

Environmental governance in legislative decrees

of the implementation of the FTA Perú - EE.UU.

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1. Introduction

During the first semester of 2008, the Peruvian government promulgated ninety-nine (99) legislative decrees thanks to the delegation of faculties it was granted in December 2007 by the Congress of the Republic, in order to implement some themes linked to the Trade Promotion Agreement signed between Peru and the United States, known as the FTA.

However, principally from different sectors of our society, some doubts have emerged regarding the benefits and contributions of these legislative decrees, as well as regarding their legality and effective link to the commitments contained in the above mentioned FTA. As a result, to date there are up to three working groups within Congress itself reviewing these decrees from different perspectives. At the same time, several review processes are being carried out by civil society organizations and this present report is the product of one of those reviews.

In order to carry out a more integrated analysis, the present document begins with a brief analysis of the law that delegates the Executive Power the faculty to legislate on diverse material related to the implementation of the Peru – U.S. Trade Promotion Agreement and to support economic competitiveness in order to take advantage of it, Law 29167. This norm establishes several conditions for the adequate implementation of this delegation, principally regarding periods, legal framework, material and its strict link to the commitments of the FTA and the corresponding measures related to economic competitiveness.

As a result, it is not an open and general delegation but, to the contrary, Congress established conditions that the Executive Power must fulfill in a joint, integrated fashion and a lack of fulfillment of any one of these conditions on the part of any of these legislative decrees implies the illegality of the regulation or the need to base it on a legal procedure that is different from Law 29157 for its validity.

At the same time, this document incorporates a brief list of the main commitments agreed upon by Peru and the United States in this FTA – specifically in the Environmental Chapter of this commercial agreement and Annex 18.3.4. regarding management of the Peruvian forestry sector. At the same time, it demonstrates a brief analysis of its contents. This analysis makes it possible to more clearly identify the level of commitments that both countries assume for the development of their environmental policies and regulations in the face of the commercial and investment commitments contained within the FTA.

Moreover, the hope is that this work makes it possible to identify the need to improve the commitments and contents of the environmental chapters in commercial agreements that the Peruvian signs with other states or economic blocks in the future.

Of the total number of approved legislative decrees, twenty-three (23) of those that strictly refer to environmental issues have been more closely reviewed, together with

fourteen (14) decrees that refer to other material linked to the environmental issue¹. However, the present document is focused on providing information solely about the decrees related to environmental governance and at the same time, those related to the management of forestry resources, land for agrarian use and water resources respectively.

As a result, the document briefly develops some of the background to these regulations, emphasizes some of the more noteworthy and controversial contents of these legislative degrees and ends by proposing some conclusions regarding their legality and their link to the FTA, as well as some recommendations for the solutions of the problems and gaps that have been identified. For an easier, orderly reading this report also presents a summary of the conclusions and recommendations that have been reached.

The aim of this document is to provide information about these decrees in a more systematized and organized manner and at the same time, it seeks to contribute elements for a participatory debate about the environmental governance and management the country requires, about the need for an adequate management of water and our forests, and above all the need to develop a legislation that ensures the public and private management of land with full respect for the pre-existing rights of indigenous peoples and other local populations. We hope that the conclusions will also make it possible to identify proposals to solve the problems that have been raised, and lead to the construction of participatory processes for the reformulation of this institutional and legal framework.

¹ See Annex.

2. Regarding the Legislative Decrees approved by the Peruvian Executive Power under the delegation of faculties of Law 29157²

Under the argument that it was necessary to adapt our legislation to the commitments assumed in the FTA with the United States, the Government of Peru requested that Congress grant it the faculty to legislate³ about diverse materials.

As a result, in December 2007 Congress approved Law 29157, in effect from January 01, 2008, under which the Executive Branch is granted the faculty to legislate about specific materials for 180 calendar days “...in order to facilitate the implementation of the Peru – United States Trade Promotion Agreement and its Amendment Protocol, and to support economic competitiveness for its use, within the framework of what is stipulated in the second paragraph, clause 4) of article 104 of the Political Constitution of Peru and what is established in clause d) number 1 of article 76 and article 90 of the Congressional Regulations.” (Our underline).

The specific material indicated in clause 2.1 of Law 29157 includes the following:

- Facilitation of trade
- Improving the regulatory framework, institutional strengthening, administrative simplification and modernization of the State.
- Improving the administration of justice in material related to trade and administrative litigation, for which the opinion of the Judicial Branch will be requested.
- Promotion of private investment
- Impelling technological innovation, improving quality and the development of skills.
- Promotion of employment and micro, small and mid-sized companies.
- Institutional strengthening of environmental management
- Improving the competitiveness of farming production.

At the same time, clause 2.2 of this regulation establishes another condition that indicates “The content of the legislative decrees will be strictly subject to the commitments of the Peru – United States Trade Promotion Agreement and its Amendment Protocol and the necessary measures to improve economic competitiveness for its use, without prejudice to the observation of the constitutional and legal dispositions...”⁴.(Our underline).

As a result, it is important to note that article 2 of Law 29157 clearly contains two requirements to be met by the Executive for the correct application of the delegated

² A more exhaustive report about these issues can be found in the one written by Francisco José Eguiguren Praeli in his “Informe Jurídico Análisis de la Conformidad Constitucional del Uso de la Facultades Legislativas Otorgadas por el Congreso al Poder Ejecutivo Mediante la Ley No. 29157”, from August 2008.

³ Regulations with the status of Law, issued by the Executive Power after the delegation of faculties by Congress.

⁴ Article 2.2 of Law 29157

faculties. The fulfillment of only one does not resolve the lack or absence of fulfillment of the other requirement. In effect, for the adequate implementation of this delegation of faculties, it is indispensable to not only fulfill the material defined in clause 2.1 of Law 29157, but it also requires that the legislative decrees be “*strictly*” linked to the FTA commitments with the United States and measures to improve the economic competitiveness necessary to take advantage of this commercial agreement and vice versa.

Anything that is not subject to the fulfillment of these conditions cannot be considered and consequently must be regulated outside of the exception regime of Law 29157.

As a result, according to several experts in constitutional material, an important number of the ninety-nine (99) legislative decrees approved by the Government of Peru under the delegation of legislative faculties, broadly exceed the faculties delegated by Congress and therefore are unconstitutional and illegal.⁵

Moreover, an important element to be considered is the legal and political responsibility of the cabinet of the current government, for failing to fulfill article 90 of the Congressional Regulations⁶, which establishes that the President of the Republic must render accounts to Congress or the Permanent Commission of the issued legislative decrees, within three days after their publication, an obligation that was not fulfilled and remains pending.

⁵ “... in analyzing the group of legislative decrees issued by the Executive Power, in application of the faculties delegated by Law 29157, **it is possible to confirm without great difficulty that there has been an extensive and abusive use of the terms of the contents of the delegation...**” Francisco Eguiguren, Legal Report “Análisis de la Conformidad Constitucional del uso de facultades legislativas otorgadas por el Congreso al Poder Ejecutivo mediante la Ley 29157”. August 05, 2008

⁶ Article 90 of the Congressional Regulation: “*Congress exercises control over the Legislative Decrees issued by the President of the Republic in use of legislative faculties referred to in article 104 of the Political Constitution, according to the following rules:*

- a) The President of the Republic must render accounts to Congress or the Permanent Commission of the Legislative Decrees under the legislative faculty, within three days after their publication.
- b) Once the circular and the dossier is received through which the President will render accounts regarding the legislative decree and at the latest one working day later, the President of Congress will send the file to the Congressional Commission of the Constitution and Regulations, or that which is indicated in the authoritative law, for its study.
- c) The informing commission will present a ruling in a period of no more than 10 days. Should the legislative decree or decrees contradict the Political Constitution or exceed the framework of the delegation of faculties granted by Congress, it will recommend its repeal or modification to modify the excess or contradiction, without affecting the political responsibility of the members of the Cabinet.”

3. Free Trade Agreement (FTA) signed between Perú and the United States

Negotiations for an FTA began in May 2004 as a response to the expiry of the ATPDEA, in place until December 2006. The FTA was signed by both parties in Washington, D.C. – USA on December 8, 2005, ratified by Peru on June 29, 2006 and definitively ratified by the United States on December 4, 2007.

The FTA, including its addendums, contains a Preamble and 23 chapters, as well as several annexes, attached letters, understandings and letters of Exchange. Chapter 18 refers specifically to the environmental issue, which contains general rules related to environmental legislation and biological diversity and an annex with detailed commitments regarding the issue of forestry lumber trade. It is Chapter 18 that has been more closely analyzed for the purposes of this report, identifying, among other issues, the following aspects of interest⁷:

- ❖ In order to identify the levels of environmental protection in the Framework of this agreement, both countries have recognized in article 18.1 in the environmental chapter of the FTA *“the sovereign right of each of the parties to establish their own levels of internal environmental protection and their environmental development priorities and therefore to adopt or modify their laws and environment policies, each party will aim to ensure that their laws and policies provide and stimulate high levels of environmental protection and will make every effort to continue improving their own levels of environmental protection (our underline).*
- ❖ Regarding the application and observance of environmental laws, article 18.3.1 of the FTA establishes that a party will not cease to apply its environmental legislation *“to fulfill their obligations under the covered agreements, through a course of sustained and recurring action or in-action , in a way that affects trade or investment between the parties, after the date this agreement comes into effect. (our underline)*
- ❖ For its part, article 18.3.2 indicates that *“...it is inappropriate to encourage trade or investment by weakening or reducing protections afforded in their respective environmental laws. Accordingly, a party shall not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such laws in a manner that weakens or reduces the protections afforded in those laws in a manner affecting trade or investment between the parties. (our underline).*
- ❖ Regarding biological diversity, both parties *“... will remain committed to promoting and encouraging conservation and the sustainable use of biological*

⁷ The commitments related to forestry material in the FTA will be analyzed when that issues is addressed in this report.

diversity and all of its components and levels, including plants, animals and habitats and reiterate their commitments in article 18.1”⁸ (Our underline).

- ❖ This chapter indicates the importance of multilateral environmental agreements, recognizing as a commitment from both parties, in this commercial agreement and specifically this environmental chapter, to adopt, maintain or legislate “...to meet their obligations under the multilateral environment agreements listed in annex 18.2 (covered agreements)”⁹, included in that list the following international environmental agreements.

- a) *“Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), given in Washington, March 3, 1973, amended;*
- b) *Montreal Protocol on Substances That Deplete The Ozone Layer, given in Montreal, September 16,1987, modified and amended;*
- c) *1978 Protocol Related to the International Agreement to Prevent Ship Contamination, given in London, February 17. 1973.*
- d) *Convention on Wetlands of International Importance as the Habitat for Aquatic Birds, given in Ramsar, February 2, 1971, amended.*
- e) *Convention on the Conservation of Antarctic Marine Living Resources, given in Canberra, May 20, 1980.*
- f) *International Convention for the Regulation of Whaling, given in Washington on December 2, 1946.*
- g) *Convention for the establishment of an Interamerican Tropical Tuna Commission, given in Washington May 31, 1949.*

- ❖ Regarding the issue of forestry sector governance, established in annex 18.3.4, both countries commit to combating trade linked to illegal logging and the illegal trade of wild fauna.

- ❖ Both countries are committed to cooperating in the application of the commitments assumed by the Peruvian government, including strengthening skills and other measures to promote the sustainable Management of forestry resources. The strengthening of skills could include:

- a) Strengthening the legal and institutional Framework of forestry property and the international trade of forestry products
 - Strengthening institutional skills for the fulfillment of forestry regulations and the international trade of forestry products.
- b) Improving the performance of the forestry concessions system.
- c) Increasing the participation of the public and improving transparency in decisions about the planning and management of forestry resources.

- ❖ Periodic audits will be established together with the verification of producers and exporters as well as the identification of observation measures, for which the processes and periods of the actions that each party must carry out have been identified in this annex.

⁸ Article 18.11.2 of the FTA Peru -US

⁹ Article 18.2 of the FTA Peru -US

- ❖ There is a commitment to work on the framework of CITES, establishing that none of the measures in this annex will limit the faculties of any of the parties to take measures consistent with their own laws in the application of CITES.
- ❖ A Sub-Committee on Forestry Sector Governance will be created to facilitate cooperation indicated in this annex and to encourage a forum to exchange opinions and information among the parties about any issue derived from the application of this annex. This sub-committee comes under the Merchandise Trade Committee and the Environmental Affairs Council.
- ❖ It is agreed that each country will establish a process so that the public can present comments about any issue included in this annex, which must be shared with the other party if they are of public dominion.
- ❖ An examination of the application of this annex will be defined three years after the FTA comes into effect.

