



global witness

Making the Forest Sector Transparent

Annual Transparency Report

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Partner: Derecho, Ambiente y Recursos Naturales (DAR)

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Making the Forest Sector Transparent

Making the Forest Sector Transparent is a four-year programme supporting civil society groups in forest-rich countries to advocate for greater transparency and good governance. An important part of the programme is the production of annual report cards by independent NGO partners to monitor the forest sector in their countries. The number of NGO partners has increased year-on-year, starting in Cameroon, Ghana, Liberia and Peru in 2009, to including Ecuador in 2010 and Guatemala and the Democratic Republic of Congo (DRC) in 2011.

The 2011 Report Card consists of 20 key indicators on important provisions of the legal and regulatory framework that applies to the forest sector governance. The partners collected data between July 2011 and August 2011. Each indicator includes an 'objective' assessment of whether clear provisions exist and information on them is publicly available, resulting in a 'yes', 'partial', or 'no' overall. This is combined with a more 'subjective' assessment of whether there is evidence of change in the last year (where a report card was produced in 2010) and analysis of whether the provision enables transparent access to information and/or decision-making. Data collection was largely carried out through office-based research, for example by searching the websites of government institutions and other official sources of information, supplemented where appropriate by contacting key informants and requesting specific information. The data presented on each indicator is organised as shown in the Table below.

Indicator assessment

Does it exist?	Is it available?	Indicator	
Yes – specific provision in current laws and norms that have been passed by state and applies to the forest sector	Yes – available to public from official sources (websites, publications, media)	Yes	
	Partial – some information provided but not complete (e.g. only parts of manuals)	Partial	
	No – although evidence that exists, it is not available (includes when only unofficial sources)	No	
Partial – process underway to develop it, but not yet established in law; or limited provision or relevance to forest sector	Partial – some information provided but not complete (e.g. only parts of manuals)	Yes	
	Partial – some information provided but not complete (e.g. only parts of manuals)	Partial	
	No – although evidence that exists, it is not available (includes when only unofficial sources)	No	
No – no current provision or plans to establish (even though needed)		No	
Not applicable - not relevant to the country-specific context		N/A	

Specific questions guided the determination of the existence and availability of the provisions for each indicator. In order to receive a 'yes', the provision needed to both exist in the legal and regulatory framework and information needs to be publicly available on it, whereas a 'partial' or 'no' indicator reflected that either one or the other criteria (or both) was partially or not met.

The change in the last year was assessed against the following scale:

-  Significantly Improved - major development such as new law or information system
-  Improved - steps forward such as initiatives with potential to improve transparency
-  No Change - no evidence of major change in the conditions for transparency
-  Worsened - steps backward such as activities taking place without transparent processes
-  Significantly Worsened - major deterioration such as termination of laws or systems

Specific information was provided on the full titles of the applicable laws or other norms, the names of the authorities or institutions responsible for them, the dates when they were passed, and the website or other official sources where they can be accessed.

For further information please go to www.foresttransparency.info.



Freedom of Information Legislation



Is there Freedom of Information legislation in the public domain?

The Political Constitution of Peru establishes access to public information as one of the fundamental rights of every citizen. The country also has Law No. 27806, the Law on Transparency and Access to Public Information, which has been in force since 2003, and which regulates every citizen's right to request information and the obligation of the State bodies to publish information on their websites and/or disseminate it in newspapers and periodical reports.

Since the outset of the programme, DAR has measured the level of compliance of the public institutions with responsibilities in administration of the forest sector with the Law on Transparency and Access to Public Information and the specific regulations on implementation of transparency websites. Compared to 2011, the levels of transparency and access to information have increased slightly, and in particular the Regional Governments have implemented measures for greater transparency within their institutions. However, there are still government bodies which do not even reach 50% compliance in their levels of transparency (as far as their Websites are concerned). In addition, there are public bodies which either do not publish all the information required by law, or publish it in an incomplete or outdated manner.

It is true that some progress has been made, but this is relatively insignificant given that change is very slow and in some cases it seems as though the topic of transparency and access to public information has been stopped or put on "stand by"; this could be because in practice there is no real monitoring of this topic by the State. The Congress of the Republic and the Office of the Auditor General of the Republic should take on a real commitment to monitor the public institutions, and take the appropriate measures in cases of non-compliance with the law. It should also be stated that since 2008 the Public Ombudsman has been publishing reports and annual balances on supervision of the transparency websites of the regional governments and provincial municipalities located in departmental capitals; furthermore, in April 2012, this body proposed the creation of an Autonomous National Authority on Transparency which, if implemented, would be great progress in implementing genuine oversight and monitoring of the public institutions in this field.

Title:

- a. Paragraph 5 of Article 2 of Peru's Political Constitution of 1993, which establishes access to information as a fundamental right, allowing anyone to "request the information required, without specifying the reason why, and receive it from any public body, within the legal deadline, with the cost entailed by the request. Exceptions to this are information affecting personal privacy and information expressly excluded by law or for reasons of national security".
- b. Law No. 27806 - Law on Transparency and Access to Public Information; the Single Text of which was approved by Supreme Decree No. 043-2003-PCM of 22 April 2003.
- c. Law No. 27927 - Law modifying Law No. 27806, Law on Transparency and Access to Public Information.
- d. Supreme Decree No. 072-2003-PCM 2003 – Approving Regulation of the Law on Transparency and Access to Public Information
- e. Law No. 29091 2007 - Law modifying paragraph 38.3 of Article 38 of the General Administrative Procedures Law which sets out the publication of a number of legal provisions on the Website of the Peruvian State and on Institutional websites.
- f. Supreme Decree No. 063-2010-PCM – Approving implementation of the Standard Transparency Website in Public Administration Bodies.
- g. Ministerial Ruling No. 200-2010-PCM – Approving Directive No. 001-2010-PCM/SGP "Guidelines for implementation of the Standard Transparency Website in Public Administration Bodies".

Organisation:

- a. Office of the President of the Republic
- b. Congress of the Republic
- c. Congress of the Republic
- d. Office of the President of the Council of Ministers
- e. Congress of the Republic
- f. Office of the President of the Council of Ministers
- g. Office of the President of the Council of Ministers

Source:

- a. <http://www.tc.gob.pe/constitucion.pdf>
- b. http://www.peru.gob.pe/normas/docs/LAW_27806.pdf
- c. http://www.construyendoperu.gob.pe/Documentos/Transparencia/law_27927.pdf
- d. http://can.pcm.gob.pe/files/Normatividad/ds_072_2003_pcm.pdf
- e. http://www.ongei.gob.pe/Bancos/banco_normas/archivos/law_29091.pdf
- f. http://www.ongei.gob.pe/Bancos/banco_normas/archivos/Ds_063_2010_PCM.pdf
- g. http://www.ongei.gob.pe/Bancos/banco_normas/archivos/n_200-2010.pdf

National Forest Policy

 Is there a current national forest policy in the public domain?

