

Lima, Perú July 31, 2024

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Executive Director  
Secretariat Submissions on  
Environmental Enforcement Matters  
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**Asunto :** Presentation of complaint against the peruvian state for non compliance with the provisions of article 18.3, belonging to chapter 18 of the Trade Promotion Agreement between Perú – USA

- I. Derecho, Ambiente y Recursos Naturales - DAR, registered in the registry entry N° 11649248 of the Registry of Legal Entities of the Lima Registry Office, with address in Jirón Brigadier Mateo Pumacahua 2249, Lince, duly represented by its Executive Director, Hugo Che Piu Deza, with DNI N° 10726429, e-mail: [hchepiu@dar.org.pe](mailto:hchepiu@dar.org.pe) y [lpalao@dar.org.pe](mailto:lpalao@dar.org.pe), representing the following civil society organizations:

1. CooperAcción
2. Red por una Globalización con Equidad - RedGE
3. Asociación Interétnica de Desarrollo de la Selva Peruana - AIDSESP
4. Confederación Nacional Agraria - CNA
5. Confederación Campesina del Perú - CCP
6. Movimiento Ciudadano Frente al Cambio Climático - MOCICC
7. Asociación ProPurus
8. Fundación para la Conservación y el Desarrollo Sostenible - FCDS Perú
9. Pachamama Alliance Perú
10. ARBIO Perú
11. Asociación de mujeres indígenas emprendedoras en la artesanía textil la merced del centro poblado de Otuzco
12. Federación Regional de Mujeres Campesinas Artesanas Indígenas Asalariadas y Migrantes de Arequipa - FERMUCARINAMA
13. Federación Agraria nor oriental .F.A.N.O.R. Amazonas. Base C.N.A.
14. Federación Nacional de Mujeres Campesinas, Artesanas, Indígenas, Nativas y Asalariadas del Perú - FENMUCARINAP Junín
15. Cecobosque, base de la CCP.
16. PLANET TV EIRL
17. Comisión Episcopal de Acción Social - CEAS

And on behalf of the following natural persons:

1. Rocío Paola Prieto Duclós
2. Héctor Amaya Zacarías
3. Gisella Valdivia Gozalo
4. Ivan Brehaut Larrea

5. Elba Tatiana Espinosa Quiñones
6. Ana María Ancaya La Rosa
7. Paola Contreras Dominguez
8. César Augusto Ipenza Peralta
9. Elizabeth Rojas Cerrón
10. Karla Gabriela Zelaya Galloso
11. Lucia Valer Huacho
12. Manuel Saboreni Meneses.
13. Segundo Secundino Alarcón Díaz
14. Guadalupe Alejandrina Hilario Rivas
15. Francisco Sernaque Espinoza
16. María Laura Vargas Valcárcel
17. Javier Rodolfo Jahncke Benavente
18. Javier Francisco Pastor Bohorquez
19. Daniel Jesús Rodríguez Azcarate
20. Martha Filomena Baldera Farroñan
21. Pablo Alfredo De la Cruz Guerrero
22. Pamela Alejandra Balanta Jimenez
23. Nils Gustavo Ordoñez Cayetano
24. Nathaly Estela Ulloa Arias
25. Blanca Elcira Marisol Pérez Valdez
26. Elena Yaranga Huaman
27. Nelly Maritza Chancha Inga
28. Mariano Huayhua Espinoza
29. Daniela Margaret Quispe Delgado
30. Joaquin Luciano Castañeda Rosales
31. Kathy Janet Salazar Munive

## II. PETITION

This submission to the Secretariat for Submissions on Environmental Enforcement Matters **invokes the lack of effective application**, as well as the **weakening of the protection contemplated in environmental legislation by the Peruvian State**, thus failing to comply with the provisions of article 18.3, belonging to Chapter Capítulo 18 of the Perú – USA TPA.

In that sense, we need to urge the Peruvian State to comply with the Trade Promotion Agreement between Peru – USA, and, consequently, to repeal Law No. 31973, which modifies the Forestry and Wildlife Law; as well as repeal any regulation issued as a consequence of the approval of Law No. 31973, in order to avoid regulatory impacts. Likewise, it is requested to annul the administrative acts and actions approved within the framework of Law No. 31973.

In addition, request official information on the attempted new weakening of forestry legislation regarding species protected under the Convention on International Trade in Endangered Species of Wild Fauna and Flora-CITES, through Bill No. 7085-2023/PE<sup>1</sup> Law that modifies Law No. 29763, Forestry and Wildlife Law and proposes to modify article 46 of Law No. 29763, Forestry and Wildlife Law, to reduce the levels of control of the protected species Shihuahuaco (Dipteryx).

<sup>1</sup><https://wb2server.congreso.gob.pe/spley-portal/#/expediente/2021/7085>

In the following sections, the need to pay attention to this requirement will be supported before the Secretariat for Submissions on Environmental Enforcement Matters, for which the requirements indicated by the Secretariat are met.

### III. COMPLIANCE WITH ADMISSIBILITY REQUIREMENTS

With the purpose of evidencing the lack of effective application of environmental legislation by Peruvian State, the following documents are presented:

- a) Letter N° 081-2024-DAR/DE, dated april 17, 2024, sent to the Agrarian Commission.<sup>2</sup>
- b) Letter N° 092-2024-DAR-DE, dated april 18, 2024, through which the opinion is sent to the draft law PL n° 07519/2023-CR and precedentes.<sup>3</sup>
- c) Newspaper reports that reflect the position of various specialists on the weakening of the framework for the protection of CITES species as a result of the weakening of the legal framework, even more so when the Peruvian state committed to obtaining all the necessary resources to meet the demands of protecting CITES species such as the shihuahuaco. <https://ojo-publico.com/ambiente/territorio-amazonas/peru-ignoro-evidencia-sobre-peligros-explotacion-del-shihuahuaco>

### IV. PREVIOUS CONTEX

According to the World Bank (2016), forests represent vital carbon stores that become harmful when logging and other activities generate the loss of forest cover. However, maintaining such coverage in sufficient quantity reduces the impacts of climate change by mitigating. It is for this reason that the protection and sustainable management of forest areas brings with it not only the benefits of avoiding environmental damage, but also of contributing to the improvement of the ecosystem and a solution to a global problem.

Almost 60% of the Peruvian national territory is covered by forests. The total extension of our forests, as of 2015, was 69,020,330 hectares. We have forests on the mountain coast and jungle. The largest area of our forests (94%) is found in the Amazon.

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<sup>2</sup> To see in:

<https://wb2server.congreso.gob.pe/spley-portal/#/expediente/2021/7085>

<https://wb2server.congreso.gob.pe/spley-portal-service/archivo/MTC3MjU0/pdf>

<sup>3</sup> To see in:

<https://wb2server.congreso.gob.pe/spley-portal-service/archivo/MTC3OTUy/pdf>

<https://wb2server.congreso.gob.pe/spley-portal/#/expediente/2021/7519>

Thus, Peru is the second country with Amazon forests in the world (after Brazil) and the ninth country on the planet in terms of forest extension in general. Likewise, it is the fifth country in the world with the highest percentage of primary forests (4%), in relation to the surface of its national territory.

