measures, and the plausibility of the claim, and in the present case these two assumptions are not met either, because the complementary study prepared by the consultant hired by the National Mining Company has not yet been approved, and it has not been done because within the observations issued the State Comptroller General has established the measures that the Minister of the Environment and Water must take into account to approve the study, and based on these observations, they have also been made to the National Mining Company, which must comply with these observations before the study is approved;

That there is a specific route in the event that it is considered that there is an illegality in the granting of the license, and that it can even be verified in the special examination carried out by the State Comptroller General's Office, there is no type of recommendation for the Minister Environment and Water enters into a process of suspension or revocation of this permit;

That the plaintiff has indicated that the environmental impact study that gave rise to the first environmental license is mediocre, according to its criteria; However, in the special examination carried out by the State Comptroller General's Office, nowhere is a 'mediocre' term used for the study or for its approval; Certain shortcomings are established, which by virtue of the recommendations made by the Comptroller's Office are being taken into account to comply with them, and it will be the Comptroller's Office that will decide whether or not these recommendations have been met, and in this sense was not considered appropriate to establish that the study is mediocre; nor have it been established what the points of said

environmental study that are mediocre or what are the measures that are insufficient to mitigate the impacts that the activity can generate, emphasizing that all human activity, even if it is not economic, generates an impact on nature, an impact that can be positive or negative, and For negative impacts, there are measures that must be adopted, environmental impact studies and an environmental management plan for the granting of a license, and that as a consequence of the granting of the license is that the Minister of the Environment and Water, as the environmental authority, must control and monitor the established obligations; control and monitoring that has been done, having the National Mining Company submitted all the obligations, some of which have already been approved, and another is under observation by the environmental authority; That there is no violation of constitutional rights for a protection action to proceed, nor are the precepts established by the Organic Law of Jurisdictional Guarantees and Constitutional Control being fulfilled for a precautionary measure to proceed, for which he requests that after verifying his evidence, it be filed the action and it is declared inadmissible.

### **III TESTS.-**

Once the allegations have been concluded, in order to deal with the evidence as a whole and given the volume of the same that had been announced by the petitioner, it has been arranged that the petitioner be acted first, and then that of the prosecuted entity, and of this it has :

#### **3.1 Evidence from the petitioning party:**

- Testimony of Mr. JUAN MANUEL GUAYASAMIN, who points out: That amphibians are biphasic vertebrates, living as an aquatic tadpole and as an adult on land; who have what is called bare skin without scales, without hair, without feathers; what makes them vulnerable; They do not have the ability to move, but rather limited, which makes them dependent on their habitat, since they cannot move to other places

when there are alterations to its environment; with two additional factors: they are very sensitive to diseases introduced by humans, as a result of which they are seriously threatened by extinction in the province of Imbabura.- That Ecuador is a very diverse country in amphibians per area, and this is of great responsibility Therefore, there are endemic species, 627 species, of which 57% are in some danger of extinction according to international organizations for the conservation of nature.- Who knows the intervention area of the mining project in the Llurimagua area, and knows the surrounding area and places, due to the diversity not only in amphibians, but also in other species; as well as the work in the Junín community reserve.- That the amphibians of the Llurimagua area, reviewing the lists of

species; and it has two extremely threatened species, such as the atelopus longirostris which, until recently, was believed to be extinct.- That the harlequin frog (atelopus longirostris), is one of the last of its species and must be protected, with mining being a threat due to its aquatic and terrestrial life so that any threat from any contamination to its habitat can have determining consequences in terms of its population, such as the extinction of the species.- That the confused rocket frog (ectopoglossus confusa), is the same as the frog harlequin, which requires bodies of water for its reproduction and for its tadpole phase, with surrounding forest; so we are facing a threatened species with the possibility of extinction; And like the harlequin frog, it is a unique species that is found in a few other locations in Ecuador, and the degree of threat from mining activity is extremely high, not only for amphibian species; Above all, open-pit mining implies the removal of all the species that are in a certain area and the alteration of the soil without having a single example that the mining activities have had an adequate action that demonstrates that it can later be recovered. Something from its initial state, because for all the removal of the stone material and that implies an increase in the flow of vehicles, realization of roads, the introduction of other activities to the area such as agriculture, livestock, and the always latent possibility of contamination in all the basins connected through water, being a risk for all species. - That reviewing the environmental impact studies it is clear that the work that was done for that area is concise, to say the least, since there is a great lack of information on the species that exist in the area, and the wrong could be taken decision to affect that area without having a good idea of the species that inhabit there and the requirements of those species.- That there are ways to mitigate the impacts of mining, the first thing being that the technology used is state-of-the-art technology , with constant control of the water before, during and after the mining activities.- That in terms of the impact of mining, it would really be naive to think that these sites are going to return to a state similar to the current one; Especially the open pit mining activities are the most destructive imaginable. - That the environmental impact report talks about some strategies such as removing animals and locating them in other places; But that is tremendously unfeasible, because the ecological relationships of the animals are altered, and you cannot simply grab them and put them somewhere else; With this or the only thing that is done is to destine the new individuals to die because they have no territory, they have no place to reproduce, they are at a great disadvantage with the resident animals and, then, moving the animal or plant species is not realistic nor is it



scientific; it is not a solution; Perhaps a person who does not know about these things could say that there is no problem but what is being destined to these living beings to death.- That there is also the possibility of creating ex situ confinement sites, creating infrastructure that recreates the conditions where these species can live until they can be reintroduced to their original place, but this requires many technical elements and is a very high budget for it to be well done in a technically and scientifically adequate way. - That the environmental impact studies in the case LLurimagua are not adequate to avoid extinction and the damage that endemic species could suffer; Given the magnitude of the impact and the environmental diversity affected, they are not viable, and it is important that, both the companies that make these studies and the mining companies themselves, be more honest with this type of suggestion; since simply saying that a species moves from one place to another, saying that they are rescued, does not have scientific support.- That there is no talk of monitoring processes, so it is not known what the conditions and requirements of these species and how it can be said that they are going to be moved without having any idea of what is happening in the life cycle of each of the threatened species.- That the mining activity in Lurimagua, as mining, is extremely dangerous; such as the accident that occurred in Brazil, of the rupture of the mining water dam, causing ecological damage and also causing the death of many people.- That the area where the work will be carried out is topographically complex, which means another risk due to seismicity, a factor that must be taken into account when working in hydrographic areas because not only local contamination can be generated, but also downstream contamination.- That the reports that you have reviewed regarding the list of species in the environmental impact study and in a study that the Hampatu Center has carried out in the area, and from these studies it is established that the environmental impact studies do not do a good job of documenting the species of the place, and hence the surprise by the tremendously concise of the list of species in this study; Being one of the places with the greatest diversity, the list presented borders on the ridiculous, since many of the most threatened species are those that are not precisely mentioned in that report,

that are there; If there is not even a report on the species that exist there, including the two threatened with extinction, it is impossible to monitor it.- That the witness is not a surveyor or expert accredited by the Judicial Council.- That the basin area of the Llurimagua area, formed by streams, including those of Junín, form these basins that flow into the Pacific and have an impact on the biodiversity of the basins that go downstream.-

