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Executive Report Study on the Criminal Justice System in Environmental Matters in Peru – Executive Report

May 2015

This study has been conducted at the request of the United States Agency for International Development (USAID). It was prepared by Nataly Ponce, Eli Castillo, Liliana Bances, and Cesar Ipenza, independent consultants from Partners for Global Research and Development LLC (PGRD) under contract No. AID-527-C-13-00002.

EXECUTIVE REPORT

STUDY ON THE CRIMINAL JUSTICE SYSTEM IN ENVIRONMENTAL MATTERS IN PERU

ANALYSIS AND RECOMMENDATIONS TO STRENGTHEN THE JUDICIARY SYSTEM AGAINST ILLEGAL LOGGING AND ILLEGAL MINING

May 2015

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The opinions expressed herein are those of the team that conducted the study, and do not necessarily reflect the views of USAID or of the Government of the United States of America.

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ACRONYMS

AMAG	Academia de la Magistratura (Academy of the Judiciary)
CPP	Código Procesal Penal (Code of Criminal Procedure)
EFA	Entidades de fiscalización ambiental (Environmental Control Entities)
EFOMA	Equipo forense especializado en materia ambiental (Environmental Forensic Team)
FEMA	Fiscalías Especializadas en Materia Ambiental (Environmental Prosecution Offices)
JIPEMA	Juzgados de Investigación Preparatoria en Materia Penal [sic] (Preliminary Investigation Courts for Criminal [sic] Matters)
SGF	Sistema de Gestión Fiscal del Ministerio Público (Attorney General's Office's Prosecution Management System)
SIJ	Sistema Integrado Judicial del Poder Judicial (Integrated Judicial System of the Judiciary)
SINEFA	Sistema nacional de evaluación y fiscalización ambiental (National Environmental Evaluation and Control System)
PNP	Policía Nacional del Perú (Peruvian National Police)
PPMA	Procuraduría Pública Especializada en Materia Ambiental (Public Prosecutor's Office Specialized in Environmental Matters)
RENIEC	Registro Nacional de Identificación y Estado Civil (National Identification and Vital Statistics Registry)
USAID	United States Agency for International Development

I. INTRODUCTION

Peru is home to rich forest and biological diversity, with invaluable forest resources, fauna, and flora. According to Peru's Ministry of the Environment, the country has 73.3 million hectares of forests, ranking it ninth worldwide in terms of forested area. An estimated 4,400 of the Peruvian forest plant species are used for a variety of purposes. Peru ranks first in marine and fresh water fish with about 2,000 species. It has more than 4,000 types of butterflies, and ranks second in the world in the number of bird species with over 1,816 different types. These resources are concentrated in the Amazon area, but are also found in the coastal area and in the Andean region.

Peru faces a serious natural resources predation and environmental damage problem, caused mainly by mining activities and the logging of protected forest species. The illegal extraction of gold, or illegal mining, and illegal logging are crimes that cause serious damage to the environment and natural resources.

In the past 10 years, the Peruvian Government has strengthened its institutional capacity to confront environmental crimes. Some of the measures adopted include the creation of the Ministry of the Environment, (MINAM) and the modification of regulations to establish new environmental crimes, including the establishment of stricter penalties for cases that cause greater damage or environmental impact.

In the penal or criminal justice field, concern for environmental issues has translated into the creation of bodies specialized in this matter. In 2008, the Attorney General's Office started the installation of Environmental Prosecution Offices (*Fiscalías Especializadas en Materia Ambiental*). In turn, in 2014, the Judiciary created two Preliminary Investigation Courts for Environmental Matters (*Juzgados de Investigación Preparatoria Especializados en Materia Ambiental*), whose sole purpose is to address these crimes.¹

The application of the Criminal Procedure Code constitutes the legal setting for the prosecution and punishment of environmental crimes in Peru. The code has been in place since 2006, and includes an adversarial, public, and cross-examination model that has strengthened the investigative powers of the Attorney General's Office and the impartial role of judges. It also regulates mechanisms to resolve criminal disputes more quickly. The Criminal Procedure Code governs 23 of the country's 33 judicial districts, including those with the most environmental problems.

¹ This measure has focused on the creation of preliminary investigation courts, but not on specialized single-judge or three-judge courts, which are the higher instances responsible for oral trial and sentencing in this procedural phase.

II. OBJECTIVES AND METHODOLOGY

The objectives of this study are to analyze the performance and results of the Peruvian justice system as they relate to environmental crimes and crimes against natural resources, particularly against illegal mining and illegal logging; and to identify institutional and inter-institutional progress and challenges for the proper administration of justice in this field.

The study was carried out between October 2014 and January 2015, in five judicial districts: Piura, Cusco, Loreto, Madre de Dios and Ucayali. There are Environmental Prosecution Offices in all these districts, while only Piura and Cusco have Preliminary Investigation Courts for Environmental Matters.

The assessment applies a mixed methodological approach, which integrates the analysis of multiple quantitative and qualitative datasets. With respect to quantitative sources, the study is based on statistical information extracted from the Integrated Judicial System (*Sistema Integrado Judicial – SIJ*), in the case of the Judiciary, and from the Prosecution Management System (*Sistema de Gestión Fiscal – SGF*) in the case of the Attorney General's Office.

With respect to qualitative sources, the study is based on over 50 interviews with environmental crimes specialists, including judges, prosecutors, police officers, attorneys, members of institutions responsible for environmental control, and civil society representatives. These interviews took place in the subject judicial districts and in the city of Lima.

III. REGULATORY AND INSTITUTIONAL FRAMEWORK

Environmental crimes include a set of illegal acts specified in Title XIII of the Criminal Code, which is organized into four main chapters: two that define the crimes in and of themselves, and two that regulate complementary aspects of the crime, such as the responsibility of public employees and precautionary measures.

The chapters of the Criminal Code that describe the illegal acts refer to pollution crimes and crimes against natural resources. In 2012, the Criminal Code was modified to include a series of articles that regulate the crime of illegal mining, or illegal extraction of minerals, in the chapter regarding pollution crimes. The penalties for environmental crimes depend on various factors, such as the means employed and the damage caused, becoming stricter when the case involves public officials or administrative authorities in charge of environmental control.

The state treatment of environmental crimes is under the purview of several legal and non-legal public institutions, which we describe in the following pages.

A. Administrative Area

In the administrative arena, there are several entities responsible for environmental control. These bodies are known as Environmental Control Entities (*Entidades de Fiscalización Ambiental – EFA*) and they make up the National Environmental Evaluation and Control System (*Sistema Nacional de Evaluación y Fiscalización Ambiental – SINEFA*).

