

SPECIALIZED CIVIL, COMMERCIAL, LABOR, FAMILY, CHILDREN, ADOLESCENTS AND ADOLESCENT OFFENDERS CHAMBER OF THE IMBABURA PROVINCIAL COURT OF JUSTICE

In Suit No. 10332202100937, there is the following:

IN VIEW OF: The Sole Court of the Specialized Court of Civil, Commercial, Labor, Family, Childhood, Adolescence and Adolescent Offenders of the Provincial Court of Justice of Imbabura has been integrated by drawing lots by law, by the provincial judges Jaime Eduardo Alvear Flores (Subrogating Judge), Monica Sofia Figueroa Guevara and Luz Angelica Cervantes as judges. Once the present case has been deliberated and decided, in accordance with the provisions of article 24 of the Organic Law of Jurisdictional Guarantees and Constitutional Control, it is incumbent upon us to notify it on the basis of the following motivation:

I. BACKGROUND

Eligibility Summary

The citizens Darwin Javier Ramirez Piedra, José Israel Pérez Lucero, Jesús Antonio Prado Morales, Velsi Cenaida Guachagmira Fuel, Jorge Acero González, Vivian Isabel Idrovo Mora, on their own behalf; and, Lourdes Katerine Andrade, Javier Morales Riofrío and Melida Adriana Pumalpa Iza, the latter 3 officials of the Ombudsman's Office of Ecuador, have filed a constitutional lawsuit of ACTION OF PROTECTION against the Ministry of Environment, Water and Ecological Transition; the Ministry of Energy and Non-Renewable Natural Resources; and, the Attorney General's Office of the State.

By the corresponding lottery held on November 30, 2021, Judge Oscar Alfredo Coba Vayas of the Multicompetent Judicial Unit of the Cotacachi canton has assumed jurisdiction, and by order of the same date of November 30, 2021 at 14h52, he has summoned a hearing for December 3, 2021 at 14h30.

After presenting his excuse and another recusal generated by one of the plaintiffs, which were denied, the judge referred to again assumed jurisdiction and in a ruling dated January 13, 2022 at 3:16 p.m., he re-scheduled the hearing for January 19, 2022 at 9:00 a.m. Subsequently and due to other incidents, the hearing was scheduled for January 31, 2022 at 09h00, which concluded on February 10, 2022, and a decision was issued on February 11, 2022 at 15h00 in which the lawsuit was rejected for not violating constitutional rights. The plaintiffs have filed an appeal of the aforementioned sentence and being in this Chamber to resolve, it is considered:

Challenged Judicial Decision

It is the judgment of first instance notified in writing on February 24, 2022 at 14h56, which in its pertinent part reads as follows:

"(...) Therefore, the claims made by the plaintiffs in connection with their request for full reparation do not fall within the constitutional scenario, since their possibilities and disagreements must exhaust the legality route to access the constitutional route if they comply with the provisions of the law on the matter. The action for protection is not a mechanism of superposition or replacement of the administrative or judicial instances, so that the action for protection does not replace the other judicial means, the constitutional justice does not assume powers that do not correspond to it, affecting the legal certainty of the citizens, and

*distorting the jurisdictional structure of the State and disregarding the institutional guarantee that the Judicial Function represents. It is the responsibility of the judges of instance to verify that the controversy brought before them is a violation of a constitutional right. The action of protection is applicable to the public service if it violates human rights, since it is its duty to abide by the constitutional state of rights and social justice. In the present case it is not appropriate that by means of the action of protection it is intended to declare violations of a right in a very personal way as the plaintiffs claim, even more so when the Constitution of the Republic of Ecuador orders that the communities must be consulted as already noted. Rights are not absolute, they can have limits and this does not mean violation of rights. The violation of rights implies affecting their hard core, and with it serious and irreparable damages, the protection action is a constitutional guarantee of precautionary character, with the purpose of promoting that the human rights established in the Constitution are not violated and that the citizenship enjoys them in their good living. Since there is no violation of a constitutional right, the other claims of the plaintiffs are groundless in this way. Consequently, the assumptions established in Article 40 of the Organic Law of Jurisdictional Guarantees and Constitutional Control do not concur, in other words, there is no violation of a constitutional right, which is the action or omission in this case, of a public authority and the inexistence of another adequate and effective judicial defense mechanism to protect the alleged violated right against the plaintiffs, especially since Article 3 of the Constitution of the Republic of Ecuador establishes among other principles that it is the primary duty of the State to guarantee the effective enjoyment of rights without any discrimination whatsoever. Since the plaintiffs have not demonstrated and fully justified the violation of the fundamental rights enshrined in the Constitution of the Republic of Ecuador. In view of the foregoing considerations, and without any other considerations being necessary, this Judge, **ADMINISTERING JUSTICE, IN THE NAME OF THE SOVEREIGN PEOPLE OF ECUADOR, AND BY AUTHORITY OF THE CONSTITUTION AND THE LAWS OF THE REPUBLIC**, in the terms stated, the claim of the Active Legitimates is denied, and in accordance with the provisions of numeral 1 of Article 25 of the Law of Constitutional Guarantees and Constitutional Control, the sentence is sent to the Constitutional Court, for its knowledge and eventual selection and review, within a term of three days, counted from its execution. Without costs".*

Description of demand

Facts reported and rights allegedly violated

The plaintiffs have pointed out:

"(...) That on December 16, 2014, approval was given by MAATE (Ministry of Environment) for the advanced exploration phase of metallic minerals in the "Llurimagua" concession, without using suitable instruments to inventory the species in the area to prepare the EIA (Environmental Impact Assessment); the necessary efforts were not made to inventory and sufficiently identify the biodiversity of the site, since according to specialized scientific literature, there are species in danger of extinction that were not identified in the EIA. That the approval of this environmental management plan did not contemplate suitable measures to mitigate the risk of extinction of endangered and critically endangered species. That the Ministry of Environment allowed interventions in the area within the advanced exploration phase of metallic minerals without correcting the observations generated in the official letter No. MAR-DNPCA-2018-1851-O of October 18, 2018. That the Ministry of Energy and Non-Renewable Natural Resources has granted the mining concession title 403001 Llurimagua, on November 7, 2011 without prior consultation with the communities located in the area of influence of the concession. That likewise

the Ministry of the Environment, having granted the environmental license on December 16, 2014 for the advanced exploration phase in Llurimagua, also failed to consult the communities located in the area of influence of the project, in a process that complies with the standards established for environmental consultation. Finally - they say - that on October 18, 2018 when the Ministry of Environment issued its observations in relation to the complementary EIA, prepared for the expansion of the area for the advanced exploration of metallic minerals, it also did not consider for the preparation of the EIA a prior process of environmental consultation."

The right of nature to the full respect of its existence and the maintenance and regeneration of its vital cycles, structure, functions and evolutionary processes, recognized in Article 71 of the Constitution; specifically in relation to the right of the State to adopt precautionary and restrictive measures necessary to avoid the extinction of species, developed in Article 73 of the Constitution; and, **2.** The right of the participants to be consulted, recognized in numeral 4 of article 61 of the Constitution; specifically in relation to the right to environmental consultation, developed in article 398 of the Constitution.

Specific claims of the plaintiffs

The plaintiffs request that:

"(...) The violation of the constitutional rights of the plaintiffs to be consulted and to environmental consultation be declared. Declare the violation of the rights of nature to have its existence fully respected, specifically by adopting restriction and precautionary measures to avoid the extinction of species.

Restitution measures

To annul the mining concession title for metallic minerals No. 403001 and declare the expiration of the concession. That the environmental license for the advanced exploration phase of the Llurimagua concession be revoked. That if the Ministries of Energy and Natural Resources as well as the Ministry of the Environment persist in issuing concessions that affect the environment in the Llurimagua area, they carry out an environmental consultation process in due time, respecting national and international standards on the matter. That the Ministry of the Environment be ordered to directly, or through third parties, conduct an exhaustive study to identify the species that inhabit the area, as well as to understand the dynamics of each species and population in such a way that the existence of the species is made visible; this, in strict adherence to national and international standards established for this purpose and the best practices recognized in specialized scientific literature. That the Ministry of the Environment be ordered to carry out a study, through an independent consulting firm, and with the supervision of at least 3 faculties of environmental engineering, biology or related subjects, from 3 national or international universities, with the purpose of measuring the impact caused by the interventions carried out in the area, and to establish - as soon as possible - strategies to repair the populations of species that have been affected.

Compensation measures

That the Ministry of Energy and Non-Renewable Natural Resources, together with the Ministry of the Environment, generate a fund and invest in the area in order to promote the proliferation and care of endangered species.

Satisfaction measures

That a public apology be made to the community, published in a newspaper of major national circulation and on the MAATE website within a maximum period of 15 days after the guarantee demanded has been granted and that it be maintained for a reasonable period of time.

Guarantees of non-repetition

That the Ministry of Energy and Environment be prohibited from carrying out or authorizing any type of potentially environmentally damaging intervention in the Llurimagua area until a committee of independent researchers made up of representatives from at least 3 faculties of environmental engineering, biology or related subjects from 3 national or international universities issues a report stating that sufficient technical efforts have been made to identify the species in the area, to understand the dynamics of each species, and to obtain the necessary data to identify the species in the area, biology or related subjects from 3 national or international universities issues a report stating that sufficient technical efforts have been made to identify the species in the area, to understand the dynamics of each species, and to obtain the necessary information so that, in the event that any intervention in the area is authorized, the necessary measures are taken to avoid the extinction of species. That it be stipulated that no type of concession may be granted or any type of permit, authorization, license or other type of authorization be granted for extractive activities in the area until an adequate consultation process is carried out and the necessary restriction and precautionary measures are taken in the case of endangered species.

Investigation and sanction

That administrative and judicial processes be initiated to investigate and sanction the officials who authorized the granting and concession of environmental licenses to the detriment of the rights of people and Nature.

Conduct of the hearing and response to the lawsuit

Intervention of the plaintiffs: **DARWIN JAVIER RAMIREZ PIEDRA**, through attorney **CARLOS VARELA**, has said *"The violation of his sponsored party's own rights to be consulted who has also seen the right to nature violated. All these rights are recognized by the Constitution of the Republic. He discloses the facts of how mining concession permits are granted in an area rich in biodiversity without consulting the communities and which affect the environment and in some cases irreversibly; Art. 389 of the Constitution is violated, as well as the rights established in Art. 71 and 73 of the Constitution. An environmental license is granted without correcting the very serious methodological ways to protect endangered species. In the area of Llurimagua it is settled on the hotspot of presence of species that take care of the conservation of the environment. There will be a lot of evidence about the violation of the rights of the community and of nature"*. **JOSÉ ISRAEL PÉREZ LUCERO**, through the lawyer **VERÓNICA POTES**, said *"The 2008 Constitution speaks of a right that the community must be consulted. The constitutional court indicates the scope of the consultation. Not only the interest of this community should be considered, but also the interest of future generations. The consultation should always be oriented towards a harmonic agreement with the community, free of coercion, in a timely and prior manner with ample time for citizen participation. In mining, each of the phases must be consulted. The simple process of information is not consultation. All mining projects are violence. See*

possibly caused irreversible damage to nature in conditions of intimidation with public force". **JESÚS ANTONIO PRADO MORALES**, through attorney MARIA ESPINOSA, said "The violation of his client's rights to be consulted. Particularly the residence of his client. There has been a purely social participation of a project that was already decided to be granted. All phases are subject to consultation. They came to the community offering work, but no information was given about the impacts on the community's environment. At the time of the prior consultation, the majority of the community was opposed to the project and this has generated social conflicts. At the time the concessions were granted, the norm was clear and the rights established in the constitution were violated. The serious violations of the rights to nature break the social fabric. The community has not been consulted according to the legal nor constitutional norms, therefore the mining concession is null and void. **VELSI CENAIDA GUACHAGMIRA FUEL**, through attorney MARIO MONCAYO, has said "The Ministry of the Environment has violated rights due to methodological errors; error in the use of bibliography (species not identified, only amphibian species reviewed); problems in the approval of the PMA: it does not contain protection measures (citing a sentence from the Los Cedros case); it points out the scientific certainty and uncertainty. These are the facts that violate the right to nature and nothing has been done to address these errors. Gustavo Redin, has indicated "That the principles of prevention and precaution have been violated; scientific uncertainty. He indicates that two species of frogs are exclusive to this area, as well as the impact of some birds exclusive to this area has not been mentioned (he points out the case of the cedars) and that the two forests have identical ecosystems. During the environmental impact study they did not establish all the species exclusive to the zone for preservation". **JORGE ACERO GONZÁLEZ**, BY HIS OWN RIGHTS, has said "That there are the judgments of the Ceibos and the Cedars. The existing ecosystem in the concession zone is protected by the constitution. The concession zone is located in the Intag Valley, one of the biological points with primary forests; it is an ecosystem with a variety of species in critical or high risk of extinction. Mining is already causing serious damage to nature and there are no studies in the management plan of 2014 and 2018. When there are no precautionary measures, environmental licenses or environmental registrations cannot be granted." **VIVIAN ISABEL IDROVO MORA**, through lawyer Angel Gonzalez and Ab. Ana Vera, has said "That they will present documentary evidence, who indicates about the violation of the right to environmental consultation. Report of the PPS of the draft EIA and PMA for advanced exploration phase, dated October 9, 2014, made by the MAE; Systematization of the social participation process of October 9, 2014; Defensorial file p. 897 Resolution No. 864; report commander Subzone Imbabura No. 10". **VIVIAN ISABEL IDROVO MORA**, in addition, has requested "To declare the violation of the rights of the plaintiffs to be consulted. It requests that all appropriate measures be taken and that they be reestablished to the state prior to the violation. Declare the expiration of this concession. In the event that a consultation process is carried out, the respondent is ordered to establish parameters in accordance with national and international standards. As a restitution measure, the Ministry of the Environment is ordered to carry out an excautionary study regarding the existing species in the area. As a measure of non-repetition, no permits or licenses should be granted until an adequate consultation has been carried out. A public apology is requested".

Intervention of the Ombudsman's Office

LOURDES KATHERINE ANDRADE; JAVIER MORALES RIOFRIO AND AB. MELIDA PUMALPA IZA, a through the lawyer MELIDA PUMALPA IZA, have said "The violation of the right to nature, which leads to the maintenance and regeneration of life cycles. The second element is the structure of nature; nature's functions. The state is obliged to protect the right to nature. The reasonable term did not exist. Infringement of the right to a

environmental consultation, linked to a healthy environment, health and nature. It requests the acceptance of the action for protection and to order measures of reparation".

SHEAR NICHOLAS PETER, representing APT NORTE, through attorney YULY TENORIO, has said *"That the members of the brief presented have their properties within the concession area and that they are affected and have never been consulted. They request to take into account the ruling of the cedros case. They request that the right to citizen participation be taken into account, and that integral reparation be taken into account".*

TEST

Of the legitimated active parties: AB. MARIO MONCAYO, presents documentary evidence on the environmental impact study; Report of the State Comptroller General's Office, two reports issued by the municipality: 1.- Environmental impact study; 2.- Report of the State Comptroller General's Office; 3. **The testimonial statements of ANDREA TERÁN VALDEZ,** who has said *"That she is a biologist; that she has experience in amphibians since 2008; in biodiversity monitoring, she indicates that she knows the area of Intag, the area of Llurimagua, that she has experience in the area, she indicates that she has experience in the area, she indicates that she knows the area of Intag, the area of Llurimagua; That she has experience in the area, she indicates that in 2016 the snout-nosed frog was rediscovered in Junín; we do not know the area well yet, but we do know the Andean hotspot; it is an area that connects many private reserves such as the cedars, it is within the Cotacachi Cayapas reserve and the Andean Choco. These reserves are geographically close and have similar flora and fauna. He indicates that he is familiar with the 2014 environmental impact study document of the environmental management plan. He indicates that when he conducted the studies in the area in 2012 he found the species snout-toed frog that was extinct, and also found the frog extopolosus confusus. It indicates that the identifications established in the environmental impact study are doubtful because it confused them in the identification of the species".* To the **counter examination** he said *"The life cycles of the frog, amphibian refers to two phases of life, one underwater and the other out of water at an adult age".* Answer to Ab. Yuly Tenorio: *"The twin waterfalls are two, one has clear water and the other had changed its characteristics we were told that after the exploration phase was given it was brown, the frog was found in the one that had crystal clear water. According to what I read in the environmental impact study no measures have been taken because these two species have not been reported. I am dedicated to amphibians".* Maria Fernanda Manopanta, *"I did not conduct the 2014 environmental impact study. I did not make identifications, I was not in the field".* Karola Samaniego, *"Extinction means that a species ceased to exist. In 2014 according to the reports the frog was extinct".* **PEDRO JORGE JIMÉNEZ PRADO (BIOLOGIST),** who said *"I know about Llurimagua in general terms about the problems that exist between the mining companies and the communities, I have not done any studies on the community of Llurimagua. There are no scientific studies in the area where I work, scientifically there are no studies of the species; the characteristics are a medium mountain zone of cloud forests, there are altitudes, the river flows are moderate with interesting slopes with muddy and rocky sediments; there are similarities with the surrounding forests, it could be the area of the Mira River, the Guayllabamba basin in environmental-ecological issues; In the area there should be 8 to 10 species of different families; endemism is a condition when a species is found in a certain place and is not found anywhere else in the world; the entire region has a high endemism and I am also referring to Llurimagua, the course of the water in this place and around the world serves as a transport of nutrients and minerals. It is a dynamic system, with mobility in which nutrients and energy are exchanged between ecosystems, and there is also an exchange of affectations, this is a dynamic system and if there is affectation it can affect the species, in this zone there are sardinitas and they are endemic for the region, if I read the environmental impact study plan, specifically with the etiological subject, in the study there are only the species of preñadillas, other species exist in the Llurimagua zone, the method with which it was*

