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Peru: Building the Road to Change

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Analysts describe as positive the first measures by Peruvian President Ollanta Humala's administration, which are aimed at making economic growth with social inclusion a reality and are also giving the new president high approval ratings.

About 70% of the population approve of President Humala's job performance, according to the latest poll by Datum International, whose results were released on Sept. 10. In addition, 78% of respondents expressed support for the recently approved prior-consultation law for indigenous communities, and 80% approve of the new levies on mining companies.

On Sept. 6, the executive signed the Ley de Derecho a la Consulta Previa a los Pueblos Indígenas u Originarios, which Congress had approved unanimously on Aug. 23, and which is in line with the principles of Convention 169 of the International Labor Organization (ILO) regarding indigenous tribes and peoples, in effect in Peru since 1995.

The new law recognizes "the right of indigenous or native peoples to prior consultation [by the government] regarding legislative or administrative measures that directly affect their collective rights, physical existence, cultural identity, quality of life, or development."

The law incorporates much of the content of the law approved by the previous legislature on May 19, 2010, which former President Alan García (2006-2011) refused to sign, sending it back to the legislature with a number of observations, including that it needed to clearly specify that indigenous peoples had no veto right in administrative or legislative matters that directly affect them.

"We indigenous peoples only demand respect for the right to a dignified life, and this approval signifies a demonstrated willingness of the government to follow through with the great changes that the country needs, an authentic form of doing things with respect and continuing to promote the genuine harmonious development of the country," said Alberto Pizango, president of the Asociación Interétnica de Desarrollo de la Selva Peruana (AIDESEP) in a conversation with on Aug. 24.

Eduardo Vega, the acting Defensor del Pueblo, expressed his satisfaction with the law's passage, calling it "a law that constitutes a pivotal step in recognizing the rights of indigenous people and in institutionalizing the intercultural dialogue between them and government authorities." He also said that the measure incorporates the recommendations called for by the Defensoría del Pueblo.

"Signing the prior-consultation law was an outstanding debt with the indigenous peoples. This is really a first step, there is a historic debt with the indigenous peoples regarding inclusion, education, health, nutrition, pensions—that is, every type of security that indigenous peoples are lacking today," said Beatriz Merino, former defensora del pueblo, in an interview with daily on Sept. 19.

Referring to the Amazonian work stoppage by indigenous groups to defend their territory, which on June 5, 2009, resulted in acts of violence in the northeastern city of Bagua that cost the lives of 34
indigenous and police (NotiSur, July 24, 2009), Merino said that, "if the prior-consultation law had existed at that time, if regulations had been in place, and if they had been carried out at the time, that tragedy would not have happened."

President Humala signed the new law in Bagua. "Today we have taken an important step in building a new Peru, a great republic where all its children are respected," said the president.

On Sept. 20, the multisectoral commission—made up of representatives of the Ministerios de Energía y Minas, Agricultura, Educación, Ambiente, and Cultura—was set up. It will have the task of writing the rules governing the prior-consultation law within the next 90 days. The commission is expected to submit a final draft of the rules during the first half of December. Within the next 180 days, it must also identify and create a registry of the indigenous and native peoples who have the right to the consultation.

Vicente Otta Rivera, vice minister of intercultural affairs at the Ministerio de Cultura, told the press that participation of indigenous peoples is necessary for the process of drawing up the rules for the prior-consultation law.

National and international indigenous and human rights organizations praised the signing of the law and emphasized that it is a key to avoiding more social conflicts and deaths. During the García administration close to 200 people died in social protests.

**New mining tax**

With the aim of obtaining more revenue from mining companies to finance anti-poverty programs, the government reached an agreement with the companies to change the tax system from one based on sales to one based on operating profits. The businesses accepted an annual levy of 3 billion soles (US$1.1 million).

"This tax will not affect either the investment or the competitiveness of businesses, and would provide a US$30 billion investment in mining projects in the next five years," said Prime Minister Salomón Lerner during the presentation of the Cabinet to the Congress on Aug. 25.

Pedro Martínez, president of the Sociedad Nacional de Minería, Petróleo y Energía, told the press that all mining companies agreed with the new system and intended to collaborate with the social-inclusion efforts promoted by the government. He said that, after consulting with all the mining companies, "the conclusion was that mining could support the issues linked to social inclusion; we then moved forward, and the results are those that were announced."

