

3-24-2017

Flurry of Presidential Initiatives in Peru Criticized as Affront to Basic Rights

Elsa ChanduvÃJaÃ±a

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

Recommended Citation

ChanduvÃJaÃ±a, Elsa. "Flurry of Presidential Initiatives in Peru Criticized as Affront to Basic Rights." (2017).
<https://digitalrepository.unm.edu/notisur/14504>

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.

Flurry of Presidential Initiatives in Peru Criticized as Affront to Basic Rights

by Elsa Chanduóí Jaña

Category/Department: Peru

Published: 2017-03-24

Civic, indigenous, and labor organizations are challenging a number of legislative decrees approved by Peruvian President Pedro Pablo Kuczynski's government, saying they violate human, labor, and indigenous rights ([NotiSur, July 1, 2016](#)).

For their part, government officials say the decrees—including among the 112 issued under the delegation of powers approved by Congress on Sept. 29, 2016—are meant to simplify procedures and facilitate investments.

"Together, the 112 measures have one objective: to move Peru toward being a more just country, with more opportunities and greater modernity," the presidency of the Council of Ministers said in a press release in January. "The 112 laws issued focus on five areas: total water and sanitation coverage, economic reactivation and formalization, the battle against corruption, citizen safety, and administrative simplification."

The decrees are being reviewed and debated in Congress. A working group created by the Constitution Commission for the purpose of conducting the review will write a report recommending approval, modification, or rejection of each decree. The report will then go to the Constitution Commission and the Permanent Commission in Congress.

'An in-depth, technical, legal job'

"Each one of the more than 100 legislative decrees will be reviewed. Congress is no longer a table of different groups; we are doing an in-depth, technical, legal job," Úrsula Letona, who chairs the working group, told the daily *El Comercio*. "I have found out that in the previous political control commission [during the Ollanta Humala (2011-2016) administration], only 12 of the 67 decrees issued under the powers were reviewed." Letona is a member of *Fuerza Popular* (Popular Force), a party sympathetic to the former dictator Alberto Fujimori (1990-2000).

Serving on the working group with Letona are Vicente Zeballos, a legislator from the ruling *Peruanos por el Cambio* (Peruvians for Change PPK) party, and Javier Velásquez Quesquén, of the *Partido Aprista Peruano* (Pro-APRA Peruvian Party).

Several of the decrees have inspired challenges, on the grounds that they are considered attacks on fundamental rights. Opponents have demanded that Congress exercise its role of political control and carefully review them.

This is the case of Legislative Decree 1333, which has to do with access to land for prioritized investment projects (*Proyectos de Inversión Priorizados, APIP*). Critics say the decree violates constitutional property rights in general, and specifically, the land rights for indigenous communities and peoples, because it facilitates access to rural areas to promote investment projects of national interest regardless of whether the property is public, private, communal, formal, or informal.

The Regional Organization of Indigenous Peoples of the Northern Peruvian Amazon (Organización Regional de Pueblos Indígenas de la Amazonía Norte del Perú) warned, "Many of these areas where these projects will be prioritized belong to indigenous peoples who have ancestral priority, but many times do not have the mechanisms to get recognizable official records of ownership, such as inclusion in the public registry or property titles." Similarly, a press release from the Interethnic Association for the Development of the Peruvian Jungle (Asociación Interétnica de Desarrollo de la Selva Peruana, AIDSESEP) indicated that the decree "shows a new form of expropriation and violation of the land rights of the thousands of campesino [farm worker] and indigenous communities that exist in the country. It also has a possibility of generating new land conflicts."

AIDSESEP further criticized the so-called "Dispossession Law" for not having had a prior consultation, as mandated by a law approved in 2011, and urged the state to "fulfill its obligation to provide title to communities and geo-reference the boundaries of all communities to create a modern rural property registry."

Pressure from civil society groups, mainly from indigenous and campesino communities, had a positive effect. On March 14, the Constitution Commission said Decree 1333 should be struck down, something that will now be debated in a plenary session.

Frente Amplio legislators María Foronda and Tania Pariona welcomed the commission's conclusion, because they believe the legislative decree violates territorial rights of Andean and original peasant communities.

"With the APIP, they tried to create a monster so they [the investors] could make decisions about [indigenous community] territories in an area with insufficient regulations, where territories are still not recognized and the self-determination of native peoples is not respected," said Foronda, president of the Commission of Andean, Amazonian, and Afroperuvian Communities, the Environment and Ecology (Comisión de Pueblos Andinos, Amazónicos y Afroperuanos, Ambiente y Ecología).

Pariona, a Quechua legislator, said, "It was not possible to approve a legislative decree that violates constitutional rights that have been won after years [of work] and lives lost in our country."

Nevertheless, on March 16, Alfredo Thorne, Peru's minister of economy and finance, urged Congress to reconsider the Constitutional Commission's rejection of Legislative Decree 1333, arguing that it is part of the government's reactivation package.

National organizations that make up the Unity Pact of Indigenous Organizations of Peru (Pacto de Unidad de Organizaciones Indígenas del Perú) called for a sit-in at the headquarters of the state-owned Agency for Promotion of Private Investment (Agencia de Promoción de la Inversión Privada, known as Proinversión) March 17. The organization said that it would not give up the fight against the decree.