The catch was inappropriate, I used a hand net. It is not my opinion, there are several scientific studies, electrofishing is a technique that uses a low voltage with high amperage that does not allow to die but if a show to establish the diversity of organisms underwater, in the study this technique was not performed. The best measure on water resources is not to affect those water resources, on excesses of particular pollutants, any alteration generates an alteration to the ecosystem. It is not possible to apply protection measures to species that are not known. I am generally aware of reports on what has to do with water; metals imply accumulation. In the case of fish, there is no mention of measures in case of spills; I do not know if the mine is going to be closed; the accumulation curve when it is stabilized is when the number of species existing in the place has been found". On **counter examination** he said: Responses to Maria Espinosa, "I read the etiological part of the report. From what I read in the report there is not enough information". Answers to Dr. Angel Gonzalez, "Not all species are mentioned in that study; the sampling technique was not used; definitely not". Melida Pumalpa, "Connectors are habitats or connection systems between ecosystems; biological corridors are those that allow communication between them; there are corridors in all watersheds. The ecosystem functions are those that allow the functioning with the distribution of water throughout the basin". Answers to Mr. Jorge Acero's questions, "Because of the environmental impact, there are alterations like a chain". Answers to Dr. Maria Manopanta, "Electrofishing is not the only technique, it is the best, scientifically it is the only one. Electrofishing is done where it is possible and there are the conditions; the identification management protocols are looked at the little fish, I did an environmental impact study, I am not a qualified consultant". Juan Carlos Escobar, "If I have been in the Llurimagua sector, I have not done studies in the Llurimagua sector, I have not read the report in its entirety; I know the methodological system; I have not carried out the experimentation method; I ratify that they must exist, the answer is theoretical. If the study does not contemplate the species that should be contemplated there must be more species than those that were found; the etiological part is badly done; not all the species of the place were registered, I pointed out that if I know and that I have not worked in the place, if the information of all the species can be collected". Response to Marco Rubio, "In the last 5 years I have not published anything about the river in the Llurimagua sector". Answers to Victor Cabezas, "No one can talk about the scientific community; I am a biologist, I have a Master's degree, I have a doctorate, the latter is not registered". **MARCO FEDERICO MONTEROS ALMEIDA**, who said "That in the last 5 years I have dedicated myself to biodiversity studies; I am currently working in the sector of Intag by green sky; this area is characterized by diverse forests. Hotspots are hotspots of flora and fauna in tropical zones. Much of the pheasant range is concessioned and in this part is Llurimagua. Epiphytes form an important group within these zones, they filter and absorb environmental humidity, they form small niches for other species; 50% of these species are found within this zone; I had the opportunity to review two documents, in both reports they focus on plants and trees and discard this type of species. There are species that are not mentioned in these studies. In this case there is evidence about the vulnerability of these species that are adapted to specific conditions of reduced spaces. The study of this type of species does not appear in the report. If there is a way to identify the mother species; the mother plants within the epiphytes are in charge of maintaining the conservation of the ecosystem; in the three documents read there is no relevant data regarding epiphytes; there is an accumulation curve with respect to the report made. The curve does not represent on the basis of the study carried out". In response to the question asked by Mr. Jorge Acero, "On the one hand, they contribute to the diversity of the area and are related to air capture and filtration. Within the ecosystem and nature it is interrelated and any affectation alters the ecosystem; within the study it does not mention species of threat categories; I have not had the opportunity to visit the forests in that area". Response to Ab. Maria Fernanda Manopanta, "I have not had the opportunity to visit but because of the characteristics of the area there are epiphytes; the 2018 complementary study does not

I do not know if it was approved; I am not aware of the Ministry of Environment's observations on the complementary study". Response to Marco Rubio, "I do know about the system of protected areas; the Llurimagua zone". Response to Victor Cabezas, "I did not use any documents when I gave my testimony, I did use publications in indexed magazines, these publications are not related to the Llurimagua forest, I read the techniques and results of the environmental impact study on the flora component". Response to Dr. Yolanda Salgado, "The 2014 environmental impact study I reviewed in 2017, and the 2018 one I was reviewing a few months ago. Due to work issues I reviewed the 2018 impact study. If there is no precise data it is not possible to make a curve". **JAIME GARCIA DOMÍNGUEZ (BIOLOGIST)**, who said "Yes, I know the Intag area, I have conducted several studies, I have collaborated with the search for amphibians; the area is the same biological corridor. Of the species mentioned, all are threatened, I work in the area because it is of worldwide interest and it is more striking for those of us who work with this type of endemic species; the magazine Mechur declares this area as a hotspot; the Cotacachi Cayapas is classified as a key biodiversity area and the Intag area is declared a key biodiversity area. I have experience in conducting species inventories; for these amphibian and reptile inventories different methodologies are used, among them the plifor trap. If I read the environmental impact study of 2014; biological corridors are important to conserve for the conservation of nature; genetic variability is like when a person has consanguinity with another person and this person has a disease that cannot be maintained over time; biodiversity works as a network, it is essential to maintain the balance, if the network is broken there may be a disappearance of some species. The issue of pollution, deforestation, defragmentation can affect amphibians because the sun enters more and can dry the ecosystem and therefore the amphibians; the environmental management plan of 2014 I read because I work in the area; there are cases such as the condor, jaguar successful with amphibians there are no successful cases to follow up". Carlos Varela, "If I prepare myself before conducting the inventory and entering the area, we do a very large range of methodology, many times they are scientific studies that make this type of inventory. I base my work on taxonomy; among the studies carried out I reviewed the Llurimagua study plan; when I reviewed the environmental management plan I found in mitigation - relocation, this is not effective to protect the species". Response to Maria Fernanda Manopanta, "I do know what an environmental study is; I do know about the specific study to identify a species; the environmental impact study studies many species; in the Llurimagua project, from what I have read, there is an impact on the twin waterfalls, I have not conducted environmental impact studies; a scientific study and a study focused on a productive activity, the scientific study uses a methodology; there is a bibliography to conduct a sampling study". Response to Juan Carlos Escobar, "There is no specific authority that determines the danger of extinction. The criteria are based on the USN; I do not base it on my own criteria; I have not carried out tourist expeditions to the Intag sector". Marco Rubio, "I do not know the legal basis for categorizing a region as a hotspot. If I know the system of protected areas; I am not sure I know the national system of protective forests and natural heritage; I do not know if the mining concession area affects the Llurimagua project"; responses to Ab. Victor Cabezas, "About the Llurimagua area I have not made publications; I cannot say all the species from memory; since 2011 until recently I have seen the species. The environmental management plan there are no effective protection measures; the tropical Andes is a hotspot, I do not remember where the magazine the Nitchur is from, in the year 2000 was that it was published; in 2021 there was an update in the magazine". Answer to Dr. Yolanda Salgado, "I have several incomes, they are collaborations with different entities; the inventories are not sold, photography is part of my tool; I take photographs in the areas I visit, I do not sell the photographs; it was a scholarship for photography". Karola Samaniego, "I do not take photographs for the company Tropical Herly, I am co-founder of fototurs ecuador and I do fototurs in Ecuador and I do receive economic income; I don't remember an interview for an article because I am a photographer.

There have been several; in the Chocó sector I had land in a remote area of Esmeraldas". **DARWIN JAVIER RAMÍREZ PIEDRA**, who said "I have lived in the community of Junín for 23 years, when I got married I bought a property here in Junín, I currently live in the community of Chalguayacu Alto, I live with my wife and my 4 children, 3 boys and 1 girl; I filed this action for protection because I feel affected because I have property here, I live in Junín; I was affected because there was no consultation, we live in these territories and on top of the fact that we live here they make the concession; when we had the first environmental study we have seen that we have always been affected because they have always gone behind our backs, we have always been here for generations, because of this we have had the obligation to organize ourselves and to be attentive to not be excluded, In 2010 the community of Junín appointed me as their representative, this has come from the state, they have been abusing our communities and nature and those of us who live here, we have not had any response from the state, at the beginning we sent letters of invitation but the state never attended us. They have been harassing the communities creating social division, every day that dawns we have this concern, the concession companies threaten our survival, the state has not guaranteed us anything. There are 4 communities Junín Chalguayacu Alto, Cerro Pelado and Barcelona, since we have the copper deposit many companies have come, at the beginning the national mining with the Japanese company, then Ace Dancuper and now Enami EP; approximately in 2011-2012 they began to enter a forest that we bought without authorization from the community; we have not been invited for the concession of this company; since I came to live I have been secretary, treasurer, trustee, in 2013 I was president of the community. Co-administrator of a part of the El Chontal forest. I was not informed of the concession of the mining process; In 2014 I had an invitation with the Minister of the Interior, there were rumors that they wanted to enter the reserves of the community, we thought it was to talk about the forest reserve, when I was returning from Quito in Nanegalito I was arrested, with the argument that I had a food trial, they took me to Otavalo and at five in the morning they just gave me the document arrest warrant, I was detained for 10 months in Ibarra. When I got out of jail I returned to my community and found the mining company Enami EP with a lot of police, the reserve is the one that takes care of the forest and the water and we do community tourism, the reserve belongs to the community and we manage a community tourism group. During the time that the mining company has been in the reserve, we have been affected by the social division, the impediment to enter community tourism, we have to register to enter our own house, the state is not guaranteeing us the right to work freely, the impact on society, on our family and friends, once we enter the reserve they have done drilling, contamination, hot water that we did not know that these waters have. I have not received any information from the company or the state. Gustavo Redin, "I was called to the Ministry during the government of Rafael Correa when Minister José Serrano was in office. When I returned from prison after 10 months, the police and the mining company were in the community, in the entire Intag area. When I entered the community, there weren't as many as there were at the beginning, there were around 100 police officers. The presence of the police affected tourism and intimidated those of us who work in this area. We have a cabin that houses 30 people and we take them to the primary forest to enjoy the beautiful waterfalls in the community of Junín; we take them to the primary forest of Junín where there are waterfalls called the twins and the hidden veil of the bride. Response to Ab. Melida Pumalpa, "We were not consulted because we did not have any information about the concession, we continued doing our activities, when patrolling we saw strangers entering our property; the cutting of trees and affectation occurred in 2015 and 2016 they began to build platforms and damaged the road they cut trees more than allowed they cut trees greater than 10 cm wide, we asked for an inspection of the authorities and nothing happened, nothing happened, no

There was something favorable for the community; the waterfalls are life for our communities". Responses to Ab. Yuly Tenorio, "The twin waterfalls were affected, they changed color to green; I did participate in monitoring to obtain samples but not by the company; when the exploration phase began they altered some parameters; I proposed the protection action to guarantee the defense of nature and all the living beings that are in it". In response to Mr. Jorge Acero, "We formed a group of community members who are in defense of nature to monitor the activity they were carrying out in our reserve, we found trees in our forest that had been cut down; they never told us they were going to cut them down; The company's workers were told that we are prohibited but we went in and took photos so that the Ministry of the Environment would come to inspect; the hot water upwelling is in the area where they drill but we do not know why the water is hot; if we can see a source of contamination, the Junín River is a different color because of the additives used; the company has not made any repairs, it has repaired itself now that they are no longer there"; Response to Ab. Maria Fernanda Manopanta, "Yes I represent the community in 2010 as a representative of the forest administration, currently I am not a representative of the community, currently the representative is Maria Yépez; each of us take care of our land and everything that is the community, of activities that damage the community reserve, before 2014 the whole community took care, community tourism is to take care of nature; all kinds of activities generate an impact on community tourism activity is minimal; In 2010 we went to the MAE, we wanted to annex the Chontal forest, we made a request but they did not give us a deed; I do not have title to the reserve, I have possession; conductivity is when some substance gets into the water; we have been divided, some are defending nature and others are defending the companies, the mining project that is in the community has divided us". Responses to Ab. Juan Carlos Escobar, "I do know about the effect on the water, I do not know the chemical composition of the water, we did the monitoring with the accompaniment of technicians from the Municipality of Cotacachi; we are not experts to know what determines the contamination, but we seek the accompaniment of an authority so that this is real and safe; I do not know what the difference is between repair and remediation; the facts we have seen what they did in the receba is why we know; if I know about the reports of the environmental studies but not in detail I do not understand much; what was said was not instructed by anyone". Response to Dr. Karola Samaniego Karola Samaniego, "The reserve is not registered with the competent authority; the community tourism revenues go to the community, but there are some that left to work for the company, there are still many of us from community tourism and we continue to take care of the forests that the mining company is now invading; I would like to maintain community tourism because it has motivated us to unite the community and we guarantee the care of the forest and water, the intention is not to benefit from tourism and for future generations we are dedicated to agriculture and cattle raising; the forest is to protect and the farms are for our cattle". Marco Rubio, "I waited a long time because we did not know about the concession; I said about the concessions from before, when the Japanese were there; I have no private patrimonial interest in the community tourism activity; the economic benefits of community tourism reach everyone; the benefits have not generated resources, but the union has generated resources". Responses to José David Ortiz, "I do not represent the Chalguayacu community, Cerro Pelado, community of Barcelona; in 2014 I was president of the community of Junín and I was imprisoned in Ibarra; I did not know of a meeting in 2014 called by the Ministry of Environment; Mrs. Leidy Iliana Torres is my wife; Leidy Iliana Torres in 2014 had the position of treasurer. (The document from the Ministry of Environment is shown to him). I do not know if the community of Junín was summoned to the 2014 assembly; I do not know about the environmental impact study; in 2014 I cannot give information about that; in 2014 I was in prison and did not have access to information; I do not know if the community of Junín presented any kind of observation to the social impact study; the

Ministry of the Environment notified the community of Junín in 2018, I was there, I did not receive the notification, I was not a leader; in the presentation assembly to analyze the environmental impact study I was there, in that meeting I made observations; my level of education is elementary school; I do not have a university degree, I do not have scientific training; in the primary forest of the community of Junín the monitoring was carried out, in the parameters of the trails that were not planned because they were caught in the winter and began to cut trees; I have not led opposition to the activities carried out by the mining company ENAMI EP". Response to Dr. Yolanda Salgado, "When I bought land in Junín it was already cultivated land, I bought it from some deceased people, I have maintained it as I bought the land, I grow food for my family, I am not a large-scale producer". **VELSI CENAIDA GUACHAGMIRA FUEL**, who said "I have known this issue since childhood, my life was in two communities, I know about the conflict that we are living and we presented this action of protection to the ministries and government entities for not complying with the obligations to guarantee each Ecuadorian, I have not been consulted, there was even an occasion when I was of age and there were people who came to socialize, Before I was of legal age, I told the national mining company Enami to take pictures and we came to carry out a socialization that was in 2012-2013, there I learned that they must bring documents that accredit, there they told me you are a minor and what you are asking us is of a private nature, the people who were in that meeting and those facilitators, there was a relaxation, I demanded rights, they did not give an answer that we are collecting names to those who want employment; These events happened in the community of Barcelona, later on, many public institutions continued to introduce so-called environmental impact studies, they never presented us with credentials, if we were in opposition to extractivism, they never told us whether they agree or not that this project will cause damage to the places where we live, they have never consulted me, instead of making a generalized socialization they divide us, I am presenting the resistance of Intag, I did not go to the university, I have general knowledge, in 2014 there was no consultation, there was another process they said we are facilitators we had no response, we had the support of the national police, in 2018 in the process of expansion we found out on the other hand by workers of the company, however we appealed to the constitutional court, this situation of no consultation and violation of the rights of nature leads us to the aggressiveness of the workers of the company to the people of the community, I am representing against the ministry of the environment, on some occasion colleagues asked for permission to take wood for their house and they were denied, however they agreed to environmental licenses; we were never consulted; as for the right to nature, it has been affected by the decrease of water due to the exploration phase; the communities are quite extensive and have a variety of agriculture and species, the conditions are different from one community to another; there is division among neighbors; in my community there are two directives". To the **counter examination** has said: response to Ab. Ana Vera, "They did not give us in the 2012 socialization, they presented themselves as facilitators; the 2012 socialization was given in the community of Barcelona; the 2014 process was with intimidation it was not a consultation; I do not know which officials were in the 2014 process they again presented themselves as facilitators, in 2014 there was a conflict; in 2018 there was no socialization in my community; the employees of the company physically assaulted us". Response to Ab. Gustavo Redin, "No authority could be identified because they presented themselves as facilitators". Response to Ab. Yuly Tenorio, "I have not received information about the Lurimagua project". Response to Ab. Maria Fernanda Manopanta, "I belong to the Cerro Pelado community and previously belonged to the Barcelona community, I do not represent the community, I am not a representative of the Cerro Pelado community, because I lived in the community and I experience the social division on a daily basis; the Ministry of the Environment lied because on one occasion the mining company and Codelco used the clothing to enter the forests of Cerro Pelado, I am aware of the attitude of the Ministry of the Environment; I cannot give the name of the official who lent me the clothing, the Ministry's van arrived with the Ministry's seal; I carry out agricultural activities in Cerro Pelado, I have

