

Making the Forest Sector Transparent Annual Transparency Report 2011



global witness

Country Specific Report: Guatemala

Prepared by Ut'z Che' and Global Witness, October 2012

Introduction

Guatemala 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 first assessment of the forest sector in Guatemala carried out by Ut'z Che' 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. 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.foreststransparency.info.

Key Conclusions from 2011

The two main forest authorities, the National Institute of Forests (Instituto Nacional de Bosques – INAB) and the National Council of Protected Areas (Consejo Nacional de Areas Protegidas – CONAP) were not fully compliant in 2011 with the Access to Public Information Law (Ley de Acceso a la Información Pública – LAIP), and key information was not translated into indigenous languages. The National Forest Statistics System could develop into an important information source.

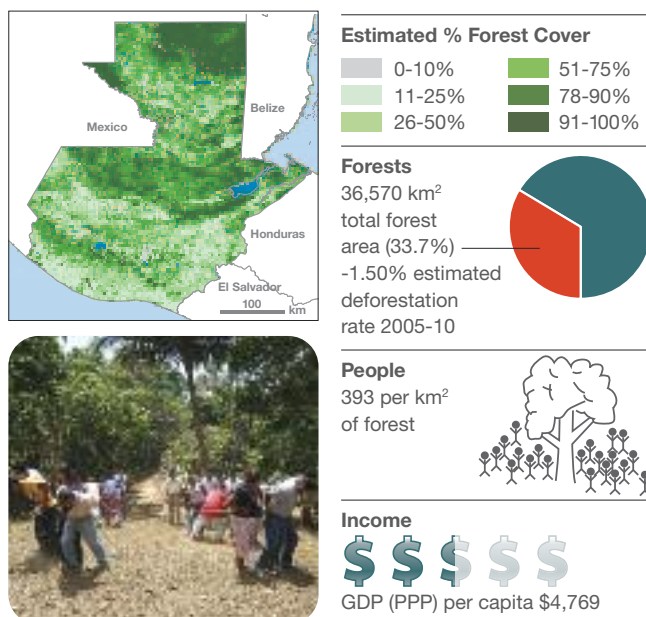
There is a very high level of land inequality, and promises to clarify tenure and recognise customary rights have not been fulfilled. Lack of information and maps on forest ownership limits analysis. A bill proposed by civil society for a National System of Integrated Rural Development would oblige the state to strengthen land reforms, but it has not been approved.

Available evidence shows that there are high levels of illegal or unauthorised logging and little compliance with forest legislation. Authorities lack the capacity to manage activities in the sector. The annual public environmental spending, including forest authorities' budgets, has been very low (0.5% of GDP).

The Forestry Incentives Programme (PINFOR) was intended to support smallholders, but it has not been funded at the proposed levels and it has not reached the most marginalised groups. Pressure by civil society organisations, including Ut'z Che', led to the government approving the law in late 2010 for a programme to target incentives at smallholders (PINPEP). More information is needed to analyse how incentives are distributed.

Participation is weakened by shortfalls in transparency. Representation of different stakeholders in existing forums and their impact on decisions was hard to judge. The National Forest Programme (Programa Forestal Nacional – PFN) had not yet created the Forest Consultation Group to help develop consensus. The REDD+ preparations were also not supporting wider participation, but Ut'z Che' and others successfully lobbied for a more inclusive process to involve indigenous and rural groups.

Guatemala Vital Statistics



Community group exercise as part of workshop in Guatemala. Photo Global Witness

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/ra/ra2010/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>

The *Making the Forest Sector Transparency* 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.

Indicator:  Yes  Partial  No  Not applicable

Changes since 2010 not assessed, as this is the first report for Guatemala.

