

GUILLERMO LASSO MENDOZA
CONSTITUTIONAL PRESIDENT OF THE REPUBLIC

WHEREAS:

Articles 1, 317 and 408 of the Constitution of the Republic of Ecuador establish that the non-renewable natural resources found within State territory are the inalienable and perpetual property thereof, and are not subject to the statute of limitations; and that, in managing them, the State will prioritize the intergenerational process, the conservation of nature, the collection of royalties or non-tax contributions and company participation while minimizing negative environmental, cultural, social and economic impacts; and the State must receive profits from the exploitation of these resources in a portion that is no less than what the company exploiting them receives;

Numbers 5 and 7 of Article 3 of the Constitution of the Republic of Ecuador establish that the State has the fundamental responsibility of promoting the sustainable development and equitable distribution of resources and wealth, as well as protecting the country's natural and cultural heritage;

Article 15 of the Constitution of the Republic of Ecuador establishes that the State will promote the use of environmentally friendly technologies and non-contaminating and low-impact alternative energies in the public and private sectors. Energy sovereignty will not be achieved in detriment to food sovereignty, nor shall it affect water rights.

Article 57 of the Constitution of the Republic of Ecuador recognizes and ensures the following collective rights of the indigenous peoples, communities, races and nations: to participate in the use, usufruct, administration and conservation of renewable natural resources on their lands, and the right to be previously consulted, in a free and informed manner, within a reasonable term, about the plans or programs for the prospection, exploitation and sale of non-renewable resources on their lands, which could environmentally or culturally affect them;

Article 147 of the Constitution of the Republic of Ecuador establishes the responsibilities and duties of the President of the Republic of Ecuador, including: "(...) 3. To define and direct the public policies of the Executive Branch. (...) 5. To direct public administration with a lesser concentration of power, and issue the necessary decrees for its integration, organization, regulation, and control.";

Number 11 of Article 261 of the Constitution of the Republic of Ecuador establishes that energy, mineral, and oil resources come under the exclusive responsibility of the central Government;

Article 313 of the Constitution of the Republic of Ecuador establishes that the State, in accordance with Article 1 of the Mining Law, reserves the right to administrate, regulate, control and manage strategic sectors, according to the principles of environmental sustainability, care, prevention and efficiency, including the energy sector in all of its forms, non-renewable natural resources, and the transportation and processing of metallic and non-metallic minerals;

Article 316 of the Constitution of the Republic of Ecuador establishes that the State may exceptionally delegate its activities in strategic sectors to private initiatives and to the public and solidary economy;

Article 317 of the Constitution of the Republic of Ecuador establishes that the State, in managing its non-renewable natural resources, shall prioritize the intergenerational process, the conservation of nature, the collection of royalties or non-tax contributions and company participation while minimizing negative environmental, cultural, social and economic impacts;

Article 395 of the Constitution of the Republic of Ecuador establishes that the State shall guarantee a model that promotes sustainable development and environmental balance while respecting cultural diversity, conserving biodiversity and the natural regenerative capacity of ecosystems, guaranteeing that the needs of present and future generations will be met; that the policies of environmental management will be applied transversally, and compliance thereof shall be obligatory for the State at all levels, and by all legal entities and individuals in national territory; and that the State shall guarantee the active and permanent participation of affected peoples, communities, races, and nationalities in the planning, execution, and control of all activities that cause environmental impacts;

Article 398 of the Constitution of the Republic of Ecuador establishes that every decision or state authorization that could affect the environment must go through a process of community consultation whereby community members will be informed thereof in a timely and thorough manner. The consulting party shall be the State. The law will regulate the previous consultation process, public participation, duration of the process, the consulting party, and the criteria of evaluation and objection regarding the activity that is being consulted.

Article 4 of the Mining Law states that the President of the Republic has the responsibility and duty of defining and directing the mining policy; and to develop, implement, and apply said policy, the State will work through the Respective Ministry;

The Mining Law regulates the exercise of the sovereign rights of the Ecuadorian State to administrate, regulate, control, and manage the strategic mining sector under the principles of sustainability, care, prevention, and efficiency; and in Chapters I, II, III and IV of Section IV, it establishes the obligations of mining titleholders in terms of employment and labor, environmental conservation, social management, community participation and consultation, and royalty payments;

Article 6 of the Mining Law states that the National Mining Policy will tend to promote innovation, technology, and research at all levels so as to allow for the endogenous development of the sector. For this process, the respective Ministry will coordinate actions with post-graduate science and technology programs in the country by

establishing development, technical training, and financial assistance mechanisms for the sustainable development of the mining industry in the country;

Article 7 of the Mining Law states that the Respective Ministry shall present the National Development Plan for the mining sector to the President for his or her consideration;

Letter i) of Article 7 of the Mining Law, and point 4 of the Regulation to the Mining Law state that the Respective Ministry is responsible for creating Consultation Councils that allow for the public to participate in the decision-making process for mining policies through development, technical assistance, training, financial aid, and environmental incentive mechanisms to promote the sustainable development of the mining industry in the country and more efficient productive units.

