



# Peru: Recent Environmental Law Reforms

November 2008

LL File No. 2008-001390  
LRA-D-PUB-001166

This report is provided for reference purposes only.  
It does not constitute legal advice and does not represent the official  
opinion of the United States Government. The information provided  
reflects research undertaken as of the date of writing.  
It has not been updated.

## LAW LIBRARY OF CONGRESS

### PERU

## RECENT ENVIRONMENTAL LAW REFORMS

### *Executive Summary*

*The US-Peru Trade Promotion Agreement (TPA)<sup>1</sup> commits the parties to effectively enforce their own domestic environmental laws and adopt, maintain and implement legislation to comply with the obligations under multilateral environmental agreements. This report addresses both the accomplishments as well as the pending reforms needed to comply with the commitments undertaken under the TPA by the Peruvian government on environmental law matters*

### **I. Introduction**

The Peru-United States Trade Promotion Agreement (TPA) is expected to become effective on January 1, 2009, once implementation is completed. The TPA includes an environmental chapter which;

- requires the effective enforcement of environmental laws;
- encourages high levels of environmental protection;
- prohibits the weakening of environmental laws to attract trade or investment; and,
- ensures fair, equitable and transparent proceedings for the administration and enforcement of environmental laws.

The TPA also;

- establishes mechanisms for public participation and access to environment related information;
- creates a council on environmental affairs, with a mechanism that enables any citizen to submit inquiries or petitions; and,

---

<sup>1</sup> Trade Promotion Agreement, Peru-, US-Peru, April 12, 2006, U.S.T.R (2006), *available at* [http://www.ustr.gov/Trade\\_Agreements/Bilateral/Peru\\_TPA/Final\\_Texts/Section\\_Index.html](http://www.ustr.gov/Trade_Agreements/Bilateral/Peru_TPA/Final_Texts/Section_Index.html)

- makes a commitment for cooperation between the two countries in the area of environmental affairs.<sup>2</sup>

The TPA also reasserts the obligations of the parties to adopt maintain and implement laws, regulations, and other measures to fulfill their obligations under the following selected multilateral environmental agreements:

- Convention on International Trade in Endangered Species of Wild Fauna and Flora ( 1973)<sup>3</sup>;
- Montreal Protocol on Substances that Deplete the Ozone Layer ( 1987)<sup>4</sup>;
- Protocol of 1978 to the International Convention for the Prevention of Pollution from Ships, 1973 (1978)<sup>5</sup>;
- Convention on Wetlands of International Importance Especially as Waterfowl Habitat (1971)<sup>6</sup>;
- Convention on the Conservation of Antarctic Marine Living Resources (1980)<sup>7</sup>;
- International Convention on the Regulation of Whaling (1946)<sup>8</sup>; and,
- Convention for the Establishment of an Inter-American Tropical Tuna Commission (1949).<sup>9</sup>

---

<sup>2</sup> *Id.*, chapter 18.

<sup>3</sup> Convention on International Trade in Endangered Species of Wild Fauna and Flora Mar. 3, 1973, World Conservation Unit IUCN, available at <http://www.cites.org/>

<sup>4</sup> Montreal Protocol on Substances that Deplete the Ozone Layer, Sept. 16, 1987, United Nations Environmental Program, available at [http://ozone.unep.org/Publications/MP\\_Handbook/Section\\_1.1\\_The\\_Montreal\\_Protocol/](http://ozone.unep.org/Publications/MP_Handbook/Section_1.1_The_Montreal_Protocol/).

<sup>5</sup> Protocol of 1978 to the International Convention for the Prevention of Pollution from Ships, 1973 Oct. 12, 1978, International Maritime Organization, available at [http://www.imo.org/Conventions/mainframe.asp?topic\\_id=258&doc\\_id=681](http://www.imo.org/Conventions/mainframe.asp?topic_id=258&doc_id=681).

<sup>6</sup> Convention on Wetlands of International Importance Especially as Waterfowl Habitat, Feb. 2, 1971, U.N.T.S. 14583, available at, [http://ramsar.org/index\\_very\\_key\\_docs.htm](http://ramsar.org/index_very_key_docs.htm).

<sup>7</sup> Convention on the Conservation of Antarctic Marine Living Resources, May 20, 1980, Antarctic Treaty System, available at <http://eelink.net/~asilwildlife/antarctic1980.html>. See also <http://www.ccamlr.org/pu/e/gen-intro.htm>.