Peruvian forests are threatened by deforestation and degradation processes. From 2001 to 2023, Peru lost 4.08 Mha of tree cover, which is equivalent to a 5.2% decrease in tree cover since 2000, and 2.60 Gt of CO<sub>2</sub> emissions. Addressing forest loss requires the coordination of the public and private sectors, at the national, regional and local levels. Likewise, in Peru, the main cause of deforestation is the change in land use for agricultural purposes. This activity involves the indiscriminate felling of trees to make way for agricultural crops or pastures for livestock. Deforestation associated with agriculture and livestock not only reduces forest biodiversity, but also has a significant impact on local and global ecological balance, affecting water cycles and contributing to climate change.

## V. ABOUT ARTICLE 18.3 OF THE PERÚ – USA TPA

The rules that are the subject of this complaint allow the identification of the violation of a series of international treaties to which the Peruvian State is a party and their full compliance implies adopting a series of guarantees, otherwise, it must be responsible for the non-compliance that derives from its actions, as well as the adoption of appropriate remedial and compensatory measures.

In that sense, the Perú – USA TPA develops its Eighteenth Chapter “Environment”<sup>[14]</sup>, in order to recognize that each Party has sovereign rights and responsibilities with respect to its natural resources, contributing to mutually supportive trade and environmental policies, and thus promoting the optimal use of resources in accordance with the objective of sustainable development, and strive to strengthen the links between the trade and environmental policies and practices of the parties, which can take place through environmental cooperation and collaboration.

Within the framework of this, article 18. Includes the following:

### **Article 18.3: Application and Observance of Environmental Laws**

1. (a) A Party shall not fail to effectively apply its environmental legislation, and and its laws, regulations and other measures to comply with its obligations under covered agreements, through a sustained or recurring course of action or inaction, in a manner that affects trade or investment between the Parties, after the date of entry into force of this.

(...)

2. The Parties recognize that is inappropriate to promote trade or Investment by weakening or reducing the protections contemplated in their respective environmental legislations. Accordingly, a Party shall not rescind or repeal, nor offer to rescind or repeal, such legislation in a manner that weakens or reduces the protection afforded by such legislation in a manner that affects trade or investment between the Parties.

3.

<sup>4</sup>[1] Available in: [https://www.acuerdoscomerciales.gob.pe/En\\_Vigencia/EEUU/Documentos/espanol/Medio\\_Ambiente\\_limpio.pdf](https://www.acuerdoscomerciales.gob.pe/En_Vigencia/EEUU/Documentos/espanol/Medio_Ambiente_limpio.pdf).

[2] Available in: [https://biblioteca.spda.org.pe/biblioteca/catalogo/data/20211007003704\\_principio-de-no-regresion.pdf](https://biblioteca.spda.org.pe/biblioteca/catalogo/data/20211007003704_principio-de-no-regresion.pdf).

Likewise, article 18.3 contemplates Annex 18.3.4. referring to the management of the forestry sector, which establishes:

*1. The Parties recognize that trade related to illegal logging and illegal trade in wildlife, including wildlife trafficking, undermines trade in products from legal logging sources, reduces the economic value of natural resources, and undermines efforts to promote conservation and sustainable management of resources. Accordingly, each Party undertakes to combat trade associated with illegal logging and illegal wildlife trade. The Parties recognize that good management of the forest sector is crucial to promoting the economic value and sustainable management of forest resources. Accordingly, each Party undertakes to take action within the framework of this Annex to improve the management of the forest sector and promote legal trade in wood products.*

### **Strengthening management of the forestry sector**

*2. The Parties recognize their joint efforts, both through bilateral initiatives and in relevant international forums, to address issues relating to trade in wood products. Likewise, the Parties take note of the considerable progress made by Peru in creating the institutions and regulatory framework necessary to guarantee the sustainable management of its forest resources.*

*(...)*

*(h) Create and promote the use of tools that complement and strengthen regulatory controls and verification mechanisms related to the extraction and trade of wood products. In this context, Peru must:*

*(i) Take into account the opinions of local and indigenous communities, non-governmental organizations and the private sector, including operators of timber extraction concessions;*

*(...)*

*4. The Parties undertake to cooperate in the application of the measures required in the preceding paragraph, including through capacity strengthening and other joint initiatives in order to promote the sustainable management of Peru's forest resources. The Parties shall develop and implement any capacity-building activities under this paragraph in accordance with the Environmental Cooperation Agreement, as stipulated in Article 18.10. Such capacity-building measures may include:*

*(a) Strengthen the legal, regulatory and institutional framework that governs forest ownership and international trade in forest products.*

As can be seen, article 18.3 seeks to protect the correct application of environmental regulations, which implies avoiding its weakening through modifications and/or repeals. Likewise, in its Annex 18.3.4 it establishes the obligation of the Peruvian State to promote the improvement of the management of the forestry sector, which implies both the legal trade of wood products, the strengthening of its institutions and the legal framework, taking into account to This is the opinion of local and indigenous communities, government organizations, among others.

The aforementioned clauses are directly related to the principle of Environmental Law called “non-regression”, “non-regression” or “prohibition of retrogression”, according to which:

*“...environmental regulations and jurisprudence should not be reviewed if this would imply going backwards with respect to the levels of protection*

*achieved previously. Its purpose is to avoid the suppression of regulations or the reduction of their demands by contrary interests that cannot be demonstrated to be legally superior to the environmental public interest, since in many cases, such regressions can result in irreversible environmental damage or damage that is difficult to repair” (Peña, 2013, p. 12 [2].*

Therefore, as will be explained throughout this complaint, Law No. 31973 implies a setback with respect to the standards, requirements and aspirations originally regulated by Law No. 29763, which obviously means non-compliance with the principle of no setback, and therefore, of the international commitments of the Peruvian State contained in the TPA signed with the United States of America.

In this context, it is also important to point out that for several years the Ministry of Agrarian Development and Irrigation of the Executive Branch has tended at various times to make forest governance more flexible, such is the case that despite having held a public competition for the appointment of the head of the Executive Director of the Forest and Wildlife Service was fired<sup>5</sup> and that it was judicial replacement and once again this body has been left without a leader and a trusted official has been appointed.<sup>6</sup>

## **VI. REGULATORY WEAKENING DUE TO THE APPROVAL OF LAW N° 31973**

The signing of the TPA between Peru and the United States in 2006 promoted a series of legislative reforms in Peru, aimed at complying with the commitments assumed in the treaty. Among these reforms was the need to adapt the country's environmental and natural resources legislation.

The approval of the Forestry and Wildlife Law, Law 29763, in 2011, was part of these reforms. This law had the objective of sustainably managing the forest resources and wildlife of Peru. Likewise, the regulation of this norm was the product of a process of prior consultation with indigenous peoples due to the implications on their lives and worldview.<sup>7</sup>

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<sup>5</sup> <https://www.gob.pe/institucion/midagri/normas-legales/853785-002-2020-minagri>

<sup>6</sup> <https://www.infobae.com/peru/2024/05/15/designan-a-nuevo-director-de-serfor-sin-concurso-publico-en-medio-de-criticas-por-ley-antiforestal-y-flexibilizacion-ambiental-desde-el-ejecutivo/>

<sup>7</sup> <https://www.gob.pe/institucion/cultura/noticias/48443-consulta-previa-para-la-propuesta-del-reglamento-de-la-ley-forestal-y-de-fauna-silvestre-entra-en-su-etapa-final>

On January 11, 2024, Law No. 31973 was published, Law that modifies Law 29763, Forestry and Wildlife Law, and approves complementary provisions aimed at promoting forest zoning. This norm is the result of the signature of the accumulated bills: PL 649, 894 and 2315/2021-CR, which, in 2022, was observed by the Executive Branch. Furthermore, indigenous organizations<sup>8</sup>, civil society<sup>9</sup>, the academic and scientific sector<sup>10</sup>, the National Council of the Deans of the Professional Colleges of Perú<sup>11</sup> warned that this proposed standard represents a great weakening in the management and governance of the forestry sector.

