

**To:** Cyrus R. Vance Center for International Justice  
**From:** Payet, Rey, Cauvi, Perez Abogados  
**Date:** August 17, 2021  
**Subject:** Implementation of the Escazu Agreement in Peru

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The main purpose of this document is to provide our legal opinion on the consistency and implementation of national laws vis-a-vis the Escazú Agreement (the "Agreement"). Considering the foregoing, we have focused our analysis on the following five (5) main areas:

- a) The right to a healthy environment.
- b) Access to environmental information.
- c) Access to justice in environmental matters.
- d) Protection of environmental defenders.
- e) Implementation and compliance mechanisms.

This document has been prepared following the template provided by the Cyrus R. Vance Center for International Justice, which includes the main provisions of the Agreement. The legal framework used to draft this document as well as a glossary of the main terms used herein are in Appendix 1 hereto.

## I. Executive Summary

### a) Implementation of the Agreement in Peru

- The Peruvian State has not ratified the Agreement<sup>1</sup>, so it is not obliged to comply with its provisions. Notwithstanding the foregoing, our current legal and institutional framework includes many of the obligations contemplated in the Agreement.
- According to Peruvian law, since it is an international human rights instrument, it should have been approved by the Congress of the Republic prior to its ratification by the President of the Republic. However, the proposal for its ratification was never discussed in the Plenary of the Congress due to political issues and pressure from certain sectors. Thus, the Legislative Commission of Foreign Relations -in charge of reviewing legislative initiatives especially related to foreign policy- decided to file the Agreement in October 2020.

### b) Environmental institutions

- Peru has administrative and judicial institutions specialized in environmental issues. Among the most important is the Ministry of the Environment, created in 2008, whose main function is to implement the national environmental policy. To this end, the environmental sector is structured in a National Environmental Management System, which is made up of functional systems. On the other hand, there are also environmental authorities at the judicial level, such as the Specialized Environmental Prosecutor's Offices and the Environmental Courts, which have gained real importance in the last decade.

### c) The right to a healthy environment

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<sup>1</sup> The Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean was adopted at Escazú, Costa Rica, on March 4, 2018. The negotiations on the Agreement initiated at the United Nations Conference on Sustainable Development (Rio+20) in 2012 with the adoption of the Declaration on the application of Principle 10 of the Rio Declaration on Environment and Development in Latin America and the Caribbean. To date, the Agreement has been signed by 24 countries in the region and ratified by 12 of them: Argentina, Mexico, Antigua and Barbuda, Bolivia, Ecuador, Guyana, Nicaragua, Panama, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Saint Lucia and Uruguay.

- The current legal framework has established particularities with respect to environmental processes in order to guarantee effective access to environmental justice. Among them, the following stand out: (i) the broad active standing to file a lawsuit in defense of the environment, (ii) the reversal of the burden of proof in Amparo Proceedings and (iii) the administrative strict liability in environmental matters. However, the construction of a solid legal framework for environmental proceedings is still under development.
- The PCP recognizes as a fundamental right the right of every person to enjoy a balanced environment adequate for the development of his or her life<sup>2</sup>. The content of this right is determined by: i) the right to enjoy that environment and, ii) the right to have that environment preserved. Since this is a constitutional right, when it is threatened or violated, an Amparo Proceeding may be filed.
- The Amparo Process has some limitations, mainly in its duration and in the cost of its promotion by the plaintiff. However, certain favorable particularities have been developed from the concept of "Amparo Ambiental", which attempt to respond to the protection of this right according to its special nature.

d) Access to environmental information

- Another of the relevant rights in environmental matters is the right of access to public information, which has been recognized as a fundamental right in the PCP, which consists of the power of every person to -without expression of cause- request and access information held by public entities. The fundamental right of access to information can be protected through the Habeas Data Process.
- The administrative regulations also recognize the right of access to public information, which is materialized through (i) requests for access to public information, (ii) the direct and immediate access procedure and (iii) the information published in the Transparency Portals maintained by each of the public administration entities.
- The right to citizen participation in environmental decision-making processes is established in environmental regulations. In this regard, it is established that any natural or legal person, individually or collectively, may present opinions, positions, points of view, observations or contributions, in the decision-making processes related to Peruvian environmental management and in the policies and actions that affect it, as well as in its subsequent execution, follow-up and control.

e) Protection of environmental defenders

- In general, it can be noted that the current context remains a threat to environmental defenders. According to reports from various institutions specializing in the subject, the number of murders of environmental defenders in 2020 alone amounted to eight (8) victims and approximately twenty (20) between 2013 and 2021. However, these figures could be higher, given that there is another number of cases that, due to limitations of access to complaints or poor accessibility to data, are not part of the official figures presented.

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<sup>2</sup> At a regional level, the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights "Protocol of San Salvador" recognized the right to a healthy environment and provides in Article 11 that everyone has the right to live in a healthy environment and that States Parties shall promote the protection, preservation, and improvement of the environment (See Advisory Opinion OC-23/17, dated November 15, 2017, numbers 5 and 6).

- Notwithstanding the current context, Peru has been taking measures to protect the rights of human rights defenders in environmental matters. The current regulatory framework is led by initiatives from the Executive Branch. The main advances are the result of measures deployed by the Ministry of Justice and Human Rights; however, none of these measures are backed by a Law. There are currently two (2) initiatives in Congress of bills presented for the protection and defense of the rights of environmental defenders; however, they are still pending approval.
- During 2018, a National Human Rights Plan 2018-2021 has been approved within the Ministry of Justice and Human Rights. This Plan includes the recognition of special protection for environmental defenders. What is remarkable about this instrument is that it proposes measures to promote the protection of environmental defenders by the Ministry of Justice and some authorities of the Executive Branch. However, it is not equally binding on all authorities of the state administration.
- Since April of this year, the Ministry of Justice and Human Rights has also had in place the Intersectoral Mechanism for the Protection of Human Rights Defenders. This instrument establishes a catalog of protection measures for the protection of human rights defenders, the registry of risk situations, authorities, deadlines and coordination between institutions to promote their defense and protection.
- In July 2021, the Ministry of the Environment approved the Sectorial Protocol for the Protection of Environmental Defenders, which established general guidelines for the prevention, recognition and protection of the rights of environmental defenders, as well as the publication of a biannual report on their main challenges and risks.
- From the review carried out, it has been noted that not only do the norms contribute to the protection of environmental defenders, but also through the prior solution to the structural problems of territory, the fight against drug trafficking, deforestation, among others, for which they advocate. Likewise, in order to prevent attacks, investigate and punish those responsible, concrete measures should be applied to collateral problems such as the stigmatization and criminalization suffered by environmental defenders, which impede their due protection.

**II. Legal analysis**

Does Peru have national legislation that establishes the obligations defined in the Escazu Agreement? How is the implementation and enforcement of these rules in the country?

Although Peru has not ratified the Agreement, the normative framework developed with respect to the rights involved is aligned with what is developed in the Agreement. From the PCP to laws and regulations of lower hierarchy, the national legal system has managed to develop a substantive and procedural framework of environmental regulations that concretize the exercise of the rights and measures contemplated in the Agreement. It should be pointed out that the legal framework referred to is still in a process of development, and its development has not been systematic with respect to all the matters included in the Agreement, nor with respect to all the institutions. As a result, the implementation and enforcement of these norms has had shortcomings at the practical level. Nevertheless, progress has been made in strengthening these measures through state and even private initiatives.

Right to a healthy environment	
	Guarantee the right to a healthy environmental in the Constitution.
	The right to live in a healthy environment is contemplated in the PCP. Based on the recognition of the right to the environment, the PCP developed a broad framework of

provisions on this matter. Article 2.22 of the 1993<sup>3</sup> PCP establishes the following: "*everyone has the right to peace, tranquility, enjoyment of free time and rest, as well as to enjoy a balanced and adequate environment for the development of his life*"<sup>4</sup>. The PCP also established a normative framework for matters such as the National Environmental Policy, the natural resources regime, the sustainable development of the Amazon, the conservation of ecological biodiversity and Natural Protected Areas<sup>5</sup>.

Additionally, the international framework establishes provisions and obligations for the Peruvian State that affect the measures taken to protect the right to enjoy an adequate and balanced environment. According to article 55 of the PCP, "*treaties entered into by the State and in force are part of national law*". Thus, the provisions of the treaties that Peru has ratified are included in the legal system and are enforceable by the State. In this line, for instance, as the Peruvian State has ratified the American Convention on Human Rights ("ACHR"), its provisions are applicable and the legal framework in force retains as a mandatory reference the Reports of the Inter-American Commission on Human Rights ("IACHR"), as well as the Advisory Opinions and jurisprudence of the Inter-American Court of Human Rights ("IACHR Court")<sup>6</sup>. Moreover, other international soft law instruments, such as Declarations, are also important to provide the legal framework to demand the protection of this right by the State and society in general.

Regarding the fundamental right to enjoy a balanced and adequate environment for the development of life, the Peruvian Constitutional Court (the "Constitutional Court") has interpreted the content of this right as having two parts determined by: (i) the right to benefit from this environment and, (ii) the right to have that environment preserved (Grounds 17 of the Judgment in Case No. 0048-2004-AI/TC, dated April 1, 2005).

Regarding the first part, the Constitutional Court has stated that it implies the right of people to enjoy an appropriate environment for their development and dignity. The second one refers to the obligations to preserve environmental resources in adequate conditions for their enjoyment, which is aimed at society in general and to the governmental authorities in charge of supervising and controlling the development of economic activities that directly or indirectly impact the environment.

Since it is a fundamental right, when its constitutionally protected content is threatened or violated, one of the six (6) regulated constitutional guarantees may be triggered: the *Amparo* Process (the "Amparo"). The purpose of the *Amparo* is to restore things to the situation prior to the violation or threatened violation of the constitutional right. For cases involving the right

<sup>3</sup> The current PCP dates to 1993, when there was also an Environmental and Natural Resources Code (CMARN), which was published in 1990 and is no longer in force. The CMARN was the first law to develop a legal framework for environmental management in the country and developed the main guidelines for national environmental policy, the natural resource management regime, and cultural heritage, among others.

<sup>4</sup> The previous Constitution of 1979 established a similar provision in Article 123 in the Chapter on the Economic Regime, which stated that "*everyone has the right to live in a healthy, ecologically balanced and adequate environment for the development of life and the preservation of the landscape and nature. Everyone has the duty to conserve this environment. It is the obligation of the State to prevent and control environmental pollution*". However, the great change was attributed to the inclusion of the right to a balanced environment in the catalog of fundamental rights of the current PCP.

<sup>5</sup> The Constitutional Court has recognized this set of provisions as the "Ecological Constitution" (Grounds 6 to 12 of the Judgment in Case No. 03343-2007-PA/TC, dated November 25, 2005) as it establishes the relationship between the individual, society and the environment. The Ecological Constitution has a triple dimension: (i) As a principle that irradiates the entire legal order since it is the obligation of the State to protect the natural wealth of the Nation, (ii) As the right of all persons to enjoy a healthy environment, a constitutional right that is enforceable through various judicial channels and, (iii) As a set of obligations imposed on the authorities and individuals, "in their capacity as social contributors".

<sup>6</sup> In addition, Peru ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted by the United Nations General Assembly on 16 December 1966, and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights "Protocol of San Salvador". The latter recognized the right to a healthy environment and that it must be protected by each State.

to a balanced and appropriate environment, the Constitutional Court has characterized the particularities of the "Environmental Amparo" (Grounds from 8 to 12 of the Judgment in Case No. 04216-2008-PA/TC). One of them is that the Judge participates in the investigation to clarify the controversy since it requires "*a strong probative period*". It is stated that the limitation of evidentiary proceedings must be interpreted in line with PCP and the purpose of constitutional proceedings (Ground 8 of the Judgment in Case N° 02682-2005-PA/TC, dated January 25, 2006). Another feature of the *Amparo* refers to who may file the claim. Although the *Amparo* Process can be filed by the party concerned or its representative, in cases involving diffuse rights or interests such as the environment, where the affected parties are part of a community, it can be filed by any person. The complaint may also be filed by the Ombudsman's Office or non-profit institutions.

The Amparo can be filed against the State or against any person who, through an act or omission, has threatened or affected this right. The term to file the claim is sixty (60) days after the violation of the right has occurred, provided that the affected party has had knowledge of the injurious act and has been in a position to file the claim. The beginning of the time period depends on the type of violation. To access this process, it is required to exhaust previous administrative or judicial procedures that are equally satisfactory to protect their rights. In order to have access to this process, it is required to exhaust the prior administrative or judicial procedures that are equally satisfactory in providing protection to their rights. This requirement may be adaptable as the legislation provides for exceptions on a case-by-case basis.<sup>7</sup> The process consists of two instances in the ordinary judicial process. Only when in the second instance the judicial decision is not favorable to the plaintiff, the plaintiff may access the Constitutional Court through a constitutional remedy.

The *Amparo* is an urgent process, so it is usually faster than other judicial processes. However, from the filing of the lawsuit to the final judgment, an *Amparo* can last between two (2) to three (3) years on average. This term is not appropriate if the purpose is to protect the possible violation of the right to an adequate and balanced environment against a threat or irreparable environmental damage. In that sense, to guarantee a prompt response while the process moves forward, precautionary measures may be requested for the protection of the right, when the requirements established by law are met. Notwithstanding this, the granting of a precautionary measure will depend in many cases on the Judge's assessment.

Financial constraints represent another obstacle to access to the process. The current legal framework establishes that *Amparo* is not subject to the payment of judicial fees. However, the filing and prosecution of a lawsuit will require additional expenses such as the payment of attorneys' fees, or personal expenses to prosecute the case, in the case of persons who do not reside in the place where the lawsuit will be filed. That is the case of members of indigenous and local communities. The intervention of some Non-Governmental Organizations ("NGOs") has provided a solution, since the NGOs file the *Amparos* on the behalf or in support of the indigenous and local communities by providing the required legal advice. Also, the legal provision that establishes that in case the final judgment is favorable to the plaintiff, the reimbursement of the costs generated in the process could be requested.<sup>8</sup> Another limitation is language. Judgments are issued in Spanish and in a legal language that

<sup>7</sup> " **Article 46.- Exceptions to the prior exhaustion of remedies**

*Exhaustion of preliminary remedies shall not be required if:*

1) A resolution, other than the last one in the administrative proceeding, is executed before the expiration of the term for it to become consensual; 2) By the exhaustion of the prior proceeding the aggression could become irreparable; 3) The prior proceeding is not regulated or has been initiated unnecessarily by the affected party; or 4) The prior remedy is not resolved within the terms established for its resolution."

<sup>8</sup> " **Article 56.- costs and legal fees**

*If the judgment declares the claim to be well founded, the costs and legal fees established by the Judge shall be imposed on the authority, official or defendant."*

is not friendly to the public. The Constitutional Court has sought a solution to this problem by incorporating official translators of native languages in the Judiciary. However, in practice, not all cases are covered.

Another important problem is also related to the enforcement of the sentences declared to be well-founded. It may happen that, after the *Amparo* has been completed, the judgment has been favorable to the plaintiff; but due to legal inaccuracies, bureaucratic obstacles to execute an act or other limitations, the judgment does not achieve its purpose and is not executed. Solutions have been considered, such as filing another *Amparo* to request the execution of the judgment. Yet, this is still a problem in practice.

Another issue to consider is its limited application. Since it is a legal procedure that seeks to resolve a specific case, the scope of the judgment is limited to the parties participating in the lawsuit. Nevertheless, these decisions are persuasive case law and may be used to inform similar conditions in other *Amparos*. Additionally, it has been observed a recent increase in the use of this procedure to ensure access to environmental justice and action on climate change for the benefit of society.<sup>9</sup>

It is important to point out that the *Amparo* is not the only constitutional legal procedure to protect the right to a balanced and appropriate environment. Other processes such as Habeas Data could also give effectiveness to this right through the protection of the right of access to information, which we will explain in greater detail in the following section of this document. Likewise, the Process of Unconstitutionality, the *Acción Popular*<sup>10</sup>, and the Actions of Compliance<sup>11</sup>, can protect this right with the peculiarities and limitations that each one presents. However, even with the deficiencies, the *Amparo* maintains its nature as an urgent, broad and accessible process<sup>12</sup> to guarantee the protection of the right to a healthy and balanced environment.

Right of access to environmental information

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Ensure the right to public access to environmental information and define procedure for such access.

Access to public information is a right established in national legislation. The legal framework for access to public information is as follows:

a) The right of access to information as a constitutional right

The right of access to public information has been recognized as a fundamental right in Article 2.5<sup>13</sup> of the PCP, which consists of the power of every person to request and access

<sup>9</sup> A current and notable case is the Amparo Process case filed by a group of children under the advice of the Legal Defense Institute and an NGO in 2019 to request government action on climate change, arguing for the protection of their right to life, environment and sustainable development. The case is still under evaluation and could become a precedent for climate justice in the country, especially considering that the current regulation on climate change is recent and general.

<sup>10</sup> Proceedings to expel or modify in whole or in part laws, regulations, administrative rules or resolutions of a general nature that violate the PCP. In this regard, the Code of Constitutional Procedure establishes regarding both processes:

*"Article 75.- Purpose*

*The purpose of the Class Action suit and proceedings to determine unconstitutionality is to defend the Constitution against infringements against its hierarchy of norms."*

<sup>11</sup> Aimed at demanding the execution of a law or an administrative act.

<sup>12</sup> All other constitutional processes have particularities in the active legal standing and requirements for their admission that limit their access, unlike the Amparo Process, which relaxes the requirements for admission in matters referring to the right to the environment.

<sup>13</sup> **"Article 2°.- Right of the person.** Every person has the right:

5. To request, without expression of cause, the information he/she requires and to receive it from any public entity, within the

information held mainly by state entities, excluding information whose public access is prohibited by the Constitution, i.e., information affecting personal privacy and information expressly excluded by law or for reasons of national security. The right of access to information was a novelty in the 1993 PCP, since this right has no precedent in previous constitutions in our country.

Based on the foregoing, the right to obtain information, as conceived in our constitutional system, consists of the right to seek and obtain information that should not be denied by the State. The right to access information considered public involves an active requesting party and a passive disclosing party. Any person, without distinction of any kind, considered a holder of a fundamental right as per the PCP can be the active requesting party; while the passive disclosing party can be any entity exercising public functions..

The fundamental right of access to information can be protected through the Habeas Data Process, which is established in numeral 1 of Article 61 of the PCP, which states that any person may resort to the Habeas Data Process to *"access information held by any public entity, whether it is information generated, produced, processed or possessed by them, including information contained in completed or pending files, studies, opinions, statistical data, technical reports and any other document that the public administration has in its possession, regardless of whether it is in its possession, studies, opinions, statistical data, technical reports and any other document that the public administration has in its possession, regardless of its content, processed or possessed, including information contained in completed or pending files, studies, opinions, statistical data, technical reports and any other document in the possession of the public administration, regardless of the form of expression, whether graphic, audio, visual, electromagnetic or in any other type of material support"*.

The Habeas Data Process proceeds when the plaintiff has claimed the respect of his right of access to public information, and the defendant has reiterated its failure to deliver the information or has not answered within ten (10) business days following the filing of the request. However, exceptionally, these requirements may be dispensed with when their exigency generates the imminent danger of suffering irreparable damage, which must be accredited by the plaintiff.

