Environmental impact assessment reform in Peru

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Introduction

Peru is one of the most ecologically diverse countries in the world, comprising a large and wide-ranging territory with a considerable wealth of natural resources. Approximately 15% of the GDP depends on natural resources, given that most of the productive activities -the pillars of economic growth of the country -are linked to the direct extraction of those resources. Historically, however, Peru has experienced different peaks of economic growth based on the exploitation of natural resources, such as rubber, guano, saltpeter, anchoveta, hydrocarbons, and minerals. As evidence demonstrates, though, these economic opportunities were not taken advantage of, so as to ensure the country's development (Multi-Sectoral Commission 2009).

Despite Peru's good economic performance, the country also faces a series of environmental challenges. The GoP began a process of policy and institutional reforms aimed at strengthening the environmental management framework to confront some of the most critical aspects of environmental deterioration and the depletion of natural resources. Our main objective in this paper is to discuss the evolution of environmental impact assessment (EIA), in Peru, and its effectiveness in reducing the costs of environmental degradation. We start the analysis by showing how the environmental policy reform began, including how the EIA was initially established, and how the environmental policy was shaped. Then, we characterize the first stage of the process and how the GoP has responded to these problems by strengthening its environmental management framework.

The early stage of EIA in Peru

Early efforts to integrate natural resource planning in Peru, go back to the 1960s with the creation of the National Office for Natural Resources Evaluation (ONERN), which played a substantial role in the systematic collection of data regarding natural resources in the country, conservation policy, and the preparation of national economic and social development plans. In 1990, the National Code for Environment and Natural Resources (Legislative Decree 163) introduced the concept of environmental impact assessment (EIA). It also established that the

EIA be approved before the implementation of investment projects and that the information contained in the EIA be accessible to the public, except in case when this information could affect intellectual property rights.

This approach was strongly challenged by sectors that perceived environmental protection as an obstacle to economic growth. In 1991, resistance to the environmental platform led to the abolishment of Article 8 and Chapter XXII of the Code, through the approval of the Framework Law for the Growth of Private Investment (Legislative Decree 757) that endorsed the distribution of environmental management entities among line ministries[1]. Consequently, during the following years, each ministry developed a sectoral approach to environmental regulation, including the approval of EIA and the supervision of its own staff and its administrative and technical responsibilities.

In 1992, the National Institute of Natural Resources (INRENA) was created and given a dual mandate, as a reviewing agency to other ministries where natural resources were involved and as a sectoral authority for the EIA review of agricultural projects. The National Environmental Council (CONAM) was established in 1994 (Law No. 26410). CONAM's mandate was to (i) propose, manage and evaluate national environmental policy; (ii) elaborate environmental quality standards and maximum permissible levels; and (iii) direct the National System of Environmental Management and the National System of Environmental Impact Assessment. Although the Law for Environmental Impact Assessment of Projects and Activities (Law No. 26786), approved in 1997, gave CONAM the oversight of the EIA, the responsibility of developing the terms of reference for the content of environmental impact studies, licensing, supervising, and enforcing environmental compliance rested on each sectoral ministry.

The Law of the National System of Environmental Impact Assessment (SEIA) was passed in 2001(Law No. 27446). SEIA's implementation, however, began eight years later, when regulations to the law were approved. Despite CONAM's role in governing the SEIA, each sector retained responsibilities in the revision and approval of EIAs. The EIA became a proxy for project tailored pollution-control regulations and land-use planning but without the indispensable context of technical environmental standards, incentives and capacity for project monitoring, evaluation and response. EIA became a permit system that prioritized compliance with procedural stipulations without improvements in the quality of the environment and natural resources (World Bank 2007). Limitations in the use of EIAs included the lack of standardization and uniformity in the content and scope of EIAs across and within sectoral ministries; the notion of public participation as events for sharing information rather than for opening up governmental decision making to public scrutiny; and the weak enforcement of monitoring activities (World

[1] The process the led to the sectoral approach to environmental management began in the 1980s with the creation of the Environmental Affairs Office (1981), as an advising agency to the General Directorate of Mining.

Bank 2009). By the late-2000s EIA had become the key instrument for environmental policy in Peru, covering all economic activities at the national, regional and local levels.

While EIA developed more robustly in the extractive sector, it also confronted the issue of credibility among sectors of civil society that argued that the sectoral authority's (i.e., Ministry of Energy and Mines) intention to apply environmental protection measures was undermined by its mandate to impel the sector's economic growth. This lack of trust and some environmental events led to a spiral of conflicts, negatively affecting the credibility of the EIA system.

The Ministry of Environment (MINAM) and the National System of Environmental Impact Assessment (SEIA)

Significant factors that contributed to the creation of MINAM, included (i) a growing awareness in the public and private sectors of increasingly severe environmental issues; (ii) indirect pressure within the framework of negotiations of the Free Trade Agreement (FTA); and, (iii) a growing concern from civil society, non-governmental organizations (NGOs) and the international donor community about the need for a strong environmental authority to balance the unprecedented economic growth and its associated environmental impacts (World Bank 2009, p.2). MINAM's functions include the review process of EIAs for large projects, environmental licensing, and coordination with key sectors and regions on environmental issues.

