



Instituto de
Defensa Legal



Alert: The Peruvian Government backs down in the fight against illegal logging

Osinfor, the institution in charge of supervising the legality of timber in Peru, was weakened by a Supreme Decree that reduces its independence

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LIMA, PERU - While the Agency for Supervision of Forest Resources and Wildlife (Osinfor) has continued to identify illegal harvest and trade of timber in Peru, providing key information that has compelled other agencies to recognize and act upon the seriousness of illegality in the Peruvian forestry sector, on Wednesday, December 12 the Presidency of the Council of Ministers (PCM) approved a Supreme Decree that undermines the independence of Osinfor by removing it from the PCM and relocating it within the Ministry of Environment (MINAM). MINAM presented the proposal without consulting - or even informing - Osinfor. The approval of the change also occurred in opposition to the official and public position of Osinfor.

This change severely weakens the repeatedly attacked independence and institutional capacity of Osinfor. It also leads to a further erosion of transparency related to the legal origin of wood throughout the supply chain, led by certain sectors from industry and government in recent years as a reaction to the effective control actions implemented by Sunat (the Peruvian Tax and Customs Authority) since 2014 based on information provided by Osinfor. The multi-year operation of Sunat and Osinfor, supported by Interpol and the World Customs Organization and known as Operation Amazonas, resulted in the confiscation of thousands of cubic meters of illegally extracted timber from the Peruvian Amazon in Peru, the United States, Mexico and the Dominican Republic. The subsequent reaction of industry - supported by certain Peruvian government officials - has been to attack Osinfor and to attempt to turn it into a weak institution without independence. Both Osinfor and Operation Amazonas with Sunat have been recognized internationally as successful examples in the fight against illegal

logging - bringing greater transparency and accountability to an extremely opaque sector - and other countries with similar problems are considering replicating the model. But, in Peru, the government is opting to undermine it.

Osinfor was created as an independent body reporting to the PCM during the arduous process of negotiations for the revision of the Peruvian forestry law in 2000, but in practice it functioned in a very limited way and without independence, as Osinfor was housed in what at that time was the equivalent of the forest authority. The Legislative Decree that created Osinfor also explicitly indicates that the Osinfor is attached to the PCM (Art. 1, DL 1085, from July 2008). While a previous Peruvian law says that the adscriptions of these kind of organisms can be defined by a Supreme Decree (law 29158, from December 2007), there is an open debate among legal experts as to whether this allows for a lower ranking legal instrument (a Supreme Decree) to modify a higher ranking one (a Legislative Decree), which is against the Peruvian law and its procedures. Therefore, transferring Osinfor under the ambit of MINAM, through a Supreme Decree seems to be contrary to Peruvian law. Another important reason to question the legality and appropriateness of the transfer is that Peru's National Authority for the Civil Service (Servir) has declared that – given its responsibilities and attributions – [Osinfor is similar to a regulatory body in both form and function](#) and therefore should be treated as one. The same law 29158 establishes that all the regulatory bodies must be attached to the PCM.

In addition, the Forestry Annex of the Trade Promotion Agreement (TPA) between Peru and the United States establishes that Peru must strengthen the institutions responsible for enforcing the laws that impact on forest management in Peru, and specifically states that it must implement the provisions related to the creation of Osinfor under the Forestry Law as “an independent and separate entity” (Article 3.h.iii of Annex 18.3.4 of APC Peru - USA). The law referenced by the TPA also specifically located Osinfor under PCM. Relocating Osinfor within MINAM, which has responsibilities on "the sustainable use of natural resources" and "sustainable development of the Amazon" (Article 3 of Legislative Decree 1013 approving the the Law of Creation, Organization and Functions of the Ministry of Environment), generates a clear conflict of interest, since Osinfor is responsible for auditing actors potentially engaged in illegal activities that go against the sustainable use of resources and against the sustainable development of the Amazon.