We asked the ministry for reports on the management plan but they never gave us any; mitigation, repair and remediation, I don't know exactly what they are". Juan Carlos Escobar, "The State has not been able to fully comply with its obligations because I feel that my rights were violated; in my opinion the obligations that the State has not complied with is to protect the right to a free and healthy environment; I do know the constitution, I have read some parts; I have not read the mining law in depth; if there are socio-environmental conflicts, in my opinion a socio-environmental conflict is a rupture of the people and environment component". Response to Dr. Karola Samaniego, "In agriculture we work extensively, I work for my economy". Response to Mr. Marco Rubio "The ENAMI EP company did not give me information I can assure because I asked, I can say that they are officials because they presented themselves and said that they are facilitators; I and other people have not received a document inviting to a socialization I have arrived by coincidence". Response to Ab. José Ortiz, "In 2012 I lived in the community of Barcelona and went to the community of Cerro Pelado in 2012, I was 17 years old; in that year they told us that the facilitators were going to introduce a new project and there would be a lagoon with ducklings and a mining company, who would sign up for direct and indirect jobs; they did not mention the exact projects but they talked about Junín; I did not know about the Llurimagua project in 2014. In 2014 I lived in Cerro Pelado in my parents' house; I do not know that in September 2014 the Ministry of the Environment conducted an assembly; I do not know that a draft report was issued; I could not say if it was the Ministry of the Environment or the mining company in 2014. In 2018 I entered Intag to my land is part of the sector Comunidad Cerro Pelado; I do not know if in 2018 the ministry of the environment put in knowledge of Cerro Pelado any report. I do not know if in 2018 it put in knowledge of cerro pelado the draft of the impact of the environment on the Llurimagua project; I do not know if there are observations to the environmental impact study of 2018; I do not know about fixed attention center on the consultation of the Llurimagua project in the community of cerro pelado; the complementary attention center was not put; I did not file a lawsuit against ESAEM and CODELCO. I am accusing the state ministries that did not do their job, not a mining company"; Answers to Dr. Yolanda Salgado, "My other activities I do cabuya handicrafts, advertising in Cotacachi, I take care of my daughters, artisan development". **JOSE ISRAEL PEREZ LUCERO**, said "Being a farmer; I live in the commune of Chalguayacu Alto, I was born here and I have my land that is within the mining concession, this has caused us a social impact, in 1995 for a mining concession it was said that they were going to relocate to other land. In 2011 I had another possession and I was trying to make another deed and they started to come to talk to me, they had been from Codelco an Eng. Jose Benitez; We had a meeting with the people of Chalguayacu Alto, we told him that we did not want mining because of the water, they said that we were going to have a first class road, he said that they were going to work and we told them what we were going to work on, it was already 8 to 9 years and they said that we were going to put a university so that their children could study and become engineers, We told them that you are deceiving them, in 2014 they were still trying to enter and we would not let them, the strategy they use, from the government they invite the president of Junín and others invite them, they make him enter the lawsuit and when he returns they take Javier prisoner, on March 8, 2014 the police entered and put a chain on him; As we were 76 people we said there is nothing to do, they arrived there with the governor and the policeman told them that we wanted to talk, and said now we went too far because we went too far, some women said no, they took me, then about four of us, then a 14 year old girl, my companions jumped seeing that they took me, then they released us and they went too far because there were more than 300 policemen, They entered Junín, there were police in Chalguayacu Alto, Chalguayacu Bajo, we walked with our ID cards because the police would not let us pass, if there were any tourists they made them return, so we had nothing to do, then they came to socialize the project in Chalguayacu Alto, then people came who lived in Quito and have land in Junín, they said they understood and said

questions about the environmental impact and the primary forest, I told them that this is a primary forest because no one has cut down there; a man from Quito who has some land here said that in this environmental study there are many flaws, they did not stop us much; as we had that experience that they deceive us, they said they were going to cut only sticks of 10 cm in diameter and that they were going to make platforms of only 10; we know the reality that if we make a road it is difficult to cover it. In 2012 the vice president Jorge Glas came and offered hospitals, millennium schools, we told him that it was a farce, and that water is our life and that if they make a large-scale exploitation they will do damage; I have gone to the waterfalls and to go there they had to register, it was a hassle; I was in an association of ranchers to take care that no one enters the forest, we had an agreement with the ministry of the environment during that agreement no one entered the protective forest; When they began to cut down trees of more than 10 in diameter we went to denounce to the Ministry of the Environment, there has been a social impact, before we all took each other we did mingas, there have been many offers but nothing has materialized; if this bothers us all, we ask that they respect us because we take care of the water in this area there are many water sources". Ana Vera, "In 2011 Mr. José Benítez and other Enami officials appeared; the meeting with Mr. José Benites was more or less in 2013, in this meeting I did not distinguish officials from the Ministry of the Environment; I personally told him that no, that we should be consulted; many people from the communities were at the socialization, an engineer, Mr. Rene Fuentes, I told them that they should consult us. Rene Fuentes, I told them that they are lying because they said that it is a secondary forest and I told them that it was a primary forest, they said the name of a lady from the ministry of the environment, in 2014 they did not socialize me, they did not give me any document; the heliport was taken by the mining company Codelco and Enami". Answer to Ab. Verónica Potes, "It seems that it lasted half an hour that of year 2014 there was only that meeting". Answer to Maria Espinosa "They did not provide information, they were just talking". Gustavo Redin, "For almost a year they did not allow entry to the heliport, the tourists who went there were turned back by the police. The gentlemen from Codelco went to do the work in 2013". Responses to Mr. Jorge Acero "At the meeting we were told that everything is fine, but as we had experience from previous meetings we made observations. We had no response from the Ministry of the Environment regarding the impact on the environment". Response to Melida Pumalpa, "In the community of Chalguyacu Alto there are about 74 families, more or less about 250 people, at the meeting there were about 30 people from my community; in the community there are the most mestizos, 95% of us were born here. Responses to Yuly Tenorio, "I do not go to the twin waterfalls, more the companions who are in tourism have gone, I have gone with environmental officials, as I had the management of the Chontal forest, I was also going to denounce the cutting of the trees to the Ministry of the Environment; the workers, about three or four are from the community, the rest are from different places, I have not asked if they are affiliated". Maria Fernanda Manopanta, "My land is within the Llurimagua concession, I do have a property title; the meeting with Eng. Benítez was about whether we would allow mining to enter, he offered first class roads and a university in Apuela; we were about 15 to 20 people at that meeting; I heard about the social participation process for the granting of the license for the Llurimagua project; the comptroller's report was given to me in more than 800 pages but I did not read it; We had a hearing in Quito and we had our lawyer Larreategui, that's why I knew about it, our lawyer told the vice minister of the environment that the activities began without a license, I don't know about it, that's what I heard; I went to see the environmental impact study, in Chalguyacu Alto they put up a tent, I went to see it and there were a lot of sheets of paper and I said to the man who was sitting there, what is going to happen to us, because according to the Japanese impact study it told us that they were going to relocate us, he told me to read and I told him that I was going to read so much". Juan Carlos Escobar, "The Minister of the Environment is the fundamental part to give the license, as the company was failing, we went to Quito so that this is controlled due to the violations to nature". Marco Rubio, "What I said is because I had an experience that we were going to be evicted, and if the mining companies come in, what will happen to us,

The creation of a school was only an offer for the parish of García Moreno, not for our communities. The violation of the right is that in the area that protects Junín the company is cutting down trees, this affects the rivers, further down there are people who take that water for the animals, as they cut down the trees in the advanced exploration; the logging began in 2016 because they needed to palisade the roads, and they cut down trees that is why we denounced to the ministry of the environment; I have not cut down trees, because our association has worked, we planted grass to not cut down trees, now we are reforesting; when they talked about Miguel Alemán I read and it was happening on the screen, and we observed him saying that this is a falsehood and that it will happen with the big trees". Responses to José Ortiz, "The felling of trees is by Codelco. We denounced the Ministry of the Environment and the State and not the company. The public hearing was held in the community house that is now a school, there were about 30 people from the community but with the other people, about 150 people, we were on September 30, 2014, I do not remember the position, a woman said she was representing the Ministry of the Environment, I do not remember the name; in that public hearing it was made known the environmental impact of the Llurimagua project, what I made is the observation that this is not a secondary forest but a primary forest. In that meeting I did make the observation; in the community of Chalguayacu Alto established information points for the Llurimagua project in 2014. If you know if the ministry of the environment in September 2014 established in the community of Chalguayacu Alto a public information center did not establish for the environmental impact study; in 2014 a fixed information center to publicize the environmental impact study of the Llurimagua project, in Chalguayacu no post of that was placed; traveling information center-I do not understand much, there was no tent in Chalguayacu Alto, there was the tent in Chalguayacu Bajo. I do not know about the publication I did not have computer or cell phone; if we were in 2018, we made observations I go when we are invited, there were some questions that were asked and they never answered them; January 12, 2019 there was only an assembly I do not remember well the date, they were manifesting something but they did not answer what they were asked; I made observations to the complementary study of 2018 and I made observations that the previous one has not been complied with; my property was given by the IERAC to my dad and I bought from my dad a part; I do not know the requirements because maybe I was 4 years old when my dad had the deeds; in the property they do agriculture and livestock". **JESÚS ANTONIO PRADO MORALES**, who said "I am domiciled in Barcelona de cerro pelado; I comment that since 2012 we have seen the entrance of the Enami company on the road to Barcelona, we lived in my community more or less 40 families, but much more before there was a disunity of some companies, before there was disunity in my community, they said Enami company because we were aviamos and they never consulted us, I know that they arrived more or less in the year 2013, I do not know the exact dates, I was communicated to a meeting by the presidents, when I saw a lot of people, that meeting was held in a community house, they said the company came to give information, there I saw that they put a screen and explained this exploration, I heard that they talked about Junín and how they were going to do this exploration work but I did not understand because we only saw on the screen, more or less there were about 5 to 6 people that I did not know who said they were from the Enami company and the environment, I don't remember the date when all of a sudden the public force entered with representatives of the company, those who were in charge of that I didn't know, maybe the community board knew, I didn't know what was going on, there were a lot of people passing by, that happened and more or less but we never knew what it was about, I imagined that it was about mining, so I opposed this mining thing, not if they never consulted us, they should have informed us, I said that I have the right to defend the right to live in peace, at that time the people were a little bit against mining, almost the majority, it happened that the police were already here, then I found out that they came to be studies, it was during the time of Rafael Correa; The police surprised us all of a sudden there, the police came for about 15 days, there were police at the entrance of my community, they surprised me because they asked me for documents, I was afraid because I didn't have any documents.

license, when they said that they are protecting the gentlemen of the company, after the meeting they put up some tents in Barcelona supposedly to socialize, the people at that time we were not interested in this, some colleagues got upset and talked to them, to me that those of the company put up these tents, as I was not very interested I did not approach and seeing the amount of leaves; They never communicated to me in 2018 there was a call to my wife saying that a company was going to come to do a socialization, then we gathered some people who did not agree, it was a Friday, I do not remember the date, they did the socialization in Villaflora and supposedly the next day they did it in Barcelona, then we met to not let them do it because they never consulted us, they said they were coming to socialize the expansion of the project, we did not let them enter our community, we had problems with the people who supported the project, we did not let them enter the community of Cerro Pelado either. The truth here we live divided; in view of the fact that we did not let them carry out this socialization we have had serious problems in our community; since that time the gentlemen of the company began to enter but we did not know what they were entering, I do not know about this issue; I was lucky to talk to a gentleman from the company and he told me that he came for a call from the president of the community and I told him that they have never communicated anything to us; the gentlemen of the board since 2018 have changed people, in the change of council is very hard every year; In the community where I live, there are two leaders, most of them support the company because they receive their gifts, I told the president of the council to explain to me why he receives those gifts, and in 2019 the problems continue, the gentlemen of the companies came guarded by the police; It was said that the police are there to protect us, but when the police came to the community they protected the company owners; it is true that there is a majority supporting the company in my community because they give them royalties, until today we continue with the problems; it hurts me how we live in the community, we live like cats and dogs. I was born here, up to 25 years of my life we were very united, but since the mining companies came in the division began, I agree that there should be a consultation to explain to us, mining must be a very hard case, they are going to affect our water sources, I feed myself from there. Sometimes I have asked them to let us live in peace, we have lived through a disaster. On my part I have not been consulted, the ministry of the environment should have come to explain to us; on my part I take care of the water sources, I like the forests, I support the care of nature, in order to put an end to the conflicts in my community. Response to Ab. Ana Vera, in 2013 I do not remember who participated in the meeting, I remember that there were 5 people who said they were representatives of Enami and the Ministry of Environment, but they had no identification, I knew from comments; in 2013 they did not give me information document; in 2013 I was not consulted if I agreed with the entry of the mining company; I do not remember the year they put the tent, there was the seal of Enami on the tent I did not know who put. I did not participate in the socialization of 2018". Response to Ab. Verónica Potes "Yes, I was at the 2013 meeting, more or less it was set up after noon, it lasted more than an hour". Answer to Ab. Gustavo Redin, "In 2013 I went to see the meeting as I was not interested in the meeting, mining; if there were people offering sources of work for me I think it was from the Enami company; gifts have arrived at the end of the year with meal kits, there is a women's association, they have been given some cattle; they have not offered me gifts or money". Answer to Yuly Tenorio, "Currently there is still disunity in the community; if the company has given gifts to the school, I don't remember the year when they gave computers, currently I have received some materials for the kitchen; I am a parent of the school; I have not been invited by the state to an environmental consultation". Maria Fernanda Manopanta, "I am from the Barcelona community; in 2014 I was not a representative of the community, currently I am not a representative of the Barcelona community, I was not invited to the 2013 meeting, seeing that people arrived and I arrived at the meeting. I do not know that the Llurimagua project was socialized in 2014, I am opposed because I have my properties and because I have not been consulted and I do not know what mining causes, I am currently defending my properties; I do not understand what legal mining is, no one has explained to me what legal mining is." Responses to Ab. Juan Carlos Escobar, "I think that if I was

the Enami company, it must have been because there were representatives of Enami and of the ministry, they said so I was not sure if they were or not; we did not let the company enter because of the deceit, I do not believe the gentlemen of the company; in 2012 they entered but I found out when they were already inside; I did not meet with the company; the company offered I say because in the community they ask for uniforms and this was never given; I knew because of my colleagues; I know how to read a little, I do not remember the content of the lawsuit, my lawyers explained it to me when I went to sign; I do not know the purpose of the action but I signed with the purpose of solving the conflict that we have with the company; I wanted some institution to come and inform us to understand, I want to return to live as in the past in a healthy place, I am defending my rights, what is mine and my family's. I do not know what are the ways to claim my rights, I do not know what are the ways to claim my rights. I do not know which are the ways to claim, my defense does not explain to me which are the ways to claim my rights". Karola Samaniego, "The division has been going on for more or less 22 to 25 years; the division is due to the mining companies; the division has been going on since before 2012 due to the arrival of the companies; I am sure that there will be contamination, because in my time some 30 years ago any type of product was planted and I remember that at that time no chemicals were used; I do not know but open pit mining will destroy our farms, I believe that mining will affect us; currently I do not use chemicals on my farm". Marco Rubio, "I would like to know the reality of this, I would like you to explain to me if this is good or bad, as in other places there are disasters due to mining, that is why I don't see it as good. I don't know what a socialization process is" Response to Ab. Victor Cabezas, "Yes, there was a meeting in 2013, mining affects me mainly because it will cause damage to my farms". **SEGUNDO VICENTE QUIGUANGO PANTOJA**, who said "I am a native of the Villaflora community, I have four children, I live with my wife. I have attended a mining socialization, I don't remember the year. The meeting was here in my community. Some people were at the meeting, I think they were paid by the company and there was also a biologist. The same technicians that were there led the meeting. The meeting was to start exploration in the upper part of Junín. We were not consulted about the exploration in Junín, they said that it was not going to affect the water. In that meeting I did not receive any documentation. In the meeting they did not ask me if I agreed or not, they only socialized that there was going to be exploration in the upper part of Junín. I have not seen the exploration in Junín. I have participated in another meeting, once they set up a table for two days and came to gather information, they brought a lot of documents I think it was about environmental impact, the socialization table in the community house of my community, in that community house there were only two people at the table, I think they were paid by the Ministry of the Environment. I did not identify any person from the Ministry of the Environment at that table. When I approached the table they told me to write whether I wanted mining or not, all of us who were present that day said that we did not agree with mining. The environmental impact document was the Llurimagua project. To the document that was on the table I did not do because I did not read. In 2019 there was no activity of the mining company if we have received benefits in an infrastructure of a boli court without order of the community because the presidents have made the management without communicating to the community." **LUIS MEDARDO BURBANO REGALADO**, who said "I am a small farmer, living in Cerro Pelado for 48 years. I have been told that there are mining concessions, but I have not seen them. If I participated in a socialization carried out by the Ministry of the Environment in 2013, at that time I was president of my community, I was going up and I found a tent of the gentlemen of the Enami company, I told them what they do there and they said that I enter the meeting in the meeting there were few residents, they told me to open and sign and I told them no, I said I was going to hold a meeting with the residents, at that meeting I did not receive any documents, as authority of the community they did not ask me for authorization. In 2014 there was no socialization in my community by the MAE. The company has wanted to enter to conduct water studies here but we have not let them. They entered every 8 days or so in 2019. They want to enter by force without permission from the owners. How community decisions are currently made with people that the companies have there, the rest of the residents are not aware of what they do there. I do know about mining activities.