EFA's have different powers, some of which link them directly to the administration of criminal justice applicable to environmental crimes. These include the preparation of *substantiated reports*, which are technical documents required for the prosecution of environmental crimes, and which should be sent to prosecutors.

EFA's have jurisdiction by industry, with EFA's established for the mining, hydrocarbons, power, fishery, industrial, transport, and forestry industries, among others. In turn, each industry has an EFA with national, regional, or local jurisdiction. For example, for illegal mining alone, there are up to four different environmental control agencies, all of which may prepare substantiated reports, depending on whether the environmental damage has been caused by large-scale mining, small-scale or artisanal mining, or also, whether the offenses are aggravated by acts perpetrated within a protected natural area or a regional conservation area.

In addition to preparing substantiated reports, administrative oversight and control institutions detect violations that may constitute crimes, which they must then report to special prosecutors, including all relevant information needed for their timely action. On the other hand, the administrative authorities and the prosecution offices, along with the police, must plan and execute joint prevention operations. The chain of custody for the receipt of seized species is another form of interaction between the administrative and judicial bodies. Finally, there is the supervision of the environmental remediation measures ordered by judges, whose due fulfillment is overseen by the relevant administrative bodies - for example, the reforestation of areas affected by illegal logging.

B. Legal Area

To address environmental crimes, the criminal justice system is made up of the Judiciary, the Attorney General's Office, the Specialized Prosecutor's Office, the National Police, and the Office of Public Defense.

The Judiciary resolves legally relevant conflicts through the application and interpretation of legal statutes. It is governed by the Constitution and the Judiciary Organic Law. It is made up of judges, who are responsible for administering justice; the defendants, who are the persons prosecuted or seeking justice; and jurisdictional auxiliaries, who are persons who provide support for the administration of Justice.

There is a framework agreement between the Judiciary and the Ministry of the Environment signed in 2013, where both parties committed to adopting certain regulatory actions related to environmental crimes. Within this framework, by Resolution No. 155-2013-CE-PJ of August 2013, the Judiciary created two Preliminary Investigation Courts for Environmental Matters (*Juzgados de Investigación Preparatoria Especializados en Materia Ambiental – JIPEMA*). They are located in Piura, with jurisdiction over the judicial districts of Piura, Tumbes, Sullana, Lambayeque, and Cajamarca, and in Cusco, with jurisdiction over the judicial districts of Cusco, Puno, and Madre de Dios. In all other districts, environmental crimes are legally prosecuted by common courts that address all types of crimes.

The Attorney General's Office is the constitutional body charged with investigating and prosecuting crimes on behalf of society. It is an autonomous body governed by its Organic Law, and it is made up of prosecutors, prosecuting assistants, and administrative staff. By Resolution of the Board of Supreme Prosecutors No. 038 -2008-MP-FN-JFS, of March 2008, the Attorney General's Office created the Environmental Prosecution Offices (*Fiscalías Especializadas en Materia Ambiental – FEMA*), with the mission of preventing and investigating environmental crimes.² There are 26 FEMA in the country,³ especially in the judicial districts where environmental problems are more prevalent. These bodies are coordinated and supervised by the coordinating prosecutor of the Special Environmental Prosecutors.

In addition to the FEMAs, in 2010 the Attorney General's Office created the environmental forensic team (*equipo forense especializado en materia ambiental – EFOMA*) and the environmental forensic laboratory, which are part of the Legal Medicine and Forensic Sciences Institute. The EFOMA is defined as a multidisciplinary team of experts specializing in environmental crimes, created to provide technical and scientific support to specialized prosecutors. It is in charge of executing expert assessments to investigate, identify, quantify, appraise, and predict environmental damages. The mission of the environmental forensic laboratory is to determine the environmental quality parameters of the samples collected during expert assessments performed nationally, and emit corresponding expert opinions that serve as evidence during legal proceedings.⁴

The Public Prosecutor's Office Specialized in Environmental Matters (*Procuraduría Pública Especializada en*

² Resolution the Attorney General's Office No. 1177-2014-MP-FN – Regulation of the Environmental Prosecution Offices, of April 2, 2014.

³ Information as of December 2013. In those judicial districts that lack FEMAs, their functions are assumed by Crime Prevention Units (*Fiscalías de Prevención del Delito*). FEMAs are located both in judicial districts that apply the Code of Criminal Procedure as well as those that apply the unreformed criminal justice system.

⁴ Information in the presentation by the Environmental Forensic Laboratory, available at http://pmsj-peru.org/wp-content/uploads/2014/10/Brochure_Laboratorio.pdf

Materia Ambiental – PPMA) belongs to the State’s Legal Defense Council (*Consejo de Defensa Jurídica del Estado*), presided over by the Minister of Justice and Human Rights. The PPMA is made up of environmental prosecutors who cooperate with the investigation and present evidence regarding the crime and the parties responsible. The procedural role of the prosecutors is to estimate the damage caused by the environmental crimes, appraise the amount of civil compensation, and demand said compensation before the courts. The PPMA was created in 2010, and is made up of a single professional team at the national level. There are no environmental prosecutors at the regional and local levels.

The Office of Public Defense is a body within the Ministry of Justice and Human rights that, within the criminal procedure framework, has the central mission of providing free technical defense to the accused, especially to people who lack economic resources. The Office of Public Defense does not have public defenders specialized in environmental matters.

The Peruvian National Police (PNP) is part of the Ministry of the Interior. Its functions include the prevention and investigation of crimes in support of the Attorney General’s Office. In 2000, the police created the PNP office for tourism and ecology, later called Tourism and Environmental Protection Office, which is currently made up of the tourism division and the environment division. The environment division is tasked with planning, organizing, directing, controlling, and supervising police prevention and investigation operations for the protection and conservation of the environment and natural resources.

