

Making the Forest Sector Transparent Annual Transparency Report 2011



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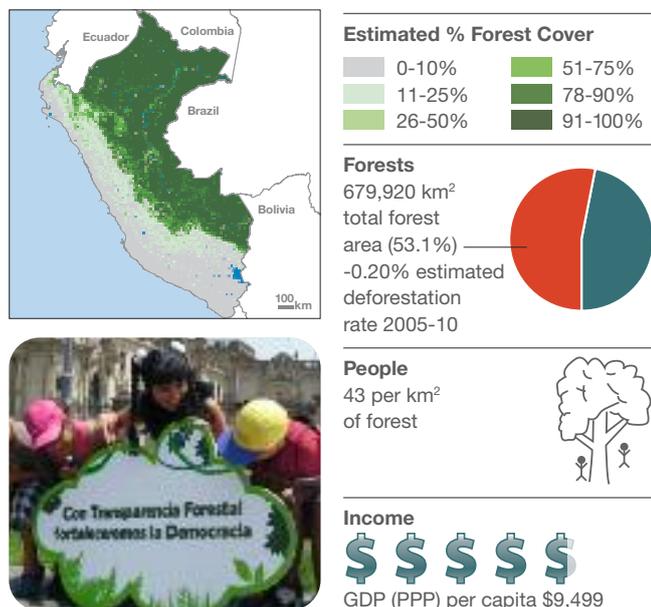
Country Specific Report: Peru

Prepared by Derecho Ambiente y Recursos Naturales (DAR) and Global Witness, October 2012

Introduction

Peru is one of seven forest-rich countries where the *Making the Forest Sector Transparency* programme is working. The Annual Transparency Report is published each year to assess whether the right information is being made available to citizens to ensure that they have a say in how their forests are managed. This summary presents the main findings from the third assessment of the forest sector in Peru carried out by DAR in 2011. It applies a set of 20 'yes' (green circle), 'partial' (yellow circle) or 'no' (red circle) indicators to test whether the necessary provisions in the legal framework exist in the public domain and whether important documents and data are made publicly available. Changes in the last year are also highlighted. The assessment was largely carried out using desk research to December 2011. The complete analyses from all the report cards and more recent updates are available at www.foresttransparency.info.

Peru Vital Statistics



Street theatre in Lima, Peru, highlighting the need for forest sector transparency. Photo: DAR

Map of estimated % forest cover adapted from FAO Global Forest Resources Assessment 2010 and derived from Global Land Cover Facility data of vegetation continuous fields. Land area, forest area and estimated deforestation rate drawn from FAO Global Forest Resources Assessment 2010, accessed at <http://www.fao.org/forestry/fra/fra2010/en/>. Data on total population and GDP per capita in 2010 based on purchasing power parity (PPP) converted to international dollars are drawn from the World Bank data accessed at <http://data.worldbank.org>

Key Conclusions from 2011

DAR released its third report on fulfilment of the Transparency and Access to Public Information Law by forest-related authorities in March 2012, which showed that there had been some improvements but that many obligations were still not being met. Responsibility for forest management has been decentralised to regional authorities, and DAR has conducted capacity-building work with San Martin Regional Forest Authority to improve its information management, which has demonstrated the benefits of transparency and influenced other regions like Loreto to make progress.

Two important laws were finally passed following complicated and contentious processes. The new Forest and Wildlife Law establishes a revised framework for managing the sector through the National Forest and Wildlife Service (SERFOR) and the National Forest and Wildlife Management System (SINAFOR). The Right to Prior Consultation of Indigenous or Native Peoples Law provides a mandate for free prior informed consultation, but there remain questions to resolve over how this leads to consent. DAR played a major role in bringing all stakeholders to the table to negotiate the new laws, and important lessons need to be learnt from this process such as the need for adequate time and representation to allow for meaningful participation.

The new laws explicitly recognise customary rights of indigenous peoples, but it remains to be seen how they are implemented in practice. The state controls all forest resource uses through concessions, permits and authorisations, but public information is lacking on these activities as well as on forest law enforcement. Extra-sectoral activities such as mining are also having an impact on communities and forests. As it stands, although Peru has laws, regulations and planning systems with the potential to improve transparency and governance, far greater commitment is needed to implement them in practice.