The duration of the Habeas Data Process is approximately three (3) years, which is not very advantageous when it is required to protect the right of access to environmental information. However, to guarantee a more immediate response while the Habeas Data is being processed, the Judge may require the defendant who owns, administers or manages the file, registry or data bank, to remit the information to the plaintiff. Likewise, the request for anticipated execution may also be requested by the plaintiff at any stage of the proceeding and prior to the issuance of the judgment. Such information must be provided by the defendant within a maximum term of three (3) business days.

#### b) Legal framework of the right of access to information

The right of access to public information was initially recognized in Legislative Decree No. 757, which approved the Framework Law for the Growth of Private Investment ("DL 757") in 1991. DL 757 included a chapter on transparency in the processing of administrative procedures, in which it was established that the information in possession of public entities

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*legal term, with the cost involved in the request. Exceptions are made for information affecting personal privacy and information expressly excluded by law or for reasons of national security.*

*Bank secrecy and tax secrecy may be lifted at the request of a judge, the Attorney General, or a congressional investigative committee in accordance with the law and provided that they refer to the case under investigation. [...]"*. (Emphasis added).

must be provided to the individuals who request it, except for information that may affect national security, foreign relations, information that is merely internal to the public administration, and information corresponding to individuals that is of a reserved nature. DL 757 not only recognized for the first time the right of access to information in administrative proceedings, but also recognized this right prior to its inclusion as a fundamental right in the PCP.

Since its inclusion in the constitutional norm in 1993, the right of access to public information has been regulated in different norms. However, it was with the entry into force of the TAIP Law, as well as its Unique Ordered Text, approved by Supreme Decree No. 043-2003-PCM ("TUO TAIP"), and its Regulations, approved by Supreme Decree No. 021-2019-JUS, that the regulatory legal framework of the fundamental right of access to information was consolidated, as well as the promotion of transparency of State acts.

Likewise, this set of rules established the principle of publicity of the activities and provisions of public entities, and expressly established the cases of exception related to information expressly classified as secret, reserved or confidential. Along these lines, the following main mechanisms were established to guarantee access to information:

*(i) The Standard Transparency Portal.*

In order to materialize access to information, the TAIP Law provided the creation of a Standard Transparency Portal ("PTE") in each public administration entity. The PTE is an information platform of free access to any user who requires updated information on (i) the directory of public officials of the institution and the regulations that govern and issue each institution, (ii) investment projects and public works of the entity and their execution, (iii) citizen participation, (vi) requests for access to information, among others.

According to the results of the 2019-2020 Supervision Report conducted by the Ministry of Justice to three hundred (300) PTE of various supervised entities, it was identified that only twenty-nine (29) entities complied with providing the total amount of information required by the LTAIP<sup>14</sup>. Likewise, it was identified that the information item with the lowest level of compliance at the national level is that of citizen participation, in which only 30% of the entities complied with providing such information and in a timely manner. This fact was identified mainly in the provincial municipalities of departmental capitals.

*(ii) The request for access to public information*

Additionally, the TAIP Law establishes the figure of the request for access to information, which consists of an express request for information held by public administration entities. The request may be submitted by any natural or legal person to the public entity, in person or through the PTE of the institution's web portal. Such request is submitted according to the format and information established in the TAIP Law<sup>15</sup>.

<sup>14</sup> Minister of Justice and Human Rights (2020). *Monitoring of the Standard Transparency Portals of the Public Administration entities - Annual 2019 and First Semester of 2020*. Retrieved from: <https://cdn.www.gob.pe/uploads/document/file/1497664/Reporte%202019.pdf>

<sup>15</sup> The information requested for the request for access to information is as follows: (i) full names, surnames, identification document number and address. In the case of minors, it will not be necessary to include the number of the identification document; (ii) telephone number and/or e-mail, in case this information is available; (iii) in case the request is submitted to the entity's document reception unit, the request must contain the applicant's signature or fingerprint, in case the applicant does not know how to sign or is unable to do so; (iv) specific and precise expression of the request for information, as well as any other information that facilitates the location or search for the requested information; (v) if the applicant knows the agency that holds the information, it must be indicated in the request; and, (vi) optionally, the form or modality in which the applicant prefers the agency to deliver the information (simple copies, electronic mail, among others).

The request is unmotivated, i.e., the applicant must not express the cause or reason for the request. Once the request is admitted, the entity has a term of ten (10) working days to provide the information or to inform that it cannot be granted. In the event that the information requested does not fall within the competence of such authority, the entity shall transfer the request to the competent entity and inform the applicant of such fact. Exceptionally, the entity may extend the term described above, for which purpose it must inform the applicant of the new date for sending the information within the additional term of two (2) working days, as well as the reasons for not being able to comply with the term set forth in the regulation.

If the entity does not comply with the request for access to information, it will be legally considered as denied. The denial of access to the requested information may also originate from (i) secret information as established in the PCP, such as classified information in the military or intelligence field; (ii) non-existence of data in the possession of the entity that makes it impossible to provide the requested information; or (iii) because the entity is not competent to provide such information.

In addition, the regulations establish that access to information is limited when it relates to on-going investigations of the public administration that have been initiated in the previous six (6) months and are pending a final resolution. Likewise, requests for information from legal advisors or lawyers which may reveal the strategy of the public entity before an administrative or judicial process, may be denied.

In case of denial of the requested information, the applicant may file an appeal before the Court of Transparency and Access to Public Information ("TTAIP") of the Ministry of Justice and Human Rights ("MINJUSDH", acronym in Spanish), within no more than fifteen (15) calendar days. If the denial of the request continues, the administrative process is deemed to be finalized and the pertinent actions may be filed in judicial or constitutional proceedings.

According to the Annual Report on Requests for Access to Public Information Processed by Public Administration Entities ("SAIP 2020 Report") of 2020 prepared by the MINJUSDH, 97.0% of the requests received by the entities were fulfilled in 2020, while 1.0% were in process and 1.9% of the requests were not fulfilled<sup>16</sup>.

Although the SAIP 2020 Report states that most of the requested information was delivered by the entities, it concluded that the entities have limitations in the process of delivering information, such as the lack of digitization of information, the implementation of remote work as a result of the National State of Emergency decreed by the outbreak of COVID-19, the rotation in the staff and the availability of the requested information in the PTE of the entity, although this last reason is not exempt from the obligation to deliver the information in the form in which it is requested by the applicant.

*(iii) The direct and immediate access procedure*

The TAIP Law also establishes the procedure for direct and immediate access to public information. For this purpose, the applicant must visit the offices of the entity during its business hours. It should be noted that direct access to information only refers to information that is explicitly of a public nature and that does not require a prior analysis to define such nature.

c) The right of access to information in environmental matters

<sup>16</sup> Ministro de Justicia y Derechos Humanos. (2020). *Informe Anual de las Solicitudes de Acceso a la Información Pública Tramitadas por las Entidades de la Administración Pública*. Recuperado de: <https://cdn.www.gob.pe/uploads/document/file/1780523/IA%202020.pdf.pdf>

The right of access to information in environmental matters is governed by the same provisions established in the PCP and in the administrative regulations described above. In addition, in 2004, Law 28245, Framework Law of the National System of Environmental Management ("SNGA Law") was approved, which established as one of the principles of such system the guarantee of the right to environmental information. The SNGA Law defined access to environmental information as one of the mechanisms of citizen participation and stipulated the right of every person to request and receive information on the state and management of the environment and natural resources, in accordance with the PCP and the TAIP Law.

In this line, the General Environmental Law, Law No. 28611 ("LGA") recognized in its Preliminary Title the right of access to information, which included the policies, regulations, measures, works and activities that could affect, directly or indirectly, the environment, without the need to invoke justification or interest that motivates such requirement. As part of the approval of the above-mentioned regulations, the National Environmental Information System ("SINIA", acronym in Spanish) was created, which constitutes an information network that facilitates the systematization, access and distribution of environmental information under the responsibility of the Ministry of the Environment ("MINAM", acronym in Spanish).

In order to promote greater access to environmental information, in 2009, the Regulation on Transparency, Access to Environmental Public Information and Citizen Participation and Consultation in Environmental Matters ("RTAIPA") was approved, which is applicable to the entities and bodies that are part of the National Environmental Management System ("SNGA", acronym in Spanish) or perform environmental functions at all national, regional and local levels. In addition to incorporating the guidelines developed in the TAIP Law, the RTAIPA provided that the request for information must be answered within a maximum term of seven (7) business days -as compared to the ten (10) business days of the TAIP Law-, which may be extended exceptionally for five (5) additional business days whenever the volume and complexity of the information requested warrants the extension or there is a circumstance that justifies it.

Additionally, the RTAIPA innovated by establishing for the first time a chapter referring to consultations and claims for environmental infractions coming from foreign authorities or persons. To this end, it is established that MINAM may request any person, public or private entity, the necessary information to issue an opinion on the information consulted. The response to the authority or foreign person must be issued within a term not exceeding ninety (90) working days, extendable for an additional thirty (30) working days if the complexity of the matter and the nature of the investigation so require.

Although the approval of the RTAIPA established the guidelines for the compliance of access to information by the environmental authorities, there are authorities that have approved specific directives on this matter, as is the case of the Agency for Environmental Assessment and Enforcement ("OEFA", acronym in Spanish).

The OEFA is the governing body of the National Environmental Assessment and Control System ("SINEFA", acronym in Spanish) and is responsible for supervising whether the parties under its jurisdiction comply with the environmental obligations derived from the environmental regulations, their environmental management instruments and the administrative acts and provisions issued. Nonetheless, this institution not only has direct supervisory and oversight powers, but it is also competent to supervise compliance with the functions of the national, regional or local environmental oversight entities ("EFA", acronym in Spanish). In other words, OEFA is not only competent to supervise the title holders of mining

<p>or agricultural activities, but can also supervise any other institution that is adequately carrying out its functions in environmental matters.</p> <p>In that line, in 2012, the OEFA approved Directive No. 1-2012-OEFA/CD to promote greater transparency regarding the information administered by the OEFA ("<u>OEFA Directive</u>"), which detailed, at a general level, the information that is in possession of the OEFA and which information cannot be disclosed because it is of a confidential nature. In this line, the OEFA Directive established that the only exception to the public nature of environmental information is the information considered as secret, reserved and confidential according to the rules governing access of information. In particular, the following information constitutes confidential information:</p> <p>(i) Information related to investigations in process referred to the exercise of the sanctioning power of OEFA;</p> <p>(ii) Information containing commercial secret, industrial and technological secret, banking, tax and stock exchange secret, which are not available by other means of public information; and,</p> <p>(iii) Information that affects the personal and family privacy of the persons involved in a procedure and information coming from third parties outside the investigation procedure, whose disclosure without prior authorization could cause them serious economic or moral damages.</p> <p>Finally, it is established that, in accordance with the provisions of the TAIP Law, an officer of said institution will be responsible for delivering the requested public information, as well as for complying with the provisions of the OEFA Directive.</p>	
<p>02</p>	<p>Define specific rules facilitating access to environmental information to persons and groups in vulnerable situations, including making efforts to identify and support persons or groups in vulnerable situations, providing assistance in preparing requests for access and ensuring information is available in the various languages used in the country.</p> <p>The regulations on access to information do not establish specific provisions or procedures for the support of persons or groups in vulnerable situations.</p> <p>With respect to the accessibility of information in different languages, there are certain authorities, such as the Ministry of Culture or the MINJUSDH, which have not only approved access request forms in the Quechua language but have also made their administrative procedure texts available to the public in Quechua. However, these initiatives are insufficient considering that there are forty-eight (48) indigenous languages in Peru<sup>17</sup>.</p>
<p>03</p>	<p>Ensure access to environmental information is provided at no cost, provided for costs of reproduction and delivery, which must be reasonable.</p> <p>The costs related to access to environmental information are established in national legislation. According to article 2, paragraph 5) of the PCP, individuals requesting information from public entities must assume the administrative cost of such request. Along these lines, the TAIP Law established that the applicant requesting the information must only pay the amount corresponding to the costs of reproduction of the information requested, which must</p>

<sup>17</sup> The Ministry of Culture registers a total list of forty-eight (48) indigenous or native languages, four (4) of which are spoken in the Andes and forty-four (44) are spoken in the Amazon. See more at: [https://bdpi.cultura.gob.pe/sites/default/files/archivos/paginas\\_internas/descargas/Lista%20de%20Lenguas%20Indi%CC%81ge nas%20u%20Originarias%202021.pdf](https://bdpi.cultura.gob.pe/sites/default/files/archivos/paginas_internas/descargas/Lista%20de%20Lenguas%20Indi%CC%81ge nas%20u%20Originarias%202021.pdf)

<p>be published in the Unique Text of Administrative Procedures (TUPA) of each entity.</p> <p>Subsequently, due to the existence of undue charges and the demand of additional requirements to those established in the regulations by public administration entities, in 2020 Supreme Decree No. 164-2020-PCM was enacted, which standardized the costs for processing fees in requests for access to public information. The costs established by the referred norm are as follows:</p> <ul style="list-style-type: none"> <li>- Simple copy in A4 format: S/0.10 (per unit) (USD 0.026)</li> <li>- Compact Disk (CD): S/1.00 (per unit) (USD 0.26)</li> <li>- Information by e-mail: free of charge.</li> </ul> <p>Additionally, the regulation establishes that in case other forms of delivery of physical information are requested (such as maps in different formats, satellite images, among others), each entity may determine the payment for the processing fee. The costs approved by the environmental authorities range from S/. 4 to S/. 32 soles (USD 1.03 to USD 8.22).</p> <p>The requirement of additional costs to the applicant of the information will be supervised and sanctioned by the National Authority of Transparency and Access to Public Information ("<u>ANTAIP</u>") of the MINJUSDH, as well as by the Comptroller General of the Republic.</p>	
<p>04</p>	<p>Establish or designate one or more impartial entities or institutions with autonomy and independence to promote transparency in access to environmental information.</p> <p>Peru does have impartial entities with autonomy and independence in the access to environmental information. The MINJUSDH through the National Directorate of Transparency and Access to Public Information is the ANTAIP. The ANTAIP is responsible for promoting the culture of transparency and access to public information and has regulatory, supervisory, consultative and promotional powers in terms of transparency and access to public information.</p> <p>As part of the supervisory powers of said entity, in 2017 the TTAIP was created. This court is a resolution body of the MINJUSDH under administrative supervision of the Ministerial Office and functional independence as the last administrative stage, in charge of deciding the controversies that arise related to transparency and the right to access public information at the national level.</p> <p>Although ANTAIP is the highest institution in the matter, all public administration entities are responsible for compliance with the rules of transparency and access to public information. In environmental matters, the OEFA, as the governing body of SINEFA, is the entity responsible for conducting and supervising compliance with access to environmental information by the EFAs.</p>
<p>05</p>	<p>Guarantee that competent authorities generate, collect, publicize and disseminate environmental information relevant to their functions.</p> <p>National regulations do establish the obligation to generate, compile and make available to the public information relevant to its functions. Please review the answer to question 1 of this section "<i>Right to access environmental information</i>".</p>
<p>06</p>	<p>Create one or more environmental information systems.</p>

Peru has several environmental information systems, which are detailed below:

a) SINIA

As previously mentioned, the SINIA is an information network under the responsibility of MINAM, which facilitates the systematization, access, and distribution of environmental information. The SINIA facilitates free access to environmental information generated by public and private entities and includes the following information:

- (i) Statistical environmental information;
- (ii) Documentary bibliographic environmental information;
- (iii) Regulatory documentary environmental information; and,
- (iv) Geospatial environmental information.

The SINIA is accessible through the following link: <https://sinia.minam.gob.pe/>

b) The National Environmental Research Observatory ("ONIA", acronym in Spanish):

The ONIA is a mechanism for the dissemination of open access scientific-environmental research, in a quick and accessible way for researchers, academics, public officials and civil society. Its purpose is to monitor the development of the Environmental Research Agenda 2021.

The ONIA is accessible through the following link: <https://investigacion.minam.gob.pe/observatorio/>

c) Pollutant Release and Transfer Register ("PRTR"):

The PRTR is a catalog with the releases and transfers of chemical pollutants, with emphasis on those considered as hazardous, including information on the risks that these may have for the health of the environment and the population, the amount of releases and transfers through air, water and soil. We will explain the PRTR in more detail in the next question.

The PRTR is accessible through the following link: <https://retc.minam.gob.pe/>

d) GEO BOSQUES:

GEO BOSQUES is a platform for monitoring changes in forest coverage and distributing such information to the different users. Distribution is through reports, maps, digital mapping server/viewers<sup>18</sup> and emails.

GEO BOSQUES is accessible through the following link: <http://geobosques.minam.gob.pe/geobosque/view/index.php>

e) Information System for Disaster Risk Management ("SIGRID", acronym in Spanish):

SIGRID is a digital geospatial platform, freely accessible, designed to consult, share, analyze and monitor information related to hazards, vulnerabilities and risks originated by natural phenomena; as well as to provide territorial information at a national level.

SIGRID is accessible through the following link: <http://sigrid.cenepred.gob.pe/sigridv3/>

<sup>18</sup> Digital server (also known as viewer) used by the Ministry of Environmental to show the forest coverage in Peru.

	<p>f) <u>Solid Waste Management Information System ("SIGERSOL"</u>, acronym in Spanish):</p> <p>The SIGERSOL is a tool, administered by MINAM, that facilitates the registration, processing and dissemination of information on solid waste management and management of municipalities and from title holders of non-municipal activities.</p> <p>The SIGERSOL is accessible through the following link: <a href="https://sigersol.minam.gob.pe/">https://sigersol.minam.gob.pe/</a></p> <p>g) <u>Geoserver</u></p> <p>The Geoserver is a technological platform with specialized geospatial information on the environmental situation of the territory. This system contains information on areas with potential for sustainable development, safe and disaster risk areas, illegal mining and other crime alerts, and land use changes at the national, regional, provincial and district levels of the Peruvian territory.</p> <p>The Geoserver is accessible through the following link: <a href="https://geoservidor.minam.gob.pe/">https://geoservidor.minam.gob.pe/</a></p> <p>Although the information systems described above develop the topics established in the Agreement, one of the limitations of these systems is that the information is only available in Spanish, with the exception of certain documents such as the National Environmental Policy (obtained from SINIA), which is available in audio in Quechua. This represents a limitation for those who do not speak and understand Spanish easily. Publicizing strategy should focus on overcoming the language barrier, as well as the barrier of the use of technical and legal terms that make it difficult for any citizen to understand.</p>
07	Create materials, waste and pollutant release and transfer register.
	<p>National legislation includes the registries detailed in the Agreement, which are described below:</p> <p>a) <u>Pollutant Release and Transfer Register</u></p> <p>In 2005, Peru ratified the Stockholm Convention on Persistent Organic Pollutants (POPs). Subsequently, MINAM approved the National Implementation Plan for the Stockholm Convention on Persistent Organic Pollutants, which included the creation of the PRTR.</p> <p>The PRTR was created with the objective of inventorying and updating a nationwide database on releases and transfers to air, water, and soil of pollutants according to geographic area and economic activity. The PRTR is updated annually with the information reported by the title holders of industrial establishments and companies not categorized as micro or small enterprises.</p> <p>b) <u>Hazardous materials</u></p> <p>Peru does not have a national registry of hazardous materials. However, the law that regulates the Land Transportation of Hazardous Materials and Waste, approved by Law No. 28256 ("<u>MATPEL Law</u>"), established that the hazardous materials listed in the United Nations Orange Book are regulated in Peru.</p> <p>In addition, the MATPEL Law established the creation of a Single Registry of Land Transportation of Hazardous Materials and/or Hazardous Waste, applicable to those title</p>

holders authorized to transport hazardous materials. Although this registry is not available on the web page of the institution in charge, it can be accessed through a request for access to public information.

c) Hazardous and non-hazardous waste

The Integral Solid Waste Management Law, approved by Legislative Decree No. 1278, created SIGERSOL and the Registry of Solid Waste Operating Companies ("EO-RS", acronym in Spanish), both under the responsibility of MINAM.