<sup>8</sup> International Convention on the Regulation of Whaling, Dec. 2, 1946, International Whaling Commission, available at <http://www.iwcoffice.org/commission/convention.htm>

<sup>9</sup> Convention for the Establishment of an Inter-American Tropical Tuna Commission, May 31, 1949, IATTC, available at <http://www.iattc.org/homeeng.htm>.

The TPA annex on Forest Sector Governance commits both Peru and the United States to combat trade associated with illegal logging by increasing enforcement personnel and imposing stricter criminal and civil penalties for illegal logging. It also strengthens enforcement of the right of indigenous communities to manage their lands. In addition, the TPA creates a mechanism to audit and verify violations of environmental standards.<sup>10</sup>

## II. Implementation Challenges

One of the primary challenges of a trade promotion agreement such as the TPA is its effective implementation. Enforcing of environmental laws and multilateral environmental agreements, strengthening the power of the Ministry of the Environment (which was recently created<sup>11</sup>) and the Forestry Authority to control illegal logging are key elements in assessing the success of the TPA. To this end, the Peruvian government was expected to secure adequate funding and give sufficient independence to the Environmental Secretariat to administer the reporting process for citizens. Indigenous and local communities must also be allowed to participate in a transparent and public decision making process regarding their lands and the environment.<sup>12</sup>

Peru has accordingly taken a number of legislative measures to implement the commitments entered into under the Trade Promotion Agreement with the United States (TPA).<sup>13</sup> In order to speed up the implementation process, the Peruvian Congress approved Law 29157<sup>14</sup> on December 18, 2007 empowering the Executive to enact legislation to implement of the TPA. This law required the Executive to adopt the necessary laws within 180 days. The laws were to be with regard to several trade related topics, including, the institutional strengthening in the area of environmental management; and improvement of competitiveness of agricultural production.<sup>15</sup>

## III. Framework of Environmental Laws

According to the National Constitution<sup>16</sup> and the General Law of the Environment,<sup>17</sup> the basis of environmental policy is the protection of the environment and natural resources, for the improvement of the citizen's quality of life and the achievement of sustainable development.

---

<sup>10</sup> US-Peru TPA, *supra* note 1 at Annex 18.3.4.

<sup>11</sup> LEGISLATIVE DECREE NO. 1013 of 13 May, 2008, CREATING THE MINISTRY OF THE ENVIRONMENT in E.P. 14 May 2008.

<sup>12</sup> CIEL Marcos Orellana Center for International Environmental Law February 28, 2008.

<sup>13</sup> US-Peru TPA, *supra*, note 1

<sup>14</sup> LAW 29157 ON DELEGATION TO THE EXECUTIVE OF LEGISLATIVE POWER IN MATTERS RELATED TO THE TRADE PROMOTION AGREEMENT WITH THE US, of 18 Dec. 2007, in E.P. 20 Dec. 2007.

<sup>15</sup> *Id.*, art. 2.1

<sup>16</sup> CONSTITUCION POLITICA DEL PERU ( C.N.), Nomos & Thesis, Lima, 2006.

<sup>17</sup> LEY GENERAL DEL AMBIENTE, LAW 28611 of 13 Oct., 2005, in El Peruano ( E.P.) 15 Oct. 2005.

Environmental administration is based on the Sistema Nacional de Gestión Ambiental – SNGA (national system of environmental management). The SNGA was headed by Consejo Nacional del Ambiente – CONAM (national council of the environment) until the creation of the Ministry of the Environment (MINAMB)<sup>18</sup> in May of 2008, which integrated all environmental agencies from national, regional and local governments. The primary purpose of the MINAMB is to communicate the work of all agencies in the SNGA to the public and to oversee the environmental sector. MINAMB has the authority to design, establish, and execute government policies concerning the environment, issue environmental permits and control compliance with environmental regulation in all other sectors having a potential impact on the environment, (e.g. mining, agriculture).

The MINAMB has two sub-directorates: the Strategic Development of Natural Resources and the Environmental Management. It also has an advisory commission. The advisory commission is headed by two deputy ministers; one for strategic development of natural resources, including the rainforest; and the other for environmental management.<sup>19</sup>

Although MINAMB's responsibilities include the monitoring of industrial wastewater emissions and industrial water use, it will not have authority over water management. The Agriculture Ministry will be in charge of water, through the recently created National Water Authority.<sup>20</sup>

The above agencies play the most important role in Peru regarding enforcement of environmental law. However, in the case of the mining and energy activities, there is a special agency for control and supervision on environmental matters called *Organismo Supervisor de la Inversión en Energía y Minería* - OSINERGMIN.<sup>21</sup>

Local governments are mainly focused on managing environmental matters related to domestic and commercial affairs within the area of their jurisdiction (district or province). Regional governments were recently created in Peru, and the decentralization process should be completed during the present year. It is possible that the regional governments will gradually assume more environmental responsibilities than they currently have.<sup>22</sup>

Within its competencies, each ministry manages an environmental control system. The system operates on the basis of periodic on-site controls and environmental audit of operations, as well as special examinations, such as environmental accidents. Environmental agencies can impose corrective measures and penalties for non-compliance with environmental obligations.

