

Peru's proposed Ministry of the Environment: what is at stake?

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Basic information:

- On October 28th, 2007, Alan Garcia wrote a page of commentary in *El Comercio* arguing that “the old anticapitalist communist of the 19th century disguised themselves as protectionists in the 20th century and changed colours again in the 21st century to be environmentalists”
- On December 20th, 2007 Alan Garcia announced his intention to create a Ministry of the Environment
- The Executive has prepared a proposal for what this Ministry should look like. The Congressional Commission on Andean and Amazonian Peoples, Environment and Ecology chaired by Gloria Ramos has prepared a different proposal, as has the College of Engineers
- A commission to draft the design of the Ministry has been created and is chaired by ecologist, Antonio Brack Egg.
- On January 23rd Brack commented he hoped to have a final design proposal by February 15th, 2008. However, the Supreme Decree to formally ratify the commission has not yet been passed

Governments might create ministries but they don't own them. Ministries are parts of a State whose *razón de ser* is to foster order in society through laws and their enforcement, through seeking that all citizens share basic principles about acceptable behaviour, and through ensuring the relative predictability that we all need in order to be able to plan and move on with our lives. When the State fails in these purposes, disorder grows and citizens suffer.

The quality and legitimacy of any *part of* the State has implications for the legitimacy of the State *as a whole*. In embarking on institutional reforms governments therefore have a very significant duty of trusteeship regarding the larger implications of their actions. In Peru, where achieving a socially legitimate, democratically agreed upon sense of order has been so challenging, such general concerns should probably inform any and all specific efforts to reform the State. The design of a Ministry of the Environment (MMA), then, has to be considered in light of its implications *both* for ensuring order, predictability and shared basic values regarding society's relationship to the environment *and* its implications for the ability of the State as a whole to ensure overall social cohesion.

So how far does the Executive's current proposal for a new MMA measure up? One does not have to be obsessed with mining to recognize that disputes related to the expansion of extractive industries and the regulation of their environmental and social impacts have driven some of the most profound and sustained questioning of the legitimacy of the Peruvian State and of the existing order – as the Defensoría del Pueblo reported to the Peruvian Congress in early 2007. One might therefore have expected that a new MMA would address concerns underlying these disputes. These

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concerns, shared across the spectrum from the Defensoría through to radical activists, are that:

- There is a conflict of interest when the Ministry of Energy and Mines (MEM) is responsible for promoting its sector, at the same time as evaluating environmental impact statements to determine whether mining projects should proceed
- The Ministry's capacity and diligence in attending to environmental regulation are too compromised to instil any confidence in its ability to attend to citizens' environmental concerns
- The decision to transfer the supervision of mines' environmental performance to OSINERGMIN while MEM maintained all regulatory authority and controlled the approval of EISs, failed to resolve the first problem while creating further dispersion of environmental responsibility.
- There should therefore be an *independent environmental authority* with *autonomous* power to regulate and sanction

The proposed MMA does *nothing* to address these issues. It is silent on what will happen to MEM's roles in environmental regulation, and while saying that the MMA will bring together INRENA, INADE, CONAM, PRONAMACHCS and DIGESA it is explicit in saying that OSINERGMIN will continue to exist independently of the Ministry. While giving the MMA as its first function "To formulate, plan, lead, coordinate, execute, supervise and evaluate national environmental policy" it apparently gives it no powers in the arena which has seen by far the most environmental conflict. This would be somewhat akin to giving a Ministry of Education responsibility for education policy and quality, but no power over teachers nor rights to assess their performance (powers and rights that the current Ministry of Education has insisted and demonstrated are central to its ability to improve education). The accompanying text justifying the Executive's proposal gives no explanation for the proposed independence of OSINERGMIN, nor the document's silence on extractive industries.

Three other reasons deepen the sense that the Executive's proposal would fail to create a Ministry with either *autonomy* or *authority*.

First, the *financial*: the proposal says that the Ministry will require no additional public funds because it will operate with those currently controlled by the entities that will be fused together to form it. Yet, as the proposal's own accompanying text makes clear, these funds have been palpably insufficient for delivering forms of regulation that protect the environment. There is little reason to expect that a Ministry funded at the same level will be able to do much more.

Second, the *political*: the proposal says that one of the MMA's main tasks will be to "Establish policy, criteria, tools and procedures for Territorial Planning and Environmental Planning." At another point it says MMA will have the power to declare protected areas for water resources. *If* this is to mean that it will have the potential authority to identify environmental "no-go" areas for extractive industries, this will lead to head on conflicts with the National Society for Mining, Oil and Energy - conflicts in which the MMA will require full backing of the executive if it is to be effective. Yet the explicit exclusion of OSINERGMIN from the proposed design, and the lack of any mention of what will happen to the environmental roles of

the MEM, question how far such presidential backing can be guaranteed. Moreover, because the Minister will be hired and fired by the President, this will not be an environmental authority with autonomy from the Presidency.

Third, the *bureaucratic*: the proposal remains vague on various critical points. For instance, and as Cooperación have noted, while the proposal says the MMA will “lead the National System for Environmental Impact Evaluation” and will supervise the evaluation of Environmental Impact Studies for both public and private sector investments, it does not say that MEM will give up such roles for its sector. Vagueness such as this will lead the MMA into inter-ministerial wrangling that will divert much energy and stall any progress on its core mission.

Two comparisons with the Defensoría del Pueblo are appropriate here. First, the Defensoría has been able to contribute so much to the quality of governance in Peru because it is independent of the Presidency – the Ombudsman is appointed cross-party by Congress. Second, its effectiveness is not because of its public funding (which is meagre) but because of the international cooperation support it receives. If the MMA is really to enhance environmental quality in Peru, the support of international cooperation will be paramount.

So one has to ask whether the legislation has been designed to fail? And if it has been designed to fail, why did Alan Garcia announce its creation on December 20th, 2007? Centrist commentators in Peru (e.g. David Rivera, *El Comercio* 14/1/07) wonder out loud whether this is just an attempt at window dressing, reflecting no real environmental commitment and serving as a mere political gesture to allow the government to continue promoting investment. Is this, then, an MMA designed as part of an on-going presidential attempt to demonstrate dedicated trusteeship of the economy, in the process compromising the quality of its trusteeship of the State?

Garcia himself explained the proposal as a response to demands made by the US regarding labour rights and the environment during negotiation of the FTA (*El Comercio*, 20/12/07). Informed sources also report that just prior to the IDB’s approval of a loan for Camisea II on December 19th, 2007, Garcia received a direct call from the Bank’s president on the matter. If this is so, then environmental justice activism makes a difference, because both the IDB and the US Trade Representative were under intense pressure from activists in the run up to both these deals. However, the lesson is that it is not enough simply to create the space for an Environment Ministry – because that space can easily be filled by a proposal with genetic flaws built into its very core. It is *just as important* to have clear proposals as to exactly how that Ministry should be designed and why. The devil really is in the detail and at the moment of writing this argument over detail is being led largely by the Defensoría and the Congressional Commission on Andean and Amazonian Peoples, Environment and Ecology. It will matter immensely which details finally find their way into law – not only for the ability of the MMA to adequately regulate the environment, but also for the overall legitimacy of the Peruvian State and the existing socio-economic order in years to come.