- Witness JAIME GARCÍA DOMÍNGUEZ, biologist, of Spanish nationality, domiciled in Quito, states: That he has no field experience in the Junín sector, but he does in other similar areas - That he works to rescue endangered species - That he works in the Northwest from Quito and has carried out research, although not individually, in the herpetofauna area.- That LLurimagua is in a hot spot area of the Tropical Andes; A hot spot being an area of biodiversity explosion that has two main characteristics: 1500 endemic plant species, and at least seventy percent loss of habitat.- That in Llurimagua there are two key species: the atelopus longirostris or the harlequin frog long-snouted, from the buffoon family (toads), with a size of approximately three centimeters, the female larger than the male; closely associated with water, since the female lays her eggs in the water and lives in the water in her tadpole phase; that it is a species that until recently was considered extinct, and worldwide, of its genus there were about thirty species of extinct amphibians, among them, the atelopus longirostris, which has reappeared incredibly recently and there is a scientific publication about the rediscovery, being classified as a critically endangered species; which is known only in this area; that hampatus and harlequin frogs belong to the group of atelopus, which are considered emblematic animals or jewels of the biotropics, and mentioned by the Survival Committee.- That atelopus are suffering one of the greatest declines, then, of the ninety species of atelopus in the biotropics of Latin America, one hundred percent since the female lays the eggs in the water and lives in the water in its tadpole phase; that it is a species that until recently was considered extinct, and worldwide, of its genus there were about thirty species of extinct amphibians, among them, the atelopus longirostris, which has reappeared incredibly recently and there is a scientific publication about the rediscovery, being classified as a critically endangered species; which is known only in this area; that hampatus and harlequin frogs belong to the group of atelopus, which are considered emblematic animals or jewels of the biotropics, and mentioned by the Survival Committee.- That atelopus are suffering one of the greatest declines, then, of the ninety species of atelopus in the biotropics of Latin America, one hundred percent since the female lays the eggs in the water and lives in the water in its tadpole phase; that it is a species that until recently was considered extinct, and worldwide, of its genus there were about thirty species of extinct amphibians, among them, the

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animals or jewels of the biotropics, and mentioned by the Survival Committee.- That atelopus are suffering one of the greatest declines, then, of the ninety species of atelopus in the biotropics of Latin America, one hundred percent which is known only in this area; that hampatus and harlequin frogs belong to the group of atelopus, which are considered emblematic animals or jewels of the biotropics, and mentioned by the Survival Committee.- That atelopus are suffering one of the greatest declines, then, of the ninety species of atelopus in the biotropics of Latin America, one hundred percent one hundred are threatened.- That the category "in danger", which is the second most serious category, after "critical danger" is a frog from the group of endoobatridae that are poisonous frogs, called rocket frogs, confused rocket frog, of the Which practically nothing is known because it was a long time without reappearing again, even believing it as possibly extinct, it is found in streams and waterfalls

, It is one of the oldest animals in terms of evolution, one of the first to appear of the poison frogs, being able to call it a living fossil of the group of poison frogs, and there is doubt about its exact reproductive cycle, which could be very interesting, finding it only in that area of Las Gemelas waterfalls.- That there are other species in a threatened category such as

pristimantis mutabilis which has the peculiarity of being the only amphibian that can change the structure of the skin and for this characteristic it is very special it is famous and it is found in the moss; that among other pristimantis frogs such as the rocket, pahuma

, apart from being a critically endangered species, on the verge of extinction, it is one of the twenty-five most threatened on the planet, even more threatened than the gorilla.- In botany, the same happens with the accumulation curve, being interesting that it is not orchids have been recorded, being that orchids are the most diverse plants on the planet, and Ecuador is home to around sixteen percent of orchid species in the world; Northwest Ecuador is the place with the greatest diversity of plants, with around four thousand two hundred species of orchids in Ecuador, and most of them, seventy percent, are in the region of the Tropical Andes, cloud forest like what is that of LLurimagua.- That new orchids are being discovered in Ecuador, being so endemic, name, and however, in the environmental impact study the most diverse flow of plants of all that we have, with the largest number of species, is not described.- That the same happens with the subject of mammals in which no feline.- Reviewing the methodology of the environmental impact study and camera traps have not been set, which means that it is not possible to identify felines, not even spending every day and night in the field, so that in a study of two or three days of sampling a sub-sampling is obtained, omitting information; without a single feline, despite the fact that in Manduriacu the jaguar considered critically endangered is registered and on the Coast, registered in areas near Llurimagua that live up to two thousand five hundred meters of altitude, but in Llurimagua it is not registered,

Although it is an area where the jaguar can be, but without cameras for a long time, the most endangered species will not be able to be registered, so the study must be stronger.- That pumas and leopards are not registered pardalis nor tigrinis, nor the margay leopard, nor yaguarundi.- That in birds, the Andean eagle, Spizaetus isidori, which is in a danger category and of which very little is known, being in the Los Cedros area could be in Llurimagua, but without camera traps and with a few days, there will not be a record.- That there are many sub species in reptiles in the Los Cedros and Manduriacu areas, but they have not been recorded in the Llurimagua environmental impact study ;There is even a species of snake that was considered extinct and, having found an individual in Manduriacu, it could be in Llurimagua but more studies are required.- As frogs are species associated with water, the conservation of sources is extremely important for their survival, since can affect the biota and therefore the tadpoles, since a small change can mean their death.- That the entry of people into the area, into the forest, according to the studies carried out on mining processes, means the introduction of pathogens such as the batrachochytrium dendrobatidis fungus that has caused the decline of more than five hundred species in the world and one of the most affected groups is the atelopos, including longirostris, so that human entry and the disturbance of vegetation can affect it,Well, frogs are also found a hundred meters from the river.- That the rediscovery of the ectopoglossus longirostris was approximately in 2017, the International Union for the Conservation of Nature IUCN, had declared it extinct.- That the environmental impact study is of 2014 and the complementary one of 2017, approximately.- That if it is an extinct species, its rediscovery must be registered in the environmental impact study, all the more reason, since the fact that it has been found in a study that was not of environmental impact is totally in accordance with what is stated with the species accumulation curve, and as mentioned, that there are many species that are not registered in the environmental impact study, that is,There was not enough study to register a majority of the species adequately, since if in the environmental impact study a good study of the herpeto-fauna had been made, they would have found the species and rediscovered it, the publication of the rediscovery for the sake of science.- That they do not know the observations that the State Comptroller General's Office has made to the study complementary to the environmental impact study, specifically the biotic component.- That the observations made by the witness are not made in based on the observations of the Office of the Comptroller General of the State, but rather the publication of the rediscovery would have been made for the good of science.- That it does not know the observations that the State Comptroller General's Office has made to the study complementary to the environmental impact study, specifically the biotic component.- That the observations made by the The