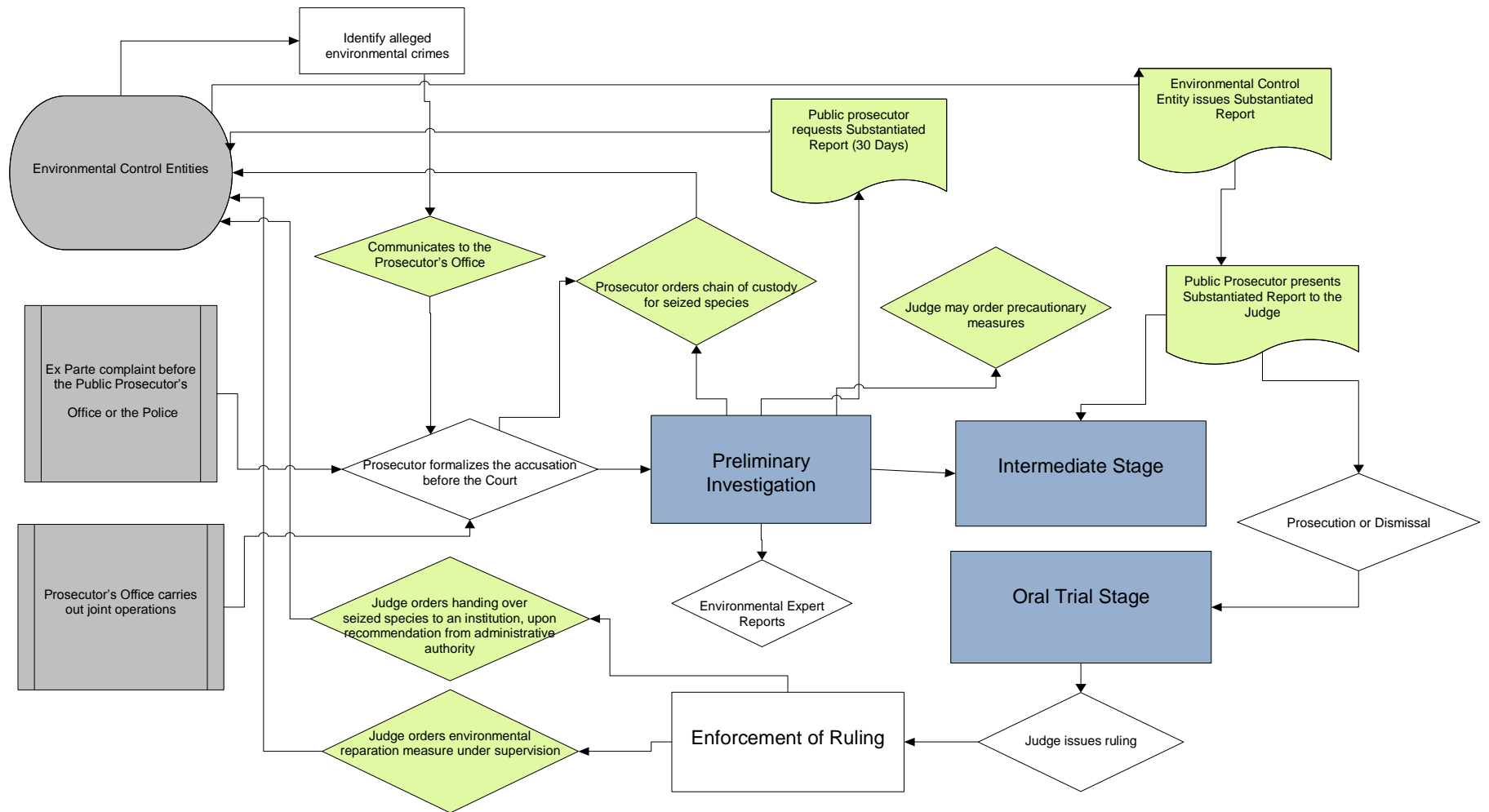
The new Code of Criminal Procedure (*Código Procesal Penal – CPP*), has been applied in Peru since 2006. This tool strengthens the prosecutors’ investigation and prosecution functions, and the unbiased third-party role of the judges. The new criminal procedure set forth in the CPP has three stages:

- The preliminary investigation carried out by the prosecutor, the purpose of which is the collection of evidence and relevant information about the crime and its perpetrators;
- The intermediate stage or control stage carried out by the preliminary investigation judge, the purpose of which is to assess the relevance and consistency of the prosecution’s accusation, provide evidence of charge and dismissal, and decide whether the case deserves to go to trial or be filed away; and,
- The trial stage carried out by the trial judges, the purpose of which is to debate the charges brought up by the prosecutor, admit and process the evidence provided by the parties during the intermediate stage, and reach a judgment that will resolve the dispute.

The CPP regulates the tools aimed at achieving an early resolution of cases, such as a prosecutorial filing, for reported acts that do not constitute crimes or where it is very difficult to gather evidence about the crime and the suspects. Likewise, alternative resolutions to common criminal proceedings include mechanisms to abstain from criminal prosecution under the authority of the prosecutor (i.e. principle of opportunity and reparatory agreements), early termination, early conclusion of the trial, and immediate trial.

Graph I depicts the interactions between the environmental administrative control entities and institutions of the criminal justice system, within the framework of the new criminal process.

Graph 1: Criminal procedure interactions among judicial institutions and environmental administrative control entities.



IV. MAIN FINDINGS

A. Regarding the criminal justice system as a whole

The creation of specialized bodies in the Peruvian justice system to carry out the investigation and punishment of environmental crimes constitutes a positive measure. Nevertheless, in order to administer timely and effective justice in environmental crime cases, it is necessary to consolidate the operations of these bodies, both at the Attorney General's Office level as well as at the Judiciary level. A first finding of the study is that the justice system has significant weaknesses to be able to properly fulfill its duties. A first weakness is inadequate access to infrastructure and human, logistic, and technological resources to operate effectively. For example, there are only 17 specialized environmental prosecutors in the Prosecutor's offices of Piura, Madre de Dios, Ucayali, and Loreto, who are handling 4,817 complaints accumulated for the 2010-2014 period, which means an average of 370 cases per prosecutor.

However, weaknesses not only relate to the inadequacy of resources to operate. In addition to that, there is an absence of institutional policies, strategic guidelines, and management tools for guiding, monitoring, and providing feedback on the performance and results of environmental criminal justice. According to interviews conducted in the field, among other institutional shortcomings, the Attorney General's Office does not have a criminal investigation and prosecution policy for environmental crimes, nor methodologies or institutional strategic guidelines for the prosecutorial handling of environmental crimes.

