

Alert: Peruvian Government Threatening the Independence of Osinfor

The institution in charge of supervising the legality of Peruvian timber is at risk

September 12, 2018

LIMA, PERÚ - While the Agency for the Supervision of Forest and Wildlife Resources (Osinfor) of Peru continues its unceasing efforts to identify the harvest and trade of illegal timber and disseminate key information that obligates other authorities to recognize the serious situation of illegality in the Peruvian forestry sector and take action, the Presidency of the Council of Ministers (PCM) of Peru is engaging in a new attempt to weaken the frequently threatened independence and institutional capacity of Osinfor.

The latest attempt to weaken OSINFOR comes in the form of a draft legislative decree that has been discussed in recent weeks within the delegation of legislative powers to the Executive Branch, under the framework of Law 30823. Based on the pretext of strengthening Osinfor, the PCM modified a decree proposal originally presented by Osinfor by changing the method of selection for the person who runs the institution: instead of conducting a public selection process for an Executive President for four years, a director would be appointed. The immediate anticipated impact from this change is a weakening in the institutional capacity and independence of Osinfor—since its director could then be removed without prior notice, at any time and without any explanation—in addition to contradicting the National Policy of Modernization of Public Management, which is based on the meritocratic civil service. Osinfor previously rejected the PCM's modification to its proposal, but the PCM removed the controversial article from the Osinfor proposal and included it in another decree. At the present, it is expected that the Council of Ministers will begin meeting by 7:00 a.m. on September 12 to approve the PCM proposal and reject the original Osinfor proposal.

The national authority of the civil service in Peru, SERVIR, conducted an analysis and concluded that the conditions and functions of Osinfor place it in a situation similar to that of regulatory bodies¹ and, as the Organization for Economic Cooperation and Development (OECD) stated, "[t]he nomination process [for the director of a regulatory body] is a crucial juncture where the lack of transparency and accountability on the process and criteria leading to a nomination might create strong perceptions of undue proximity."² The current proposal in Peru would create just such a situation.

It is not new that Osinfor is subject to the pressures described in the OECD document. In January 2016, the Peruvian government abruptly dismissed the then Executive President of Osinfor, Rolando Navarro,³ yielding to the strong pressure of a powerful sector of the Peruvian forestry industry that blamed Navarro for the seizures of illegal Peruvian timber in the United States under the context of Operation Amazonas led by SUNAT (the Peruvian Tax and Customs Authority).⁴ In the wake of the dismissal and as a result of a strong outcry from civil society

organizations, international cooperation, and articles in Peruvian and foreign media about the arbitrary dismissal of Navarro,⁵ the Peruvian government created a working group to develop the terms of reference for a public selection process for the new Executive President of Osinfor within 30 days.⁶ Two and a half years later, the public selection process still has not been announced and the terms of reference are not known. Instead, the PCM is now seeking to eliminate the public selection process altogether and replace it with a direct appointment with reduced qualifications. Since 2015, there have been a number of attempts to weaken the Osinfor, including proposals to reduce its budget and its functions, as well as to reduce its independence by relocating it within the forestry authority Serfor, the Ministry of Agriculture or the Ministry of the Environment—all options that would go against the sustainable use of Peruvian forests and violate national norms, as well as the Peru-US Trade Promotion Agreement.

Although some Peruvian government authorities have declared that the high percentages of illegality and the public and private corruption in the forestry sector recently identified in research reports produced by [EIA](#),⁷ [CIEL](#)⁸ and [Global Witness](#),⁹ among other organizations, no longer exist and that the problems of the Peruvian forestry sector have already been solved, information from Osinfor updated through August 2018 indicates this is not the case, and it is likely that this is one of the reasons the Peruvian government is again attempting to weaken the supervisory body.

According to the recent Osinfor press release, between October 2017 and August 2018 the agency documented the illegal harvest of at least 274 thousand cubic meters of wood, equivalent to 5,000 truckloads, just from the region of Loreto.¹⁰ It should be noted that this volume refers only to cases in which the Osinfor has verified that 100% of the harvested wood is illegal in origin. All other cases, in which the percentage of illegality is less than 100%, have not been included in this figure, although they are being investigated.

In parallel, a study commissioned by the Financial Intelligence Unit (UIF), an entity of the Peruvian government in charge of combating assets laundering, has identified that in 2015 and 2016 the Peruvian forestry sector generated around 700 million annual soles (equivalent to more than 200 million dollars per year) in illicit assets.¹¹

It is unacceptable that Peru—in addition to violating the Peru-US Trade Promotion Agreement, as well as the intent of various other international commitments—seeks to weaken Osinfor's institutional structure, instead of strengthening Osinfor, which has played a central role in detecting illegal harvest and trade of Peruvian timber. In addition, there are laws that increasingly demand more information on the legal origin of timber and wood products and also include serious penalties such as fines and incarceration for those who import products of illegal origin. The independence of the Osinfor is essential to enable the entry of legal timber from Peru to destinations such as the United States (where the Lacey Act applies), Europe (where the European Union Timber Regulation applies) and even China, since much of the wood imported by China is processed and re-exported to the United States and Europe.