After the publication of Law No. 31973, the Embassies of Germany, Norway, the United Kingdom and Canada, as partners of Peru in the Joint Declaration of Intent DCI, issued a joint declaration<sup>12</sup> showing their concern through a publication on their social networks, where they also rejected the approval of the rule. Likewise, on January 18, 2024, a letter was sent<sup>13</sup> addressed to the Congress of the Republic, MIDAGRI, MINCU, MINAM, SERFOR, requesting the repeal of the approved law.

Despite the irregular procedure that arose for its approval, even without taking into account the reconsiderations presented by two congressmen<sup>14</sup>, This rule was published in the official newspaper “El Peruano”. Nor was it considered that this norm goes against Peru's commitments to the fight against climate change, international treaties on environmental, trade and human rights issues, aggravating the situation of deforestation in the Peruvian Amazon that will be explained later. As is the case of the four partner embassies of Peru in the Joint Declaration of Intent (DCI), who expressed their concern about the anti-forestry law approved by Congress<sup>15</sup>.

In addition, the special rapporteur on the Rights of Indigenous Peoples of the United Nations (UN) warned the Peruvian government in relation to the modifications made to the Forestry and Wildlife Law, which promote impunity in illegal activities. in the forests and increase violence against defenders of indigenous rights<sup>16</sup>.

<sup>8</sup> ORAU, 2024. Carta de la Organización Regional AIDSESEP de Ucayali (ORAU) en: <https://wb2server.congreso.gob.pe/spley-portal-service/documento-anexo/NjE0NQ==/pdf>

CNA, 2024. Carta de la Confederación Nacional Agraria (CNA) en: <https://wb2server.congreso.gob.pe/spley-portal-service/documento-anexo/NjA0Ng==/pdf>

PPICC, 2024. Carta de la Plataforma de los Pueblos Indígenas frente al Cambio Climático (PPICC) en <https://wb2server.congreso.gob.pe/spley-portal-service/documento-anexo/NjA0Mw==/pdf>

GTA-NW, 2024. Carta del Gobierno Territorial Autónomo de la Nación Wampís (GTA-NW) en: <https://wb2server.congreso.gob.pe/spley-portal-service/documento-anexo/NjAwMg==/pdf>

<sup>9</sup> DAR, 2023. Carta y pronunciamiento de la sociedad civil. En: <https://wb2server.congreso.gob.pe/spley-portal-service/documento-anexo/NjAxNQ==/pdf>

<sup>10</sup> PUCP, 2024. SCIENCE, VOL. 383, NO. 6686, PERU'S ZONING AMENDMENT ENDANGERS FORESTS <https://www.science.org/doi/10.1126/science.ado005>

<sup>11</sup> El Consejo Nacional de Decanos de los Colegios Profesionales del Perú representa a todas las profesiones organizadas en Colegios Profesionales del país.

<https://www.connuestroperu.com/ecologia/83118-los-colegios-profesionales-del-peru-rechazan-ley-que-amenaza-la-biodiversidad-en-la-amazonia>

<sup>12</sup> Pronunciamiento de las Embajadas de DCI, 2024. En: <https://twitter.com/UKinPeru/status/1748344710412878056>

<sup>13</sup> DAR, 2024. Carta dirigida al Congreso de la República y al Poder Ejecutivo. En: <https://drive.google.com/file/d/1yEnl1MTpNp7f2oc8fSGZVwHtGCHNtgel/view>

<sup>14</sup> Reconsideración a la votación del dictamen del Proyecto de Ley 649, 849 y 2315/2021 -CR. de la congresista Ruth Luque Ibarra. Oficio N° 384-2023-2024/RLI-CR. En: <https://wb2server.congreso.gob.pe/spley-portal-service/documento-anexo/NjAyMQ==/pdf>

y la congresista Susel Paredes Piqué. Oficio N° 507-2023-2024-SAMPP/CR. En: <https://wb2server.congreso.gob.pe/spley-portal-service/documento-anexo/NjAxOQ==/pdf>

<sup>15</sup> INFOBAE, 2024. Embajadas de Noruega, Alemania, Inglaterra y Canadá, socias de Perú en Declaración Conjunta de Intención (DCI), expresan preocupación por Ley Anti Forestal aprobada por el Congreso. En: <https://www.infobae.com/peru/2024/01/20/embajadas-de-cuatro-paises-expresan-preocupacion-por-situacion-en-peru-sobre-ley-antiforestal-aprobada-por-el-congreso/>

Law No. 31973 is composed of 2 articles, 2 Transitory Complementary Provisions and 1 Final Complementary Provision, in this regard it is stated that, according to article 1 of the law, the objective is to promote the development of the forest zoning process.

The first major change to the Law is presented through article 2, which proposes the modification of articles 29 and 33 of Law No. 29763, with the purpose of passing the approval of the establishment of production forests. permanent and forest zoning from the Ministry of the Environment to the Ministry of Agrarian Development and Irrigation (MIDAGRI), as we can see below:

**Article 2. Modification of articles 29 and 33 of Law 29763 Forestry and Wildlife Law**

*Articles 29 and 33 of Law 29763, Forestry and Wildlife Law, are modified, being worded as follows:*

**Article 29. Permanent Production Forests**

*Permanent production forests are established by ministerial resolution of the Ministry of Agrarian Development and Irrigation, at the proposal of SERFOR, on forests of categories 1 and II of forest zoning, for the purposes of permanent production of wood and other forest products other than wood, as well as wildlife and the provision of ecosystem services.*

*The State promotes the comprehensive management of these forests. To this end, the regional forestry and wildlife authority prepares, directly or through third parties, and approves the Master Management Plan that contains, at a minimum, the identification of sites that require special treatment to ensure the sustainability of the use, the routes of access, common roads and control points.*

*Prior to its establishment, the State carries out an environmental impact assessment and consults the population that may be affected by its establishment.*

*Permanent production forests are supervised by the head of the corresponding Forestry and Wildlife Management Unit (UGFFS)."*

**Article 33. Forest Zoning Approval**

*Forest zoning is approved by ministerial resolution of the Ministry of Agrarian Development and Irrigation, at the proposal of SERFOR based on the technical file prepared by the Regional Government and with prior opinion from the Ministry of the Environment."*

On the other hand, within the framework of its Transitory Complementary Provisions, the Law suspends forest zoning and annuls the requirement to carry out the land classification process and the prohibition of change of use in the "exclusion areas for agricultural purposes." . Likewise, it ignores that these territories are property of the State, under the regime of eminent domain and that, therefore, they cannot be subject to private appropriation by individuals under any type of modality. In this sense, **what this project seeks is the private appropriation by individuals of lands that are the Nation's heritage as long as they have natural resources.**

<sup>16</sup> INFOBAE, 2024. Comunicado del relator especial sobre los Derechos de los Pueblos Indígenas de la ONU. En: <https://www.infobae.com/peru/2024/02/01/relator-de-la-onu-advierte-a-peru-que-ley-antiforestal-incentiva-el-despojo-y-tala-en-tierras-indigenas/>



