# Climate change and environmental institutio

This article identifies the weaknesses of Peru's environmental and climate institutions, both in their budget allocations for climate change adaptation and mitigation and in their compliance with the national policies approved for this purpose, including the Framework Law on Climate Change and the Peru's Nationally Determined Contributions to the global fight against climate change.

**KEY WORDS:**
Adaptation,
Environment,
Climate change,
Mitigation,
Planning.

## Cambio climático e institucionalidad ambiental en el Perú

El artículo identifica las debilidades de la institucionalidad ambiental y climática del Perú tanto para dedicar presupuesto a la adaptación y mitigación del cambio climático como para cumplir con las políticas nacionales aprobadas con ese fin, entre ellas, la Ley Marco de Cambio Climático y las Contribuciones Nacionalmente Determinadas del país a la lucha global contra el cambio climático.

**PALABRAS CLAVE:**
Adaptación,
Ambiente,
Cambio climático,
Mitigación,
Planificación.

**PAUL E. MAQUET**
*Communicator with a master's degree in Political Communication from the University of Chile and Environmental Journalism from the Instituto Internacional de Formación Ambiental (IIFA). He is currently a member of the National Program of the NGO CooperAcción. He has authored books and articles on the environment, socio-environmental conflicts and alternatives.*

# ons in Peru

AGENCIA ANDINA

The year 2023 is not just any year. It is not simply an El Niño year, a phenomenon that is well-known and recurrent in Peru's history. It is something far more serious: the start of the global climate collapse, long-predicted by science, as a consequence of the pollution of the atmosphere with greenhouse gases.

It is important to make this clear. If we watch the news and follow official statements, it would seem that what we have before us is "only" the El Niño. And by saying "only", I don't mean to downplay its importance: the phenomenon has had and will have devastating consequences for several regions in Peru, which include social, health and economic effects. However, if the events of 2023 and 2024 are approached as merely the effect of the El Niño, the underlying idea is that this is a temporary emergency, which may cause a lot of damage but which "will pass."

But it will not pass. The situation is going to get increasingly worse. And Peru needs to prepare itself seriously for this.

The year 2023 broke all climate records. The record for the hottest day and the hottest month ever recorded (Sanz 2023), the record for sea ice melt (Martínez 2023), the record for wildfires in the northern hemisphere (EFE Green 2023), the record for the highest temperature recorded in winter in the southern hemisphere (Washington Post 2023) were broken. These records have consequences: Montevideo became the first national capital city to be left without drinking water; the flow of the Panama Canal fell to the point of seriously obstructing inter-oceanic trade; and catastrophic floods have occurred on every continent.

In the Mediterranean Sea, the warmer waters produced a front similar to a hurricane, something absolutely unprecedented. When it struck the desert cities of Libya, which are not prepared for rains of that scale, it was a catastrophe with a death toll of about twenty thousand people (Flores 2023)

This string of data has one objective: to understand that this is a new process and not a passing phenomenon like the El Niño. These are references to historic records that have never been reached before, not even during the strongest El Niño episodes.

Let us be clear: none of this is "natural". These records are directly linked to another record, the concentration of carbon dioxide (CO2) in the atmosphere. This has now reached 424 parts per million, the highest in at least three million years (Elcacho 2023). In other words, all human history has developed under different conditions and we have entered unknown climate territory.

Where does all that CO2 come from? Over 80 percent is caused by burning fuels (oil, gas and coal), mostly for generating power. It is important to say this loud and clear, because in times of crisis there is no shortage of speeches that seek to cause confusion and divert attention. One congressman even said that heavy rains are the fault of gender "ideology" (Mujica 2022) and there is an abundance of politicians in the world who believe that climate collapse is some kind of hoax. We are in times of the rise of anti-science.

## THE CLIMATE CRISIS AND PERUVIAN INSTITUTIONS

If modern Peru has never been prepared for any episode of the El Niño phenomenon, even though we have lived with it since pre-Hispanic times, it is far less prepared to face the combined effect of the El Niño and climate change. In 2023, news reports revealed that only a tiny proportion of the budget earmarked for El Niño prevention had been spent (Medrano 2023). In recent years, research has shown that Peru's budget for climate change adaptation and mitigation has never reached even 1 percent of the national budget, or 0.4 percent of the gross domestic product (Alfaro 2021).