witness is not made based on the observations of the State Comptroller General's Office, but rather because the publication of the rediscovery would have been made for the good of science.- That it does not know the observations that the State Comptroller General's Office has made to the study complementary to the environmental impact study, specifically the biotic component.- That the observations made by the The witness is not made based on the observations of the State Comptroller General's Office, but rather because

The expert establishes that the species that are known are not recorded and that the accumulation curves show a sub-sampling that as a scientist is able to establish - That he is not an expert accredited by the National Council of the Judiciary, but has a master's degree endorsed by the National Secretariat of Science and Technology and a degree in Biology.-

**- The following documentary evidence has also been incorporated:**

1. Final report within the Special Examination of the first exploration phase in the Llurimagua Mining Project by the National Mining Company and the Ministry of the Environment, No. DNA6-0001-2019, for the period from January 1, 2012 to January 31 December 2017, which highlights, on page 21, that the Minister of the Environment and Water approved the environmental impact study and the environmental management plan without complete information; Specifically, the Minister of the Environment and Water approved the impact study and the environmental management plan without climatological and hydrological parameters typical of the area, and considering results of elements that do not allow knowing their concentration in water and soil, which caused the study not to contain the information necessary for the identification of sensitive areas and environmental impacts, of meteorological stations closest to the project, in order to update the environmental impact study.- It will request the general manager of the National Mining Company EP., to present a technical report that determines the concentration values of chemical elements in water and soil that were not identified in the baseline of the environmental impact study, in order for it to be updated.- Also read page 26 of the Comptroller's report, that the limits for the analysis of water and soil did not allow to quantify the presence of elements ; In addition, the reported values exceeded the permissible limits.- In addition, it did not take into account constitutional norms related to the restriction of activities that can generate the extinction of species, nor the precautionary principle, in accordance with the principles



of application of the rights enshrined in article 11, ibidem, relative to the direct and immediate application of constitutional norms (11.3), and the application and interpretation of more favorable norms that favor the effective enforcement of rights (11.5). - B) The detection limits for the analysis of water and soil did not allow to quantify the presence of elements; in addition, the reported values exceeded the permissible limits.- C) EMPRESA NACIONAL MINERA EP breached the provisions established in the environmental license, creating effects

social and environmental.- D) EMPRESA NACIONAL MINERA EP intervened in the Junín river micro-basin without guaranteeing the use of water and ecological flow and without having a conservation plan. This, in clear contradiction with the constitutional norm enshrined in article 411 that establishes as the responsibility of the State, to ensure and conserve the hydrographic basins and the ecological flows associated with the hydrological cycle. It should not be forgotten that, according to this same standard, the sustainability of ecosystems and human consumption are a priority in relation to the use of water.- E) EMPRESA NACIONAL MINERA EP did not have the certification of not affecting bodies of water in order to protect the stability, quality and environment of the water resources, nor did it comply with the flow authorized in the SENAGUA Resolution. They did not verify that in the reports of the continuous monitoring and follow-up program of the measures contemplated in the environmental management plan and in the environmental compliance audit, that the concentrations of the water and soil elements did not allow comparison with the maximum permitted limits; and they did not observe that there were concentrations of lead and zinc that exceeded the values established in the standard; however, they approved. For their part, the servers of the National Mining Company EP did not validate the results of the laboratory analyzes, prior to the presentation of the aforementioned documents, with the risk of affecting human beings and aquatic life.- It will have the Director of Environmental Control and the technicians of that the concentrations of the elements of water and soil did not allow comparison with the maximum permitted limits; and they did not observe that there were concentrations of lead and zinc that exceeded the values established in the standard; however, they approved. For their part, the servers of the National Mining Company EP did not validate the results of the laboratory analyzes, prior to the presentation of the aforementioned documents, with the risk of affecting human beings and aquatic life.- It will have the Director of Environmental Control and the technicians of that the concentrations of the elements of water and soil did not allow comparison with the maximum permitted limits; and they did not observe that there were concentrations of lead and zinc that exceeded the values established in the standard; however, they approved. For their part, the servers of the National Mining Company EP did not validate the results of the laboratory analyzes, prior to the

presentation of the aforementioned documents, with the risk of affecting human beings and aquatic life.- It will have the Director of Environmental Control and the technicians of

area, verify that the analysis of laboratory results ensures the detection of concentration of chemical elements according to the permissible limits.- That the Minister of the Environment will request the general manager of the National Mining Company EP to prepare and deliver a technical report in which the Chemical elements for water and soil quality with their concentration in the Llurimagua mining project that were not identified in the monitoring and follow-up reports, and if applicable, the adoption of corrective measures will be ordered.

This document has been objected to by the defense of the Minister of Environment and Water, indicating that the report refers to other institutions for which it cannot respond, since the National Secretariat of Water has recently been merged into the Minister of Environment and Water. on June 04, 2020, and that the Water Control Agency is attached to the ministry but has its own legal personality.-

2. Resolution No. 864, of December 16, 2014, issued by the surrogate Minister of the Environment, of the Ministry of the Environment, which approves the ex ante environmental impact study and the environmental management plan for the advanced exploration phase of metallic minerals in the area Llurimagua mining company, and grants the environmental license to the National Mining Company EP.-

This document is objected to by the defense of the Minister of the Environment and Water, indicating that it refers to the first environmental license granted in December 2014, not being relevant to the case since the petition does not claim that rights had been violated , nor has the administrative act been verified illegality, which corresponds to another process.

3.- Environmental impact study of the year 2014, and a Complementary study to the Ex Ante Environmental Impact Study and Environmental Management Plan for the advanced exploration phase of metallic minerals in the LLurimagua Mining Area, which indicates that there are seven species but not those that correspond to the atelopus longirostris frog or the confused rocket frog.