## **Transitional Complementary Provisions**

### **FIRST. Forest Zoning and Granting of Enabling Titles**

***Suspend the obligation to require forest zoning as a requirement for the granting of enabling titles. For the implementation of this provision, the regional government will accredit to Serfor the progress in the application of the Methodological Guide for Forest Zoning, according to the criteria indicated below:***

- a) For up to two years, counted from the publication of this law, provided that the regional government has installed the technical Committee.*
- b) For up to one year, additional to the period mentioned in literal a), provided that the technical file of forest Zoning is ready for its socialization.*

*In any of the aforementioned assumptions, the regional government must consider the variables, criteria or sources of information that the Methodological Guide for Forest Zoning, approved by Serfor, for the identification of a category of forest zoning, which must be compatible with the requested qualification.*

*The provisions of this temporary complementary provision do not apply to the granting of timber forestry concessions.*

### **SECOND. Prohibition of granting qualifying titles**

*During the period of suspension of the forest zoning requirement established in the first transitional complementary provision, no forestry and wildlife titles will be granted in areas that are in the process of recognition, titling or expansion of peasant and native communities. ; as well as in areas that are in the process of establishing territorial reserves, peoples in voluntary isolation or in initial contact.*

Forest zoning is crucial to establishing use rights over forests. Without a clear zoning system, there is a risk of unsustainable exploitation of forest resources. Additionally, land use qualification is critical to determining permitted activities in each area, ensuring that designated forest lands are used appropriately. This avoids misinterpretations where lands that should be forestry are illegally converted for agricultural use, violating the forestry law that prohibits such conversion.

It should be noted that Law No. 31973 and the drastic and debilitating modifications it introduces to the legal framework for the protection of forests and the control of deforestation, have motivated criticism from various relevant state agencies, including the National Forestry and Wildlife Service. Silvestre – SERFOR, which through Official Letter No. D000912-2023-MIDAGRI-SERFOR-DE indicated its position contrary to Law No. 31973 due to the serious risks it implied for forest heritage, wildlife and forest ecosystem services. Thus, **SERFOR has warned that the formalization of land with forestry and protection capacity as agricultural crops would facilitate the processes of land use change, stimulating deforestation and soil degradation, affecting compliance with the climate commitments that Peru has assumed.** In that same sense, SERFOR has indicated that the changes to the Forestry Law do not take into account the proposed regulatory improvements in relation to Contracts for the Transfer of Use of Agroforestry Systems, thus encouraging deforestation in favor of particular interests.

Likewise, at the time, the Executive Branch decided to observe the proposal after the Ministry of the Environment (MINAM), the National Forestry and Wildlife Service (SERFOR), the Ministry of Agrarian Development and Irrigation (MIDAGRI), the Ombudsman's Office, among other entities and civil society, warned that what was approved by the Congress of the Republic would generate negative effects on forests such as massive deforestation and the impact on forest and wildlife resources and ecosystem services, in addition to the promotion of impunity for business activities in the large-scale agribusiness sector that historically have not met the requirements established in the LFFS, under the modus operandi of deforesting first and considering the option of legalizing it later. In addition, it fails to comply with the international commitments signed by Peru such as the Joint Declaration of Intent with Norway and Germany, and the FTA with the United States, as well as affecting the aspirations of the OECD. However, despite this, this norm was approved behind the backs of the indigenous peoples.

By validating deforestation, this Law weakens the Peruvian legal system and threatens the right of all Peruvians to enjoy a balanced environment suitable for life recognized in article 2.22 of the Constitution. Likewise, this fundamental right has been recognized in various international treaties on human rights, such as article 12.2.b of the International Covenant on Economic, Social and Cultural Rights; and article 11 of the Additional Protocol to the American Convention on Human Rights on Economic, Social and Cultural rights, duly signed and ratified by the Peruvian State.

On the other hand, this law also included a single final complementary provision, with the objective of modifying the current land classification regime based on its capacity for greater use (CTUM), in the titling processes of rural properties and in the authorization processes of land use change.

***Final Complementary Provision***

***ONLY. Land classification and rules on change on use for existing agricultural activities***

Private properties that have property titles or proof of possession issued by the competent authority prior to the validity of this law or that are within the scope of Law 31145, Law of Physical-Legal Sanitation and Formalization of Property Rural areas in charge of the Regional Governments, that do not contain forest mass and that develop agricultural activity, are considered, exceptionally, as exclusion areas for agricultural purposes and therefore are excepted from carrying out their classification of lands due to their greater capacity for use, as well as being exempt from compliance with the provisions contained in article 38 of Law 29763. This exception does not exempt the minimum reserve obligation established in the fourth paragraph of the article. 38 of the law referring to thirty percent of the forest mass on private property, nor the administrative, civil or criminal responsibilities of public officials, natural or legal persons, who have incurred crimes related to land trafficking.

If the private property does not have the minimum reserve area, it must be progressively compensated with reforested or conservation areas inside or outside the property. Serfor must establish the appropriate mechanisms for this purpose.

In this regard, it is necessary to point out that by Supreme Decree No. 005-2022-MIDAGRI dated April 22, 2022, the new Land Classification Regulations by their capacity for Major Use (RCTCUM) are approved, establishing in its article 6 ° that MIDAGRI, through the General Directorate of Agrarian Environmental Affairs - DGAAA, is responsible for the preparation, supervision, evaluation and approval of soil survey studies and land classification for their greater use capacity, as well as its promotion and dissemination at the national level and that, SERFOR carries out the evaluation of the study of survey of vegetation cover (forests) according to its powers, establishing that the classification of lands by its capacity for greater use is composed of studies of soil survey and vegetation cover survey.

This standard also established the procedure for the approval of Land Classification studies due to their capacity for greater use and the principles, methods and procedures that must be carried out for the approval of the studies presented by those natural or legal persons who wish to develop agricultural activities. or agricultural activities on forest lands that have vegetal cover (forests or other forest ecosystems or wild vegetation), establishing that the lands can be classified according to their maximum vocation for use, that is, on lands that have similar characteristics and qualities in terms of its natural aptitude for the sustainable production of clean crops, permanent crops, forest pastures and establishing that those that do not meet these conditions are considered protection lands.

In that sense, under the current RCTCUM, if the result of land classification according to its capacity for greater use is land suitable for pasture, land suitable for forestry or protection land, no agricultural or agricultural activity can be carried out on said lands. lands, and therefore the change of use of the lands cannot be requested or deforestation carried out on them, and likewise, if the result of the land classification study according to its capacity for greater use, is lands suitable for clean cultivation or land suitable for permanent crops but that has not been previously approved by the competent authority, nor can any agricultural activity be carried out and, therefore, it is not possible to request a change of use of land or request or execute deforestation on the land, so if this express prohibition is not complied with, one would be incurring a forestry infraction and a crime against forests typified in the Penal Code. That said, with what was approved in the Sole Final Complementary Provision, what is intended is to avoid the classification of lands based on their capacity for greater use, thereby causing lands intended for forestry use to be used as agricultural lands.

Another important point regarding this Provision is the fact that its last paragraph constitutes a danger for territorial planning, since it contemplates the fact that those who have not made the minimum reserve (30%) of the forests on their properties, they may compensate for it on the same property or on another, which is dangerous since this reserve is precisely aimed at protecting specific parts of said space that need to be conserved due to their very particularity.

From the above, it is unavoidable that, with the promulgation of this law, which modifies the Forestry and Wildlife Law, which approved complementary provisions aimed at promoting forest zoning, the deforestation of forests will be unconstitutionally validated and legalized.