On Sept. 19, the congressional economy and energy and mines committees approved the three proposals submitted by the executive for applying the new tax regime. The first creates the special tax on mining applicable to businesses without tax-stability contracts. The second establishes the special "windfall-profits tax" applicable to businesses with such contracts. The third changes the method for calculating the amount owed.

The provision allowing mining companies to deduct the new levy as an expenditure when calculating their income tax (impuesto a la renta), which equals 30% of the accounting profits that each company registers in a year, has provoked a reaction. This is especially the case in regions where extractive activity is carried out and that will see their revenue reduced from the mining
canon (royalties), through which local and regional governments share in the revenue the Peruvian government receives from mineral exploitation. Fifty percent of the income tax goes to the canon (NotiSur, Dec. 12, 2008).

During the García administration, mining companies agreed to pay an annual (voluntary mining contribution) of just less than 500 million soles (US$185 million). With the new tax regime, the tax burden for the entire mining sector is increased from 38.5% to an average of 42.7%. In addition, all mining companies, without exception, will now pay the new mining taxes.

"It is a more efficient form of tax collection. More profitable companies pay more, and payment will be made quarterly," Julia Cuadros said on Sept. 22 at a working breakfast with journalists organized by Red Muqui and Comunicaciones Aliadas. "Although that is true, the three forms of tax collection will be made after deducting operating costs; therefore the amount collected will not be 3 billion soles but less," she said, adding that calculations by the organization Propuesta Ciudadana puts the amount to be collected at about half what was announced.

What is clear is that the executive will receive the taxes collected. It remains to be seen how those greater resources will be distributed among the regions to compensate for the reduction in the canon. Some observers remarked that it is unclear how the funds are going to be administered, what state agency will manage them, what projects will be financed with this influx of money—social programs or development projects.

For greater social inclusion

On Aug. 15, less than a month after taking office, the Humala administration fulfilled one of the promises made during the president's July 28 inaugural address—to increase the monthly minimum wage (Remuneración Mínima Vital, RMV) for private-sector workers from 600 to 675 soles a month.

"The present government is committed to recovering workers' buying power through various measures, among them a 150-sole adjustment to the Remuneración Mínima Vital, which will be carried out in two steps: the first this month and the second in 2012," read the presidential decree published in the official newspaper.

Another of Humala's campaign promises was to recapture the cheap gas from Block 88 of the Camisea field for the domestic market. To that end, on Sept. 12, Prime Minister Lerner announced that the gas would be freed up within 30 to 60 days. Lerner said that the Consorcio Camisea companies understood the government's "political sovereignty," which consists in developing the petrochemical industry in southern Peru.

To address citizens' ever-increasing insecurity, in mid-August the new government created a security council, headed by President Humala, which will focus on establishing harsher sentences for criminals who use firearms, who harm or victimize minors, those who commit acts of corruption, and bad drivers.

Humala has said that he will apply imprescriptible measures for crimes of corruption against the state and that those who commit such crimes and their accomplices will be permanently disqualified from holding any public office. He also announced the creation of a Procuraduría Especial (office of special prosecutor) for corruption cases against the state. The new office is expected to be in operation by late September.
To promote state development and social-inclusion policies aimed at reducing poverty, inequality, vulnerability, and social risk, on Sept. 22, the full Congress approved a law creating the Ministerio de Desarrollo e Inclusión Social (MIDIS), which will focus on the government's major social programs.

"The principal objective of the programs that MIDIS will be in charge of will be to support persons in poverty not through assistentialism but rather by implementing productive social policies so that in five years the beneficiaries will have a job or their own sustainable business," sociologist Juan Arroyo, who worked on designing the new ministry, told La República. "The best social policy is employment."

The Confederación General de Trabajadores de Perú (CGTP) announced that on Oct. 12 it would lead a large national march to support Humala's presidency. "We are going to support the changes that are taking place, such as the fight against corruption, the recovery of Lot 88 of Camisea gas for national consumption, the levy on windfall mining profits, the increase in the minimum wage, and the struggle against citizen insecurity, among other measures," CGTP secretary-general Mario Huamán told the press.

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