Part of the commitments unilaterally assumed by Peru within the area of forestry management include:

- ❖ A commitment to increase human resources and tools to ensure fulfillment of Peruvian forestry legislation related to logging and trade in forestry products:
 - a) More personnel in national parks, in concessions and in protected indigenous areas with forestry resources in Peruvian legislation.
 - b) To develop an anti-corruption plan for officials and personnel from the forestry sector.
- ❖ To establish stiffer measures that carry civil and penal responsibility for all acts that create obstacles or undermine sustainable forestry management in Peru.
- ❖ To impose civil and penal sanctions to discourage conduct that violates the Peruvian legal framework regarding the extraction and trade of forestry products.
 - a) To increase sanctions under the Penal Code.
 - b) To suspend the right to export a forestry product in the event of a legal infraction.
- ❖ Implementation of policies to monitor the species included in any CITES appendix¹⁰:
 - a) Integral inventory with an analysis of the populations of those species
 - b) Technical studies to establish the yield of the products.
 - c) Technical analysis and periodic updating of this inventory and yield studies and the results must be made public.

¹⁰ Convention On International Trade In Endangered Species of Wild Fauna and Flora

- ❖ To conclude and adopt a strategic plan to implement Appendix II of the CITES, including broad-leaf mahogany, by decree or central government resolution, obtaining the financial resources for the development of the plan.
- ❖ To establish an annual quota to export broad-leafed mahogany (pieces, sawn wood, veneer sheet, plywood) according to article IV of CITES and advice from the CITES scientific authority of Peru on forestry species:
 - a) Include in the annual quota only mahogany extracted from concessions or indigenous community lands where INRENA has approved and verified the Annual Operative Plan, subject to supervision from OSINFOR.
 - b) Ensure that the export quota considers the integral inventory of the population of those species, the technical studies to establish the yield and periodic updates.
 - c) Ensure that the export quota does not surpass what is recommended by the CITES Scientific Authority for forestry species.
- ❖ To improve the administration and management of forestry concessions:
 - a) To complement existing mechanisms in order to implement a competitive and transparent process for the adjudication of concessions.
 - b) To review the annual operative plans of these concessions, publish those that are approved and to periodically and opportunely verify their fulfillment.
 - c) To physically inspect the designated areas for the extraction of the species indicated by CITES prior to approving or verifying an operative plan and to draft a report that will be available to the public.
- ❖ To create and promote the use of tools that complement and strengthen regulatory controls and verification mechanisms for the extraction and trade of forestry products:
 - a) Taking into account the opinions of indigenous and local communities, the NGOs and the private sector.
 - b) Designing systems to verify the origin and chain of custody of species indicated by CITES and to trace the species from their extraction to their exports.
 - c) Applying in full the legal forestry framework and strengthening the institutions responsible for fulfilling these laws and any aspect of forestry management in Peru. The OSINFOR will be established according to Law 27308.
 - d) Identifying a focal point responsible for investigation any infraction of forestry norms.
- ❖ To strengthen, protect and elevate the skills of indigenous communities to manage their land for the production of commercial lumber.
- ❖ To adequately identify the protected areas and concessions.

Based on a review of this environment chapter of the FTA with the United States we can reach the following general **conclusions**:

3.1 With the exception of the forestry sector, no binding instruments are included to improve environmental management in Peru. At the same time, no effective commitments are established to fulfill existing environmental legislation in each country, with the exception of cases where it could affect the investment and trade that is the subject of this agreement.

In effect, this Environment Chapter of the FTA in reality is essentially focused on achieving the application of environmental legislation in each country to the extent that it affects investment and trade between both¹¹. Along these same lines, Article 18.3.2 of the FTA recognized that “...it is inappropriate to promote trade or investment by weakening or reducing the protections afforded in their respective environmental laws...” and it then establishes a commitment so that both parties do not weaken or reduce the protection granted by said legislation “... in a manner affecting trade or investment between the parties.”

This means that, with the exception of the issue of the forestry sector in Peru, which is addressed under a perspective of the use and trade of lumber, for effects of this FTA both parties assume concrete commitments that do not weaken their legal environmental framework only to extent that they do not effect the investment and trade commitments established in the agreement, leaving aside a strict fulfillment of important principles and environmental regulation (climate change, biological diversity, etc) and social regulation (indigenous peoples, etc), recognized and incorporated by both countries through international commitments and their own legal framework.

Which is to say, if it does not affect trade or investment but weakens this legal environmental framework, no procedure to investigate infractions to the FTA or consultations about its effective implementation will proceed, according to the mechanisms established in said agreement¹².

This is probably the result of an erroneous and excessive interpretation of sovereignty and the right to prioritize the environmental development of each country established in article 18.1 of this environment chapter of the FTA; the reason why, in general, this commercial agreement is only limited to **promoting** high standards and protection levels in the environmental policies and laws of both countries.

However, there are other interesting experiences in which commercial agreements have defined more strict obligations regarding the domestic and international environmental legal framework without “renouncing” the sovereignty of each country, which could have served as a foundation for the negotiation of this environmental chapter of the FTA with the United States.

¹¹ Article 18.3 of the Peru- US FTA : “A Party shall not fail to effectively enforce its environmental laws, and its laws, regulations, and other measures to fulfill its obligations under the covered agreements, through a sustained or recurring course of action or inaction, in a manner affecting trade or investment between the Parties, after the date of entry into force of this Agreement.”

¹² Article 18.6, 18.7, 18.8, 18.9 y 18.12 of Peru – USA FTA.

One concrete case is the FTA signed between Chile and Canada, which establishes in a timely fashion the obligation of both parties to guarantee high standards in their environmental legislation¹³, for which each party must apply their environmental laws and regulations¹⁴, in an effective manner, as well as all international agreements signed by each country on this material¹⁵ – regulations and agreements that were detailed in a list that is included as an appendix – to finally define mechanisms and procedures for the effective fulfillment of these agreements, without this involving a loss of sovereignty or implying foreign interference in the definition of their priorities.

To this end, the erroneous information publicly provided by different Peruvian authorities is worrying regarding the true level of protection afforded by the country's legislation after the FTA with the United States, legislation that is also the result of a lengthy process and 18 years of development in Peru. Moreover, the weak manner these issues have been regulated in the trade instrument is also worrying, which could generate important environmental and social impacts for a country with such important multi-cultural characteristics and biological diversity such as our own.

3.2 Concrete agreements were only established for the implementation of a reduced number of international environmental agreements.

In effect, unlike what is established between the FTA signed between Chile and Canada mentioned above, the Environment Chapter of the FTA between Peru and the United States proposes that each party should adopt, maintain and implement regulations and measures to meet their obligations only regarding “... *the multilateral environmental agreements listed in annex 18.2 (“covered agreements”)*”

As a result, that country that considers itself to be affected (i) only in aspects regarding trade and investment, (ii) can legitimately argue and demonstrate that the other country has not met its commitment to adopt, maintain or implement laws, regulations or other measures to fulfill an obligation (iii) only contained in one of these multilateral environment accords.

For its part, in the event that there is any “*inconsistency*” between the obligations of one of the parties in this trade agreement regarding some of the obligations regulated in these multi-lateral environment agreements – those on the list – the parties are committed to trying to balance both obligations “*but this shall not preclude the Party from taking a particular measure to comply with its obligations under the covered agreement, provided that the primary purpose of the measure is not to impose a disguised restriction on trade*”¹⁶.

¹³ Article 3 of the Environmental Cooperation Agreement of the FTA Chile – Canada.

¹⁴ Article 5 of the Environmental Cooperation Agreement of the FTA Chile – Canada.

¹⁵ Article 40 of the Environmental Cooperation Agreement of the FTA Chile – Canada: “*Nothing in this Agreement shall be construed to affect the existing rights and obligations of either Party under other international environment agreements, including conservations agreements, to which such Party is a party.*”

¹⁶ Article 18.13.4 of the FTA Peru – USA

3.3 Taking all of this into consideration, the FTA could have made it possible to prioritize the fulfillment of trade agreements established in the agreement over and above the environmental obligations of both countries.

3.4 For future Free Trade Agreements or trade agreements in general, to be celebrated by the Peruvian State, where commitments are developed in environmental material, other experiences should be taken into account such as the Environmental Chapter in the FTA Chile – Canada and improved based on our reality.

4. Environmental Governance – Ministry of Environment (MINAM)

Based on the Framework Law for the Growth of Private Investment, Legislative Decree 757, November 13, 1991, establishes that the competent authorities in environmental material – referred to in the 1990 Environment and Natural Resources Code, in effect since that date – will be the sectors (ministries) or those who monitor business activities without prejudicing the authority of Regional¹⁷ and Local Governments¹⁸.

On the other hand, the National Institute of Natural Resources – INRENA – created by Legal Decree 25902, November 27, 1997, adscript to the Ministry of Agriculture assumes the mandate of “*promoting the rational use and conservation of natural resources with the active participation of the Private Sector: At the same time, it can carry out pre-investment studies in areas for small irrigation work, improving irrigation and drainage infrastructure, use of underground waters and treated waste waters.*” For this, an institutional legal framework¹⁹ was established in which said institute would basically be structured around three branches: the Forestry Branch, The Water Resources Branch and the Natural Protected Areas Branch.

At the same time in 1994, through Law 26410, a National Environmental Council was created, initially responsible for proposing, coordinating, leading and evaluating the National Environmental Plan and the National Environmental Action Plan later taking on additional attributes²⁰, related to the general evaluation and environmental management framework, management of solid waste and inter-sector coordination of biological diversity²¹, although the ministries and other institutions continued to be responsible for licensing and monitoring the activities developed by companies or others who generate environmental impact.²²

¹⁷ General Law on Regional Governments, Law 27867, dated November 18, 2002.

¹⁸ General Law on Municipalities, Law 27972, May 27, 2003

¹⁹ The Regulation on the Organization and Role of INRENA, approved through S.D. 02-2003-AG indicates that this institution is the authority responsible for “*...carrying out and promoting the necessary actions for the sustainable use of renewable natural resources, conservation of the wild biological diversity and the sustainable management of the rural environment through a territorial ordering focus by basins and its integrated management, establishing strategic alliances with a group of involved social and economic actors.*”

²⁰ Additional Attributes that were given through the promulgation of Laws 26786, 26839, 27104 y 27314.

²¹ The Regulation of the Organization and Role of CONAM, approved through S.D. 022-2001-PCM, establishes that the mission of this institution is “... to promote sustainable development, seeking a balance between economic growth, protection of the environment and social well being,” then specifying that the aim and objective of this authority, among others, is to lead “the inter-sector coordination process with the Central Government, Regional and Local Governments and the elaboration of strategies and agreement of policies, regulations, time frames and goals with civil society institutions and organizations in order to promote Social Development.

²² According to Legislative Decree 757

However, this structure of Peruvian environmental governance did not operate at the same rhythm as the challenges and needs raised by the reality of the country. For this reason, and for the past several years, diverse institutions and people linked to the issue have been lobbying for structural reforms in Peruvian environmental governance in order to achieve a substantial improvement in the environmental management of the country, taking into consideration the experience generated in these past 18 years²³ as well as in the national and international processes and dynamics in environmental material, more specifically, the conservation of biological diversity, climate change, among others.

However, this request has been permanently ruled out by successive Peruvian governments. Rather, it was a proposal from the World Bank²⁴ about the need for an institutional environmental reform²⁵, as well as requirements for an improvement in the state management of mega-projects proposed by International Financial Institutions or IFIS²⁶ that approved the loan for the Camisea II project of the Peru LNG Project²⁷ that meant that on December 20, 2007, after a trip to Washington, USA, the current president finally announced the decision to create an Environmental Ministry of Peru²⁸. Beyond the “official and non official” reasons to propose the creation of a Ministry of Environment in Peru, this event is considered a positive aspect and a unique opportunity to achieve the long hoped for improvement in the country's environmental management.

After the official announcement, a type of “competition” emerged in Peru to generate regulatory proposals for the creation of said ministry within the Executive Branch²⁹ that in less than 15 days had elaborated a proposal³⁰, despite the fact that several months earlier there was an environment reform process developed from Congress⁽³¹⁾⁽³²⁾. After the Executive Branch presented some proposals and as result of this rush, several

²³ Since 1990, the date when the former Environmental and Natural Resources Code came into effect.

²⁴

<http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/ENVIRONMENT/0,,contentMDK:20441326~pagePK:210058~piPK:210062~theSitePK:244381.00.html>

²⁵ World Bank. “Análisis Ambiental del Perú: Retos para un desarrollo sostenible”. May 2007 http://siteresources.worldbank.org/INTPERU/SPANISH/Resources/Resumen_Ejecutivo_FINAL_publicado_corregido_Junio_11.pdf

²⁶ Inter American Development Bank – BID, US Export - Import Bank – EXIMBANK EEUU, International Financial Corporation of the World Bank.

²⁷ Based on the deficient experience of the management of the Peruvian Government in the Camisea I project, broadly demonstrated by groups of organizations and individuals from national and international civil society.