## **VII. NATIONAL AND INTERNATIONAL ENVIRONMENTAL REGULATIONS UNCOMPLIED BY THE PERUVIAN STATE AS A CONSEQUENCE OF THE APPROVAL OF LAW 31973**

## A. Political Constitution of Perú of 1993

The Constitution has recognized forestry and wildlife resources as constitutional legal assets, as well as the legal-constitutional regime established in their favor. Indeed, the 1993 Constitution has provided for a special section entitled "On the environment and natural resources", within the title referring to the "Economic Regime". These are articles 66, 67, 68 and 69.

If one reviews the foundation of Law No. 31973, one finds an invocation and isolated interpretation of articles 59 and 88 of the Constitution, without harmonizing its interpretation with articles 66, 67, 68 and 69 of the Constitution, which state:

**Article 59.-** *The State stimulates the creation of wealth and guarantees freedom of work and freedom of enterprise, commerce and industry. The exercise of these freedoms must not be harmful to public morality, health, or safety. The State provides opportunities for improvement to sectors that suffer from any inequality; In this sense, it promotes small businesses in all their forms.*

**Article 88.-** *The State preferably supports agricultural development. It guarantees the right of ownership over land, privately or communally or in any other associative form. The law can set the limits and extent of the land according to the peculiarities of each area. Abandoned lands, according to legal provisions, become the domain of the State for sale.*

**Article 66.-** *Natural resources, renewable and non-renewable, are the Nation's heritage. The State is sovereign in its use. The conditions for its use and granting to individuals are established by organic law. The concession grants its owner a real right, subject to said legal norm.*

**Article 67.-** *The State determines the national environmental policy. Promotes sustainable use of natural resources.*

**Article 68.-** *The State is obliged to promote the conservation of biological diversity and protected natural areas.*

**Article 69.-** *The State promotes the sustainable development of the Amazon with appropriate legislation.*

It also leaves aside article 2.22 of the Constitution, referring to the protection of the right to a harmonious and balanced environment. Thus, norms are being interpreted without respect to the principles established by the Constitution. That is to say, they only want to look at the sectoral norms that regulate specific powers, and interpret them in isolation, ignoring other constitutional principles.

In the present case, the constitutionality of this Law is based on two norms of the Constitution. In articles 59 and 88 of the Constitution. Note that article 59 is cited, but it deletes the part of article 59 that precisely says that freedom of business, commerce and industry **is not an absolute right, but is limited by other constitutional legal rights.**

No solo la moral, la salud y la seguridad pública limitan la libertad de empresa, sino el medio ambiente, y en este caso la protección del patrimonio forestal también son un límite a la libertad de empresa.

La Ley cita también el artículo 88 que establece que “El Estado apoya preferentemente el desarrollo agrario”. Habría que señalar que el Estado al momento de promover el desarrollo agrario, debe respetar el medio ambiente. En otras palabras, el medio ambiente irradia toda política de desarrollo agrario. Como dice el propio artículo 44 de la Constitución, el Estado no debe impulsar cualquier desarrollo sino un desarrollo equilibrado y adecuado a la vida.

Not only morality, health and public safety limit the freedom of enterprise, but the environment, and in this case the protection of forest heritage, are also a limit to the freedom of enterprise.

The Law also cites article 88, which establishes that “The State preferably supports agrarian development.” It should be noted that the State, when promoting agricultural development, must respect the environment. In other words, the environment radiates every agricultural development policy. As article 44 of the Constitution itself says, the State must not promote any development but rather a balanced development appropriate to life.

It is clear that a systematic interpretation of articles 59 and 88 of the Constitution is needed in light of the other norms of the Constitution, which has not been done during the preparation and approval of Law No. 31973, which is why it has been failed to comply with the provisions of the Political Constitution of Peru, violating and weakening it.

## **B. Law N° 29763, Forestry and Wildlife Law**

Article 4 paragraphs b. and f. of Law No. 29763, Forestry and Wildlife Law, clearly establishes that forestry and wildlife resources maintained at their source and lands of greater forest use capacity and lands of greater use capacity for protection with or without forests, make up the Forest and Wildlife Heritage of the Nation. This is evident from its wording:

### ***Article 4. Forest and Wildlife heritage of the Nation***

- The forest and wildlife heritage of the Nation is made up of the following:*
- a. Forest ecosystems and other wild vegetation ecosystems.
  - b. Forest and wildlife resources maintained at their source.**
  - c. Forest and wildlife biological diversity, including their associated genetic resources.
  - d. *Los bosques plantados en tierras del Estado.*
  - e. *The services of forest ecosystems and other wild vegetation ecosystems.*
  - f. *servicios de los ecosistemas forestales y otros ecosistemas de vegetación silvestre.*
  - f. Lands with the capacity for major forestry use and lands with the capacity for major use for protection, with or without forests.**
  - g. The landscapes of forest ecosystems and other wild vegetation ecosystems as long as they are subject to economic use. Forest plantations on private and communal properties and their products are considered forest resources, but are not part of the forest and wildlife heritage of the Nation. (our emphasis)**

**The consequence is clear, they cannot be used for agricultural activity, for agricultural purposes or other activities that affect vegetation cover, sustainable use and conservation of forest resources. As we observe in article 5 of the Forestry and Wildlife Law:**

**Artículo 5. Forest resources**

*The following are forest resources, regardless of their location in the national territory:*

- a. Natural forests.**
- b. Forest plantations.**
- c. Lands whose greatest use capacity is forestry and for protection, with or without tree cover.**
- d. The other wild components of the emerging terrestrial and aquatic flora, including their genetic diversity.**

In short, what the Law intends is to enable agricultural activities in territories with forestry aptitude. As Lucila Pautrat points out in the amparo lawsuit filed against the agriculture ruling, *“there is no doubt that the Amazon forests and the lands whose capacity for greatest use is forestry and for protection with or without tree cover, by constituting forest resources in accordance with the subsections to. and c. of Article 5 of Law No. 29763, they cannot be devastated or harmed by agricultural activities or any other nature unrelated or different to forestry activities, nor can the initiation or formalization of said agricultural activities be encouraged; especially when the current legal system itself identifies these activities as a violation of forestry legislation and as environmental crimes.”*

De igual manera, la Ley pretende la eliminación de la clasificación de tierras y la prohibición de cambio de uso, exigida por el artículo 38 de la Ley Forestal y Fauna Silvestre, redactado de la siguiente manera:

Likewise, the Law seeks to eliminate land classification and the prohibition of change of use, required by article 38 of the Forestry and Wildlife Law, worded as follows:

**Artículo 38. Use of lands with higher use capacity for clean cultivation or permanent crops with current forest cover**

When there is forest cover on public domain lands technically classified as having a greater use capacity for clean cultivation or permanent crops, according to the **Regulations for the Classification of Lands for their Greater Use Capacity**, Serfor may authorize their change of current use for agricultural purposes, respecting the ecological-economic zoning, of medium or higher level, **approved by the regional government or local government, corresponding, and prior binding opinion of the Ministry of the Environment in accordance with the administrative procedure approved by both authorities for this purpose.**

Once the change of current use is authorized to carry out the removal of the forest cover, proceed as established in the article referring to clearing where applicable. In the cases of private properties whose current vegetation cover contains forest mass, the change of use requires authorization from the regional forestry and wildlife authority supported by a technical microzoning study.