Timeline and relevant facts:

- On July 11, 2018¹², Osinfor sends to the PCM, within the framework of the delegation of powers to legislate requested by the Executive Power from Congress and approved on July 18, a proposal for a legislative decree to strengthen Osinfor. Around 40 pages of

technical and legal support justify said proposal. Among other aspects, the proposal provided measures to:

- Strengthen Osinfor's field supervision reports by categorizing them as evidence sufficient to begin a legal proceeding.
 - Include within the supervisory roles of Osinfor all types of authorized access to the forest *that have as their objective the sustainable use and environmental services coming from the forest*, as well as – in collaboration with the competent authority – *the administrative acts for the removal of forest cover (...) that allow access to the exploitation of forest resources and trade in timber products*.
 - Authority to *visit the collection sites, depots and processing plants to obtain information*.
- On August 9, 2018, the PCM meets with Osinfor to evaluate Osinfor's proposal. As a result of the meeting, the PCM asked Osinfor to reinforce its explanatory statement for the need of the proposal.
- On August 17, 2018, the PCM sends to Osinfor a proposal to modify the selection process for the President of said institution, a topic that was not included in the August 9 meeting and that was not previously discussed with Osinfor. The proposal intends to modify article 6 of Legislative Decree 1085, so that:
- Osinfor is no longer led by an Executive President appointed through a public selection process, for a period of four years, but instead is appointed by an executive decision (*resolución suprema*) without a fixed term to guarantee stability and independence for the institution.
 - Eliminates the requirement that the director must have a minimum of 10 years of experience in the forestry sector.
- On August 20, 2018¹³, Osinfor sent to the PCM a letter rejecting the proposal of the PCM to amend Article 6 of Legislative Decree 1085, supported by a technical and legal briefing stating that:
- "The need for public selection process to appoint the head [of Osinfor] is imperative to safeguard the independence of the entity (whose work is similar to the regulatory agencies), in accordance with the commitment made by the Peruvian State in the Trade Promotion Agreement - Peru-US FTA, in order to guarantee the institutional capacity of the forest sector and not put at risk the confidence in and credibility of wood products from the Peruvian market".
 - "In conclusion, Osinfor disagrees with the amendment to Article 6 of DL 1085. In this sense, as the proposing entity of the draft Legislative Decree for the strengthening of Osinfor, we request that the aforementioned article be excluded and [the draft Legislative Decree's] approval process be continued, for the reasons stated."
 - Osinfor suggests that a public selection process for its Executive President be commenced as soon as possible.
- As of the afternoon of September 12: The August 17 proposal of the PCM is likely to be approved, with provisions on the selection of the head of Osinfor (without a public selection process and with fewer requirements). The proposal has been separated from

the draft decree for the strengthening of the Osinfor and has been incorporated into another broader decree that seeks to modify a range of government entities responsibilities related to their powers, regulations and functions.

- The original proposal presented by Osinfor on July 11, 2018 is likely to be rejected.

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¹ Legal Brief 176-2009-ANSC/OAJ Accessible at:

https://storage.servir.gob.pe/normatividad/Informes_Legales/2009/InfoLegal_176-2009-ANSC-OAJ.pdf

² OECD (2017), Creating a Culture of Independence: Practical Guidance against Undue Influence, The Governance of Regulators, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264274198-en>

³ EIA, 2016. Press Release: *EIA denuncia cese de Presidente del Osinfor*. <https://eia-global.org/press-releases/eia-denounces-termination-of-peruvian-forest-oversight-body-president>

⁴ For more info on *Operación Amazonas*, see: EIA, 2018. Moment of truth. Chapters 3 y 4. <https://eia-global.org/reports/momentoftruth>

⁵ The Guardian, 2016. Peru sacks top anti-logging official.

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⁶ *Resolución Suprema 022-2016-PCM*, published January 27, 2016 in the newspaper *El Peruano*. *Conforma el Comité encargado de elaborar las bases para el desarrollo del concurso público para la elección del Presidente Ejecutivo del Osinfor. Integrado por Jorge Manuel Pando Vilchez (por PCM), Gustavo Suárez de Freitas Calmet (por MINAM) y Aída María Amézaga Menéndez (por MINAGRI)*.

⁷ EIA, 2018, Moment of Truth, [https://content.eia-](https://content.eia-global.org/posts/documents/000/000/694/original/MomentofTruth.pdf?1520443534)

[global.org/posts/documents/000/000/694/original/MomentofTruth.pdf?1520443534](https://content.eia-global.org/posts/documents/000/000/694/original/MomentofTruth.pdf?1520443534)

⁸ CIEL, 2017, "Continuous Improvement" in Illegal Practices in the Peruvian Forest Sector,

<https://www.ciel.org/wp-content/uploads/2017/11/EnglishVersionFinal.pdf>

⁹ Global Witness, 2017, "Buyers in Good Faith": How Timber Exporters are Complicit in Plundering Peru's Amazon, https://www.globalwitness.org/documents/19251/Buyers_in_Good_Faith.pdf

¹⁰ OSINFOR alerted about 60 million board feet of illegally harvested timber that represents more than S/. 108 millions, Press Release N° 045-2018-OSINFOR, <https://www.osinfor.gob.pe/osinfor-alerto-sobre-mas-de-60-millones-de-pies-tablares-de-madera-extraida-ilegalmente-que-representaria-mas-de-s-108-millones/>

¹¹ SBS – UIF, 2018. *Presentación final de resultados de la Evaluación sectorial de exposición a los riesgos de Lavado de Activos y Financiamiento del Narcotráfico en el sector maderero en el Perú*. June 5, 2018.

¹² Official letter N 133-2018-OSINFOR/01.2, obtained through an Access to Information request, signed of receipt by the PCM on July 12, 2018.

¹³ Official letter N 124-2018-OSINFOR/01.1, obtained through an Access to Information request, signed of receipt by the PCM on August 22, 2018.