The *Making the Forest Sector Transparent* programme is coordinated by Global Witness and works with a coalition of leading local NGOs in Cameroon, the Democratic Republic of Congo, Ecuador, Ghana, Liberia and Peru to engage policymakers and advocate for capable, responsive and accountable forest sector governance. Each partner has administered a mini-grants fund to support grassroots advocacy in their country.



Peru Indicators 2011

Indicator: Yes Partial No Not applicable

Change since 2010: Significantly Improved Improved No Change Worsened Significantly Worsened

Freedom of Information Legislation			The 2003 Transparency and Access to Public Information Law sets out obligations on public bodies, but the majority do not comply with even the minimum standards, and information provision is still insufficient and incomplete. Requests for information on the forest sector have been met, but not always in a timely fashion.
National Forest Policy			A third preliminary version of the National Forest Policy was updated in June 2010, but this document still has not been approved and therefore did not influence the forest law. The documents that make up the implicit policy of the forest sector are not readily accessible and are technically complex, which limits participation.
Codified Forest Law and Supporting Norms			A legal framework for the forest sector is provided by the 2000 Forest and Wildlife Law, which has been implemented through lower level regulations. A new Forest and Wildlife Law was approved in 2011, and will come into force once implementing regulations are completed. It is expected that they will relate to emerging issues such as forest ecosystem services.
Signed International Agreements Related to Forest Products			The Trade Promotion Agreement with the United States, which was approved in 2006, directly led to the updating of forest sector legislation. Its implementation involved an environmental consultative committee, including a civil society observer. A Trade Agreement with the EU was initialled in 2011 and it is expected to come into force in 2012.
Provisions for Transparency in Forest Laws and Norms			There are explicit provisions on transparency and access to information in the 2011 Forest and Wildlife Law and the National Anti-Corruption Plan for the Forest and Wildlife Sector. These measures are in the process of being implemented and are expected to improve compliance with the Transparency and Access to Public Information Law.
Legal Recognition of Customary Rights in Forest Laws and Norms			The 2011 Forest and Wildlife Law recognises the concept of indigenous peoples' forests and respects their traditional knowledge. The law is awaiting the completion of implementing regulations. It is publicly available, but has not been translated into community languages. Participation in the formulation of the law was also considered inadequate
Legally Recognised Procedure for Consultation on New Forest Norms			The Law on the Right to Prior Consultation of Indigenous or Native Peoples was approved in 2011. This right is also recognised in the new Forest and Wildlife Law. Although it was criticised, the consultation process on this law provides guidance and lessons on a framework for representation, timeliness and information sharing.
Legal Recognition of the Right to Free Prior and Informed Consent			The Law on the Right to Prior Consultation of Indigenous or Native Peoples officially conforms to ILO Convention 169 and ensures that there is consultation and a desire for consent following an inclusive decision-making process, but stops short of outright FPIC.
National Land Tenure Policy			There is no specific policy on land tenure. The Constitution states that natural resources are national assets and the state has sovereign power over them. Norms specify that there is no private ownership of forests, and frame the requirements for access to their use. National and regional planning processes are seek to formalise tenure arrangements.
Forest Ownership and Resource Use Maps			Maps currently provide information on the location of titles for forest use, but they do not identify the holders and types of use. The situation has improved due to the release of more technical maps covering where rights have been granted, but further detail is necessary to support public participation.

Peru Indicators 2011

Indicator: Yes Partial No Not applicable

Change since 2010: Significantly Improved Improved No Change Worsened Significantly Worsened