As far as National Forest Policy is concerned, there has been no major progress made on the third draft version produced in 2010. This version includes a guide for incentives but makes no explicit mention of REDD+. It is worth mentioning that the document recognises the participation of all the stakeholders involved and decentralisation; it also highlights fairness and social inclusion and respect for cultural diversity in management. Meanwhile, the National Forest Strategy, made official in 2004 as a precursor document for National Forest Policy, needs to be adapted for REDD+, not only because this is a new and emerging topic, but because it is linked to other sectors of management of natural resources.

In May 2012 the General Directorate for Forests and Wildlife in the Ministry of Agriculture presented a Guide to Methodology to the Participative and Decentralised Process for strengthening of the Forest Sector, which includes drawing up a National Forest and Wildlife Policy for which the participation process (receipt of contributions, drafting and approval) must last for approximately two months, and must be reviewed and validated by an inter-governmental Group.

Meanwhile, Law No. 27308, the Forests and Wildlife Law (still in force) and Law No. 29763, the Forests and Wildlife Law approved in June last year (which will come into force when there is a regulation to implement it), have been approved and/or promulgated without the explicit existence of a National Forest Policy, which has consequently had no influence on their implementation; however, the recent Forest Law considers the follow-up to a National Policy.

Finally, the documents which make up the implicit policy of the Forest Sector are drafted in Spanish, but have not been translated into other local languages, and are only accessible through publication in the Official Newspaper "El Peruano" (a newspaper which, though distributed nationwide, arrives with a few days' delay and in smaller quantities) and the websites of each institution linked to the forest sector; this situation, added to the fact that the material is technically complex and large in size, means that access to the information is limited for community populations.

Title:

- a. Guide to Methodology. Participative and Decentralised Process for the strengthening of the Forest Sector, May 2012
- b. Proposed National Forest and Wildlife Policy – PNFFS (3rd Version) 2010
- c. Proposed National Forest and Wildlife Policy – PNFFS (2nd Version) 2010
- d. National Forest Strategy, from 2002 to 2021 (ENF) made official by Supreme Decree 031-2004-AG.

Organisation: General Directorate for Forests and Wildlife - Ministry of Agriculture

Source:

- a. http://dgffs.minag.gob.pe/rffs/pdf/guia_metodologica_proceso_fortalecimiento.pdf
- b. <http://www.minag.gob.pe/portal/download/pdf/especiales/lawforestalydefaunasilvestre/pnffs-3rversion-dgffs-07jun10.pdf>
- c. <http://www.minag.gob.pe/portal/download/pdf/especiales/lawforestalydefaunasilvestre/aportes-versionpreliminar-pnf-alexisluna-5abr10.pdf>

d. No longer available online



Codified Forest Law and Supporting Norms



Is there a codified forest law with supporting norms to fully implement it?

Law N° 27308, the Forests and Wildlife Law (still in force), provides a legal framework for the forest sector, which has been applied through official regulation and other lower level regulations. Access to it has been limited in terms of understanding the regulation, because of its technical language. Added to this are the general forest norms, which need to be brought into line with lower level provisions for application and adaption to the reality of the area. Meanwhile, only some technical forestry administrations on a regional level make available to the public the regulations and the procedures for each type of process.

Although the State began a process of updating forest legislation, which concluded with Law 29763, the new Forests and Wildlife Law (now approved and which will come into force once it has been regulated), it did not carry out an exhaustive analysis of forest regulations. It is expected that the implementing regulation of this law will see the beginning of a process to ensure that is compatible with REDD+, international trade agreements and other advances and initiatives, in particular if it refers explicitly to the regulation of the forest ecosystem services.

It should be emphasised that February 2012 saw the beginning of the participative and inclusive process for developing consensus in the drafting of the text of the regulation for the Forests and Wildlife Law, which must be drawn up in a decentralised manner within the current legal framework and within the deadline set out in the aforementioned Law. This process is expected to involve the participation of civil society organisations, indigenous organisations, the State, representatives of the environment, agriculture and culture sectors of National Government, as well as public officials from the Regional Governments. In addition, further progress came in May 2012 with information about the methodology designed by the General Directorate for Forests and Wildlife with the support of the Intergovernmental Group (Environment Ministry, Ministry of Foreign Trade and Tourism, Ministry of Production, Forest Resources Supervisory Body (OSINFOR), Ministry of Culture and Regional Governments) which establishes two processes: the process of citizen participation and, subsequently, the process of free, prior and informed consultation of the indigenous peoples. It is worth pointing out that the methodology emphasises the importance of achieving active participation and proposals from the different associated stakeholders and parties interested in the management of forest and wildlife resources.

Title:

- Law No. 27308 (2000) - Forests and Wildlife Law (currently in force)
- Supreme Decree No. 014-2001-AG – Approves Regulation of the Forests and Wildlife Law
- Law 29763 (2011) - Forests and Wildlife Law (Law which will come into force when there is a regulation to implement it)
- Ministerial Ruling No. 0048-2012-AG – Declares the process of drawing up the Regulation for Law No. 29763, the Forests and Wildlife Law to be a priority
- Law No. 27783 (2002) - Law on the Bases of Decentralisation
- Law No. 27867 (2002) - Organic Law on Regional Governments

Organisation:

- Congress of the Republic
- Ministry of Agriculture through the National Institute of Natural Resources (INRENA), now absorbed by the General Directorate for Forests and Wildlife.
- National Government and Congress of the Republic (through the Agriculture Commission)
- Ministry of Agriculture
- Congress of the Republic
- Congress of the Republic

Source:

- <http://www.legislacionforestal.org/law-forestal-y-de-fauna-silvestre-4/>
- <http://www.legislacionforestal.org/reglamento-de-law-forestal-y-de-fauna-silvestre/>
- <http://dgffs.minag.gob.pe/pdf/Law29763.pdf>

- d. http://www.minag.gob.pe/portal/download/pdf/marcolegal/normaslegales/resolucionesministeriales/2012/rm_0048-2012-ag.pdf
- e. http://www.pmde.gob.pe/archivos/lawesynormas/law_bases_descentralizacion.pdf
- f. http://www.ceplan.gob.pe/documents/10157/17736/law_27867.pdf

Signed VPAs and Other Agreements on Forest Products

 Has the country signed an international agreement(s) that relates to forest products?

In the free trade agreements and treaties signed, there are lists of annexes and duties, which identify commercialised goods between the signatory countries; some of these agreements are designed to protect the forest resources and implement contingency plans for illegal extraction processes linked directly to commercialisation. On this point, the Free Trade Agreement (FTA) with the USA motivated the process of updating forest legislation, with the Peruvian State undertaking a series of commitments in environmental management and in the forest sector to improve trade in legal timber products.