In all cases, in each property or productive unit a minimum of thirty percent of the existing forest mass is reserved on land suitable for agriculture, in addition to the obligation to maintain riparian or protective vegetation. (Our highlight)

What the Law actually seeks is the elimination of the two basic requirements: Classification of Land by its Capacity for Greater Use and the change in land use. And this, in the words of Lucila Pautrat, will generate *“the legalization and/or formalization of activities carried out illicitly, such as change in land use, illegal logging, deforestation, clearing, land usurpation, invasions, expansions of agricultural frontiers, illicit plantations, among others that, with their implementation, would affect the Forest and Wildlife Heritage made up of the Amazon Forests and forest lands since they were developed without any authorization issued by a competent authority such as the Ministry of Agrarian Development and Irrigation. – MIDAGRI, the National Forestry and Wildlife Service - SERFOR or the Regional Forestry and Wildlife Authorities - ARFFS (including the Technical Forestry and Wildlife Authorities - ATFFS), according to the competence of each of these entities; that is, without taking into consideration technical criteria that ensure that the execution of the activities does not affect the appropriate use of the land.”*

Likewise, impunity in criminal matters is sought for people who have deforested forests. As we know, the regulations are not retroactive unless they benefit the prisoner, in accordance with article 103 of the Constitution:

**Article 103°.-**

*Special laws can be issued because the nature of things demands it, but not because of the differences of people. **The law, from its entry into force, applies to the consequences of existing relationships and legal situations and has no force or retroactive effects; except, in both cases, in criminal matters when it favors the accused.** The law was repealed only by another law. It is also voided by a ruling that declares its unconstitutionality. The Constitution does not protect the abuse of rights.*

As a consequence of the approval of the Sole Final Complementary Provision of the Law that modifies Law No. 29763, Forestry and Wildlife Law and the complementary provisions aimed at promoting forest zoning, all police and fiscal investigations and judicial processes Penalties would be filed, generating impunity for deforesters. As Pautrat points out, *“total impunity would be generated for irregular conduct carried out by natural and legal persons, both in the administrative sphere - established by the MIDAGRI, ARFFS/ATFFS - as well as the criminal investigations followed by the Public Ministry, through the Specialized Prosecutor's Offices in Environmental Matters (FEMA), for the commission of environmental crimes in the form of crimes against natural resources and through the Specialized Prosecutor's Offices in Organized Crime, for the commission of crimes committed by criminal organizations”*.

Finally, and what is worse, deforestation is validated. The approval of the Law will allow *“on the one hand, the unconstitutional validation of the deforestation of a total of 2,636,585 hectares of forests in Peru that occurred from 2001 to 2020 as reported by the Monitoring of the National Forest Program of the Ministry of the Environment and; Likewise, what will generate from now on is a greater and massive deforestation of the Amazon forests at the hands not only of owners of private properties, but also of the possessors, who currently cannot cut down the forests if they do not previously have the approval of the Land Classification due to its greater use capacity and with the authorization of change of use to carry out the removal of forest cover.”*

### **C. Law Nº 28611, General Environmental Law**

The General Environmental Law includes in its Preliminary Title those principles on which environmental management in Peru must be governed.

#### ***Artículo V.- From the principle of sustainability***

*The management of the environment and its components, as well as the exercise and protection of the rights established by this Law, are based on the balanced integration of the social, environmental and economic aspects of national development, as well as the satisfaction of the needs of current and future generations.*

#### ***Artículo VI.- From the principle of prevention***

*Environmental management has as its priority objectives 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.*

For its part, the Constitutional Court has established in relation to the principle of prevention:

*“The State's duty to adequately prevent the risks facing the ecosystem, as well as the damage that can be caused to the environment as a consequence of human intervention, especially in the performance of an economic activity, is unavoidable. Furthermore, the principle of prevention obliges the State to execute actions and adopt technical measures that are intended to evaluate the possible damage that may be caused to the environment”*.



It is important to note that the Constitutional Court requires measures to be adopted to neutralize environmental damage when a risk exists and is known in advance. In the present case, the principle of prevention operates, since the nature of deforestation in Peru and its harmful effects in the medium and long term are widely known. There is solid scientific evidence that allows us to warn of the dangers to the environment in Peru in the future. That is why, by virtue of this principle, the State must optimize its public management tools to offer real solutions and resolve the underlying problem.

But in addition to the environmental constitutional principle, we have the general obligation of States to prevent violations of human rights in general. Indeed, States must not only refrain from violating fundamental rights, they must also prevent those violations that are serious, according to their development in International Human Rights Law. The Peruvian State, in its capacity as a State party to the American Convention, has an objective duty to protect the human rights of people against acts committed by third parties. Especially when you know of real and immediate risks of violations of your rights.

This duty of prevention has also been developed by the European Court of Human Rights. The European Court has adopted decisions in this regard where some specific criteria are used to define it. Thus, in the case *Osman v. United Kingdom*, a cautious approach was established to define the duty of prevention.

For its part, the Inter-American Court has also specified jurisprudential criteria on the duty of prevention against the actions of third parties. For the Court, the State has the obligation to reasonably prevent violations of human rights. Likewise, in the case of the Pueblo Bello Massacre, he affirms that the conventional obligations of states do not imply unlimited responsibility for any act coming from individuals, but rather those conditioned *"to knowledge of a situation of real and immediate risk for a given individual or group of individuals and the reasonable possibilities of preventing or avoiding that risk"*.

The progressive deforestation of the Peruvian Amazon means a massive violation of the right to enjoy a healthy environment of all Peruvians, in particular, and of national citizens, in general. As such, it is attributable to the State, since it has not taken sufficient measures to alleviate the problem. That is, although it is not directly responsible for deforestation, it is responsible for failing to take effective actions to protect the Peruvian Amazon. This, in accordance with the doctrine of foreseeable and avoidable risk.

In the specific case, the progressive deforestation of the Amazon represents a situation of real and immediate risk, since it has been scientifically proven and its first effects are already possible to perceive and measure in the environment. This situation seriously threatens the rights of all Peruvians and is the result of the action of private agents (legally and illegally) who operate in the Amazon territory. The Law would definitely contribute to the deforestation and destruction of the Amazon.

Likewise, there are reasonable possibilities to prevent and avoid risks, through the modification and optimization of public policies on environmental and forestry matters, which lead to the reduction of net deforestation in the Peruvian Amazon to zero, and the increase in state capacity. supervision and punishment of environmental infractions and crimes. On the other hand, the State is intimately aware of the risk situations in the Amazon regions, to the point of having documented them and collected abundant information about them, but has not taken efficient action to date.

The Ministry of the Environment, for example, is technically capable of monitoring deforestation in almost real time – thanks to satellite images – but cannot intervene in degraded areas with police and prosecutor personnel. Finally, the cases described could have been avoided with more efficient public policies and greater control action in the field. Instead of carrying out these measures, it legislates in favor of deforestation by dispensing with essential requirements for the implementation of agricultural and agro-industrial projects on lands suitable for forestry and protection that will seriously affect the environment, thus contravening the principles established in the General Law of the Environment.

#### **D. ILO Convention 169**

Although the Second Transitory Complementary Provision of Law No. 31973 makes express reference to peasant, native and town communities in voluntary isolation and initial contact, this norm has been approved without prior consultation, which violates the right to prior consultation, and the obligation to obtain consent recognized in Article 6 of ILO Convention 169, regulated by Law 29785 and developed by the binding jurisprudence of the Constitutional Court (TC hereinafter) and the Inter-American Court of Human Rights (Inter-American Court in forward), as well as, violates what is established in Annex 18.3.4. of the Peru - US FTA, specifically regarding having the opinion of indigenous communities.