---

<sup>18</sup> L-D 1013, *supra* note 12, arts. 11 and 12.

<sup>19</sup> L-D 1013, *supra* note 12.

<sup>20</sup> L-D 1013, *supra* note 12.

<sup>21</sup> D-L 1013, *supra* note 12.

<sup>22</sup> EL MINISTERIO DEL AMBIENTE TENDRA AMPLIAS FACULTADES PARA SANCIONAR, in *El Comercio* (E.C.) 14 May 2008 available at <http://www.elcomercio.com.pe/ediciononline/HTML/2008-05-14/el-ministerio-ambiente-tendra-amplias-facultades-sancionar.html> (last visited 10/24/2008).

MINAMB's authorities are legally obliged to facilitate public access to environmental information under their control. Any person is entitled to access this kind of information without expression of cause or justification. However, public access to information related to industrial, technological or commercial secrets, among others, is restricted by law.<sup>23</sup>

#### IV. Water

Decree Law 1081 creating the National System on Water Resources<sup>24</sup> was adopted in furtherance of the implementation of the TPA. It supports the economic competitiveness for a better use of the water resources. The decree creates the National Authority on Water, who will be responsible for the issuance of rules and regulations for the management of water resources in Peru.<sup>25</sup>

#### V. Crimes against the Environment

On September 23rd, 2008, the Criminal Code of Peru<sup>26</sup> was amended by Law 29263 to tighten the penalties for infringement of environmental laws, such as trafficking with endangered species, damage to forests or illegal logging. Under the new provisions of the Criminal Code, illegal logging will be sanctioned by imprisonment of three to six years. With the passage of this law, which will become effective on January 2009, the implementation of the TPA would be considered completed on the Peruvian side of the agreement.<sup>27</sup>

In addition to increasing the criminal sanctions for illegal logging, the new law imposes penalties. Four to six years of imprisonment is imposed for contamination of the environment.<sup>28</sup> Three to five years of imprisonment is mandated for those who traffic in wild animals or plants or illegally extract aquatic species.<sup>29</sup> The criminal liability of the perpetrator or the financier of illegal logging is still unclear under the new legal text.<sup>30</sup>

---

<sup>23</sup> The International Comparative Legal Guide ENVIRONMENTAL LAW, 2008, Peru, Global Legal Group, available at <http://www.lclg.co.uk>.

<sup>24</sup> DECREE LAW 1081 CREATING THE NATIONAL SYSTEM ON WATER RESOURCES of 27 June, 2008 in E.P. 28 June, 2008.

<sup>25</sup> CREAN AUTORIDAD DEL AGUA, in Peru.com Economia Online, 13 March, 2008 available at [http://www.peru.com/finanzas/docs/2008/3/13/DetalleDocumento\\_491193.asp](http://www.peru.com/finanzas/docs/2008/3/13/DetalleDocumento_491193.asp) (last visited 10/31/08).

<sup>26</sup> LAW 29263 ON THE AMENDMENT OF THE CRIMINAL CODE AND THE LAW ON THE ENVIRONMENT of 23 Sept. 2008 in E.P. 2 Oct. 2008.

<sup>27</sup> CONGRESO ENDURECE LAS PENAS CONTRA LA TALA ILEGAL Y PIRATERIA, El Comercio, 5 Sept. 2008 available at <http://www.elcomercio.com.pe/ediccionimpresa/Html/2008-09-05/congreso-endurece-penas-contrata-ilegal-y-pirateria.html> (last visited 10/23/2008).

<sup>28</sup> Law 29263, *supra* note 22, arts. 304 and 305.

<sup>29</sup> Law 29263, *supra* note 22, art. 308.

<sup>30</sup> *Supra* note 23. Congreso endurece las penas...