Meanwhile, the Agreement with the European Union was signed on 26 June 2012 and is expected to enter into force at the end of 2012, depending on approval in the respective Parliaments of the signatory countries. This Agreement contains Article 273 on trade in forest products, the aim of which is to promote sustainable management of forest resources and thereby improve application of the laws and good forest governance, and promote trade in legal and sustainable forest products.

Although these international agreements are in the official language (Spanish), they have not been translated into other community languages, making access to these documents difficult for those populations. Meanwhile, these agreements have not been given a consultation process; the only participants have been the responsible bodies of each government. However, implementation of the Free Trade Agreement signed with the USA involved the formation of an environmental consultative committee which acts as an observer representing civil society, to meet the commitments taken on by the Peruvian State.

For these agreements to have genuine effect, there must be compliance on all sides with the already existing national regulations on transparency and citizen participation in the management of forest resources, but there also needs to be a strengthening of the mechanisms for monitoring timber products and verifying of the legality of their origin; if this is not done, all the stipulations will remain merely illustrative, with no real effectiveness. It is also debatable whether the FTA with the USA has had a real impact on trade in forest products. For example, an investigation by the International Environmental Investigation Agency (1) states that "almost two years after expiry of the deadline for Peru to implement its obligations, little has been done to demand compliance with the agreement."

(1) Environmental Investigation Agency (2012) La Máquina Lavadora (The Laundering Machine). Available at http://launderingmachine.files.wordpress.com/2012/04/spanish_report_eia_final2.pdf

Title:

- a. Peru – USA Trade Promotion Agreement approved by Legislative Ruling 28766 (2006)
- b. Free Trade Agreement between the Government of the Republic of Peru and the Government of the People's Republic of China, ratified by Supreme Decree 092-2009-RE, and implemented by Supreme Decree 005-2010-MINCETUR
- c. Free Trade Agreement between Peru and Chile, signed on 22 August 2006 and ratified by DS 057-2006-RE. Amendment ratified by DS 052-2008-RE. The Agreement came into force on 1 March 2009 and was implemented by Supreme Decree No. 010-2009-MINCETUR.
- d. Multiparty Trade Agreement Peru-Colombia- European Union (2012)

Organisation: Ministry of Foreign Trade and Tourism

Source:

- a. http://www.acuerdoscomerciales.gob.pe/index.php?option=com_content&view=category&layout=blog&id=57&Itemid=80

- b. http://www.mincetur.gob.pe/newweb/Portals/0/comercio/tlc_china/texto_acuerdo.html
- c. <http://www.mincetur.gob.pe/newweb/Default.aspx?tabid=2852>
- d. http://www.acuerdoscomerciales.gob.pe/index.php?option=com_content&view=category&layout=blog&id=50&Itemid=73

Provisions for Transparency in Forest Laws and Norms

 Are there any provisions in forest-specific laws and/or supporting norms that develop the right to access public information on the forest sector?

There are currently explicit provisions on transparency and access to information for the forest sector, which have been regulated through the Forest Law 29763 (recently approved but awaiting implementing regulation) and which form part of the National Anti-Corruption Plan for the Forest and Wildlife Sector; these have still not been exercised, however, because they are in the process of being implemented. It is hoped that this process can be implemented after priority has been given to drafting the regulation for this law.

In addition, this new Forest Law establishes the National System for Forest and Wildlife Management (SINAFOR), which includes the key stakeholders in administration of forest and wildlife resources and the instruments associated with them: forest inventories and the system of information, which includes a monitoring module. However, as part of the participative and decentralised process for strengthening of the forest sector, the process of design and drafting of the SINAFOR proposal is still necessary, which will last for around four months.

In the framework of Law 27806, the Law on Transparency and Access to Public Information, information on the forest issues has been requested from the public institutions associated with the forest sector. Over the last year, the percentage of replies to the requests received has increased, but there are still some public bodies which reply outside the deadline established by law. A further problem relates to the quality of the replies; there has been some improvement but some bodies do not reply specifically to the requests or simply give no type of justification for not responding.

On this point, it should be emphasised that the information provided or published by the government bodies is vital for decision-making. With the implementation of the National Anti-Corruption Plan for the Forest and Wildlife Sector, corrective measures will be applied to improve this situation. This is a step forward in encouraging access to information by citizens.

In addition, the Regulation on Transparency, Access to Public Environmental Information and Citizen Participation and Consultation on Environmental Matters should not be overlooked. Its purpose is to establish provisions on access to public information with environmental content, transparency websites for environmental content, and to regulate the mechanisms and processes for citizen participation and consultation on environmental matters.

Title:

- a. Ministerial Ruling 0552-2010-AG – Technical Guidelines on Systematisation and Administration of Forest and Wildlife Information.
- b. National Anticorruption Plan for the Forest and Wildlife Sector approved by Supreme Decree 009-2011-AG, specifically in strategic objective I.
- c. Procedures for Handling Documentary Management Processes for Organisations in the Ministry of Agriculture approved by Sectoral Directive 005-2010-AG-DM.
- d. Law No. 29763, Forests and Wildlife Law (which will come into force when there is a regulation to implement it), specifically in paragraphs 1, 2 and 12 of the Preliminary Title, and in Art. II General Principles, and articles 142, 143 and 144 of Title IV “Transparency in forest and wildlife management”.
- e. Supreme Decree N° 002-2009-MINAM – Approves the Regulation on Transparency, Access to Public Environmental Information and Citizen Participation and Consultation on Environmental Matters.

Organisation: a. Ministry of Agriculture

- b. General Directorate for Forests and Wildlife – Ministry of Agriculture
- c. Ministry of Agriculture
- d. General Directorate for Forests and Wildlife – Ministry of Agriculture
- e. Environment Ministry

Source:

- a. [http://www.minag.gob.pe/dgffs/pdf/2010/ResolMin/RM%20N%C2%B0%20552-2010-AG-\(Lineamientos%20sobre%20sistematizaci%C3%B3n%20y%20administraci%C3%B3n%20de%20Informaci%C3%B3n%20Forestal\).PDF](http://www.minag.gob.pe/dgffs/pdf/2010/ResolMin/RM%20N%C2%B0%20552-2010-AG-(Lineamientos%20sobre%20sistematizaci%C3%B3n%20y%20administraci%C3%B3n%20de%20Informaci%C3%B3n%20Forestal).PDF)
- b. <http://www.legislacionforestal.org/aprueban-el-plan-nacional-anticorrupcion-del-sector-forestal-y-de-fauna-silvestre-ds-009-2011-ag/>
- c. <http://www.minag.gob.pe/download/pdf/marcolegal/normaslegales/directivas/directiva-sectorial005-2010-ag-dm.pdf>
- d. <http://dgffs.minag.gob.pe/pdf/Law29763.pdf>
- e. http://www.peru.gob.pe/docs/PLANES/188/PLAN_188__2012.pdf



Recognition of Customary Rights in Forest Laws and Norms



Are customary and traditional rights recognised in codified forest law and supporting norms?