Regulated System of Permits for Commercial Logging Operations			There is a regulated system of forestry authorisations, permits and concessions. Access to these contracts/permits is only possible through specific information requests, and the rights holders are difficult to identify. The creation of an integrated system, SINAFOR, is expected to improve access.
Legal Requirement for Consultation before Commercial Logging Allocation			When granting concessions or other forestry permits and authorisations, there is no requirement that obliges the forest authority to consult interested parties prior to the granting of these rights.
Verification Process (Due Diligence) on Eligibility of Commercial Operators			There is currently no process, nor is one planned by law, to verify the technical and financial capacity of bidders. It is only assessed whether the bidder meets the minimum conditions to enter into a contract with the State (for example, having a Tax Identification Number; authorised representatives; and a management plan).
Forest Management Plans			Even though each rights-holder of a forestry permit is required to produce a forest management plan, in general these plans are not carried out and if they are compiled then they are not available to the public. The new Forest and Wildlife Law sets out creation of SINAFOR, which is charged with making such plans available.
Regulation of Environmental Services			Although environmental services are addressed in general norms, there is no specific law that regulates them and projects may be developed inappropriately. The new Forest and Wildlife Law includes provision for a payment or compensation scheme for environmental services.
Strategic Environmental Assessment			The National Environmental Action Plan 2011-2021 was approved this year. It sets out specific actions and goals that strengthen strategic assessment through Territorial Planning and Ecological and Economic Zoning. Whilst this is in the process of being implemented it will take some time for it to become useful in influencing strategic land-use decisions.
Independent Forest Monitoring			The Public Ombudsman is an autonomous body that played an important role in pressing for updated forest legislation, and informed its subsequent content. This body and the Forest Resources Supervisory Body (Organismo Supervisor de los Recursos Forestales – OSINFOR) are attached to the state; there is no active advocacy within civil society for independent forest monitoring.
Fiscal Systems to Distribute Forestry Royalties or Incentives			The system of redistribution of forestry taxes and royalties to regional and local governments is found in the Canon Law and relies on the forest authorities communicating with the finance ministry. Only limited data on the amounts collected and distributed are available on official websites.
Information on Forest Law Infractions			Neither the forest authority nor OSINFOR publish information on forest law infractions and fines, in spite of regulatory instruments that stipulate their obligation to maintain registers with these details. This makes it difficult for citizens to identify individual offenders or gather prior information on companies signing contracts.
Annual Forest Authority Report			Even though the law requires the forest authority to disseminate an annual report of its activities, it has only presented a statistical yearbook to date, which is insufficient alone. The creation of SINAFOR following the new Forest and Wildlife Law could support the production of such reports.

Analysis

The eight indicators assessed as 'greens' reveal that Peru has the necessary legal and regulatory framework to strengthen forest sector transparency. Even though their development has been contentious, the new laws include provisions with the potential to improve decentralised management of activities, recognition of customary rights, and prior consultation leading to agreement on projects. The planning framework has also been enhanced with further measures to support strategic assessment of environmental impacts.

While these legal and planning changes all represent useful steps, whether real improvements in forest governance are realised will depend on their implementation. The five 'yellows' and seven 'reds' show that there are major deficiencies to address on this score. The national forest policy needs to be finalised, and defined processes are necessary to formalise land tenure. Key documents and data, such as annual reports, contracts, management plans, and revenues disbursement, could be made more readily accessible to the public. Regarding forest law enforcement, the authorities do not publish data on offences and fines. It is hoped that the National Anti-Corruption Plan for the Forest and Wildlife Sector will drive forward corrective measures and provide better information.

The institutional arrangements for governing the forest sector were going through important changes in 2011. The creation of SINAFOR is intended to result in better integration of information on activities in the forest sector. In a context of decentralisation, it is therefore important that regional governments' capacity for information management is augmented as well. Annual assessments and capacity-building work by DAR has encouraged some regional authorities to realise the benefits of transparency; this trend needs to be sustained and widened.

There is considerable debate and conflicts in Peru over the impacts of extra-sectoral activities such as mining on forests and communities. Preparations for REDD+ and carbon projects have also been the subject of contention. Lessons from the limits to consultation on the new forest law need to be learnt to ensure that there is adequate information, time and representation to allow all stakeholders, in particular indigenous peoples and rural communities, to participate meaningfully in decisions on forest land use.

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Key Recommendations

Full recommendations are available at www.foresttransparency.info/peru. In summary,

The forest authorities should:

- Develop an information system to support coordination of responsibilities as part of SINAFOR.
- Implement the changes in the new Forest and Wildlife Law by appointing experienced personnel in the new SERFOR.
- Comply fully with the norms on transparency and access to information, by taking appropriate corrective measure where necessary.
- Develop a guiding framework for consultation on new norms taking into account lessons learnt from recent development of laws and plans.
- Take forward the process of designing a new National Forest Policy to set out how the law will be implemented.

The Legislative Assemblies should:

- Follow the process set out by the Law of Prior Consultation to ensure that there is public participation in new regulations.
- Develop better information dissemination and more participative processes for the formulation of laws.

Civil society organisations should:

- Strengthen their role as monitor, defender and in some cases overseer of legal compliance by the forest authorities.
- Improve information sharing to the public on policy implementation at regional, departmental, municipal and community levels.

Donors should:

- Ensure that proposed projects have the free, prior, informed consent of affected populations.
- Share information on the results of projects to the public.



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