Municipalities, EO-RS and non-municipal solid waste generators are required to register solid waste information in SIGERSOL. The information reported is consolidated by MINAM, which presents its results in the National Report on the State of the Environment in Peru and prepares a report on greenhouse gas emissions and reductions in the solid waste sector. SIGERSOL also publishes annual reports with information differentiated by department, province and district. To date, information is only available up to 2018.

In addition, the EO-RS Registry has information on the EO-RS authorized by MINAM to provide cleaning services for roads and public spaces, collection and transportation, conditioning, recovery, transfer, treatment or final disposal of solid waste.

08

Guarantee immediate disclosure and dissemination of information in case of imminent threat to public health or the environment, develop and implement early warning system.

National legislation establishes a procedure for declaring environmental emergencies in the national territory. Likewise, the OEFA has regulations for the issuance of preventive measures in case of imminent danger or high risk of damage to the environment or people's health, within the framework of the supervisions that such entity carries out to the owners of investment projects under its jurisdiction.

a) Declaration of environmental emergency

In 2006, the first regulations for the Declaration of Environmental Emergency ("DEA") were approved. The DEA is applicable to a certain geographic area in case of occurrence of sudden and significant environmental damage caused by natural, human or technological causes that deteriorate the environment.

In order for a DEA to proceed, the following technical criteria are evaluated: (i) concentration levels of pollutants above standards or maximum permissible limits; (ii) permanent and irreversible alteration of natural conditions and landscapes of significant areas, which compromise the productivity of the same; (iii) affectation and risk to the health of people and their food sources due to contamination with emissions and discharges of toxic and hazardous substances; and, (iv) risk due to vulnerability of populations.

The declaration must be approved by MINAM and will be published in the official gazette "*E/ Peruano*". The resolution with the declaration includes an Immediate and Short Term Action Plan, which indicates the territorial scope, the safety and sanitary technical measures to be adopted, in order to avoid damages to health and the environment, the duration of the emergency and the minimum necessary control measures.

b) Preventive measures within the framework of environmental supervision of investment project holders.

The SINEFA Law establishes that the OEFA -as the governing body of SINEFA- may impose preventive measures in order to avoid an imminent danger or high risk of serious damage to the environment, natural resources and people's health, as well as to mitigate the causes that generate the environmental degradation or damage. Preventive measures are dictated in any of the following cases:

- a) Imminent danger: is the situation of risk or damage to the environment which occurrence is highly probable in the short term.
- b) High risk: is the probability of occurrence of environmental impacts that may transcend the limits of a facility, and adversely affect the environment and the population.
- c) Mitigation: is configured when it is necessary to implement actions tending to prevent cumulative damages of greater severity on the environment.

Preventive measures are dictated as part of a supervision, which involves the supervising authority and the title holder of the operations that generate the imminent threat to public health or the environment. The regulations governing administrative measures do not establish an early warning system for the general public; however, the OEFA usually informs the public of the issuance of the preventive measure through press releases on its website on the same day the measure is issued. Likewise, the OEFA has a web portal of the administrative measures issued, where the general public can access the resolutions that dictated the preventive measures. It should be noted that both the press releases and the Register of Administrative Measures are only available in Spanish.

It should be noted that the preventive measure must be executed immediately from the day of its notification to the holder of the operations. The preventive measures that may be ordered are the temporary, partial or total closure or business stoppage of the premises or activities that generate the hazard; temporary confiscation; destruction of hazardous materials or waste that generate the imminent hazard or risk; as well as any other suitable measure. In case the title holder of the operations does not voluntarily execute the preventive measure, the OEFA may request the support of the Peruvian National Police to enforce the preventive measure. Additionally, in this case, the owner of the operation will be sanctioned with a fine of up to 100 Tax Units (USD 112,994.35) for refusing to comply with the orders of the environmental authority.

09

Publish and disseminate national report on the state of the environment, at intervals no longer than 5 years.

Peru has three (3) main documents detailing the diagnosis of the environment. These publications are more than five (5) years old and have only been prepared in Spanish. The reports are published in the SINIA and in a single format.

It should be noted that environmental regulations do not regulate the frequency with which these reports on the state of the environment must be approved or their specific content.

The documents detailing the state of the environment at the national level are as follows:

- (a) Environmental Diagnosis of Peru ("DAP", acronym in Spanish).

The DAP was one of the first environmental management instruments created in the country in 2008. The report described the situation of the environment and natural resources, with emphasis on issues such as water quality, air pollution, the threat to agricultural soils, biological diversity, and the problem of the extinction of aboriginal groups and cultures. In addition, the DAP detailed the country's environmental management objectives and their

	<p>importance for competitiveness in international markets.</p> <p>b) <u>National Environmental Action Plan PLANAA PERU: 2011-2021</u> ("PLANAA", acronym in Spanish)</p> <p>In 2011, MINAM approved the National Environmental Action Plan PLANAA PERU: 2011-2021 ("PLANAA"). The PLANAA is a long-term national environmental planning instrument and contains the main goals and expected changes through 2021. Additionally, it contains a situational diagnosis of the following topics: (i) water, (ii) solid waste, (iii) air, (iv) forests and climate change, (v) biodiversity, (vi) mining and energy, and (vii) environmental governance.</p> <p>c) <u>Report on the State of the Environment</u> ("INEA", acronym in Spanish)</p> <p>In 2012, the first INEA was approved for the years 2009 to 2012. Then in 2015, the second and last INEA was approved, corresponding to the years 2012 and 2013.</p> <p>The INEA presented information on (i) the potential and wealth of the country's natural heritage; (ii) the severe environmental problems and liabilities that explain the deterioration of the natural heritage; and, (iii) the actions and initiatives that are materializing with the purpose of reducing pressures on natural resources and the environment. The report included the information suggested in the Agreement; however, INEA only presented information on collaboration agreements in the public sector; no information on the social and private sector was recorded.</p>
<p>10</p>	<p>Encourage independent environmental performance reviews evaluating efficacy, effectiveness and progress of national environmental policies in fulfillment of national and international commitments.</p> <p>Peruvian environmental regulation does not establish independent environmental performance review mechanisms.</p>
<p>11</p>	<p>Ensure consumers and users have official relevant and clear information on the environmental qualities of goods.</p> <p>Over the last few years, Peru has issued some legal provisions on the environmental qualities of goods and services, as well as their effects on health. To date, there is no specific regulatory framework on such practices; however, certain strategic sectors have enacted relevant standards that promote sustainability in the production and consumption of goods and services.</p> <p>As part of the compliance with the 17 Sustainable Development Goals established by the United Nations in 2015, the Peruvian State committed to adopt sustainable practices in responsible production and consumption.</p> <p>In the case of the manufacturing industry and domestic trade sector, the Ministry of Production ("PRODUCE", acronym in Spanish) provided for the promotion of Cleaner Production Agreements ("APL", acronym in Spanish) with the holders of activities in that sector. The APLs are voluntary promotional instruments that seek to improve the production and environmental conditions of their processes to achieve a circular economy. To date, there are seven (7) APLs with companies such as Coca Cola Peru and Arca Continental Lindley, Backus, Koplast, Aceros Arequipa, among others, that have voluntarily implemented sustainable measures in their operations.</p>

In addition, the Ministry of Agriculture ("MIDAGRI", acronym in Spanish) has approved specific regulations for the production and marketing of organic products in accordance with international standards. This regulation establishes provisions on organic product labeling, which must provide clear and accurate information on the organic status of the product and include the name of the responsible producer, as well as the name and registration number granted by the certifying authority.

Likewise, the Ministry of Transportation and Communications ("MTC", acronym in Spanish) enacted for the first time in 2001, the Maximum Permissible Limits ("MPL") of pollutant emissions for motor vehicles circulating on the road network. This regulation was innovative in implementing the Euro<sup>19</sup> technology in the country with the purpose of reducing the amount of polluting emissions in the environment<sup>20</sup>. The approval and application of emission standards has been gradual, since Euro standards require the introduction of new technologies (fuels at the national level, for example).

In addition to this, in 2018, MINAM approved the first law regulating single-use plastic and disposable containers or packaging. This law shows a first and important advance regarding the most urgent measures that are necessary to reduce pollution from the massive use of single-use plastics, such as plastic bags and straws (used for drinks), and other materials such as Expanded Polystyrene<sup>21</sup> (also known as EPS or *tecnopor*). The standard follows a regional trend and presents additional scopes. As highlighted by MINAM, although there are regulations that prohibit plastic bags in other Latin American countries, they have not incorporated the use of other materials such as Expanded Polystyrene, so Peru is the pioneer in this aspect.

Likewise, this law not only seeks to reduce the consumption of these products with a view to mitigating their impact on the oceans and rivers, through disincentives, such as a tax on the consumption of plastic bags, but also through incentives to manufacturers, importers, and marketers of this material, providing alternatives such as biodegradable bags.

With respect to consumer protection regulations, the Consumer Protection and Defense Code does not establish specific provisions on the information to be given to consumers and users on the environmental qualities of goods. However, it is established that in case there is a product or service that after its placement in the market, it is detected that there is a risk for the health of the consumers, the supplier is obliged to communicate this fact to the authority; as well as to inform immediately to the consumers, by means of announcements in the media.

12

Promote access to environmental information in possession of private entities and encourage public and private companies to prepare sustainability reports.

a) Access to environmental information in the hands of private entities

In accordance with the above, the regulation on access to information is applicable to public administration entities, which have the obligation to provide information that has been

<sup>19</sup> Regulatory measures approved by the European Parliament, which regulate the acceptable limits for exhaust emissions from new vehicles sold in the Member States of the European Union (EU). Emission standards are defined in a series of progressively implemented EU directives that are becoming increasingly restrictive.

<sup>20</sup> The pollutant emissions regulated by MINAM are: (i) carbon monoxide CO, (ii) nitrogen oxides NOx, (iii) hydrocarbons + NOx, and (iv) particulate matter PM.

<sup>21</sup> Expanded Polystyrene (EPS) is a foamed plastic material commonly used as food packaging, as it withstands and maintains high temperatures. It is commonly used in Peru by restaurants and markets.

created or obtained, or that is in their possession. Additionally, the regulation is also applicable to legal entities under the private regime that provide public services or exercise administrative functions of the public sector.

The relevant regulations include those provided by private entities to the public administration, within the framework of the regulation of their operations. Nonetheless, the regulations on access to information do not include information held by private entities, which are considered confidential.

b) Preparation of sustainability reports

Environmental legislation provides for the preparation of thematic sustainability reports by public and private companies, which must be submitted to their competent environmental authority within the deadlines established in the environmental regulations or within the deadlines established in their environmental study.

These reports contain information on the environmental management of their operations, such as solid waste management; environmental monitoring of their emissions or discharges; compliance with their environmental studies; social performance with communities or interest groups, among others. The sectors that require sustainability reports are those that generate the greatest impact on the environment, such as mining, electricity, hydrocarbons, industry, among others. The general public can access this information through access to information requests.

13

Guarantee mechanisms for public participation in decision-making processes, revisions, re-examinations or updates with respect to projects, activities and other processes for granting environmental permits that have or may have significant impact on the environment or when they may affect health.

Environmental legislation guarantees and establishes mechanisms for citizen participation in environmental decision-making processes. In this line, the RTAIPA establishes that environmental citizen participation is the process through which citizens participate responsibly, individually or collectively, in the definition and application of policies related to the environment and its components, which are adopted at each of the levels of government, and in the process of public decision-making on environmental matters, as well as in their execution and oversight.

Specifically regarding citizen participation in the framework of investment projects, environmental legislation includes the citizen participation process as an essential requirement in the evaluation and execution of public and private investment projects, as well as natural resource management projects, within the framework of the National Environmental Impact Evaluation System ("SEIA", acronym in Spanish). The SEIA, among other aspects, establishes the guidelines for environmental impact assessments of investment projects in the country and classifies such assessments into three categories of Environmental Studies depending on the type of project and the impacts that will be generated.

The SEIA is led by MINAM and is integrated by the National Environmental Certification Service for Sustainable Investments ("SENACE", acronym in Spanish), an institution specialized in the evaluation of the environmental feasibility of the most complex investment projects in the country; as well as by the sectorial authorities, who issue the environmental certification of the projects or activities, within the scope of their respective competences.

To that extent, citizen participation is mandatory for the owner of the activities, as part of the process of evaluation and approval of their Environmental Studies. This requirement is essential because without complying with the mandatory mechanisms established, the competent authority will not be able to start the evaluation of the Environmental Study and in this sense, the owner of the activity will not be able to obtain the environmental certification, which is a mandatory requirement for the start of the productive activities.

Thus, compliance with the citizen participation process becomes an essential requirement, recognizing this right as a constitutional right that every person has and that allows them to "*participate responsibly in the decision-making processes, as well as in the definition and application of policies and measures related to the environment and its components, which are adopted at each of the levels of government*".

This constitutional right, which is materialized in environmental regulations, empowers all persons to present opinions, positions, points of view, observations and/or contributions, in the decision-making processes of environmental management and in the policies and actions that affect it, as well as in its subsequent execution, follow-up and control; circumscribing such participation to a responsible action, in accordance with the rules and procedures of the formal mechanisms established for such purpose, and in accordance with the principles of good faith, transparency and truthfulness.

It should be noted that without prejudice to the participation mechanisms recognized in the general legislation, certain sectors such as energy, mining, agriculture and industry have special rules that regulate the processes of citizen participation in the scope of their activities and include suitable mechanisms for these activities, such as the use of traditional means, dialogue tables, information offices, among others.

It is important to mention that the execution of citizen participation processes, within the framework of the evaluation of Environmental Studies, is the responsibility of the owners of investment projects and not of the State. In this case, it is the State that verifies that the process is carried out in compliance with the approved environmental regulations.

Finally, citizen participation mechanisms are applicable to all stages of the environmental impact assessment process, from project design to the post-closure phase. It should be noted that the contributions and suggestions of the citizen participation process will be informative and non-binding in nature.

14

Make efforts to identify the public directly affected by the above mentioned decision making processes, and promote specific actions to facilitate their participation.

Although citizen participation is a process applicable to all citizens, environmental regulations have established provisions so that the public directly affected by the decision-making process has the necessary information on the investment projects that will be executed in their localities. Along these lines, the LGA establishes that public hearings, as one of the mechanisms for citizen participation, must be held in the area of the population closest to the project's zone of influence. The specific location is determined by the authority in charge of the evaluation of the Environmental Study of the licensee.

It is also established that the affected population will be informed by placing posters in the offices of the local authorities, publishing notices in the local newspapers with the largest circulation in the locality, radio announcements in radio companies in the area, mailboxes for comments and suggestions in the community, information offices in the same locality, among

	<p>others.</p>
<p>15</p>	<p>Make public the following minimum necessary information related to the above mentioned decision-making processes: (a) description of the area of influence and physical and technical characteristics of the proposed project or activity; (b) description of the main environmental impacts of the project or activity and, as appropriate, the cumulative environmental impact; (c) description of the measures foreseen with respect to those impacts; (d) a summary of (a), (b) and (c) herein in comprehensible, non-technical language; (e) public reports and opinions of the involved entities addressed to the public authority related to the project or activity under consideration; (f) description of the available technologies to be used and alternative locations for executing the project or activity subject to assessment, when the information is available; and (g) actions taken to monitor the implementation and results of environmental impact assessment measures.</p> <p>The information detailed in the Agreement is part of the Environmental Studies that the title holder of the activity submits to the competent authority for evaluation. As part of the public participation process, such owners must make available to the general public and the population affected by the activities, an executive summary of the Environmental Study, which includes the information mentioned in the Agreement.</p> <p>The environmental regulations establish that the executive summaries made available to the public must be easy to understand and in Spanish, as well as in the predominant language of the locality where the investment project is planned to be carried out. The executive summaries should be physically available to all citizens from the environmental assessment phase of the project (i.e., prior to construction) until project closure.</p> <p>In addition to making the executive summaries of the environmental studies available to the public, the project owner must organize public hearings, participatory workshops, among other mechanisms for citizen participation, in which professionals will be available to explain the information contained in the summaries to the people attending the hearings.</p>
<p>16</p>	<p>Promote the right to public participation in environmental decision-making processes with respect to environmental matters of public interest such as land-use planning, policies, strategies, plans, programmes, rules and regulations, which have or may have significant impact on the environment.</p> <p>The PCP recognizes the rights of citizens to participate in the public affairs of the State. For this reason, over the years, various mechanisms or institutions have been instituted and regulated so that people can participate in the State's decision making process.</p> <p>In environmental matters, citizen participation is one of the cornerstones of environmental management. In addition to its recognition at the international level, as in the Rio Declaration on Sustainable Development, the right to citizen participation in environmental decision-making processes is established in the LGA.</p> <p>In this respect, it is established that any natural or legal person, individually or collectively, may present opinions, positions, points of view, observations or contributions, in the decision-making processes of environmental management and in the policies and actions that affect it, as well as in its subsequent execution, follow-up and control.</p> <p>Along these lines, environmental regulations establish that public entities have the following obligations regarding citizen participation:</p>

- Promote timely access to information related to matters subject to citizen participation.
  - To train, provide advice and promote the active participation of entities dedicated to the defense and protection of the environment and the organized population in environmental management.
  - Establish mechanisms of citizen participation for each process of involvement of natural and legal persons in environmental management.
  - Eliminate formal demands and requirements that hinder, limit or prevent the effective participation of natural or legal persons in environmental management. -
- Ensure that any natural or legal person, without discrimination of any kind, can access the mechanisms of citizen participation.
- To account for the mechanisms, processes and requests for citizen participation in the matters under its responsibility.

17

Define procedure and mechanisms that support the right to public participation in above mentioned decision-making processes, from early stages until decision is made.

Environmental regulations on citizen participation have established procedures and mechanisms for the decision-making process. In this line, the LGA specifies that people not only have the inalienable right to live in a healthy, balanced and adequate environment for the full development of life, but also have the duty to contribute to an effective environmental management and to protect the environment.

