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Peru Weakens Environmental Protections, Encourages Investment in Extractive Industry

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Peru’s Congress on July 11 passed a packet of laws to promote investment and reactivate the economy despite numerous national and international criticisms that labeled the proposal a blow to the country’s environmental structure, control, and management.

President Ollanta Humala had proposed the bills three weeks earlier, the Ministerio de Economía y Finanzas drew them up, and Congress adopted the bill as Law No. 3627-2014, the "Law that establishes tax measures and simplifies procedures and permits to promote and stimulate investment."

Article 19 of the new regulation states that for the next three years the Organismo de Evaluación y Fiscalización Ambiental (OEFA) will "favor actions geared toward preventing and correcting infringing behavior in environmental matters" and will apply sanctions only in exceptional cases. Instead of sanctions with fines, it calls for corrective measures. Should an offender of environmental regulations not take recommended corrective measures, the OEFA could impose fines of up to 50% of the maximum fine. Humala and his minister of finance had asked for a 35% fine limit.

Provisions of this article, however, would not apply in the case of serious infractions "that generate actual damage putting peoples’ lives and health at risk."

Iván Lanegra, former intercultural vice minister, told the newspaper La República, "Clearly, reducing fines implies less environmental protection and, worse yet, dismantling environmental protection is done with a law called "Investment Promotion," which increases the risk that it could be interpreted to mean environmental policy is being used to attract investment, which is precisely what should not be done."

In late June, the Defensoría del Pueblo sent an official letter to Congress lobbying against paralyzing environmental inspection, and among the recommendations was a plea "not to approve Article 19 of the proposed law, which allows for suspending administrative proceedings involving OEFA sanctions and reducing the fines because it would weaken institutions for monitoring and enforcement."

Meanwhile, on July 13, the Central General de Trabajadores del Perú (CGTP) publically said, "By aiming to reduce labor fines by up to 50% during a three-year period, and thus lowering fines issued by the Superintendencia Nacional de Fiscalización Laboral, just like those issued by the OEFA ... what remains to be seen is whether cheaper sanctions would encourage greater violations of labor rights and with intensify social conflicts."

The bill as adopted also indicates that when the agency responsible for approving Environmental-Impact Reports for a specific investment project requires opinions both connected to and not connected to the public sector, they would have 45 business days—and not 30 as the executive had
asked—to rule. If the official responsible for issuing the opinion fails to meet the deadline, that official would be guilty of serious misconduct and be punished.

The new law also requires additional paperwork for approval of environmental-preserve areas including enactment by supreme decree and Cabinet approval, eliminating the authority of the Ministerio del Ambiente (MINAM) to make technical decisions based on analyzing and approving these temporary areas.

"This would seem to be the result of a specific fear of the Sociedad Peruana de Hidrocarburos (SPH) about the decision of the Consejo Directivo del Servicio Nacional de Áreas Naturales Protegidas por el Estado (SERNANP) to approve a preserve in Peru’s northern sea area. It is clear that the state cannot make regulatory decisions to benefit particular interests instead of the common good," said Isabel Calle, director of the nongovernmental organization (NGO) Programa de Política y Gestión Ambiental de la Sociedad Peruana de Derecho Ambiental (SPDA).

For Calle, the measures are a response to the interests of various business groups intent on "toppling" the "bureaucratic hurdles" to investments in extractive industries.

"What they want is to cut the authority and autonomy [of MINAM], stating that their management instruments must be voted on by the Cabinet, which is a political rather than a technical body. We are talking about technical processes that will now be handled politically," César Gamboa, executive director of the NGO Derecho, Ambiente y Recursos Naturales (DAR), told La República.

The paquetazo, as the group of bills is called, is unacceptable not only because it weakens the country’s environmental institutions but also because it is seen as an absolutely incoherent and opportunistic measure considering that Peru will host the UN Climate Change Conference (COP 20) in Lima scheduled for Dec. 1-12.

Challenges to the new law also focused on the "exceptional" updating of all outstanding tax debts due when the law took effect that are owed the Superintendencia Nacional de Aduanas y Administración Tributaria (SUNAT), including EsSalud and the Oficina de Normalización Previsional (ONP). The government says that reducing the tax liability will benefit 152,000 taxpayers, of which more than 140,000 are micro and small businesses. However, the opposition in Congress complained that 159 medium-sized and large businesses would benefit also.

Economy and Finance Minister Luis Miguel Castilla told the media, "We’re talking about a discount [taxing strategy] and an accounting update to eliminate capitalization of interest that made it impossible to collect unpaid debt because of the snowball effect that today we are trying to clean up and provide certainty for taxpayers,"

Affront to FTA

Sociologist Alejandra Alayza, former executive coordinator of the Red Peruana por una Globalización con Equidad (RedGE), warned that the new law appears to violate Peru’s free-trade agreement (FTA) commitments with the US and the European Union (EU) to not lower labor or environmental standards to benefit trade and investment (NotiSur July 21, 2006, Oct. 19, 2007, and March 14, 2008). "The paquetazo could have a setback and backfire," she wrote in her column in La República.

In statements to El Comercio, Environmental Minister Manuel Pulgar-Vidal denied that the approved economic packet would affect environmental agreements in the FTAs. To the surprise of
experts and social organizations, the environment minister said that none of his responsibilities had been cut, although he admitted, "It’s not the best scenario."

A group of economists La República surveyed warned that the new measures to reactivate the national economy would not work because they focus exclusively on supply conditions, ignoring the reduction in demand. The measures will benefit specific sectors, specifically mining and hydrocarbons, and would only give results in the medium term, they said.

Economist Germán Alarco said that the government should increase the minimum wage. He justified his proposal by saying, "By increasing it 10% to 824 new soles [US$295] per month, domestic demand would expand by 0.7 of a point of GDP, so growth would be greater than 5%.

In a statement July 6, the CGTP said, "It is important to stimulate demand by improving credit policy and increasing pensions and wages in general."

The Federación Nacional de Trabajadores Mineros Metalúrgicos y Siderúrgicos del Perú (FNTMMSP) said, "The package does not propose industrializing the country nor diversifying domestic production. Rather it reinforces the primary export model and continues to incentivize production of raw materials when we have a growing problem of external demand that, according to experts, will last until 2025."

In his column in La Primera, economist Félix Jiménez wrote that the current slowdown shows a need to change from a primarily export growth model to one based on modernizing agriculture and developing agroindustry and manufacturing.

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