²⁸ <http://www.elcomercio.com.pe/ediciononline/HTML/2007-12-20/alan-garcia-propone-creacion-ministerio-medio-ambiente.html>

²⁹ Process initially led by the Ministry of Energy and Mines.

http://www.elcomercio.com.pe/ediciononline/HTML/2007-10-13/para_el_ministerio_de_energia.html

³⁰ <http://www.elcomercio.com.pe/ediciononline/HTML/2007-12-26/la-proxima-semana-presentan-proyecto-ministerio-medio-ambiente.html>

³¹ Process lead by then President of the Commission of Andean, Amazon, AfroPeruvians Environment and Ecology Commission, Ms Gloria Ramos Prudencio.

³² <http://www2.congreso.gob.pe/Sicr/TraDocEstProc/CLProLey2006.nsf> Dated Dec. 21, 2007 Legal Project 2026/2007-CR was presented that proposed to create the Minister of Environment and Natural Resources.

questions and contributions emerged from different organizations⁽³³⁾⁽³⁴⁾⁽³⁵⁾ and experts⁽³⁶⁾⁽³⁷⁾⁽³⁸⁾⁽³⁹⁾ linked to the environment issue regarding the contents and processes to achieve better environmental management in the country through adequate institutional reform. The issues that were raised were referred to, among others:

- c) Creation of an Environment Ministry through a law expedited by Congress, which would permit a more participatory and transparent process to exchange opinions and contributions.
- d) Need for an explicit environmental policy for the country, elaborated and approved from the Ministry of Environment itself.
- e) Need to integrate the environment management of the national government in the Ministry of Environment and develop adequate coordination instruments with other national government authorities and with Regional and Local Governments.
- f) Definition of a Ministry of Environment as the body responsible for a National Environmental Management System that responds to this new organizational structure.
- g) Effective promotion of the development of environmental research and education.
- h) Transfer to the Ministry of Environment the roles and authority to evaluate, license, control, monitor and sanction in environmental material, without excluding the mining, energy sector and taking into consideration the respective roles and responsibilities to be transferred to other levels of government, in a decentralization process that facilitates the territorial ordering of the country.
- i) Effective conservation and integral management of our biological diversity and in particular a National System of Natural Areas Protected By the State, SINANPE.
- j) To improve environmental governance and an effective citizen participation.
- k) The establishment of mechanisms that ensure the financial sustainability of the Ministry of Environment.
- l) The effective implementation of international environmental commitments.

³³ COOPERACIÓN. “Some comments about the proposal of the Executive of the Law to create a Ministry of Environment,” January 2008.

³⁴ Ombudsman . “Mirada estratégica de la Institucionalidad Ambiental en el Perú. La partida: los resultados esperados”. Jan 10, 2008 Ombudsman

³⁵ Ombudman. “Puntos Críticos y Esenciales para el Éxito de la Reforma Ambiental en el Perú”. January 2008

³⁶ Marc Dourojeanni. “Ministerio del Ambiente y de los Recursos Naturales”. January 2008.

³⁷ Iván Lanegra. “Análisis del Proyecto de Ley del Ejecutivo sobre el Ministerio del Medio Ambiente”. January 2008

³⁸ Statement from several experts promoted by the the National Environmental Society. . “Un Ministerio del Ambiente para el Desarrollo Sostenible del País”. January 2008.

³⁹ Julio Diaz Palacios. “Conclusiones del Conversatorio: La Creación del Ministerio del Ambiente; Algunas Propuestas para el Debate y la Construcción de Consensos”. January 23, 2008.

Under the argument of integrating the proposed recommendations⁴⁰, the Government of Peru announced the creation of a commission for the elaboration of a regulatory proposal for the creation of a Ministry of Environment⁴¹ approved January 29, 2008 under Ministerial Resolution No. 025-2008-PCM, which created a Multi-Sector Working Group presided over by Mr. Antonio Brack Egg, who had to “...*determine the list of professionals from the Public Sector that will integrate the Group and to convene specialist professionals from the Private Sector that he considers necessary for the review and elaboration of a proposed Law to create the Ministry of Environment...*”⁴² (Our underline).

This Commission had to draft the following in a period of no more than 20 calendar days:

- a) Diagnostic of the environmental problematic in the country
- b) Proposal for an Environmental Policy
- c) Legal Bill that creates the Ministry of Environment and its Respective Reasoning.

The working group was set up February 1, 2008 and delivered its final proposal to the Peruvian Government on March 3, 2008, which is to say 12 calendar days before the expiry of the granted period⁴³. However, and despite the argument to gather opinions from civil society for the elaboration of the proposal, literally established in Ministerial Resolution No. 053-2008-PCM, there was never any citizen participation process.

To the contrary, despite the proposal presented by this “Multi-Sector Working Group” to the head of the Cabinet, the Ministry of Agriculture obtained the approval of Legislative Decree 997 on March 12, 2008, the Law on the Organization and Role of the Ministry of Agriculture, which defines as an area of its responsibility, among others, forestry land, forestry resources and their use, flora and fauna, water resources⁴⁴, removing in this manner part of the responsibility and role the future Ministry of Environment would require for an effective management of the environment and the biological diversity.

In effect, Legislative Decree 997 defines the following as the responsibility of the Ministry of Agriculture:

- a) To issue regulations for the integral, social, efficient and modern management of water resources.

⁴⁰ Fifth considering the R.M. 025-2008-PCM: “ *That considering the thematic and regulatory complexity, as well as the trans-sector nature of an environmental policy there is a need to create a multi-sector working group that will review the proposal and propose a Ministry of Environment with the authority and organic structure that guarantees the continuity of the promotion of private investment in the exploitation of resources and the realization of productive activities with environmental protection and social equity, allowing for a better quality of life of our population*”

⁴¹ <http://www.elcomercio.com.pe/ediciononline/HTML/2008-01-10/brack-liderara-comision-crear-ministerio-medio-ambiente.html>

⁴² Article 2 of the R.M. 025-2008-PCM

⁴³ Ministerial Resolution No. 053-2008-PCM extended the period to March 15, 2008 under the argument of “*gathering the opinion of the interested guilds and representatives institutions from civil society.*”

⁴⁴ Article 4.2 of Legislative Decree 997.

- b) To establish national policies for the exploitation and sustainable development of forestry resources, flora and fauna, in accordance with the National Environmental Policy.
- c) To grant, recognized, modify or cancel rights through authorizations, permits, licenses and concessions, according to the regulations on the material and in its area of authority, including water, forestry resources and flora and fauna.

Finally, the First Final Complementary Disposition of this Legislative Decree 997, creates the National Water Authority, as a public body under the Ministry of Agriculture. “... *responsible for issuing the regulations and establishing the procedures for the integrated and sustainable management of water resources ...*” and “...*responsible for the National Water Resource Policy and Strategy and the National Water Resource Plan, exercising its authority in its area of competence, applying warning sanctions, fines, immobility, closure or suspension for infractions that will be determined in the Supreme Decree...*”

The approval of this Legal Decree 997 clearly demonstrated the contradictions within the Executive Branch regarding the areas of authority and role of a Ministry of Environment that adequately responds to the needs of the country and, on the other hand, made it possible to make visible the limited transparency and public participation in decisions making. Finally, this also contradicted the arguments regarding the Peruvian government's decision to create a Multi-Sector Working Group, made up of officials from several ministries under the Executive Branch and some experts from the private sector, with a clear mandate to propose a Law that would create this Ministry of Environment, geared toward improving environmental management in Peru.

In this context, on May 14, 2008 Legal Decree 1013 was published in the official daily El Peruano, which approved the Law for the Creation, Organization and Roles of the Ministry of Environment. However, as well as the areas of responsibility and roles already reserved to the Ministry of Agriculture, under the previously mentioned Legal Decree 997, this regulation also failed to gather many of the proposals put forward by the so-called “Brack Commission” due to its reformulation by several State Ministries⁴⁵, that, without necessarily being specialists in the theme, similar to the Ministry of Agriculture, attempted to defend what they considered their “feuds” or areas of authority, without specifically analyzing the trans-sectoral nature required by the Ministry of Environment to improve environmental management in the country.

In effect, the main “novel” proposals for this “Brack Commission” not included in Legislative Decree 1013 are:⁴⁶

- a) Regarding the role of the Ministry of Environment, it eliminated:

⁴⁵ <http://www.andina.com.pe/Espanol/Noticia.aspx?id=gKgkhe6HVKI=>

⁴⁶ Information obtained from the “Legal Proposal of the Ministry of Environment and the Presentation of Motives.” Multi-Sector Working Group Proposal for a Ministry of Environment (R.M. No. 025-2008-PCM). March 2008

- Elaboration and follow-up of the National Environmental Policy and the specific policies that are established; environmental regulations and the evaluation of natural resources and the environment.
- To grant concessions, licenses, permits and authorizations in the framework of environmental legislation, if this responsibility has not been assigned to other sectors Regional or Local Governments. Moreover, to issue in coordination with other authorities, regulations and technical guidelines for the granting and recognition of rights through authorizations, permits, licenses and concessions.
- To approve and monitor Strategic Environmental Studies⁴⁷ and Environmental Impact Studies of major investment projects or those that could affect the environment.⁴⁸ It also eliminated the possibility of carrying out special environmental monitoring.
- To evaluate, together with competent authorities, the efficacy and efficiency of environmental adaptation and management programs.
- To supervise and sanction the adequate fulfillment of responsibilities at different levels of government regarding management of all type of solid waste, control and re-use of liquid waste and air contamination.
- The planning and coordination of sector, regional and local processes regarding territorial ordering and the use and recovery of soil.
The strategic development of forestry patrimony and wild fauna, establishing the ordering and criteria for the protection and recovery of the forest, management of wild fauna and conservation of species in danger.⁴⁹
- To elaborate, direct and supervise the National Water Resources and Basins Policy and to direct the National System to Manage Water Resources and Basins.
- To elaborate and approve norms and dispositions for the use and sustainable exploitation of water resources, under its area of authority.
- To implement, organize, direct and administer water resource management, the National Registry of Water Rights, the National Registry of Waste and the National Registry of Water User Organizations.
- Declare the exhaustion of natural sources, place a ban on zones and the basins or sub-basins that are in critical condition with a need for rehabilitation.
- To evaluate the policy on the Natural Protected Areas and approve the Umbrella Plan for the National System of Natural Areas Protected by the State – SINANPE. To approve the management and planning instruments for natural areas protected by the national administration.

⁴⁷ Legal Decree 1078 modifies the Law of the National System to Evaluate Environmental Impact, incorporating into said system the Strategic Environment Evaluation – EAE as a instrument to evaluate the environmental impact of policies, plans and programs at a national, regional and local level. The authority proposing these policies, plans and programs is the one that should apply this EAE and the MINAM should first issue an Environmental Report that “*will orient adequate decision making the prevents environmental damage.*”

⁴⁸ Legislative Decree 1039 modifies Legislative Decree 1013 and incorporates as a role of the Ministry of Environment the possibility to review some of the EIAs approved by other authorities in a aleatory manner, without indicating how it will be determined which EIAs will be reviewed or the process that will be used to review them.

⁴⁹ However, subsequently Legislative Decree 1079 was approved, which would recover some of these responsible. Article 2: “*The competent authority to administer forestry patrimony, wild flora and fauna in natural protected areas and their environmental services is the Ministry of Environment through the National Service of Natural Protected Areas.*”

- To issue a prior binding opinion for those investment projects that could affect natural protected areas that are administrated at a national level and their buffer zones⁵⁰ and, consequently, to approve the applicable technical criteria for the issuance of these prior binding opinions.
 - To grant usage rights through concessions, authorizations and permits or other mechanisms to carry out activities inherent to the objectives and role of national administered Natural Protected Areas within their area of authority.
 - To promote, grant and regulate rights for environmental services and other similar mechanisms generated by natural protected areas under its administration.
 - To elaborate or review, together with competent authorities, National Strategies related to Biological Diversity, Climate Change, to Combat Desertification and Drought, Persistent Organic Contaminants, as well as other International Agreements related to chemical substances and to coordinate the periodic elaboration of national reports in this area.
 - To implement the National Climate Change Strategy
- b) Regarding the organizational structure of the Ministry of Environment, the following were eliminated:
- The creation of a specialized Technical Body, adscript to the Ministry of Environment, responsible for the strategic management of water resources and basins and that a regulatory technical authority be constituted in this area.
 - The creation of a general office responsible for coordinating with Regional Governments and the prevention and management of socio-environmental issues.
 - The creation of a general office responsible for promoting synergies for the application of a domestic environmental policy linked to International Environmental Agreements, to consolidate the national position of environmental sustainability regarding international agreements to encourage the trade potential in the country; to intervene, in coordination with the Ministry of Foreign Affairs and the corresponding sectors, in the negotiation of binding international agreements in environmental material and to propose mechanisms that facilitate investment, international technical and financial cooperation.
 - ❖ The creation of a general office responsible for the strategic planning of environmental management and natural resources in the country; the National Environmental Information System (SINIA) board; the coordination, preparation and dissemination of Reports about the “Environmental Situation.”
 - ❖ The name proposed by the Brack Commission of the “Environmental Supervision and Monitoring Body” was modified to be Environmental Evaluation and Monitoring Body, however, its role is exactly the same – to monitor, supervise, control and sanction – and at no point was the role of evaluating incorporated.