B. Regarding the Attorney General's Office

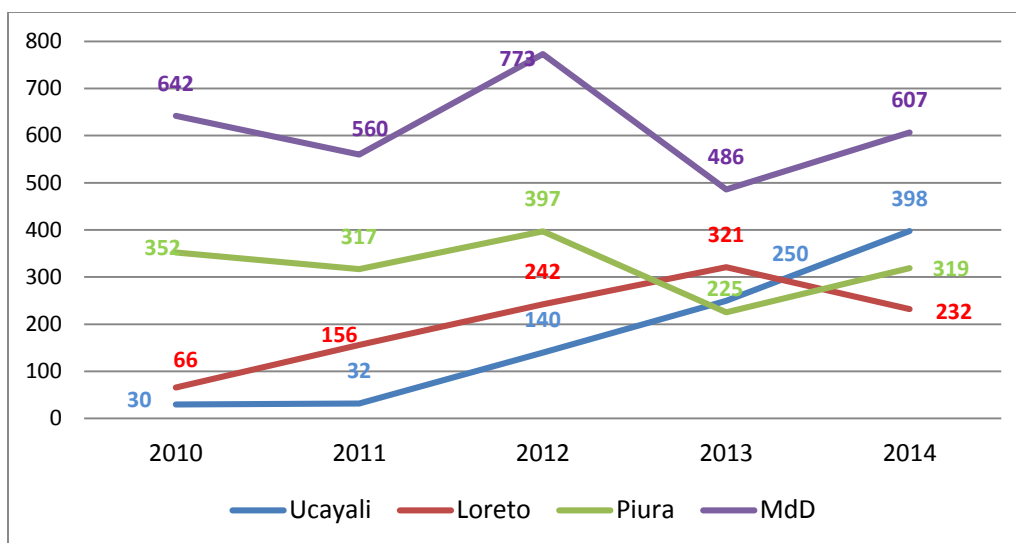
1. Increase in environmental complaints

Between 2010 and 2014, environmental complaints in the judicial districts under study experienced a significant increase. Loreto and Ucayali, both regions with vast forests, showed an increase in complaints, followed by Piura and Madre de Dios, which maintained the same level of annual complaints.

The increase in environmental complaints could be related to an increased commission of environmental crimes, which in turn would be associated with a higher demand for natural extracted resources at a local and international level. It could also be explained as a result of the new criminal classification, specifically the creation of the illegal mining offense. Graph 2 details the evolution of environmental complaints made at the FEMAs under analysis.⁵

⁵ It includes the judicial districts of Ucayali, Loreto, Piura, and Madre de Dios. It does not include Cusco, since the statistical analysis for this judicial district was made primarily in relation to cases coming from Madre de Dios.

Graph 2: Number of complaints received at the Environmental Prosecution Offices: 2010-2014



Source: Our own creation based on statistics provided by the FEMAs

2. Accumulation of environmental complaint investigations

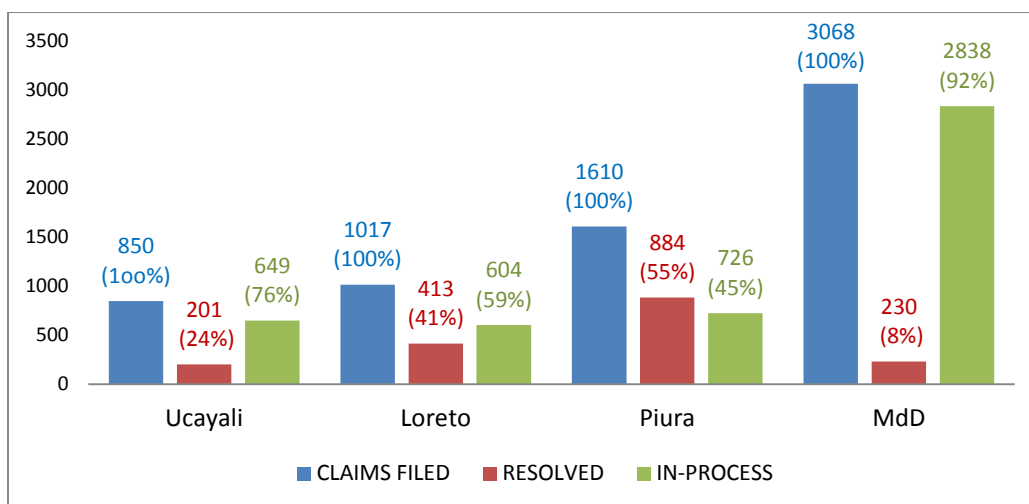
The legal system's response capacity against environmental crimes is critically affected by a backlog of claims at the FEMAs, particularly those in the preliminary investigation stage.

For the purposes of this study, backlog is understood to be the accumulation of claims pending prosecutorial or legal resolution during any given year, resulting from unresolved claims filed that year, plus any unresolved or pending claims from the previous years.⁶ Bearing this definition in mind, we find that, out of the 6,545 environmental claims filed before FEMAs in Madre de Dios, Piura, Loreto, and Ucayali between 2010 and 2014, only 1,728 (26 percent) have been resolved, leaving 4,817 environmental claims (74 percent) still pending resolution or in backlog. Graph 3 shows the status of environmental claims per judicial district.

Environmental claims backlogs have different causes. At the institutional level, the FEMAs have serious limitations in human, logistical, and technological resources available to address their workload. In addition, the FEMAs do not have institutional guidelines that will guide their performance on specific environmental claims. While FEMA regulations describe the generic elements of the prosecutorial role in the investigation and prosecution of cases, they do not provide guidelines for the strategic use of legal and management tools that prosecutors may apply for the adequate control of their procedural load. In this context, the FEMAs do not have a corporate office design, or differentiated work processes to address the various types of environmental complaints they receive, which affects the case backlog.

⁶ Within this framework, *resolution* refers to a prosecutorial decision that puts an end to the investigation, or a legal resolution at the trial court level. Therefore, backlog refers to all unfinished cases at the trial court level, regardless of whether or not they have been formally brought before the Judiciary.

Graph 3: Status of Claims at Environmental Prosecution Offices: 2010-2014



Source: Our own creation based on statistics provided by the FEMAs

At the operational level, the interviews indicated that alleged offenders usually reside in remote rural areas, or for their actual domiciles to vary from those found in the National Identification and Vital Statistics Registry (*Registro Nacional de Identificación y Estado Civil – RENIEC*). This hinders the delivery of notifications, and thus affects the advancement of cases. In addition, interviews indicated that, in some FEMAs, prevention activities are given operational preference over investigation and prosecution activities, which has a negative impact on the progress of complaints.

The environmental complaints backlog is particularly critical in Madre de Dios. According to the interviews carried out, there is a generally negative view of the results of the prosecutorial work in this district, which several stakeholders attributed to inefficiency or possible corruption in the handling of environmental complaints.

3. Recording of environmental crimes, incidence, plaintiffs, and defendants

The study has found that the criminal justice system's statistical record of environmental crimes is insufficient to provide a reliable overview on the types of crimes reported and the system's final response to these crimes. For example, in the judicial districts visited there is no information on the type of sentences issued in environmental cases, and therefore it is not possible to determine whether they have been convictions or acquittals.⁷

The database used in the Attorney General's Office to record environmental crimes is the Prosecution Management System (SGF), which is designed to store information such as the date claims were formally brought, measures adopted – filing or formalization of the case, timeframes for processing, whether or not the case has been concluded at the court level – among other relevant data. However, the usefulness of such information is restricted due to the under-recording of the crime under the corresponding category. It is worth noting that in the judicial districts, the SGF has up to 50 types of environmental crimes, including the category “*crimes against environmental resources - environmental crimes*,” which encompasses various unspecified crimes.

