New Threat to Peru's Forests and Indigenous Peoples

Elsa ChanduvÀ JaÀ±a

Follow this and additional works at: https://digitalrepository.unm.edu/notisur

Recommended Citation

This Article is brought to you for free and open access by the Latin America Digital Beat (LADB) at UNM Digital Repository. It has been accepted for inclusion in NotiSur by an authorized administrator of UNM Digital Repository. For more information, please contact amywinter@unm.edu.
New Threat to Peru's Forests and Indigenous Peoples

by Elsa Chanduví Jaña

Category/Department: Peru

Published: Friday, December 17, 2010

Six months after Peru's Congress passed the framework law on prior consultation with indigenous peoples, the law has yet to be signed; nevertheless, the government has convoked a prior consultation to approve a new forestry law, all while ignoring indigenous organizations' observations.

In mid-July, the executive submitted to Congress a proposed forestry law (Ley Forestal y de Fauna Silvestre). The bill was sent to the Comisión Agraria, which created a working group with participants from the government as well as civil society.

On Dec. 15, the Comisión Agraria approved the bill, despite opposition from indigenous organizations, and sent it on for debate by the full Congress.

The bill had been written based on requirements of the free-trade agreement (FTA) with the US, which went into effect in February 2009. In late July of this year, US Trade Representative Ron Kirk expressed his concern regarding the fulfillment of commitments assumed under the FTA because Peru had been unable to comply with full implementation of the agreement's Forestry Annex.

Peru's Foreign Trade and Tourism Minister Martín Pérez said at the time that the only point still pending was approval of the new forestry law, which attempted to fill the vacuum left by the annulment of Decreto Legislativo (DL) 1090, following a 55-day strike by the Amazonian communities in mid-2009 demanding that it be annulled. The strike ended with a violent confrontation between Awajún indigenous and the police in the Amazonian city of Bagua (NotiSur, June 5, 2009) and (June 18, 2010).

DL 1090 had been approved in 2008 by President Alan García using legislative powers given him by Congress to adapt national legislation to provisions of the FTA with the US.

Public hearings

On Nov. 8, the Comisión Agraria published a notice in the official gazette El Peruano convoking the indigenous population individually or organized in communities, associations, or federations, or their representatives, to a free and informed prior consultation on the forestry bill to be held that month under procedures established by the committee and the indigenous organizations.

The consultation was called, according to the notice, "because the bill contains proposals involving management in territories occupied by indigenous peoples with provisions likely to affect their rights, according to the guidelines of International Labor Organization (ILO) Convention 169 and the reiterated jurisprudence of the Tribunal Constitucional (TC)."

The Amazonian, Andean, and coastal indigenous communities' organizations, represented by the Asociación Interétnica del Desarrollo de la Selva Peruana (AIDESEP), the Confederación de Nacionalidades Amazónicas del Perú (CONAP), the Confederación Nacional de Comunidades del Perú Afectadas por la Minería (CONACAMI), the Confederación Campesina del Perú (CCP), and
the Confederación Nacional Agraria (CAN) rejected the convocation to what they referred to as a "so-called consultation."

In a Nov. 20 letter to Comisión Agraria president Aníbal Huerta, Congress president César Zumaeta, and national and international public opinion, the indigenous leaders disputed calling the talks organized by the commission for late November in four Amazonian cities a "consultation."

In point three of the letter, the organizations said that "signing the framework prior-consultation law approved by Congress on May 19, 2010, is indispensible for any consultation on the proposed forestry law or any other law or administrative decision that affects indigenous peoples."

The indigenous leaders also said that the "conversations" were set up hastily and without adequate time for debate; they thus called for extending the deadline until a process agreed on by consensus and carried out in good faith is in place.

"We condemn the attempt to hastily impose a forestry law to favor for-profit interests and the FTA with the US and that is why the prior-consultation law has been stalled," said AIDESEP in its analysis of the forestry bill.

"They want to rush full steam ahead to approve the forestry law, using an aberrant consultation, with the intention of turning over part of the indigenous territory to lumber companies," AIDESEP president Alberto Pizango said in a press conference, after insisting that the government sign the prior-consultation law approved by Congress last May. "By doing this, they are trying to impose the forestry law, then affirm that they complied with Convention 169, and finally set a precedent for future consultations."

The Shawi leader also said he regretted that the Comisión Agraria and the Ministerio de Agricultura had not responded to AIDESEP's observations on the law, shutting them out in the process.

Among AIDESEP's numerous observations is that Article 62 of the forestry bill allows forestry businesses to have tracts of land between 10,000 hectares and 40,000 ha, but there is no limit to the number of tracts that they can control, and they can control the tracts for renewable 40-year periods.

The communities must "compete" with lumber, mining, and oil companies as well as with tourism businesses that can have up to 10,000 ha and with nongovernmental organizations (NGOs) to establish conservation areas, which have no limits whatsoever.

"A new type of latifundio [large landed estate] is being promoted in the Amazonia through these large forestry concessions, postponing indigenous territorial demands," said AIDESEP's Consejo Directivo in its Nov. 22 analysis of the bill.

Roberto Espinoza, AIDESEP advisor on forestry issues, said that the forestry bill gives ample powers to lumber companies to acquire larger concessions as well as allowing a change in the use of forest lands, converting them into agricultural lands.

"It attempts to encourage the lumber latifundios, and that is unfortunate because dozens of indigenous peoples have been waiting a long time for titles to their lands. We believe that, just as business owners have the right to do business, the indigenous communities also have the right to their property," said Espinoza. "Not a single article promotes lumber extraction in favor of the indigenous communities."
Nevertheless, the Comisión Agraria continued with the public hearings scheduled in five cities including Satipo and Pucallpa, where those attending said that they had the characteristics of an informational workshop.

**Procedure challenged**

The nongovernmental Instituto de Defensa Legal (IDL) sent congressional president Zumaeta a letter with observations on the process and challenged Congress' attempt to pass the forestry bill without first having the prior-consultation law signed.

IDL asked Zumaeta and the Comisión Agraria president, when it carries out prior consultation on the law, to consider the TC's ruling regarding constitutional principles of good faith, flexibility, the goal of reaching an agreement, transparency, and prior implementation of the consultation process.

"We find it questionable that they want to approve the Ley Forestal y de Fauna Silvestre without the prior signing of the Ley de Consulta Previa de los Pueblos Indígenas. This is incompatible with the "good faith" principle that should orient and regulate actions of the state," said IDL.

In a Dec. 6 document addressed to the Comisión Agraria, the Defensoría del Pueblo expressed concern with the way the consultation process for the forestry law was carried out, saying that the "public hearings" had generated confusion regarding the state's role and the stages of the consultation process. The Defensoría considers that the committee is still in the informational stage, which has not been exhausted in the hearings.

The Coordinadora Nacional de Derechos Humanos (CNDDHH) indicated that the informational stage should be followed by an internal evaluation, in which the government should facilitate indigenous organizations' attempts to carry out a free and reasonable evaluation of the aspects of consultation so that the organizations can define their proposals. Only when the two previous stages have concluded can the dialogue stage begin, which requires an appropriate methodology and execution within a reasonable time frame.

On Dec. 6, AIDESEP sent a letter to the Comisión Agraria expressing its surprise at having thus far received no answer to the six letters sent to the committee regarding issues on which it gave technical-legal observations on the forestry law as well as the procedure to be followed. Therefore, the national organization—at the express request of its base—decided to not participate further in any consultation process convoked by the congressional committee because the process violated minimum guarantees of good faith, concrete deadlines, and due process.

-- End --