⁵⁰ Legal Decree 1039 modifies Legislative Decree 1013 and moves over to the Deputy Ministry of the Strategic Development of Natural Resources to the Ministry of Environment the role of “*designing the national policy and strategy of integrated management of natural protected areas, as well as supervising their implementation,*” and therefore it does not achieve the level of the initial proposal of the Brack Commission on these issues.

- The “Brack Commission's” proposal for a new representative structure of the Board of the National Fund for Natural Areas Protected by the State – PROFONANPE – was modified, finally removing a member of the NGOs with recognized experience in ANP and incorporating a member of the business guild, without defining their level of experience.

Despite the fact that the proposal from the so-called “Brack Commission” was more adequate than the final contents of the Law for the Creation of the Ministry of Environment, there are some contributions developed from civil society⁽⁵¹⁾⁽⁵²⁾⁽⁵³⁾⁽⁵⁴⁾⁽⁵⁵⁾⁽⁵⁶⁾⁽⁵⁷⁾ that were not included in the proposal from this working group or in Legislative Decree 1013, including the following:

- a) The approval of the national environmental policy on the part of the Ministry of Environment.
- b) The approval of the Environmental Impact Studies and other instruments of environmental management, as well as monitoring activities, by the national government, through a Specialized Technical Body for Environmental Evaluation and Monitoring⁵⁸.
- c) The implementation of a National Plan for Environmental Remediation, in coordination with Local and Regional Governments.
- d) The need to specify the binding nature of the territorial ordering in the country.
- e) The planning and implementation of the National Forestry and Fauna Policy, with specific roles of ordering, licensing, monitoring, supervision and sanction, in coordination with Regional and Local Governments.
- f) The integrated development and implementation of the National Biological Diversity Strategy.
- g) The development of explicit policies and the redesign of citizen participation instruments.
- h) The development of a Law for the Funding of Environmental Management in the country.

Based on the analysis of this process, as well as the contents of these legislative decrees, the following *conclusions* emerge:

⁵¹ Letter from the Civil Society Coalition for the Creation of the Ministry of Environment to Prime Minister Jorge Del Castillo. February 14, 2008.

⁵² Press note Red Muqui. “Brack ya entregó los documentos del futuro Ministerio del Ambiente a la PCM”. March 04 2008.

⁵³ Press Note Red Muqui. “Un amplio debate sobre el proyecto del Ministerio del Ambiente permitirá recoger aportes desde los diferentes espacios técnicos especializados”. March 7, 2008.

⁵⁴ Letter from the Civil Society Coalition for the Creation of the Ministry of Environment to Prime Minister Jorge Del Castillo. March 24, 2008

⁵⁵ Letter from Environmental and Natural Resources – Dar to Prime Minister Jorge del Castillo, April 1, 2008

⁵⁶ Letter from the Peruvian Environmental Law Society – SPDA to Prime Minister Jorge del Castillo, attaching the report – “Comentarios y Propuestas de Modificación al Proyecto de Decreto Legislativo Ley de Organización y Funciones del Ministerio del Ambiente”. April 4, 2008

⁵⁷ Iván Lanegra. “Que no debe dejar de tener el Ministerio del Ambiente”. April 9, 2008

⁵⁸ Proposal also made by the Ombudsman

4.1 Legal Decree 997, Law on the Organization and Role of the Ministry of Agriculture is unconstitutional as it does not fall within the delegation of responsibilities approved by Law 29157⁵⁹

As indicated above, Law 29157, which grants the Executive Power the power to expedite these legislative decrees, clearly establishes two conditions for the adequate application of this delegation: a) fulfillment of the material indicated in clause 2.1 of the norm and b) that the contents of these legislative decrees strictly adhere to the commitments of the FTA with the United States and measures to improve economic competitiveness for in order to take full advantage of this commercial agreement.

On the other hand, as indicated in the second paragraph of the considerations in Legal Decree 997, the approval of the Law for the Organization and Roles of the Ministry of Agriculture in reality responds to the need to modernize the apparatus and processes of the Peruvian State “*in order to improve public management and construct a democratic, decentralized state at the service of citizens,*” as indicated in Article 1 of Law 27658, Law on the Modernization of State Management⁶⁰, a modernization process that, in the case of the agriculture sector, began with the approval of Supreme Decree No. 024-2007-AG, dated September 5, 2007, which is to say, prior to the approval of Law 29157.

On the other hand, it is also evident that this Legal Decree 997 regulates the authority, role, basic structure of the Ministry of Agriculture, implies the future materialization of administrative acts and acts of the administration of the highest agricultural authority in the country that will never be linked in any way to the implementation of the FTA with the United States, which exceeds the material and conditions established by the cited article 2 of Law 29157 and consequently, contravenes what is established in the first paragraph of Article 104⁶¹ of the Peruvian Constitution.

4.1 Legislative Decree 997, law on the Organization and Roles of the Ministry of Agriculture is unconstitutional and contradicts the General Executive Power Law.⁶²

The First Transitory Disposition of the General Executive Power Law established that as of the implementation of this regulation⁶³, the Executive Power was obligated to remit to the Congress of the Republic⁶⁴, proposals for the Laws on the

⁵⁹ Legislative Decree 1047 that approves the Law on the Organization and Role of the Ministry of Production is also unconstitutional for the same reasons.

⁶⁰ Second paragraph of the considerations in Legal Decree 997

⁶¹ “Congress can delegate in the Executive Power the authority to legislate, through legislative decrees, on specific material and for a determined period established in the authoritative law...”

⁶² Legislative Decree 1047 that approves the Law on the Organization and Role of the Ministry of Production is also unconstitutional for the same reasons.

⁶³ According to article 109 of the Political Constitution of Peru, in place the day after its publication, which is to say since December 21, 2007 http://www.pcm.gob.pe/Transparencia/Doc_Gestion/29158-LOPE.pdf

⁶⁴ In a period of four months in the case of ministries with exclusive authority and a period of six months for ministries with exclusive and shared responsibilities

organization and role of the ministries listed in the First Final Disposition of this organic law, which include the Ministry of Agriculture.

On the other hand, there is the “General Law on the Executive Branch” is Law number 29158 while the “Law that delegates the authority of the Executive Power to legislative on diverse material related to the implementation of the Peru- United States Trade Promotion Agreement and with the support of the economic competitive for its exploitation,” is Law number 29157 and therefore it is obvious that the General Law on the Executive Branch came after the regulation that delegated the authority.

This means that, for the case of the approval of the Law on the Organization and Role of the Ministry of Agriculture, the Executive Branch should be strictly submitted to the procedure established in the First Transitory Disposition of Law 29158, cited in the previous paragraph, which is to say the elaboration of a Law proposal to be approved by Congress.

As a result, with the approval of Legal Decree 997, the aim is to modify the procedure established in the General Executive Branch Law, modification that is unconstitutional and directly contradicts what is established in the second paragraph of Article 104⁶⁵ and article 101⁶⁶ of the Political Constitution of Peru.

4.3 Legislative Decree 1013, Law to Create the Ministry of Environment, is unconstitutional because it does not meet the conditions of Law 29157, law on delegation of authority.

Despite the attempt to officially link the creation of the Ministry of the Environment with the FTA with the United States, in said commercial agreement there is no concrete commitment to reformulate environmental governance in Peru. In effect, as has been indicated, article 18.1 of the environment chapter of this FTA is uniquely limited to establishing the commitment to *promote* high standards and protection levels in the environmental policies of both countries, without mentioning the obligation of the Peruvian State to create a Ministry of Environment.

More precisely, it is important to also indicate that In Peru there is no National Environmental Policy or explicit and formal guidelines that establish the need to create a Ministry of Environment, which was demonstrated by the mandate received by the so-called “Brack Commission” through Ministry Resolution No. 025-2008-PCM⁶⁷, to elaborate an Environment Policy proposal for the country, a proposal that has not yet been approved.

As a result, as the creation of a Ministry of Environment in Peru is not a formal commitment in the FTA, Legal Decree 1013 does not meet the conditions

⁶⁵ “Materials that cannot be delegated cannot be delegated to the Permanent Commission.”

⁶⁶ “...It is not possible to delegate to the Permanent Commission material related to constitutional reform, nor the approval of international treaties, organic laws, Budget Law or the Law of the Comptroller General of the Republic.”

⁶⁷ From January 29, 2008

established in clause 2.2 of Law 29157⁶⁸, that demands that “*the contents of the legislative decrees be strictly subject to the commitments of the Peru – United States Trade Promotion Agreement and its Amendment Protocol and the measures necessary to improve the economic competitiveness in order to take advantage of it...*”

Finally, similar to the case of Legislative Decree 997, it is also evident that Legal Decree 1013 regulates the authority, role and basic structure of the Ministry of Environment, which implies the future materialization of administrative acts and acts of administration of the maximum authority in environmental material in the country that will never be linked in any way to the implementation of the FTA with the United States and this implies a State reform that exceeds the material and conditions established in cited Article 2 of Law 29157, and consequently, contravenes what is established in the first paragraph of Article 104⁶⁹ of the Political Constitution of Peru.

4.4 Legislative Decree 1013 is unconstitutional as it contradicts the General Law on the Executive Power.

Article 22.5 literally establishes that the “*Ministries are created, merged or dissolved by law at the proposal of the Executive Power. The re-dimensioning and reorganization of the Ministries can be done through Supreme Decree, with the approving vote of the Council of Ministers* (Our Underline).

On the other hand, as we have indicated above, this “General Law on the Executive Branch” is number 29158 and for its part the “Law that delegates in the Executive Branch, the authority to legislate on diverse material related to the implementation of the Peru -United States Trade Promotion Act and with the support of economic competitiveness in order to take advantage of it” comes under Law 29157, and therefore it is evident that the General Executive Branch Law came after the regulation to delegate authority.

This means that, for the case of the creation of the Ministry of Environment, the Executive Branch must be strictly submitted to the procedure established in referred article 22.5 of Law 29158, which is to say, the elaboration of an Executive Branch proposal that must be subsequently approved by the Congress of the Republic.

Consequently, with the approval of Legislative Decree 1013 the aim is to modify the procedure established in the Executive Branch General Law, a modification that is unconstitutional as it directly contradicts what is established in the second paragraph of article 104⁷⁰ and article 101⁷¹ of the Political Constitution of Peru.

⁶⁸ A regulation that grants the Executive Power the authority to issue legislative decrees about the FTA and its exploitation.

⁶⁹ “Congress can grant the Executive Power the authority to legislate, through legislative decrees on specific material and for a determined period established in the authoritative law...”

⁷⁰ “Material that cannot be delegated cannot be delegated to the Permanent Commission”

⁷¹ “...It is not possible to delegate to the Permanent Commission material related to constitutional reform, nor the approval of international treaties, organic laws, Budget Law or the Law of the Comptroller General of the Republic...”

4.5 Congress must repeal Legislative Decree 997 or should declare it to be unconstitutional. Moreover, the Executive Branch must draft a proposal of the Law on the Organization and Role of the Ministry of Agriculture to be presented to Congress for its approval, according to the General Law on the Executive Branch.

4.6 Congress should repeal Legislative Decree 1013 or should declare it to be unconstitutional. However, together with repealing the law, it should approve a new law to create this ministry, which should incorporate the contributions and proposals developed in different discussions and dialogues over the past year, in order to identify, in a participatory manner, the skills, role and organizational structure of a Ministry of Environment that responds to our needs and that implies a true improvement in the environmental management of the country. Moreover, with the repeal of Legal Decree 997, this “new version” of the Ministry of Environment should include the authority and roles regarding water resources, and forestry and wild fauna resources proposed by diverse representatives of civil Peruvian society.

5. Forestry and wild fauna resources⁷²

The current Forestry and Wild Fauna Law, Law 27308⁷³, published July 15, 2000 established a structural change in forestry sector regulation⁷⁴, integrating forestry management to forestry and fauna resource management in the country, and modifying models of access and ways to use these natural resources.

For its part, on June 28, 2008 Legislative Decree 1090 was published, a Forestry and Wild Fauna law that basically repealed⁷⁵ law 27308, establishing a new legal framework for the development of forestry and wild fauna activities in the country. At the same time, it emphasized the responsibility and role of the Ministry of Agriculture in this material, outlined in the previously cited Legislative Decree 997, but did not identify the office or branch of this ministry responsible for assuming these functions⁷⁶.