Citizen participation in environmental matters implies that citizens should be informed and be able to participate in decision-making on matters that affect their quality of life and environmental quality. To this end, the RTAIPA established that public entities have the following obligations regarding citizen participation:

- Promote timely access to information related to matters subject to citizen participation.
- Train, provide advice and promote the active participation of entities dedicated to the defense and protection of the environment and the organized population in environmental management.
- Establish mechanisms of citizen participation for each process of involvement of natural and juridical persons in environmental management.
- Eliminate formal demands and requirements that hinder, limit or prevent the effective participation of natural or legal persons in environmental management.
- Ensure that any natural or legal person, without discrimination of any kind, can access the mechanisms of citizen participation.
- To account for the mechanisms, processes and requests for citizen participation in the matters under its responsibility.

In this sense, public entities have the obligation to carry out citizen participation from an early stage, so that their influence on the decision or rule to be adopted can be real. The mechanisms of consultation in matters with environmental content are the following:

- Public hearings;
- Participatory workshops;
- Opinion surveys;
- Suggestion boxes;
- Regional and Local Environmental Commissions;
- Technical Groups;
- Management Committees;
- Participatory monitoring;
- Guided visits;

	<ul style="list-style-type: none"> <li>- Citizen Vigilance Committees, duly registered with the authority;</li> <li>- Follow-up of environmental compliance indicators;</li> <li>- Reporting of violations or threats of violations of environmental regulations;</li> <li>- Publication of draft regulations;</li> <li>- Other duly substantiated mechanisms.</li> </ul>
18	<p>With regards to above mentioned decision-making processes, guarantee public is informed, as a minimum, of (a) the nature of the environmental decision, (b) the authority responsible for making the decision and other authorities or bodies involved, (c) procedure for public participation, (d) other public authorities where additional information can be requested and procedure for such request.</p> <p>The environmental regulations include the provisions developed in the Agreement.</p>
19	<p>Provide the means to facilitate understanding and participation of directly affected public with primary language that is different from official language.</p> <p>National legislation establishes that the documents that the project owner submits to the competent authority, within the framework of the evaluation of Environmental Studies, must be written in Spanish. In addition, the competent authority may also require that the information made available to the public - as in the case of the executive summaries mentioned above - must also be written in the predominant language of the locality where the investment project is planned to be carried out. Likewise, when the predominant language in the area of execution does not allow or makes a written translation of the study difficult, the presentation of a magnetic, digital audio or any other appropriate means of the executive summary may be requested for its dissemination.</p>
20	<p>Encourage establishment of appropriate spaces for consultation in which various groups and sectors are able to participate.</p> <p>National regulations do establish appropriate spaces for consultation. Please review the answer to question 16 and 17 of this section "<i>Right to access environmental information</i>".</p>
21	<p>Guarantee domestic legislation and international obligations in relation to the rights of indigenous peoples and local communities are observed.</p> <p>The right to consultation is the right of indigenous or native peoples to be previously consulted on legislative or administrative measures, as well as national and regional development plans, programs and projects that directly affect their collective rights, physical existence, cultural identity, quality of life or development. This right was recognized in Convention 169 of the International Labor Organization concerning Indigenous and Tribal Peoples in Independent Countries ("<u>ILO Convention 169</u>"), and was ratified by Peru in 1995.</p> <p>Within this framework, Law No. 29785, Law on the Right to Prior Consultation of Indigenous or Native Peoples ("<u>Prior Consultation Law</u>") was approved in 2011 and, the following year, through Supreme Decree No. 1-2012-MC, the Regulations that develop the provisions of the Law were approved. Thus, in accordance with the provisions of Convention 169, the legal framework has established that in order to be recognized as an indigenous or native people, two essential elements must be met, one objective and the other subjective. The objective element implies that these peoples are descended from populations that inhabited the country at the time of colonization and, regardless of their legal status, retain their own social, economic, cultural and political institutions or part of them. The subjective element has to do</p>

with their self-recognition as indigenous peoples.

The main objective of the prior consultation process is to reach an agreement between the State and the indigenous or native peoples through an intercultural dialogue that guarantees their inclusion in the State's decision-making processes for the adoption of measures respectful of their collective rights. The right to prior consultation does not imply a veto right in favor of these peoples.

According to the Law on Prior Consultation, state entities promoting a legislative or administrative measure that may have an impact on an indigenous or native population must observe at least the following stages of consultation: (i) identify the legislative or administrative measure subject to consultation; (ii) identify the indigenous or native peoples to be consulted; (iii) publicize the legislative or administrative measure; (iv) inform about the legislative or administrative measure; (v) evaluate with the institutions and organizations of the indigenous or native peoples the legislative or administrative measures; (vi) dialogue with the representatives of the indigenous or native peoples; and, finally, (vii) make a decision.

Below is a table detailing the differences between prior consultation and citizen participation mechanisms:

Differences between citizen participation and the right to prior consultation		
Issue	Citizen Participation	Right to Prior Consultation
Beneficiaries	All persons	Only indigenous or native populations
Stage of application	All stages of a project	Prior to the adoption by the State of a legal or governmental measure
Responsibility	Depending on the type of mechanism and the stage of development of a project it may be promoted by the Government or by the titleholder of the relevant activity	Government
Veto right	No	No

Access to justice in environmental matters

01

Ensure domestic legislation guarantees substantive and procedural due process.

The right to due process is expressly recognized as a principle in article 139<sup>22</sup> of the PCP. This provision radiates the following four existing mechanisms in the Peruvian regulation to make effective the access to environmental justice:

- a) The administrative route;
- b) The ordinary judicial route (civil process, contentious-administrative process and criminal process);
- c) The constitutional judicial route (amparo process, compliance, habeas data, popular action)

<sup>22</sup> **"Article 139° - The following are principles and rights of the jurisdictional function:**

3. Observance of due process and jurisdictional protection.

No person may be diverted from the jurisdiction predetermined by law, nor subjected to proceedings other than those previously established, nor tried by exceptional jurisdictional bodies or by special commissions created for this purpose, whatever their denomination. [...]"

and unconstitutionality); and,  
d) The alternative mechanisms of conflict resolution.

Along these lines, in administrative proceedings, the LPAG recognizes due process as a principle applicable to all administrative proceedings. If the process does not comply with the minimum guarantees for the plaintiff, the proceeding may be deemed void. These guarantees include the right to multiple instances, the right of defense, the right to offer and produce evidence, the right to challenge resolutions, the right to obtain a reasoned decision based on law, among others.

In the same sense, the Code of Civil Procedure establishes a series of principles applicable to all judicial proceedings in civil and contentious-administrative matters. The Preliminary Title of the code determines that the right to effective judicial protection is subject to due process. All other principles that contribute to guarantee due process are derived from this provision.

In the same line, the Code of Criminal Procedure recognizes this right, which is materialized through the minimum guarantees that are established for all criminal proceedings, specifically the guarantees referring to the right to defense, means of proof, motivation, among others.

Likewise, the PCP is under the provisions of the principle of due process. To that extent, it is regulated that the Amparo Process can make effective the protection against final judicial resolutions that violate this right. Furthermore, Habeas Corpus can be filed to protect individual freedom when due process has been violated. In other words, due process is both a right and a principle of the administration of justice, which is summarized in the set of minimum guarantees that must be observed to ensure that the proceeding is fair and that its execution is in accordance with the legal system.

02

In addition and support of due process, have (a) competent State entities with access to expertise in environmental matters; (b) effective, timely, public, transparent and impartial procedures that are not prohibitively expensive; (c) broad active legal standing in defense of the environment; (d) the possibility of ordering precautionary and interim measures, inter alia, to prevent, halt, mitigate or rehabilitate damage to the environment; (e) measures to facilitate the production of evidence of environmental damage such as the reversal of the burden of proof and the dynamic burden of proof; (f) mechanisms to execute and enforce judicial and administrative decisions in a timely manner; and (g) mechanisms for redress.

(a) Competent government entities with access to environmental expertise

During the last 20 years, the creation of institutions with environmental competencies has expanded. Although Peru has had an environmental legal framework since 1990, it was not until 2008, within the framework of the Peru-United States of America Trade Promotion Agreement negotiations, that policies were approved for the implementation of norms and institutions that guarantee a higher level of environmental protection. In 2008, MINAM was created to replace the National Environmental Council, which was created in 1994 and whose role was more limited to that of a coordinating entity. MINAM was created under the function of designing, establishing, executing and supervising the national and sectorial environmental policy.

After its creation, other entities accompanied the phase of strengthening the environmental institutional framework. As previously mentioned, the environmental sector was structured in a National Environmental Management System made up of different functional levels and environmental management roles. Thus, the SEIA was created as a system for the

identification, prevention, supervision and early correction of negative environmental impacts.

The SINEFA was also created, led by the OEFA, whose purpose is to enforce compliance with environmental legislation through evaluation, supervision and oversight, control and environmental sanctioning powers. In this sense, the OEFA is in charge of carrying out these functions directly on the investment projects under its jurisdiction. Likewise, as the governing entity, it also supervises the exercise of these functions by the EFAs, which, as previously indicated, include the Ministries, Regional Governments and Local Governments, since these institutions carry out environmental control functions.

On the other hand, in criminal matters, the Penal Code regulates a Title XIII on Environmental Crimes, which has provided for the creation of Specialized Environmental Prosecutor's Offices ("FEMA", acronym in Spanish) throughout the country, with jurisdiction to investigate these crimes in the first instance. However, this situation is not repeated in the second instance, since there are no Superior Prosecutor's Offices Specialized in Environmental Matters. This may imply a limitation in the focus of specialization in the investigation as the process advances to higher instances.

In addition to the investigative function, the Environmental Protection Directorate ("DIREPMA", acronym in Spanish) of the Peruvian National Police, better known as the "Environmental Police", was also created, made up of police officers trained to investigate environmental crimes. Also, as part of the judicial process itself, as a result of the execution of the "Pacto de Madre de Dios por la Justicia Ambiental" ("Madre de Dios Pact for Environmental Justice")<sup>23</sup>, more than ten (10) courts of that nature have been established throughout the country to hear cases involving illegal mining, deforestation, environmental contamination and related crimes.

Although the creation of environmental institutions has spread throughout the country, there is still a need to strengthen the specialization of environmental courts that resolve administrative and constitutional contentious matters. Likewise, to date there is a sector whose environmental competencies are being exercised by a different authority. This is the case of the education sector, which should be under the supervision of the Ministry of Education ("MINEDU", acronym in Spanish); however, since 2009 the Ministry of Housing, Construction and Sanitation ("MVCS", acronym in Spanish) is in charge of the environmental competences, as long as MINEDU implements the necessary actions to grant environmental certification to the holders of activities under its jurisdiction.

(b) Effective, timely, public, transparent, impartial and cost-prohibitive procedures.

In administrative proceedings, as established in Article 237<sup>24</sup> of the LPAG, an administrative sanctioning procedure cannot exceed nine (9) months, renewable for a maximum of three (3) additional months. In other words, once the administrative sanctioning procedure has been initiated by the environmental authority, a decision must be issued within a maximum period of one year.

<sup>23</sup> The Madre de Dios Pact was signed in November 2017 by various institutions of the Executive Branch, Judicial Branch, Attorney General's Office and civil society, is a commitment adopted with a view to the constitutional and legal recognition of environmental rights, through the implementation of concrete measures to ensure access to environmental justice.

<sup>24</sup> "**Article 237-A. Administrative expiration of the sanctioning procedure:**  
1. The term to resolve the sanctioning procedures initiated ex officio is nine (9) months counted from the date of notification of the imputation of charges. This term may be extended exceptionally, for a maximum of three (3) months, and the competent body must issue a duly substantiated resolution, justifying the extension of the term, prior to its expiration. The administrative expiration does not apply to the appeal procedure. [...]".

Likewise, the progress of these procedures must be notified to the investigated party and the resolution that resolves the procedure is published on the portals of each relevant institution or made available on the SINIA platform.

Additionally, all administrative proceedings must comply with a series of principles set forth by the LPAG, among which the principles of impartiality, due process, speed, efficiency, participation, among others, which seek to provide the minimum guarantees in the course of administrative sanctioning proceedings. In fact, the LPAG provides that no fees should be charged for the processing of these procedures. The filing of an environmental complaint before the authorities is free of charge and can be submitted through virtual channels.

The same logic is followed in the judicial process in terms of minimum guarantees, as these principles are derived from the constitutional mandate of administration of justice. Regarding the cost that may be involved in the processing of a judicial process, the free defense that has been established as a right of persons in vulnerable situations is emphasized. However, the speed of the process continues to be a shortcoming in this venue. Due to the high procedural burden, some processes may take years to be resolved, which may imply higher costs in the long term. In criminal matters, these shortcomings have been reduced through the procedural simplification mechanisms regulated in the Peruvian Criminal Procedure Code of 2004, such as the principle of opportunity, early termination and early conclusion, which are special processes that allow for greater efficiency and effectiveness of the criminal process.

c) Broad legal standing in defense of the environment, in accordance with national law

The LGA establishes broad legal standing, from which it follows that every person has the right to a quick, simple and effective action before the administrative and jurisdictional entities in defense of the environment. Along these lines, broad legal standing is admitted in the filing of administrative complaints or in the initiation of judicial proceedings.

In administrative proceedings, article 105<sup>25</sup> of the LPAG has regulated that any person may file a complaint on facts known to be contrary to the environmental law without the need to prove a direct affectation. It is established that its presentation obliges the authorities to practice the necessary diligences to determine the veracity of the complaint. From the complaint onwards, the complainant participates as a third party, since the investigation creates a relationship only between the administrative authority and the investigated party. However, the third party enjoys certain rights, such as the right to provide evidence of the existence of an administrative infraction or the non-compliance with a precautionary or corrective measure, the implementation of measures to protect his safety and the right to have the authority explain its decision in the event that it decides to reject his complaint.

In the case of the judicial route, the Constitutional Court has established in environmental matters that "*as for the diffuse interest, any natural person is authorized to initiate the judicial actions that have been foreseen in the law with the purpose of exempting it from protection, therefore, for such cases, it is not required that there be a direct affectation to the individual promoting the judicial action, it has also been foreseen that juridical persons whose corporate purpose is the preservation of the environment have procedural legitimacy for their defense*" (Ground 8, of the TC Sentence, in Case N° 964-2002, of March 17, 2003). In this sense,

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<sup>25</sup> **"Right to lodge a complaint**

105.1 All persons administered are empowered to communicate to the competent authority those facts that they know to be contrary to the law, without the need to support the immediate affectation of any right or legitimate interest, or that by this action they are considered the subject of the procedure.  
(...)"

Peruvian law provides for broad active standing to defend the right to enjoy an adequate and balanced environment and its components in administrative and judicial proceedings.

It should be noted that cases that are not heard by the national judicial system can also be heard under the contentious jurisdiction of the IACHR Court. This is possible based on the parameters established by the Case of Indigenous Communities Members of the Lhaka Honhat Association (Nuestra Tierra) v. Argentina<sup>26</sup> and the Advisory Opinion OC-23/17, which enabled the possibility of alleging the violation of the right to the environment as an autonomous right, recognized in Article 11<sup>27</sup> of the Protocol of San Salvador, in connection with Article 26<sup>28</sup> of the ACHR. Therefore, as long as the requirements of competence and admissibility are met, it is possible to defend this right in the judicial and administrative channels of the domestic jurisdiction, as well as in the international jurisdiction, if applicable.

(d) The possibility of ordering precautionary and provisional measures to, among other purposes, prevent, stop, mitigate or recover damages to the environment.

In administrative proceedings, Article 236<sup>29</sup> of the LPAG establishes that the competent authority may provisionally adopt precautionary measures. In this line, in environmental matters, the possibility of adopting preventive measures and measures of restoration, rehabilitation, repair, compensation and recovery of the Nation's Natural Heritage is recognized.

These measures were approved in Articles 22- A<sup>30</sup> and 23<sup>31</sup> of the SINEFA Law. Preventive

<sup>26</sup> Cf. Case of Indigenous Communities Members of the Lhaka Honhat Association (Nuestra Tierra) v. Argentina. Merits, paras. 201 to 209.

<sup>27</sup> **"Article 11.- Right to a Healthy Environment:**

*Everyone has the right to live in a healthy environment and to have access to basic public services.*

*2. The States Parties shall promote the protection, preservation and improvement of the environment."*

<sup>28</sup> **"Article 26.- Progressive Development:**

*The States Parties undertake to adopt measures, both internally and through international cooperation, especially economic and technical, to achieve progressively the full realization of the rights derived from the economic, social, educational, scientific and cultural standards contained in the Charter of the Organization of American States, as amended by the Protocol of Buenos Aires, to the extent of available resources, by legislative or other appropriate means "*

<sup>29</sup> **"Article 236.- Precautionary measures.**

*236.1 At any stage of the trilateral proceeding, ex officio or at the request of a party, interim measures of protection may be ordered in accordance with Article 146.*

*236.2 If the party obliged to comply with a precautionary measure ordered by the administration fails to do so, the rules on compulsory execution provided for in articles 203 to 211 shall apply.*

*236.3 An appeal may be filed against the resolution issuing a precautionary measure requested by any of the parties within three (3) days from the notification of the resolution issuing the measure. Unless otherwise provided by law or a decision of the authority to the contrary, the appeal does not suspend the execution of the precautionary measure.*

*The appeal shall be submitted to the hierarchical superior within a maximum period of one (1) day, counted from the date of the granting of the respective appeal and shall be resolved within five (5) days.*

*(...)"*

<sup>30</sup> **"Article 22-A.- Preventive measures:**

*Preventive measures may contain orders to do or not to do. They are imposed only when there is evidence of an imminent danger or high risk of serious damage to the environment, natural resources or derived from them, to the health of persons; as well as to mitigate the causes that generate environmental degradation or damage.*

*In order to order a preventive measure, it is not required the initiation of an administrative sanctioning procedure. Such measure is executed without prejudice of the administrative sanction that may be applicable.*

*The validity of the preventive measure extends until its compliance has been verified or the conditions that motivated it have disappeared."*

<sup>31</sup> **"Article 23.- Measures for the restoration, rehabilitation, repair, compensation and recovery of the Natural Heritage of the Nation:**

*23.1 Without prejudice to imposing any of the established sanctions, the competent authority may also oblige the natural or legal person responsible for the damage to restore, rehabilitate or repair the altered situation, as the case may be, or to compensate it in environmental terms when the above is not possible, in accordance with Article IX of Law No. 28611, General Environmental Law.*

*23.2 The competent authority may also recover, retain or confiscate goods, or products derived therefrom, that have originated as a consequence of the illegal extraction or exploitation of natural resources, inasmuch as they constitute Natural Heritage of*

measures, these are dictated even without the existence of a sanctioning procedure. The holder of the activity must either avoid high risk, and imminent danger or mitigate the impact on the environment until the risk or danger to the environment ceases. In addition, the law also provides for the adoption of measures of restoration, rehabilitation, repair, compensation and recovery as complementary to the sanctions established at the end of a sanctioning procedure, dictated within the framework of the principle of environmental responsibility regulated in the LGA.

Likewise, it has been established the possibility that the authority may carry out direct actions of recovery, retention or confiscation of goods, or products derived therefrom, that have originated as a consequence of the illegal extraction or exploitation of natural resources. In the specific case of the OEFA, the Resolution of the Board of Directors No. 27-2017-OEFA/CD, Regulation of Sanctioning Administrative Procedure of the OEFA, establishes the possibility that administrative measures such as precautionary measures and corrective measures may be issued.