Freedom of Information Legislation		The LAIP is available on various government websites. It establishes the transparency of public administration and the right to free access to public information, but there is a lack of compliance, resources, dissemination and knowledge of its obligations, including among forest authorities and municipalities.
National Forest Policy		The 2001 Forest Policy sets out the policy for the management of forest resources. The policy is available on the website of the INAB. An official evaluation in 2011 found that there had been little or no progress in many of the key aspects of forest production and conservation ¹ .
Codified Forest Law and Supporting Norms		The Forest Law was passed in 1996 and its 2005 code regulates the sector. The laws and norms are available on official websites, but none have been translated into indigenous languages. Evidence suggests that the legislation is not being applied consistently and that the great majority of forest activities are carried out illegally ² .
Signed International Agreements Related to Forest Products		Guatemala was a signatory of the Central American Free Trade Agreement with the USA in 2004. Central America has also negotiated an Association Agreement with the EU. There is little information on the participation of civil society in the process of negotiating agreements and regulating trade in forest products.
Provisions for Transparency in Forest Laws and Norms		The forest laws and norms do not make specific reference to access to public information, but the LAIP is comprehensive. However, the forest authorities have not complied with their obligations under the Access to Public Information Law. A process has been established to centralise forest sector information, which should improve access to information.
Legal Recognition of Customary Rights in Forest Laws and Norms		Even though the Constitution and the 1996 Peace Accords oblige the state to recognise customary rights of indigenous peoples, and institutions have been established to do this, there have been many obstacles to these rights. There is also no specific recognition of customary rights in the forest laws and norms.
Legally Recognised Procedure for Consultation on New Forest Norms		The system of Development Councils provides a formal procedure for consultation at different levels, and the National Forest Agenda of the PFN sets out informal consultation methods and regional forums, but there is no formal national forest forum and information on the Councils and other forums is very limited.
Legal Recognition of the Right to Free Prior and Informed Consent		The right of consent of indigenous communities is recognised in law, but the procedures necessary to implement this right have not been developed. A controversial and legally problematic regulation was developed by the previous Government to implement ILO Convention 169, but was not consulted with indigenous peoples, so it lacks legitimacy.
National Land Tenure Policy		The Agrarian Policy 2009-2012 and the National Policy for Integrated Rural Development 2009-2015 set out land policy in the short term. The initiatives to date have done little to address the very high level of land inequality in the country ² , which also underpins a lack of information on forest land tenure.
Forest Ownership and Resource Use Maps		There are no comprehensive maps of forest land tenure, but there are national maps of forest licences and forestry incentives. There are many land-related conflicts, which limits the creation of tenure maps. The Land Register is aiming to clarify land tenure nationally, but this process is expected to take more or less 15 years.

1 Monterroso, O. (2011) *Evaluación de la Política Forestal de Guatemala a diez años de su implementación*. Consejo Nacional de Estándares de Manejo Forestal Sostenible para Guatemala, Programa Nacional Forestal, Instituto Nacional de Bosques y Organización de las Naciones Unidas para la Agricultura y la Alimentación

2 Universidad Rafael Landívar (2009) *Análisis costo/beneficio de las actividades de la ilegalidad en el Sector Forestal y una propuesta para mejorar y fortalecer los mecanismos de gestión en el INAB en función del control forestal*. Dirección de Investigación, Instituto de Agricultura, Recursos Naturales y Ambiente

Indicator:  Yes  Partial  No  Not applicable

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Regulated System of Permits for Commercial Logging Operations		Forest law requires that forestry operators have a licence, but the documents are only made available to third parties on request from INAB. A study has found that forest institutions have little capacity to supervise forestry activities and that most forestry production is not incorporated into legal systems ³ .
Legal Requirement for Consultation before Commercial Logging Allocation		The regulations include basic requirements for public participation in all forestry activities, including prior to commercial logging as part of the required environmental impact assessment. In practice there is little evidence of this consultation, which is at the discretion of the Ministry of Environment and Natural Resources (Ministerio del Ambiente y Recursos Naturales – MARN).
Verification Process (Due Diligence) on Eligibility of Commercial Operators		Forest law and regulations require a form of 'due diligence' process for timber production of over 100 m ³ per annum, in that a registered Forest Manager must draw up the forest management plan. A regulation stipulates the training of these managers and this process is the responsibility of a committee formed of university and INAB representatives.
Forest Management Plans		Regulations place requirements on the completion of forest management plans and annual operating plans, which contain detailed information on planned locations, volumes and durations of activities. Local communities may apply for a copy of a management plan from the corresponding regional office of INAB, but these are not available on the website.
Regulation of Environmental Services		There are some regulations relating to environmental services, such as one on biodiversity. A Climate Change bill has been initiated, which could support communities and landowners through payments for carbon sequestration, but land inequality issues still need to be resolved if poor indigenous communities are to benefit from this.
Strategic Environmental Assessment		There are various government policies and plans, but none constitutes a strategic environmental evaluation of the priorities between different uses of natural resources. Civil society has criticised the government for approving extractive industry activities contrary to planning principles and with a lack of coordination.
Independent Forest Monitoring		There is no dedicated independent forest monitor although a number of official and academic bodies have some form of monitoring function. Indigenous communities are not formally involved in forest monitoring, though there are examples of various indigenous community associations informally monitoring forest operations in different parts of the country.
Fiscal Systems to Distribute Forestry Royalties or Incentives		The taxation and redistribution system of INAB is regulated by law and information on the amounts is available. The law specifies that 50% of PINFOR should be directed to small landowners, but in practice this was not being met, which led to the PINPEP law being passed in 2010 to also support people without title deeds.
Information on Forest Law Infractions		The forest law and regulations include rules on the penalties for forest infractions. The Ministry of Interior publishes articles on forest infractions, but there is no specific section for this purpose, and the judiciary is notoriously inefficient on forest crime. Little information is available on this work from the Ministry, INAB or the judiciary.
Annual Forest Authority Report		The latest annual report of INAB about its overall activities was the Work Report and Statistical Bulletin for 2009. To date, the 2010 and 2011 reports have not been published, but CONAP has published a more recent report from 2010.