I'm a lifer here, and I even know what happened in Junín. I have been asked about mining activities, but they are not welcome, that's why we have opposed them. We take care of our forests, our land, we don't want our entire Intag sector to be destroyed, it's a paradise here. Mario Moncayo, who has been speaking to Ab, said, "I wasn't at the 2013 meeting because I left without signing. The police and authorities have come in favor of them and it seems that they are not in favor of the farmer". Answer to Verónica Potes, "In the 2013 meeting there were more or less 10 to 15 people". Answer to Maria Espinosa: "At any time has the MAE through its officials informed you about the impacts of mining activities? they have not come. Officials from the Ministry of Resources have not provided information, they do not pay much attention to us". Response to Gustavo Redin, "An engineer from the company told me not to sign the attendance certificate, I told him no because I am going to have a meeting because we have to talk to see what it is about". Responses to Ab. Yuly Tenorio, "The companies are not welcome because later we lived in harmony in the community and now we are separated, we do not live well, there have been conflicts between family members. I only read the attendance paper, the other document I didn't read, I didn't know what it was about". Response to Maria Fernanda Manopanta, "I do not represent the community now. I do know that the MAE has affected my community, when they have come with the company and have provided the environmentalists to the company, lending vests. When we did not let them enter, we thought they were from the company but they were from the environment. I thought that the MAE was helping to take care of the forests". Response to Ab. Juan Carlos Escobar, "I said that I have not read the studies I have not said that I do not know; I went up by causality and I was a little while there in the meeting of 2013; if I left the meeting; I was not given anything in that meeting; if I left there I did not see if they delivered papers or not. When I just arrived he told me that I of the opening of the meeting, I told him that I was going to withdraw and he told me to sign and there was another paper but they did not give me anything. If I was in 2013 representative of the community, I understand that if they put you as president is to comply, but I was not notified. I know why I am in this hearing, for our rights that belong to us, we have not been consulted, the reality is that we have full rights as owners; my concern is my land, the forests, the water, we do not want them to be destroyed, we want to leave them for future generations. I am in favor of my rights and those of the community. I come personally to testify of my own free will". Karola Samaniego, "I understand the difference between legal and illegal mining. Right now in my community I do believe that the company is entering illegally because they came with false papers. There are papers that they have only made the presidents sign, they have not consulted with all of us, if we think and we are human beings. Not every document is false, but there were false documents presented by the company. The environmental impact study, I understand that there must be good and bad things there. After the 2013 meeting I did meet with the assembly but since the majority did not agree we did not accept this position, I did talk to Enami; they told me to give them permission to make a small hole and I said no; I told them if I give them permission if you make a hole and the water dries up then I told them what I was going to do and they said they were going to bring a tanker; at that time the company listened to my position". Marco Rubio, "The false documentation presented, I do not remember when it was presented. If the Enami company had the documents in order they would already be mining; we have not allowed them to carry out the studies. I know that illegal mining is a crime, I have not filed a complaint". José Ortiz, "What project was socialized in 2013, I was not there to know what the project was about. I do not know if The advanced exploration project in the Llurimagua community began in 2014. In 2014 Mr. Silvio Quilumbango I do not remember what position he held; I do not remember what position Mr. Diego Jorge Villarreal held in the Cerro Pelado community in 2014 it seems that he was a trustee, Mr. Jorge Guachagmira in the Cerro Pelado community I do not remember what position he held in 2014. (A document is shared on screen) Piedad Fuel is the wife of Mr. Jorge Guachagmira. I do not know if the MAE convened a public assembly for the community of Cerro Pelado on September 30, 2014. It seems to me that they did come in September 2014.

the MAE to the community of Cerro Pelado. He indicates that he does not know if the MAE set up information center tents in 2014. I do not remember having opposed the socialization on January 12, 2014". **LAURO REMIGIO LUCERO LUCERO**, who said "Being a farmer, rancher and perform community tourism, I live in Junín-parish García Moreno for 21 years. We have an association eco Junín of community tourism that shares with the community Chalguayacu Alto, we do community tourism in the ecological receba Junín, in 2014 I was vice president, in that year was as president Javier Ramirez, in that year he was caught in prison, In 2014 as vice president we patrolled the reserve and what we found at that time were strangers in the reserve, at that time the community was very organized, the community told them to leave, the patrol was done to ensure that there was no logging, to protect the reserve and that there were no mining companies, we did not know the strangers. Now we do know about the Llurimagua project that was granted without consulting us, just when we were patrolling we were told that there was a mining concession. Since the mining company entered the reserve, tourism has decreased in our communities. When they started working in the reserve, they built the platforms and trails; the platforms are very different in the hillside areas, our reserves are very humid, there are landslides, trees are cut down; they have never asked me because I have never agreed with them. To the **counter-examination** he said: Answers to the ab. Mario Moncayo, "With the unidentified people they said they were Enami workers, they did not mention anything else, they said they were going to do studies. Responses to Maria Espinosa: "The patrols were done on a rotating basis with two or two people, for example this week you had two people and the other week another two, the whole community went on patrols, when they were found we realized that they had granted concessions for all of this". Gustavo Redin, "The community reserve is located in the upper part of Junín. That was in 2012 I first encountered the strange people. We took tourists to the community ecological reserve to the waterfalls, in 2014 we had no tourists, in 2015 we had a few tourists because they put a gate where tourists slept. We took tourists to the twin waterfalls and the bridal veil waterfalls, but the number of tourists was low due to the entrance of the national mining company Enami-Codelco and the invasion by the gate and the police. In 2014 they entered with the police vans of Enami-Codelco". Responses to Mr. Jorge Acero, "In 2014 being vice president as Javier was taken prisoner they wanted me to sign for the company to enter, I never signed, before this refusal they said that I was also going to be taken prisoner, it remained in 2014 without president because Javier was detained, justly Enami EP workers approached me and I was also summoned to a house of Javier and the president of the board came, they also wanted to come from the Enami company but I did not want to, they told me if I signed Javier and Victor Hugo would be free; there was blackmail". Responses to Yuly Tenorio, "In 2014 regarding mining activities in Junín I was not invited to the socialization, I was not invited in 2014 by the MAE". Responses to Maria Fernanda Manopanta, "The Junín reserve was purchased with possession rights from 16 families, it was purchased with purchase and sale contracts; it is not in the Junín community reserve, only a small part joins the Cotacachi Cayapas and the rest joins the Chontal reserve; the Junín community reserve was purchased as a right of possession, to protect the water and the forest. We don't know about the mining activity, but we do know about the concessions that are made without consulting us. We have not known anything when they have already had the concession. We knew about the mining activity when we were patrolling. In 2014 they put up tents in September for information in the plaza; I did not go near because the company's strategy was to take a quick photo, I only saw from afar, I do not know about the environmental impact study". Responses to Eduardo Chang, "I didn't go because I was indignant, because they said that there was development, works, all the offers, but in the end there is nothing, that's why I didn't get informed". Karola Samaniego, "I have been involved in community tourism since 2001 or 2000, the community reserve was purchased from 1998 to 2005 and covers 1500 hectares. When they entered the reserve, they invaded the house where we camped with the tourists, they put the gate there; we do not have title to the reserve. Response to Isabel Merizalde, "MAE personnel did go to the reserve to inform us about the reserve.

about the Llurimagua project in September 2014. I don't remember if personnel from the national mining company came to socialize the project. We were cancelled as a board because Javier was in prison, I do not remember if we were invited". EDWIN ERNESTO RAMÍREZ PIEDRA, who said "I live in Chalguayacu Alto, García Moreno parish. I need help in case of reentry, right now I am alone. I was born here and I am going to grow old here. I am dedicated to agriculture and tourism. I heard about the Llurimagua project in 2011 when they started wanting to enter. We have always done patrols because we have a forest in the Junín community, I can't give you the dates. I was not able to identify the people because they were not known, the people were in the ravines but we did not know what they were doing, they were in La Fortuna ravine. We patrolled every 8 days to see the possibility of the people. During the patrols we found flora and fauna. I was once in a meeting, I am not so clear about the date. In that meeting I can not say the names because I am bad at remembering names, there were only a few people from the community. I don't know if there were MAE officials at this meeting. There were officials from the Ministry of Energy at this meeting but I do not remember the names. I am a guide. I do tourist activities in the waterfalls and in the forest of the Junín community. The damage is due to the felling of trees where the roads were palisaded, a lot of wood was cut down, the company that was doing the studies, the company ASCENDER, cut the trees. They have not given me any documentation of the Llurimagua project. They have not asked me if I agree with the mining activities in my community". Mario Moncayo, "I found out about the Llurimagua project from other people. In the meeting they socialized about the project". Response to Mr. Jorge Acero, "The water from the waterfalls goes to the river, to the stream and to the community, to the Junín River. I cannot specify the diameter of the felled trees, but they are large trees, not small trees". Maria Fernanda Manopanta, "I belong to the Chalguayacu Alto community, in 2014 I was not a representative of the community; I do not know if the Ministry of Environment entered the community with information about the Llurimagua project. I do not know if the Ministry of Environment delivered to my community information regarding the complementary environmental study plan in 2018. I do not know if in September 2014 the socialization of the Llurimagua project took place. I do not know if in 2019 the socialization of the complementary study of the Llurimagua project was carried out". Response to Ab. Eduardo Chang, "I can't stand to see the face of these people. Do not inform me of this project by any other means". Response to Ab. Isabel Merizalde, "In 2014 was the meeting in Chalguayacu Alto. As far as I know I do not know if more information centers were installed; if I have left the community, I did not know of the information centers because they have not put in Chalguayacu Alto I have not gone to see in the community Junin. For the plaintiffs my brother Javier Ramirez and Israel Perez I came as a witness. The action is for the damage to nature for defending water and life".

RESPONSE OF THE DEFENDANTS, THIRD PARTY INTERVENER AND INTERESTED THIRD PARTIES.

The MINISTRIES OF THE ENVIRONMENT AND WATER; OF ENERGY AND NATURAL RESOURCES NOT RENEWABLES AND THE ATTORNEY GENERAL OF THE STATE, duly represented, in their interventions have said:

Juan Carlos Escobar, on behalf of the MINISTRY OF ENERGY AND NON RENEWABLE NATURAL RESOURCES, has said *"This action for protection is inadmissible due to the form and substance, it does not show violation of the right to nature, to the people, in some paragraphs they appear as defenders of nature, in other paragraphs they appear for their own rights in defense of their properties. At the moment of resolving the case, I request that all these inaccuracies be taken into account. By the form, this action is denaturalized, they request to annul the licenses and to annul the mining title, being these acts an administrative procedure. On the one hand, they allege the violation of the rights to nature by the*

omission of the state and in another part of the hearing it is alleged facts that distract the nature of the action. The state, respectful of the normative framework headed by the constitution, is responsible for guaranteeing rights through its actions. There were several moments during the hearing that the State acted in bad faith, because it tried to distance itself from constitutional justice in order to deal with issues of mere legality or alleged violations that have ideal and effective mechanisms for their reparation and redress. No violated right is identified. In the end, is it possible to develop mining activities in the Ecuadorian state? The answer is yes, in a way it is about delegitimizing the activity and giving it an environmental context. The case that summons us is that the owner of the Llorimagua project is the public mining company and its mining company EMSAEC; the mining company is the one that would be affected, the plaintiffs by appearing in bad faith; the state has the capacity to administer the mining resources in that public power and competence that arises from the constitution and the law, granted a mining title in favor of the mining company for prospecting, exploration and exploitation; the mining title is the right granted by the state to an operator to manage these activities, but this activity does not allow him to perform the activity because it is conditioned by the constitution and the law, to develop the activity he must perform previous acts to have an environmental license and have a certificate of no impact on water resources. The state on December 16, 2014 granted an environmental license and it is under study. The plaintiffs have indicated that the state has not guaranteed environmental rights. There are Numeral 4 mining title-rights and obligations, 7 social and environmental observances; and 11- granting of the title. We cannot argue that by the date of the granting of the title the State knew of the acts that were going to be carried out. In view of the above, there is an evident denaturalization of the action, if we review paragraph 110, it is requested to declare the expiration of a concession; there is no objective element to declare the non-compliance with the law, there is an administrative way to request the expiration of a concession, the other request of the plaintiff is to leave without effect the environmental license, there is also an effective way. This action is inadmissible because from the reading of the text and the development of the witnesses we can determine the violation of the rights; the requirements with the elements determined in art. 41 of the LOGJCC are not met. The expert witnesses and the testimonies were forged testimonies, constructed; although the level of instruction could limit the reading of the text to the plaintiffs, the lawyers had the obligation to inform and explain to them what this action is about. The expert witnesses, expert witnesses, in their little professional capacity indicate that there has not been a well done environmental study, these experts have an economic interest, this detracts from the impartiality of their comments. He requests that this action be declared inadmissible in terms of the forum and form, since there is no violation of any constitutional right". **PROOF MINISTRY OF ENERGY:** Documentary evidence: Totality of the administrative file for the granting of the mining title in favor of Empresa Nacional Minera EP (fs. 15 of the file; fs. 23-office; fs. 24-cadastral report: fs. 39-mining concession title, numbers 4, 7 and 11; fs. 46-mining registry).

Maria Fernanda Manopanta on behalf of the MINISTRY OF ENVIRONMENT, has said: "She requests a term to legitimize intervention. It establishes an alleged violation of the right to nature and consultation for the mining concession; To the study of the environment. Article 40 of the LOGJCC establishes that the protection action is admissible. The Amicus Curiae that are from the same community in their writings indicate that what is indicated by the plaintiff is not true. At no time has this state portfolio violated any constitutional right. Art. 71 and 73, 397 of the CRE are clear. It is necessary to distinguish between positive and negative impacts on the environment. What is an environmental management plan? It was established in the environmental management law in the sixth book, which regulated environmental permits; once the environmental management plan is in place, the environmental license is granted; these administrative acts enjoy the presumption of legitimacy and legality; in this case there is no violation of constitutional rights. The environmental license was granted once the environmental impact management plan was submitted. The

Llurimagua mining project report contains the environmental and social component. It is important to note that this project obtained a certificate of intersection in which it is stated that it does not intercept the forest and protective vegetation, even less within protected areas. Once the environmental license was granted by the state, it was up to us to carry out the control and follow-up, environmental licenses are granted in phases; within the control of monitoring and follow-up we have the report of January 6, 2022; it is indicated that annual environmental programs and budgets have been carried out from 2016-2022, terms of reference. Regarding the audits, the one corresponding to the period December 2014-2015, 2015-2017 are already approved as for those of the period December 2017-2019 is under review. It was also pointed out that there is a violation of the complementary Environmental Impact Study, Enami EP presents the complementary environmental impact study, i.e. we are facing an expectation. It has also been pointed out in the lawsuit regarding the special examination carried out by the General State Comptroller's Office to the Llurimagua Mining Project, within the examinations carried out by this state portfolio there are no recommendations for the expiration of the environmental licenses". **As part of his response to the lawsuit, the BIOLOGIST JORGE DUQUE intervenes**, who has said "About the Environmental Impact Study Llurimagua Mining Project - Llurimagua Biotic Study 2014 based on Methodological Design, Characterization of the Study Area, Methodological Criteria, Methodology, Statistical and Ecological Analysis. With a study of a short period of time it is not possible to obtain the totality of species for sampling that are present in the environment. On the basis of these preliminary species data, ecological information was obtained. On the aquatic side, water quality is evaluated. As for the environmental impact assessment, for each biotic component there is an environmental management plan, an impact prevention and mitigation program, a closure and rehabilitation program, an environmental education plan, and a monitoring and follow-up program. The measures were focused macro and micro on the biotic community. The environmental education plan states that training will be provided to mining company officials, employees, and community members. The study based on the project does meet the methodological, statistical and ecological requirements of the operational area where the Llurimagua project is located; the research studies are focused, they are not general. The project for information gathering is based on scientific documents endorsed by authors, on this consensus was also evaluated. On the subject of the species that were not identified and that are in severe danger of extinction as indicated in previous presentations, we determined that some species argue that they are not only concentrated where the Llurimagua project is located but are concentrated in other places, not only in natural environments but also in affected and altered environments. Although the complementary study is being reviewed by the Ministry of the Environment, it does not yet have the respective validity, as the observations made by CGE are being gathered". In response **to the clarifications requested by the Judge**, he said "When talking about the complementary impact study, how many people are working on this criterion? In the biotic component we are carrying out three technicians because it is a process of several chapters, a technician to evaluate the environmental part, the social part, cartography, geology. What do these bibliographic criteria consist of? they are based on foundations found in books, papers, publications. How long do these criteria last? there are publications since 94, 89 of 96, 2006, 2014, 2018 and on the basis of all this chronological analysis we are working". **Continuing her intervention, AB. MARIA FERNANDA MANOPANTA**, stated: "Once the biologist has been heard, it is established that MAATE has granted the permits guaranteeing Arts. 71 and 73 of the constitution and according to the regulations in force at that time. The participation process was carried out in accordance with Art. 28 and 29 of the Environmental Management Law in force at that time, for which Executive Decree 1040-Regulations for the Application of Environmental Management Mechanisms was created.

The Social Participation Plan, for the implementation of which Ministerial Agreement 066 was created. Meetings were held in the Barcelona community, fixed Public Information Centers were established, itinerant in Chalguayacu bajo, Cuchilla Marín, Cerro Pelado. The media used for the 2014 citizen participation process are: personal invitations, publications in a local media, on the radio, informative posters, perifoneo. Regarding the citizen participation of the complementary impact study for 2018, it was carried out in the parish García Moreno, Chalguayacu Alto Community, Barcelona Commune, sports court of the Junín Community, fixed public information centers in Gracia Moreno, the other center located in the parish GAD building of Peñaherrera, municipal GAD of Cotacachi, the itinerant ones were in the communal house of Villaflores, communal house of Chalguayacu Bajo. Mechanisms used: personal invitations, press - el norte newspaper - el comercio newspaper, local radios, posters. It is somewhat illogical for the plaintiffs to say that no citizen participation processes have been carried out. This is an environmental license and not an environmental registry".

DOCUMENTARY EVIDENCE: Oficio-Technical report of the environmental impact study submitted by ENAMI dated October 27, 2014.- Certificate of Intersection of the Llurimagua Project Mining Area.- Report of compliance with the environmental obligations of the mining company for the Llurimagua project.- First observations made by the Ministry of the Environment. First observations made by the Ministry of Environment regarding the complementary environmental impact study where the components carried out in 2018 are stated.- Oficio No. MAAE-DRA-2021-1075-O dated December 30, 2021- Pronunciamiento del Estudio complementario al Estudio de Impacto Ambiental ex ante y plan de manejo ambiental para fase de exploración avanzada de minería metálica del área Llurimagua code 403001.- Informe de cumplimiento de monitoreo y seguimiento-obligaciones.- Report of compliance of monitoring and follow-up-obligations.- Report of the process of social participation-acting of the mining company for the Llurimagua project.- Report of the process of social participation-acting of the mining company for the Llurimagua project.- Report of compliance of the environmental obligations of the mining company for the Llurimagua project. Report of the social participation process - public hearing - conclusions of the social component - environmental impact study - forest exploitation license. It has been demonstrated ad nauseam that this state portfolio has not violated constitutional rights. Since none of the requirements of art. 40 of the LOGJCC have been complied with, it is requested that the action for protection be rejected and that it be filed.