The new Forest Law No. 29763 recognises the customary and traditional rights of indigenous peoples and is available on the websites of the institutions connected with the forest sector, specifically on the website of the General Directorate for Forests and Wildlife, although to date it has not been translated into community languages. The only document translated so far to facilitate access to information for these populations on their collective rights is Convention 169, which has been translated into Quechua. This translation was provided by the International Labor Organization (ILO) itself.

As far as recognition of indigenous rights is concerned, article 78 of Law No. 29763 states that the national and regional authorities recognise the concept of indigenous peoples' forests and respect their traditional knowledge of forest and wildlife use and management. It also states that indigenous knowledge will be incorporated, in coordination with the responsible body on these matters, in the technical regulations regulating community forest management. There are other important articles, such as article 75, which talks of forest management by the native communities which is carried out in an autonomous way and in accordance with their world view and with guidelines incorporating their cultural and spiritual values. Similarly, article 79 sets out that the communities should be able to plan and manage their lands according to their uses, customs and norms. However, it remains to be seen how the authorities will implement these principles, given the lack of more transparent implementation processes or mechanisms and the conflicts over land use and tenure.

Title:

- a) Article 8.1, 8.2, 9.1 Agreement No. 169 of the International Labour Organisation on respect for Customary Laws and respect for traditional methods.
- b) Articles 88 and 89 of Chapter VI of the 1993 Political Constitution of Peru "On the Agricultural System and the Peasant and Native Communities".
- c) Article 18 of the Organic Law for Sustainable Use of Natural Resources approved by Law No. 26821 (1997)
- d) Forest Permits in Community Lands agreed with Article 12 of Law No. 27308 - Forests and Wildlife Law (law currently in force), and article 43 of the Forest Law Regulation (2001)
- e) Peasant and Native Communities - Article 134 of the Peruvian Civil Code (1984)
- f) Terms of Reference approved for the formulation of Forest Management Plans in Native and/or Peasant Community forests with commercialisation purposes on a small, medium and large scale via Administrative Ruling 232-2006-INRENA
- g) Law No. 27811 (2002), which establishes the System of Protection for the Collective Knowledge of Indigenous Peoples Linked to Biological Resources
- h) Law No. 29763 (2011), the New Forest Law (which will come into force when there is a regulation to implement it), specifically paragraphs 3 – Prior Consultation – and 5 – cross-

cultural relations, knowledge, traditions and world view – of Art II of the Preliminary Title, and Article 78 “Regarding Traditional Knowledge” of Title IV “Forests in native community lands”.
i) Guide to Methodology. Participative and Decentralised Process for strengthening of the Forest Sector, 2012.

- Organisation:
- a) International Labour Organization
 - b) Office of the President of the Republic
 - c) (---)
 - d) Ministry of Agriculture – General Directorate for Forests and Wildlife
 - e) (---)
 - f) Ministry of Agriculture, Ex INRENA
 - g) National Institute for Defence of Competition and Protection of Intellectual Property (INDECOPI)
 - h) Executive Power and Congress of the Republic – through the Agricultural Commission
 - i) General Directorate for Forests and Wildlife

- Source:
- a) <http://www.legislacionforestal.org/convenio-169-de-la-oit/>
 - b) <http://www.tc.gob.pe/constitucion.pdf>
 - c) <http://www.legislacionforestal.org/law-organica-para-el-aprovechamiento-sustainable-de-los-recursos-naturales/>
 - d) Page 28 of the Manual of Legal Regulations on illegal logging http://www.spda.org.pe/_data/publicacion/20091015180142_.pdf
 - e) <http://www.legislacionforestal.org/codigo-civil/>
 - f) <http://www.legislacionforestal.org/archivos/varios/2010/09/Resolucion-Jefatural-232-2006-TdR-Comunidades-Nativas1.pdf>
 - g) <http://www.congreso.gob.pe/ntlaw/Imagenes/Lawes/27811.pdf>
 - h) <http://dgffs.minag.gob.pe/pdf/Law29763.pdf>
 - i) http://dgffs.minag.gob.pe/rffs/pdf/guia_metodologica_proceso_fortalecimiento.pdf



Formal Procedures for Consultation on New Forest Norms



Is there a legally recognised procedure that specifies the methodology for consultation on the development of new forest-related norms?

On 23 August 2011 the Congress of the Republic approved by unanimity Law No. 29785 – Law on the Right to Prior Consultation of the Indigenous or Native Peoples, in accordance with International Labour Organization Convention 169. Subsequently, on 6 September 2011, President Ollanta Humala promulgated this law in the Imaza district, province of Bagua, in the Amazonas region, which was the scene on 5 June 2009 of the tragic events which led to the death of 10 Awajún native people and 24 police officers.

It is worth emphasising that, with the promulgation of the Law on the Right to Prior Consultation of the Indigenous or Native Peoples, there is now a legal mandate which requires there to be a consultation process before the introduction of any legislative or administrative measure which might directly affect the indigenous populations and their collective rights. In addition, the recently promulgated Forest and Forest Wildlife Law (Law No. 29763) stipulates recognition and fulfilment of this right (in paragraph 3, Article II). This most recent provision was the product of a consultation process for which documents, guides and methodologies were drawn up, in a similar fashion to the formulation of the National Forest Anti-Corruption Plan.

Although the State attempted to implement a participative process for the new Forest and Wildlife Law which embraced a wide public (local population, NGOs, business people and indigenous populations), this process was considered insufficient and very short-term, to the extent that the indigenous movement became divided (one sector is asking for a modification of the law, while the other is in favour). Although the process was questioned because time was limited, it provided invaluable experience as a guiding framework for this type of process, which in the future needs to take into account the lessons learnt to be more appropriate, participative and inclusive.

As a result of this consultation process, consideration must be given to appropriate deadlines which allow due and timely information and the active participation of all the stakeholders, respecting their traditions, customs and language. For example, during the consultation of indigenous peoples, they requested that the information stage needed to be preceded by a pre-information stage, with technical support for them to understand the proposal in its entirety. Because the previous processes did not have this prior stage, the forums and hearings were sharply questioned because of their technical level and because there was insufficient time for the population to find out about the proposal. Nevertheless, this experience served as a trial run for a methodological instrument on how to reach partial consensus on a legislative proposal.