This report is objected stating that it has already been observed by the State Comptroller General's Office and that they are being taken into account by the Minister of the Environment and Water and that the indicated species have been discovered years after the study.- That said study has not been prepared by the Minister of the Environment and Water.

4. Llurimagua inspection report, of April 24, 2018, made by the Environmental Management Directorate of the municipality of Cotacachi, addressed to the Mayor of Cotacachi.

This document is objected indicating that it is not the competence of the Autonomous Decentralized Municipal Government of Cotacachi regarding mining resources.

5. Certificate of compatibility of land use, dated January 22, 2016, issued by the Directorate of Territorial Planning of the Municipality of Cotacachi that indicates that advanced exploration activities are not compatible with the objectives and policies of the Canton Land Use Plan. -
6. Status report No. SCYGR-GADMSAC-008-2018, issued by the Executive Secretary of Citizen Security and Risk Management of the Autonomous Decentralized Municipal Government of Cotacachi.-
7. Document Mega-mining and water in Íntag an independent evaluation: Preliminary analysis of the potential impacts on water from open-pit copper mining in Junín, Intag area, Ecuador ", by Aurelie Chopard, William Sacher.-
8. IUCN report on the threat categories of *Atelopus longirostris* and *ectopoglossus confusus*.-
9. Scientific article that describes the tolerance of amphibians to acidic environments. The following press publications: Articles from the newspaper El Comercio of September 4, 2019 entitled "The homicidal frog is reproduced in a laboratory to prevent its extinction" .-
10. Article of the newspaper El Norte, of May 30, 2017 entitled Extinct frog rediscovered within the mining concession in Imbabura.- Detail of *Atelopus longirostris* by the Pontificia Universidad Católica del Ecuador.- Articles under the magnifying glass: The mine that will increase Codelco's production .

### **3.2 Proof of the actuated entity.-**

- Official Letter No. of October 18, 2018, issued by the then National Director of Environmental Pollution Prevention at the time, through which it informs the general manager of the National Mining Company, which is the proponent of this complementary study, the following , in the main part, responses to the project surveys, complementary study for the exploration phase of metallic minerals in the soil of the area, code 403001

located in the García Moreno and Peñaherrera parishes of the Cotacachi canton, Imbabura province, on the basis of technical report No. 206-2018 of October 17, 2018, sent by means of a memorandum MINISTRY OF THE ENVIRONMENT AND WATER-DMPESA-2018-1917-M of October 18, 2018, it is determined that it does not meet all the technical and legal requirements required by current environmental regulations, for this reason this state portfolio requests to present clarifying and then complementary information based on the following observations; It consists of two hundred and thirty-three observations, the main ones being the following, observation No. 25 for the terrestrial flora and fauna complement, increasing the sampling of inclusion of quantitative and qualitative sample units

considering the ecosystems, habitat and type of coverage existing in the area in order to cover a greater percentage of the area and register a higher number of species richness; Likewise, observation No. 59 establishes, in the complement, including the group study, because it is characterized by presenting environmental bioindicator reports, in addition to taking it into account to indicate the direct abiotic influence; Similarly, observation No. 210 establishes, in terms of methodology, to include techniques such as forest seed collection, plant rescue, orchid harvesting, and repair techniques or methods, techniques to intimidate fauna, intimidation and modification. of fauna;

- Technical report No. 276-2018-JGL-ULA of October 17, 2018, which is precisely the technical report that bases the previous test, which is the official letter that communicated to the NATIONAL MINING COMPANY, that the complementary study cannot be approved because it contains observations, effectively the technical report that contains the observations, in number 3), conclusions and recommendation are established, from the review and analysis it is established that the study complementary to the environmental impact study and environmental management plan of the mining area, With code 403001, it is concluded that it does not comply with the technical requirements stipulated in current environmental regulations, for this reason it is recommended to request clarifying and expanding information based on the observations in this report. The Document is technical report No.

- Report sent to the Ombudsman's Office that reports on the study and environmental management plan of LLurimagua, which is under review by the Ministry of the Environment.

- Official letter of June 30, 2020 signed by the undersecretary of environmental quality for the Office of the Comptroller General of the State, regarding compliance with the means of verification of the compliance matrix with details of compliance with the recommendations for the special examination and attached the Memorandum of September 2019, which refers to observations of the State Comptroller General with a progress matrix reported each month and another of October 31, 2019 and a memorandum of September 23, 2019 from the undersecretary of environmental quality made recommendations to the LLurimagua project, and the official letter of October 15, 2019, in which the reports for recommendations of the final report of the

LLurimagua project.

- Report 2354-2020-bnca of September 04, 2020 from the Directorate of Regulation and Control indicates that the LLurimagua concession has complied with the presentation established in the environmental license standard, one approved and one under review, 10 monitoring reports and one under review and compliance with the recommendations of the State Comptroller General's Office and in the terms in which they were approved with documentation from the end of December 2014 and 2015 with official letters from December 18, 2015 and the reference term from the period 2015 to 2017 , in the period 2017 to 2019, it was approved respectively with an official letter dated May 1, 2020 with respect to audits from 2014 approved with an official letter dated August 4, 2017; audit from 2015 to 2017 is observed with official letter dated April 30, 2020; operator monitoring reports dated February 16, 2016, the second semester dated June 24, 2016; Also approved in the semester of 2016 with official letter dated October 03, 2017; in the second semester approved with official letter March 27, 2018; in 2017 approved with official letter dated October 23, 2019; observed with the second semester with official letter of May 13, 2020; in 2018 observed with official letter of May 13, 2020; in the second semester observed with an official letter dated May 13, 2020; in 2019 first semester observed with official letter of May 13, 2020; The second half of 2019 is under review, and also in 2020. in the second semester approved with official letter March 27, 2018; in 2017 approved with official letter dated October 23, 2019; observed with the second semester with official letter of May 13, 2020; in 2018 observed with official letter of May 13, 2020; in the second semester observed with an official letter dated May 13, 2020; in 2019 first semester observed with official letter of May 13, 2020; The second half of 2019 is under review, and also in 2020. in the second semester approved with official letter March 27, 2018; in 2017 approved with official letter dated October 23, 2019; observed with the second semester with official letter of May 13, 2020; in 2018 observed with official letter of May 13, 2020; in the second semester observed with an official letter dated May 13, 2020; in 2019 first semester observed with official letter of May 13, 2020; The second half of 2019 is under review, and also in 2020.