Regarding the precautionary measures, the OEFA may issue these before the beginning or once the administrative sanctioning procedure is initiated. Some of these measures may include: (i) the seizure of goods that generate danger or risk to the environment or people's health, (ii) the cessation or conditional restriction of the activity causing the danger, (iii) the removal, treatment, storage or destruction of the goods or infrastructure causing the danger, among others. These measures may be rescinded or varied at any stage of the procedure.

It is also foreseen that the OEFA may apply corrective measures as part of the provisions contained in the final resolution of an administrative sanctioning procedure. The purpose of these measures is to revert, or diminish as much as possible, the harmful effect that the infringing conduct may have had on people's health or the environment. Compliance with the corrective measures is subject to a time frame and non-compliance may result in the imposition of a fine. On the other hand, precautionary measures may also be applied in judicial proceedings. In both civil and constitutional matters, precautionary measures may be required to ensure compliance with the purpose of the process. The precautionary measures that may be requested in judicial proceedings are diverse, applicable depending on the specific case.

In criminal matters, the Peruvian Criminal Procedural Code regulates precautionary measures in articles 312<sup>32</sup> and 313-A<sup>33</sup>, where it recognizes the Judge's power to order the immediate suspension of the polluting, extractive or depredatory activity, as well as other precautionary measures that may apply. On this point, the Attorney General's Office, by

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*the Nation in accordance with the Political Constitution. To such effect, the specific administrative norm for the application of this provision shall be issued."*

<sup>32</sup> **"Article 312 Anticipated measures:**

*The Judge, exceptionally, at the request of a legitimate party, may adopt anticipated measures aimed at avoiding the permanence of the crime or the prolongation of its harmful effects, as well as the anticipated and provisional execution of the pecuniary consequences of the crime."*

<sup>33</sup> **"Article 313-A. Precautionary measures in cases of autonomous administrative liability of legal persons:**

*In the cases provided for in the Law that regulates the autonomous administrative liability of legal persons for the crime of transnational active bribery, the judge, at the request of a legitimate party, may order, in addition to the measures established in numeral 1 of article 313, the following:*

*a. Prohibition of future activities of the same kind or nature as those by which the offense would have been committed, favored or concealed.*

*b. Suspension from contracting with the State.*

*The imposition of the measures referred to in the first paragraph is appropriate provided that there is sufficient evidence of the administrative liability of the legal person for the crime of transnational active bribery and that it is essential to prevent the risks of concealment of assets or insolvency or to prevent the obstruction of the investigation of the truth. These precautionary measures do not last longer than half of the time fixed for the temporary measures provided for in article 5 of the Law regulating the autonomous administrative liability of legal persons for the crime of transnational active bribery".*

means of the Technical - Legal Report for the Subscription and Ratification of the Escazú Agreement, sent through Letter N° 945-2018-FS/CFEMA-FN, as part of the proposal of the Executive Power to the Congress for the ratification of the Agreement ("Technical - Legal Report of the Attorney General's Office"), promotes the unification of criteria for when precautionary measures should be applied to bolster its application by the FEMAs, in order to guarantee the restitution and/or vindication of the affected legal property through environmental remediation plans. To date, this is in the process of implementation.

e) Measures to facilitate the production of evidence of environmental damage, when applicable and appropriate, such as the reversal of the burden of proof and the dynamic burden of proof.

In accordance with article 2.24 (e) of the PCP, which establishes that "*every person is considered innocent until his responsibility has been judicially declared*", the national regulation has determined that it is up to the person who accuses a fact to prove what he alleges. This principle is complied with in both judicial and administrative proceedings. In administrative proceedings, the authority must prove the facts it alleges in the framework of administrative sanctioning procedures. This is related to the ex officio impulse regulated in the LPAG, which establishes as a function of the authorities to order the performance or practice of the necessary acts for the clarification and resolution of the corresponding issues.

However, in environmental matters the LGA has established that liability is objective<sup>34</sup>. This means that the principle of presumption of innocence is applied with nuances with respect to administrative sanctioning procedures related to environmental issues and it is possible to shift the burden of proof.

In this line, it is legitimate for the authority to demand the communication of information, the presentation of documents or goods, the submission to inspections of its goods, as well as its collaboration for the practice of other means of proof.

Likewise, in the judicial process, Article 196 of the Code of Civil Procedure reaffirms the provisions of the PCP on the premise that the burden of proof must be assumed by the person who alleges the facts.<sup>35</sup> However, it is possible to shift the burden of proof in environmental matters, in case it is demonstrated that production of evidence is impossible, difficult to obtain or excessively onerous so that the burden of proof falls on whoever is in a better position to prove.<sup>36</sup> In such cases, the Judge must support the decision to apply such procedural criterion. This is in line with what is also established in contentious-administrative proceedings. Article 32<sup>37</sup> of the Sole Ordered Text of Law No. 27584, Law that Regulates the

<sup>34</sup> **"Article 144.- On strict liability**

*The liability derived from the use or exploitation of an environmentally risky or dangerous good, or from the exercise of an environmentally risky or dangerous activity, is objective. This liability obliges to repair the damages caused by the risky good or activity, which entails to assume the costs contemplated in article 142 above, and those corresponding to a fair and equitable compensation; those of the recovery of the affected environment, as well as those of the execution of the necessary measures to mitigate the effects of the damage and prevent its recurrence".*

<sup>35</sup> **"Burden of proof.**

*Unless otherwise provided by law, the burden of proof shall be on the person who asserts facts that constitute his claim, or on the person who contradicts them by alleging new facts".*

<sup>36</sup> These considerations obey a judicial practice determined in the national jurisprudence and require to be duly motivated according to the specific case. For more information see: Environmental Law Clinic of the Pontificia Universidad Católica del Perú (October 19, 2020). Report N° 02-2020, "*Complementary Technical-Legal Report for the Ratification of the Regional Agreement on Access to Information, Public Participation and Access to Justice in Environmental Matters in Latin America and the Caribbean - Escazú Agreement*", pp. 13-14. Retrieved from: <https://facultad.pucp.edu.pe/derecho/wp-content/uploads/2020/10/Informe-Complementario-Cli%CC%81nica-Juri%CC%81dica-Ambiental-PUCP-vfinal.pdf>

<sup>37</sup> **"Burden of proof**

Contentious Administrative Proceedings establishes the dynamic burden of proof. It is recognized that in case the administrative entity, due to its function or specialty, is in a better position to prove the facts, it is incumbent upon it to assume the burden of proof.

As we have already referred to in the first section of this document on constitutional matters, with respect to environmental appeals, the Constitutional Court has determined that there must be "*an accentuated evidentiary activity*". Likewise, it has determined that the burden of proof in this type of process is shifted, by virtue of the precautionary and prevention principles. Thus, "*the creators of the product or the promoters of the activities or processes in question must demonstrate that these do not constitute a danger or do not harm health or the environment*" (Ground 13, of the TC Ruling in Case No. 04978-2013-PA/TC).

In criminal matters the principle of presumption of innocence is fully respected. This does not limit the investigation in environmental matters, since in practice there are several scopes that can contribute to determine the responsibility in the commission of an environmental crime.

The Prosecutor's Office, through its Technical-Legal Report, pointed out the commitment of this institution to provide all the necessary evidence in the processes. Thus, it highlights the role of the Environmental Forensic Team ("EFOMA"), made up of experts from different disciplines who provide technical-scientific support to the prosecutorial investigations; prepare the reports containing the analysis of the environmental components involved (air, surface water, effluents, groundwater, soil, sediments and others); and carry out the economic valuation of the environmental damage. In addition, the implementation of the Satellite Georeferenced Monitoring Units for Environmental Crimes ("UMGSDA"), equipment for the technical recording of field information through satellite images, is also noteworthy.

f) Mechanisms for the timely enforcement and compliance with the corresponding judicial and administrative decisions.

In administrative proceedings, article 194<sup>38</sup> of the LPAG enables the public administration to proceed with the forced execution of administrative acts to ensure compliance, through its own bodies or through the PNP, provided that the requirements that make possible the concrete identification of the obligation are met.

In this sense, forced execution is regulated, which can be carried out by four means:

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*Unless otherwise provided by law, the burden of proof corresponds to the person who asserts the facts that support his claim. However, if the challenged administrative action establishes a sanction or corrective measures, or when by reason of its function or specialty the administrative entity is in a better position to prove the facts, the burden of proof corresponds to the latter."*

<sup>38</sup> **"Article 194.- Enforcement:**

*In order to proceed to the forced execution of administrative acts through its own competent bodies, or through the National Police of Peru, the authority complies with the following requirements:*

- 1. That it is an obligation to give, to do or not to do, established in favor of the entity.*
- 2. The performance must be clearly and fully determined in writing.*
- 3. That such obligation derives from the exercise of an authority of the entity or arises from a public law relationship with the entity.*
- 4. That the person administered has been requested to spontaneously comply with the provision, under penalty of initiating the specifically applicable coercive means.*
- 5. That it is not an administrative act that the Constitution or the law requires the intervention of the Judicial Power for its execution.*

*In the case of trilateral proceedings, the final resolutions ordering corrective measures are enforceable pursuant to the provisions of Article 713 paragraph 4) of the Code of Civil Procedure.(2) as amended by Law No. 28494, once the act becomes final or the administrative remedies have been exhausted.*

*In case of final resolutions ordering corrective measures, the legitimacy to act in civil enforcement proceedings corresponds to the parties involved."*

- (i) Coercive enforcement, referring to any act of coercion on the part of the authority to execute its decisions in administrative venue;
- (ii) Subsidiary enforcement, whereby a third party is enabled to execute the administrative decision, at the cost of the obligor;
- (iii) Coercive fine, consisting of the imposition of fines until the ordered is complied with; and,
- (iv) Compulsion on persons.

In addition to these mechanisms, the legislation has provided for alternative mechanisms that contribute to make administrative decisions on environmental matters more effective. This is the case of the OEFA, an authority whose decisions may be enforced even when they are challenged before the Judiciary.

Article 20-A of the SINEFA Law<sup>39</sup> establishes that the mere filing of a contentious-administrative, amparo or other lawsuit does not interrupt or suspend the coercive enforcement procedure of the OEFA's first or second instance administrative resolutions. Likewise, it regulates a restrictive regime for the application of precautionary measures requesting the suspension of the enforcement of these decisions.

On the other hand, in judicial proceedings, the Code of Civil Procedure regulates a general regime for the process of execution of the judgment according to the type of obligation: to do, not to do, to give a sum of money; requiring that the judgments comply with certain requirements that facilitate their execution and that the issuance of an executive order, which provides for the compliance of the obligation; under penalty of initiating the forced execution.

In constitutional matters, the PCP has established with respect to the sentences of performance of obligations to give, to do or not to do that their performance is immediate.<sup>40</sup> For compliance, the judge may use fixed or cumulative fines and even order the dismissal of the person responsible, depending on the specific content of the order and the magnitude of the constitutional offense. These coercive measures must be incorporated in the judgment to make them enforceable.

Likewise, Article 59 of the same law establishes that the final judgment that declares the Amparo lawsuit to be well founded must be complied with within two (2) days of notification.<sup>41</sup>

<sup>39</sup> **"Article 20-A.- Enforceability of OEFA's decisions**

*The mere filing of a contentious-administrative, amparo or other lawsuit does not interrupt or suspend the coercive enforcement procedure of the resolutions of first or second administrative instance referring to the imposition of administrative sanctions issued by the Environmental Evaluation and Oversight Agency (OEFA)."*

<sup>40</sup> **"Article 22.- Acting on Judgments**

*The sentence that becomes enforceable in constitutional proceedings is acted upon according to its own terms by the judge of the lawsuit. Judgments issued by constitutional judges prevail over those of the remaining jurisdictional bodies and must be complied with under responsibility.*

*The sentence ordering the performance of a performance to give, to do or not to do is of immediate action. For its compliance, and according to the specific content of the order and the magnitude of the constitutional offense, the Judge may use fixed or cumulative fines and even order the dismissal of the responsible party. Any of these coercive measures must be incorporated as a warning in the sentence, without prejudice that, ex officio or at the request of the party, they may be modified during the enforcement phase.*

*The amount of the fines is determined discretionally by the Judge, fixing it in Procedural Reference Units and also taking into account the economic capacity of the requested party. Its collection will be made effective with the help of the public force, the recourse to a financial institution or the help of whomever the Judge deems pertinent.*

*The Judge may decide that the cumulative fines amount up to one hundred percent for each calendar day, until compliance with the injunction. (...)"*

<sup>41</sup> **"Article 59.- Execution of Judgment**

*Without prejudice to the provisions of Article 22 of this Code, a final judgment declaring the claim to be well founded must be complied with within two days of notification. In the case of omissions, this term may be doubled. If the obligor does not comply within the established term, the Judge shall address the superior of the responsible party and shall require him to comply and order the opening of the administrative proceeding against the non-compliant party, when appropriate and within the same term. After two days have elapsed, the Judge shall order the opening of administrative proceedings against the superior in*

In the case of environmental crimes, the Peruvian Criminal Procedural Code establishes that the Public Prosecutor's Office is in charge of controlling the execution of criminal sanctions in general. For this purpose, it may apply the corresponding supervision and control measures, in coordination with the Judge of the Preparatory Investigation<sup>42</sup>.

From the current legal framework it can be seen that there are mechanisms to execute the decisions taken at the administrative and judicial level, however, it is still necessary to emphasize the focus on the special nature of environmental processes to ensure the effective protection of this right.

g) Reparation mechanisms, as appropriate, such as restitution to the state prior to the damage, restoration, compensation or payment of an economic sanction, satisfaction, guarantees of non-repetition, attention to the affected persons and financial instruments to support the reparation.

The LGA regulates the preventive principle in Article VI of the Preliminary Title<sup>43</sup>, which states that the priority objectives of environmental management are to prevent, monitor and avoid environmental degradation. In cases where it is not possible to eliminate the causes that generate it, measures of mitigation, recovery, restoration or eventual compensation, if applicable, must be adopted.

In the same line, Article IX<sup>44</sup> of the same LGA establishes that whoever causes environmental degradation must adopt measures for its restoration, rehabilitation, or, when the above is not possible, to compensate in environmental terms the damages generated; without prejudice to the liability that may be applicable. In this line, Article 23 of the SINEFA Law<sup>45</sup> has established that, in the corresponding cases, in addition to the sanction measures imposed as a result of an administrative sanctioning procedure, the competent authority in environmental matters may order the responsible party to apply measures to restore, rehabilitate or repair the altered situation, as the case may be, or to compensate it in environmental terms.

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*accordance with the mandate, when appropriate, and shall directly adopt all measures for its full compliance. The Judge may sanction for disobedience the person responsible and the superior until they comply with his mandate, as provided for in Article 22 of this Code, without prejudice to the criminal liability of the official. (...)"*

<sup>42</sup> **"The Execution of the Judgment**

*Article 488 Rights.- (...) 3. Without prejudice to the provisions of the previous paragraphs, the Public Prosecutor's Office is responsible for controlling the execution of criminal sanctions in general, urging the corresponding supervision and control measures, and formulating to the Judge of the Preparatory Investigation the requirements that may be necessary for the correct application of the Law".*

<sup>43</sup> **"Article VI.- Principle of prevention:**

*The priority objectives of environmental management are to prevent, monitor and avoid environmental degradation. When it is not possible to eliminate the causes that generate it, the corresponding mitigation, recovery, restoration or eventual compensation measures are adopted".*

<sup>44</sup> **"Article IX.- Principle of environmental liability**

*The person causing the degradation of the environment and its components, whether a natural or legal, public or private person, is obliged to adopt inexcusably the measures for its restoration, rehabilitation or repair as appropriate or, when the above is not possible, to compensate in environmental terms the damages generated, without prejudice to other administrative, civil or criminal liabilities that may arise".*

<sup>45</sup> **Article 23.- Measures of restoration, rehabilitation, repair, compensation and recovery of the Natural Heritage of the Nation.**

*23.1 Without prejudice to imposing any of the established sanctions, the competent authority may also oblige the natural or legal person responsible for the damage to restore, rehabilitate or repair the altered situation, as the case may be, or to compensate it in environmental terms when the above is not possible, in accordance with Article IX of Law No. 28611, General Environmental Law.*

*23.2 The competent authority may also recover, retain or confiscate goods, or products derived therefrom, that have originated as a consequence of the illegal extraction or exploitation of natural resources, insofar as they constitute Natural Heritage of the Nation in accordance with the Political Constitution. To such effect, the specific administrative norm will be issued for the application of this provision.*

Along these lines, there are current Guidelines for environmental compensation within the framework of the SEIA, approved by Ministerial Resolution No. 398-2014-MINAM, which serve as a guide to require the owner of a project to respect the sequence of measures contemplated in the mitigation hierarchy, which are prevention, minimization, rehabilitation and compensation.

Likewise, the General Guide for the Environmental Compensation Plan was also approved by Ministerial Resolution No. 66-2016-MINAM, which defines the mitigation hierarchy as the sequence for the application of measures aimed at preventing and mitigating the environmental impact generated by an investment project: prevention, minimization and rehabilitation.

These instruments, together with the measures established as part of the environmental regulations of each sector, provide the parameters to apply compensation mechanisms, both in the framework of the evaluation of environmental studies, as a complement to the sanctions issued as a result of a sanctioning procedure.

03

Establish (a) measures to minimize or eliminate barriers to the exercise of the right of access to justice; (b) means to publicize the right of access to justice and the procedures to ensure its effectiveness; (c) mechanisms to systematize and disseminate judicial and administrative decisions; and (d) the use of interpretation or translation of languages other than the official languages.

Access to environmental justice is a new scenario for Peruvian institutions. However, this has not been an excuse for the institutions not to resolve measures to guarantee access. The advances that exist are limited due to the recentness of its implementation, but the signing of important commitments such as the Madre de Dios Pact allows us to know that they have shown interest in promoting and guaranteeing access to environmental justice.

This Pact is an initiative of the Judiciary, which collects various commitments from this institution, being the most prominent, the creation of an Observatory of the Environmental Judiciary ("Environmental Observatory"), in order to give citizens the control and monitoring on the exercise of a state function. This Observatory, created in 2019, serves as a virtual platform that will provide information and knowledge to the Judiciary, native communities, civil associations, universities, private companies and citizens in general; around public policies and the debate of the relevant actors of Environmental Justice in Peru.

Likewise, the Judiciary assumed a series of commitments under the Madre de Dios Pact, of which the following stand out:

- (i) To develop environmental justice to improve its access and specialized application, in administrative, criminal, contentious-administrative, constitutional, civil, customary and special matters;
- (ii) To strengthen the capacities of the legal defense of the State in environmental matters;
- (iii) To elaborate and execute plans for training, research, dissemination of specialized materials in environmental law and justice;
- (iv) To facilitate access to environmental justice avoiding any barrier that could impede or limit access to environmental justice.

Other institutions that have also joined this Pact have established measures that contribute to the elimination of barriers to access to justice. In this sense, MINAM, the main promoter of the matter, has made the following commitments: to coordinate with authorities to train them

in law, environmental justice and environmental damage; to publish the content of convictions for environmental crimes at the national level on its web portal; and to systematize and monitor sentences handed down in cases promoted by the MINAM Attorney General's Office.