Furthermore, given the promulgation of the Law on the Right to Prior Consultation and, subsequently, its Regulation, a Guide to the Methodology for Strengthening of the Forest Sector has been approved and published, stipulating that in the case of regulation of the new Forest and Wildlife Law, two major stages must be adhered to: a general participative process (of approximately eight months) and a process of free, prior and informed consultation of the indigenous peoples (which will last between three and four months). This will give greater legitimacy to the process and will involve, through their participation and position, this historically marginalised group.

Title:

- a. Analysis of the Law on the Right to Prior Consultation of the Indigenous or Native Peoples and the criterion for its implementation in the context of the debate on the draft Forests and Wildlife Law (2010).
- b. Process for Free, Prior and Informed Consultation of the Indigenous Peoples in Draft Law 4141/2009-PE in the framework of ILO Convention 169.
- c. Guide for the review Process for Forest and Wildlife Legislation (Forest Law, National Forest Policy and Regulation), 2009
- d. Participative Construction in the Anticorruption Plan for the Forest and Wildlife Sector (Review date: 21/07/2010)
- e. Law No. 29785 – Law on the Right to Prior Consultation of the Indigenous or Native Peoples recognised by the International Labor Organization (ILO) Convention 169.
- f. Supreme Decree No. 001-2012-MC, which approves Regulation of Law No. 29785, the Law on the Right to Prior Consultation of the Indigenous or Native Peoples recognised in the International Labor Organization’s Convention 169.
- g. Guide to Methodology. Participative and Decentralised Process for Strengthening of the Forest Sector (2012).

Organisation:

- a. Congress of the Republic’s Agricultural Commission
- b. Congress of the Republic’s Agricultural Commission
- c. Ministry of Agriculture through the General Directorate for Forests and Wildlife
- d. Ministry of Agriculture through the General Directorate for Forests and Wildlife
- e. Congress of the Republic
- f. Ministry of Culture
- g. General Directorate for Forests and Wildlife

Source:

- a. http://f1.grp.yahoofs.com/v1/gJ4pTkOjNpR5yqTBheUrl4uOS7K9412Fwy_iKmVRP2dpLrYkkmPi4aYnNE1O5JWFJOYeGVr-OfWP5BJmzMVKRYDB2smTk_AVQ/ANALISIS%20DE%20LA%20LAW%20DE%20CONSULTA%20PREVIA.pdf
- b. http://f1.grp.yahoofs.com/v1/gJ4pTgCLWJt5yqTB3_j9aCCiA52idzeoDaKGpJeKaZBRU2_51U7ly4YY6XnIIHs22wwAdSPqOGVILW METODOLOGIA%2023%2011%202010.pdf
- c. http://www.minag.gob.pe/download/pdf/especiales/lawforestalydefaunasilvestre/documentossecretariatecnica/guia_para_el_proceso_law_forestal-versionfinal-fbv.pdf
- d. <http://www.pfsi.us/pasf/documentos/Metodologia/METODOLOG%cdA%20DEL%20PROCESO%5b1%5d.pdf>
- e. <http://www.congreso.gob.pe/ntlaw/Imagenes/Lawes/29785.pdf>
- f. <http://www.mcultura.gob.pe/sites/default/files/docs/reglamento-de-la-law-nro29785.pdf>
- g. http://dgffs.minag.gob.pe/rffs/pdf/guia_metodologica_proceso_fortalecimiento.pdf



Legal Right to Free Prior and Informed Consent



Is the right to free prior informed consent of indigenous peoples and forest-dependent communities recognised in forest law and supporting norms?

As established in ILO Convention 169, Law No. 29763, the Forest and Wildlife Law (which will come into force when it has implementing regulation), and Law No. 29785, the Law on the Right to Prior Consultation of the Indigenous or Native Peoples, set out norms to regulate free, prior and informed consent, and the procedures to follow to ensure that the indigenous peoples are consulted.

The Law on the Right to Prior Consultation stipulates that it will allow “agreement or consent to be reached between the State and the indigenous or native peoples regarding the legislative or administrative measure which affects them directly, by means of an cross-cultural dialogue which guarantees their inclusion in the State decision-making processes and the adoption of measures which respect their collective rights.” Its regulation also involved a participation and consultation process, although the indigenous movement became fragmented, with one sector in favour and the other opposed to the result reached.

This is why it is necessary to strengthen the participation processes for regulation of the new Forest and Wildlife Law, in accordance with ILO Convention 169 and the Declaration of Human Rights, in order to reach an agreement or informed consent, as indicated in paragraph 3 of its Article II, and as stipulated in the Guide to Methodology for a Participative and Decentralised Process for Strengthening of the Forest Sector.

Nevertheless, the case of the Law on Prior Consultation, as some analysts have pointed out, could be “just another example of much noise but little impact, given that an illegitimate regulation process was followed by a lack of transparency in the other processes accompanying its implementation... In addition, there are basic questions such as the denaturalisation of the law itself, when it is stated that the consultation will take place before the contract is signed, after the bidding; in practical terms, this means that consultation will be used as a mere act of procedure, contradicting all the national and international regulations which attempt to give coherence to our body of legislation.” (1)

On this point, regulations must be respected and complied with, in the same way as international law and a number of rulings by the Constitutional Court provide backing for the collective rights of indigenous populations. One such ruling concerns the case of the Tres Islas Native Community in Madre de Dios, in which the Court confirmed the right to land ownership and respect for the autonomy of communities against illegal mining, thus making it the first national jurisdictional body to legislate in favour of indigenous self-determination (2).

(1) Méndez, Luis Hallazi (2012) "Prior Consultation in Plot 1AB and International Law" La Primera. Available at http://www.diariolaprimera.com/online/columnistas-y-colaboradores/la-consulta-previa-en-el-lote-1ab-y-el-derecho-internacional_119897.html

(2) Inter-Ethnic Association for Development of the Peruvian Jungle (2012) "The Constitutional Court, in a historic decision, ruled in favour of the indigenous Tres Islas community " Published in News. Available at <http://www.aidesep.org.pe/tribunal-constitucional-en-decision-historica-sentencio-a-favor-de-la-comunidad-indigena-tres-islas/>

Title:

- a. Article 8.1, 8.2, 9.1 of the ILO Convention No. 169, with regard to customary laws and traditional methods.
- b. Article II Preliminary Title of Law No. 29763 (2011) - Forest and Wildlife Law (which will come into force when there is a regulation to implement it)
- c. Law No. 29785 (2011) - Law on the Right to Prior Consultation of Indigenous or Native Peoples recognised in ILO Convention 169.
- d. Guide to Methodology. Participative and Decentralised Process for strengthening of the Forest Sector, May 2012.