- Testimony of MARLON ORLANDO FLORES SANTOS, public servant of the Minister of the Environment and Water: That the internal procedure in the Directorate of Environmental Regularization for a complementary environmental study is that it is registered according to the permits of the Ministry of Natural Resources, then the regularization is requested on the proponent sends a biotic, social, cartographic study with its technician on the subject, once it enters the review by specialists; He reviews baseline, impact areas, environmental management to see shortcomings that the

studies and make observations according to the consultant who must acquit them and then proceed to give his report recommending the approval and license in the case of biotic report.- Which aspects should consider the environmental impact study and the comment to be approved by the The Ministry of the Environment and Water must have methodologies applied and standardized by the ministry and with a scientific field, with characterization of the fauna, flora and aquatic fauna and the number and location of the sampling points that are correct and necessary for the baseline and then the impacts that will be generated in that baseline and if the management plan is adjusted to the need to preserve the nature of the flora and fauna.- That the complementary Ex ante study for the advanced phase of LLurimagua is a study in

invertebrate fauna with a greater number of species to monitor the impact area and management plan.- That the environmental and complementary impact studies are the obligation of the applicant who must hire an agency for it.- That it is their obligation to approve the environmental impact studies, review the flora and fauna, and to approve the study it must have the environmental regulations on biotic issues and with optimal characterization of the area to be sampled that the impact management plan is presented to prevent and mitigate the impact.- What has been in LLurimagua twice and before he has carried out work in the area and a visit as Minister of the Environment and Water; it was some days; there are three thousand hectares and about 700 hectares have been concessioned. but Jorge Duque in 2014.- That he does know the name Hot spot, an example being the El Chocó area for its diversity and endemism.- That to respect the rights of nature, various mitigation measures are taken that can be biotic or social.- That biotic studies do not focus on a single group of fauna but on all components and not by species; monitoring is carried out and then sampling is carried out to verify if the measures for preservation can be adjusted, prohibition of logging and revegetation are requested; This project is for the advanced exploration phase.- What as mitigation measures to avoid impact - That in order to respect the rights of nature, various mitigation measures are taken, which may be biotic or social. - That biotic studies do not focus on a single group of fauna but on all components and not by species; monitoring is carried out and then sampling is carried out to verify if the measures for preservation can be adjusted, prohibition of logging and revegetation are requested; This project is for the advanced exploration phase.- What as mitigation measures to avoid impact - That in order to respect the rights of nature, various mitigation measures are taken, which may be biotic or social. - That biotic studies do not focus on a single group of fauna but on all components and not by species; monitoring is carried out and then sampling is carried out to verify if the measures for preservation can be adjusted, prohibition of logging and revegetation are requested; This project is for the advanced exploration phase.- What as mitigation measures to avoid impact



For noise, it is taken from the machinery, that they periodically review the machinery so that they emit the least noise, that they use silencers, which are not only for bird components but for all fauna in general.

#### **IV. REGULATORY CONSIDERATIONS**

Based on these allegations, the evidence, and those that have been used in the rejoinder of both parties, thus, also the allegations of the amicus curiae, to resolve, it is considered:

**FIRST: From the competition-** The subscribed judge is competent to hear and resolve the present case, in accordance with the provisions of Article 7 of the Organic Law of Constitutional Guarantees and Constitutional Control, in accordance with the provisions of Article 88 of the Constitution of the Republic.

**SECOND: Of the solemnities.-** In the processing of the present case, no defect or omission of any substantial solemnity is observed that could influence the decision of the same; It has not been found that any guarantee of due process contemplated in Articles 75, 76 and Article 82 of the Constitution of the Republic has been violated; The international standards of human rights and the administration of Justice have been complied with, with the principles of effective judicial protection, the right of defense, and the due process having been given to the case, the process is valid and so is declared.- Adding that, due to the complexity and abundance of the evidence announced by the petitioning party, however, the broad exercise of evidence by the procedural parties, as well as its contradiction, has been guaranteed.

Regarding the allegation of lack of passive legitimation in this case, the acted entity has argued that other public entities related to the issuance of the environmental license, or the mining operator, have not been summoned to exercise their defense in In this case, it must be taken into account that, according to Article 41 of the Organic Law of Constitutional Guarantees and Constitutional Control, which deals with the origin of passive legitimation in constitutional actions, and when it lists the acts against which the action proceeds, establishes: 1. Any act or omission of a non-judicial public authority that violates or has violated rights, that impairs, diminishes or nullifies their enjoyment or exercise; 2. Any public policy, national or local, that entails the deprivation of the enjoyment or exercise of rights and guarantees; 3. Any act or omission of the public service provider that violates the rights and guarantees... "from which it follows that the legitimate liabilities are the non-judicial public servants who have generated the act that violates the constitutional right or guarantee; in this case, it is the legitimated active who directs his claim against the Minister of Environment and Water,

pointing to it as the entity that, in order to avoid the violation of the rights of nature mentioned in its petition, must immediately suspend “all administrative processes and all activities leading to the exploration or extraction of metallic minerals within the Llurimagua mining concession (code 403001), until it is shown that all endangered species have been taken into account within the Environmental Impact Studies, and sufficient precautionary measures are in place to avoid a negative impact on the species and their habitats, including their possible extinction.

**THIRD.-** Regulatory considerations.- 3.1 The constitutional protection action, in accordance with the provisions of Article 88 of the Constitution of the Republic of Ecuador, is intended to directly and effectively protect the rights recognized in the Constitution, and may interpose when there is a violation of constitutional rights, by acts or omissions of any non-judicial public authority; against public policies when they imply the deprivation of the enjoyment or exercise of constitutional rights; and, when the violation comes from a private person, if the violation of the right causes serious damage, if it renders improper public services, if it acts by delegation or concession, or if the affected person is in a state of subordination, defenselessness or discrimination,

Within the present case, it is necessary to analyze what pertains to the rights of nature, since the petitioner invokes them, and the right to legal certainty, in application of the *iura novit curia* principle.

**3.2 Rights of nature.-** Environmental Law belongs to the branch of social law and is a system of legal norms that regulate people's relationships with nature, with the purpose of preserving and protecting the environment in an effort to leave it free from contamination, or improve it in case of being affected. Its objectives are the fight against pollution, the preservation of biodiversity, and the protection of natural resources, so that there is a healthy human environment.