In effect, Article 3.3 of the Legal Decree 1090 indicates the Ministry of Agriculture is the National Forestry Authority and the “...regulatory body, regarding the sustainable use of forestry and wild fauna resources,” responsible for promoting its conservation and the design, execution, supervision and evaluation of the National Forestry Policy and at the same time, leading, planning, coordinating and approving the national information system, control and forestry and wild fauna administration, applicable to every level of government.

This regulation, despite the development of a large number of modifications to Law 27308, basically maintains its structure and policy guidelines. The most important modifications, for the effect of this report, refer to:

- a) The elimination of the National Forestry Policy Consultative Council – CONAFOR, which should have become a space for transparent participation of actors linked to the forestry sector, operating as a consultative body in the formulation and implementation of the National Forestry and Wild Fauna Plan.
- b) It reinstates OSINFOR outlined in Law 27308 as an entity adscript to the Presidency of the Council of Ministries and broadens its responsibility and roles.
- c) It eliminates the forestry plantations and lands where the greatest use capacity is forestry production from the definition of forestry resources. At the same time, it eliminates the State's lands where the capacity for greatest

⁷² A more detailed report about these themes can be found in a report elaborated by Hugo Che Piu Dez in his “Comentarios Legales al Decreto Legislativo 1090 que aprueba la Ley Forestal y de Fauna Silvestre”, September 2008.

⁷³ Legislative Decree 1090 that approves a New Forestry and Wild Fauna law has established in its Sixth Final Complementary Disposition: “The present Legislative Decree will come into effect the day following the publication of its Regulation in the Official Daily El Peruano, meanwhile everything stipulated in Law 27308 and its Regulations will be applicable.”

⁷⁴ Regulated up until now by Legal Decree 21147, May 1975.

⁷⁵ With the exception of the Seventh Complementary Transitory Disposition of Law 27308.

⁷⁶ It is understood that the omission will be corrected with the Regulations of Legislative Decree 997.

use is forestry – without or without forests – from the concept of Forestry Patrimony.⁷⁷

- d) It incorporates a new mode of taking advantage of forestry resources called Concession by Private Initiative, which is granted up to 40 years according to the procedures and conditions to be regulated under the Laws Regulations.
- e) It modifies the requirement that the General Forestry Management Plan must have an Environmental Impact Study, replacing it with an Environmental Impact Evaluation.
- f) It modifies the article related to the right to usage, changing the name to economic retribution and adding, for the case of forestry concessions and wild fauna, another type of payment it calls Reciprocal Returns, which will be fixed according to the value of the resource that is used. Later, in a final complementary disposition it allows the current holders of the forestry concession contracts to modify the payment of the right to usage for this new Reciprocal Return, established based on the value of the resource, to the extent they meet the conditions established by the National Forestry and Wild Fauna Authority.
- g) It establishes that the Ministry of Agriculture is responsible for expediting forestry authorizations.
- h) It incorporates the land of the so-called Eyebrow or Edge of the Jungle in art. 25, regarding the promotion of agro-forestry and forestry systems.⁷⁸

After an analysis of these modifications, we can reach the following *conclusions*:

5.1 The elimination in the Forestry and Wild Fauna law⁷⁹ of the Consultative Forestry Policy Council (CONAFOR) as a consultative body on forestry policy, wild fauna and other areas of interest for the sector is a worry. Moreover, with this modification the spaces for public participation in the management of these natural resources is being reduced even further, a fact that is directly impacts the commitment assumed by the Government of Peru in the FTA with the United about the strengthening of capacities in order “Increase public participation and improve transparency in decisions making related to the planning and management of forestry resources⁸⁰.

5.2 The broadening of the responsibilities to OSINFOR established in Legislative Decree 1085 and Legislative Decree 1090 is unconstitutional as it generates an

⁷⁷ I will refer to these modifications in greater detail below, when addressing legislative decrees on lands.

⁷⁸ I will refer to these modifications in greater detail below, when addressing legislative decrees on lands.

⁷⁹ Legislative Decree 1090

⁸⁰ Clause d) of article 4 of Annex 18.3.4 of the FTA Peru – USA Environmental Chapter

overlay with the responsibilities of the Regional Governments granted in the respective general law.

Article 1 of the Legislative Decree 1085, which creates the Supervision Body of Forestry Resources and Wild Fauna (OSINFOR) establishes that the purpose of this public body, among others, is to “...monitor the sustainable use and conservation of forestry resources and wild fauna, as well as environmental services coming from forests, granted by the State through diverse modalities of use recognized in Law No 27308, Forestry and Wild Fauna Law, according to the definitions specified in article 2 of said regulation.” (Our underline).

At the same time, article 2 of this legislative decree indicates that it is OSINFOR's responsibility to “...monitor the sustainable use and conservation of forestry resources and wild fauna, as well as environmental services coming from the forest, for their sustainability, according to the policy and integrated national management strategy for natural resources and the policies established by the Ministry of Agriculture in its area of responsibility.” (Our underline).

Finally, article 3 of the referred to legislative decree indicates that OSINFOR is responsible for “... *monitoring the fulfillment of the operating permits granted by the State, as well as the obligations and conditions contained in them and the respective management plans...*”

For its part, article 5 of Legal Decree 1090 establishes that OSINFOR is responsible, among others, for the “... monitoring of the sustainable usage and the conservation of forestry resources and wild fauna resources, as well as environmental services coming from the forest, according to the law which created it.” (Our underline)

However, clause q) of article 51 of the General Law on Regional Governments gives it the specific role to “Grant permits, authorizations and forestry concessions in areas within the region, as well as to exercise work to promote and monitor in strict compliance with the national forestry policy.” At the same time clause e) of the same article also grants Regional Governments the specific role to “Develop monitoring and control actions to guarantee the sustainable use of natural resources under their jurisdiction.” (Our underline)

This demonstrates the overlay of roles among these two authorities, but from a legal point of view an evident contradiction with the General Law on Regional Governments and a modification of that law. To this end, we must recall that this modification of the General Law on Regional Governments does not come from the approval of another general law decree by Congress as corresponds, but from two legislative decrees (1085 and 1090) – approved by the Executive Power based on a delegation of the authority of the Congress, which directly violates what is established by articles 104⁸¹ and 101⁸² of the Peruvian Political Constitution.

⁸¹ “Material that cannot be delegated cannot be delegated to the Permanent Commission.”

⁸² “...It is not possible to delegate to the Permanent Commission material related to constitutional reform, nor the approval of international treaties, general Laws, Budget Law, Comptroller General Law...”

5.3 The decision to incorporate the modality of the private initiative to grant forestry concessions for logging purposes does not meet the requirements established in Law 29157, and therefore it is unconstitutional.

As has been indicated above, Law 29157, through which the Congress delegates the Executive Branch the possibility to approve these legislative decrees establishes two requirements or conditions: a) that it be subject to the material listed in article 2.1 of the Law 29157 and b) the contents of the legislative decrees are strictly subject to the commitments of the FTA and the necessary measures to improve the competitiveness in order to take advantage of this commercial agreement.

For its part, number (i) of clause g) of article 3 of Annex 18.3.4 of the Environmental Chapter of the FTA, which establishes the need to improve the administration and management of forestry concessions in Peru defines as a commitment of our country *“To complement the existing mechanisms to implement a competitive and transparent process for the adjudication of concessions.”* (Our underline).

However, the Government of Peru had done the opposite. In effect, clause c) of article 9.1. of Legislative Decree 1090, under which this new Forestry and Wild Fauna law is approved has established a new modality to grant forestry concessions for lumber purposes, called a “Concession for Private Initiative.” This new modality, unlike the existing forestry concessions for lumber purposes granted through public auction or public tender only “operates” at the request of the party, which is to say through direct negotiation with the State.

As a result, as this new modality is developed through a request from the party and not through “competitive and transparent” processes, there is a direct contradiction with the referred to commitment in the FTA. When this FTA commitment is not fulfilled, the conditions of Law 29157 are not fulfilled. If the material and conditions of Law 29157 are not fulfilled, this clause c) of article 9.1 of Legislative Decree 1090 becomes unconstitutional because it violates what is established in Article 104 of the Peruvian Political Constitution.

5.4 The modification that changes the required Environmental Impact Study for an Environmental Impact Evaluation in the contents of the Forestry Management Plan for the different modalities of forestry use weakens the forestry management in the country, which contradicts the commitments in the FTA.

Article 15.1 of Law 27308 establishes that these Forestry Management Plans must integrate the corresponding Environmental Impact Study. For its part, the third paragraph of article 11.1 of Legislative Decree 1090 indicates that as of this regulation, the General Forestry Management Plans which together with the annual operative plans are considered the two levels of the forestry management plans – must incorporate an Environmental Impact Evaluation.

Law 27446 of the Law on the National Environmental Impact Evaluation System, recently modified by Legislative Decree 1078 contains three categories of

Environmental Impact Evaluations to grant the environmental certification required at the beginning of the execution of public, private or mixed capital investment projects, which involve activities, construction, works and other commercial and service activities that could cause significant negative environmental impacts in the country.

These three categories are: a) Declaration of Environmental Impact (DEI) for the case of *“those projects whose execution does not lead to negative environmental impacts of a signification nature”*; b) Semi-detailed Environmental Impact Study (SD-EIS) for *“those projects whose execution could originate a moderate environmental impact and whose negative effects could be eliminated or minimized through the adoption of easily applicable measures”*; c) Detailed Environmental Impact Study (EIA-d) for *“those projects whose characteristics, scale and or localization could produce significant negative environmental impacts, quantitatively or qualitatively, requiring a profound analysis to review their impacts and propose the corresponding environmental management strategy.”*

When article 11.1 indicates Environmental Impact Evaluation and not Environmental Impact Study – that can be semi-detailed or detailed – depending on each case, as part of the contents of the General Forestry Management Plan, it leaves open the unnecessary and high risk possibility that these forestry management plans end up containing mere environmental Impact Declarations (EID) at the exclusive criteria of the official of the time, which reduces the level of protection for these forestry ecosystems.

To this end, it is necessary to mention that in the FTA there is a commitment on the part of both parties to develop strengthening of skills *“to improve the performance of the system of forestry concessions to fulfill the economic, social and ecological objectives.”*⁸³ It is difficult to understand how the government can assume obligations to strengthen skills – with the high cost that is implied – to improve the performance of the concessions and on the other hand, the Government of Peru itself modifies its Forestry and Wild Fauna Law weakening the requirements and the environmental management instruments in the related forestry concessions. There is an evident contradiction between this modification and this environmental chapter.

5.5 The change in the payment modality for forestry use currently held by the title holders of forestry concessions, referred to in the Firth Complementary Final Disposition of Legislative Decree 1090, violates the juridical security of public tenders for the granting of forestry concessions for logging purposes already carried out and violates the competitiveness and transparency of future public tenders.

The current holders of forestry concessions for lumber purposes obtained their contracts after winning different processes of “public tenders” developed as of 2002 in the country. In order to participate in these public tenders, these concessions

⁸³ Clause c) of article 4 of 18.3.4 of the Environmental Chapter of the FTA

holders competed with other bidders, presenting their respective technical and economic bids. For the case of the economic bids, these were established based on an amount or value per hectare of forest, which made it possible to define the total payment for use of the concession. Those proposals that contained the highest values or amounts were awarded the highest points. It is worth specifying that, in many cases, the points received for the economic proposals was the determining factor to define who won the right to develop these forestry concessions.

However, and despite the fact that this right to usage was in reality established by the concession holders themselves, based on their own economic proposals, this Legislative Decree 1090, in permitting these concessions holders a change in the payment modality in reality is modifying the final amount of the payment of their right to usage – now called reciprocal returns, in evident prejudice of those who lost the tenders despite the fact that they may have presented better technical proposals and despite the fact that they could have offered higher amounts than those that the concessions holders will finally pay, thanks to this regulation.

This constitutes, without a doubt, a very negative precedent for future public tenders, reducing the level of confidence in the competitive and transparency nature of those tenders, which once again violates the commitments assumed by the Peruvian State in the FTA with the United States, in particular in that which refers to *“Complementing the existing mechanisms to implement a competitive and transparent process for the adjudication of the concessions.”*⁸⁴. (Our underline)

5.6 Article 12 of Legislative Decree 1090 is unconstitutional as it violates the specific role of the Regional Governments established in clause q) of article 51 of the organic law.

As has been indicated, clause q) of article 51 of the General Law on Regional Governments grants these the specific role of *“Granting permits, authorizations and forestry concessions, in areas within the region, as well as to exercise promotion and monitoring work in strict fulfillment of the national forestry policy.”* (Our underline)

However, article 21 of Legislative Decree 1090 grants the National Forestry Authority – understood to be the Ministry of Agriculture, according to article 3.3 of the same regulation – the responsibility to grant authorizations to carry out “clear cutting” within the area of the forests or in areas with forest cover, for the development of oil operations, mining, industry or any other nature.