The reliable results on the legal origin of wood at the national level have existed in Peru since 2009, the year in which the Osinfor became an independent and autonomous body. Osinfor's field verification work has been possible thanks to the autonomy and functional independence of the institution, which allows it to act transversally and cross-sectorally at all levels of government. Osinfor's stature as an independent entity under the PCM, separate from the institutions authorizing forest use and regulating management of natural resources, allows it to act with apolitical objectivity. As such, Osinfor has been able to perform as both an auditing and sanctioning body, as is the case of [other independent organizations under PCM](#), such as the Supervisory Body for Investment in Energy and Mining or the Supervisory Body for Investment in Public Infrastructure for Transportation.

It is not new that Osinfor is victim of pressures and attacks to weaken it. In January 2016, yielding to the strong pressures of a powerful sector of the Peruvian forestry industry that accused the then Executive President of Osinfor, Rolando Navarro, for the seizures of illegal

Peruvian timber that occurred in the United States in the framework of the Operation Amazonas led by Sunat, the Peruvian government abruptly dismissed Navarro. Since 2015, there have been successive attempts to weaken 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 against the country's progress in the fight against illegal logging, in addition to violating both national regulations and the Peru-US Trade Promotion Agreement.

MINAM, meanwhile, in addition to issuing general guidelines on the conservation of biodiversity and environmental implications of productive activities and being in charge of the National Program for Forest Conservation (Programa Nacional de Conservación de Bosques), it is also the CITES scientific authority. This Ministry establishes annual timber export quotas for CITES-listed species, which directly affect the interests of the forest title holders, who are subject to audits by Osinfor (Article 3.ii Legislative Decree 1085 creating Osinfor). Also, Osinfor administrative processes are key to define which communities can participate in MINAM's programs to receive payments for forest conservation – which include, among others, commercial timber harvesting activities. With the inclusion of Osinfor in MINAM, said entity will be judge and party at the same time.

It should be noted that without the autonomy and independence of OSINFOR, greater transparency and knowledge about the results of the supervisions and audits of forest title holders would not have been possible. For example, on September 16, 2018, the newspaper El Comercio was able to warn - based on Osinfor's supervision of forest management plans - that [more than 60% of the wood harvested in Peru in 2017 was of illegal origin](#).

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](#), [CIEL](#), and [Global Witness](#), 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 working to weaken – and fully control – the supervisory body.

A [recent OSINFOR press release](#) reveals that, between October 2017 and November 2018 the agency documented the illegal harvest of at least 389 thousand cubic meters of wood, equivalent to over 7,000 truckloads, just from the region of Loreto. 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. It is worth mentioning that the Osinfor information was one of the components for the preparation of the UIF study and, without an independent Osinfor, such a study could not be replicated or updated, potentially putting Peru's qualifications to be part of the OECD at risk.

It is unacceptable for Peru - in addition to being a violation of the Peru-US Trade Promotion Agreement - to take actions to weaken Osinfor's institutional structure, instead of reinforcing it, since Osinfor has played a key role in detecting the illegal harvest and trade of timber. It should be noted that a change of this level on the independence of the Osinfor will also affect the forest title holders, the users of the forest, among whom are Indigenous Communities. In accordance with Peruvian and international law on Indigenous Rights, the legislative changes that directly affect Indigenous Communities must undergo a process of Free and Informed Prior Consultation that, clearly, has not occurred in this case. In addition, in a global timber market with laws that increasingly demand more information on the legal origin of timber and include fines and incarceration for those who import products of illegal origin, the independence of the Osinfor is essential to guarantee the entry of legal Peruvian timber 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 from this country is processed and re-exported to the United States and Europe.

It is imperative that OSINFOR remains independent and capable of supervising high risk forest titles. It has been demonstrated that the information produced by the Osinfor is key to detect the harvest and trade of illegal wood, both for the national market and for exports. Weakening and removing independence from Osinfor is a setback for Peru in the fight against illegal logging and opens the door to formal and de facto trade sanctions. We call on the Peruvian Government to reconsider its decision and restore Osinfor's independence, while putting in place mechanisms to guarantee that no other similar attempt will succeed in the future.

This Press Alert is endorsed by the following organizations: Environmental Investigation Agency (EIA), Center for International Environmental Law (CIEL), Global Witness, Comité de Defensa del Agua de Iquitos, Hope of the Amazon, Feconau, and Instituto de Defensa Legal (IDL).

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