Despite the motivation of the order of admission to the action, the defense of the plaintiff still in the hearing, ratifies that there has not yet been a violation of the rights of nature by the action or omission of the entity under action, focused only on two of the components of the so-called “mother” nature, that is, two species of amphibians, perhaps less than one ten thousandth part of the living components of nature, animals, plants that exist in the physical component of nature, its space vital (water, soil, subsoil, air),

that being also part of nature, it is where the components of the biota, living beings and individuals, are called plants and animals, and within the latter, human specimens, develop their life cycle: being born, growing, reproducing and dying. Thus, the attorney for the same petitioner contradicts himself in his initial argument, focused solely on these two species, when he states: That in the report of the State Comptroller General, within the Special Examination of the first phase of exploration in the Llurimagua Mining Project (with No. DNA6-0001-2019), for the period between January 1, 2012 and December 31, 2017 it has been established that, due to non-compliance by the National Mining Company with the provisions established in the environmental license, has created social and environmental effects by not guaranteeing the use of water and ecological flow in the Junín river micro-basin and without having a conservation plan.- That also the Autonomous Decentralized Municipal Government of Cotacachi, together with the Community Monitoring Group de Junín, has documented and reported contamination of the sector's water sources, specifically in: the Junín River and Las Gemelas Waterfalls, and in the La Fortuna stream, a tributary of the Junín River; felling of ancient trees, opening of trails of more than 1.5 meters wide and affectations to the soil, forest and water, due to the construction and operations of camps and platforms for drilling - Even the defense of the entity under action expressed in a moment that there is negligence in the mining activities carried out so far, Although the first proposals regarding the recognition of the rights of nature in the constituent body were politically described as naive, it would seem that Ecuador has what could be the most progressive Constitution in the world that, in the face of environmental problems such as diffuse pollution water, poor air quality in urban areas, unsatisfactory waste treatment, and the decline of species and habitats, recognizes the need and a transition towards a paradigm shift: from the right to Nature to the rights of nature.

In the world, this paradigm shift, more than from the legislative, has been from the jurisprudential; much earlier, even than the 2008 Constitution, in countries such as the United States, Colombia, and after the Constitution of the Republic with decisions of the courts of New Zealand, India, South Africa, New Caledonia, (United Nations, Seventy-third period of sessions Item 20 h) of the provisional agenda \* Sustainable development. 2018. A / 73/221).

In Ecuador, the constitutional text is very clear in recognizing nature as

subject of rights; Of course, it should have been said the holder of rights, since the subject concept, if not for the opposition to the androcentric concept, still denotes submission. Something of this androcentric conception is found in the second chapter of the Constitution of Ecuador, within the so-called "rights of good living", it is understood of humans; thus, articles 12 and 13 recognize, respectively, the human right to water and the right to healthy and nutritious food. Articles 14 and 15 deal with the healthy environment. Article 15 prohibits, for example, the production, marketing and import of genetically modified products because they are harmful to human health and violate food sovereignty and ecosystems.

The rights of nature itself, in view of its intrinsic value, is developed in the seventh chapter: article 71 recognizes the right that nature has to reproduce, carry out life and regenerate its vital cycles. Any person may demand compliance with these rights with public authorities.- Article 72 establishes the right to restore nature.- Article 73 deals with precautionary and restriction measures for activities that may lead to the extinction of species, to the destruction of ecosystems and the permanent alteration of natural cycles. It also prohibits the introduction of organisms and organic and inorganic material that could permanently alter the national genetic heritage. - Article 74 reveals the right of people to benefit from the environment and the natural resources that allow them to live well - We say intrinsic values of nature, such as the values of living species and ecosystems, regardless of the appreciation human; different from the "sumak kawsay or good living" which rather includes the relationship of harmony that must exist between the people of the human species with nature, in a kind of state of truce in the face of the possibility that the latter damage may entail the extinction of the former.- "Therefore, it is observed that Ecuador is a pioneer in the constitutionalization of this change in worldview, once it consecrates the rights of Mother Earth in its highest value and hierarchy norm (Viana, 2013, p. 23), and hence the same Art. However, environmental damage is not just any damage, and it is even necessary to determine the difference between damage to nature and environmental civil damage. The diffuse interest that projects its effects as such characterizes the former. "Damages to the environment in themselves are those that do not depend on the specific impact on the health, life or property of human beings. On the other hand, the damages that reflecting that environment

*deteriorated are transmitted and represented as concrete damages to people and their property are those achieved by classical civil legislation "* (Morales Lamberti, 2008, p. 12).

In addition, the damage must not be 'little thing'; It is established in the glossary of terms of the Environmental Management Law that environmental damage is "all loss, reduction, detriment or significant impairment of pre-existing conditions in the environment or one of its components. It affects the functioning of the ecosystem or the renewability of its resources. ".- And since the 'significant' is not defined in the legislation, the following definition in the Dictionary of the Royal Spanish Academy of the Language is had of this concept as" That it is important because it represents or signifies something. ".- Perhaps, the felling of two or three thousand-year-old trees described in the inspection report of the Autonomous Decentralized Municipal Government of Cotacachi, (fs. 26 and photographs from fs. 19 to 26), or the death of the last few remaining individuals of an animal or plant species, their extinction, may not be significant for the public interest; but it is intrinsically so for each of these trees due to their millennial existence, or for each of the last entities of the species that is in danger of extinction. And that, precisely, is the intrinsic value of nature that, being recognized in the Constitution of the Republic, has been considered perhaps a vanguard in constitutionalism worldwide. Accordingly, the Organic Law of Jurisdictional Guarantees and Constitutional Control, in its Article 39 establishes: "The protection action will have as its object the direct and effective protection of the rights recognized in the Constitution and international treaties on human rights, that are not protected by habeas corpus actions, access to public information, habeas data, due to non-compliance, extraordinary protection and extraordinary protection against decisions of indigenous justice. ".- Thus, the protection action constitutes the power of the individuals or administered to request the protection of constitutional justice against an illegitimate act that violates constitutional guarantees or that causes or will cause serious damage. In this case, the violation of the intrinsic rights of nature, as the owner, to have its existence fully respected and to the maintenance and regeneration of its life cycles, structure, functions and evolutionary processes.- Well, it has not been said that carving an ancient tree or extinguishing a plant or animal species, These factual propositions of the petitioner and constitutive of violation of rights, as well as conditions of threat and risk for the holders of such rights, have not been enervated by the acted entity; as it matches

in accordance with the rules of the burden of proof provided for in Article 10 of the Organic Law of Jurisdictional Guarantees and Constitutional Control: "... 8. Evidence that demonstrates the existence of an act or omission that results in the violation of constitutional rights, except in cases where, in accordance with the Constitution and this law, the burden of proof is reversed.