Organisation:

- a. International Labour Organization
- b. Executive Power and Congress of the Republic – through the Agricultural Commission

- c. Congress of the Republic, Constitution and Regulation Commission
- d. General Directorate for Forests and Wildlife

Source:

- a. <http://www.legislacionforestal.org/convenio-169-de-la-oit/>
- b. <http://dgffs.minag.gob.pe/pdf/Law29763.pdf>
- c. <http://www.congreso.gob.pe/ntlaw/Imagenes/Lawes/29785.pdf>
- d. http://dgffs.minag.gob.pe/rlffs/pdf/guia_metodologica_proceso_fortalecimiento.pdf

 **National Land Tenure Policy**

 Is the national policy on land tenure, including forest tenure, set out in a current document?

The Peruvian legal framework relating to ownership, tenure or access to forest resources is defined by article 66 of the Political Constitution of the State, which states the following: “Natural resources, both renewable and non-renewable, are a national asset. The State has sovereign power over their use. An organic law sets out the conditions for their use and granting of such to private individuals. The licence grants its holder a real property right, subject to the aforementioned legal regulation.” Consequently, the concept of private property is outside the political-legal framework for the natural resources because they are in the public domain, and thus inalienable.

Likewise, the development of a National Forest Policy will serve as an instrument for establishing the explicit policy relating to tenure and access to forest and wildlife resources. Meanwhile, zoning and national forest planning which will be promulgated with the implementation of Law 29763 - Forest and Wildlife Law (recently approved but awaiting implementing regulation), which is designed to determine the potential and limitations for the direct and indirect use of forest ecosystems and other wild vegetation ecosystems, and is an important step forward in forest management.

As regards the security of land tenure and use, the indigenous peoples (specifically AIDSESEP) point out that the new Forest Law is insufficient, as there is a need for a regulation which establishes respect for indigenous ownership, thus solving the problem of demand for land and recognition of their ancestral territories and thereby support and promote holistic land management.

Finally, the process of formalising the tenure of forest lands must be strengthened by the regional governments as far as their responsibilities allow, bearing in mind that responsibilities in the forest sector have already been transferred to five regions. These responsibilities are framed in the general legislation and must be included as part of regional development policy, including improved criteria for handing over the possession of lands which in some cases affect the change in land use.

Title:

- a. Political Constitution of Peru, 1993 (Article 66).
- b. Law No. 26821 - Organic Law for sustainable use of natural resources.
- c. Law No. 27308 - Forests and Wildlife Law (Law in force)
- d. Regulation on classification of lands because of their capacity for greater use (Supreme Decree 017-2009-AG).
- e. Law No. 26505 (1995) – Law on private investment in the Development of economic activities on national territory lands.
- f. Regulation for Law No. 26505, referring to Private Investment in the Development of Economic Activities on National Territory and Peasant Community Lands. (Supreme Decree 011-1997-AG) (Forests).

Organisation: Ministry of Agriculture

Source:

- a. <http://www.tc.gob.pe/constitucion.pdf>
- b. http://www.produce.gob.pe/RepositorioAPS/1/jer/PROPESCA_OTRO/marco-legal/1.3.%20Law26821.pdf
- c. <http://www.adaalegreconsultores.com.pe/normas/Agricultura/8.pdf>

- d. <http://www.legislacionforestal.org/reglamento-de-clasificacion-de-tierras-por-su-capacidad-de-uso-mayor/>
- e. www.congreso.gob.pe/ntlaw/Imagenes/Lawes/26505.pdf
- f. <http://www.cepes.org.pe/legisla/ds01197.htm>

Consultation before Commercial Logging Allocation

-  Is there a legal requirement for stakeholder consultation to take place prior to the allocation of commercial forestry operations?

For determining the Permanent Production Forests (BPP), in which concessions are granted, there are no participation processes. In these areas, the Operating Units are determined, and then put up for public tender, with the process culminating in the granting of forest concessions.

Similarly, when granting the permits and authorisations, the forest authority does not adopt a consultation process prior to the granting of these rights.

Title:

- a. Supreme Decree 014-2001-AG.- Regulation of the Forest and Wildlife Law
- b. Law 27308 (2000) - Forest and Wildlife Law which defines the environmental services (still in force)

Organisation:

- a. Ministry of Agriculture through its Line Directorate, National Institute of Natural Resources (INRENA), now absorbed by the General Directorate for Forests and Wildlife
- b. Congress of the Republic

Source:

- a. <http://www.legislacionforestal.org/reglamento-de-law-forestal-y-de-fauna-silvestre/>
- b. <http://dgffs.minag.gob.pe/pdf/law27308.pdf>

Regulation of Environmental Services

-  Are there national laws and other norms that regulate the use of key environmental services of forests?

Specific legislation on ecosystem services has been a subject of debate in the Congress of the Republic of Peru since 2009. At the beginning of 2012 it was brought back onto the agenda, but to date no progress has been identified. However, there is a series of guidelines (some with the rank of law) designed to provide a framework for some initiatives in the management of environmental services.

It should be borne in mind, however, that there is still no clear legal framework for legal relations between private citizens and the State, which are basically contractual; this means that the subject of the contract and the people involved remain in the air, as is the person responsible for environmental services, i.e. the person who can decide on these matters. Consequently, provisions for the use of environmental services are inadequate and lack the necessary information conditions. This, in turn, makes decision-making difficult in terms of the role of the State, the Regional or local Governments, private citizens, civil society organisations and the communities. Finally, there is a requirement for an improved legal framework on economic incentives for the conservation of ecosystems.

Payment schemes are currently being implemented in many places for environmental services in river basins, and Peru has initiatives which are still being discussed, such as that for the city of Moyobamba – San Martín (see “Payments for Environmental Services”, page 282, link: <http://data.iucn.org/dbtw-wpd/edocs/EPLP-078-Es.pdf>), and more recently Aquafondo, for the city of Lima. In Chachapoyas work has also begun to design a similar programme.

It is worth stating that, with approval of the Law for Provision of Environmental Services and the regulation provided for in the Forest and Wildlife Law (Law No. 29763) (recently approved but awaiting implementing regulation), article 2.9 of the Preliminary Title states that it is the duty of the State to prioritise assessment, valuation and promotion of the payment or compensation scheme for the goods and services in forest ecosystems, as well as other financial instruments which benefit management of the asset. This represents an important change because it regulates specifically the way the ecosystem services are handled.

Title:

- a. Draft law 786/2011-CR, Law on Provision of Environmental Services
- b. Article 94 of the General Environment Law
- c. Article 60 of Law 29763, the recently approved Forest and Wildlife Law (which will come into force when there is a regulation to implement it).
- d. Article 62 of Law 27308 - Forest and Wildlife Law, which defines the environmental services (still in force)
- e. National Environmental Policy, approved by Supreme Decree No. 012-2009-MINAM

Organisation:

- a. Congress of the Republic through the Commission for Andean Amazonian and Afro-Peruvian Peoples.
- b. Environment Ministry
- c. Ministry of Agriculture
- d. Ministry of Agriculture
- e. Environment Ministry

Source:

- a. <http://www2.congreso.gob.pe/Sicr/TraDocEstProc/CLProLaw2011.nsf>
- b. http://www.minam.gob.pe/index.php?option=com_content&view=article&id=483&Itemid=133
- c. <http://dgffs.minag.gob.pe/pdf/Law29763.pdf>
- d. <http://dgffs.minag.gob.pe/pdf/law27308.pdf>
- e. <http://www.minam.gob.pe/normaslegales/>

Strategic Environmental Assessment

 Is there a formal strategic environmental assessment and planning process to determine the priorities for land use between forests, mining, large-scale agriculture, infrastructure development and other demands?