The limiting effects of this situation are evident, for example, in the case of illegal logging complaints. On one hand, Peruvian legislation does not have a unique and specific “*illegal logging*” criminal classification, subsuming it instead under the “*crimes against forests or forest formations*” category. However, according to interviews, there are also reports of illegal logging which are recorded under “*illegal trafficking of timber products*,” “*illegal trafficking of protected flora and fauna species*,” and the generic “*crimes against environmental resources - environmental crimes*,” thus making it impossible to accurately determine the extent of the problem. Likewise, in reports where more than one crime coexist, the SGF records the most serious crime, which also affects the statistical monitoring of the crimes actually perpetrated and reported.

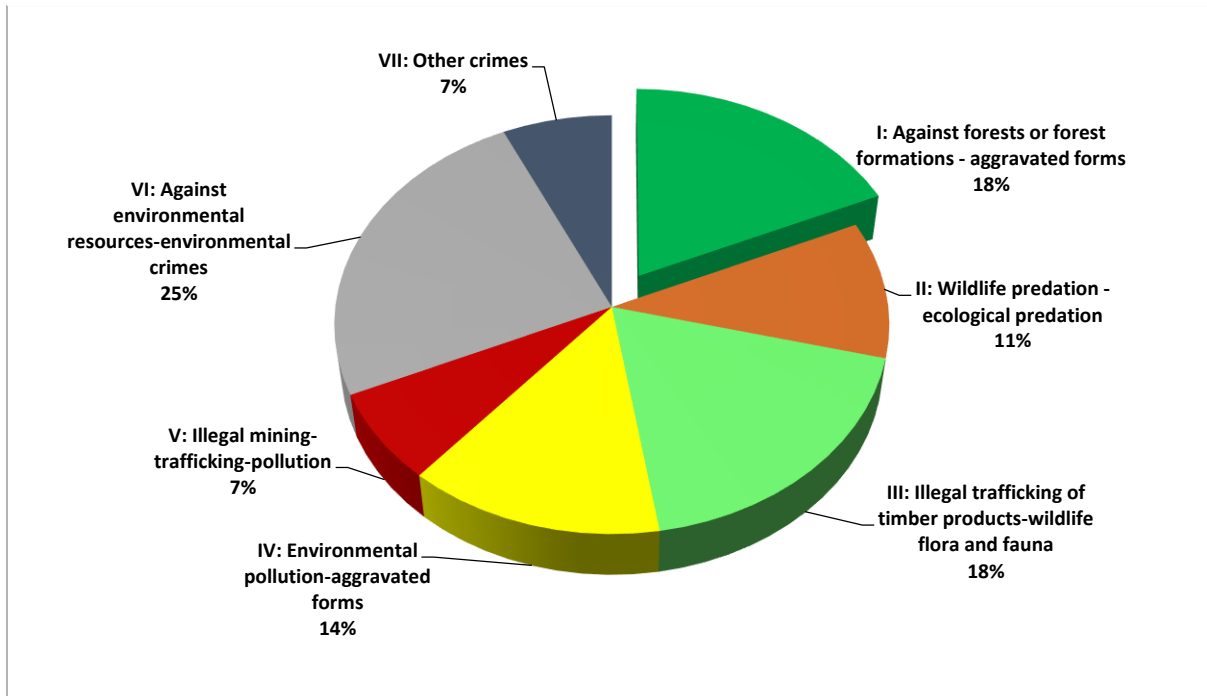
In addition, neither the Attorney General Office's National Coordinating Unit of the FEMA nor the Judiciary has a consolidated recording system for environmental complaints at a national level.

In this scenario, and considering the importance within the framework of this study of identifying the main environmental crimes that enter the criminal justice system, the consulting team processed the statistics to which it had access in the judicial districts, grouping the crimes reported according to the different categories registered based on their relationship or possible association. The aforementioned processing resulted in the data presented in Graph 4, which shows the environmental crimes with the highest incidence in the Madre de Dios, Ucayali, Piura, and Loreto –Maynas- Prosecution Office. The categories are as follows: I- includes aggravated forms of crimes against forests and crimes against forests or forest formations; II- includes wildlife (flora and fauna) predation and ecological predation; III- includes illegal trafficking of protected flora and fauna, illegal trafficking of forest timber products, foreign trade of protected flora and fauna, and prohibited removal of fauna and flora; IV includes environmental pollution, aggravated forms of environmental pollution, pollution resulting from noncompliance with regulations related to the handling of solid waste, pollution resulting from trafficking of hazardous waste,

⁷ The Integrated Judicial System (SIJ) of the Judiciary does not have information on the number of people criminally prosecuted and their legal status, since the criminal recording unit covers only the case or proceeding, which can involve more than one single accused. This limitation is present in all criminal cases, including environmental cases.

environmental pollution, and pollution; V includes pollution – illegal mining (aggravated forms) and pollution (illegal mining); VI groups crimes as crimes against natural resources – environmental crimes; VII includes all other crimes from various categories.

Graph 4: Distribution of crimes at the Environmental Prosecution Offices: 2010-2014



Source: Our own creation based on statistics provided by the FEMAs

The above graph suggests that the environmental crime with the highest incidence is illegal logging, assuming it is subsumed under the crimes against forests or forest formations category in their simple and aggravated forms (18 percent), illegal trafficking of timber products and trafficking of wild flora and fauna (18 percent), and partially in the generic categories against environmental resources - environmental crimes (25 percent). Environmental pollution crimes not specifically recorded as illegal mining come in second (14 percent), while specific illegal mining crimes constitute 7 percent.

Regarding environmental crimes in each judicial district, it is noteworthy that, in Madre de Dios, illegal logging represents only 11 percent of the crimes reported, while Piura shows the greatest diversity of crimes reported, including environmental pollution, illegal trafficking of the carob tree species, whose processing involves its carbonization for commercial purposes, and ecologic predation against marine species during closed season.

According to interviews, most complaints are ex parte complaints made by those affected by the crimes, including cases of farmers and forest concessionaires that resort to the justice system to report the use or illegal exploitation of their property or possessions, as well as complaints from native communities affected by the damage to their habitat (in Ucayali). Interviewees indicated that a lower percentage of environmental cases originate at the initiative of the Prosecutor's Office or from administrative environmental control entities. From this we can conclude that the actions of state institutions before environmental crimes are primarily reactive and not proactive and predictive, a situation that constitutes a weakness in the investigation and punishment of such crimes, particularly for serious or complex cases.