Karola Samaniego on behalf of the Attorney General of the State, said "The plaintiffs indicate that the right to not be consulted about the Llurimagua mining project has been violated and that it has caused damage to the environment in which they live by action and omission on the part of state entities, this has no legal basis. For which I will base on four points: Is sentence No. 1149-19-JP/21 Los Cedros case applicable? The concession of the Llurimagua Project does not constitute an affectation to the protective forest, therefore this sentence is not applicable - Regarding the environmental consultation, is sentence No. 22-18-IN/21 applicable - The plaintiffs are not authorized to present the protection action on behalf of the entire community. The plaintiffs do not represent the right to nature but personal interests as indicated in the testimonies. Subsequent regulations cannot be applied, only those in force at the time, which is why the second argument of the claim is not met. - The CGE report is not required in a protection action. It is not possible to declare the expiration of a mining concession because it would violate the right to legal certainty; the control of legality is exclusive to the Contentious Administrative Court. Therefore, regarding the arguments of the lawsuit: Is sentence No. 1149-19-JP/21 applicable? No; Is the environmental consultation, is sentence No. 22-18-IN/21 applicable? No; Is the CGE report enforceable in a Protection Action? No; Is it possible to declare the expiration of a mining concession by means of a Protection Action? No. In response to the lawsuit referring to the rights to nature, these have been protected by the State; The environmental impact study, the environmental license was granted prior justification of the requirements established in the law in force at that time; The steering of the strategic sectors, is the exclusive power of the central State with respect to strategic sectors and is in accordance with the constitutional regulations; the protection action is not based on threat, the mining activity is not a threat to the

The rational use of energy and mining resources is a determining factor for the economic growth and social and productive transformation of Ecuador. The current institutional framework encompasses the management of three strategic sectors: electricity, hydrocarbons and mining; the mining sector contributes substantially to the growth and economic progress of the country and consequently to its GDP. In 2020, it represented the fifth highest item of non-oil exports, 182% more compared to the 2019 period.

Are the procedural requirements for the action for protection not met? From the factual and legal assumptions of the case, as well as from the testimonial and party statements, it is not determined that the action is focused on the violation of rights. The discussion on alleged false documents, invasions and affectations to activities of economic and particular nature go beyond the orbit of constitutional justice. The alleged threat to species due to exploration activities that ceased to be carried out in 2018, is incompatible with the nature of the protection action. Therefore, I request that the present protection action be declared inadmissible".

INTERESTED THIRD PARTY: Although the lower court judge has mistakenly treated it as an "intervener", in truth, in constitutional matters, it is an interested third party, and should be considered as such. **The lawyers Marco Rubio, Isabel, Merizalde and Jenny Quiroz representing EMPRESA NACIONAL MINERA ENAMI EP, have said:** Ab. Marco Rubio, "It is important to delimit the facts that are disputed in this action for protection, in this case there are two: an alleged violation of the rights of nature by the environmental impact study which leads to an environmental license, this license is for one phase. Actions after 2015 produced an affectation, the lawsuit indicates with respect to affectations of 2014. The second violation, according to the plaintiffs, we supposedly had to carry out an environmental consultation, there are legal regulations in force to date when an environmental consultation must be carried out. The principle of legal certainty is established in the constitutional norm. The plaintiffs have tried to modify the scope of the action by using rulings that did not exist at that time". Ab Jenny Quiroz, "Presents third party coadjuvant on the grounds that the national mining company has the concession rights in the Llurimagua mining area. At present it is in agreement working with the mining company EMSAEC that is for technical development of mining project, Enami EP provides support in the environmental and social technical areas that would have the execution of the concession. Since October 2018. The Llurimagua mining project does not intersect with any protected area. The EMP establishes actions to prevent. Mitigate, control, correct and compensate for possible impacts that could be generated as a result of the company's operations resulting from the activities of the advanced exploration phase for the Llurimagua mining area. The EIA describes the area of influence, sensitive areas and risk, including the determination of the area of direct influence, the area of indirect influence, sensitive areas, sensitivity of the biotic environment, sensitivity of the socioeconomic environment, archeological sensitivity and risk analysis. The social participation of the communities in the area of influence was carried out. Of the 11 observations made by the CGE, 8 have been complied with. Enami EP is complying with the observations. In conclusion: The Llurimagua Project does not intercept the National Protected Areas system. There is no violation of the rights of nature. The intervened area is 130 hectares corresponding to 2.69% of the concession. The environmental consultation has been complied with in accordance with the legislation in force at that time". ENAMI EP DOCUMENTARY EVIDENCE.- Mining concession title for metallic minerals Llurimagua code 403001.- Resolution of authorization and declaration of the beginning of the advanced exploration stage.- Resolution number MM-SZM-N-2018-0097.- Environmental license.- Environmental impact study with its annexes.- Official letter ENAMI-CCS-2018-0018-OFC for review of complementary study to the environmental impact study.- Official letter No. ENAMI-ENAMI-2019-0144-OFC - Notification of change of phase.

from advanced exploration to economic evaluation of the Llurimagua mining concession.-
Oficio No. MAE-DNPCA-2014-0940-CERTIFICATE OF INTERSECTION OF THE LLURIMAGUA
MINING AREA.- Oficio No. MAE-DNPCA-2019-1105-O-APPROVAL OF THE PROCESS OF SOCIAL
PARTICIPATION AND CLOSURE OF THE EXPEDIENT.- GENERAL REPORT-Special Examination to
the

Llurimagua Mining Project. The testimonies that we have requested is the people who work in
ENDRIN the company that conducted the environmental impact study in 2014 and the
environmental management plan, for being useful, relevant and conducive request to be taken
into account. This demonstrates the suitability of the methodologies used.

OTHER INTERESTED THIRD PARTIES

Dr. Yolanda Salgado on behalf of the PRESIDENCY OF THE REPUBLIC, said "On the basis expressed by the defendant. I attach myself to what has been said by these institutions. The obligations of the state are many and varied; and they are of general interest. I must state that the plaintiffs on behalf of a conditioned action, must realize the irons exposed in the libel of their lawsuit. These value judgments have been undermined by the defense of the Ministry of the Environment. No evidence has been presented to prove that the environment has been affected. In this action for protection it has remained in simple statements and it has not been proved, it does not show the violation of any right. The MAATE already said it with respect to the study of the environmental plan management. Legal certainty covers us all. Administrative acts must be included in the case at hand, caducity and nullity. All rights must exist before requesting their exercise, otherwise it is an erroneous presentation, which makes this action of protection improper. Trying to question the validity of an administrative act in the constitutional justice, makes this protection action inadmissible. The caducity is a right regulated in the Administrative Organic Code; the administrative acts correspond to the administrative venue. The time for compliance with the conditions continues to expire. The exclusive competence over the recommendations issued by a CGE review is also not competent to be heard or enforced through constitutional channels. What is the underlying interest of the plaintiffs? There are too many questions that do not contribute to this case. The state is responsible for administrative management. The principle of general interest overrides private interest. It is intended to cause administrative chaos. The plaintiffs have not been able to prove what they indicate in paragraph 5 of the libel and the alleged violation of rights. In accordance with Article 40 of the LOGJCC, no rights have been violated, therefore the complaint does not comply with requirement 2, the plaintiffs have not been able to establish that the constitutional remedy is the appropriate one, but rather the administrative remedy. Neither does it fall under the provisions of Article 42 of the LOGJCC. The protection action at hand becomes inadmissible and it is declared as such in the respective sentence. It requests a term to legitimize intervention. **In his reply to the action, he said** "I am not going to personalize my arguments in the reply because we have seen the vagueness of his arguments. It has not been justified which authority violated the alleged right. They had no evidence, nor did they have any arguments. The rights of all must be respected. The executive and its entities act in strict adherence to the principle of legality. Although all their acts are refuted as legal, they are also regulated by law. Constitutional justice cannot be called upon to invade the administrative sphere. An infraconstitutional order cannot be disregarded. I request that legal certainty be guaranteed. Dignified life is guaranteed. We are here in the punctual determination of the responsibilities that correspond to the state and it is to watch over all the 17 million Ecuadorians. For a protection action to proceed there must be the material existence of the violated right. A protection action is denaturalized when it is used in any type of ordinary cause. I must insist on the figure of expiration and nullity. What rights would be affected by a possible judgment in favor of the plaintiffs, not only the right to legal certainty, but also the right to health, education and work. Returning to the subject of control, these

The administrative recommendations that are in the report are only the comptroller's office that has the power to follow up until these recommendations are complied with; since the special examination is in the process of being complied with, it cannot be established as having been carried out. The mining activity is a legal activity with control and regulated, and the illegal one is repelled by the state. It would not be possible to obtain the royalties paid if the State were not delivering a legal activity to someone who is carrying out an illegal activity. You must analyze if there is an affectation of constitutional rights and if sufficient evidence has been presented to establish violated rights. A simple argumentation is not enough to file a protection action. It has been established that there is not and has not been any violation of any constitutional right. Disputes in the administrative sphere have their own path. It requests the rejection of the present action of protection as inadmissible because it does not contain the requirements of Article 40 of the LOGJCC and therefore falls under the grounds of Article 42".

José David Ortiz, Dr. Rodrigo Jijón, Carlos Izquierdo and Dr. Víctor Cabezas on behalf of EXPLORACIONES MINERAS ANDINAS ECUADOR EMSAEC S.A., in their respective interventions said: "On the basis of these agreements it has made millionaire investments, this project has been called a binational project. My client is in this action because the plaintiffs, through this action for protection, have the purpose of preventing the Llurimagua project from continuing. Therefore, there are administrative acts that have generated acquired rights. My client has a direct interest in the maintenance of the administrative acts. The basic points to develop: EMSAEC is a third party with acquired rights that acted in good faith; its authority lacks competence to declare the caducity of a mining concession. The allegations made are not consistent with the reality of licensing and environmental monitoring; also the proven facts show that socialization did take place; the judgment in the Cedros case is unenforceable in this case. We are going to establish some important aspects about the way this protection action has been processed. There are administrative acts that enjoy a presumption of legitimacy, this means that these acts are valid and cannot be left without effect by the good will of a person, without or until there is an order from a competent authority. The administrative act is the title that grants the mining concession. The second act is the resolution, on the basis of these two acts Enami EP proceeds with the mining exploration phase. The plaintiffs accuse the public entities of having violated constitutional rights. Acquired rights is a situation created by fulfilling all the necessary conditions in compliance with current regulations". **Dr. Rodrigo Jijón** "I am going to talk about two points, regarding their competence to declare the caducidad. As to the lack of competence, the law establishes its procedure. The protection action seeks to fraudulently replace to establish the expiration of the mining concession, by accepting the expiration the due process would be violated and the protection action would be denaturalized". **Again, Attorney José David Ortiz,** "For a protection action to proceed, the legislator in Art. 40 of the LOGJCC has established three requirements and none of them are met in this protection action. There is no scientific uncertainty here. An environmental study was carried out. As part of this process the environmental impact study was conducted baseline studies that can determine species of flora and fauna where advanced exploration activities were carried out and were authorized. It is a matter of reviewing the documentation to establish that the claims of the plaintiffs are not true. That there is no bibliographic support is false. To realize that the arguments are false. It is enough to see the environmental impact study, to see allegations made in a light manner. The environmental management plan is composed of an impact management and monitoring plan. Environmental management does not end with the issuance of the environmental license. To date, 13 monitoring campaigns have been carried out and have not generated a species variation. There are environmental audits conducted by a third party. The purpose of the protection action is to repair when there are consummated facts. This fact alone makes you, Mr. Judge

reject this action for protection. The second allegation of violation of constitutional rights that has to do with the environmental consultation - this does not match the reality of the facts, what has not been said is that two consultations were held in 2014 and 2018. Despite the fact that two consultation processes were carried out they say that the standards indicated by the constitutional court have not been taken into account. We cannot analyze Art. 398 of the Constitution only as the plaintiffs want. In 2014 the environmental license was approved. By reviewing the consultation process it will be possible to verify that the consultation was carried out in accordance with the regulatory standards. It is clear that the consultation processes did exist, the plaintiffs try to convince you that it has not existed, they want to lead you to the absurdity that you qualify by retroactivity of norms. By accepting this, you would be disregarding rights acquired by means of the norm in force to date. The ruling of the cedar forest has no legal value for your authority in terms of the precautionary principle. When we talk about the right to environmental consultation we are talking about a general consultation and therefore the community must be consulted and this has been done, but it is not a consultation of a personal nature. It is reprehensible to use humble people. Neither Enami nor EMSAEC were defendants in the libel of this action. It requests that the allegations made by the plaintiffs be struck out. The plaintiffs intend to base their claim on the basis of a special report made by CGE". **Carlos Izquierdo**, "In order to know how evidence works in the constitutional sphere, it is necessary to ask a question. This principle must be observed as long as it does not serve to circumvent the plaintiffs' defense. In the first place, the plaintiffs present a document in English and it is not accompanied by a translation, therefore it is requested to be dismissed, therefore the plaintiff could not pronounce on it, it is unconstitutional evidence. Article 289 of the Organic Environmental Code establishes a privative, excluding competence. The report issued by the Municipal Government of Cotacachi should be dismissed as unconstitutional and not competent to make such report. The document presented with the lawsuit does not meet the standards, it does not have a signature of responsibility". **Victor Cabezas** "I want to make two points, about the declaration of the witnesses (experts) and about the witnesses. The opinions and allegations tried to be covered by a cloak of scientificity with these expert witnesses. Regarding the first expert witness, EMSAEC was not given the floor for cross-examination, in violation of due process. On the one hand, Mr. Prado in his testimony indicated that the socialization had not been carried out, but on the other hand, he took de facto measures to not let the technicians in and that he was not interested either, neither of his two claims are related to this protection action. This is a paradigmatic case of an improper use of the protection action, that is why your authority must dismiss this protection action as improper".

TESTIMONIAL EVIDENCE OF THE DEFENDANT

The testimonial statement of **MIGUEL ÁNGEL VICENTE ALEMÁN ANDRADE**, who has said "I am an engineer for more than 36 years. I am the general manager of the environmental consulting firm ENTRIX that does environmental impact studies, ENTRIX came to Ecuador in 1996, 28 years has been working in Ecuador but ENTRIX also works in other countries. In Ecuador we have done more than 300 environmental impact studies, we have an A category, we can do more complex studies. ENTRIX considers that each project is important and in particular in 1995-96 we did the oil pipeline. The Posorja water project; the project in block 31 Yasuni; all the study projects have been approved by the Ministry of Environment, all the environmental impact studies have been approved to ENTRIX. I have been working in the mining industry since 2008 and since then we have been working on several mining projects. ENTRIX has the ISO quality, environmental and safety certificates in each country. Currently in Latin America we work in Peru, the United States, in Australia where we are based, we also work in Europe and Africa, we have worked in more than 50 countries. The environmental impact study is an instrument of the environmental policy to be able to carry out an environmental impact assessment.

project, which is prepared under methodologies and guidelines to prepare that seeks to plan a project to minimize environmental impacts. The environmental impact study is used to mitigate environmental impacts, it is also the document that serves the authority to evaluate the project to obtain the environmental license to carry out and execute. The environmental impact studies must be carried out by a multidisciplinary team such as the physical, biotic and social components, made up of civil and environmental engineers, biologists, social scientists, economists and anthropologists. An environmental impact study is studied in the first place a project is carried out and a planning evolution is made and the development area is defined, then the area of study and implementation of the project in the different components, then a field work is carried out, finally a risk and environmental evolution is made, an environmental management plan is prepared that includes all the mitigation measures. In the concept of minimizing the environmental impact, then this study is submitted to a review process by the Ministry of the Environment and the process for the granting of the environmental license is carried out. The text or the norm has the different quality criteria, the guidelines, requests that the studies must comply with these methodologies, these guidelines must be taken in detail so that when the study is submitted to the ministry they are observed. These guidelines must be adjusted depending on the conditions and characteristics of each study. The consequence is established in the norm and the consequence is that the environmental impact study is observed and it can be rejected and not be approved and not obtain the environmental license. Each country has its own regulations and the regulations are modified. Ecuador has very strong regulations to comply with the environmental impact study. The regulations are adjusted according to the particular characteristics of each country. In the case of a mining study, the environmental impact study must be based on the type of project and project stage. The mining stage has based on the phases, it has its particularities and characteristics, what I am going to do, what is the activity I am going to do, each stage has more analysis. In order to prepare an environmental impact study, prior authorization must be obtained. Previously, environmental impact terms of reference had to be prepared, defining what was to be done, known as the terms of reference. The environmental management plan is an element of the environmental impact study, it is a dynamic living document that has a continuous evaluation process not only by the project operator, but also by the authority. An environmental management plan is approved with the environmental impact study. The environmental impact study for the Llurimagua project was approved by the Ministry of the Environment after meeting the requirements. Yes, I participated in the study of the Llurimagua project. It was to obtain the environmental license. The environmental impact study of the Llurimagua project began in 2013, at the end of 2014 the environmental license was granted; the environmental impact study lasted more or less a year and a half, all environmental impact study a little more before from the beginning of the feasibility of the project and where that project is going to be developed. The environmental impact studies concluded that the project is feasible to carry out and that the impacts are permissible to carry out, can be managed through the environmental management plan, mitigating, preventing and controlling the impacts carried out in the study. The environmental management plan has several components, there are several measures for the construction to mitigate the environmental impact. The monitoring and systematic ones serve for the different points of the project. I believe that there is no uncertainty in the evaluation process of the Llurimagua project. The abandonment consists of reforestation, reforming the entire environment and revegetation where the platform was built, the success is in the restoration of this ecological zone and recovering these areas due to the mining activity. The baseline study characterizes each one of the factors and components of the area where the project is going to be developed and to be able to diagnose the conditions that are found at that time prior to the implementation of the project; it will allow the basis to know what was the activity carried out; it is developed under the guidelines and regulations issued by the Ministry of Environment. In this country there is no environmental impact study that is out of the norm". Carlos Varela, *"Yes, I initially connected to the hearing for 10 to 15 minutes and then the lawyers told me to disconnect. I presented Amicus Curiae at the request of the*