Likewise, taking into account that of the approximately 2,666 native communities that exist in Peru, 710 communities lack title to their traditionally occupied territories, this law constitutes and promotes the dispossession of land from native communities, which constitutes a threat of form. certain and imminent property rights of native communities over their traditionally occupied territories that do not yet have property titles, this would be configured since within the framework of the Law, enabling titles may be granted to those who have developed activities without having the respective zoning, which could cause a kind of overlap with the territories of indigenous peoples.

To the extent that this law affects the rights to land and territory of indigenous peoples, recognized by ILO Convention 169 and the binding jurisprudence of the Inter-American Court, it should have been consulted and has not been. The requirement to consult legislative acts that affect indigenous peoples is established in article 6 of ILO Convention 169.

It is important to note that the determination of whether a norm should be consulted does not depend on its name, but on the effects it may have on the rights of indigenous peoples. On this point, the Constitutional Court points out in its ruling 00022-2009-PI. (f.j. 21) that the specific regulations on indigenous peoples and those of a general nature that directly affect them must be consulted. For the TC, the direct impact refers to the legal modification of the situation of members of indigenous peoples in relevant issues and in a substantial way.

Likewise, the TC, in its ruling 00025-2009-PI (f.j 25) indicates that any state measure (administrative or legislative) is subject to consultation “whose effect is to undermine, harm, unfavorably influence or cause a direct alteration in the rights and collective interests of indigenous peoples”.

Through this Law, the Government “has” a precious and fundamental asset for peasant and native communities such as their territory. Consequently, they should and should be consulted. In this case, not only will it affect them, but this law will leave them without their land. What greater and more disastrous impact can be demanded. Unsanitised territories are handed over “de facto” despite the fact that many of these territories belong to indigenous peoples.

## **VIII. REGULATORY IMPACTS OF STANDARDS/IMPACTS OF NON COMPLIANCE**

Within the framework of the above, the approval and subsequent application of Law No. 31973 would generate the following negative impacts:

### **A. From the environmental perspective:**

To the extent that the Antiforest Law promotes and validates deforestation, an increase in emissions from the LULUCF sector would occur, which are the main greenhouse gases that Peru emits in the context of the global climate crisis. Within the framework of this, the National Forestry and Wildlife Service – SERFOR, through Official Letter No. D000912-2023-MIDAGRI-SERFOR-DE, indicated its position contrary to Law No. 31973 and has warned that the formalization of land as agricultural crops with forestry and protection capacity would facilitate the processes of land use change, stimulating deforestation and soil degradation, affecting compliance with the climate commitments that Peru has assumed. In that same sense, SERFOR has indicated that the changes to the Forestry Law do not take into account the proposed regulatory improvements in relation to Contracts for the Transfer of Use of Agroforestry Systems, thus encouraging deforestation in favor of particular interests.

The most recent data from MINAM on the advance of deforestation in the Amazon forests, corresponding to the years 2021 and 2022, indicates that far from having slowed down, said deforestation process continues at high levels, having added 284,551 additional deforested hectares in those two years. Recent studies warn that agricultural activity is the main direct cause of deforestation. The “Monitoring of the Andean Amazon Project (MAAP)” analyzed the National Map of Agricultural Surface prepared by MIDAGRI, finding that 56% of the forest lost in the Peruvian Amazon, between 2001 and 2017, had been converted into agricultural surface in 2018.<sup>17</sup>

<sup>17</sup> MAAAP (2021) “Agriculture and deforestation in the peruvian amazon” <https://tinyurl.com/2b8nys2k>

Likewise, the risk of increased deforestation is increased, considering that every year deforestation in Peru increases and its main cause is the change in land use for agricultural activities, even more so if we take into account that this law allows those who have deforested for agricultural purposes<sup>18</sup> (fully aware that doing so without authorization constitutes prohibited behavior and a crime) can now regularize their situation, that is, legalize it. Which means that these lands used for forestry will no longer be recovered and would be destined for agricultural use.

In addition, the modified Forestry and Wildlife Law established that 30% of the property granted as property must be used for forest. Now that requirement has been made more flexible since those areas can be used in agricultural activity as long as they are compensated with reforested areas. This definitely increases the loss of forest, especially when in our country, the State has little capacity for supervision and control.

## **B. From the social perspective:**

The increase in social conflict and intensification of situations of helplessness and vulnerability of indigenous defenders, it should be noted that the Ombudsman's Office, through its deputy for the Environment, Public Services and Indigenous Peoples, has indicated that between the years 2020 and 2022, 17 cases of murder of environmental and indigenous defenders were recorded, as a result of conflicts derived from their efforts to defend and preserve their territories and communities against the advance of illegal occupation and deforestation of their lands.

Along these lines, Law No. 31973, by favoring those who have invaded lands, can increase the existing conflict situation between them and the indigenous communities that defend the territory. Consequently, this Law may affect defenders, who could be sued in this new context for preventing the dispossession from taking place.

On the other hand, Law No. 31973 has serious consequences for the fight against illegal coca production, which has grown considerably in recent years. The most recent official data, as of 2022, indicate that the national area dedicated to coca cultivation amounts to 95,008 hectares, an increase of 75.5% in just 5 years, while in 2018 the cultivated area of coca reached 54,134 hectares.

It is of particular concern that by 2022, coca crops in the territory of indigenous and peasant communities occupied a total of 18,076 hectares, while coca crops in protected natural areas and their buffer zones totaled 14,865 hectares. Law No. 31973 will make difficult the process of implementing actions to control illegal cultivation and production of coca that have been considered within the framework of the National Anti-Drug Policy for 2030.

It should be noted that the National Commission for Development and Life without Drugs – DEVIDA, the governing body in the prevention of drug use, expressed its concern regarding the legislative proposals to modify the Forestry Law, which were later integrated into the Law. No. 31973. DEVIDA warned that by enabling the possibility of developing crops in forest and forest areas with the presentation of a property title or proof of possession, deforestation and the advancement of coca cultivation could be facilitated and stimulated. illicit purposes in these areas, to the detriment of native communities and indigenous Amazonian peoples.

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<sup>18</sup> It is important to distinguish the situation of those people who were part of the migratory waves to the Amazon promoted by the State from those who have invaded forest land in recent times.

Finally, with respect to the territories, Law No. 31973 puts the land and the territory at risk, as has been pointed out, 710 native communities still do not have property title and this situation makes them vulnerable to natural or legal persons who have a record of possession that has been obtained irregularly.

### **C. From the legal perspective:**

From the legal field, the impact of the right to prior consultation of indigenous or native peoples is observed; impunity and promotion of illegal economies, such as land trafficking, illegal logging and drug trafficking; and, the failure to comply with International Treaties signed by Peru, such as ILO Convention 169, the Paris Agreement (UNFCCC) and the FTAs with the United States of America and the European Union.

