

LEGISLATIVE DECREES THAT AFFECT THE SUSTAINABLE USE OF LANDS AND THE RIGHT TO LAND OWNERSHIP: L.D. N° 1020, 1064 and 1089



Implementation of the FTA threatens the sustainable use of agricultural land and the rights of farmers¹

- The implementation of the FTA is used to facilitate private investment in agricultural lands and lands belonging to peasant farmer and native communities, affecting the rights of these communities.
- Legislative Decrees N° 1064, 1089 and 1020 affect the right to private and community property and tend to lead to land concentration, favouring extractive industry activities.

Taking advantage of the extraordinary faculties that Congress granted it for the implementation of the FTA with the United States, the Peruvian government approved 99 legislative decrees, of which 25 are directly related to the agrarian sector in the country. These decrees are aimed at facilitating private investment in the extraction and use of natural resources, affecting the rights of indigenous peoples and peasant farmers, recognized in the Constitution and the law.

Consolidation of mid-sized property, uprooting of small property owners

L.D. N° 1020 promotes the organization of agrarian producers and the consolidation of rural property, encouraging land purchase to build sustainable productive units (greater than 20 hectares), without taking into account that the majority of Peruvian agriculture is in the hands of small holders and small property owners. As a result, it encourages them to sell their lands but does not propose any alternative activity for their livelihood and that of their families.

This decree favours farmers with sufficient resources and capacity to provide a guarantee for banks, which also allows them to obtain land from their neighbours who have fewer options and resources.

Affects the right to property and imposes servitude

L.D. N° 1064 causes great concern as it repeals laws that regulated the use of agricultural land (Law N° 26505, known as the Land Law, among others) and leaves without effect mechanisms such as negotiation between land owners and extractive companies for the use of the land, substituting them for servitude². The new regulation is not clear and seems to impose upon owners of farm land the legal obligation to establish servitude to the benefit of mining, petroleum or other extractive activities.

This legislative decree has also modified the legislation regulating peasant farmer communities and native communities, creating serious doubts about the validity of laws passed in previous years for the protection of these organizations. At the same time it has granted the Ministry of Agriculture the capacity to change the classification of agricultural land, without major requirements, which could affect community lands and above all forestry lands in the Amazon, thereby affecting these resources.

L.D. N° 1064

- Imposes servitude in favour of mining, petroleum, gas exploitation, etc.
- Affects the right to land property titles

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² Servitude is a real right that makes it possible to establish limitations on a plot to the benefit of another and allows the second to practice certain acts of usage on the land in question.

Land Concentration and formalization of rights for investors

For its part, L.D. N° 1089 grants the government institution responsible for the Formalization of Informal Property (COFOPRI), an entity originally created to formalize informal property in urban areas, the exclusive responsibility to formalize rights over agricultural property for four years. This regulation bypasses the authority of Regional Governments in this area and, of even greater concern, allows COFOPRI to rectify property inscriptions in Public Registrars. This could potentially allow it to reduce areas that are recognized as belonging to peasant farmer and native communities and small landowners, as many of them do not yet have titles, without allowing them much possibility to oppose this entity that has been given such broad sweeping powers.

The extractive orientation of natural resources being promoted by the Government has also been expressed in the different draft laws that have been presented and are currently before Congress. One of these encourages the exploitation of extensive wooded areas, supposedly de-forested, better-known as the “Law of the Jungle” (Draft Law N° 840-2006-PE for Promotion of Private Investment in Reforestation and Agro-Forestation), which has received numerous objections. Another is Law N° 2133, Law For the Granting and Use of Marshes or Flood Lands, which seeks the adjudication of flood lands in the Amazon to private companies for mono-crops in extensive areas, above all for the production of bio fuels, without taking into consideration the fragile nature of these lands or considering the existence of primary forests in the areas they seek to adjudicate.

The promotion of private investment in these conditions can severely affect the sustainability of fragile ecosystems and therefore deprive the county of these resources in the future.

INFO:

- Recognized Peasant Farmer Communities: 6066
- Titled Peasant Farmer Communities: 5053
- Peasant Farmer Communities that remain to be titled: 1013 (of these more than 50% are located in Puno, Ayacucho and Cusco)³

The implementation of the FTA is used to affect the rights of the rural population

The pending regulation of the legislative decrees generates greater uncertainty among the rural populations and indigenous communities, due to the orientation of the most recent measures. Given this and the excesses incurred by the Government, Congress must proceed to review the questioned legislative decrees and repeal L.D. N° 1064, as it violates the Constitution and the rights of agrarian producers and the rural population who live in conditions of poverty and extreme poverty. And Congress must also review and modify the Legislative Decrees N° 1020 and N° 1089.

³ Information COFOPRI as of January 2008.

More information:

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