There are two key words when talking about climate change policies: *adaptation*, which refers to all those actions required to "adapt" to the consequences of this phenomenon and take advantage of the "opportunities" it could bring; and *mitigation*, which refers to all those actions to reduce the causes of the problem, i.e., greenhouse gas emissions.

Peru has an abundance of policies and the institutional framework for directing them. The two most important instruments are the Framework Law on Climate Change (Law 30754) and the nationally determined contributions (NDCs), both of which are binding, i.e., mandatory.

The Framework Law notably obliges the State to incorporate climate change criteria into its planning and public investment instruments, across all government levels (national and subnational) and sectors (ministries). However, it is worth asking: is this in fact happening? Does government build infrastructure – bridges and roads - taking into account the climate scenarios of the years ahead? Do mining investment promotion policies take into account the scenarios of changing water availability? Do hydrocarbon policies consider the necessary scenario of fossil fuel divestment?

To give an example: as repeatedly mentioned by Liliana Miranda, architect and researcher at the Intergovernmental Panel on Climate Change (IPCC), the Water Resources Law regulations stipulate that the height of bridges must be calculated based on the average maximum flow of rivers, rather than taking into account the maximum extraordinary flow (see Estrada et al. 2023). In other words, bridges are built to collapse at the next extraordinary flow; which means at the next El Niño. Peru designs bridges to collapse every seven or fifteen years. This is worse still in the context of climate change, since we know that flows will be less and less "average" and more and more extraordinary.

The same thing is happening at the subnational level. Local governments have not yet understood for example, that sustainable transport is an essential policy in

the context of climate change, and we have to beg them not to shut down bicycle lanes. And urban growth planning continues without prioritizing the protection of wetlands, valleys or agricultural land, and without properly considering the problems of expanding cities into areas at risk in the event of heavy rains, flash floods or rising rivers.

Although perhaps it is excessive to use the word "planning". The law instructs the State to "plan" with climate change criteria, but the truth is that in Peru nothing is planned. Many plans are documents put away in the files of the bureaucracy, while in the real world we live in the realm of laissez-fair, where the short-term interests of mining, oil, real estate and construction companies or any other company able to influence public decisions are simply imposed.

The second instrument to be considered is the NDCs, the contributions that Peru has offered to the global fight against climate change as part of the Paris Agreement. This is an international agreement in force and ratified by Peru, and the commitments are therefore compulsory.

Peru's NDCs in the area of adaptation (see High Level Committee on Climate Change 2020) include objectives for seven priority thematic areas: agriculture, forestry, fisheries and aquaculture, health, water, tourism and transport. Peru has established 91 adaptation measures in these areas. The mitigation NDCs aim to achieve a 20 percent emission reduction target with respect to the Business-as-Usual (BAU) scenario[1] emissions by 2030, plus an additional 10 percent that is conditional on international cooperation. Peru has defined 62 greenhouse-gas mitigation measures in five sectors: energy, industrial processes and product use, agriculture, land use and waste (see GTM-NDC 2018). These NDCs are undoubtedly an important step forward, and have been translated into more specific proposals in a series of sectoral documents on mitigation and adaptation (see Annexes, GTM-NDC, 2018). However, as mentioned above, the main problem with this instrument is that, although as an international commitment it is binding, its measures are not financed. Alfaro (2021) has shown that over 50 percent of the climate change projects included in the public budget in recent years are not (or are only indirectly) linked to the NDCs. For example, while the NDCs emphasize water conservation and watershed regeneration measures, the budget includes drinking water infrastructure, which may be very important but is not a climate change adaptation measure.

Peru has other instruments and decision-making channels related to climate change. For example, there is a multisectoral National Climate Change Committee with civil society participation, and a National Climate Change Strategy drafted and regularly updated by the Ministry of the Environment (Minam) using participatory procedures. In addition, the law requires that at the subnational level, regional governments also develop similar strategies.

