

IMPLEMENTATION OF FORESTRY COMMITMENTS CONTRADICT THE FTA: L.D. N° 1090



Legislative decrees for the implementation of the FTA forestry annex put Amazon forests at risk¹

- For the implementation of the FTA, the Peruvian government has promulgated several legislative decrees that make it possible to change the use of the forestry lands, further weakening already fragile Peruvian regulations.
- Legislative Decrees N° 1090 y N° 1064 are the most dangerous as together they allow forest areas that has been deforested to become “agrarian land” or “fallow land” that can be used for other activities that are not forestry-related.

Despite the importance of the forestry annex, the implementation of the FTA carried out by the Peruvian government puts the sustainability of the forests at risk. These decrees have been approved without any prior consultation and no citizen participation. Among them, L.D. N° 1090, corresponding to the new forestry and wild fauna law, will replace the current law N° 27308 promulgated in July 2000, which was a product of a long process of debate and consensus.

Legislative decrees permit a change in the use of forestry lands

In the implementation process, legislative decrees have been considered that allow deforested land with a capacity for forestry use to be considered fallow land and therefore, turned over for agrarian use.

- L.D. N° 1090 excludes land with a capacity for forestry use from the concepts of forestry resources and national forestry assets and therefore the land is considered like any other land for agrarian use, under L.D. N° 1064.
- L.D. N° 1064 only protects the forestry use of those lands with vegetation coverage and allows land with a capacity for forestry use that has been deforested to be considered fallow. Once considered fallow land, L.D. N° 994 is applied and therefore only its land titling for agrarian use is promoted.
- L.D. N° 1089 establishes an extraordinary and temporary regime to formalize rural property as long as it demonstrates farming activities.

INFO

In Peru more than 50% of our territory is forest and deforestation is the leading cause of greenhouse gas emissions, leading to climate change

The new forestry law is unconstitutional and does not meet the commitments of the forestry annex in the FTA

Several articles in L.D. N° 1090, the New Forestry and Wild Fauna Law, violate the responsibilities and role that Regional Governments are assigned under the framework of the Constitution and the General laws. It fails to take into account higher-ranking legislation and assigns a role that currently corresponds to regional

¹Hugo Che Piu, Executive Director of Derecho, Ambiente y Recursos Naturales-DAR.

authorities, to the Ministry of Agriculture, and the Body to Supervise Forestry Resources and Wild Fauna. As a result, it affects the decentralization process and the transfer of roles that Peru has been implementing for the past several years, weakening the forestry management of regional authorities.

The legislative decrees do not elevate the political authority of the forestry authority, despite the fact that this constitutes, not only a consensus among business people, environmentalists, indigenous organizations and academics from the Peruvian forestry sector, but a commitment in the framework of the FTA itself.

In the FTA, Peru committed itself to strengthening the institutional capacity for the fulfillment of the Forestry Law and the international trade in forestry products. However, this commitment is not adequately represented in the decrees that have been promulgated. L.D. N° 997, N° 1013 and N° 1090 that develop forestry issues, do not clearly demonstrate the political level that will be assigned the forestry authority and also fail to include the proposal for the creation of a Vice Ministry for Forestry, put forward by diverse sectors.

- Despite the recent changes in legislation related to illegal logging, there has been no real improvement in the punishment.
- The regulation suspends illegal logging until 2009.

Ombudsman warns that L.D. N° 1090 puts Amazon forests at risk²

The Ombudsman³ in its report N° 027-2008-DP/ASPMA.MA affirms that this decree affects the indicated forests, concluding among other things the following:

- There is no certainty about which body will be responsible for the different roles that INRENA has been carrying out up until now, or the hierarchical level it will have in the agricultural sectors.
- CONAFOR has been eliminated, which was the mechanism that allows citizen participation in forestry policy decisions.
- “The measures adopted in L.D. N° 1090, together with the uncertainty of environmental governance surrounding forestry and the lack of regulations that guarantee their application only in lands apt for forestry that do not currently have forest coverage, could lead to deforestation of the primary forest to increase the number of hectares of land that fit this description.” (page 14)
- It allows the legalization of lumber of controversial origin, which could encourage illegal behavior. Regarding the L.D. N° 1090 Regulations, published on the INRENA web site it warns that it will “weaken the mechanisms that ensured the sustainable use of forestry plantations and maintains uncertainty regarding the applicable usage regime for lands whose capacity for greatest use is forestry.” (page 14)

The Ombudsman is clear in the warning of danger for the forests in our country and therefore L.D. N° 1090 should be immediately repealed in order to ensure adequate implementation of the FTA.

² In: <http://www.defensoria.gob.pe/inform-varios.php>

³ The Ombudsman is an autonomous constitution body of the state whose mandate is to defend the rights of the individual and the community as well as to supervise fulfillment of the duties of the state administration and the provision of public services. At the request of the President of the Congressional Commission on Andean, Amazon, Afro Peruvian Peoples, Environment and Ecology, Congressman Róger Nájjar Kokally, the Ombudsman issued an opinion about D.L. N° 1090. This report is available in: <http://www.defensoria.gob.pe/inform-varios.php>

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