Regarding the defendants, according to interviews, those accused of committing environmental crimes are mainly individuals. A smaller number of reported cases involve legally incorporated companies. In these cases, reports originate from the use of waste drainage basins or spillage of products harmful to the environment. There is no notable investigation or criminal punishment of illegal companies engaged in environmental crimes, nor charges related to the financing of these illegal activities. The criminal justice system essentially handles complaints against the first members of criminal value chains that affect the environment and natural resources.

4. Substantiated reports

Peruvian regulations establish that a procedural requirement for the judicial handling of environmental reports is the presentation by the prosecutor of a *substantiated report* prepared by the environmental administrative authority. It may be an environmental control entity (EFA) at the national, regional, or local levels, depending on jurisdiction and environmental issues involved. The substantiated report is useful for prosecutorial decision-making because the criminal rules that typify the behaviors against the environment and natural resources, in general, are complemented by rules of an administrative nature. In this sense, the substantiated report is a very valuable aid that allows prosecutors to decide whether a complaint is criminally relevant or if it is only an administrative breach of environmental provisions. According to Peruvian regulations, substantiated reports are not binding and the prosecutor can bring charges even if the report indicates that there are no environmental administrative breaches, since a criminal case does not necessarily have to involve an administrative offense. However, legislation does stipulate that substantiated reports are mandatory in all environmental cases. In fact, this report should be visible during the intermediate stage, i.e., during the control stage of the indictment or an order for judicial archiving of the case (dismissal).

The study has identified a set of challenges related to the preparation and issuance of substantiated reports. First, some prosecutors lack clear knowledge of the timing of submission of the substantiated report to the courts. Thus, some prosecutors consider the report to be essential to the formulation of the complaint, i.e. to open the case at the prosecutor's office, so that the complaint is not formalized until the report is received. This results in the accumulation of unclassified complaints at the prosecutor offices. In many of these situations, prosecutors hold the misperception that substantiated reports qualify as evidence, and therefore that the investigation and prosecution is limited to this tool at the exclusion of gathering of other evidentiary elements such as witness statements, technical inspection certificates, pictures, or other administrative technical reports.

According to Peruvian legislation, the substantiated report must be submitted to the prosecutors by the administrative instance, within a period not to exceed 30 days after the request is received. However, the diversity of the bodies with the authority to prepare this report, and their location in the various regions or in the capital, prevent it from being issued within the established time period, further contributing to delays in processing environmental cases.

Interviewees reported having difficulty with the content and interpretation of substantiated reports. Some prosecutors believe the reports lack the information necessary to legally support cases, particularly in terms of determining the damage caused by the act reported. Likewise, prosecutors question the technical language of the reports, generating the need for clarifications that delay case processing. In turn, the representatives of administrative agencies claim that prosecutorial requirements are not always clear and precise, or that they are difficult to fulfill. For example, they claim to receive

prosecutorial requests to determine the alleged crime, which is outside of their mandate, or requests for additional in situ verifications that they cannot perform for lack of resources or for logistical reasons.

All told, there is some confusion or lack of clarity regarding the utility of substantiated reports, which along with the delay in their issuance, affects the prosecutorial handling of environmental crimes. This problem varies in each region and is linked to inadequate human and logistical resources at the entities responsible for the preparation of such reports, and to the diversity of administrative bodies responsible for their preparation.

5. Coordination between prosecutors and administrative agencies

In addition to the substantiated report, there are other matters that require close coordination between the prosecutors and the authorities of administrative agencies in charge of environmental control activities. The study determined that while there are judicial districts where there are levels of inter-institutional coordination, generally speaking, there are a lack of spaces for joint coordination, analysis, and decision-making to improve the legal handling of environmental cases.

One issue is the planning and execution of prevention operations. According to the prosecutors interviewed, there are times when joint prevention and supervision operation processes are developed in situ; however, there are other times where the administrative personnel required to successfully implement those actions are missing.

The chain of custody is another issue that requires improved coordination between the prosecuting authorities and the administrative agencies. There are judicial districts where large quantities of species of flora and fauna are seized in absence of protocols for their adequate protection. This scenario becomes critical when the species are perishable in the short-term.

In addition, administrative agencies must supervise compliance with environmental remediation measures, understood to be those measures ordered by the courts to repair environmental damage, e.g. reforestation of an affected area. According to the interviewees, the administrative entities are not always willing to comply with the supervision of these measures due to the remoteness of the areas in question and the scarcity of their human resources.

6. Need for guidelines and prosecutorial management tools

The investigation and punishment of environmental crimes in Peru has a direct link with the institutional capacity of the Attorney General's Office to deal with these crimes. The new criminal procedure model provides prosecutors with a set of functions and powers to carry out the full prosecution process, including the application of alternative mechanisms to common proceedings that may represent effective criminal sanctions in a shorter timeframe. For this, it is essential that Prosecution Offices have solid capabilities for the gathering and legal support of evidence in environmental cases.

The lack of an institutional policy for the prosecution of environmental crimes constitutes a central void in the Attorney General's Office ability to effectively punish environmental crimes. Such policy should contain the specific institutional guidelines or rules for handling cases that will guide the strategic actions of prosecutors, taking into account the duties and powers conferred upon them by the law. The absence of a policy that guides the exercise of the prosecution in environmental cases results in the same investigation methodology applied in other types of crimes to be used for all environmental crimes, which do not take into account the specific characteristics and procedural needs of environmental

crimes.

Some of the essential elements that a criminal prosecution policy should include are criteria guiding the prioritization of certain environmental crimes based on differentiated organization and work processes. It should also include guidance for the application of alternative mechanisms to common proceedings, for instance, in environmental cases that do not cause serious environmental damage.

In the operational arena, the study found that prosecutors lack tools such as guides, protocols, and standardized formats for the exercise of their duties in order to address environmental crimes. This absence is exacerbated by the lack of implementation of a corporate design at the Environmental Prosecution Offices.

7. Need for prosecutor training

Environmental prosecutors must strengthen their ability to support alleged facts in court hearings, which is a critical element to start the investigation and design the case's theory. Some judges indicated that prosecutors provide the narrative of the facts and identify the generic offense allegedly committed, but do not provide a precise, clear, and detailed description of the circumstances that constitute the alleged offense, which would provide probable support through relevant elements of proof, according to each case.

According to the interviews, the Academy of the Judiciary (*Academia de la Magistratura – AMAG*), the Attorney General Office's School, and the FEMA Coordinating Unit have developed training courses on environmental matters for prosecutors. However, these have not been ongoing, do not complement each other, and are not systematically designed to progressively increase the official's skills based on their responsibilities and powers in the investigation and prosecution of environmental crimes.