But those in charge of defining and implementing these policies at the sectoral, national and subnational levels have a weak sense of ownership of them. Although no issue is more topical or more urgent, most politicians and officials continue to see the fight against climate change as something remote or of marginal importance. Despite the fact that climate collapse would force profound changes in the way we relate to nature, it is still thought that public policies can continue with inertia, on auto-pilot.

## ENVIRONMENTAL INSTITUTIONS

If climate institutions fail in particular, this has to do with the weakness of environmental institutions in general. And let this be clear: this weakness does not seem to be a coincidence, but part of constant pressure from the business sectors and their political representatives to stop "too much environmentalism" "harming investments and the economy". What these sectors cannot understand is that environmental damage harms the economy.

This section will review some of the most critical issues of Peru's environmental institutions.

• **Land use (LU)**. Land use planning is crucial to ensuring proper management of the various economic activities and their environmental impact. It should make it possible, with technical information and community participation, to define the production priorities in each region. However, the land-use planning policy has faced obstacles, presented both by the State and the business sector, due to the fear that it may hinder investments (especially extractive investments). This has resulted in a zigzag of advances and reversals. The current government has submitted a Bill on LU, but it still raises doubts because it is weak (see Leyva and Zamalloa 2023).

1 "Business-as-Usual", an expression that refers to the continuity of previous policies.

• **Strategic environmental assessment (SEA)**. Strategic environmental assessment is an instrument which has greater scope than the specific environmental impact studies conducted for individual investment projects. Its purpose is not to evaluate investment projects in isolation, but to examine State policies, plans and programs. According to the law, SEA is a systematic, active and participatory process for including the environmental dimension in government agencies' proposals for development policies and programs, using this as a preventive tool for environmental management at the relevant decision-making levels. Despite the fact that this instrument has been established in law for over two decades, in practice it is not applied.

• **Protection of water-producing areas**. The preservation of water producing areas such as headwaters and moorland has been a persistent demand of community organizations and communities affected by mining. After the Conga conflict in 2012, community organizations presented a Bill that addressed the issue The initiative, with several amendments and cuts, became the Headwaters Law in 2017. The law required the National Water Authority (ANA) to develop a methodology for demarcating headwaters, which would allow them to be declared as untouchable areas when considered vulnerable. Although the ANA approved this methodology in 2021, to date it has not once been applied, and not one single headwater has been protected. The mining sector is apprehensive about this issue, as it fears that it could harm investment, while the State seems reluctant to comply with this legal obligation, to avoid affecting the interests of the business sector.

• **Autonomous and resourced water authority**. The National Water Authority (ANA) is the agency in charge of managing Peru's water resources. Although the law creating the ANA stipulated that it would be transferred

to the Ministry of the Environment, it is still under the jurisdiction of the Ministry of Agriculture over ten years later. This poses a conflict of interest, since the agriculture sector is the main water user and, at the same time, the main water-use regulator. It would be advisable for the ANA to become an autonomous agency and be better funded, since the resources currently allocated are insufficient to carry out tasks such as control, definition of ecological flow and marginal strips, and demarcation of headwaters, among other pending responsibilities. In addition, the lack of adequate hydrological stations and baseline data on groundwater flows means that decisions on water-use authorizations and licenses are taken blindly.

• **Strengthening and improving environmental impact assessments**. The environmental impact assessments (EIA) are the instruments designated by law to assess the effects of investment projects and determine the mitigation measures necessary. However, these documents have lost credibility over time and have been called into question in cases such as Conga and Tia Maria. To address these concerns, the National Environmental Certification Service for Sustainable Investments (Senace) was created in 2012, with the intention of strengthening the environmental assessment. However, due to pressure from mining companies and the interest of the State in encouraging investment, EIAs have grown steadily weaker. Governments have passed legislation, such as Law 30230, to reduce the assessment time and penalize officials who delay it, without increasing resources to ensure thoroughness. In addition, government agencies now have only one consultation round for raising objections; EIAs that use data from other studies can be approved; and lower-ranking instruments, such as supporting technical reports, have been created to approve changes faster. Despite all this, both the business sector and the State insist on weake-

ning these instruments even further. For example, the current government has been debating a rule to restrict technical opinions in the EIA evaluation process.