Likewise, MINAM has carried out activities such as the working meetings "State of Implementation on Issues Related to Access to Environmental Information", where the authorities share their progress in environmental justice and access to information.

In the same line, both SENACE and OEFA, carry out joint actions to promote the right of access to environmental justice, mainly from the dissemination of information on matters within their competence. In the case of SENACE, the publication of all decisions adopted in the framework of environmental certification processes and the establishment of a Social Intervention Strategy with a focus on conflict prevention have been arranged. For its part, the OEFA also has a platform for the publication of its administrative decisions in first and second instance, in addition to the measures that can be applied to protect the right to the environment, within the framework of the sanctioning power it exercises to guarantee access to justice.

Other institutions, such as the Attorney General's Office, have also taken measures to implement actions aimed at strengthening access to justice. In this sense, this institution has established means to disseminate this right through its Press Office, which organizes campaigns to promote the fight against environmental crimes and disseminate the procedure to be carried out before the FEMA. Additionally, the Attorney General's Office is committed to promoting publicity campaigns on these crimes and the authorities involved.

The Ministry of Culture has a Directorate of Indigenous Languages and a Registry of Interpreters of Indigenous Languages and a Registry of Facilitators, which seeks to eliminate language barriers in the issuance of decisions at the administrative and judicial level, and other measures that will be addressed in the following section.

04

Establish support mechanisms, including free technical and legal assistance with the objective to meet the needs of persons or groups in vulnerable situations.

The Peruvian legal framework has provided various provisions to guarantee access to justice for persons in vulnerable situations. In addition to establishing equality before the law and the ethnic and cultural plurality of the Nation as fundamental rights, the Constitution establishes as a principle of the administration of justice the principle of free defense in numeral 16 of Article 139 of the PCP<sup>46</sup>. This provision is specified at the legal level in Article 2 of Law No. 29360,<sup>47</sup> Public Defense Service Law, which establishes that the right to defense of persons who do not have economic resources must be guaranteed through the Public Defense Service.

This service seeks to provide free technical legal assistance and advice in the matters expressly established, including criminal matters. In this line, Supreme Decree No. 13-2017-JUS establishes that the General Directorate of Public Defense and Access to

<sup>46</sup> **Article 139.- Principles of the Administration of Justice** *The following are principles and rights of the jurisdictional function:*

16. *The principle of free administration of justice and free defense for persons of scarce resources; and, for all, in the cases indicated by law.*

<sup>47</sup> **Article 2.- Purpose of the Service**

2.1 *The Public Defense Service has the purpose of guaranteeing the right of defense and access to justice, providing free technical legal assistance and/or sponsorship in the matters expressly established in the Regulations, to persons who do not have economic resources or are in a situation of vulnerability, and in other cases where the law expressly so establishes.*

Justice of the Ministry of Justice, is the line body in charge of conducting, regulating, promoting, coordinating, and supervising public defense services. Its functions include formulating, executing and supervising public defense policies, plans and programs that guarantee access to justice for vulnerable populations.

In addition to the above, the Directorate of Criminal Defense performs functions in the line of executing management policies for the provision of criminal legal aid services to low-income persons.

On the other hand, the Judicial Branch has implemented measures such as the Permanent Commission for Access to Justice for Persons in Condition of Vulnerability and Justice in your Community ("AJPV Commission"), which carries out its activities within the framework of the National Plan for Access to Justice for Persons in Condition of Vulnerability - Judicial Branch 2016 - 2021. This Commission executes activities to promote the mechanisms for the protection of the fundamental rights of persons in vulnerable situations.

The activities of the AJPV Commission have a high participatory content from which they collect ideas, complaints, comments or any report for the elaboration of judicial care protocols, law proposals or programs. In 2015, through Administrative Resolution No. 217-2015-P-PJ dated May 25, 2015, the National Coordination of this Program was designated the responsibility for the implementation and monitoring of the effectiveness of the 100 Brasilia Rules and the Charter of the Rights of Persons before the Judiciary. In October of the same year, the "National Program for Access to Justice for Vulnerable Persons" was constituted by Administrative Resolution No. 316-2015-CE-PJ, in order to concretize the elaboration of the National Plan for Access to Justice for Vulnerable Persons, in application of the 100 Brasilia Rules. In 2016, the Executive Council of the Judiciary decided to merge both programs and found the National Program for Access to Justice for Vulnerable Persons and Justice in your Community. Other measures that have been implemented in the Judiciary, are materialized in the Itinerant Justice Modules, the Gender Justice Commission, Working Commission on Indigenous Justice and Justice of Peace, Commission of Attention to the User and the National Commission of Environmental Management. Through the Permanent Commission on Access to Justice for Persons in Vulnerable Conditions and Justice in your Community, activities have been carried out such as the "Llapanchikpaq" fairs, where the services of the Judicial Branch are exhibited to the population and there are information modules and environmental awareness-raising activities for the general public. Also, by Administrative No. 264-2017-CE-PJ, the "Protocol of Itinerant Justice for the Access to Justice of Persons in Condition of Vulnerability" was approved. This instrument aims to regulate itinerant justice in the development of the different stages of the judicial process until the issuance of the sentence, in order to allow access to justice for the population in condition of vulnerability, providing them with a decentralized and integrated justice service. However, despite the intense regulation that has been issued, the Public Defender's Office in general presents critical problems.

The most limiting is the judicial burden that prevents public defenders from being fully involved in each case they take on. This leads to long-term deficiencies in the defense. Another issue that is related to the approach in which this measure has been applied is that legal aid is placed at the defense level. It is therefore necessary that its functions can also be developed at the level of initiating legal actions. In this area, the system is still at an initial level.

Likewise, with respect to some vulnerable groups such as members of indigenous peoples, assistance mechanisms have been established by the Ministry of Culture, such as the creation of a National Registry of Interpreters and Language Translators, and the

<p>implementation of the Public Policy Working Group, a platform for contacts with indigenous organizations.</p> <p>However, despite these joint efforts, there are still some sectors, such as the Ministry of Energy and Mines, that recognize that they do not have regulations to facilitate assistance and guidance to groups of people in vulnerable situations. Therefore, through Report No. 1060-2018-MEM/OGAJ for the Subscription and Ratification of the Escazú Agreement, dated October 22, 2018, this Ministry has recommended a normative development at the regulatory level to concretize measures. Other institutions of the Executive Branch also present these shortcomings, which must be resolved with a view to solving the information asymmetry in the defense of citizens' rights.</p>	
<p>05</p>	<p>Ensure judicial and administrative decisions adopted in environmental matters are in writing.</p> <p>Administrative and judicial decisions are issued in writing and are notified to the parties to keep them informed of their progress. Article 139<sup>48</sup> of the PCP, which regulates the principles of the jurisdictional function, establishes as a standard the written motivation of judicial decisions in all instances.</p> <p>Along these lines, the LPAG establishes that administrative acts, instruments through which the decisions of the courts are issued in administrative proceedings, are issued in writing. Thus, they are usually issued through Directorial Resolutions, in the first instance, and in Tribunal Resolutions, in the second instance, which are notified to the interested party.</p> <p>In the judicial process, decisions are issued in writing in the form of judicial sentences. Likewise, the Constitution also establishes as a principle the publicity of the proceedings. Therefore, in both administrative and judicial proceedings, decisions are not only issued in writing and notified to the parties in physical or virtual format, according to their choice, but are also published on the institutional web page of the issuing authority.</p> <p>Some institutions such as the OEFA, SERFOR and the National Water Authority, in administrative proceedings, or the Judiciary, in judicial proceedings, publish the decisions that were taken under their jurisdiction. In the case of the administrative authorities, these decisions are published on institutional web pages or on SINIA portals. On the other hand, the Judiciary has the Judicial Records Consultation website. Some special institutions such as the Constitutional Court also have their own database to store their systematized jurisprudence.</p>
<p>06</p>	<p>Promote alternative dispute resolution mechanisms to allow such disputes are prevented or resolved.</p> <p>The Peruvian legal framework has alternative dispute resolution mechanisms at the beginning of an administrative proceeding or judicial process. In administrative proceedings there are mechanisms that have practical effects that contribute to prevent or resolve a conflict. One of these measures is the voluntary correction, configured as an exemption from liability for violations. The voluntary cure is regulated in Article 257 of the LPAG,<sup>49</sup> which</p>

<sup>48</sup> **Article 139.- The following are principles and rights of the jurisdictional function:**

5. The written motivation of judicial decisions in all instances, except for mere procedural decrees, with express mention of the applicable law and the factual grounds on which they are based. [...]"

<sup>49</sup> **Article 257.- Exonerating and extenuating circumstances and mitigating factors of liability for infractions**

1.- The following conditions exempt from liability for infringements:

a) Acts of God or force majeure duly proven.

b) Acting in compliance with a legal duty or the legitimate exercise of the right of defense.

means that it is a general regime applicable to administrative proceedings initiated before any administrative authority.

This measure can be requested when someone who commits an administrative infraction corrects it immediately, prior to the initiation of a sanctioning procedure by the authority. Thus, in the case of an infraction that may affect the health or environmental rights of a person or group of persons, the initiative to correct it before the intervention of the authority can avoid the generation of a conflict and avoid a controversy through an administrative procedure or judicial process. However, although the LPAG enables this scenario, the decision to remedy is unilateral and depends on the individual who committed the infringement. It is worth noting that depending on the damage caused, not all breaches can be remedied. Therefore, whenever it is possible to remedy the infringement, it is possible to opt for this route.

Regardless of the voluntary correction, there are no alternative mechanisms in administrative proceedings that allow the parties to a dispute to settle a controversy before the initiation of an administrative sanctioning proceeding. What has been applied is that the institutions can regulate measures that contribute to the resolution of a possible dispute. The OEFA, for example, highlights its participation in dialogue tables and worktables as measures to deal with complaints or denunciations presented by a certain sector of the population with respect to investment projects under its jurisdiction.

Through these activities, the OEFA actively participates as a guarantor of compliance with environmental standards. In this line, it carries out environmental monitoring, supervisions, training workshops, among other activities. Thus, if a community complains about contamination issues related to a company's activities or a special environmental emergency situation, the OEFA can deploy these activities to support the solution of the potential conflict.

As well as the OEFA, there are other institutions that, within the framework of their functions, can apply measures that contribute to the prevention or resolution of controversies before initiating a procedure. However, the application of these measures may be limited depending on the particularities of the institution that applies them. In the case of the OEFA, they are restricted to investment projects under its jurisdiction (mining, hydrocarbons, energy, industry, fishing, aquaculture, agriculture and solid waste) and to situations that, due to a special relevance identified by the institution, merit its intervention before initiating an administrative sanctioning procedure.

In practice, the current tendency is to initiate sanctioning proceedings. There is a persistent distrust on the part of the population with respect to the legitimacy of the institutions to demand that individuals comply with their obligations in environmental matters. In this sense, the tendency of the affected party to request that compliance with the obligations be demanded by means of a sanctioning procedure is reasonable.

In judicial proceedings there are more widely developed mechanisms. In fact, Article 152 of the LGA regulates the most widely used: arbitration and extrajudicial conciliation.<sup>50</sup> Arbitration

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c) *Mental incapacity duly proven by the competent authority, provided that such incapacity affects the aptitude to understand the offense.*

d) *The mandatory order of a competent authority, issued in the exercise of its functions.*

e) *Error induced by the Administration or by a confusing or illegal administrative provision.*

f) *The voluntary correction by the possible sanctioned party of the act or omission charged as constituting an administrative infraction, prior to the notification of the charge referred to in subsection 3) of Article 255.*

<sup>50</sup> **"Article 152.- Arbitration and conciliation**

tends to be mostly used in disputes between companies or between companies and the State. In this sense, the most widespread mechanism among the population is the extrajudicial conciliation, defined as a procedure or alternative to the judicial process that involves the participation of a conciliator and the parties. It is essentially a negotiation, but with the intervention of a third party who helps in the communication process. The result of this mechanism is a conciliation act with the agreements reached by the parties, it has the value of a sentence and can be executed in this way.

These alternative mechanisms entail several advantages for the administered party. The main one is that it allows the parties in conflict to solve their problem in a faster way, since it avoids the judicial processes that can take years due to the judicial burden. Another important point is that the parties involved decide in an equitable manner the solution to the problem.

On the other hand, in criminal matters we have the principle of opportunity, a principle that has a similar purpose to the voluntary correction in administrative proceedings. By means of this mechanism, enabled for certain crimes that do not represent a greater seriousness, the person under investigation may agree to a reparatory agreement, which involves the payment of a pecuniary penalty or compensation in favor of the injured party with the intervention of the Prosecutor. This principle puts an end to the criminal investigation before initiating the judicial process. However, it is only applicable when the Prosecutor allows it in cases where the offenses are minor and do not involve, for example, irreparable environmental damage. Therefore, its application is usually more restricted.

It is worth mentioning that, in parallel to these mechanisms, in the framework of the implementation of environmental impact studies, citizen participation mechanisms can also provide some solutions. Among them are the Consultation Mailboxes, which are communication mechanisms so that the people administered can send queries, complaints or suggestions to the owner. Therefore, in order to avoid any controversy, these measures and others that the project owner may implement, such as workshops, dialogue tables, among others, contribute to channel requests before resorting to administrative or judicial channels. Along these lines, the Prior Consultation of indigenous peoples has also provided some solutions to the resolution of conflicts that may exist.

Other attempts to resolve conflicts have also been made by the Presidency of the Council of Ministers of the Executive Branch. In this office, dialogue tables have been set up to listen to the requests of both parties and reach agreements that make the execution of large investment projects

viable. Likewise, the Ombudsman's Office, in its role of defending constitutional and fundamental rights, has also carried out actions to promote dialogue, such as monitoring social conflicts. As part of these functions, it mediates in conflicts and issues monthly periodical publications that are disseminated to the sectors to promote the resolution of controversies. However, due to the mistrust that exists among the population regarding the activities of the institutions, there is a tendency to activate administrative sanctioning

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*Certain or determinable environmental controversies or claims concerning property rights or other rights freely available to the parties may be submitted to arbitration and conciliation. In particular, the following cases may be submitted to these means:*

- a. Determination of indemnification amounts for environmental damages or for the commission of crimes against the environment and natural resources.*
- b. Definition of compensatory obligations that may arise from an administrative process, whether monetary or not.*
- c. Disputes in the execution and implementation of contracts for access and use of natural resources.*
- d. Precise in the case of limitations to property rights that existed prior to the creation and implementation of a national protected natural area.*
- e. Conflicts between users with overlapping and incompatible rights over spaces or resources subject to environmental management or zoning "*

	<p>procedures or judicial processes in order to ensure the enforceability of compliance with the obligations. Therefore, the focus should be on strengthening the institutions' capacity for timely response and working on their prestige to generate confidence in the population to seek ways of resolving conflicts before activating the corresponding processes.</p>
	<p>Human rights defenders in environmental matters</p>
<p>01</p>	<p>Guarantee a safe and enabling environment for persons, groups and organizations that promote and defend human rights in environmental matters.</p>
	<p>In recent years, Peru has adopted measures for the protection of the rights of human rights defenders in environmental matters ("<u>Environmental Defenders</u>"). From the international level, the measures have been supported by the following main instruments:</p> <ul style="list-style-type: none"> <li>- The 1998 Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms;</li> <li>- The Reports of the IACHR of the Organization of American States (OAS);</li> <li>- The Advisory Opinions and judgments of the IACHR Court;</li> <li>- The recommendations issued by the Human Rights Committee;</li> <li>- The opinions of the Committee on the Rights of the Child;</li> <li>- The recommendations of the Committee against Torture;</li> <li>- The recommendations of several States in the sessions of the Universal Periodic Review of Peru; and</li> <li>- The reports of the Special Rapporteur on the situation of human rights defenders of the United Nations ("<u>Special Rapporteur</u>").</li> </ul> <p>Specifically with respect to a certain group of them, such as Amazonian or peasant leaders, other instruments have also been important, such as (i) ILO Convention 169, (ii) the United Nations Declaration on the Rights of Indigenous Peoples, (iii) the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas, as well as the main human rights treaties of the Inter-American Human Rights System.</p> <p>At the national level, the role of promoter and protector has been mainly assumed by the Executive Branch, the Ombudsman's Office and a small sector of the Congress. Normative advances began in 2018, however, these are still insufficient in the face of the serious social problem involving threats to the rights of Environmental Defenders.</p> <p>According to the Global Witness "<i>Defendiendo el Mañana</i>" report<sup>51</sup>, in 2019 the murder of two hundred and twelve (212) environmental defenders was reported worldwide, of which more than two thirds of them occurred in Latin America. This information should be read in conjunction with the data reported by the National Human Rights Coordinator ("<u>CNDDHH</u>", acronym in Spanish), which records twenty (20) murders of environmental defenders between the years 2013 and 2021, twelve (12) of them were indigenous leaders from the Amazon<sup>52</sup>.</p> <p>Likewise, Front Line Defenders, a human rights defense organization, reported that during 2020 the murders of Human Rights Defenders in Peru amounted to eight (8) people, with the</p>

<sup>51</sup> Global Witness (July, 2020). "*Defending tomorrow: Climate crisis and threats against land and environmental defenders*". Retrieved from: [https://www.globalwitness.org/documents/19941/Defending\\_Tomorrow\\_ES\\_low\\_res\\_-\\_July\\_2020.pdf](https://www.globalwitness.org/documents/19941/Defending_Tomorrow_ES_low_res_-_July_2020.pdf)

<sup>52</sup> Ojo Público (2021). "*Morir por la tierra: catorce indígenas asesinados en la Amazonía desde 2013*". Updated March 10, 2021. Retrieved from: <https://ojo-publico.com/1779/morir-por-la-tierra-indigenas-asesinados-en-la-amazonia>

majority of the victims being part of indigenous organizations or the State as Environmental Defenders<sup>53</sup>. Along these lines, reported sources from MINJUSDH indicate that, since the "Protocol to Guarantee the Protection of Human Rights Defenders" (the "Protocol") came into force, a norm that establishes the implementation of an early warning system in the face of threats or attacks on human rights defenders, twenty-nine (29) requests for the application of protection measures were registered from 2019 until the beginning of the year 2021. Eighteen (18) cases of them correspond to Environmental Defenders and rights of indigenous peoples<sup>54</sup>. However, the number could be higher. There is another number of cases that, due to limitations of access to complaints or poor accessibility to data, are not part of the official figures.

This reality, which is accompanied by inefficient state actions to prevent and punish those responsible for threats and attacks on Environmental Defenders, means that there is no environment of protection and security for them. According to the Report presented by the Special Rapporteur as a result of his visit to Peru from January 21 to February 3, 2020, four (4) main threats faced by human rights defenders ("Human Rights Defenders") in the country were identified, which includes Environmental Defenders<sup>55</sup>.

First, Human Rights Defenders are not recognized by the authorities and are subject to stigmatization. During his visit, the Special Rapporteur verified that most of the authorities of the central, regional and municipal public administration did not recognize human rights defenders or were indifferent to their work. As a result, they do not support them through public statements and are reluctant to provide the necessary protection measures. This is compounded by stigmatization under terms such as "*opponents of development*" and "*radical anti-mining groups*"<sup>56</sup>.

