



# THE DEFEND THEM ALL FOUNDATION

Case Number: COTO-BCBVC-2020-01

August 28, 2020

Submitted by: Defend Them All Foundation

Addressed to: Señores/as Jueces de la Corte Constitucional del Ecuador

## **Amicus Curiae in Support of Plaintiff's Acción de Protección Illincocha**

Lindsey Zehel (US Passport number XXXXXXXXX), on behalf of the Defend Them All Foundation (EIN 82-5196560), located at 25 NW 23<sup>rd</sup> Place, Suite 6-310, Portland, Oregon, United States, presents this amicus brief to the Honorable Constitutional Court of Ecuador in the case No. COTO-BCBVC-2020-01 for the purpose of providing information on the impacts that the mining practices at issue would have on the biodiversity of the páramos of Azuay.

### **Background on Defend Them All Foundation and our Interest in this Case**

The Defend Them All Foundation is a nonprofit organization dedicated to improving the legal protections of animals and their habitats. In furtherance of this aim, Defend Them All Foundation works directly with advocates in target localities, including Ecuador. The organization is independent and non-partisan. It receives no money, either directly or indirectly, from any government. It is headquartered in Portland, Oregon, United States.

Since 2015, the Defend Them All Foundation has led an annual study abroad externship program in Cuenca for law students with an interest in environmental law and policy. As the first country to constitutionally guarantee the Rights of Nature, Ecuador has served as a unique, inspiring platform for the next generation of passionate advocates. The steady erosion of these hopeful principals in favor of competing interests has been disheartening to observe over these years. However, we maintain hopeful that the tenacity of Ecuador's citizens determined to safeguard these important places and their inhabitants will prevail.

### **Purpose and Summary of this Submission**

On June 23, the Meritorious Cuenca Fire Department began construction work within the Illincocha sector of Cajas National Park – a sensitive area known around the world for its rich biodiversity and beauty. Despite having the highest “National Park” conservation category within the National System of Protected Areas, the work was allowed to proceed without compliance with constitutional, regulatory, and administrative requirements. The careless errors and omissions that lead to this result are a direct violation of Nature Rights enshrined within Ecuador's Constitution.

Significant impacts are inherent with construction of any level within the páramos. This simple understanding has informed legal and regulatory policies that have in large part preserved these unique habitats and their inhabitants for current and future generations.

The porous andosol soils that make up the paramo ecosystem have evolved from volcanic ash deposits over millions of years. Páramos play an essential role in water regulation of wide-

ranging regions through interconnected water balancing components.<sup>1</sup> The complex hydrology of the páramos is not well-understood, but what is known is that they provide a home for many species and a vital source of water to all living beings downstream.<sup>2</sup>

These unique soils are home to approximately 157 species of birds, 8 of which are endemic; 44 species of mammals that represent 10.30% of the total species in Ecuador; 5 species of reptiles that represent 48% of those of the Andean floor; 18 species of amphibians, equivalent to 37% of those of Andean floor; 572 species of flora, distributed in 266 genera and 93 families, of these species 453 are native and 106 endemic. In addition to the abundance of animal and plant species, there also exists 30 registered archaeological sites (Suárez, 2005).

Article 71 of Ecuador's Constitution grants Nature "the right to integral respect for its existence and for the maintenance and regeneration of its life cycles, structure, functions and evolutionary processes." For Nature to persist, ecosystems must maintain their biodiversity. For biodiversity to persist, individual species must continue thriving. For species to thrive, individual members of those species must have an ecosystem that supports their welfare. This interrelated well-being – from individual organisms to entire ecosystems – is the "vital cycles, structure, [and] functions" that Nature has a right to maintain.

### **Recommendation**

Considering the sensitivity and importance of this protected area and its inhabitants, any construction, including the use of heavy 4x4 vehicles and machinery designed to strip and remove layers of soil and sensitive vegetation – even in individual isolation, directly violate the rights recognized in Article 71.

The egregiousness of these actions is further underscored by the particular credentials of the responsible parties – the very institutional bodies charged with the protection of Cajas National Park are those approving this detrimental project. Rather, these parties should be ensuring a comprehensive respect for the Rights of Nature as well as maintaining and restoring this unique ecosystem.

For all of the reasons above, and the reasons detailed in Plaintiff's brief, we urge the court to adopt this protective action and demand remedies suggested.

Respectfully submitted,

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<sup>1</sup> *Feasibility Study* at 302; Valladares, C. & Boelens, R., *Mining for Mother Earth: Governmentalities, sacred waters and nature's rights in Ecuador*, 100 *Geoforum* 68, 70 (2019).

<sup>2</sup> *La Granja: Revista de Ciencias de la Vida*, 28(2) 2018:52-66.