This once again demonstrates the overlay of the role of these two authorities, but principally an evident contradiction with the General Law on Regional Government and a modification of that Law. We must recall that this modification of the General Law on Regional Governments does not come from the approval of another general law decreed by the Congress of the Republic as corresponds, but rather the promulgation of another legislative Decree – 1090 – approved by the Executive Branch, based on a delegation of the responsibilities of Congress, which directly

⁸⁴ Numeral (i) of clause g) of article 3 of annex 18.3.4 of the FTA Environmental Chapter

violates what is established in article 104⁸⁵ and 101⁸⁶ of the Peruvian Political Constitution.

5.7 Despite the long list of commitments about the forestry sector assumed by the Government of Peru in annex 18.3.4 of the Environmental Chapter of the FTA signed with the United States, there is no specific commitment to approve a New Forestry and Wild Fauna law but rather to carry out some specific improvements in the legal forestry framework.

5.8 Taking into consideration this and other deficiencies demonstrated in Legal Decree 1090, many of which have been openly proposed by different experts, academic institutions, professional colleges and other civil society institutions and considering that this regulation is not currently in effect⁸⁷, it corresponds to the Congress of the Republic to repeal this legislative decree and confirm a process to review and modify the current Forestry and Wild Fauna law, Law 27308, based on the FTA commitments and principally the National Forestry Policy.

⁸⁵ “Material that cannot be delegated cannot be delegated to the Permanent Commission.””

⁸⁶ “... It is not possible to delegate to the Permanent Commission material related to constitutional reform, nor the approval of international treaties, organic laws, Budget Law or the Law of the Comptroller General of the Republic... ..”

⁸⁷ This Sixth Complementary Final Disposition of Legislative Decree 1090 literally establishes that this new Forestry and Wild Fauna law “... will come into effect the day after the publication of its Regulations in the Official Daily El Peruano and meanwhile will be applicable what is stipulated in Law 27308 and its Regulations.”

6. Land for agrarian use

Within the package of 99 legislative decrees recently promulgated by the Executive, based on the delegation of faculties contained in Law 29157, up to four of these decrees refer to the issue of land for agrarian use.⁸⁸

Below I will mention some of the more relevant aspects – for the effects of the present report – of these legislative decrees.

Legislative Decree 994

- a) Defines fallow land with agricultural aptitude as those not exploited because of a lack or surplus of water.
- b) It presumes the property of the State over fallow land with agricultural aptitude, with the exception of land where there is a private or community land title.
- c) It excludes from the concept of arable land with agricultural aptitude:
 - Land found within Natural Protected Areas
 - Land that constitutes Archeological Patrimony of the Nation
 - Land destined for defense or national security
 - Land within plans approved for urban expansion and included in the inventory of land for housing
 - Forestry land and those with the capacity for greater forestry use
 - Ocean shores
 - Riverbeds, banks and marginal strips of river beds, lakes, lagoons and water storage areas.
- d) It establishes the responsibility of the State to promote private investment for the execution of irrigation projects in fallow land through the transference of the property of the land in exchange for a payment the investors could carry out through one or more of the modalities established by this norm, with the Ministry of Agriculture the responsible party for carrying out the paperwork and evaluating the private initiatives at a national level and the regional and local governments regarding those that correspond to them.

Legislative Decree 1020

- a) Establishes the legal framework to promote the organization of agrarian producers and the consolidation of rural property in order to expand access to agrarian credit and encourage competitiveness, reconversion and modernization of the Agrarian Sector.

⁸⁸ It also promulgated Legislative Decree 1015 and Legislative Decree 1073, however, these have recently been repealed by Congress with Law 29261, September 20 2008, restituting articles 10 and 11 of Law 26505, Law on private investment in the development of economic activities in lands in national territory and campesino and native communities, with their original texts.

- b) The conformation of Agrarian Associative Entities requires the signing of a contract among its members registered in MINAG, which does not generate a new legal body but rather only recognizes these the capacity to act as such for the signing of funding contracts or to guarantee that funding with any company from the national financial system or legal individual, considering this credit operation in an independent manner from that of its members, however, its members are responsible for these operations in a solidarity manner.

Legislative Decree 1064

- a) Establishes that the constitutional concept of land in the agrarian regime includes all land that could be used for agrarian purposes. In this sense, it incorporates land for forestry use within the concept of land for agrarian use⁸⁹.
- b) On the other hand, it keeps in the definition of land in the agrarian regime, grazing land, land for feed, land with forestry and fauna resources, fallow land, as well as the river banks, margins and river beds and in general any other legal denomination that the soil receives in Peruvian territory that is susceptible to agrarian use, such as that which is established in Law 26505 “Law on Private Investment in the Development of Economic Activities in Land in National Territory and Campesino and Native Communities.”
- c) Despite qualifying land for forestry use as land for agrarian use, said land receives a different legal treatment, indicating that the use of land with forestry aptitude is governed by related legislation and by this regulation in a supplementary fashion while land for agrarian use is governed by this regulation and by the Civil Code in a supplementary fashion.
- e) It reiterates the definition of the concept of “fallow land” established by Legislative Decree 994 and includes in the list of exceptions of fallow land, hills and plains with natural grazing land for livestock.
- d) It establishes that State land with capacity for greater use or forestry purposes cannot be used for agriculture, live stock or other activities that affect the vegetation coverage, the sustainable use and conservation of forestry resources, no matter where it is located in national territory.
- e) It establishes that State land located in the jungle or the edge of the Jungle, with a greater capacity or aptitude for farming or livestock encourages the use of agro forestry and forestry systems “reserving a minimum of 30% of its forestry mass and a strip of no less than 50 meters from the river bed, water bodies or other similar areas.”
- f) At the same time, this legislative decree indicates that the change in the use of State lands located in the Jungle or Edge of the Jungle must be authorized by the

⁸⁹ Article 30 of Legal Decree 22175, the Law on Native Communities and Agrarian Development in Jungle and Edge of the Jungle regions, established as lands for “farming use” only those lands “with aptitude for crops” and lands “with aptitude for ranching,” leaving aside those with “forestry aptitude.”

Ministry of Agriculture, based on a technical file that “guarantees the sustainability of the eco-system,” according to the National Environmental Policy and according to the procedures and requirements established in the Regulation. However, Legislative Decree 1090, a subsequently approved regulation, modifies the rigidity of these technical files, indicating that they must “principally” guarantee the sustainability of the ecosystem.

- f) The characteristics, conditions and procedures for the adjudication of land in the Jungle and the Edge of the Jungle, for agricultural and agroindustrial purposes will be established in the regulations of this norm.
- g) It modifies article 13 of Legal Decree 22175⁹⁰ , and article 7 of Law 24656,⁹¹ that establishes the inembargable, imprescriptible and inalienable nature of the lands of these indigenous people, declaring only the imprescriptibility of their lands.
- h) It establishes in article 5.3 that land with a forestry aptitude that corresponds to those territories of Native Communities will be transferred to them.
- i) Article 5.4 of these legislative decrees literally establishes that “*The Native communities located within the borders of national parks, whose activities do not violate the principles that justify the establishment of said conservation units may remain in them without possession and/or property titles.*”
- j) It does not consider land of peasant farmer and native communities to be those pieces of property owned by third parties with legitimately obtained titles, modifying in this manner clause a) of the article of Law 24657⁹² that establishes this same exception but only for those cases where the titles of these third parties had been “obtained prior to January 18. 1920 and are directly developed by the titled owners.
- g) It eliminates the requirement to have a prior agreement with the property owner or the culmination of an administrative procedure in order to obtain servitude for cases involving the use of private lands in order to carry out activities related to mining or hydrocarbons, already declaring the subjection of agrarian land (in general) for servitude, including mining and hydrocarbons.
- k) Finally it repeals title I, II, III, IV and the Seventh Complementary Disposition of Legislative Decree 653, Law 26505, with the exception of article 10 and all the regulations that oppose it.

⁹⁰ Law on Native Communities and Agrarian Development of the Jungle and Edge of Jungle Regions.

⁹¹ General Law on Campesino Communities.

⁹² Declares of national need and social interest the demarcation and titling of land belonging to campesino communities.

Legislative Decree 1089

- a) It declares of national public interest the formalization and land titling of rustic plots and fallow land at a national level, for a period of four (4) years, from when the current Legislative Decree comes into effect.
- b) Creates a Temporary Extraordinary Regime to Formalize and Title rustic plots and authorized fallow land, at a national level, for a period of four years under the Formalization of Informal Property Body – COFOPRI.

Following the same line of analysis undertaken in the present report and after reviewing these issues we can reach the following *conclusions*:

6.1 The weakness of the concept of forestry resource⁹³ and forestry patrimony,⁹⁴ established in Legislative Decree 1090, together with the incorporation of land for forestry use or forestry aptitude within the concept of land for agrarian use established in Legislative Decree 1064 and the weakening of the guarantee of sustainability in the technical files with the change of the use of lands in the Jungle and Edge of the Jungle established in Legislative Decree 1090⁹⁵, seeks to facilitate the transfer of property in these lands, in evident agreement with the proposals made by the Executive Branch in its Law 840 and 1770 projects, better known as the “Law of the Jungle.”

6.2 Legislative Decree 1064 eliminates the consultation process and prior agreement with indigenous peoples for the development of mining activities and hydrocarbons in their lands, further violating the rights recognized to these people in ILO Agreement 169, of which the Peruvian state is a part.

6.3 Legislative Decree 1064 is unconstitutional, in repealing Law 26505⁹⁶, without meeting the requirements contained in the Third Final Disposition of the “Law on Private Investment in the Development of Economic Activities in Land of National Territory and Campesino and Peasant Farmer Communities.”⁹⁷

In effect, the third final disposition of the regulation literally establishes that said law was approved with the requirement of “majority qualified, according to what is stipulated in Art 106 of the Peruvian Constitution,” which refers to the process involving general laws – also establishing that the modification or repeal of that same law requires that another legal regulation “expedited by Congress” and “fulfilling the same formality” which means that: a) only Congress can regulate the modification or repeal of this law; and b) The process for the modifying or repealing the law must be carried out under the same formalities as Law 26505 (prior ruling reports by parliamentary commissions, voting by qualified majority in the Congress plenary, among others).

⁹³ Article 2.1 of Legislative Decree 1090 eliminates forestry plantations and lands whose capacity for greatest use would be forestry production from the definition of forestry resources.

⁹⁴ Article 6 of Legislative Decree 1090 eliminates the State's land where the capacity for greatest use is forestry – with or without forests – from the concept of Forestry Patrimony.

⁹⁵ Article 25 of Legislative Decree 1090.

⁹⁶ All the articles with the exception of article 10.

⁹⁷ Commonly known as the “Land Law.”

While it is true that this “Land Law” is not a general law, as it does not meet the conditions outlined in the Constitution for that purpose, this does not mean that its third disposition is irregular or unconstitutional. In the first place, this final disposition has not been declared unconstitutional by any competent authority, and therefore remains in place to date. On the other hand, the reference to article 106 established in this final disposition of Law 26505 does not necessary imply that Congress sought to give it the status of a General Law but rather that it limited itself to ensuring fulfillment of the strictest formal requirements in order to repeal or modify said norm, which is a blanket of greater protection, without there being any regulation in our legal system that prohibits this.

These criteria and interpretations are ratified with what is indicated in Article 75 of Law 28237, Constitutional Procedural Code, which establishes “(...) *For contravening article 106 of the Constitution it is possible to demand the total or partial unconstitutionality of a legal decree, urgent decree or law that is not approved as a general law, if said dispositions had regulated material reserved to a general law or imply the modification or repeal of a law approved as such.*”

However, Legislative Decree 1064 has been promulgated by the Executive Branch without process, vote or any intervention on the part of Congress for its approval.

7. Water resources

Regarding water resources, in the 99 legislative decrees promulgated by the Executive Branch, based on the delegation of responsibility contained in Law 29157 we find two legislative decrees of importance. Below are some of the most relevant aspects – for the purposes of this report – of these legislative decrees.

Legislative Decree 1081

- a) This legislative decree creates the National System of Water resources with the objective to articulate the work of the States for the integrated and multi-sector management of water resources, recognizing that this management includes, among other activities *“the evaluation, valuation, disposition, assignment of use and efficient and sustainable multi-sector use of the water resource”*⁹⁸.
- b) It defines as a Priority Principle access to water, the satisfaction of the primary needs of the human being above any other use⁹⁹.
- c) Defines as a principle respect for the use of water by Peasant Farmer Communities and Native Communities, understanding both to be indigenous peoples, as well as the right to use water that runs through their land, as long as they do not oppose the law¹⁰⁰.
- d) *It indicates as the purpose of the National System of Water Resources to be “articulating the State's action in the integrated and multi-sector management, the sustainable use, the conservation and an increase of water resources, as well as fulfillment of the National Policy and Strategy on Water Resources and the National Water Resources Plan”* ¹⁰¹
- e) Defines the ministries and other public and private institutions that will make up the National Water Resources System, indicating that the National Water Authority is leadership body of this system and responsible for its operation and establishes the sources that provide its economic resources. At the same time, indicates the planning instruments of the National Water Resources System.
- f) Defines the organizational structure and the role of the National Water Authority and, at the same time, defines the nature and purpose of the Basin Councils.
- g) The Fourth Final Complementary Disposition literally indicates that *“The National Water Authority can delegate or authorize the exercise of its role to individual or legal entities in the public or private sector for the execution of work and projects related to water resource management.”* However, this delegation was subsequently clarified in the Third Final Complementary Disposition of the

⁹⁸ Article 2 of Legislative Decree 1081.