## VI. Forestry

The Amazon rainforest covers almost a third of Peru and is highly prized by companies seeking to exploit the lax enforcement regime to harvest precious hard woods like mahogany. For many years, ecologists have expressed deep concern over the rapid depletion of Amazon biodiversity and estimate that, at the present rate of deforestation, the basin, home to an incredible array of flora and fauna, could be harmed beyond repair in coming decades.<sup>31</sup>

The environment and interior ministries in Peru have announced plans to set up a special task force to safeguard forests and monitor the rivers in the Amazon basin. This special force will be made up of approximately 3,000 officers to be known as the Environment Police. The force will oversee 373,000 square kilometers of Amazon rainforest and patrol rivers to combat illegal logging and the unauthorized clearing of forest. According to the Environment Minister this issue has to be treated as a problem of organized crime, morality and oversight. On June 27<sup>th</sup>, 2008, a new Law on Forest and Wildlife was adopted.<sup>32</sup> This new provision governs the forestland that covers over half of the nation's area was adopted and is expected to have global implications. Peru has the second-largest tract of forest land in Latin America, the eighth largest in the world, and 92 percent of its forests are in the biodiverse and hardwood-rich Amazon basin.<sup>33</sup>

The new Law on Forest and Wildlife removes barriers to the protection of the national forest that existed under the law to protect the national forests.<sup>34</sup> This is done by allowing forestry concessions to private companies for up to 40,000 hectares of land for up to forty years.<sup>35</sup> Under the former law only 5,000 hectares of land were allowed to be given in concession. Environmentalists objected to the fact that although the law does not allow the sale of the forest, a concession of such magnitude-up to 40,000 hectares- and for such a long period- 40 years- negates any real difference.<sup>36</sup>

Decree-Law 1090 redefines the “national forest patrimony” and lifts protections against logging and other forms of exploitation.<sup>37</sup> The Congress of Peru is already considering the amendment or repeal of this Decree-Law which national and regional communities and

---

<sup>31</sup> TLC y biodiversidad, A. Brack Epp, available at <http://www.educared.edu.pe/directivos/articulo/406/tratado-de-libre-comercio-y-biodiversidad> (last visited 11/17/08)

<sup>32</sup> DECREE-LAW 1090 ADOPTING THE NEW LAW ON FORESTRY AND WILDLIFE of 26 June 2008 in E.P. 28 June, 2008.

<sup>33</sup> ALERTA ROJA FORESTAL, EL DECRETO LEGISLATIVO QUE PONE EN JAQUE LA IMPLEMENTACION DEL TLC, Revista caretas, 17 July 2008, available at <http://www.caretas.com.pe/Main.asp?T=3082&id=12&idE=785&idSTo=446&idA=33984> (last visited 10/28/08)

<sup>34</sup> PERU: CON DECRETO, GARICA IMPULSA “LEY DE LA SELVA”, in Biodiversidad en America Latina, 10 July 2008 available at <http://www.biodiversidadla.org/content/view/full/42422> (last visited 10/31/08)

<sup>35</sup> D-L 1090, *supra* note 29, art. 9.

<sup>36</sup> Peru: Con Decreto, *supra* note 31, p. 2.

<sup>37</sup> D-L 1090 *supra* note 29, arts. 11-15.



environmentalists oppose because of the complete disregard for social or cultural sustainability in its provisions.<sup>38</sup>

## VII. Indigenous Land

Another controversial measure was Decree Law 1015<sup>39</sup>, passed by the executive branch in May 2008. The purpose of this measure was to simplify the privatization and sale of communal lands held by indigenous and farming communities. Communal land, essential to indigenous traditional way of life, had previously been protected by a law requiring a two-thirds majority in Congress to authorize any land sales. However, Decree Law 1015 reduced this requirement to a simple majority in order to encourage the sale and subsequent exploitation of the land by foreign and domestic companies.<sup>40</sup>

In early August 2008, indigenous communities and human rights groups responded by taking to the streets, blocking major roads and bridges and occupying key energy plants in Peru's southeastern and northern regions. Following two weeks of demonstrations, the Peruvian Congress repealed Decree 1015 by passage of Law 29261<sup>41</sup> on September 27<sup>th</sup>. With this action they restored the two-thirds majority rule. While the repeal was certainly a substantial victory for Peru's indigenous population, it was only one small step forward among many leaps backward.