Legislative Decree 1078 – the regulation modifying Law 27446, the National System for Environmental Impact Assessment Law - strengthened the requirement to use Strategic Environmental Assessment (SEA) in policies, plans and programmes for sectoral, regional and local development likely to have significant environmental implications. There is currently a proposal for a draft Ministerial Ruling which seeks to approve criteria and mechanisms for formulation, implementation and tracking of SEA, the aim of which is to establish procedures on three levels of government, depending on their responsibilities, for the application of public Policies, Plans and Programmes.

At the moment there is a New Sustainable Energy Matrix and SEA to improve the evolution of energy and mining activities in the period 2012-2040; this will allow the creation of specific programmes or projects for rational coexistence of the activities in this sector with sustainable care of the environment and society.

In addition, strategic axis no. 6 (on natural resources and the environment) of the Bicentenary Plan in Peru which looks to 2021, sets out seven specific objectives, one of which is to strengthen the National Environmental Management System from the three levels of government (national, regional and local), thereby encouraging the active participation of citizens in the plans or programmes. This plan has provided for specific actions and targets to strengthen the planning process through Territorial Planning and Economic and Ecological Zoning. Although it is true to say that civil society and the indigenous communities have participated in these processes, they did not directly influence the decision-making, as this depended on the political priorities defined by the government.

Despite the fact that Peru has these planning processes and SEA, in reality there are many disputes and conflicts about priorities for land use between the forest sector, hydroelectric power stations, infrastructure projects, mining, agriculture and other social demands, with considerable pressure in the Peruvian Amazon. This is why an attempt is being made to strengthen SEA by using integrated and effective strategic actions which allow conservation and sustainable use of ecosystems.

Title:

- a. Regulation on Economic and Ecological Zoning (ZEE). Supreme Decree No. 087-2004-PCM. Regulation creating the Technical Consultation Committee for Territorial Planning.
- b. Directive "Methodology for Economic and Ecological Zoning". Council Decree Directive No. 010-2006-CONAM-CD
- c. Policy Guidelines for Territorial Planning approved by Ministerial Ruling No. 026-2010 MINAM
- d. National Environmental Policy, approved by Supreme Decree No. 012-2009-MINAM
- e. National Environmental Action Plan – PLANAA Peru 2011-2021 (Approved by D.S. No. 014-2011-MINAM)
- f. Bicentenary Plan for Peru to 2021
- g. Law 27446 (2011) – Law on the Environmental Impact Evaluation System (SEIA)
- h. Ministerial Ruling, which approves the criteria and mechanisms for the formulation, implementation and tracking of strategic environmental evaluation (EAE)

Organisation:

- a. Office of the President of the Council of Ministers
- b. National Environment Council absorbed by the Environment Ministry
- c. Environment Ministry (MINAM)
- d. Environment Ministry
- e. Environment Ministry
- f. National Centre for Strategic Planning (CEPLAN)
- g. Environment Ministry
- h. Environment Ministry

Source:

- a. <http://biblioteca.unmsm.edu.pe/redlieds/Recursos/archivos/Legislacion/Peru/DS087-2004-PCM.pdf>
- b. <http://sinia.minam.gob.pe/index.php?idElementoInformacion=200&idformula=&idTipoElemento=>
- c. http://www.minam.gob.pe/index.php?option=com_content&view=article&id=616:aprueban-lineamientos-de-politica-para-el-ordenamiento-territorial&catid=1:noticias&Itemid=21
- d. http://www.minam.gob.pe/index.php?option=com_docman&Itemid=65
- e. http://www.minam.gob.pe/index.php?option=com_content&view=article&id=871:plan-nacional-de-accion-environmental-planaa-peru-2010-2021
- f. http://www.minam.gob.pe/index.php?option=com_content&view=article&id=1423
- g. http://www.minam.gob.pe/index.php?option=com_content&view=article&id=245&Itemid=86
- h. http://www.minam.gob.pe/index.php?option=com_docman&task=doc_download&gid=4727&Itemid=69



Forest Ownership and Resource Use Maps



Are there publicly available official maps showing current types of forest ownership and forest resource use?

The maps currently available meet the partial objective of providing information regarding the location of the titles granted for forest extraction; however, this is still deemed insufficient because there is a need to identify the holders of this right and the type of use granted, as well as identifying their respective contract, permit and/or certificate, as is the case with maps granting oil extraction rights in Peru.

The information in the maps will be of greater use if they include information from all the sectors associated with management of natural resources, and there are no discrepancies in the information provided by different organisations.

Given the above, 2012 saw an improvement in the availability of thematic maps and maps consolidating important forest information, as well as an aide-memoire for each thematic map, produced by the General Directorate for Forests and Wildlife and made available to users on its website, where we can find information on forest concessions for timber and non-timber purposes.

It is important to continue with the process of making detailed information in the maps available to the public, not only so that citizens can be aware of it, but also so that the information provided can help them to take specific decisions regarding the rights which might assist them.

Title:

- a. Services to the Public – Administrative Ruling No. 257-2004-INRENA
- b. Directorial Ruling No. 090-2007-COFOPRI/DE
- c. Map of Forest Licences: Forest Licences, Permanent Production Forests - BPP, Native Communities - CCNN, Peasant Communities - CCCC, National System of State-Protected Natural Areas - SINANPE and others.
- d. GEO Server, Peru in Maps (Map search engine)
- e. Thematic maps

Organisation:

- a. Ministry of Agriculture
- b. Ministry of Housing through the COFOPRI
- c. Ministry of Agriculture through the General Directorate for Forests and Wildlife
- d. Environment Ministry
- e. Ministry of Agriculture through the General Directorate for Forests and Wildlife

Source:

- a. [http://www.minag.gob.pe/dgffs/pdf/normatividad/2004/resjef/RJ.%20N%C2%BA%20257-2004.INRENA%20\(Servicios%20al%20P%C3%BAblico\).pdf](http://www.minag.gob.pe/dgffs/pdf/normatividad/2004/resjef/RJ.%20N%C2%BA%20257-2004.INRENA%20(Servicios%20al%20P%C3%BAblico).pdf)
- b. <http://www.cofopri.gob.pe/pdf/pnf/RS-090-2007-COFOPRI-DE.pdf>
- c. http://dgffs.minag.gob.pe/pdf/mapas_tematicos/Ocupacion.pdf
- d. http://geoservidor.minam.gob.pe/geoservidor/Archivos/Mapa/N05_CONCESIONES_FORESTALES.pdf
- e. <http://dgffs.minag.gob.pe/index.php/areas-tematicas/mapas-tematicos>

Legal Documents for Commercial Logging Operations

 Are legal documents for commercial logging operations regularly published?

