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In Push To Spur Investment, Peru Weakens Environmental Protection

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Experts and civil-society leaders are up in arms at new government-approved environmental regulations for the mining and hydrocarbon industries. They say the changes are a setback for protection of the environment and demonstrate serious inconsistencies by the Peruvian government, which is hosting a major UN climate-change conference. The UN Framework Convention on Climate Change (UNFCCC) summit, also known as the Conference of the Parties (COP 20), opened in Lima on Dec. 1 and runs until Dec. 12.

The new regulations—supreme decrees 040-2014-EM (mining) and 039-2014-EM (hydrocarbons)—were approved Nov. 12 and replace environmental norms that had been in place for more than two decades. Under the new mining rules, the Ministerio de Energía y Minas (MINEM) can now carry out technical evaluations of Environmental Impact Assessments (EIAs) while they are still being prepared so as to "reduce the number of final observations" each document generates. The new hydrocarbons regulations establish criteria so that EIAs can be classified based on factors such as the scale of the environmental impact involved and the surrounding area where the given project is being planned. An EIA is a preventative instrument designed to avoid or mitigate the negative impacts resulting from an activity or project.

"[These regulations] are a step backward. It used to be that companies had no choice but to compile an EIA. Now they have the option of replacing it with an Environmental Impact Statement, a document that is far less exacting than an EIA," Vanesa Cueto, project coordinator with the association Derecho, Ambiente y Recursos Naturales (DAR), told Diario Uno.

Cueto also argues that, by including MINEM in the evaluation process, the new regulations limit the authority of the Ministerio del Ambiente. Humberto Olaechea, a coordinator with the Red Nacional de Líderes Sociales (RNLS), agrees. "They’re allowing MINEM to make decisions that are exclusively environmental," he told the same newspaper. "Instead, all those activities ought to be centralized within the state’s environmental body, because when conflicts arise, everyone passes the buck."

CooperAcción, a nongovernment organization (NGO) specialized in issues related to the extractive industries, opposes the regulation changes as well. "We should ask ourselves whether these new tools open the door to true cross-sectoral environmental management, and, above all, whether they will strengthen the national system of environmental-impact evaluation as a preventative instrument that guarantees, on a national level, the protection of our resources and communities. [Protection] is essential in a country that is particularly vulnerable to the impacts of climate change," the organization stated.

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The new mining and hydrocarbon regulations coincide with an economic stimulus law (3941/2014-PE) that the administration of President Ollanta Humala presented on Nov. 9. The law, designed to
boost investment and thus spur economic growth and sustainable development in socially excluded zones, called for expediting the EIA approval process. Congress approved the bill 10 days later.

Under the new law, the Servicio Nacional de Certificación Ambiental para las Inversiones Sostenibles (SENAC)—starting at the moment a given EIA is submitted—must complete its revision of the study and issue a Certificación Ambiental Integrada within 150 working days. The reform also streamlines the application process by allowing companies to recycle the basic information contained in already approved EIAs provided the activity they plan to carry out takes place in the same general location and within five years of the original study’s approval date. In cases where the five-year limit has already passed, companies can still use the old EIA provided they update the pertinent data.

CooperAcción attorney Ana Leyva says the measure is worrisome. "The baseline information [for one project] doesn’t necessarily work for another. That information just isn’t sufficient," she wrote in a recent analysis of the law. "Without a complete description [of the new project], there could be problems identifying the impacts. That, in turn, makes it more difficult to take measures needed for the prevention and remediation of damages."

Leyva insists that the basic information needed to evaluate a given project depends not just on location but on the activity in question and how that activity will be carried out. Different developers, for example, may plan to lay a highway, log a forest, dig a mine, and drill an oil well all in the same area. The CooperAcción attorney explained in her analysis that, while some of the data needed to assess the potential impacts of those various plans would be shared, other information would vary from project to project. The mine project would likely require a groundwater study, she argued. The logging project and the highway development probably would not.

**Less oversight, more exploitation**

Leyva notes that, even before the changes, highly qualified scientists, universities, international organizations, and environmental groups had long questioned the technical rigor and objectivity of the EIA process. Critics point out that the environmental authority tasked with approving EIAs is a branch of the ministry that promotes investment in those same sectors where projects are planned. "On top of that, new questions are being posed about the quality [of the EIA process] because of changes included in Ley 30230, which limits the amount of time people can submit technical observations," Leyva wrote.

Ley 30230, approved in July, limits the oversight and sanctioning abilities of the country’s environmental bodies. It also upends certain aspects of Peruvian property law, particularly as it pertains to territorial claims by campesino and indigenous communities (NotiSur, July 25, 2014).

Lawyer Laureano del Castillo, the executive director of the Centro de Estudios Sociales (CEPES), explains in an analysis of Ley 30230 that the authorities, to boost investments and thus prevent an economic slowdown, announced the creation of special procedures to hand over land rights to companies investing in oil extraction, forestry, mining, and other capital-intensive activities "regardless of the current or future use of these lands."

The risk, given how broadly the terms of the law are defined, is that these investors will ignore the nationally and internationally recognized rights of Peru’s 6,069 campesino communities and
1,469 native communities, especially since 72.7% of those communities (5,483 in total) have not categorically established their property rights.

"Custom-made" regulations

Some political leaders have also raised objections to the environmental-regulations changes. Verónika Mendoza, a member of Congress, is particularly dismayed by the ways companies can now recycle EIA data compiled for completely different projects. "It’s obvious that in [the span of five years] so many things can happen in a given area of land. EIAs from years ago shouldn't just be used automatically," she told La República. "These norms seem to be custom-made for the clients. It seems like the extractive industries themselves are the ones making the proposals and clearing the way for their investments at the expense of the environmental mechanisms in place."

Another critic of the measures, José de Echave, a former deputy ministry of environmental management and a leader with the left-wing Frente Amplio de Izquierda, said in a party statement that the government’s environmental policy choices are completely contradictory given that it is trying, at the same time, to lead the COP20 summit in Lima.

"While the UN looks to promote a sustainable development model, and the US and China reach an agreement for the first time to reduce greenhouse-gas emissions, the Peruvian government insists on making it easier to clear forests and lacks the minimum regulations needed to protect the water that, because of global warming, we’ll be lacking in the near future," he said.

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