⁹⁹ Article 4.1 of Legislative Decree 1081.

¹⁰⁰ Article 4.5 of Legislative Decree 1081.

¹⁰¹ Article 5 of Legislative Decree 1081.

Regulation of this legislative decree, recently approved through Supreme Decree No. 21-2008-AG¹⁰², which indicates that “*The works and projects related to water resource management that the National Water Authority could mandate or authorize to individuals or legal entities from the public or private sector are those related to the implementation of studies, projects and works and in those places where there are no Users Boards or Irrigation Commissions, the work of operation, maintenance, and improvement of the greater or minor water infrastructure and gathering economic retributions for water usage. Said work is executed under the regulation and supervision of the National Water Authority,*” while it is not possible to delegate the “*essential attributions that justify the existence of the National Water Authority, as well as the responsibility to issue regulations, exercise administrative justice regarding water, that includes, among others the sanctioning, coactive and granting of rights.*”

Legislative Decree 1083

- a) Establishes the regulatory framework to promote the efficient use and conservation of water resources, for which it establishes the elaboration of Efficiency Parameters, applicable in the use of said resources by the National Water Authority, in agreement with the National Environmental Policy.
- b) The National Water Authority must grant “Efficiency Certificates” for those cases involving the efficient use of water resources by the users and operators of public or private water infrastructure and “Certificates of Creativity, Innovation and Implementation” for Water Efficiency” to the users and operators of public or private water infrastructure that design, develop or implement equipment, procedures or technologies that increase efficiency in the use of water resources as well as the conservation of natural goods and the adequate and opportune maintenance of water infrastructure.
- c) At the same time, establish creative incentives, best practice competitions, field trips, prizes, to disseminate successful experiences and promote the use of innovative equipment and technologies – and a differentiated regime of economic retributions for those who develop the efficient use and conservation of water resources. Those that have a Creativity, Innovation and Implementation Certificate for Water Use efficiency can also access funding or the co-funding of studies and the implementation, rehabilitation and outfitting of water infrastructure work that is aimed at achieving a reduction in water loss, the efficient use and conservation of water resources in public water infrastructure.
- d) For the case of users and operators of public or private water infrastructure that does not meet the Efficiency Parameters established by the National Water Authority, these must present an Adaptation Plan for the Efficient Use of Water Resources, with the objective of reducing annual consumption until meeting, in period no greater than five years, said Efficiency Parameters. This Adaptation

¹⁰² Published in the Official Daily El Peruano, September 25, 2008

Plan must contain, as a minimum, the annual goals to reduce volumetric water loss as well as the processes that will be implemented to achieve these goals.

- e) In article 10, it allows those holding water use rights who have an efficiency certificate or who are fulfilling their adaptation plan, the use of residual waters and the possibility to supply residual treated waters to third parties and receive payment for said service to the extent that it meets the pertinent regulations and regulations related to water quality and environmental conservation issued by the Ministry of Environment to this end.

Based on an analysis of these aspects, we can indicate the following *conclusions*:

7.1 The incentives and environment management instruments established in Legislative Decree 1083 imply an interesting contribution to advance toward the sustainable use and conservation of water resources, according to article 18.5 of the Environmental Chapter of the FTA with the United States.

7.2 Legislative Decree 1081 is unconstitutional because it develops the legal framework of a National Water Authority, created without meeting the requirements of article 2 of Law 29157¹⁰³

As has been indicated, the National Water Authority was created by the First Complementary Final Disposition of Legislative Decree 997. However, this legislative Decree is unconstitutional because it violates Articles 104 and 101 of the Political Constitution of Peru.

- a) It is not within the delegation of faculties approved by Law 29157, which indicate in article 2.2 the obligation to be strictly subject to the FTA commitments with the United States and to measures to improve the economic competitiveness in order to take advantage of this commercial agreement.
- b) It regulates the organization and role of the Ministry of Agriculture, without fulfilling the First Transitory Disposition of the General Law of the Executive Branch, established that the Executive Branch is obligated to remit to Congress the Law proposals regarding the organization and role of ministries listed in the First Final Disposition of this general law, which include the Ministry of Agriculture.

7.3 Finally, under the argument of articulating the management of the resource, this Legislative Decree is limited to creating a National System of Water Resources and leaves aside, among other aspects, problems related to access, usage, management, administrative instruments and the control of water resources in the country.

¹⁰³ Law that delegates in the Executive Power the faculty to legislate on diverse materials related to the implementation of the Peru – US Trade Promotion Agreement and with the support of economic competitiveness in order to take advantage of it.

In effect, Legislative Decree 1081 only concentrates on regulating the organization and functional structure of the National Water Authority, which it declares as the leadership body responsible for the National Water Resource System but maintains the deficiencies and gaps in the legal framework for the management of water resources in the country still current under the General Water Law.¹⁰⁴

¹⁰⁴ Promulgated in 1979.

8. Summary of the conclusions and recommendations

On the Law to Delegate Faculties for the implementation of the FTA with the United States

- A. It is important to note that article 2 of Law 29157, "Law that delegates in the Executive Branch the faculty to legislate on diverse materials related to the implementation of the Peru – United States Trade Promotion Agreement and the support of economic competitiveness in order to take advantage of it," clearly contains two requirements to be fulfilled by the Executive for the correct application of the delegated faculties. Fulfillment of only one does not overcome the lack or absence of fulfillment of the other. Consequently, for the adequate implementation of this delegation of faculties it is essential to fulfill, not only the material defined in the list in article 2.1 of Law 29157 but it also requires that legislative decrees are "strictly" linked to the FTA commitments with the United States and necessary measures to improve economic competitiveness in order to take advantage of this commercial agreement and vice-versa. Anything that does not strictly comply with both conditions cannot be considered with the delegated materials and consequently should be regulated outside the exception regime of Law 29157.

Environmental Chapter of the FTA with the United States

- B. Despite the renegotiation of the environmental chapter spearheaded by Democratic representatives in the United States, the recent and questioned promulgation of legislative decrees for the implementation of the FTA Peru – USA has made it possible to identify the important limitations this chapter has to safeguard the environment. This is demonstrated by the important number of legislative decrees that seek to facilitate the access and use of natural resources (land, water, forest, among others) without considering and even violating environmental and social standards such as LD N° 1064, 1081, 1015, 1073, 1090, among others.
- C. With the exception of the issue of the forestry sector, there are no binding instruments to improve environmental management in Peru. At the same time, there are no effective commitments for the fulfillment of existing environmental legislation in each country, with the exception of those cases that could affect the investment and trade that is the subject of the Free Trade Agreement between Peru and the United States. At the same time, it only establishes concrete agreements for the implementation of a reduced number of international environmental agreements.
- D. In the event that there is some "*inconsistency*" between the obligations of one of the parties in this commercial agreement regarding some of the obligations

regulated in these multi-lateral environmental agreements – those in the list – a commitment is assumed to try and balance both obligations "*but this will not impede the parties from adopting a particular measure to fulfill their obligations according to the covered agreement, as long as the principle object of the measure is not to impose a covered restriction on trade*" This means that the FTA with the United States could permit the prioritization of the fulfillment of trade agreements established in these agreement above and beyond the environmental obligations of both countries.

- E. For future Free Trade Agreements or commercial agreements in general to be celebrated by the Peruvian State, where commitments are developed in environmental material, other experiences should be taken into account such as the FTA Chile- Canada Environment Chapter and improve them based on our reality.

Environmental Governance – Ministry of Environment

- F. Legislative Decree 997, The law on the Organization and Role of the Ministry of Agriculture is unconstitutional, as it is not a commitment of the FTA with the United States but rather responds to the process for the Modernization of the Peruvian State (Law 27658) and specifically the process to modernize the agriculture sector that began September 5, 2007 with the approval of Supreme Decree 024-2007-AG and therefore this legislative decree does not fulfill the condition established by article 2.2¹⁰⁵ of the Law to delegate faculties, Law 29157.
- G. Legislative Decree 997 – the Law on the Organization and Role of the Ministry of Agriculture is unconstitutional as it contradicts the First Transitory¹⁰⁶ Disposition of the General Executive Branch Law, which obligates the Executive Branch to remit to Congress any proposed Organization and Function Laws of the 15 ministries listed in the First Final Disposition of the referenced general law, among which is included the Ministry of Agriculture.¹⁰⁷
- H. Legislative Decree 1013 regulates the responsibilities, roles, basic structure of the Ministry of Environment, that implies the future materialization of administrative acts and acts of administration on the part of the maximum

¹⁰⁵ “Article 2.2 “The content of the legislative decrees will be strictly subject to the commitments of the Peru – United States Trade Promotion Agreement and its Amendment Protocol and the necessary measures to improve economic competitiveness for its use, without prejudice to the observation of the constitutional and legal dispositions that, regarding the delegation of legal faculties are cited in Article 1.

¹⁰⁶ “First Transitory Disposition. - Laws on the Organization and Role of Ministers. Based on when the current law comes into effect, in a period of four months will remit to Congress the legal proposals of regarding the organization and role of the Ministries with exclusive authority and a period of six months for ministries with exclusive and shared responsibilities.”

¹⁰⁷ Legislative Decree 1047 that approves the Law on the Organization and Role of the Ministry of Production is also unconstitutional for the same reasons.

authority regarding environmental issues in the country that will never be linked in any way to the implementation of the FTA with the United States. This in and of itself involves a State reform that exceeds the material and conditions established by cited art. 2 of Law 29157 and in consequences, contravenes what is established in the first paragraph of article 104¹⁰⁸ of the Peruvian Political Constitution. Legal Decree 1013, Law of the Creation of the Ministry of Environment, is unconstitutional because it does not fulfill the conditions of Law 29157, the law on the delegation of responsibilities.

- I. Legislative Decree 1013 is unconstitutional for contravening article 22.5 of the General Executive Branch Law, which establishes that ministries are created by the Law on the Congress of the Republic at the proposal of the Executive Branch.
- J. Congress should repeal Legislative Decree 997 or should declare it to be unconstitutional. Moreover, the Executive Power must elaborate a proposal for the Law on the Organization and Function of the Ministry of Agriculture to be presented to Congress for its approval, according to the General Law on the Executive Branch.
- K. Congress should repeal Legislative Decree 1013 or should declare it to be unconstitutional. However, together with the repeal it should approve a new law to create this ministry, which will incorporate the contributions and proposals developed in different processes of discussion and dialogue in the past year, in order to identify the authority, role, and organizational structure of a Ministry of Environment in a participatory manner that responds to our needs and implies a true improvement in the environmental management of the country. At the same time, the repeal of Legislative Decree 997, should include in this "new version" of the Ministry of Environment, the responsibilities and roles regarding water resources and forestry and wild fauna resources proposed by diverse representatives of Peruvian civil society.

Forestry Resources and Wild Fauna

- L. The elimination of Legislative Decree 1090 of the Consultative Forestry Policy Council (CONAFOR) as a consultative body of the national forestry authority on the forestry policy and wild fauna and other issues of interest for the sector, directly contradicts the commitments of the forestry annex of the FTA-Peru – USA, further reducing the spaces for public participation in the management of forestry resources¹⁰⁹.
- M. The expansion of faculties to OSINFOR, for monitoring the use of forestry resources, granted by the Peruvian State, established in Legislative Decree

¹⁰⁸ “Congress can delegate in the Executive Power the faculty to legislate, through legislative decrees, on the specific material and for a determined period established in the authoritative law...”

¹⁰⁹ For the strengthening of capacities clause d) of article 4 of annex 18.3.4 of the Environmental Chapter on the Peru - US Free Trade Agreement establishes the obligation to “*Increase the participation of the public and improve transparency in decision making related to the planning and management of forestry resources.*”

1085¹¹⁰ and Legislative Decree 1090¹¹¹ is unconstitutional as it generates an overlay with the role of monitoring and control granted by Regional governments in clauses e) and q) of article 51¹¹² of the General Law on Regional Governments.

