

Lima, October 23, 2020

Mr. Martín Alberto Vizcarra Cornejo
President of the Republic of Perú

Mister President, we respectfully write to share our concern regarding the situation of Tamshiyacu, the site that you visited last Tuesday, 20 October 2020, during your visit to the region of Loreto.

Tamshiyacu is a place known for its small- and medium-scale production of pineapple, its agroforestry systems, its ecotourism and mystical tourism, as well as its subsistence fishing. But it is also the location where, in 2013, a large-scale cacao plantation was established, linked to the company “Grupo Melka,”¹ **which deforested, without legal authorization, nearly 2,000 hectares of primary forest**, purchasing land from small-scale farmers at laughable prices and grabbing land from local producers who did not want to give up their property to the company. The company, **Cacao del Perú Norte S.A.C, today Tamshi S.A.C, has been penalized multiple times both through criminal and administrative processes** and has even received an order to cease its operations for not having the required legal authorizations, but this has not brought with it a change in conduct by the company, since it continues to operate, without confronting or implementing the sanctions imposed by regional and national state entities.

Since the start of its operations, the company neglected to carry out the process to submit an environmental impact assessment and received an approval. After this topic became a public scandal, the company attempted to regularize its situation with an Environmental Management and Adaptation Plan (PAMA, from the Spanish name), which was definitively denied by Ministerial Resolution N°019-2019-MINAGRI-DVDIAR on August 12, 2019. This resolution has established that the activities undertaken on the Tamshiyacu Estate – Jaguar Zone are illegal agricultural activities that under no circumstances can be regularized with a PAMA, as the company tried to do.

Likewise, on July 25, 2019, the company and two workers were sentenced for illegal trafficking of timber forest products and obstruction of justice. The ruling² issued by the Second Unipersonal Criminal Court of Maynas analyzed the illegal acts committed by the guilty parties. Throughout the process, they were able to distinguish all of the fallacious arguments used by the defense, who, among other things, ended up strangely denying the existence of forests, the application of the Forest and Wildlife Law (Ley N° 27308, in force since 2013) and the need, clearly established in the regulations, to have a previously approved mechanism for

¹ For more information on Grupo Melka, see:

- Environmental Investigation Agency. 2015. Deforestation by definition. *The Peruvian Government fails to define forests as forests, while palm oil expansion and the Malaysian influence threaten the Amazon.* https://content.eia-global.org/assets/2015/04/Deforestation_By_Definition.pdf
- Convoca, 10/03/2016. *Amazonía Arrasada.* <https://amazonia.convoca.pe/>
- Juan Luis Dammert. (2016). *Acaparamiento de tierras en la Amazonía Peruana: el caso de Tamshiyacu.* Lima Perú: Wildlife Conservation Society.

² Actualidad Ambiental 25/07/2019. Fallo histórico: Poder Judicial sentencia a Cacao Perú del Norte <https://www.actualidadambiental.pe/loreto-hoy-dictan-sentencia-a-empresa-que-deforesto-cerca-de-2-mil-hectareas-de-bosques-en-tamshiyacu/>

environmental management. The ruling would not have been possible without the effort and dedication of the representatives of the affected communities that denounced the guilty parties' deeds, the work of the Specialized Environmental Prosecutor's Office, which carried out various operations in order to connect information and prepare the case, and the participation of the Special Attorney (*Procuraduría*) from the Ministry of the Environment, in charge of the valuation studies of the harm to the environment and natural resources.

The ruling ordered a civil reparation in favor of the State for more than 15 million soles (about 5 million dollars), condemned Rubén Antonio Espinoza—company manager and current fugitive—to 8 years imprisonment and established suspended sentences for Ernesto Vega Delgado and Giovanni Cubas Ramírez. The former, head of operations, and the latter, agroindustrial plantation field staff for cacao in the Tamshiyacu Estate.

This is the first time that the judiciary has been able to penalize abusive and illegal practices that seek to implement large-scale agricultural activities in the Amazon, which openly fail to acknowledge the country's environmental regulations and institutions.

At the same time, the Environmental Assessment and Auditing Agency (OEFA, from the original Spanish), has begun an environmental administrative penalty process against the company that will conclude in the coming weeks. Furthermore, the continued infractions committed by the company against the forest and environmental laws have already been under analysis in official reports by the Ministry of Agriculture and Irrigation, by the National Forest and Wildlife Service, by the Ombudsman's Office, and the National Comptroller's Office.

The ruling from July 2019 was appealed by the convicted parties and is currently being revised by the Loreto Superior Court Appeals Chamber. Despite abundant evidence that validates the conviction sentence, the company Tamshi S.A.C. and the other convicted parties have questioned the ruling, employing arguments that seek to confuse members of the Chamber. In effect, the arguments would seek to question the thoroughness of the economic valuation for the harms inflicted upon the forests and to relieve the responsibility of the other individuals implicated in the perpetration of the crimes under investigation.

As you can see, the case of Tamshiyacu is emblematic in the fight against the expansion of large-scale agribusinesses that exist based on illegal strategies within the Peruvian Amazon. These corporate practices extended throughout Loreto, Ucayali, and San Martín, seek to legitimize these companies' conduct, pretending that they work towards the development of productive activities, hiding behind, at times, local leaders or authorities.³

Mister President Vizcarra, as is documented in this letter, the actions of Tamshi S.A.C represent the antithesis of a sustainable and respectful production model in the Peruvian Amazon, of a democracy, of the law, and of our country's climate commitments.