In this sense, environmental prosecutors indicate that they need to be trained on tools that help them adequately handle their workload in a timely manner. They also want training on strategies and methodologies for the investigation and prosecution of serious or complex environmental crimes, primarily for the purpose of identifying and prosecuting the secondary links behind illegal mining and illegal logging cases.

C. Regarding the Judiciary

1. Courts specialized in environmental matters

The creation of Preliminary Investigation Courts for Environmental Matters (JIPEMA) constitutes a successful measure by the Judiciary that demonstrates the growing importance of the adequate treatment of environmental crimes in the Peruvian justice system. Having exclusive jurisdiction over environmental matters and being located in highly affected areas is allowing these bodies to provide a differentiated and special treatment of environmental cases.

Nevertheless, it is also evident that the existing JIPEMAs need strengthening as well as a review of their geographic jurisdiction. Both the JIPEMA in Cusco as well as the one in Piura have a wide geographic jurisdiction called super-provincial, which makes them the only judicial bodies authorized to hear the investigation phase of environmental cases reported in several judicial districts. In the case of Cusco, the JIPEMA has jurisdiction over environmental cases stemming from Madre de Dios, Puno, and Cusco,

while the Piura JIPEMA has jurisdiction over environmental cases registered in Tumbes, Sullana, Lambayeque, Cajamarca, and Piura.

The JIPEMAs wide territorial jurisdiction is influencing the delay in prosecutions, particularly in cases stemming from Madre de Dios, since all processes require the mobilization of the involved parties to the city where the specialized court is located. According to this study's analysis, 70% of the procedural burden of the JIPEMA in Cusco comes from the judicial district of Madre de Dios, which causes delays and rising costs for all parties, hindering access to a quick and satisfactory delivery of justice. The situation in Piura is less critical due to the initiatives implemented by the Specialized Court to overcome geographic distances.

2. Expiration of procedural time limits

The legal treatment of environmental crimes faces a backlog issue centered on the preliminary investigation stage, which is evident both in judicial districts with specialized courts as well as in those judicial districts where these offenses are handled by common courts. In the latter case, the problem is exacerbated since environmental cases are processed together with all other types of cases.

One of the causes of delays in processing environmental cases is related to the legal notification of the parties regarding the hearings, which are the main legal mechanism used in the new criminal procedure. To address the challenge of reaching remotely located defendants and complainants, there is a need for mechanisms to push out notifications that allow for the holding of scheduled hearings. Failure to provide notifications results in postponements and procedural delays. The most critical situation regarding notifications is evident in Ucayali and Loreto, where there are no specialized courts and where notifications may take several days to reach the heart of these departments.

The environmental cases backlog is generating concern among the specialized judges. Faced with this situation, due largely to the inaction by the Environmental Prosecution Offices, the Cusco judicial district has been practicing *ex officio* term controls for extremely delayed processes in Madre de Dios. This mechanism puts an end to the preliminary investigation phase due to the expiration of the legal term established. This legal decision has generated controversy, as the Code of Criminal Procedure establishes that this measure must be filed by the litigants, in order to preserve the role of judicial impartiality underpinning the new criminal procedure model. This scenario exemplifies the severity of the minimal progress of environmental cases through the Peruvian criminal justice system.

3. Training of specialized judges and awareness-raising among court officials

The judicial treatment of environmental crimes requires high levels of knowledge and expertise by court officials, who, along with mastering the criminal and procedural rules applicable to these offenses, should also handle the large number of administrative rules applicable to environmental matters.

The creation of JIPEMAs has not gone hand in hand with the necessary training for specialized judges. In Cusco and Piura, specialized judges have acquired knowledge through self-training processes, as well as through experience working in these entities. One of the areas that judges – officials that support the judicial function – identify as needing strengthening is in the handling of environmental administrative policies, since environmental crimes are “blank laws”, i.e., they require knowledge and interpretation of administrative rules for the comprehensive legal definition of alleged criminal acts.

Raising awareness among the court officials as a whole on the importance of the proper administration of justice is also a challenge for the Peruvian criminal justice system. The study found that there are judges who don't seem to realize that these offenses must be addressed promptly and, where appropriate, must receive exemplary punishment. This is associated with the lack of information and awareness regarding the severity of the damages to the environment and natural resources.

4. Best practices in the administration of environmental justice

In Piura, the Preliminary Investigation Court for Environmental Matters is promoting the remediation or reparation of damages caused by convicted offenders, as well as the delegation of urgent proceedings to the common courts located in each region. It is also worth noting a good practice of this court - the use of mechanisms to reduce the time required to carry out the legal hearings of cases from other judicial districts. In particular, the use of video-conferencing has allowed for the better use of the time of the court and of the environmental prosecution offices.

D. Civil society

There are different levels of involvement of civil society against environmental crimes in the included judicial districts. While civil society is more active in Madre de Dios and Ucayali, in Piura the environmental crimes agenda does not carry the same weight as in the other regions, despite the fact that this judicial district experiences the greatest diversity of environmental crimes reported. Among the positive practices already in place, the initiative known as Environmental Alert (*Alerta Ambiental*) is noteworthy. This initiative monitors emblematic environmental cases in Madre de Dios, which have several months or even years of delay awaiting responses from the criminal justice system.

V. RECOMMENDATIONS

Consolidate and strengthen the administration of environmental justice

- Promote the implementation of an inter-institutional roundtable to coordinate justice system institutions on environmental matters in order to develop an agenda and monitor the implementation of measures needed to establish the adequate treatment of environmental cases in the criminal justice system in the short and medium term.
- Design and implement a Prosecution Policy for environmental crimes at the Attorney General Office that will establish institutional principles and guidelines for the various types of cases, taking into account the duties and powers of the prosecutors within the new accusatory criminal system. This policy must include measures to address both simple and complex environmental cases.
- Design the Criminal Policy for Comprehensive Fight against Environmental Crimes, through the creation of technical guidelines that will guide, coordinate, and organize the national strategy to prevent, control, and punish environmental crimes in a timely manner, promoting coordination among administrative and legal system entities.
- Provide the FEMAs, JIPEMAs, and Public Prosecutor's Office Specialized in Environmental Matters, with human and logistical resources, technology, and infrastructure to allow them to properly perform their duties, as well as to the prosecution offices and common courts that address these cases in the regions that experience the greatest environmental issues.
- In the case of human resources, establish appropriate profiles for assigning prosecutors and judges specialized in environmental matters, including leadership skills and the initiative to develop innovative practices aimed at properly addressing environmental cases.
- Apply the organizational structure of the corporate management model at the FEMAs, including work processes differentiated by type of crime, guides, protocols, and standardized format for addressing environmental cases at the prosecution level.
- Introduce mechanisms and methodologies for the intelligent analysis of crimes at the FEMAs, in order to include the recording and study of patterns or trends in defendants, crimes, places of occurrence, goods and species damaged, among other elements that contribute to technically improve the capacity to prevent, investigate, and prosecute environmental crimes.
- Develop a manual for the legal processing of environmental cases under the purview of the JIPEMAs that includes the subjects: weighing of environmental evidence, hearing management mechanisms for environmental cases, and strategies for the remediation of environmental damage, among others.
- Decentralize the activities of the Environmental Public Prosecutor's Office through the appointment of permanent Prosecutors in the regions of Madre de Dios, Ucayali, Cusco, Piura, and Loreto, who may act immediately on investigations and proceedings.
- Promote improvements in the Integrated Judicial System (SIJ) of the Judiciary and in the Attorney General's Office Prosecution Management System (SGF) in order to ensure the