- N. The creation of a new modality to take advantage of forestry lumber resources called "Concession by private initiative" in article 9 of Legislative Decree 1090 is unconstitutional as it violates the commitment of the Forestry Annex of the FTA with the United States, specifically referring to "*Complementing existing mechanisms to implement a competitive, transparent process for the adjudication of concessions*"¹¹³ and consequently it also does not fulfill the condition established in Article 2.2. of the Law to delegate faculties, Law 291571¹¹⁴.
- O. The modification of the requirement for the Environmental Impact Study for an Environmental Impact Evaluation (which could be at the criteria of the official of the time a Declaration of Environmental Impact) in the contents of the Forestry Management Plan for the different modalities for forestry use weakens

¹¹⁰ Article 1.- "*Creates the Supervision Body for Forestry and Wild Fauna Resources, OSINFOR, as a Public Executor Body, with legal status of internal public law, responsible for the supervision and the monitoring of the sustainable use and conservation of Forestry and Wild Fauna Resources as well as environmental services coming from the forestry, granted by the State through diverse usage modalities recognized in Law No 27308.*

Article 2.- "*OSINFOR is the entity responsible at a national level, to supervise and monitor the use and conservation of forestry and wild fauna resources, as well as environmental services coming from the forest, for its sustainability according to the national policy and strategy of the integrated management of natural resources and the policies to be established by the Ministry of the Environment on environmental services, in its area of competence.*

Article 3.- "*OSINFOR has the following role:*

3.1 *To supervise and monitor fulfillment of the titles granted by the State, as well as the obligations and conditions contained in them and the respective management plans. Said titles, for the effects of this Law include concession contracts, permits, authorizations and others, that are aimed at the sustainable use and conservation of forestry and wild fauna resources as well as environmental services coming from the forest.*"

¹¹¹ Article 5.- "*Supervision body of forestry and wild fauna resources. The Body to Supervise Forestry and Wild Fauna Resources (OSINFOR) is the Public Executor Body, adscript to the Presidency of the Council of Ministers, responsible for the supervision and monitoring of the sustainable use and conservation of forestry and wild fauna resources, as well as the environmental services, according to the law which created it.*"

¹¹² Article 51.- "*Role in agrarian material.-*

(...)

e) *o develop actions of monitoring and control to guarantee the sustainable use of natural resources under its jurisdiction:*

(...)

q) *To grant permits, authorizations and forestry concessions, in areas within the region, as well as to implement work of promotion and monitoring in strict fulfillment of the national forestry policy."*

¹¹³ Numeral (i) of clause g) of article 3 of annex 18.3.4 of the Environmental Chapter in the FTA Peru – US

¹¹⁴ Article 2.2 "*The content of the legislative decrees will be strictly subject to the commitments of the Peru – United States Trade Promotion Agreement and its Amendment Protocol and the necessary measures to improve economic competitiveness for its use, without prejudice to the observation of the constitutional and legal dispositions that, regarding the delegation of legal faculties are cited in Article 1."*

the forestry management in the country, which contradicts the commitment of the Peru-US FTA.

- P. The change in the payment modality for forestry use, for the current title holders of forestry concessions, referred to in the Fifth Final Complementary Disposition of Legislative Decree 1090, violates the legal security of public tenders for the granting of forestry concessions for lumber use already in place and violates the competitiveness and transparency of future public tenders, this final specific commitment of the Forestry Annex of the Peru-US FTA.¹¹⁵
- Q. Article 21 of Legislative Decree 1090¹¹⁶, which grants the Ministry of Agriculture, as the National Forestry Authority, the role to grant authorizations to carry out "deforestation" is unconstitutional because it violates the specific role of Regional Governments established in clause q) of article 51 of the General Law on Regional Governments¹¹⁷.
- R. Despite the long list of commitments about the forestry sector assumed by the Government of Peru in annex 18.3.4. of the Environmental Chapter of the FTA signed with the United States, there is no specific commitment to approve a new Forestry and Wild Fauna law, but to carry out some specific improvements to the forestry legal framework.
- S. Taking into consideration these and other deficiencies demonstrated in Legislative Decree 1090, many of which have been openly proposed by different experts, academic institutions, professional associations and other civil society institutions, and considering that this norm is not yet in effect¹¹⁸, it corresponds to the Congress of the Republic to repeal this legislative decree and conform a process to review and modify the current Forestry and Wild Fauna Law, Law 27308, based on the commitments of the FTA and principally, a National Forestry Policy.
- T. The weakening of the concept of forestry resource¹¹⁹ and forestry patrimony¹²⁰ established in Legislative Decree 1090, together with the incorporate of land for forestry use or forestry aptitude within the concept of land for agrarian use,

¹¹⁵ Numeral (i) f clause g) of article 3 of annex 18.3.4 of the Environmental Chapter in the FTA “*To complement the existing mechanisms to implement a competitive and transparent process for the adjudication of concessions.*”

¹¹⁶ Article 21 “The holders of oil, mining, industrial or any other operating contract, who carry out their activities within forests or within areas with forest coverage require authorization from the National Forestry and Wild Fauna Authority to clear-cut these areas, according to what is established in the Regulation...”

¹¹⁷ q) *Grants permits, authorizations and forestry concessions in areas in the interior of the region as well as exercising promotion and monitoring work in strict fulfillment of the national forestry policy.*”

¹¹⁸ The Sixth Complementary Final Disposition of Legislative Decree 1090 literally establishes that this new Forestry and Wild Fauna “... with enter into effect the day following the publication of its Regulations in the Official Daily El Peruano, meanwhile what is contained in Law N 27308 and its Regulation will be applicable.”

¹¹⁹ Article 2.1 of Legislative Decree 1090 eliminates the forestry plantations and the lands where the capacity for greatest use is forestry production from the definition of forestry resources.

¹²⁰ Article 6 of Legislative Decree 1090 eliminates the State's lands where the greatest capacity for use is forestry – without or without forests – from the concept of Forestry Patrimony.

established in Legislative Decree 1064 and the weakening of the sustainability guarantee of the technical files for the change in the use of lands in the Jungle and Edge of the Jungle established in Legislative 1090¹²¹, seeks to facilitate the transfer in the property of these lands, in evident agreement with proposals raised by the Executive Branch in its Law 840 and 1770 projects, better known as the "Law of the Jungle."

Land for Agrarian Use

- U. Legislative Decree 1064 eliminates the process for consultation and prior agreement with indigenous peoples for the development of mining and hydrocarbon activities in their lands, further violating rights recognized to these peoples in ILO Agreement 169, of which the Peruvian State is Party.
- V. Legislative Decree 1064 is unconstitutional in repealing Law 26505¹²² "Law on Private Investment in the Development of Economic Activities in National Territory Lands and Campesino and Native Communities,"¹²³ without fulfilling the requirements contained in the Third Final Disposition of this regulation, which establishes the obligation that any modification or repeal of Law 26505 must be carried out through a legal regulation expedited by Congress and approved by a qualified majority.

Water Resources

- W. The environmental management incentives and instruments established in Legislative Decree 1083, imply an interesting contribution to advance toward the sustainable use and conservation of water resources, according to Article 18.5 of the Environmental Chapter of the FTA with the United States.
- X. Legislative Decree 1081 is unconstitutional because it develops the legal framework of a National Water Authority, created through Legislative Decree 997, which at the same time is unconstitutional, as indicated above, for failing to meet the requirements of article 2.2 of the Law to delegate responsibilities, Law 29157¹²⁴.
- Y. With the argument of articulating the management of the resource, this Legislative Decree 1081 is limited to creating a National System of Water Resources and leaving aside, among other aspects, problems about access, use, management instruments, administration and control of water resources in the country.

¹²¹ Article 25 of Legislative Decree 1090.

¹²² All articles with the exception of article 10.

¹²³ Commonly called the "Land Law"

¹²⁴ Law that delegates in the Executive Power the faculty to legislate on diverse materials related to the implementation of the Peru – US Trade Promotion Agreement and with the support of economic competitiveness in order to take advantage of it.

Annex: List of Legislative Decrees on the environment or linked to the environmental issue

LEGISLATIVE DECREES ON THE ENVIRONMENT	LEGISLATIVE DECREES LINKED TO THE ENVIRONMENTAL ISSUE
A) Governance	A) Governance
D. Leg. 997: Law on the Organization and Role of MINAG (13/03/08)	D. Leg. 1047: Approves the Law on the Organization and Role of The Ministry of Production (26/06/08) Approves the Law on the Organization and Role of The Ministry of Production
D. Leg. 1013: Law on the creation, organization and role of the Ministry of Environment (14/05/08)	D. Leg. 1088: Law on the National System For Strategic Planning and the National Strategic Planning Center. (28/06/08)
D. Leg. 1039: Modifies dispositions in Legislative Decree 1013 (26/06/08)	
D. Leg. 1079: Establishes measures that guarantee the Patrimony of Natural Protected Areas (28/06/08)	
D. Leg. 1081: Creates the National Water Resources System (28/06/08)	
D. Leg. 1083: Promotes the Efficient Use and Conservation of Water Resources (28/06/08)	
D. Leg. 1085: Law the Creates the Supervision Body for Forestry Resources and Wild Fauna (28/06/08)	
B) Biodiversity - Transgenic	B) Land - Agriculture
D. Leg. 1059: Approves the General Law on Agriculture Health (28/06/08)	D. Leg. 994: Regime to promote private investment in irrigation for the expansion of the agricultural frontier. (13/03/08)
D. Leg. 1060: Regulates the National System of Agrarian Innovation (28/06/08)	D. Leg. 1015: Unifies the procedures of campesino and native communities from the Highlands and Jungle with those from the Coast to improve their production and farming competitiveness (20/05/08)
D. Leg. 1062: Approves the Law on the Innocuousness of Food (28/06/08)	D. Leg. 1020: Promotion for the Organization of Agrarian Producers and the Consolidation of Rural Property for Agrarian Credit (10/06/08)

Continues

LEGISLATIVE DECREES ON THE ENVIRONMENT	LEGISLATIVE DECREES LINKED TO THE ENVIRONMENTAL ISSUE
D. Leg. 1072: Protection of Testing Data or Others Not Divulged on Pharmaceutical Products (28/06/08)	D. Leg. 1064: Approves the Legal Regime for the Use of Land for Agrarian Use (28/06/08)
D. Leg. 1074: Approves the Regulation to Protect Information, Security and Efficacy in the Procedure to Authorize the Commercialization of Chemical Pesticides for Agricultural Use (28/06/08)	D. Leg. 1073: Modifies Clause B) of Article 10 of Law 26505, Law On Private Investment in the Development of Economic Activities in Lands of National Territory and Campesino and Native Communities, Modified by the Single Article of Leg. D 1015 (28/06/08)
D. Leg. 1075: Aprueba Disposiciones Complementarias a la Decisión 486 de la Comisión de la Comunidad Andina que Establece el Régimen Común sobre Propiedad Intelectual (28/06/08)	D. Leg. 1089: Establece el Régimen Temporal Extraordinario de Formalización y Titulación de Predios Rurales (28/06/08)
D. Leg. 1080: Modifica la Ley 27262, Ley General de Semillas (28/06/08)	
C) Extractive Industries or the use of Natural Resources	C) Extractive Industries or the use of Natural Resources
D. Leg. 1042: Modifies and Adds diverse articles to law 28271 – Law that regulates environmental liabilities from mining activity (26/06/08)	D. Leg. 1002: Promotion of investment for the generation of electricity with the use of renewable energies (02/05/08)
D. Leg. 1048: Specifies the Environmental Mining Regulation of the Storage Deposits of Mining Concentrates (26/06/08)	D. Leg. 1010: Substitutes articles from the Single Ordered Text of the General Mining Law (09/05/08)
D. Leg. 1084: Law on the Maximum limits of catch per vessel (28/06/08)	D. Leg. 1027: Modifies the General Fishing Law Legal Decree 25977 (22/06/08)
D. Leg. 1090: Approves the Forestry and Wild Fauna Law (28/06/08)	D Leg. 1040: Modifies Law 27651 “Law on the Formalization and Promotion of Small Mining and Artisan Mining” and the General Mining Law (26/06/08)
	D. Leg. 1054: Modifies Articles of the Single Ordered Text of the General Mining Law D.S. 014-92-EM (27/06/08)
	D. Leg. 1058: Promotes Investment in Electricity Generation with Water Resources and other Renewable Resources (28/06/08)

Continues

LEGISLATIVE DECREES ON THE ENVIRONMENT	LEGISLATIVE DECREES LINKED TO THE ENVIRONMENTAL ISSUE
D) Environmental Management Instruments	
D. Leg. 1032: Declares aquiculture to be of National Interest (24/06/08)	
D. Leg. 1041: Modifies diverse norms in the electricity regulatory framework (26/06/08)	
D. Leg. 1055: Modifies Law 28611, General Law on the Environment (27/06/08)	
D. Leg. 1078: Modifies Law 27446, Law on the National Environmental Impact Evaluation System (28/06/08)	
E) Solid Waste	
D. Leg. 1065: Modifies Law 27314, General Law on Solid Waste (28/06/08)	

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