Our population needs to overcome poverty and we will not be able to achieve this goal by validating illegal and abusive operations. For these reasons, it is a priority to:

-Implement the zoning and management of land.

³ Just as you could observe during your recent visit to Tamshiyacu, where the mayor asked for the approval of a PAMA for a Company located in his district—referring indirectly to the case of Tamshi SAC—, when the procedure had already been reviewed and denied by the Ministry of Agriculture and Irrigation.

- Update the Land Classification Regulations for the best land use capacity, assuring the sustainable use of our forests under the standards approved by Law N° 29763, the Forest and Wildlife Law.
- Finalize the process of environmental adaptation in the agricultural sector as established in Article 40 of the Regulation on Environmental Agricultural Management (approved under the DS N° 019-2012-AG).
- Promote investment or business plans that internalize the value of our natural resources, that respect our laws, and that generate fair revenue for the local population.

We agree with your statements made on October 20 in Tamshiyacu, in the sense that we must “maintain a balance between productive activities and nature” and that “this pandemic has shown us the lack of balance that we have had for many years, this pandemic has even given nature a rest. This is a lesson that it has taught us: take care of the water, take care of the rivers, take care of the trees, take of your environment.” Abundant evidence has been produced by the Peruvian State⁴, civil society organizations⁵, academics, and media outlets⁶ **that allows us to assure you that Tamshi S.A.C has not sought to maintain this balance, but rather, on the contrary, has deforested the natural Amazon forest and has violated the human and territorial rights of rural families in Tamshiyacu and the surrounding area.**

Now that you are familiar with Tamshiyacu and its current situation, we request that you support the work of the entities of your Government that are investigating and working to duly penalize the company in question, as is the case for the Office of the Prosecutor for Environmental Matters (FEMA) and the Environmental Assessment and Control Agency (OEFA), as well as the investigations and penalties carried out and applied by the Ministry of the Environment, the Ministry of Agriculture and Irrigation⁷, the Ombudsman’s Office⁸, and the National Comptroller’s Office⁹.

We are eager to meet with you and to talk more broadly about this case and its issues, to supply you with any documentation you might request, and propose concrete solutions for the fight against deforestation and in favor of the protection of vulnerable communities and Environmental Defenders in the Peruvian Amazon.

Sincerely,

The signing institutions:

1. AIDSEP
2. Asociación Pro-Purus
3. Amazónicos por la Amazonía - AMPA

4 El Ministerio del Ambiente, el Ministerio de la Agricultura y Riego, la Contraloría General de la República, la Defensoría del Pueblo

5 See <https://actualidadambiental.pe/tamshiyacu/publicaciones-sobre-el-caso/>

6 See, Ojo Público, 13/10/2020, *Empresa investigada por deforestar operar sin autorización ambiental* <https://ojo-publico.com/2146/empresa-investigada-por-deforestar-opera-sin-certificacion>

7Oficio 026-2014-MINAGRI-DM, Informe n° 0037-2019-MINAGRI-DVDIAR/DGAAA-DGAA-JJEA , Resolución de Dirección General n° 140-2019-MINAGRI-DVDIAR-DGAAA, Resolución de Dirección General N° 462-2014-MINAGRI-DVDIAR-DGAAA, Resolución Ministerial N° 236-2015-MINAGRI

8 Informe de Adjuntía N° 001-2017-DP/AMASPPI.MA

9 Informe de Auditoría de Cumplimiento N° 691-2019-CG/AGR-AC

4. Centro Amazónico de Antropología y Aplicación Práctica - CAAAP
5. CEDIA
6. Coordinadora Nacional de Derechos Humanos - CNDDHH
7. Comité de Defensa del Agua – Iquitos
8. Derecho, Ambiente y Recursos Naturales - DAR
9. Environmental Investigation Agency – Perú
10. Federación de comunidades nativas de Ucayali y Afluyentes - FECONAU
11. Forest Peoples Programm
12. Instituto del Bien Común - IBC
13. Instituto de Defensa Legal – IDL
14. Kené Instituto de Estudios Forestales y Ambientales
15. Movimiento Ciudadano Frente al Cambio Climático - MOCICC
16. Organización Nacional de Mujeres Indígenas Andinas y Amazónicas del Perú - ONAMIAP
17. Organización Regional de los Pueblos Indígenas del Oriente - ORPIO
18. Organización Regional Aidesep Ucayali - ORAU
19. OXFAM – Perú
20. Paz y Esperanza
21. Proética – Capítulo Peruano de Transparencia Internacional
22. Resurgir Amazónico
23. RADIO LA VOZ DE LA SELVA
24. Sociedad Peruana de Derecho Ambiental
25. Sociedad Peruana de Ecodesarrollo
26. Viernes por el Futuro – Perú
27. TierraActiva
28. Wildlife Conservation Society

CC: MINAM

OEFA

MINAGRI

SERFOR

FEMA

DEFENSORÍA DEL PUEBLO