Based on the guarantee included in the Mining Law regarding undertaking activities in different systems, Article 137 of the Mining Law mentions that, with the aim of promoting full employment, eliminating underemployment and unemployment, promoting productivity and competitiveness, and gaining scientific and technical knowledge, the State, through private initiatives, cooperatives, and public and solidary associations, shall promote the development of the national mining industry under special laws for small-scale mining;

The 2020 – 2030 National Development Plan for the Mining Sector is based on the following pillars: 1. Economic development seeking to position the mining sector as a relevant industry in the national economy; 2. Environmental and social sustainability by adopting good environmental practices and promoting the development of the areas of influence of projects through participation and dialogue; 3. Research and development through research, innovation, transparency and entrepreneurship to promote the development of the mining sector; 4. Management and Administration; 5. Regulation, control and implementation of measures to combat illegal mining, strengthening the administration and its presence in at-risk sectors; 6. Regulations that guarantee legal certainty for the development of sound public policy;

The current national and international economic situation requires the National Government to look for viable alternatives to explore and exploit, in a rational and environmentally sustainable manner, the non-renewable natural resources found underground in order to allocate the income from such activities to social programs to combat poverty and promote the economic development of the country, ensuring that the revenue resulting from said activities are distributed legally and equitably;

By means of Official Letter No. MEF-VGF-2021-0646-O, dated July 22, 2021, the Ministry of Economy and Finance issued a favorable opinion on the Executive Decree on Mining Sector Policies;

In exercise of the powers granted under numbers 3, 5 and 6 of Article 147 of the Constitution of the Republic of Ecuador, Article 4 of the Mining Law, and letters a), b), c) and f) of Article 11 of the Statute of the Legal and Administrative System of the Executive Branch,

DECREES:

Article 1.- To issue the Action Plan for the Mining Sector of Ecuador.

Article 2.- The State will create and articulate public policies to promote the development of the mining sector, national and foreign investment, and an increase in exports of mining products. To do so, the criteria of efficiency, effectiveness, transparency, and environmental and social responsibility shall be observed, with a focus on innovation and sustainability; and guaranteeing legal certainty for investments, governance and energy sovereignty.

Article 3.- The Action Plan for the Mining Sector of Ecuador has the primary objective of developing efficient and environmentally and socially responsible mining, assessing the local geological potential, promoting national and foreign investment, and implementing the best practices for the exploitation of these resources.

This Plan will provide the framework necessary to guarantee the legal certainty enshrined in the Constitution, which respects pre-existing rights such as contracts and rights previously acquired and signed with the Ecuadorian State, thus avoiding future contingencies, as well as the implementation of an inter-institutional strategy on eradicating illegal mineral exploitation and its environmental and social impacts in favor of legal and responsible mining.

Article 4.- Within the next 100 days, the Ministry of Energy and Non-Renewable Natural Resources must take the following actions with the support of the other competent State entities and related industry stakeholders:

- a) On a national level, publish and distribute the conditions under which legal and responsible mining must be carried out in the country for the benefit of communities and the general public, and with respect and care for the environment. Said distribution will include the following pillars and must be focused on providing clear and transparent information on: (i) the benefits received from mining and the conditions in which mining activities are carried out, especially in the communities within the area of direct influence of projects; (ii) the taxes collected from mining and the programs implemented for the benefit of the communities and the general public; (iii) the implementation of technical mining training programs in the areas of direct and indirect influence of the projects using coordination mechanisms with direct and indirect industry stakeholders; (iv) distribution of public mining policy to promote the conditions of governance and governability necessary for mining projects to be successfully undertaken.
- b) Facilitate and promote regulations on the processes of prior, free and informed consultation of indigenous peoples and nationalities in cases where government decisions or authorizations may affect their territories, in accordance with the guidelines set by the Constitutional Court of Ecuador in its respective rulings and judgments.
- c) Design a comprehensive strategy for preventing and combating illegal mineral exploitation throughout national territory, and determine the sanctions applicable

to illegal mining activities, guaranteeing due process and reinforcing the monitoring, control, intervention and enforcement capabilities of the institutions that have regulatory and control authority.