Additional reforms also strengthened the legal framework for environmental management through the adoption of the regulations to the SEIA law, which set forth the scope, functioning, principles, and participating entities (for example, national sectors, regional and local governments). Additional features of the SEIA include procedures for classification of investment projects, implementation of environmental impact studies, procedures for reviewing EIAs, and issuing environmental certification. MINAM's role as lead and administrator of the SEIA has taken the first steps in articulating national, regional, and local government levels, as well as in coordinating actions with line ministries, in order to develop common denominators and procedures for EIA. Under the SEIA regulations, MINAM must provide favorable technical opinion before sectoral environmental regulations are approved.

The National Service of Environmental Certification for Sustainable Investments (SENACE)

In 2012, the GoP established a Multi-Sectoral Commission, composed of nine ministries, whose main task is to develop proposals to improve environmental and social conditions in all economic activities, in general, and in the extractive sector, in particular. The same year, the GoP approved the Strategic Axes of Environmental Management proposed by the Multi-Sectoral Commission. Based on these strategic axes, applicable to all concerned economic and social sectors, the GoP developed and implemented new policies and norms aimed at improving the environmental and social conditions in economic activities.

In 2012, the GoP created the National Service of Environmental Certification for Sustainable Investments (SENACE), as part of the SEIA and under the auspices of MINAM (Law No. 29968). SENACE is a decentralized agency with technical autonomy whose core functions include (i) the review and approval of the Detailed-EIAs (EIA-d), except those that are excluded by a Supreme Decree and the vote of approval of the Council of Ministers, at the request of the corresponding sector; (ii) the management of the National Registry of Environmental Consultants; (iii) the management of the Administrative Register of Environmental Certifications; (iv) the coordination with other environmental authorities; (v) the formulation of proposals for the continuous improvement of the EIA process; and (vi) the implementation of a "one-window" system for environmental certification, in order to simplify and expedite administrative procedures.

Environmental priorities and policy options

In order to manage and solve environmental problems linked to market and/or policy failures, the GoP took important steps aimed at strengthening environmental governance, as well as improving environmental mainstreaming in key growth sectors (e.g. mining, urban transport, and fisheries), by implementing economic instruments and command and control regulations that differ from EIA, as well as by introducing institutional reforms to improve EIA, in particular, and the environmental management framework, in general. Several legal measures were introduced to tackle urban air pollution, address technical environmental specifications for sectoral environmental management, and protect endangered species and conserve the biodiversity of the country. Economic incentives for mining companies that meet performance-based social and environmental target outcomes has also been a tool used to improve corporate performance.

Policy measures to improve air quality comprised: (i) the conversion of vehicles to natural gas, including the provision of close to 100 service stations that supply natural gas in Lima; (ii) the establishment of stations in Lima-Callao, Arequipa, Puno, Cuzco, and Madre de Dios that supply clean diesel (less than 50ppm sulfur content); and (iii) the strengthening of the vehicle inspection system, which increased from a baseline of 60,000 to about 600,000 vehicles inspected, in 2012, in Lima, and some 80,000 vehicles in the rest of the cities (World Bank 2012b). Policy measures to eliminate lead in gasoline have been successful in decreasing human exposure to lead (Pb), as indicated by blood lead levels (BLLs) among the population. Moreover, the percentage of the population using solid fuels for cooking declined from 41%, in 2000, to 33%, in 2012.

As far as natural resource degradation and natural disasters are concerned, a new study on environmental degradation in Peru (Larsen et al. (2013) points out that the GoP's implementation of interventions in (i) eroded land rehabilitation and drainage; (ii) flood protection and early

warning system; (iii) irrigated land rehabilitation and drainage; (iv) individual fishing quotas; and (v) the reforestation program have been successfully implemented during the last decade.

Conclusions

The GoP has made considerable progress in its efforts to improve the environmental management framework by overcoming deficiencies and closing gaps that constrained its capacity to respond to growing environmental challenges. During the initial phase of environmental policy reforms, in the 1990s, the EIA, in Peru, became the main instrument for environmental policy for achieving environmental management objectives. The over-emphasis and reliance on the EIA, coupled with a dispersed and weakly-coordinated EIA management structure was unable to address effectively the environmental challenges of the country, in a context of considerable economic growth. However, the GoP reforms of the EIA system, including the creation of SENACE and the coordinating role of the SEIA, have the potential to enhance the effectiveness of EIA and recover the credibility lost by this policy instrument.

Clearly, environmental policy reform, in Peru, demonstrates that improving the EIA system is an important component of a successful environmental reform. Yet, a combination of EIA with other environmental policy tools, such as fisheries quotas, fuel substitution, environmental quality standards and economic instruments, among others, are also required for addressing environmental challenges. In this line, the Strategic Axes of Environmental Management, approved by the Council of Ministers of Peru, include more than 30 measures, which transcend aspects related to the EIA, in order to reach, in an integral manner, environmental sustainability of economic growth, and, at the same time, guarantee civil rights.

In sum, Peru's environmental policy reform goes beyond making EIA a more efficient and effective tool. By combining EIA with other instruments and legal measures, the GoP's efforts have been geared towards improving the country's environmental management framework and sustainable economic growth.

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