**3.3.- Right to legal security.-** Regarding the right to legal security, article 82 of the Constitution of the Republic recognizes it in the following terms: "The right to legal security is based on respect for the Constitution and on the existence of prior, clear, public legal norms. and applied by the competent authorities "; In other words, legal certainty is that certainty in the legal consequences of acts and in the implications of legal relationships.

According to the Constitutional Court, legal security is "[...] 1) The duty and responsibility of all Ecuadorians to abide by and comply with the Constitution, the law and the legitimate decisions of the competent authority; 2) The existence of previous, public legal norms applied by the competent authorities; and, 3) The fact that the institutions of the State, its agencies, dependencies, public servants or servants, and the persons who act by virtue of a State authority, exercise only the competences and powers that are attributed to them in the Constitution and the law (Constitutional Court of Ecuador; Alfredo Ruiz Guzmán, Pamela Juliana Aguirre Castro and Dayana Ávila Benavidez, editors., Jurisprudential Development of the first Constitutional Court, (Quito: Constitutional Court of Ecuador, 2016), 114)

One of the aspects of the constitutional right to legal security, to abide by and comply with the Constitution, the law, is the one that is evidenced in the present case that it would have been violated by the acted entity, therefore, by sending the Constitution of the Republic Article 313, that the State, is understood to be the institutions that comprise it, within the scope of its powers, to control and manage the strategic sectors, in accordance with the principles of environmental sustainability, precaution, prevention and efficiency.

Neither the control nor the precaution would have been fulfilled by the servers of the Ministry of the Environment and Water, of whom the report of the State Comptroller General establishes: "Lack of evaluation and control by the servers of the Ministry of the Environment and Water allowed the mining concessionaire not to comply with the obligations established in the environmental license, regarding the felling of native trees, timely presentation of semi-annual reports and obtaining the registration as a generator of hazardous and / or special waste,

allowing sixty trees to be felled without authorization, prevention and mitigation measures are not applied, despite which no administrative sanctions were applied to suspend or revoke the environmental license "

This, in turn, would have led to breaches and violations of the rights of nature, thereby verifying the interdependence of constitutional rights, meaning that the violation of one of them affects all the others.

In this case, it is not dealing with the right to legal security of nature, but of the human persons that make up the State and who entrust their institutions with the control of activities that could affect their right to live in an environment in harmony. with the rights of nature.- Also the right of neighboring populations or located in the Llurimagua area, whose undeniable presence has already affected nature, so much so that it is recognized that the forest in the area is no longer primary; but at least they must be socialized about the effects of the mining activity, which in this case, affirms the resident amicus curiae, are visible in their environment.

- Technical report No. 276-2018-JGL-ULA of October 17, 2018, which is precisely the technical report that bases the previous test, which is the official letter that communicated to the NATIONAL MINING COMPANY, that the complementary study cannot be approved because it contains observations, effectively the technical report that contains the observations, in number 3), conclusions and recommendation are established, from the review and analysis it is established that the study complementary to the environmental impact study and environmental management plan of the mining area, With code 403001, it is concluded that it does not comply with the technical requirements stipulated in current environmental regulations, for this reason it is recommended to request clarifying and expanding information based on the observations in this report. The Document is technical report No.

October 17, 2018.

**FOURTH.- PROCEDIBILITY ANALYSIS.-** The procedural nature of the case must also be analyzed, fundamentally that the protection action proposed by the appellant meets the requirements established in Article 40 of the Law of Jurisdictional Guarantees and Constitutional Control, which expressly states: "The Protection action may be filed when the following requirements are met: -

*1. Violation of a constitutional right.- 2. Action or omission of public authority or of an individual in accordance with the following article; and, 3. Lack of another adequate and effective judicial defense mechanism to protect the violated right "; and, Art. 42 of the same Body of Laws provides: "The Action for the Protection of*

*Rights not applicable: 1.- When the facts do not show that there is a violation of constitutional rights; 2.- When the acts have been revoked or extinguished, unless such acts result in damages that can be repaired;*

*3.- When the claim exclusively challenges the constitutionality or legality of an act or omission that does not entail the violation of rights; 4.-When the administrative act can be challenged in the judicial way, unless it is shown that the way is not adequate or effective; 5.- When the plaintiff's claim is the declaration of a right; 6.- When it comes to judicial decisions; 7.- When the act or omission emanates from the National Electoral Council and can be challenged before the Contentious Electoral Tribunal ”.*

1. Regarding the first requirement of Art. 40, the violation of the constitutional rights of nature, as well as the right to legal security regarding the right of the communities that could be affected as a result of the first, is analyzed in the previous recital. .

2. Regarding the second requirement, this is met because the omissions that would have converged in the damages described and others that are referred to in the final report within the Special Examination carried out by the State Comptroller General's first phase of exploration in the Llurimagua Mining Project (with No. DNA6-0001-2019), for the period between January 1, 2012 and December 31, 2017, the following are attributed to the controlled entity Empresa Nacional Minera, since: “A) The Minister of the Environment and Agua approved the impact study and environmental management plan without having all the elements required by the Constitution, the legal system and with incomplete information. In addition, that it did not take into account constitutional norms regarding the restriction of activities that can lead to the extinction of species, more favorable application and interpretation of regulations that favor the effective enforcement of rights (Art. 11.5) ”.- This despite the fact that a public company, subject to its control, the National Mining Company, would not have submitted the semi-annual reports in a timely manner. nor has it submitted compliance with the observations made belatedly by the entity involved in the environmental impact studies, having already passed several years without any environmental remediation appearing.

3. Regarding the third requirement, which is also related to numeral 4 of Art. 42, inexistence of another adequate and effective judicial defense mechanism to protect the violated right, and that its lack has been alleged as an exception of the party.