As of March 15, in addition to Decree 1333, the Constitution Commission had decided to recommend to Congress the rejection of two other decrees, 1344 and 1345, both of which seek to optimize services for pharmaceutical, sanitary and personal hygiene, and medical devices, among other things. Members of the commission pointed out that Congress did not give the executive the power to legislate matters of health.

Rules on detention

Meanwhile, several other legislative decrees continue to be challenged, among them Legislative Decree 1307, which broadens preventative detention (for complex cases) to 36 months with the possibility of extending it to 48 months. Under the prior law, the prosecutor could ask for 18 months in preventative custody, with the possibility of an extension of an additional 18 months.

“This is a serious setback. Believe me, we are not defending anyone; we believe the culprits have to pay. But this is a different issue: Imprisonment for four years without a conviction is excessive,” Fabiola Franceza, an expert from the non-governmental Legal Defense Institute (Instituto de Defensa Legal, IDL) told the daily Uno.

“According to November 2016 data from the National Penitentiary Institute (Instituto Nacional Penitenciario), more than 3,000 people have been detained for more than five years without a conviction,” Franceza said. She added that all officials associated with the justice system “must ensure that the basic rights of prisoners are respected.”

Jurist Carlos Rivera, also interviewed by Uno said, “Taking four years to investigate someone seems to me too long a time to determine the responsibility of the accused. This indicates that the justice system is not efficient and has not had effective instruments to sentence a person ... It’s up to the Congress of the Republic to emit an opinion through the Constitution Commission signaling that the decree will result in an infringement on fundamental rights, because to a great degree, it is an unconstitutional decree.”

Another very questionable decree is 1246, which “within the framework of simplification” includes a provision that exempts employers from registering temporary labor contracts with the Labor Ministry.

Frente Amplio legislator Marisa Glave, in statements made to the daily Uno, criticized the “camouflaged” inclusion of this decree, given that the powers given to Congress do not allow the executive to legislate on issues related to labor rights. She pointed out that seven out of every 10 workers in the formal economy are hired temporarily and noted that sending their contracts to the labor authorities constitutes a type of guarantee to a subsequent defense of their labor rights.

The Peruvian Society of Environmental Law (Sociedad Peruana de Derecho Ambiental, SPDA) has analyzed the environmental aspect of the 112 legislative decrees and has developed a system—an “environmental traffic light” to signal how they measure up in terms of protection of the environment. Seven got a green light; four got yellow lights for aspects that need to be clarified or otherwise might represent a risk, and seven were flagged with a red light.

Standing out among the decrees with red flags is Decree 1272, which seeks to revitalize administrative procedures by simplifying requirements and conditions. The SPDA noted that this decree opens the possibility that certain environmental procedures could be approved by “administrative silence” without technical or legal support, meaning the pertinent agency could approve a procedure simply by doing nothing and without determining whether the procedure would have an impact on environmental conditions. In addition, it will not include any intercultural focus or provisions that seek to integrate native and peasant communities into administrative procedures.

The organization also offered an opinion on Decree 1283, which promotes, formalizes, and implements steps to streamline forestry and wildlife activities. The SPDA warned that it eliminates the requirement to prepare management plans for private land and native community areas regarding the harvesting of wild fruits and seeds that require the felling of even one tree. It also indicates that by involving native communities, this legislative decree should have been subject to prior consultation.

Also given an environmental red light was Decree 1292, which proposes an administrative, economic, and environmental restructuring of Petroperú. Of particular concern is Petroperú's development of a plan that would contribute to the sustainable development of communities in the path of the Oleoducto Norperuano oil pipeline, and the conservation of the environment in the area affected by that pipeline. The SPDA indicates that Decree 1292 does not require Petroperú to have a plan, but leaves it up to the company's discretion. This is worrisome in light of the fact that in 2016, there were at least 13 oil spills in populated areas of the Peruvian Amazon region.

A focus on gender

The congressional working group responsible for the initial review of legislative decrees has set aside for further study those norms that recognize non-discrimination on the basis of sexual orientation or gender identity. These decrees are:

- 1266, the Interior Ministry's law of organization and functions
- 1267, the National Peruvian Police law
- 1297, protection of minors at risk
- 1323, combating femicide, family, and gender violence
- 1325, restructuring the penitentiary system
- 1348, approving the code of adolescent criminal responsibility

Decree 1323 includes, for the first time, the prohibition of discrimination on the basis of sexual orientation and gender identity as a legal issue.

"If Congress brings down that legislative decree, it would be a serious blow for the LGTB community," Alberto de Belaunde, a PPK congressman and member of the Constitution Commission, told the daily *La República*. "In the last 10 years, approximately 100 individuals have been killed for being LGBT," he added. "This decree provides the tools to prosecute crimes of this nature and change our reality."

The need to further revise these standards occurs in the context of the conservatives' campaign against Peru's basic education curriculum, which includes gender information. The Fuerza Popular group in Congress is participating in that campaign ([NotiSur, Jan. 20, 2017](#), and [Feb. 24, 2017](#)).

Those who say that many of the decrees proposed by the Kuczynski administration violate the fundamental rights of Peruvian citizens challenge the administration's assertion that the decrees are designed to "move toward a more just country with greater opportunities."

-- End --