attorney Jose David Ortiz. I did charge for the studies of the Llurimagua project as all qualified consulting firms do. EMSAEC hired me. My functions as technical director is to ensure that the environmental impact study meets the standard and is planned to meet the objective. If I know the people I hire, they are professionals, they are specialists who worked with me. In 2013-2014 that study was conducted I do not remember Pablo Arguello". Maria Espinosa "The environmental impact project had several observations; there is no environmental impact study that does not have observations by the Ministry of Environment. The usefulness of meteorological stations is to characterize the climate". Gustavo Redin, "If I know what scientific uncertainty is, it is after obtaining information to make an adequate evaluation of the ecosystem and the consequences it may have on the environment. The biotic characterization always requires more information, we cannot be conclusive in the characterization, for that it is important to take into account other elements of the environmental impact study. I do not remember if there were orchids in the study. The study did not ask for a study of orchids, it may be that today a study is requested to collect information on orchids. Sampling of mammals and avifauna was carried out using nets, I am not a biologist but I am familiar with them from my studies. For mammal sampling we used footprints and Sherman traps. For mytofauna they use hooks and traps. I certify as responsible for the study and each specialist also signs his study. In my experience we have used bed traps, at that time camera traps were not used. I do not remember if there were felines in that study. In the environmental impact study part of the baseline is to carry out studies of previous activities, there had not been previous explorations, I do not remember, I doubt that we did an exploration outcrop. In the environmental management plan the spill is established as a high impact, but the plan takes into account a contingency to prevent and control the impact. If everything is applied as stated in the environmental management plan there will be no environmental impact. From what I have reviewed there has not been any type of leak or spill". Melida Pumalpa, "There is no prevention of biological corridors because in the study area it is not determined that there are biological corridors. In this particular study, in the planning, there is a protective forest nearby and part of the planning is to move away from this protective forest to minimize impacts; the forest is to the northwest of the Llurimagua concession. In the environmental impact study, environmental services in 2013 was a concept that was not so clear and was not directly related. Within the environmental impact study and the environmental management plan there is prevention of environmental impacts, within the biotic component there are systematic monitors, one of the objectives is to raise the baseline and carry out the diagnosis and as the project develops, monitoring is carried out at different sites to have control and that is where more information is collected. The study does include prevention measures for groundwater. Response to Ms. Yuly Tenorio, "The environmental impact study does include archeological studies, but no archeological samples were collected. In the study there are no important archaeological remains. I do not remember the number of archaeological monitoring that was done because I was not involved in this type of activity. My dependency relationship is with ENTRIX. My professional ethics is to defend my studies carried out". Answers to Mr. Jose Acero's questions, "The environmental management plan establishes specific measures to prevent or mitigate impacts for each species carried out in each study either by the habitat where they live, but determine for this species a, for this species b, no. I do not remember the context read. Besides the environmental impact study for the Llurimagua project, I have not had any relationship with Enami EP or EMSAEC, I work for Entrix".

The **statement of BIOLOGIST MARIA JOSÉ RACINES TINAJERO**, who said "I currently work in the company ENTRIX. I am coordinator of the monitoring area in biotic elements. The monitoring activities in the environmental management plan within the Llurimagua project is the monitoring of vegetation, in the Llurimagua project has conducted 5 monitoring; in total are

14 monitoring, the result of the monitoring; the multitemporal analysis helps us to distinguish the temporalities of the environment. The biannual monitoring includes a rescue plan for the species mentioned, the measures do not differ for the application of endangered species. A multitemporal comparison is a comparison between the dry and rainy season, as it gives us a global result of what is happening in the area under study. We maintain a homogeneous balance between the species found. The area surrounding the project has other types of impacts. The agricultural growth in the area where we conducted the study has a large proportion. There is another type of impact: the growth of the agricultural frontier and cattle ranching has lost a large part of the vegetation; in the Llurimagua area, 70% of the vegetation is occupied. The growth of the agricultural and livestock frontier has also caused the loss of certain local species, as well as soil erosion. The house also causes impacts of species due to noise. From 2014 to 2021 increased agricultural activity by 60 to 65% over the course of monitoring. The species accumulation curve, the calculation of species, the calculation is made with the species obtained in the sampling. In the Llurimagua area it is not possible for this accumulation curve to stabilize. When the percentage is higher than 60%, it is considered successful. The electrofishing mechanism is a monitoring of fish species, the Ministry of Environment does not approve this mechanism because it is with small electrical discharges and there are very small species that would die, more or less since 2018 this mechanism is known, this mechanism. Water bodies do not need this type of monitoring and has used traditional monitoring such as nets, atarrayas. A hotspot or hot spot are areas where large numbers of species are concentrated." **Counter examination:** Responses to Ab. Gustavo Redin, "The monitoring was carried out dated the first half of 2015 in August in July 2016 September 2017. In the monitorings we raised all the information that there is in the area. In the area if there were two reappearances; we have *pristimantis* frogs, *renellae*; if we use scientific literature; in the monitoring we did not find the snouted frog. When new species are found. The first thing we do is to report the new species and put them in a section to inform the Ministry of Environment". Melida Pumalpa, "When monitoring, recommendations are made; when new or rediscovered species are found, the management plan and rescue plan are implemented; the monitoring team includes a specialist from each component, seven biologists. The monitoring also found noise from people and from the expansion of the agricultural and livestock frontier. We did not identify noise from drilling. Response to Ab. Yuly Tenorio, "In the Llurimagua concession area, secondary forest and forest restoration patches were found. This is a more important measure of the management plan where species in a threatened category are identified and that are having a great impact on where they live, they are rescued and placed in a habitat similar to the habitat where they used to live. The rescue plan is for all species. If the frog is found, a rescue plan is used for the frog, but since it was not found, the rescue plan is not carried out. Relocation areas are the same as the frog's habitat. Recommendations within a monitoring are based on results and findings. I don't know the owners of the agricultural and livestock activity".

REPLICAS OF THOSE ENTITLED TO ACTIVE LEGITIMATION:

AB. CARLOS VARELA, "After hearing the defendants and interested third parties, we ratify with more conviction in our protection action. The plaintiffs have dedicated themselves throughout the hearing to wield arguments that have nothing to do with the proposed action for protection. Claiming that the action for protection be denied is not viable; neither is it restricted or tied to the measures requested in the complaint, because it may consider that other measures guarantee a more effective remedy. For the same reason, in the matter of measures of reparation for violations of constitutional rights, the existence of the defects of incongruence extra or ultra petita cannot be alleged. The rights of nature require that in order to harmonize their relationship with nature, it is the human being who adapts himself in an adequate manner to the

natural processes and systems, hence the importance of having scientific knowledge and community knowledge, especially indigenous people because of their relationship with nature, about such processes and systems. We recognize that mining is legal, what we ask is that you let the mining companies know that no matter how much power they have, constitutional rights must be respected. The state cannot give up offering security to the citizens and only give it to the mining companies. Acquired rights arise from acts in accordance with the Constitution and the law, that is to say, they are legal orders that grant people a right that enters their patrimony". **AB. VERÓNICA POTES**, "Regarding the claims of the defendant, that the lawsuit is not clear, that Decree 1040 under which the PPS were made is the "normative framework", that the recent rulings of the CCE invent new standards and claim retroactivity; that there is no violation of the right to consultation; that the claim on concessions does not fit. The claim is clear: Llurimagua violates rights; Decree 1040 is not the normative framework; it is the Constitution, on participation, consultation and decision criteria; the CCE sentences only explain what the Constitution says since October 2008; In the Llurimagua project there has been no environmental consultation according to the legal minimums. My colleague Maria Espinosa will refer to how it was not adequate to the social environment; the consequence of the lack of environmental consultation is the ineffectuality and nullity of the administrative act. There was a socialization but no consultation. The opinion of the community was not valued according to the constitution, human rights instruments and laws. In conclusion, the Llurimagua concession is unenforceable and null; the environmental license for the advanced exploration phase is unenforceable and null; the reason is due to the omission of the fundamental right to environmental consultation, Article 398 of the Constitution; there is no legal insecurity for the mining companies because the null acts did not generate the rights they allege. No one acquires rights by violating the rights of others". **AB. MARIA ESPINOSA**, "My client ratifies all the contents of the claim for protection action. The only thing that was given is that tents be installed and that documents of more than a thousand pages be reported. The only assembly that was held was the assembly of Cotacachi. The participation of all the actors of the communities was not guaranteed. I take the word of the plaintiffs themselves, the mining activity is going to generate impacts, the social environment of the communities has been destroyed. The right to be consulted is or should have been to all the people in the area of influence. What has been fully demonstrated is that there were moments of socialization but not of environmental consultation. Clear and understandable procedures were never established to deal with a discussion and give the respective observations and establish how they were incorporated. Active participation is not possible without participation with debate. All witnesses have demonstrated that there is a legitimate interest to know. For 2014, the Constitution was in force". **JORGE ACERO GONZÁLEZ**, "I am a plaintiff for the rights of nature, it is regrettable to have heard from the plaintiff that nature is of a utilitarian nature. Nature cannot be seen as merely abstract. The mining activity in this area will have repercussions on the water cycles, the serious impacts it could have on the ecosystem. During the hearing the Ministry of the Environment has recognized serious shortcomings. Biological interaction must be protected. **AB. MARIO MONCAYO**, "We are not in front of just any category, but we are in front of a category 4. Affectation has been proven. The environmental impact study is proof. The regulations in force at the date of the concession were omitted. What should have been proven in the hearing due to the reversal of the burden of proof? That protection measures have been applied considering the principles of precaution, prevention and restriction when approving the EIA and EMP. That in the follow-up phase, the EIA recommendation was complied with, greater sampling efforts and expansion of points, and that in the face of new discoveries, new measures were applied". **AB. MELIDA PUMALPA IZA**, "The Ombudsman's Office is competent to file actions of jurisdictional guarantees. It is not a matter of being for or against mining activity, to date the Ministry of the Environment has not presented the Ombudsman's Office with a motivated resolution. The Amicus and the testimonies rendered have said that they do not agree. The State must provide sufficient information, within a reasonable time, as required to achieve the element of ample information,

understand and give impact opinions". **AB. YULY TENORIO**, "What would the Intag Valley be without its defenders 25 years of community resistance to public policies without consultation. Therefore, I request that APT NORTE be legitimized as a party. The community was not asked for its opinion in an adequate manner. Requests the acceptance of the protection measure, the integral reparation and the declaration of the violation of the right to nature and environmental consultation. It recommends archeological monitoring".

COUNTER-REPLIES:

MINISTRY OF ENERGY "I ratify my initial arguments at the time of answering this action for protection, for being vague. In the action in section III where the violated rights are identified. If you look at number 4/9, they refer to the issuance of the mining title, they make a rather vague mention. It is important that the file identifies this document at the date of the granting of the title to establish the validity or the falsity and bad faith of the plaintiffs. The 2008 constitution demonstrates that it pursues the right to nature, in effect it protects the rights to nature. I appeal to the temporality of the legal framework, that in none of the phases the witnesses and documents have been able to prove their own arguments. The economic income from the activities are used in education, health and is for the benefit of the development of this country. The first manager of a mining activity is a public company of the Ecuadorian state. How does the state protect nature? When referring to the integrity of the mining title, the plaintiffs in all the phases of this constitutional process have referred or have unloaded all their anger regarding the environmental license of the advanced exploration phase, this gives me to understand that they have nothing to say regarding the prospecting phase. It has been demonstrated that the state has complied with the norm. The plaintiff organizations are the cause of the social division. Legal certainty is to establish due process before the competent authority. I request a declaration of inadmissibility for lack of any requirement of the LGJCC".

MINISTRY OF ENVIRONMENT - Maria Fernanda Manopanta has stated "The argument made by this state portfolio has not been reversed, no constitutional right has been violated, they have referred to read sentences of the Constitutional Court. The facts pointed out by the plaintiffs have been indicated by the people of the same community that is not true. The case of the Los Cedros forest is not equal to this case as to apply this jurisprudential precedent. The norms applied to the Llorimagua project are applied according to this type of circumstances. This portfolio of state demonstrated to you with a report the control since it began with the issuance of the license, it is not that only on January 6, 2021 we are concerned about this. It has been pointed out that this state portfolio does not take measures considering that nature is an object and that this has changed since the constitution of 2008, which is not true, this state portfolio has always been protecting the right of nature. It has taken appropriate measures for all types of activities. This portfolio is on the side of all the projects that are executed according to the environmental norm and the constitution. Within the evidence acted by this portfolio of state, none of the lawyers has indicated which is the measure that appears in the environmental management plan indicating which is adequate and which is not adequate. From the evidence provided by this portfolio of state, it can be observed that the appropriate measures were applied. Article 398 of the CRE states that the law shall regulate prior consultation, citizen participation, deadlines, the subject consulted and the criteria for evaluation and objection to the activity subject to consultation. It indicates that no rights have been violated by this state portfolio as indicated by the plaintiff in its arguments. We are guaranteeing the right to nature before approving the complementary study. At no time did the special examination of the CEM make recommendations indicating the revocation of the environmental license. The duty of the Ombudsman's Office is to watch over the rights of all and that is why Amicus have appeared indicating that they need this activity to exist.

This action for protection does not comply with the requirements of art. 40 of the COGJCC, and the following conditions apply 41, therefore, it is requested that it be declared inadmissible".

PROCURADURIA GENERAL DEL ESTADO - *"The constitutionality of the mining law has already been announced by the Constitutional Court. At the environmental level, environmental licenses have been granted by the Ministry of Environment. The regulatory framework of 2014 is not the same as the one in force to date, if they did not agree with the regulations, an action of unconstitutionality should be filed. From the statements of the plaintiffs themselves, including their witnesses, we learned that the consultation was carried out in accordance with the regulations in force. The environmental impact study has been able to establish that it is not possible to determine in its entirety the existence of species. What has become evident is that Llurimagua is not in the same condition as Los Cedros Protected Forest; what they are trying to do with this action is to guarantee personal interests. It is not possible to hear noises from the drilling because they have been suspended since 2018. In Ecuador the institutions are very careful to guarantee the right to nature. It has not been said that when legal security is left aside, the consequence of that is precisely illegal mining, when mining activity is stopped, the development of the communities is stopped. In this hearing each one of the arguments of the plaintiffs has been unmasked. It has been said that vital and water cycles can be affected, a proof is that by monitoring there have been no affectations; if mining activity were incompatible with nature it would not exist in the constitution. If mining activity were incompatible with nature, it would not exist in the constitution. The effects that are evident through the satellites are the cattle ranching and agriculture carried out by the plaintiffs. The environmental consultation has been socialized and carried out using clear and simple language. Accepting this protection action will make it impossible for all the people of the communities to have a dignified life. When we talk about an environmental license, we talk about legal certainty. It is one thing to disagree because it could affect your personal patrimony. Regarding the expiration of the mining concession, there is a law on the matter and it cannot be done through a protection action. There is no violation of the law at the time the act was granted. The state does not ignore its obligations and rights, every time the legislator issues a norm it implies the context according to the needs of all Ecuadorians. The methods and actions used by the state and the companies that carry out mining activities produce a minimum impact. When there is illegal mining there is a direct impact on the community. After reviewing everything that has been presented during these days of hearings, it can be seen that there is no violation of the right to nature or other rights. There is a legal framework that protects the rights of nature, and also guarantees the subsistence of the communities and a dignified life. So far, it has not been possible to demonstrate a violation of rights, even worse, of the rights of nature. From everything in the lawsuit, from its arguments, from its testimonies and documentary contributions, it has not been possible to demonstrate a violation of rights. It is logical to assume that when it is not possible to justify the violation of constitutional rights, it is logical to assume that the requirements of Art. 40 of the LOGJCC are not met. It is clear that the Ecuadorian State continues to comply with its obligations. Pretending to declare the caducity through the action of protection that when they were born according to the law, is pretending that you act arbitrarily and abrogate functions of constituent. This action of protection incurs in the grounds of inadmissibility established in Art. 42 of the LOGJCC".*

INTERESTED THIRD PARTY (ENAMI): *"Conducting an environmental impact study is complicated; it takes two years to obtain an environmental license. It is also complicated to carry out a consultation and socialization process in communities where they are not interested. The plaintiffs have indicated the violation of the right to nature and the right to consultation. In the first case, the constitution guarantees the rights to nature, not in the area of whether or not they should generate benefits to people. This protection action does not find any basis, the*

The people who appear are there because of personal interests. Regarding the rights of nature, there is an environmental impact report and an environmental management plan. The scope of this environmental license was only for advanced exploration and this culminated in 2018. This action is intended based on assumptions. The phases are contemplated in Art. 27 of the Mining Law. There are no current damages. The time frame is extremely important. The presence of human beings, affected this ecosystem, due to the existence of the agricultural frontier. These acts enjoy a presumption of legitimacy. Regarding the environmental consultation - we have heard that some people have not participated, but through their own mouths they have said that they were not interested in it and that they were opposed to it. From the evidence provided we have justified that it has been socialized with the communities according to the law in force at that date. In the CGE's special review, it issued 11 recommendations and then with a comptroller's review, 8 of the recommendations are 100% complied with and 3 are inapplicable. By accepting the action for protection, the right of my client would be violated".