President García, who considered the decision to revoke 1015 “a serious historical mistake,” has since passed a number of other decrees that threaten the integrity of the rich biodiversity of the country and the livelihood of the people who depend on it.<sup>42</sup>

Most of the new laws passed in furtherance of the implementation of the US-Peru TPA, appear to be directed to facilitate the exploitation of the country's land and resources by international corporations. This appears to be the case with Legislative Decree 1064<sup>43</sup> that eliminates the right of landowners to negotiate with oil and mining companies on the use of their land. Pre-existing law required that companies attempt to reach an agreement with property owners in order to buy or rent their land for commercial use. Only if negotiations failed could companies turn to the government, specifically the Ministry of Mines and Energy, to force

---

<sup>38</sup> PERU: DENUNCIAN NUEVA LEY FORESTAL Y DE FAUNA SILVESTRE POR ATENTAR CONTRA LOS BOSQUES, Servindi, 9 July, 2008 available at <http://www.servindi.org/archivo/2008/4290> (last visited 10/31/08).

<sup>39</sup> DECREE-LAW 1015 ON THE TREATMENT OF COMMUNAL LANDS HELD BY INDIGENOUS AND FARMING COMMUNITIES, of 19 May, 2008, available at <http://www.educared.edu.pe/directivos/articulo/406/tratado-de-libre-comercio-y-biodiversidad> in E.P. 20 May. 2008.

<sup>40</sup> PERU: INDIGENOUS OCCUPATIONS END WITH VICTORY IN CONGRESS, in The Dominion Paper, of 23 Aug. 2008 available at <http://www.dominionpaper.ca/weblogs/sandra/2001> (last visited 11/17/08).

<sup>41</sup> LAW 29261 REPEALING DECREE LAWS 1014 AND 1073, of 20 Sept. 2008 in E.P. 21 Sept. 2008.

<sup>42</sup> CAN FREE TRADE BE FAIR?., *supra* note 11.

<sup>43</sup> DECREE LAW 1064 ON THE USE OF LAND FOR AGRARIAN ACTIVITIES, of 26 June, 2008 in E.P. 28 June 2008.

owners to sell their land. Decree 1064 cuts out the land owners completely, leaving the entire negotiation process in the hands of the government.<sup>44</sup>

Both Decree Laws 1090 and 1064 were objected to even by the U.S. Trade Representative, who recently, among other objections made, requested the Peruvian government to change this legislative instrument to include more participation by the Peruvian society and a stronger control over the forestry concessions.<sup>45</sup>

### VIII. Final Remarks

Although the U.S.-Peru TPA is based on the premise of higher compliance with domestic and international environmental standards, it is critical to consider the social, economic and political reality Peru is facing. Indigenous and farmer populations will have to be considered in the process of implementation of the TPA with regard to the environment in order to achieve the benefits that motivated both countries to enter into this agreement. It is now up to the Peruvian Congress to clarify some of the legislative measures taken by the government and make the necessary changes and adjustments in order to have a fully operational agreement.

During the first six months of 2008, President Alan García enacted a total of 102 Legislative Decrees designed to harmonize national laws with the conditions laid down by the FTA. In response, much of the Peruvian press, as well as many politicians and activists have criticized the government for adopting these decrees which, from their perspective, are actually detrimental to labor, the environment, the agricultural industry, and indigenous rights. In addition, the Peruvian Congress' Constitutional Commission recently declared approximately forty percent of the decrees to be unconstitutional.<sup>46</sup>

Prepared by  
Graciela Rodriguez-Ferrand  
Senior Foreign Law Specialist  
Law Library of Congress  
October 2008

---

<sup>44</sup> EXPERTOS PIDEN QUE NORMAS PARA EL TLC SEAN REVISADAS CON CALMA, in *El Comercio*, 22 Oct. 2008, available at <http://www.elcomercio.com.pe/edicionimpresa/Html/2008-10-22/expertos-piden-que-normas-tlc-eeuu-sean-revisadas-calma.html> (last visited 10/31/08).

<sup>45</sup> LEY TALADA, E.E.U.U. RECHAZA CONTROVERSIAL LEY FORESTAL NECESARIA PARA IMPLEMENTAR TLC in *Caretas* of 9 Oct. 2008 available at <http://www.caretas.com.pe/Main.asp?T=3082&id=12&idE=797&idSTo=82&idA=35519> (last visited 10/31/08) and PERU: HASTA E.E.U.U. RECHAZA LOS DECRETOS LEGISLATIVOS in *Bilaterals.org* of 4 Oct. 2008 available at <http://peruverde.net/blog/2008/10/07/hasta-eeuu-rechaza-decretos-legislativos> (last visited 11/17/08)

<sup>46</sup> CAN FREE TRADE BE FAIR? LESSONS FROM THE PERU-U.S. FREE TRADE AGREEMENT, Council on Hemispheric Affairs, 9 Oct. 2008 available at <http://www.coha.org/2008/10/can-free-trade-be-fair-lessons-from-the-peru-us-fta/> 9 last visited 10/31/08).