- d) Work together with the Ministry of the Environment, Water and Ecological Transition so that the appropriate measures are adopted to ensure that previous administrative acts and other environmental and water permits related to the mining industry are issued in a timely manner and do not hinder investment commitments made by mining titleholders.
- e) Instruct the National Mining Company ENAMI EP to take actions to develop and facilitate agreements of association so that private investors can participate in the projects under its responsibility.
- f) Promote and distribute statistics and projections of the mining sector in order to measure the potential economic impact that mining would represent for Ecuador in the future. To do this, a long-term economic model will be used whereby average profitability for the State is identified in terms of its contribution to Ecuador's GDP, exports, national and foreign investment, production levels, environmental and social costs, and operational and post-operational costs, among other relevant aspects.
- g) Promote transparent and equitable negotiations between the State and the mining titleholders that guarantee the economic, legal, social and environmental conditions necessary to promote mining in Ecuador.
- h) Strengthen the institutional framework of the entity responsible for the regulation, control and administration of mining rights with the purpose of improving administrative processes and complying with the principles of efficiency and effectiveness of the public administration.
- i) Take legal and regulatory actions, and actions regarding public policy and control of the mining sector that are necessary to improve the administrative processes that result from mining activities, in order to guarantee legal certainty under the precepts set forth in the Constitution of the Republic, preventing the discretion or arbitrariness of public officials in the interpretation of contracts and in other administrative actions.
- j) Provide optimal technical and legal conditions to prevent conflicts and controversies from arising; and when they do, conflict resolution will be encouraged through friendly mechanisms such as direct or assisted negotiations, protecting the interests of the State.

Article 5.- The National Government will monitor compliance with current regulations and current public policies in the mining sector. It will also promote the adoption of, and compliance with, international codes, protocols, agreements, declarations and instruments in each of the mining phases, determining factors for the responsible development of the sector, as well as the obligatory commitment of all parties involved.

The National Government shall guarantee that national regulations and international conventions will be respected, thus providing legal certainty and guaranteeing respect for the responsibilities and authorities of State institutions and strict compliance with the Constitution of the Republic of Ecuador and legal regulations applicable to the matter.

Article 6.- The National Government will provide incentives for adopting responsible social and environmental practices, as well as absolute respect for labor rights and access to complaint mechanisms established in the national regulatory framework, thus strengthening the institutional control of the State in the mining sector.

Article 7.- The transparency of information on revenue from the mining sector, as well as how it is used and assigned, is hereby established as State policy. Additionally, the mandatory publication and distribution of this information by public institutions and by private companies and stakeholders must be guaranteed.

Article 8.- The State undertakes to eradicate illegal mineral exploitation, which has a negative impact on the national economy, nature, the health of communities and the legal certainty of the titleholders of existing mining rights. It will do so through coordinated interventions in national territory, especially in areas where access is limited, promoting the participation and collaboration of different State institutions that are responsible for mining control and public security of the State.

Article 9.- Have the Agency for the Regulation and Control of Energy and Non-Renewable Natural Resources prepare, within a period of three months starting from the date of issue hereof, a detailed report on mining rights under the systems of large-scale mining, medium-scale mining, small-scale mining and artisanal mining that have been granted and are in force in Ecuador.

The report must contain at least the following information: metallic and non-metallic mining concessions, artisanal mining permits, free use authorizations, processing plant authorizations, operation contracts, exploitation contracts, mineral sale licenses, and/or any other corresponding mining rights, including mining cadastre registration details, effective dates or other information considered relevant to the objective of promoting and applying public policy in the mining sector under the principles of State efficiency, coordination and responsibility. This report must be sent to the President of the Republic.

The report will also indicate the current status of the technological tool used for the mining registry, and will specify any immediate technical and financial needs so that the necessary legal certainty, transparency and efficiency can be provided in the process of granting mining concessions.

Article 10.- Within 90 days of the date of issue hereof, have the Ministry of Energy and Non-Renewable Natural Resources implement a plan of action, together with the Agency for the Regulation and Control of Energy and Non-Renewable Natural Resources, that includes the development of a technological tool that fulfills the conditions necessary to ensure that mining rights are correctly managed, with the aim of guaranteeing the integrity of current and future mining rights, promoting new national and foreign investment, creating more jobs, and increasing tax collection for the State. Once this action plan has been implemented, the Mining Cadastre will be reopened in accordance with the parameters established by law for such purposes.

Article 11.- Within three months of the date of issue hereof, have the Agency for the Regulation and Control of Energy and Non-Renewable Natural Resources prepare an annual control plan with guidelines and schedules for all mining rights in the country. This plan must be submitted to the President of the Republic.