Likewise, the Ombudsman's Office has indicated that the application of Law No. 31973 in practice will allow the exoneration and administrative, criminal and civil impunity in forestry and agricultural matters for those who have proof of possession and property titles over deforested lands in those in which agricultural activities are carried out. It should be noted that Law No. 31973 would benefit large companies with oil palm and cocoa plantations that have been denounced for falling into speculation and land trafficking to increase their cultivated areas. The best-known complaints are against the companies Fundo Tamshiyacu in Loreto, Palmas del Oriente in San Martín, Plantaciones de Ucayali and Plantaciones de Pucallpa, which even face criminal proceedings for environmental crimes. Also the company Palmas del Shanusi (linked to the Romero Group) which was reported for purchasing land with crops and forests from farmers who sold their proof of ownership. These illegal acts had the complicity of regional authorities and officials who illegally issued certificates of possession or property titles, even on invaded lands. This opens the door to the increase in land trafficking that has already been denounced, with evidence, in regions such as San Martín and Ucayali, even with the complicity of regional authorities and officials who illegally issued certificates of possession or property titles<sup>19 20</sup>.

This Law is contrary to the efforts to guarantee and promote conservation and sustainable use, putting at risk the well-being and survival of around 370 thousand native inhabitants, belonging to more than 2,700 native communities, whose identity, culture and livelihoods are supported by forests, as it will facilitate the granting of property titles on properties that may overlap with territories of native communities and riverine communities in the process of recognition or titling. This is the case of the Nueva Austria del Sira, Unipacuyacu and Nueva Alianza communities, in Huánuco, whose ancestral territories are reduced by more than 60% due to the illegal occupation of 24 thousand hectares by third parties, to whom the mayors, courts and the government Huánuco regional office granted hundreds of certificates of possession and individual titles<sup>21</sup>.

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<sup>19</sup> Shanee, N., & Shanee, S. (2016). Land Trafficking, Migration, and Conservation in the "No-Man's Land" of Northeastern Peru. *Tropical Conservation Science*, 9(4), Art. 4.<http://tinyurl.com/msur4bch>

<sup>20</sup> Sierra Praeli, Y. (2018). Tráfico de tierras en Ucayali: funcionarios detenidos por pertenecer a mafia. Mongabay <http://tinyurl.com/3h6apbn4>

<sup>21</sup> Vera, E. (2021) Amazonía: La ilegal entrega de tierras que arrinconó a comunidades nativas de Huánuco. Convoca.pe <http://tinyurl.com/44t8w6nb>

In contrast, the State has failed to secure the collective territories of the native communities. The State itself recognizes a gap of 721 native communities still to be titled. However, the UEGPS/PTR3 of MIDAGRI in 2023 only made 40% progress in meeting its goal of demarcating the territory of native communities, according to the Institutional Evaluation Report (PEI-POI) of MIDAGRI, corresponding to the year 2023<sup>22</sup>.

On the other hand, it is necessary to observe the impunity that will be generated, because in the criminal sphere, as established by the Penal Code in its article 310, the destruction of forests or forest formations, without permission or authorization, is considered a crime. Thus, the penal code states:

*Article 310: It will be punished with imprisonment of no less than four years nor more than six years and with the provision of community services of forty to eighty days, anyone who, without having a permit, license, authorization or concession granted by a competent authority, destroys, burns, damages or fells, in whole or in part, forests or other wooded formations, whether natural or plantations.*

Previously, in order not to be prosecuted for this crime, it was necessary to have authorization to change land use, now it is enough to have proof of possession to evade responsibility. The State Attorney specialized in environmental matters, Julio Guzmán, has publicly indicated that this Law will allow the filing of criminal proceedings for crimes against forests in at least 150 cases of companies and religious groups that occupy large areas of land for forest use. In other words, this Law allows deforestation to be legalized and this criminal act not to be punished.

This rule also encourages the commission of the crime of illegitimate granting of rights over real estate, also known as “land trafficking”, which is established in article 376-B of the Penal Code. This type of crime indicates the crime occurs when officials or public servants grant certificates of possession or property titles to people who do not meet the requirements of the Law or illegally occupy real estate in the public domain, private state domain or private property. In the Amazon, numerous cases of land trafficking on national forest assets or communal property have been reported. It is considered that, with this Law, these cases may increase.

## **D. Institutional Weakening**

The Ombudsman's Office questions that it is intended that MIDAGRI and not MINAM, which is the governing entity in environmental matters and environmental territorial planning, is in charge of the forest zoning required for the assignment of uses on forest lands. With this scheme, the application of the ecosystem approach and the integrated management of land, water and living resources, for their conservation and sustainable use, as well as respect for the uses and customs of indigenous peoples, would be ignored; all of which would be overshadowed by the prioritization of agricultural activities. Likewise, the approval of forest zoning by the MINAM guaranteed the articulation of forest zoning with other management instruments, such as the National Biological Diversity Strategy, the National Climate Change Strategy, protected natural areas, compatibility with Zoning Ecological and Economical<sup>23</sup>.

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<sup>22</sup>MIDAGRI (2024). Informe de Evaluación Institucional (PEI-POI) del MIDAGRI, correspondiente al año 2023. <https://www.midagri.gob.pe/portal/images/pcm/2024/inf-eval-pei-poi-2023.pdf>

It should be noted that the deforestation process in the Amazon forests has significantly affected the natural reserve areas, putting their sustainability at risk. In this way, between 2002 and 2016, 60,055 hectares of Amazon forest belonging to protected natural areas were deforested according to the data compiled by the MINAM, to which another 431,003 hectares located in the buffer zones of said protected natural areas must be added. In this way, the advance of deforestation processes represents a considerable risk for protected natural areas and the biodiversity that they support. The application of the provisions of Law No. 31973 will be an aggravating impulse for the deforestation processes in these natural areas, by weakening and precarious the legal protection that supports them.

By passing the approval of permanent production forests and forest zoning from MINAM, which promotes environmental protection, to MIDAGRI, which promotes agriculture, this Law weakens environmental management. Likewise, leaving aside technical and forest management instruments such as studies of the capacity for greater land use and forest zoning, weakening the possibility of protecting the environment and, in particular, the forests.

**For all the reasons indicated, on behalf of all the organizations and natural persons that sign this document, we request that you, Mr. Secretary, please attend to this complaint and process it in accordance with the procedures established by the Secretariat for Submissions on Environmental Enforcement Matters.**



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**Hugo Che Piu Deza**  
**Executive Director**  
**Derecho Ambiente y Recurso Naturales (DAR)**

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<sup>23</sup> Silva, F. (2022) Informe sobre la opinión de su sector respecto del PL 649/2021-CR, 894/2021- CR y 2315/2021-CR, denominada "Ley que modifica la Ley 29763, Ley Forestal y de Fauna Silvestre, y aprueba disposiciones complementarias orientadas a promover la Zonificación Forestal", En: Hoja de Reporte de Sesiones. Síntesis de Acuerdo de Comisiones. Congreso de la República.  
[https://www2.congreso.gob.pe/Sicr/ApoyComisiones/comision2011.nsf/8bd20a6885f3c14605257a64007a99d6/9144588c084330c5052588bd005690ac/\\$FILE/14-9-22-AGRARIA-2SESIONORDINARIA.pdf](https://www2.congreso.gob.pe/Sicr/ApoyComisiones/comision2011.nsf/8bd20a6885f3c14605257a64007a99d6/9144588c084330c5052588bd005690ac/$FILE/14-9-22-AGRARIA-2SESIONORDINARIA.pdf)

## **IX. ANNEXES**

They are available in the following link:

[https://drive.google.com/drive/folders/1PI2lrh\\_GL2\\_duRcWgt6EyQTg2cmZ2ew?usp=sharing](https://drive.google.com/drive/folders/1PI2lrh_GL2_duRcWgt6EyQTg2cmZ2ew?usp=sharing)