Jose David Ortiz has said *"Regarding the reply of Carlos Varela, the precautionary principle applies when there is uncertainty. I said that this action is implausible. It has been more than 3 years since the advanced exploration activities have finished, therefore we cannot talk about uncertainty, what we can talk about is that the environmental management plan is working because species have been found, the species are still there, the forest has not disappeared. You have told us that you cannot reject the protection action based on the reparation measures, this because what you asked for did not make any sense. What they are demanding is to declare the caducity of the mining concession, leaving without effect an administrative act is not the same as declaring the caducity. The caducidad is a more serious administrative sanction. They have pretended that in this action for protection only the Ministry of Environment and the Ministry of Energy should be considered as having passive legal standing, presiding over the holder of the mining concession; when resolving an action for protection, the rights of third parties who have acted in good faith cannot be affected under the premise that the administrative acts were issued in accordance with the law. What was the legal infringement in the granting of the environmental license, well, none. Dr. Varela says that he has not sued ENAMI EP and EMSAEC because they are not obliged to sue third parties, since they are affecting the rights of interested third parties and would be violating the rights of defense. Mr. Varela indicated that the purpose of this action is to inform the mining companies that they can only carry out activities subject to the constitution. The plaintiffs do not know what the lawsuit is about, they thought that personal and particular rights are being demanded. Regarding what Dr. Verónica Potes said, indicating that the norm used was not the correct one, after 2008 the Mining Law and the Law of Citizen Participation were created, I ask her if at that date an unconstitutionality lawsuit was filed, well no, that is why they are in force. It was said that the standards of a sentence of the year 2021 had to be established, which is not applicable because it does not have retroactive effect. It is not plausible to say that there is undue interference when contributions were made for education, work, when the inhabitants of the communities themselves have stated that they did not have a good quality of life. It was demonstrated that it is an area with a lot of agricultural intervention. Nothing that is said in the Los Cedros case about the precautionary principle is not binding for this action. Mario Moncayo has said that the precautionary principle is not binding for this action. Mario Moncayo has said that the advanced explorations cause impact, no one has said otherwise and that is why an environmental management plan is made so that there are no alterations; in fact he indicates that there is no damage to the environment but then he says that by a report of the GAD MUNICIPAL of Cotacachi there are affectations. Not just any thing is an omission, the omission is a lack of a legal duty. The presumption of legitimacy of an administrative act means that the act was approved according to law. The Ministry of the Environment presented the types of monitoring in which it was indicated that there is no type of alteration to the environment. As for the Amicus Curiae presented by the plaintiff, they have been theoretical and it does not make sense to refer to these Amicus Curiae. My represented party has never used force or in order for these Amicus Curiae to be carried out.*

assertions by Amicus Alberto Acosta. It is clear that the requirements of Art. 40 of the LOGJCC are not met. There is abuse of rights by the plaintiffs. The use of non-existent evidentiary means, people that were not accredited (expert witnesses). It is intended to re-litigate the precautionary measure. It discloses art. 23 of the LOGJCC. It requests the rejection of the protection action as improper and the pertinent sanctions".

FINAL INTERVENTION OF THE PARTIES ENTITLED TO PARTICIPATE IN THE PROCEEDINGS

AB. CARLOS VARELA, *"In this case, not only the individuals and communities of the area have your attention, but also the international communities that watch over the rights of nature. We ask you to enforce the constitution, the economic interest has tried to intimidate you and intimidate us, but you are here to make it known that there is a true constitutional state of rights. The environmental consultation was not carried out. What is demonstrated is that a summary socialization process was carried out, which is not a consultation process. There is no clarity about the risks. The state through its authorities and the international companies are always arrogant towards the humble people. Is it possible that the state knows the risks, the consultation is a guarantee to avoid impacts. The constitution was in force at the time the company carried out its activities. The consultation says that it must be carried out in all phases and must be free without intimidation and physical cohesion, without criminalizing the fighters and defenders of rights. They have been misinformed, treated with disdain by introducing bribes. The state cannot delegate the legal duty. The constitutional court, the constitution, the laws and the Inter-American Court of Human Rights have said that a resolution can only end with a motivated resolution. This right is for them to live in peace. The rights of nature is a simple case, it is not a complex case, from the evidence it has been demonstrated that there are not only two species in danger of extinction, but there are 20 species, most of them have not been identified by the Ecuadorian state. If the state has not identified even in the baselines the type of species, then of course there is uncertainty. In the case we are alleging the violation of constitutional rights, you are competent to hear this case. Expert witnesses do not express opinions. There has been an attempt to delegitimize the testimonies because they are humble. The mining activity is indeed legal but it has been carried out in an aggressive manner dividing the communities. The companies have not applied the principles of precaution and restraint. I request that you declare the violation of the constitutional rights to prior consultation with the communities and the right to nature; if you declare the violation of these rights, you are not alone".* **VELSI CENAIDA GUACHAGMIRA FUEL,** *"During the development of the hearing I have seen discrimination on the part of the interested third parties. I request that what has been seen here be taken into account and that they try to denigrate the peasant farmer, we are also part of the Ecuadorian state and that is why I am here asserting my rights, regardless of the previous processes that we were not consulted, I request that we are not a bargaining chip; what they have noted is that the economic portfolio of the companies is worth more than us. We think that the protection action is to protect life. The biodiversity, the species that are in danger of extinction or not, it is outrageous that the companies say that it is necessary to carry out a mining exploration project to give handouts; now a food kit or vaccines, being the basics that the state has to give. It is a disgrace that the state portfolios say that the economy is better off with extractive companies. Today my family is in danger, the species, if we do not take preventive measures in a few years I will have to go to ask for lodging in the house of the Minister of Economy; I know that this will not happen if you have the power to guarantee our rights. Today we are trying to manipulate the people who are managing us, they have tried to distort this process, what we are doing is protecting more people, more life, more nature. What I understand is that this is a mega project, who is going to feed us, who is going to give us a house, or the life that we want to guarantee for many people, or that the people who are representing the government entities will lend me the inn. Even if I were a cattle rancher, I would have meat to give them.*

lagoon is contaminated that we are going to eat". AB. YULY TENORIO, "Remind the Ecuadorian state that resistance is a constitutional right. None of the defendants or affected people have named APT NORTE and we have not been consulted".

II. CONSIDERATIONS AND RATIONALE OF THE COURT OF THE CHAMBER

Competition

In accordance with the provisions of Article 24 of the Law of Jurisdictional Guarantees and Constitutional Control, in accordance with Article 208.1 of the Organic Code of the Judiciary, the Court of the Specialized Criminal Chamber of the Provincial Court of Justice of Imbabura is competent to hear and resolve the present action for protection of constitutional rights violations.

Legal standing

The plaintiffs have standing to file this action for protection, by virtue of the provisions of Articles 39 and 40 of the Organic Law of Jurisdictional Guarantees and Constitutional Control, as well as to appeal the judgment.

Legal nature and purpose of the protective action

The action for protection established in Article 88 of the Constitution is a jurisdictional guarantee whose purpose is the direct and effective protection of the rights recognized in the Constitution, and may be filed when there is a violation of constitutional rights, by acts or omissions of any non-judicial public authority; against public policies when they involve 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 provides improper public services, if it acts by delegation or concession, or if the affected person is in a state of subordination, defenselessness or discrimination, guaranteeing respect for due process and other constitutional rights.

Consequently, and in accordance with this constitutional provision, Article 41 of the LOGJCC states that the action for protection, *"Proceed against: 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. 4. Any act or omission of natural or legal persons of the private sector, when at least one of the following circumstances occurs: a) They provide improper public services or services of public interest; b) They provide public services by delegation or concession; c) It causes serious damage; d) The affected person is in a state of subordination or defenselessness before an economic, social, cultural, religious or any other type of power. 5. Any discriminatory act committed by any person".*

In this regard, the Constitutional Court has determined that the action for protection was incorporated as:

"(...) suitable and effective guarantee that proceeds when the judge effectively verifies a real violation of constitutional rights, with which, there is no other way for the protection of these rights other than the jurisdictional guarantees. Not all violations of the legal system necessarily have a place for debate in the constitutional sphere, since for conflicts in matters of legality there are suitable and effective means within the ordinary jurisdiction. The constitutional judge, when from the substantiation of the jurisdictional guarantee he establishes that there is no violation of constitutional rights, but only possible controversies of an infra-constitutional nature, may point out the existence of other avenues. The reasoning developed by the Law of Jurisdictional Guarantees and Constitutional Control establishes that the action of protection proceeds when there is no other adequate and effective judicial defense mechanism to protect the violated right". Under such context, it is evident that the action for protection is configured as the suitable jurisdictional guarantee to protect constitutional rights, when these are undermined by actions or omissions of any non-judicial public authority, as well as in the other cases provided for in the Constitution and the Law. This reasoning allows us to conclude that the action for protection does not constitute a mechanism of superposition or replacement of the ordinary judicial instances, since this would cause the disregard of the state jurisdictional structure established in the Constitution, as well as the violation of the right to due process and legal certainty, since the legal system itself provides through the corresponding regulations, the procedure to be followed for each proceeding. Consequently, the action for protection should not replace the other judicial means, since in such case the constitutional justice would assume powers that do not correspond to it, affecting the legal security of the citizens and distorting not only the rules related to each procedure, but additionally the jurisdictional structure of the State". (Case No. 1180-11-EP - Sentence No. 082-14-SEP-CC)

The action for protection then, constitutes an exceptional mechanism that seeks to protect the constitutional rights of the citizens (administered), against actions and omissions of the State or private individuals that affect them; and, in this approach, to ensure that these actions or non-judicial decisions have not violated constitutional rights. Therefore, Article 40 of the LOGJCC states that *"The action for protection may be filed when the following requirements are met: 1. Violation of a constitutional right; 2. Action or omission of a public authority or of a private individual in accordance with the following article; and 3.*

Determination of the legal problems to be solved

From the content and intervention of the plaintiffs in this case, in the first instance hearing, it can be determined that the violation of the alleged constitutional rights is related to the fact that the Ministry of Environment, Water and Ecological Transition did not carry out ENVIRONMENTAL CONSULTATION with the members of the communities in the area of influence of the Llurimagua Mining Project in the Intag area in the preparation of the Environmental Impact Assessment (EIA); Therefore, it is up to the Court of the Specialized Civil Chamber of the Provincial Court of Justice of Imbabura to determine whether or not the constitutional rights alleged by the plaintiffs were violated in the case *under examination*, for which purpose it is necessary to develop the analysis through the resolution of the following legal problem:

- ***The preparation of the Environmental Impact Study by the Ministry of the Environment, omitting environmental consultation with the communities in the area of influence of the Llurimagua Mining Project in the Intag area of the province of Imbabura,***

Did it or did it not violate the right of the referred communities to be consulted and to environmental consultation?

Development of the legal problem

- **ON THE RIGHT TO BE CONSULTED PRIOR TO THE ADOPTION OF DECISIONS OR THE GRANTING OF AUTHORIZATIONS THAT MAY AFFECT THE ENVIRONMENT.**

We must start by specifying that, although it is true that the "Right to Consultation", provided for in Article 61.4 of the Constitution, in general, is a right of citizen participation, it is no less true that it has been specifically developed in Article 398 of the Constitution of the Republic, when it concerns matters related to the protection of nature, and it has been called ENVIRONMENTAL CONSULTATION, and in this line of thought we will develop the problem specified.

Article 398 of the Constitution of the Republic states: *"Any decision or state authorization that may affect the environment must be consulted with the community, which shall be informed in a broad and timely manner. The consulting subject shall be the State. The law shall regulate prior consultation, citizen participation, deadlines, the subject consulted and the criteria for evaluation and objection to the activity subject to consultation. The State shall evaluate the opinion of the community according to the criteria established in the law and international human rights instruments. If the aforementioned consultation process results in a majority opposition from the respective community, the decision to implement or not the project will be adopted by a duly motivated resolution of the corresponding higher administrative instance in accordance with the law"*. The plaintiffs have specified in this regard, that *"On November 7, 2011, the Ministry of Energy and Non-Renewable Natural Resources (MERNNNR) granted the mining concession title for metallic minerals no. 403001, conferring to ENAMI EP the right "to prospect, explore, exploit, benefit, smelt, refine, commercialize and mine closure of the metallic mineral substances that may exist and be obtained in the area called "Llurimagua"; this, without carrying out any type of prior consultation with the communities located in the area of influence of the concession, in any way, reason for which, it is not even possible to analyze the compliance with the standards that allow the realization of such right. On the other hand, while the right was violated ab initio for not having consulted the decision to grant the mining concession from the initial stages, it was violated again when on December 16, 2014, the MAATE, granted an environmental license to ENAMI EP for the advanced exploration phase within the Llurimagua concession, without previously consulting the communities located in the area of possible affectation of the project. It is crucial to understand that the socialization process carried out by MAATE prior to the granting of the environmental license was not an environmental consultation process nor can it be passed off as such, because it simply did not comply with the elementary standards established by the above mentioned regulations; for example: a) The information made available to certain members of the affected communities was not adequate or sufficient to inform about the risks derived from the exploration of metallic minerals in the area b) The socialization did not even pretend to inquire about the risks derived from the exploration of metallic minerals in the area c) The socialization did not even pretend to inquire about the risks derived from the exploration of metallic minerals in the area; and d) The socialization did not even pretend to inquire about the risks derived from the exploration of metallic minerals in the area.*

the majority opinion of the communities located in the project's area of influence; it only gathered the random opinion of certain community members; c) The socialization did not take place within a reasonable timeframe; to such an extent that, as can be seen in the process report, in certain cases, community members complained because the EIA, of approximately 1000 pages, was uploaded to the MAATE web page with little time in advance of the meetings organized on site; d) Neither in the socialization nor in the report prepared by MAATE officials were the principles of good faith, transparency, preventive, precautionary, intergenerational equity and maximum publicity taken into account or mentioned. The violation of this right has been ratified and confirmed not only by the inhabitants of the area, and the Comptroller General of the State, but also by the socio-environmental facilitators themselves; 2 of which were not duly accredited; who, on their own account, in relation to the socialization process, indicated that "prior consultation does not apply".

In this regard, from the documentation in the file and that has been accredited for the first instance hearing we have been able to verify the Environmental License granted on December 16, 2014 by the Ministry of Environment in whose Resolutive part it is stated "Art.1 Approve the "Ex-ante Environmental Impact Study and Environmental Management Plan for the advanced exploration phase of metallic minerals of the LLURIMAGUA Mining Area (Cod.403001) located in the province of Imbabura, on the basis of official communication No. MAE-SCA-2014-2901 of November 11, 2014 and on the basis of technical report No. 621-14-ULA-DNPCA-SCA-MA of November 07, 2014, sent by memorandum No. MAE-DNPCA-2014-2175. MAE-DNPCA-2014-2175 of November 11, 2014; and in accordance with the coordinates established in the Intersection certificates issued through Official Letter No. MAE-DNPCA-2012-1086 of July 30, 2012 and its update through Official Letter No. MAE-DNPCA-2014-0940 of June 16, 2014. Art. 2. To grant the Environmental License to Empresa Nacional Minera ENAMI EP for the advanced exploration phase of metallic minerals in the LLURIMAGUA Mining Area (Code 403001), located in the province of Imbabura. Art. 3 The enabling documents submitted to reinforce the environmental evaluation of the project shall become an integral part of the "Ex-ante Environmental Impact Study and Environmental Management Plan for the advanced exploration phase of metallic minerals in the LLURIMAGUA mining area (Code 403001), located in the province of Imbabura, in the province of Imbabura. 403001) located in the province of Imbabura, the same that must be strictly complied with, otherwise, the suspension or revocation of the Environmental License will proceed as established in articles 68 and 69 of Ministerial Agreement No. 074 published in Official Gazette No. 063 of August 21, 2013...". In point 5 of this license and as an obligation of the National Mining Company, it has been foreseen among other aspects: "(...) To incorporate in the Annual Compliance Audit (...) The development of the **socialization** of the study approved by this Portfolio of State to the mentioned communities before the beginning of the project activities". That is to say, although it is true, a process of "**socialization**" has been contemplated, this is not the same as an "**environmental consultation**"; because SOCIALIZE in simple words of the RAE is "To promote the social conditions that favor the equal development of all people or the extension of a certain thing to the whole society". For example, "socialize the health policy", "socialize the mining policy"; that is, to make citizens aware of the existence of these State policies that at some point have to be applied in that State; but this is not the same as telling the citizens, "gentlemen, as of tomorrow, mining activity will begin in this area, you have been warned", or "as of tomorrow we will vaccinate the entire population to prevent winter diseases"; a health or mining policy in the examples indicated, when they are going to be implemented, imply other ways of sharing with society, with the community; because there will be people who agree to be vaccinated and others who do not; some will accept mining and others will not, and those ways of thinking, it is the State's obligation to respect them; and if it wishes to convince the community about the positive aspects of it, then it must respect them.

The State must work efficiently and effectively to reach the people and convince them that its implementation is positive; but not only the positive, it is also necessary to make them aware and ask them about the negative aspects of its implementation and the ways in which they must be remedied in case of health or environmental damage; This way of "convincing" should not be with "improper offers" or taking advantage of a population sector neglected by the State to offer "Christmas baskets" every year, or a soccer field, or even offering the construction of a university in the Intag area, generating expectations that in the end can cause much more damage than the implementation project itself, much less dividing a community.

The **Constitutional Court of Ecuador** has been very prolific in developing the content of this right and so, in **sentence 1149-19-JP/21** in the Los Cedros Case, it has specified the relevance of its observance in the processes that may affect the environment. Among its main aspects we can mention the following paragraphs:

*"In addition, **environmental consultation is a participatory mechanism that may contribute in certain cases to the application of the precautionary principle.** For example, the adoption of **effective protective measures may arise from the consultation**, or it may help to **identify risks.** This aspect will be reviewed in greater detail below when analyzing environmental consultation."*

*In this sense, the **rights of individuals, peoples and communities are seriously compromised when the rights of nature have been affected in an arbitrary, disproportionate and unreasonable manner.** Thus, for example, high levels of air, water and soil pollution, erosion, drought or other anthropogenic impacts on nature inevitably affect the exercise of the right to health, life, personal integrity, the right to water, food, and other economic, social and cultural rights and, in general, the different dimensions of the life of human beings".*

The Constitution establishes citizen participation in matters of public interest as a right in itself (art. 61 CRE), as a **constitutional guarantee of other rights** (art. 85 CRE), an **environmental principle** (art. 296 CRE) and an **objective that conditions the constitutional development regime** (art. 276). This right is also included and developed in the block of constitutionality." (Footnote refers to "art.