proper recording and monitoring of environmental crimes at the judicial district level and at the central level, including information on the types of offenses, the number of persons prosecuted and their legal status, hearings conducted at different stages of the criminal process, and the type of rulings issued, among others.

- Design and implement a communications strategy model (fair, diptychs, triptychs, workshops, etc.) with the purpose of raising awareness among the population about environmental issues and the problem of these crimes, and report on the progress and achievements of the administration of justice in this area.

Implement urgent measures for the resolution of environmental cases backlogs

- Strengthen the FEMAs by providing them with more trained human resources.
- Create a specialized team, based at the Attorney General's Office, to help the FEMAs resolve the environmental claims backlogs at the prosecution level, especially in the case of Madre de Dios.
- Implement a load management model at the FEMAs that will allow for equitable distribution of the workload, addressing both new and accumulated workload, by following prioritization and case purging criteria, as well as the application of alternative solutions. Develop standardized tools for improved processing, such as joint action protocols, intervention minutes, report samples, requirement samples, and other tools that will allow improving the predictability and quality of the proceeding.
- Introduce at the FEMAs work processes differentiated by type of case reported and the potential course of the criminal proceeding, and establish goals for addressing and resolving environmental cases backlogs in the short and medium term.
- Modify the Regulations of the FEMA Coordinating Unit, so as to consolidate its monitoring and supervision duties with respect to the results of these entities at the national level.
- Provide the Coordinating Unit with a management board to control and monitor the FEMAs activities and results, based on updated environmental case data.

Improve the capacity of Regional and Local Governments to prevent and preventatively control environmental crimes

- Promote the development of technical capabilities in regional and municipal governments to meet their legally established duties in the environmental area, including the allocation of adequate human, logistical, and technological resources, as well as coordination mechanisms with the appropriate administrative and legal entities.

Improve the coordination between the administrative and legal levels to face environmental crimes

- Develop inter-institutional coordination entities between the stakeholders of the criminal justice system and administrative institutions related to the environmental area, to coordinate and identify any solutions needed for the development of environmental criminal processing, punishment, and execution.

- Update the main environmental administrative rules and incorporate them into a summary to be provided to court officials. This summary must be simple, organized, and easy to understand by users.
- Prepare a guideline and workflow clearly establishing the need, input, and timeliness of the Substantiated Report in environmental cases, so that they may be disseminated among specialized officials, as well as used in the corresponding trainings.
- Train legal system officials in specific areas:
 - In matters related to the adequate handling and management of environmental cases, including comprehensive strategies to control the workload in this type of cases.
 - In matters related to investigation and punishment strategies for complex environmental cases.
 - In environmental administrative regulations, including information on protected flora and fauna species, the roles of the various institutions responsible for substantiated reports and other duties such as preventative control at the national, regional, and local levels.
- Promote the exchange and flow of information regarding the experiences of entities specialized in environmental matters at the prosecutorial, judicial, and Public Prosecutor's office levels, highlighting difficulties faced and solutions found in their practice.
- Strengthen the environmental forensic team (EFOMA); increase the number of environmental experts and decentralize them so that they may timely address the needs of the FEMAs in the most emblematic regions.
- Strengthen the capabilities of the Attorney General's Office Laboratory, to assist with means of evidence that support the environmental proceedings, such as taking samples and contrasts on environmental pollution.

Review the criminal classification of environmental offenses

- Review and update the classification of environmental crimes, including the advisability of keeping in the criminal area certain acts that could be diverted to the administrative area.
- Evaluate the inclusion in the criminal classification of the transportation of material containing mineral ore destined for processing plants, which is a conduct that is not currently typified in the Criminal Code. Evaluate the advisability of continuing with the criminal classification of illegal mining of non-metallic material.

Disseminate and promote best practices against environmental crimes in the justice system

- Promote best practices to address environmental crimes, such as electronic or phone notification, virtual hearings or hearings via videoconferencing. Likewise, best procedural practices involving compensation as redress for environmental damage.

Strengthen the courts to hear environmental cases

- In Madre de Dios:
 - Create a Preliminary Investigation Court for Environmental Matters in Puerto Maldonado, to address environmental cases in the region.
 - Create a Single-Judge Court in Puerto Maldonado, with additional environmental duties and collegiate judging.
 - Create a Preliminary Investigation Court in Mazuco, with additional environmental duties.
- In Lambayeque, create a Preliminary Investigation Court for Environmental Matters, with subject matter jurisdiction in the judicial districts of Lambayeque and Cajamarca, which will allow to shorten the distance and travel time required by the parties, thus allowing for processing and giving effect to the procedural steps more quickly.
- In Ucayali, create a Preliminary Investigation Court for Environmental Matters to offer more timely access to justice, taking into account its geographic dimension and biodiversity, as well as to integrate in a complementary manner into the work of the FEMAs in Ucayali.
- In Loreto, create a Preliminary Investigation Court for Environmental Matters to offer more timely access to justice, taking into account its geographic dimension and biodiversity, as well as to integrate in a complementary manner into the work of the FEMAs in Loreto.

Support civil society's environmental initiatives

- Promote the development of civil society's initiatives in education and social monitoring of environmental cases, such as the Environmental Alert experience in Madre de Dios, the inter-institutional round tables at the regional level, and the creation of Ombudsman's Office Commissioners specializing in environmental matters in the most emblematic regions.

Complement the interdictions

- Monitor the impact of interdictions and the need to complement these measures in order to exercise sustained and effective influence over the reduction of environmental crimes, specifically illegal mining.

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