• **Environmental quality standards and limits**. Defining maximum permissible limits (MPLs) and environmental quality standards (EQS) is critical in environmental management. This regulation has been stalled since 1996, when the first MPLs (which are still in force) were approved, and many parameters remain unregulated. The regulation process was hampered by bureaucracy and disagreements in the government commission in charge of it. Although the process was simplified under the first Minister of Environment, Law 30230 subsequently added even further bureaucracy in 2014, which gave the Prime Minister's Office the power to approve MPLs and EQSs. This decision, rather than being technical and environmental, was subject to the political will of economic and productive sectors. Although more than two decades have passed, Peru has still not established limits for certain parameters. Such is the case for mercury and cadmium, which makes it difficult to supervise and sanction companies that pollute the environment with these substances. Mining MPLs too have not been updated since 2010, an issue which is now urgent.

• **Strengthening and improving oversight**. The Environmental Evaluation and Oversight Agency (OEFA) is responsible for ensuring that companies comply with their environmental commitments and obligations. However, its work is hampered by the increasing fragmentation of environmental management instruments, which makes it difficult to monitor projects and companies' environmental obligations. In addition, its budget has been cut in recent years. This reduction in funding and the cuts in the contribution established by regulation, which is the OEFA's main source of finance, indicate a trend that reduces its capacity for action and limits its capacity for oversight. Rather than following this trend, the oversight agency needs to be strengthened to ensure that economic activities comply with their environmental responsibilities.

• **Consultation, participation and consent**. Consultation, participation and, where appropriate, consent of indigenous communities affected by extractive projects are essential for good governance. This consultation must be meaningful and not be used as a mere formality for projects to be approved. In Peru, free, prior and informed consultation with indigenous communities is a legal requirement under ILO Convention 169 (ratified in 1993) and the Consultation Law enacted in 2011. However, in practice, this right has become a hollow procedure. In the mining sector, consultation takes place only at the end of the mining project approval procedure, when all the decisions have already been taken. The Ombudsman's Office has proposed prior consultation on environmental impact studies, which are the documents that define the expected impacts of a project and the mitigation measures. However, until now, Senace and Minam have systematically refused to put EIAs to consultation, despite requests submitted in cases such as Coroccohuayco (Espinar) and the fourth modification of the EIA for Las Bambas (Apurimac). In addition, Peru has failed to comply with ILO Convention 169 standards on consent in cases of community displacement or hazardous chemical discharge.

• **Citizen participation**. Despite the formal existence of procedures in the law, citizen participation is limited and does not guarantee that all stakeholders are informed about mining projects or that their concerns and opinions are taken into account during the project approval process. Existing mechanisms focus on providing unidirectional information, rather than encouraging multidirectional dialogue or active participation in decision-making. In addition, it is hard for the communities to understand such complex information, and they need more accessible materials and access to independent technical assistance. The Escazú Agreement on access to information and public participation provides rules to guarantee that communities have access to information from companies that may affect them, and ex officio technicians to defend the interests of those affected. However, as we know, the current power bloc in Peru - the parliamentary majority - blocked the Peru's ratification of this agreement.

## FINAL COMMENTS

The hegemonic discourse in Peru is that we should not "overdo" environmental protection because it can "harm" the economy. Hence the mining industry's constant campaigns against the supposed environmental "red tape", whose aim is simply to speed up environmental authorizations for facilitating investment, to the detriment of the thoroughness of the evaluation. And that there can be no discussion about stopping oil drilling (the main direct cause of the climate crisis) because "we have to be realistic". Now that this government has created the "infrastructure authority", the same thing

is happening: it has decided to fragment and weaken environmental studies in order to facilitate investment. The looming climate collapse should help us understand that it is exactly the other way around: the only way to protect Peru's economic interests is to preserve the environment. There can be no adaptation or viable economy if the world continues to break records every year for heat, drought, floods, ice melt, forest fires, ocean acidification, erosion and loss of soil productivity … But to understand this we must change the paradigm and move from simple eco-nomics to comprehensive eco-logy.

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