Secondly, it was identified that human rights defenders are usually criminalized through the improper use of criminal law by prosecutors at the local, provincial and national levels. The Special Rapporteur highlighted a tendency of the National Prosecutor's Office to investigate and accuse human rights defenders, which results in these defenders being dissuaded and abandoning their activities in defense of the environment<sup>57</sup>.

Thirdly, there are obstacles to the right of peaceful assembly of Human Rights Defenders, regulated in the International Covenant on Civil and Political Rights. Although it was identified that the Peruvian legal system includes and recognizes the right to peaceful assembly, it was possible to identify problematic factors in the exercise of this right by Environmental Defenders, especially in the protests carried out and the lack of protection from the PNP<sup>58</sup>.

As a fourth point, it was reported that Human Rights Defenders are, in fact, not granted protection when they are at risk. The Special Rapporteur found three main deficiencies: a) the authorities do not register complaints of threats; b) there is a lack of effective systems to guarantee the physical security and protection of human rights defenders; and c) the lack of serious investigations and sanctions for those responsible for attacks on human rights

<sup>53</sup> Front Line Defenders (2020). "*Front Line Defenders Global Analysis 2020*", pp. 4. Retrieved from: [https://www.frontlinedefenders.org/sites/default/files/flid\\_global\\_analysis\\_2020.pdf](https://www.frontlinedefenders.org/sites/default/files/flid_global_analysis_2020.pdf)

<sup>54</sup> Actualidad Ambiental (May 5, 2021). "*What proposals on environmental defenders should the next Government prioritize?*" Retrieved from: <https://www.actualidadambiental.pe/que-propuestas-debe-priorizar-el-nuevo-gobierno-respecto-a-defensores-ambientales/>

<sup>55</sup> Report of the Special Rapporteur on the situation of human rights defenders (December 22, 2020). *Report A/HRC/46/35/Add.2*. Visit to Peru (January 21 - February 3, 2020). Submitted to the United Nations General Assembly: Human Rights Council 46th session. Retrieved from: <https://undocs.org/pdf?symbol=es/A/HRC/46/35/ADD.2>. Versión en español: <https://undocs.org/en/A/HRC/46/35/ADD.2>

<sup>56</sup> Ibid., p. 5

<sup>57</sup> Ibid., p. 6

<sup>58</sup> Ibid., p. 9

	<p>defenders<sup>59</sup>.</p> <p>Finally, it has recognized that Human Rights Defenders, and in particular Environmental Defenders, leaders or members of indigenous or peasant communities, are exposed to greater risks due to the defense of human rights that they exercise against large extractive industries, both legal and illegal.</p>
<p>02</p>	<p>Recognize, protect and promote rights and ability to access such rights of human rights defenders.</p> <p>Peru has made progress in the recognition, protection and promotion of the rights of Human Rights Defenders through concrete measures directed mainly from the Executive Branch and the Ombudsman's Office. Thus, since 2018, there is a National Human Rights Plan 2018-2021 ("<u>2018-2021 Plan</u>"), approved by Supreme Decree No. 2-2018-JUS.</p> <p>Previously, Peru had other National Human Rights Plans from 2006-2011 and 2014-2016; however, the 2018-2021 Plan was the first of them to recognize for the first time that Human Rights Defenders need special protection. What is remarkable about the referred Plan is that, unlike the two previous ones, it incorporates baselines, goals and indicators, which allow for a more efficient implementation, monitoring and evaluation. Nevertheless, the 2018-2021 Plan has weaknesses in that it does not report a baseline for this group, as there is no statistical record of the current situation. This represents a limitation for the design of policies or regulations, since the real magnitude of the problem is not known exactly. Likewise, another limitation to consider is that the treatment of the problem regarding the protection of Environmental Defenders has only been assumed by the MINJUSDH and some authorities of the Executive Branch.</p> <p>Subsequently, in 2019, Ministerial Resolution No. 159-2019/JUS, the Protocol to Guarantee the Protection of Human Rights Defenders (the "<u>Protocol</u>") was approved. The most noteworthy points of this instrument reside in the following points: (i) the conceptualization of what is understood as Human Rights Defenders; (ii) the identification of specific state obligations, in charge of MINJUSDH, specifically to publish annual reports on risk situations and attack patterns; (iii) coordination on the work of Human Rights Defenders with state entities; and, (iv) the possibility of granting them protection measures against the threat or violation of rights such as participation in public affairs, access to public information, due process, among others.</p> <p>On the other hand, the least remarkable aspect of the Protocol is that it has a lower rank than that of a Law and does not bind to the same extent elementary institutions in the attention of these cases, such as the PNP. These measures were later complemented with the creation of the Registry on Risk Situations of Human Rights Defenders (the "<u>Registry of Human Rights Defenders</u>"), approved by Ministerial Resolution No. 255-2020-JUS. The purpose of this registry was to gather information regarding attacks or threats against human rights defenders. In addition, it allowed for the collection of important data on the areas of greatest risk, groups of greatest vulnerability, monitoring the implementation of protection measures, among other provisions.</p> <p>In 2020, the Ombudsman's Office took the initiative to approve, through Administrative Resolution No. 29-2020/DP-PAD, the "<u>Guidelines for Ombudsman's Intervention in Cases of Human Rights Defenders</u>"<sup>60</sup> (the "<u>Ombudsman's Guidelines</u>"). This instrument standardizes</p>

<sup>59</sup> Ibid., p. 13

<sup>60</sup> Resolution No. 29-2020/DP-PAD, dated June 25, 2020: [https://cdn.www.gob.pe/uploads/document/file/1182934/Resoluci%C3%B3n-Administrativa-N\\_-029-2020-DP-PAD.pdf](https://cdn.www.gob.pe/uploads/document/file/1182934/Resoluci%C3%B3n-Administrativa-N_-029-2020-DP-PAD.pdf)

and establishes parameters and criteria for the Ombudsman's Office's attention and follow-up of cases.

Subsequently, in April of this year, through Supreme Decree No. 004-2021-JUS, the Intersectoral Mechanism for the Protection of Human Rights Defenders<sup>61</sup> (the "Intersectoral Mechanism") was approved. This instrument seeks to emphasize the coordinated work of state entities in the implementation of protection or urgent protection measures. Thus, although the protection measures will be approved by the MINJUSDH, they will also be the responsibility of the other institutions involved. In addition, it replaced the Protocol and included some of its measures, as well as included the Registry of Human Rights Defenders as part of its provisions. This Mechanism has just been approved, so the analysis of its effectiveness should be tested in the following months. The most important thing about the Intersectoral Mechanism is that it links the following eight (8) Ministries:

- MINJUSDH;
- Ministry of Interior, where the PNP is included;
- Ministry of Environment;
- Ministry of Culture;
- Ministry of Women and Vulnerable Populations;
- Ministry of Foreign Affairs;
- Ministry of Energy and Mines; and
- Ministry of Agrarian Development and Irrigation.

Recently, on July 25, 2021, MINAM approved the Sectorial Protocol for the Protection of Environmental Defenders<sup>62</sup> ("MINAM Protocol"), which is applicable to the programs, special projects and entities under MINAM. The MINAM Protocol is the first regulation approved by MINAM that establishes the general guidelines for the prevention, recognition and protection of the rights of Environmental Defenders in the environmental sector. The MINAM Protocol contains provisions related to prevention measures, collection of information on risk situations and evaluation and protection measures. In addition, the MINAM Protocol also establishes the functions of the Environmental Crimes Functional Unit ("UNIDA"), as the managing and coordinating entity in charge of the implementation of the protocol with MINAM.

It is hoped that, with this general framework for action, the authorities will be able to implement concrete measures to protect human rights defenders. However, there is still no real initiative from other authorities. As reported by MINJUSDH, the Attorney General's Office is working on guidelines for action to implement the guidelines of the Intersectoral Mechanism; however, to date, only the Ombudsman's Office has been approved.

As indicated, none of the measures taken are contained in a Law, which weakens their legitimacy and the urgency to develop concrete measures. In fact, there are two bills pending approval by Congress. Bill 6625/2020-CR, which proposes the "Law for the Protection of Human Rights Defenders" and Bill 6762/2020-CR called "Law that Promotes, Recognizes and Protects Human Rights Defenders". Both law proposals seek to strengthen the institutional framework for the protection of the rights of human rights defenders, standardize

<sup>61</sup> Supreme Decree No. 004-2021-JUS, dated April 22, 2021: <https://busquedas.elperuano.pe/normaslegales/decreto-supremo-que-crea-el-mecanismo-intersectorial-para-la-decreto-supremo-n-004-2021-jus-1946184-4/>

<sup>62</sup> Ministerial Resolution No. 134-2021-MINAM, that approved the Sectorial Protocol for the Protection of Environmental Defenders, dated July 25, 2021: <https://cdn.www.gob.pe/uploads/document/file/2037171/RM.%20134-2021-MINAM%20con%20anexo%20Protocolo%20Sectorial.pdf.pdf>

their concept, their rights and limits, as well as the State's obligations towards them.

Likewise, the creation of a National System for the Protection of Human Rights Defenders, which seeks to generate an articulation of sectors for their protection, has been highlighted from these bills. However, both bills are still awaiting approval and there are no major indications that this will happen in the near future. Although progress has been made with hopeful goals, the situation continues to be worrisome. The rates of threats and murders have not ceased since the establishment of these norms.

The main limitation to be taken into account and that must be addressed is that all measures developed should be supported by a Law, since it is required that actions for the protection of Human Rights Defenders have legitimacy and, at the same time, that the panorama of institutional actions is extended. Another issue that must be corrected is the volatility of the current legal framework for the protection of human rights defenders. The Protocol and the Register, approved in 2019 and 2020 respectively, have been repealed, but some of their provisions have been reformed and included in the Intersectoral Mechanism and the Human Rights Plan 2018-2021. Thus, although the objective was to integrate under a single instrument these measures, it is revealed at the same time that there is still no firm protection framework for HRDs.

On the other hand, it is important to note that the legal framework that currently exists is headed by the Human Rights Plan 2018-2021; the Regulation that approves the Intersectoral Mechanism, the Guidelines of the Ombudsman's Office and the MINAM Protocol. Of the four instruments mentioned above, for practical purposes, only the Intersectoral Mechanism is binding and widely applicable to various institutions. The Human Rights Plan is valid until 2021, and the Ombudsman's Guidelines are only binding for this institution, as well as the MINAM Protocol. Likewise, although the Mechanism has established the general framework of actions, the implementation of these measures requires a catalog of specific actions developed for each institution.

In addition to the Ombudsman's Office, the need for an "Action Protocol for the Implementation of Protection Measures or Urgent Protection Measures" has been established, which will be in charge of the PNP. This Protocol is still pending approval and there are no action protocols for other institutions such as the Judiciary or the Public Prosecutor's Office. In this line, the greatest initiatives in the implementation of this type of measures have come from a high level of the Executive Power.

It is necessary to work with the authorities that are in greater contact with human rights defenders, which should involve the Judiciary, the Public Prosecutor's Office and, essentially, the PNP. It is necessary to work on processes of sensitization and strengthening of their response capacity, through norms that support and guide their actions, as well as the allocation of the necessary budget to execute these measures.

On the other hand, there is also no concrete incorporation of the actions that could be carried out by regional and local authorities, civil society and indigenous organizations in the State's response to the threats faced by these groups of people. This has led to the fact that, despite the published norms, in practice, groups of human rights defenders still feel unprotected.

In this regard, two indigenous leaders of the Aidesep Ucayali Regional Organization ("ORAU"), who requested the activation of the early warning procedure and urgent protection actions, declared to the newspaper La República that these were insufficient and, beyond life

	<p>guarantees, no additional measures were identified.<sup>63</sup> Likewise, there is a clear sense of impunity as a result of the insufficient measures to punish those who attack environmental defenders. As a result, many of them prefer to leave their homes or refrain from denouncing for fear of reprisals.</p>
<p>03</p>	<p>Prevent, investigate and punish attacks, threats or intimidations directed to human rights defenders.</p>
	<p>In a prevention phase, the Peruvian State through MINJUSDH designed three (3) important instruments. First, the Human Rights Plan 2018-2021, which points out important issues such as the recognition of the special importance of the protection of environmental defenders, its definition, and identifies goals for the implementation of support and defense policies. However, the first step should be to identify the reality and the problems to be solved.</p> <p>In this sense, as part of this Human Rights Plan, the creation of a Registry of situations of risk for Human Rights Defenders by 2019 and an Intersectoral Mechanism for their protection by 2021 were proposed. Note that this registry was previously conceived, but the regulations that created it were repealed. However, it was implemented again with the Intersectoral Mechanism. To date, despite the changes that the Registry has undergone this year, both instruments have been implemented. The Registry, in effect, has made it possible to identify, through the early warning procedure regulated by the Protocol, the cases and their risk levels. Likewise, the Intersectoral Mechanism, which replaced the Protocol, made it possible to identify the relevant measures according to risk levels.</p> <p>The Guidelines of the Ombudsman's Office also cite specific actions to be taken by this institution. It is hoped that the creation of the Registry will be useful in providing a baseline for the next policies to be designed. To this end, it will also be useful to have the synergy of other institutions such as the Prosecutor's Office, the PNP or the Judiciary and even institutions such as the Human Rights Coordinator. It will also be necessary to recognize the shortcomings of current policies and improve them in order to guarantee compliance with the State's obligation of prevention.</p> <p>In this regard, the MINAM Protocol was approved by the governing body of the national environmental sector and established the biannual publication of a national report on the situation of environmental defenders in Peru by UNIDA, that will analyze, within the framework of a participatory process, the main challenges and risks faced by Environmental Defenders. Based on this document, recommendations will be formulated to strengthen public policies and the institutional and legal framework related to their protection.</p> <p>In addition to the above, there are recommendations issued by the United Nations through the Human Rights Committee; the Committee on the Rights of the Child; the Committee against Torture; the Office of the Special Rapporteur; the recommendations of several States in the sessions of the Universal Periodic Review of Peru since 2012; and even NGOs. At this point it is important to highlight that the main institutions that manage the actions of prevention, investigation and punishment involve the PNP, the National Prosecutor's Office, the Ombudsman's Office and the Judiciary.</p>

<sup>63</sup> La República Newspaper (March 11, 2021). "Urge to protect environmental defenders and end the crime society". Retrieved from: <https://larepublica.pe/sociedad/2021/03/11/urge-protger-a-los-defensores-ambientales-y-acabar-con-la-sociedad-del-crimen-medio-ambiente-defensores-ambientales/>

Despite being involved with the Intersectoral Mechanism, only the Ombudsman's Office has a Protocol for action in cases of threats and attacks on human rights defenders. Therefore, there is no real political will to address this situation as a matter of urgency. The existence of guidelines, protocols and directives is necessary so that the authorities who are in direct contact with these cases can act. This situation should also involve local and regional governments, which have yet to be involved in the issue.

On the other hand, as long as there is no concrete solution to the requests of groups of Human Rights Defenders, they will always be exposed to these risks. The issues that HRDs advocate for are due to structural problems such as drug trafficking, land titling, land trafficking, environmental crimes, or deforestation. As long as there is no concrete action by the State to address these requests, they will always be exposed to direct confrontation, often against mafias that have greater resources, are better organized and willing to commit criminal acts.

Finally, the protection measures indicated in the Intersectoral Mechanism have not represented a specific solution either. Thus, in cases of threats or harassment, the relevant measure is the granting of personal guarantees, which is manifested in an administrative act issued by the sub-prefect of the locality. However, in practice, the guarantee provided is limited to a document and not to effective protection.

Implementing security measures implies an investment of time, human and economic resources that many institutions are not capable of executing or do not possess. For this reason, it has been suggested that these measures should have their own budget, i.e. a budget allocated directly from the Ministry of Economy and Finance. At present, this is not the case, since the budget for the implementation of protection measures is financed by the general institutional budget.

Regarding the investigation measures, since there are no concrete norms that develop the guidelines to be followed by the authorities in the process of these cases, the treatment follows the course of a regular process and no measures are taken with an approach based on the unique problems of human rights defenders in environmental matters. The current norms are of general application, therefore the PNP and the Public Prosecutor's Office attempt to make up for the lack of measures directed at this specific group since the primary phase of the investigation stages. However, investigation efforts are hindered since these bodies do not have a targeted approach to the affected group and the specific conditions of the cases. Some factors may favor the collection of useful evidence for the investigation of a crime affecting the rights of human rights defenders in environmental matters, such as threats to the people around the victim, and witness testimonies.

Another important factor that does not contribute to a fair investigation is when the police and prosecutorial authorities involved in the cases stigmatize Human Rights Defenders. This stigmatization delegitimizes the PNP's activities and makes the defenders' requests and denunciations of people who threaten or violate their rights invisible. These labels can even have an impact on the investigation activities carried out by the PNP or the Prosecutor's Office, biasing their role. As reported by the Observatory for the Protection of Human Rights Defenders in its February report this year<sup>64</sup>, this bias in their functions also occurs as a result of protection agreements for extraordinary services between companies and the PNP and national legislation that favors impunity.

<sup>64</sup> Observatory for the Protection of Human Rights Defenders (February 2021). "Report Undermining Rights: The defense of human rights hindered by economic interests." pp. 8-9. Retrieved from: <https://www.fidh.org/IMG/pdf/obs-peru-socavandoderechos-esp-250221-vf.pdf>

Thus, one of the most relevant regulations is Law No. 30151, which allows the unimpeachability of members of the Armed Forces and the PNP when they use their weapons and cause injuries or deaths in the line of duty. All these factors impact the investigation phase. The criminal investigation stage is usually the phase in which cases of threats or attacks against human rights defenders are usually stopped. This explains why not all cases are sanctioned. This situation is under the objective of being changed. However, as recognized by Edgardo Rodríguez, General Director of Human Rights of MINJUSDH, to the Actualidad Ambiental portal of the Peruvian Society of Environmental Law, it has not been possible to adequately manage the cases of crimes committed prior to the Protocol, approved in 2019<sup>65</sup>. As a result, it is frequent that the cases in which the threats have materialized have though not resulted in a sanction. Thus, there is a sense of impunity as a result of unsuccessful investigations of crimes committed against human rights defenders in environmental matters, which instead of preventing violations, compels many defenders to abandon their activities and flee the country with their families.

Among the most emblematic and closely followed cases, no positive result has been achieved despite the support of international entities and NGOs to promote the process in the search for justice. This is the case of Gonzalo Pío Flores, leader of the Native Community Nuevo Amanecer Hawaii and murdered on May 17, 2020. In May 2013, the murder of his father Mr. Mauro Pío Peña, and community leader, was reported. Community leaders and members reported suffering constant threats and attacks for years by logging traffickers operating in their community's territory. To date, both crimes, the murder of the father and the son, remain unpunished.