7.2 of the Escazú Agreement obliges the Ecuadorian State to guarantee public participation on "decisions (...) that have or may have a significant impact on the environment, including when they may affect health").

*In order for a **community**, whether rural or urban, to **be subject to environmental consultation**, it is not required that it possesses a property title, nor state recognition through some kind of registration. It **is only required that the state decision** or authorization, as indicated in the Constitution, "**may affect the environment**" of said community."*

277. Article 398 of the Constitution also refers that "the law shall regulate (...) the consulted subject". Article 82 of the Organic Law of Citizen Participation (LOPC) reiterates what is established in the Constitution, while Article 184 of the COAM provides that "the Competent Environmental Authority shall inform the population that could be directly affected about the possible implementation of projects, works or activities, as well as the possible expected socio-environmental impacts and the relevance of the actions to be taken...".172 In Ruling No. 22-18-IN/21, this Court declared that "Article 184 of the Organic Code of the

Environment does not apply or replace the right to **prior, free and informed consultation** of indigenous communes, communities, peoples and nationalities; and will be constitutional provided that its purpose and content is interpreted and complemented with the constitutional norm that establishes the right to environmental consultation, **the jurisprudence of the Court on applicable prior consultation, the rules of the Escazú Agreement and with the provisions of this judgment, which determine the elements necessary to guarantee this right**".

It is worth mentioning that Article 184 of the Organic Environmental Code establishes that "in the **mechanisms of social participation there will be environmental facilitators**, who will be evaluated, qualified and registered in the Single Environmental Information System". These **facilitators are professionals in free practice, with no relationship of dependence with a public or private institution**, which the MAAE recognizes as qualified and registered for the coordination of the processes of social and citizen participation. The Court also highlights that, in judgment No. 22-18-IN/21, it declared the conditional constitutionality of Article 184 of the COAm, stating the following: "**the challenged norm will be constitutional as long as it is interpreted and complemented with the provisions of this judgment, the jurisprudence on prior consultation as applicable**, the constitutional norm that establishes the right to environmental consultation and with **the norms of the Escazú Agreement**, which establish the **necessary elements to guarantee this right**".

290.- "In order for **environmental information to be accessible, the State must eliminate barriers** of any kind that prevent the community from knowing the information on the State decision or authorization that may affect the environment. Access to environmental information in the possession, control or custody of the State **is a right in itself**. (Note: refers to the Escazú Agreement, articles 5.1 and 5.2). The right to access environmental information must be guided by the principle of **maximum publicity and includes**: "(a) to **request and receive information** from the competent authorities without the need to mention any special interest or justify the reasons for the request; (b) to **be promptly informed** whether or not the requested information is in the possession of the competent authority receiving the request; and (c) to **be informed in an expeditious manner** whether or not the requested information is in the possession of the competent authority receiving the request. (c) **be informed of the right to challenge** and appeal the non-delivery of information and of the right of appeal. requirements to exercise this right".

The **right of access to environmental information obliges the State to inform the consulted community through** appropriate means, which include **written, electronic or oral means**".

Clarity implies that the information presented to the community should be understandable and formulated in language that is neither technical nor obscure. If necessary, it should be translated when dealing with communities where Spanish is not the majority language."

294. "**Information is objective when its content is formulated in value-neutral language and is not emotionally charged**. That is to say, when it is not suggestive and does not seek to manipulate or vitiate the consent of the subject consulted".

Complete environmental information, according to Article 7.6 of the **Escazú Agreement**, includes **elements** such as: **the type or nature of the environmental decision** in question and, where appropriate, in **non-technical language**; the **authority responsible for the decision-making process and other authorities and institutions involved**; the **procedure foreseen for public participation**, including the start and end date, the **mechanisms** foreseen for such participation, and, where appropriate, the **places and dates of consultation or public hearings**; and the **public authorities** involved that **may be required** to participate.

further information on the environmental decision in question, and the procedures for request the information."

297.- **"The State**, through its competent authorities, **must ensure that the consulted community is informed**, at least, of the following aspects: **the nature, size, pace, reversibility and scope of any State decision or authorization; the reason for and purpose of the decision or authorization; the duration of the authorized project or activity; the location of the areas that will be affected; a preliminary assessment of the likely environmental impacts, including potential risks; the personnel likely to be involved in the implementation of the decision or authorization; and, the technical and legal procedures that the decision or authorization may entail.**"

In Judgment No. 22-18-IN/21, the Court stated that **"the Escazú Agreement, which complements what is recognized in the Constitution**, establishes: a. The objective of 'guaranteeing the full and effective implementation of the rights of access to environmental information, public participation in environmental decision-making processes and access to justice in environmental matters... contributing to the protection of the right of each person, of present and future generations, to live in a healthy environment and to sustainable development...'"

299.- **"The environmental consultation must inform the community in a timely manner.** According to Article 398 of the Constitution, environmental consultation is a "prior consultation" to the State decision or authorization. Article 7, paragraph 4 of **the Escazú Agreement obliges the State to adopt measures to ensure participation** "from the initial stages of the decision-making process, so that the observations of the public are duly considered." Paragraph 5 of the same article establishes that **public participation procedures must contemplate "reasonable time periods** that allow sufficient time to inform the public and for them to participate effectively.

Regarding the **obligation to provide ample information**, the Court verifies that the **documents provided by the legal defendants do not prove that accessible, clear, complete and objective information** on the nature, size, pace, reversibility and scope of the authorization issued through the Environmental Registry **was socialized**. The information provided by the defendants **also does not give an account of the reason and purpose of the environmental registry, the duration of the project or the initial exploration activity authorized, its possible risks or the probable impacts** of this environmental authorization. Therefore, the Court considers that the MAAE did not comply with the obligation to inform in a comprehensive manner, expressly provided for in Article 398 of the Constitution."

Furthermore, the interpretation of the **MAAE restricts the right to participate in environmental matters "from the first stages of the decision making process"** and **"from the initial stages of the decision making process"**, as established in the **Escazú Agreement**, and from "planning", as established in article 395 numeral 3 of the Constitution. This aspect evidences another connection with the precautionary principle, since participation must take place precisely before initiating a risky activity on the environment, whose impact is uncertain from a scientific perspective".

From all that is constant in the first instance file from folios 830 onwards, we have attached, firstly, the environmental license granted on December 16, 2014 to ENAMI-EP Company by the Ministry of Environment, with the content of its obligations that we said above, and the corresponding letters of approval of the Semi-Annual Reports from 2015. What do we find "novel" in these

reports and approval documents? It is the same company benefiting from the concession that has "obligated" itself to monitor its mining activity in Llurimagua, and obviously, we have not found anything that reports on impacts or precautionary processes to prevent impacts to nature in the Llurimagua sector; However, all of these six-monthly documents state *"That the technical and legal requirements established in the current environmental regulations have been met, in this sense, this Undersecretariat **accepts** the Semiannual Environmental Monitoring and Follow-up Report on the Environmental Management Plan for the Llurimagua mining concession (Cog.403001)".* Elementary legal science tells us that, at least, it is not ethical that "the same beneficiary can control himself" in a process of large-scale mining extractive activity, which may harm communities in their natural environment (Nature), even if the environmental license has "obliged him to do so".

But let's go to what concerns us in the analysis of the violation of the right to environmental consultation. In the Environmental Impact Study that appears on folios 874, the baseline "Socioeconomic and Cultural Component" includes a description of the communities and a Social Participation Process (PPS) in the Llurimagua Mining Project (folios 1202-1301) in which, in point 7.5.2, the only objective is to *"Determine the current state of both the direct and indirect area of influence of the project. The specific objective is to identify the socioeconomic and cultural conditions of the local population, social actors, their interests and the state of relations between the actors and authorities with the company".* As we can see, nothing is said about the right to environmental consultation to the communities, but only to see in what socioeconomic and cultural conditions they are in. In Table 7-194 we can establish that there are 11 communities in the area of influence of the mining project, and in Table 7-197 the **"Interviews"** to 24 people, as follows: 5 people are interviewed on September 14, 2013 (Chalguayacu Alto); after 8 months of this first interview, in a period 7 days between May 12 and May 20, 2014, 19 more people are interviewed, as follows: 3 people on May 12 (La Magnolia); 3 people on May 13 (Chalguayacu Bajo) ; 5 people on May 14 (2 from Cuchilla Marian and 3 from Garcia Moreno); 1 person on May 15 (Peñaherrera); 3 people on May 18 ((La Armenia); 1 person on May 19 (Chalguayacu Alto); and, 3 people on May 20 (Santa Alicia). This is not environmental consultation, but as the mining company ENAMI EP itself, has done, they are only **INTERVIEWS** for the preparation of its Impact Study and Environmental Management Plan, for the advanced exploration phase of metallic minerals of the mining concession No. 403001 Llurimagua, Llurimagua. 403001 Llurimagua, which establishes the violation of this right provided for in Article 398 of the RC, as it has not been complied with, based on the guidelines that the Constitutional Court has analyzed in the sentence above; that is, that the community has been consulted on the intervention in its natural environment by the State Mining Company; but, the environmental consultation not only has to do with this presupposition but also with the community being able to have access to the environmental information, through the elimination of barriers of any kind that prevent the community from knowing the information about the decision or state authorization that may affect the environment. *"The right to access environmental information must be guided by the principle of **maximum publicity and includes:** "a) to **request and receive information** from the competent authorities without the need to mention any special interest or justify the reasons for which it is requested; b) to **be promptly informed** whether or not the requested information is in the possession of the competent authority receiving the request; and c) to **be informed of the right to challenge** and appeal the non delivery of information and of the requirements to exercise that right".* These do not exist. Now, the defendants have presented as opposing issues to the present protection action, the fact that the referred judgment cannot be applied retroactively and that it is not of the same nature of the Los Cedros case.

In this regard, the Court of the Chamber states the following:

Of course, the Los Cedros Case is different in that the protection action in that case had as its objective the protection of the protective forest, while the present case is to prevent large-scale metallic mining in the Llurimagua sector; but the Court has agreed that the two cases tend to protect nature as a living entity and subject of rights. If nature is life, then any rule or jurisprudence is perfectly applicable retroactively, due to the quality of the right it protects. The allegation that if there was no such sentence at the time the environmental license was granted, this does not mean that the authorities, administrative, judicial or of any order, omit compliance with the constitutional obligation set forth in Article 11.3 of the Constitution of the Republic "3. *The rights and guarantees established in the Constitution and in the international human rights instruments shall be of direct and immediate application by and before any public servant, administrative or judicial, ex officio or at the request of a party. For the exercise of constitutional rights and guarantees there shall be no conditions or requirements that are not established in the Constitution or the law. The rights shall be fully justiciable. No lack of legal norm may be alleged to justify their violation or disregard, to dismiss the action on those facts or to deny their recognition*". The Ecuadorian State has provided for environmental consultation in Article 398 of the Constitution of the Republic of 2008, that is, in the domestic legal system we have provided for this right prior to the year 2014 that the environmental license is granted by the Ministry of Environment, and no legal regulation is needed for its application.

It is important to note that the United Nations Conference on Sustainable Development (Rio +20) held in the city of Rio de Janeiro, Brazil, in June 2012, which Ecuador attended, produced the document called "***The future we want***" containing clear and practical measures for the implementation of sustainable development focusing on two main issues: the green economy in the context of sustainable development; and poverty eradication and the institutional framework for sustainable development. Among the numerous measures, the member states agreed to initiate a process to develop sustainable development objectives that would be based on the Millennium Development Goals that should converge with the Post-2015 Development Agenda. It is for this reason that Ecuador along with 16 other countries in the region (Argentina, Brazil, Chile, Colombia, Costa Rica, Guatemala, Honduras, Jamaica, Mexico, Panama, Paraguay, Peru, Dominican Republic, St. Vincent and the Grenadines, Trinidad and Tobago and Uruguay, on November 4, 2013 in Lima-Peru, signed the "***Declaration on the Implementation of Principle 10 of the Rio Declaration on Environment and Development in Latin America and the Caribbean***". This Declaration, promotes access to information, participation and justice in environmental matters; it provides a common vision on the values that should inspire a future convention or regional instrument on this matter. "***Equality, inclusion, transparency, proactivity, collaboration, progressivity and non-regressivity***" were the seven fundamental principles agreed upon. Therefore, it is not possible to speak of normative absence or prohibition of jurisprudential retroactivity, if the pillars or fundamental principles that support the right of the communities to environmental consultation, existed not only at the national level but also at the international level, and it was an obligation of the Ecuadorian environmental administrative authority, its mandatory compliance, prior to the granting of the environmental license to the National Mining Company ENAMI EP on December 16, 2014, and by omitting to carry out this environmental consultation (not surveying) to the 11 Communities of influence of the mining project called "Llurimagua, that right was violated.

- **ON THE RIGHT OF NATURE TO HAVE THE STATE ADOPT THE NECESSARY PRECAUTIONARY AND RESTRICTIVE MEASURES TO PREVENT THE EXTINCTION OF SPECIES.**

The Ecuadorian State has recognized nature as a "subject of rights", which constitutes a major paradigm shift at the regional level in terms of its care and protection. The rights of nature, like the rest of the rights enshrined in the Constitution, are inalienable, unrenounceable, indivisible, interdependent, of equal hierarchy and of obligatory protection. *"The analysis of their violation must transcend the legal sphere, because it may well be possible that there are cases in which, despite the existence of the pertinent environmental permits, violations to the rights of Nature are generated; inasmuch as such permits may have been granted violating rights"*, says in its core part the sentence No. 166-15-SEP-CC.

From the review of the Environmental Impact Study, which we did supra, for the purposes of the environmental consultation, we have also been able to ascertain that the instruments and methods for inventorying species in the area of influence of the mining project have not been sufficient to identify other species that inhabit the area. That the same samples of the identified species have not been sufficient to inventory them. Nothing is said about endangered or potentially endangered species such as the **"rediscovery of the snout-nosed frog in Junín"**. This was corroborated by the biologists who testified at the first instance hearing and who are listed above. Therefore, this right of nature as a subject of rights has also been violated.

IN CONCLUSION: The preparation of the Environmental Impact Study by the Ministry of Environment, which has served as the basis for the granting of the Environmental License to the Mining Company ENAMI EP on December 16, 2014, omitting the environmental consultation to the communities in the area of influence of the Llorimagua Mining Project, in the area of Intag in the province of Imbabura, violated the rights to environmental consultation and protection of nature as a subject of rights.

III. RESOLUTION

In merit of the foregoing, and based on the provisions of Article 24 of the Organic Law of Jurisdictional Guarantees and Constitutional Control, **ADMINISTERING CONSTITUTIONAL JUSTICE AND BY MANDATE OF THE CONSTITUTION OF THE REPUBLIC OF ECUADOR**, the Court of the Specialized Criminal, Military Criminal, Police Criminal and Traffic Court of the Provincial Court of Justice of Imbabura, issues the following:

SENTENCE

1. **DECLARE** that there is a violation of the rights related to the protection of nature and environmental consultation of the communities located in the area of influence of the Llorimagua mining project in the area of Intag , province of Imbabura, by the Ministry of Environment, Water, and Ecological Transition of Ecuador, by having granted the environmental license of December 16, 2014, on the basis of an Environmental Impact Study, in violation of the rights to be consulted on environmental issues and to the protection of nature of the aforementioned communities; and,
2. **REVOKING** the first instance sentence issued in writing on February 29, 2022 at 14h56 by Judge Oscar Alfredo Coba Vayas of the Multicompetent Judicial Unit.

The Court of Appeals of the Criminal Court of Cotacachi canton, and consequently, ACCEPT the action for protection filed by the plaintiffs in the present case.

3. **REMEDIES: Restitution:** 1. The Environmental License granted on December 16, 2014 by Resolution 864 by the then Ministry of Environment is revoked; and, 2. As a consequence, all mining activity in the area of influence of the Llurimagua Mining Project (Code. 403001) until the Mining Company ENAMI EP complies with all the mechanisms and guidelines foreseen for the ENVIRONMENTAL CONSULTATION in **sentence 1149-19-JP/21**, for the elaboration of a New Impact Study and Environmental Management Plan for the Advanced Exploration Phase of Metallic Minerals of the Llurimagua Mining Concession 403001 Llurimagua. To this end, the current Ministry of Environment, Water and Ecological Transition shall be notified of this decision. The beneficiary company of the Llurimagua mining concession, ENAMI EP, shall also be notified of the revocation of this license, so that, in the time it deems necessary, it may begin to comply with the provisions of this sentence.
4. Regarding the request of the Ministry of Energy and Non-Renewable Natural Resources for the expiration of the Resolution by which the mining title has been granted to Empresa Minera ENAMI EP, this Court considers that it does not have the legal authority to do so, and it will be the Ministry itself who, based on the corresponding administrative regulations and this judgment, will take the necessary measures for the validity or not of the same.
5. The judge of first instance is in charge of the execution and compliance with the decisions of this sentence, and will follow up on this matter, requesting the necessary reports as appropriate.

In this way, the appeal filed by the plaintiffs is resolved. There is no cause among those provided for in Article 109.7 of the Organic Code of the Judicial Function that merits such a declaration, since this revocation is due to the effects that the right of challenge produces by the filing of the appeal. However, the judge of instance is kindly informed that the rules of evidence of the COGEP are not applicable in constitutional matters, due to their informality. The clerk shall comply with the legal provision of sending a copy of this sentence to the Constitutional Court - **NOTIFY AND COMPLY.**

f: CERVANTES RAMIREZ LUZ ANGELICA, JUDGE; FIGUEROA GUEVARA SOFIA, JUDGE; ALVEAR FLORES JAIME EDUARDO, JUDGE