which, together with the International Human Rights legislation, constitute what the constitutional doctrine knows as the Constitutionality Block, which must be observed by all public authorities.- For the case, the Constitutional Court of Ecuador, in judgment No. .º 102-13-SEP-CC, issued on December 4, 2013, in case No. 0380-10-EP, which is published in Judicial Gazette No. 005, of December 2013, establishes the rules for cases of inadmissibility of a Protection Action, and in the operative part it establishes: “... 4. By virtue of the powers established in article 436 numerals 1 and 3 of the Constitution of the Republic, The Constitutional Court carries out the conditional and conditional interpretation with erga omnes effects of article 42 of the Organic Law of Jurisdictional Guarantees and Constitutional Control, in the following sense: The procedural moment for the determination of the existence of the grounds for inadmissibility provided for in the numerals 6 and 7 of article 42 of the Organic Law of Jurisdictional Guarantees and Constitutional Control, will be the one to qualify the demand and it will be pronounced by means of order. While the grounds for inadmissibility of the protection action contained in numerals 1, 2, 3, 4 and 5 of article 42 of the Organic Law of Jurisdictional Guarantees and Constitutional Control, must be declared by means of a reasoned sentence, in the terms required by the Constitution of the Republic and the Organic Law of Jurisdictional Guarantees and Constitutional Control ”.- It must be taken into account in this case that the legality or illegality of the environmental license granted to the National Mining Company is not discussed. but rather the effects that the deficient control to the activities of such company has exercised the Ministry of the Environment and Water; deficient control that appears of the deficiencies found in the environmental impact studies in the complementary studies to the environmental impact studies, to their environmental management plans that have been rather observed due to the control of the State Comptroller General.- Thus , approval of impact studies - It must be taken into account in this case that the legality or illegality of the environmental license granted to the National Mining Company is not discussed, but the effects that the deficient control of the activities of such company has exercised by the Ministry of the Environment and Water; deficient control that appears of the deficiencies found in the environmental impact studies in the complementary studies to the environmental impact studies, to their environmental management plans that have been rather observed due to the control of the State Comptroller General.- Thus , approval of impact studies - It must be taken into account in this case that the legality or illegality of the environmental license granted to the National Mining Company is not discussed, but the effects that the deficient control of the activities of such company has exercised by the Ministry of the Environment and Water; deficient control that appears of the deficiencies found in the environmental impact studies in the complementary studies to the environmental impact studies, to

their environmental management plans that have been rather observed due to the control of the State Comptroller General.- Thus , approval of impact studies

deficient environmental conditions, without observance of the precautionary principle constitutionally enshrined in protection of the rights of nature, and the lack of monitoring of environmental management plans that have resulted in environmental damage and threat to animal and plant species, establish the relevance of the action initiated in this constitutional way.

### DECISION

In merit of the above and considered, ADMINISTRATING JUSTICE, IN **NAME OF THE SOVEREIGN PEOPLE OF ECUADOR AND BY AUTHORITY OF THE CONSTITUTION AND THE LAWS OF THE REPUBLIC**, the request for precautionary measures presented by the biologist ANDREA TERÁN VALDEZ is accepted, and which has been processed as a constitutional protection action with precautionary measure, declaring that with the omissions described in the official letter MINISTRY OF THE ENVIRONMENT AND WATER -SCA-2014-2901 , of November 11, 2014, not having observed the shortcomings of the environmental impact study and environmental management plan presented by the operator Empresa Nacional Minera EP in the year ZZZ , and which has been the antecedent of Resolution 864 of December 16, 2014, by which an environmental license has been granted for the execution of the Llurimagua mining project, the constitutional rights of nature have been violated, protected in the Constitution of the Republic , in Arts. 71 and 73, which provide: Art. 71.- Nature or Pacha Mama, where life is reproduced and carried out, has the right to have its existence fully respected and the maintenance and regeneration of their life cycles, structure, functions and evolutionary processes... The State will encourage natural and legal persons, and groups, to protect nature, and will promote respect for all the elements that make up an ecosystem ”; and Art. 73. natural ... ”.-

Therefore, the regulation does not establish a fixed term for the validity of environmental licenses, which in the report of the State Comptroller General's Office establishes that, the lack of evaluation and control by the servers of the Ministry of Environment and Water allowed that the mining concessionaire does not comply with the obligations established in the environmental license, regarding the felling of native trees, timely presentation of semi-annual reports and obtaining the registration as a generator of hazardous and / or special wastes, allowing sixty trees to be cut without authorization, prevention and mitigation measures are not applied, despite which no administrative sanctions were applied to suspend or revoke the

environmental license; It is provided that, in the event that the observations to the report of the State Comptroller General's Office are not complied with within a period of ninety days, for the approval of the Complementary Study to the Ex Ante Environmental Impact Study and Environmental Management Plan, Advanced exploration phase of metallic minerals from the Llurimagua Mining Area in 2018, within three months; approval for which the favorable pronouncement of the Autonomous Decentralized Municipal Government of Cotacachi and a national university must be required, the actuated entity revokes the environmental license granted to the National Mining Company, at the choice of the petitioning party, which shall designate it within five days.

In application of the precautionary principle, in application also of the reasonableness criteria, and of the danger and threat of extinction to which the animal and plant species have been exposed, as well as the physical components of the Llurimagua mining concession, as they are not even included in the environmental impact studies, establishing the verisimilitude of the factual antecedents of affectation to the physical component of nature by the activities carried out by a company under the control and evaluation of the Ministry of the Environment and Water, and that to date the extinction of species, animals or plants is irreversible, as precautionary measures the suspension of the administrative approval process of the Complementary Study to the Ex Ante Environmental Impact Study and Environmental Management Plan is established, Advanced exploration phase of metallic minerals in the Llurimagua Mining Area in 2018, and similar ones aimed at maintaining the environmental license, until:

a) It is demonstrated that all species have been taken into account in the categories: Endangered, Endangered and Critically Endangered, according to the criteria of the List of the International Union for the Conservation of Nature, of which the Ecuadorian State is part , and that sufficient precautionary measures have been provided

to avoid a negative impact on species and their habitats, including their possible extinction;

b) It is shown that all the observations made in the Special Report made by the State Comptroller General to the Llurimagua Mining Project DNA6-0001-2019 have been complied with;

c) It is demonstrated that sufficient precautionary measures have been taken to prevent the

extinction of the animal and plant species in the concession area in the Threatened, Endangered and Critically Endangered categories.

d) Current measurements of the components of water bodies are available

and of the land within the mining concession, as well as prevention, mitigation and remediation measures in the event of its impact.

Regarding the modulation of compliance with the resolution issued, regulating the effects of the sentence and the validity of the precautionary measures, the provisions of the Organic Law of Jurisdictional Guarantees and Constitutional Control will be followed, "The revocation of precautionary measures will proceed only when the violation of rights has been prevented or interrupted, the requirements provided for in this law have ceased or it is shown that they had no basis "

Send an attentive official letter to the Ombudsman's Office of the city of Ibarra for the supervision and execution of the precautionary measures issued, appoint a delegate, within five days.-

Add the submitted and foregoing briefs.

As a result of the appeal deducted by the actioned entity and by the Delegate of the State Attorney General's Office, the files are raised to the Superior.-

**BE NOTIFIED AND BE ABLE TO.**

f) .- JARAMILLO CEVALLOS CARMEN INES, JUDGE.

What I communicate to you for the purposes of law.

CEVALLOS ÁLVAREZ JORGE PATRICIO  
SECRETARY