Another more widely publicized situation is the case of leaders Edwin Chota, Jorge Ríos Pérez, Leoncio Quintísima Meléndez and Francisco Pinedo Ramírez, all from the Saweto native community, murdered in 2014. According to an investigation carried out by the journalistic portal Ojo Público,<sup>66</sup> the indigenous leaders had been denouncing the crime of illegal logging of a mafia of timber traffickers on the Peru-Brazil border since 2008. Edwin Chota and the other leaders reported several denunciations and even registered the place where they carried out their illegal activities with photographs and exact coordinates. However, for reasons such as the remoteness of the community's location and lack of resources to get there, the authorities refused to carry out an inspection in the area and shelved the case in 2010. The threats from the traffickers did not cease, so in 2013 the human rights defenders requested guarantees for their lives before the Prefecture of the Ucayali region, identifying by name and surname those who threatened to kill them. The request for guarantees was rejected and it was recommended to request the guarantees in the district where the events occurred. Finally, in April 2014, only the Ombudsman's Office arranged a meeting with the Presidency of the Council of Ministers, after which a date was set for an inspection in the area. However, that same year in August, the four leaders were murdered.

It was only after the death of the leaders that the investigation into the illegal logging complaint was resumed and the titling of their territory was accelerated. However, after six years of investigation, those responsible have not been punished. Two of the four killed are still reported missing and the PNP abandoned their search. Currently, according to the same portal, the process "*is in the accusatory stage against Segundo Atachi Félix, Josimar Atachi Félix and Hugo Soria Flores*", for whom five (5) years in prison have been requested for the

<sup>65</sup> In Actualidad Ambiental (September 21, 2020). "What actions are being taken to protect environmental defenders in Peru?" Retrieved from: <https://www.actualidadambiental.pe/que-acciones-se-están-realizando-para-protger-a-los-defensores-ambientales-en-el-peru/>

<sup>66</sup> Ojo Público report (February 3, 2020). "Saweto: The violence of impunity in the Amazon". Retrieved from: <https://ojo-publico.com/1525/saweto-la-violencia-de-la-impunidad-en-la-amazonia>

	<p>crime of illegal timber trafficking and thirty-five (35) years for murder.</p> <p>This has been confirmed by the Special Rapporteur who reiterates that these are not isolated cases, but a generalized situation that was also reported in other parts of the country such as Piura and Madre de Dios.<sup>67</sup> This indicates that there has been no success in preventing impunity in the most emblematic cases, which also has negative repercussions in other less publicized cases. Budget deficiencies, geographical distance, stigmatization and criminalization, poor coordination between institutions and corruption have limited and hindered the punishment of those who have committed these crimes.</p>
<p>Compliance and implementation of the Escazú Agreement</p>	
<p>01</p>	<p>Commit to provide resources for national activities needed to fulfill the obligations defined by the agreement.</p>
	<p>The Peruvian State has not ratified the Agreement. The legislative commission in charge of its evaluation filed the case in October 2020, so it was never discussed in the Plenary of Congress. The Agreement, being an international human rights instrument, must comply with a prior approval mechanism, established in Article 56<sup>68</sup> of the PCP.</p> <p>In this sense, the Agreement should have been approved by the plenary of the Congress of the Republic before its ratification by the President. However, even before being discussed in the Congress, the Foreign Relations Commission of the Congress, which oversaw its evaluation, approved its filing.</p> <p>Considering that the Agreement has not been ratified, the Peruvian State has no obligation to adopt its provisions. Nevertheless, considering the international framework of which Peru is a part, initiatives have been presented to ensure the implementation of similar provisions so that these rights are not left unprotected.</p> <p>This is shown in the current regulations that guarantee the rights of access to information, civic participation, access to justice in environmental matters and protection of environmental defenders. In the last decade, the Peruvian State has focused on strengthening the institutions that lead the action to ensure these rights. In contrast to the incipient role that still exists respect to the protection of Environmental Defenders, efforts have been made to guarantee the right of access to information. In addition, important institutions were created, such as ANTAIP and TTAIP, with supervisory and control functions in the exercise of the right of access to information.</p> <p>Citizen participation in environmental matters is also a constitutional right recognized in the PCP and in environmental regulations. This right must be implemented before executing investment projects, as well as government plans and programs that cause environmental</p>

<sup>67</sup> Report of the Special Rapporteur on the situation of human rights defenders (December 22, 2020). *Report A/HRC/46/35/Add.2*. Visit to Peru (21 January - 3 February 2020). Presented to the United Nations General Assembly: Human Rights Council 46th session, pp. 25. Retrieved from: <https://undocs.org/pdf?symbol=es/A/HRC/46/35/ADD.2>. English version: <https://undocs.org/en/A/HRC/46/35/ADD.2>

<sup>68</sup> **"Article 56.-** *Treaties must be approved by the Congress prior to their ratification by the President of the Republic, provided they deal with the following matters:*  
*Human Rights.*  
*2. Sovereignty, dominion or integrity of the State.*  
*National Defense.*  
*Financial obligations of the State.*  
*Treaties creating, modifying or suppressing taxes; those requiring modification or repeal of any law and those requiring legislative measures for their execution must also be approved by Congress."*

	<p>impacts. Considering that sometimes workshops, hearings and other methods by which citizen participation is carried out are limited to a formality, legislative advances and state actions point to the need for a constant involvement of citizens in decisions on environmental matters.</p> <p>In fact, a type of citizen participation is the right to prior consultation, which, as previously developed, involves the indigenous peoples affected by a legislative or administrative measure in the decision-making process. Also, access to justice through the installation of novelties such as the creation of the FEMAs, the implementation of environmental courts in some regions such as Madre de Dios, the strengthening of the EFAs and recently the Environmental Crimes Functional Unit of the Ministry of the Environment, has been making progress.</p> <p>Finally, regarding to protection of the rights of Environmental Defenders, proposals are being put forward to provide greater guarantees. No notable progress has been made, but it is hoped that even with the deficient legal framework, efforts will be consolidated, and objectives will be achieved. Even with its limitations, important measures have been identified that were fully compatible with the Agreement's proposals; however, due to political decisions, it was decided not to consider its ratification.</p>
02	<p>Cooperate with other parties to the agreement with the objective to strengthen national capabilities to implement the agreement.</p> <p>There has been no specific cooperation between Peru and the States Parties of the Agreement in the application of its provisions other than the negotiations and alliances that were formed for its elaboration and signature. Since the Peruvian State has not ratified the Agreement, it is only subject to the international obligations deriving from the Treaties to which it is a party and the Universal Declarations.</p> <p>In this sense, the regional normative framework that is enforceable for Peru, and which it shares with other States party to the Agreement, is formed by the ACHR, the Protocol of San Salvador, as well as the recommendations and reports of the IACHR and the jurisprudence of the Inter-American Court of Human Rights.</p> <p>Likewise, the Rio Declaration on Environment and Development, the ILO Convention 169, the Paris Agreement, among other Treaties and Declarations that promote a standardization of commitments of the States in environmental matters, are also applicable. However, as Peru is not a party to the Agreement, no alliances have been established with the States Parties to enable cooperation on its provisions.</p>
03	<p>Encourage partnerships with non-parties to the agreement (states from others regions, private organizations, civil society organizations, etc.).</p> <p>Peru has signed several international agreements that also establish environmental measures. One of the initiatives that seeks to focus on environmental justice is the International Environmental Justice Congresses led by the Peruvian Judiciary. This is an academic event that brings together national and international specialists and is attended by more than one hundred and fifty (150) Peruvian judges and judges from other South American countries and other representatives of institutions interested in environmental issues.</p> <p>Peru is also a member of other environmental alliances. The Andean Community of Nations ("<u>CAN</u>", acronym in Spanish), formed by Bolivia, Colombia, Ecuador and Peru as member</p>

<p>countries and Argentina, Brazil, Chile, Paraguay and Uruguay as associate countries, has implemented some proposals such as the Andean Environmental Charter, which establishes guidelines, thematic axes and goals for the implementation of the 2030 Agenda and the Sustainable Development Goals.</p> <p>The CAN, which is formed by countries that share an important diversity of ecosystems -such as the Andes Mountains or the Amazon- has also committed to promote the integrated management of water resources, face the effects of climate change, among others.</p> <p>The Pacific Alliance, which promotes the economic and commercial integration of its member countries (Peru, Chile, Colombia and Mexico), has a specialized area called the "Environment and Green Growth Technical Group". This area develops and implements actions for sustainable development, based on the regulations of each country.</p> <p>The Asia-Pacific Economic Cooperation ("<u>APEC</u>", acronym in Spanish), has also emphasized a sustainable approach as an important issue in business transactions. APEC supports the 2030 Agenda for Sustainable Development. In that sense, according to the Report "20 years of Peru in APEC", prepared by the Peruvian Exterior Commerce Society ("<u>COMEXPERÚ</u>", acronym in Spanish) in 2017. APEC policies have revealed to maintain a preference for investments in green growth, as well as drives a transition towards low carbon impact and resilient economies to climate change. Along these lines, this objective is also reflected in the efforts to expand the scope of ethical codes aimed at sustainability to more than nineteen thousand (19,000) companies. It also highlights food security issues, where APEC has proposed models for sustainable agriculture, forestry management and aquaculture.</p>	
04	<p>Recognize that regional cooperation and information sharing shall be promoted in relation to all aspects of illicit activities against the environment.</p>
	<p>There is an implicit recognition of the importance of strengthening cooperation with other countries in the region with respect to the environmental infractions reported from the actions carried out by the Peruvian State. This is verified when, despite not having ratified the Agreement, Peru was an active member in the previous phases of negotiation and signature, demonstrating a willingness to collaborate internationally. In addition, the national legal framework shows the relevance of the right of access to information through the development of a strengthened system of Transparency, Access to Public Environmental Information, Participation and Consultation, as well as the growing importance of the investigation of environmental infractions and crimes. This is a useful tool in the event that this information is required for collaboration between countries with a view to clarifying environmental infractions. Therefore, the conditions for an eventual cooperation in this aspect are given. However, since the Agreement has not been ratified, there is no uniform and firm pronouncement from the Peruvian State expressly stating an intention of international collaboration with respect to illegal activities against the environment.</p>
	<p>Other questions regarding topics not defined as obligations of the parties:</p>
01	<p>Has the country taken steps to engage with the virtual and universally available clearing house Observatory on Principle 10?</p>
	<p>Yes, Peru has established a legal framework that guarantees the access rights established in Principle 10 of the Rio Declaration on Environment and Development. According to</p>

	<p>information gathered in the Observatory of Principle 10 in Latin America and the Caribbean by the Economic Commission for Latin America and the Caribbean (ECLAC), Peru has implemented the following:</p> <p>(i) The right of access to information has ten (10) policy instruments, one judicial pronouncement and, seventeen (17) International treaties, (ii) The right to public participation has thirteen (13) policy instruments and has signed ten (10) International treaties and, finally, (iii) The right of access to justice has nine (9) policy instruments, one (1) Judicial pronouncement and three (3) international treaties.</p> <p>All these advances maintain challenges in practice, which we have reviewed in each of the previous sections. However, the state is implementing measures that ensure the protection of these rights and guarantee their exercise.</p>
02	<p>Has the country taken steps to make contributions to the Voluntary Fund created by Article 14 of the Escazú Agreement?</p> <p>Peru has not ratified the Agreement and therefore has not taken any actions to contribute to the Voluntary Contributions Fund created by the Agreement. Nonetheless, at the time, MINAM had stated that the financing of the payment of voluntary contributions could be considered in the formulation of the institutional budget, once the ratification process of this international instrument was completed.</p>
03	<p>Has the country taken steps to engage in the Conference of the Parties to the Escazú Agreement?</p> <p>No. Currently, the file of the Agreement remains filed in the Foreign Affairs Committee of the Congress.</p> <p>Additionally, we should note that on July 28, 2021, Pedro Castillo assumed the presidency of Peru for the period 2021-2026. President Pedro Castillo, whose political party "Peru Libre" represents the conservative left, won the elections with a Government Plan that although it contains some initiatives in environmental matters, also presented proposals that attempt against the compliance of Treaties and the decisions of International Tribunals and Multilateral Organizations, under the logic that the State should not abdicate its competences and that foreign countries should not interfere in the activities of the State.</p> <p>Notwithstanding the above, the Minister of Foreign Affairs, who was recently appointed by Castillo, declared that he would promote the ratification of the Escazu Agreement. To date, it is uncertain whether the current government will ratify the Agreement and whether the Congress, which contains a large conservative sector, will support such decision.</p>

## Appendix I

### I. Peru's Legal framework

The main normative sources used for the preparation of the report are the following:

- a) Political Constitution of Peru of 1993 ("PCP").
- b) American Convention on Human Rights ("ACHR").
- c) Law No. 28611, General Environmental Law ("LGA").
- d) Law No. 28237, Constitutional Procedural Code.
- e) Law No. 27806, Law on Transparency and Access to Public Information ("TAIP Law").
- f) Law No. 29325, Law of the National System of Environmental Evaluation and Control ("SINEFA Law").
- g) Law No. 28245, Framework of the National Environmental Management System ("SNGA Law").
- h) Law No. 27446, Law of the National System of Environmental Impact Assessment ("SEIA Law").
- i) Supreme Decree No. 43-2003-PCM, Sole Ordered Text of the Law of Transparency and Access to Public Information.
- j) Supreme Decree N° 2-2009-MINAM, Regulation on Transparency, Access to Environmental Public Information and Citizen Participation and Consultation in Environmental Matters ("RTAIPA").
- k) Supreme Decree N° 21-2019-JUS, Regulation of the Law of Transparency and Access to Public Information.

### II. Abbreviation List

**"Agreement"**: Escazú Agreement

**"Amparo"**: Amparo Process

**"ACHR"**: American Convention on Human Rights

**"AJPV Commission"**: Permanent Commission for Access to Justice for Persons in Condition of Vulnerability and Justice

**"ANTAIP"**: National Authority of Transparency and Access to Public Information

**"APEC"**: Asia-Pacific Economic Cooperation

**"APL"**: Cleaner Production Agreements

**"CAN"**: Andean Community of Nations

**"CMARN"**: Environmental and Natural Resources Code

**"CNDDHH"**: National Human Rights Coordinator

**"COMEXPERÚ"**: Peruvian Exterior Commerce Society

**"Constitutional Court"**: Peruvian Constitutional Court

- “**DAP**”: Environmental Diagnosis of Peru
- “**DEA**”: Declaration of Environmental Emergency
- “**DIREPMA**”: Environmental Protection Directorate
- “**DL 757**”: Legislative Decree No. 757, Framework Law for the Growth of Private Investment
- “**ECLAC**”: Economic Commission for Latin America and the Caribbean
- “**EFA**”: Environmental Oversight Entities
- “**EFOMA**”: Environmental Forensic Team
- “**Environmental Defenders**”: Human rights defenders in environmental matters
- “**Environmental Observatory**”: Observatory of the Environmental Judiciary
- “**EO-RS**”: Registry of Solid Waste Operating Companies
- “**FEMA**”: Specialized Environmental Prosecutor's Offices
- “**IACHR Court**”: Inter-American Court of Human Rights
- “**IACHR**”: Inter-American Commission on Human Rights
- “**ILO Convention 169**”: International Labor Organization concerning Indigenous and Tribal Peoples in Independent Countries
- “**INEA**”: Report on the State of the Environment
- “**Intersectoral Mechanism**”: Intersectoral Mechanism for the Protection of Human Rights Defenders, approved through Supreme Decree No. 004-2021-JUS
- “**LGA**”: Law No. 28611, General Environmental Law
- “**Madre de Dios Pact for Environmental Justice**”: The Madre de Dios Pact (*Pacto de Madre de Dios por la Justicia Ambiental*) signed by the Executive Branch, Judicial Branch, Attorney General's Office and civil society.
- “**MATPEL Law**”: Law No. 28256, Land Transportation of Hazardous Materials and Waste Law
- “**MIDAGRI**”: Ministry of Agriculture
- “**MINAM**”: Ministry of the Environment
- “**MINAM Protocol**”: Sectorial Protocol for the Protection of Environmental Defenders, approved by Ministerial Resolution No. 134-2021-MINAM
- “**MINEDU**”: Ministry of Education
- “**MINJUSDH**”: Ministry of Justice and Human Rights

“**MPL**”: Maximum Permissible Limits

“**MTC**”: Ministry of Transportation and Communications

“**MVCS**”: Ministry of Housing, Construction and Sanitation

“**NGOs**”: Non-Governmental Organizations

“**OEFA**”: Agency for Environmental Assessment and Enforcement

“**OEFA Directive**”: Directive N° 1-2012-OEFA/CD, Directive that promotes greater transparency with respect to information managed by the OEFA

“**Ombudsman's Guidelines**”: Guidelines for Ombudsman's Intervention in Cases of Human Rights Defenders, approved by Administrative Resolution No. 29-2020/DP-PAD

“**ONIA**”: National Environmental Research Observatory

“**ORAU**”: Aidesep Ucayali Regional Organization

“**PCP**”: Political Constitution of Peru of 1993

“**PLANAA**”: National Environmental Action Plan

“**PNP**”: Peruvian National Police

“**Prior Consultation Law**”: Law No. 29785, Law on the Right to Prior Consultation of Indigenous or Native Peoples

“**PRODUCE**”: Ministry of Production

“**Protocol**”: Protocol to Guarantee the Protection of Human Rights Defenders

“**PRTR**”: Pollutant Release and Transfer Register

“**PTE**”: Standard Transparency Portal

“**Registry of Human Rights Defenders**”: Registry on Risk Situations of Human Rights Defenders, approved by Ministerial Resolution No. 255-2020-JUS

“**RTAIPA**”: Supreme Decree N° 2-2009-MINAM, Regulation on Transparency, Access to Environmental Public Information and Citizen Participation and Consultation in Environmental Matters

“**SAIP 2020 Report**”: Annual Report on Requests for Access to Public Information Processed by Public Administration Entities

“**SEIA Law**”: Law No. 27446, Law of the National System of Environmental Impact Assessment

“**SEIA**”: National Environmental Impact Evaluation System

“**SENACE**”: National Environmental Certification Service for Sustainable Investments

“**SIGERSOL**”: Solid Waste Management Information System

“**SIGRID**”: Information System for Disaster Risk Management

“**SINEFA Law**”: Law No. 29325, Law of the National System of Environmental Evaluation and Control

“**SINEFA**”: National Environmental Assessment and Control System

“**SINIA**”: National Environmental Information System

“**SNGA Law**”: Law No. 28245, Framework Law of the National Environmental Management System

“**SNGA**”: National Environmental Management System

“**Special Rapporteur**”: Special Rapporteur on the situation of human rights defenders of the United Nations

“**TAIP Law**”: Law No. 27806, Law on Transparency and Access to Public Information

“**Technical - Legal Report of the Attorney General's Office**”: Technical Legal Report for the Subscription and Ratification of the Escazú Agreement

“**TTAIP**”: Court of Transparency and Access to Public Information

“**TUO LAIP**”: Supreme Decree No. 043-2003-PCM, Unique Ordered Text of the Law on Transparency and Access to Public Information

“**TUPA**”: Unique Text of Administrative Procedures

“**UMGSDA**”: Satellite Georeferenced Monitoring Units for Environmental Crimes

“**UNIDA**”: Environmental Crimes Functional Unit

“**2018-2021 Plan**”: National Human Rights Plan 2018-2021, approved by Supreme Decree No. 2-2018-JUS