Article 12.- Within four months of the date of issue hereof, have the Ministry of Energy and Non-Renewable Natural Resources prepare and implement a formalization plan for artisanal miners, observing pertinent legal regulations and guaranteeing the legal certainty of pre-existing mining rights. This plan must be submitted to the President of the Republic.

Article 13.- Within three months of the date of issue hereof, have the Ministry of Energy and Non-Renewable Natural Resources modify the Instructions for Granting Metallic Mineral Concessions for the granting of metallic mining concessions and expired areas or areas that have been returned or reverted to the State, in order to establish conditions that guarantee fair and equitable treatment of local and international mining stakeholders. The Ministry of Energy and Non-Renewable Natural Resources must issue clear guidelines to the different regional offices to avoid the unnecessary duplication of administrative procedures and guarantee legal certainty and security for stakeholders.

Article 14.- Have the Ministry of Energy and Non-Renewable Natural Resources expedite strategic and second-generation mining projects, ensuring that the sector is managed in a timely manner and, within a month of the date of issue hereof, issue a report on the investments committed to and effectively made in all of these projects, including those that are currently in the exploration phase. This report must be sent to the President of the Republic.

Article 15.- Within one month of the date of issue hereof, have the Ministry of Government convene the Special Commission for the Control of Illegal Mining -CECMI- in order to prioritize the urgent intervention in areas where illegal mineral exploitation is currently ongoing in the country. At the decentralized level, provincial governments shall take the actions necessary to fulfill this Action Plan within the framework of their powers.

Article 16.- Within one month of the date of issue hereof, have the Ministry of Energy and Non-Renewable Natural Resources send the project for creating the public-private Mining Consultation Council, which will have the objective of promoting public participation in the organized development of public mining governance, to the Office of the President of the Republic.

TEMPORARY PROVISIONS

FIRST. - Within two months of the date of issue hereof, the Ministry of Energy and Non-Renewable Natural Resources will issue the other guidelines and other technical provisions required to implement the Action Plan, which must be reported to the General Secretariat of Public Administration and the President's Cabinet.

SECOND.- Within two months of the date of issue hereof, the Ministry of the Environment, Water and Ecological Transition, together with the Ministry of Energy and Non-Renewable Natural Resources, will jointly review the processes for granting permits, authorizations, records, audits, licenses and other administrative acts related to the mining sector that are in process and pending, and will order the pertinent actions to prioritize

these processes. They will also implement an immediate action plan to ensure that pending processes are completed within a maximum of three months.

Fulfillment of this provision will be reported to the General Secretariat of Public Administration and the Office of the President, and in the event that it is not fulfilled, the pending process, the grounds for non-compliance, and the official responsible for such process must be reported.

THIRD.- Within two months of the date of issue hereof, the Ministry of the Environment, Water and Ecological Transition, together with the Ministry of Energy and Non-Renewable Natural Resources, will issue an Inter-ministry Agreement within the framework of their authority and under the principle of coordination and cooperation, to efficiently and timely grant the environmental and water permits that strictly comply with environmental and water regulations, optimizing times for issuing them and prioritizing ex-post controls. In this Agreement, clear guidelines will be established to avoid delays in completing administrative procedures and to avoid infringing upon the rights of the applicant due to not receiving timely attention.

FOURTH. - The Secretariat of Public Administration and the President's Cabinet, as well as the Minister of Energy and Non-Renewable Natural Resources, as the governing body of public policy on mining, will coordinate with the competent State institutions to carry out all of the actions necessary to implement and undertake this Action Plan; therefore, all State institutions involved will provide priority attention and support.

FIFTH. - Within 30 days of the date of issue hereof, the Ministry of the Environment, Water and Ecological Transition, together with the Ministry of Energy and Non-Renewable Natural Resources, will prepare a Ministry Agreement regarding granting the prior administrative act set forth in Article 26 of the Mining Law, referring to effects on water resources and on the order of priority of access to water, for which the principle of efficiency, effectiveness and simplification of administrative procedures must be considered.

FINAL PROVISION. - The execution of this Executive Decree, which will enter into effect on the date it is signed regardless of the date it is published in the Official Gazette, is entrusted to the Ministry of Energy and Non-Renewable Natural Resources and the other State institutions that, as part of their responsibilities, must carry out actions related to compliance with the provisions hereof.

Given in the National Palace, in Quito, on August 5th, 2021.

GUILLERMO LASSO MENDOZA

CONSTITUTIONAL PRESIDENT OF THE REPUBLIC OF ECUADOR