Analysis

Following the Peace Accords signed in 1996 to end the civil war, Guatemala established a legal and regulatory framework for governing the forest sector. The seven indicators rated as 'greens' reflect elements of this framework, such as the codified forest law and PINFOR. National policies have also been developed to guide land tenure. The LAIP provides a general framework for freedom of information applied to all public bodies. However, the eleven 'yellows' reveals that these legal provisions are not applied fully or consistently. Key information such as forest management plans and lists of infractions are difficult to access. Forests are divided between private, public and communal ownership, but there is a lack of information and maps on forest land tenure. Regarding participation measures, information on the system of development councils and on forest-specific consultation groups is also lacking. The two 'reds' reflect the absence of forest-specific provisions for transparency (compensated somewhat by the LAIP), and, of greater concern, the absence of specific recognition of customary rights in forest laws and regulations.

Analysis reveals that Guatemala faces major challenges to improving forest transparency and governance. In particular, forest authorities lack the capacity to comply fully with the laws and apply regulations to the sector. Without the necessary information and resources, fundamental issues such as high land inequality, marginalisation of indigenous peoples, and high levels of illegal and unauthorised logging are not being effectively addressed. Pressure by civil society has created some movement, notably PINPEP, which should provide better targeted incentives to support rural smallholders, but political will is needed to progress other proposals, such as the bill for a National System of Integrated Rural Development. The lessons learnt from some improvements in participation, such as the move to a more inclusive approach to REDD+ preparations, also needs to be extended to other forums and groups related to the forest sector.

Official information is also lacking on the causes of deforestation due to extra-sectoral activities. Instead of implementing plans and policies to protect and manage the environment and natural resources, successive governments have supported large-scale projects, such as mining, agro-fuels or oil extraction operations. Proposals to address climate change and deforestation need to gather impetus if they are to represent a change in direction for the forest sector.

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This material has been funded by UK aid from the Department for International Development; however the views expressed do not necessarily reflect the department's official policies. The programme is funded for four and a half years until March 2013 as part of its Governance and Transparency Fund.

Key Recommendations

Full recommendations are available at www.foresttransparency.info/guatemala.

In summary,

The Government of Guatemala should:

- Increase public environmental spending to the levels recommended by the World Bank for addressing climate change and deforestation.
- Approve Bill 40-84 on the National System of Integrated Rural Development to establish a mechanism for fairer land distribution.

INAB should:

- Comply with LAIP by publishing annual reports and making links to information accessible online.
- Produce more comprehensive information for analysis of PINFOR.
- Promote social and municipal participation in the assessment of the forest policy and the committee against illegal logging.
- Work with MARN to develop a website for the Group on Forests, Biodiversity and Climate Change to support preparations for REDD+.

Development Councils should:

- Comply with LAIP by providing information to the public on policy implementation at regional, departmental, municipal and community levels

Civil society, indigenous peoples and community groups should:

- Disseminate information and promote participation in the PFN.
- Promote LAIP at a local level to support a culture of accountability.
- Participate more actively in the Development Councils.
- Join together to encourage the media to create spaces for information and discussion on environmental issues.

The National Forest Programme should:

- Create a forest consultation group and promote more participation in thematic forums and policy roundtables.
- Link with the Development Council and the Group on Forests, Biodiversity and Climate Change.