There is a formal regulated system of contracts for forest authorisations, permits and licences, which are differentiated according to the method of access to the forest (levels of use). A Forest Management Plan and an Annual Operating Plan with an indication of the administrative division and the limits for use must be presented and approved by the responsible regional forest authority in order to obtain a contract.

However, civil society organisations and local communities cannot obtain directly information on the contracts/ permits granted; this information can only be accessed if accreditation is provided by the holder of the right or by means of a formal request for information. The fact that the Forest Authority does not have a specific register makes it difficult for the local population to identify these rights holders; similarly, neither is there a register of the communities which are using their forests.

In previous years the National Commission of Public Registers only administered a register of forest concessions and other associated rights. However, in 2012 the General Directorate for Forests and Wildlife made available on its website Registers of Forest Concessions, which helps to identify the contracts.

Having this type of information available is not only important, but also contributes to transparency, and serves to uphold rights against third parties: difficulty in gaining access limits the ability of the populations to take decisions associated with forest operations.

This need is even more true taking into account the powers which were transferred to the regional governments, who have full powers with regard to the forest sector for granting permits for use and other operating permits; what is required here is an integrated system so that the information is not dispersed with one organisation responsible for this function. On this point, the new Forest Law (Law No. 29763), provides for this aspect with the creation of the National System for Forest and Wildlife Management, although to date this has still not been implemented.

Title:

- a. Article 10 and 11 Law No. 27308.- Forest and Wildlife Law
- b. Article 83 and 85 of Supreme Decree No. 014-2001-AG.- Regulation for the Forest and Wildlife Law
- c. Terms of Reference approved for the formulation of Forest Management Plans in Native Community and/or Peasant forests intended for commercialisation on a small, medium and large scale via ADMINISTRATIVE RULING No. 232-2006-INRENA
- d. Establishment of promotion measures for forest licences with wood use purposes nationwide (DS 008-2010-AG)
- e. Ruling No. 070-2006-SUNARP-SN Approving the Directive which Regulates the Registration of Forest and Wildlife Licences and Licences for Forestation and Reforestation, Regulated by the Forest and Wildlife Law, Law No. 27308
- f. Register of Forest Licences

Organisation:

- a. Congress of the Republic
- b. Ministry of Agriculture through its Line Directorate Institute of Natural Resources INRENA, now absorbed by the National Forest Directorate
- c. Ministry of Agriculture, Ex INRENA
- d. Ministry of Agriculture, General Directorate for Forests and Wildlife
- e. National Commission of Public Registers – SUNARP
- f. General Directorate for Forests and Wildlife

Source:

- a. <http://www.legislacionforestal.org/law-forestal-y-de-fauna-silvestre-4/>
- b. <http://www.legislacionforestal.org/reglamento-de-law-forestal-y-de-fauna-silvestre/>
- c. <http://www.legislacionforestal.org/archivos/varios/2010/09/Resolucion-Jefatural-232-2006-TdR-Comunidades-Nativas1.pdf>
- d. <http://www.legislacionforestal.org/establecen-medidas-de-promocion-para-concesiones-forestal-con-fines-maderables-a-nivel-nacional-ds-008-2010-ag/>
- e. <http://www.dar.org.pe/legis/pdf/RSUNARP.pdf>
- f. http://dgffs.minag.gob.pe/index.php?option=com_content&view=article&id=89&Itemid=226



Reports on the Verification Process of Eligibility of Commercial Operators



Are the reports published from a formal “due diligence” process on the eligibility, suitability and capability of applicants for contracts or licences to conduct commercial forestry operations?

There is currently no process, nor is one planned by law, to verify the technical and financial capacity of applicants; the only assessment carried out is whether the applicant meets the minimum conditions to enter into a contract with the State (having a Tax Identification Number-RUC; authorised representatives; a Management Plan; and others).

As there is no process for verification of applicants, the information is not available, nor have the decision-making processes been affected.

It is considered that this type of verification should be carried out to determine the suitability of the holder of the right of operation, with implementation of measures for strengthening abilities, given that experience has shown that a number of licence holders do not have the sufficient technical and/or financial capacity and end up transferring their rights under the contract to third parties, or begin operation of the natural resource without the correct technical parameters.

Forest Management Plans

 Are forest management plans published?

In general, the Forest Management Plans are identified as requirements but not as tools, which is why they are commonly called forest extraction plans: they are based solely on the method of extracting the timber, not on minimising the environmental impact. This is why they are either not complied with or, if they are complied with, they are not available to the public.

If the Plans were available as dynamic and flexible tools for management and supervision of forest operations, the design of which would allow identification in advance of the activities and sustainable use, they would allow both the holder and the public concerned to analyse them and obtain results of the levels of compliance therewith.

In particular, it would allow the Body for Supervision of Forest and Wildlife Resources (OSINFOR) to have full control and oversight of sustainable use and conservation of the forest and wildlife resources, and of the ecosystem services.

In addition, the new Forest and Wildlife Law indicates the creation of the National System of Forest and Wildlife Management, a body responsible for ensuring the public has access to the operating management plans and general forest management plans approved prior to this Law and in the framework. It also classifies the information generated by the body as: a) confidential - certain sections of the plans which will be regulated in specific regulations and b) non-confidential - the information on the list of forest species subject to use, the extraction evaluation, debts with regard to operating permits and environmental impacts resulting from the performance of the activity.

Title: a. Article 96 of Supreme Decree 014-2001-AG.- Regulation for the Forest and Wildlife Law
b. Article 45 of Law 29763 (2011), Forest and Wildlife Law

Organisation: a. Ministry of Agriculture through its Line Directorate, the National Institute of Natural Resources (INRENA), now absorbed by the General Directorate for Forests and Wildlife
b. Executive Power and Congress of the Republic – through the Agricultural Commission

Source: a. <http://www.legislacionforestal.org/reglamento-de-law-forestal-y-de-fauna-silvestre/>
b. <http://dgffs.minag.gob.pe/pdf/Law29763.pdf>

Reports from Independent Forest Monitoring

 Are reports by an independent forest monitor published?

The work carried out by the Public Ombudsman in defence of natural resources has played a pivotal role in the process of updating Peruvian forest legislation, fulfilling not only an observer role but also as a monitor and intermediary between the interests of the State and the different stakeholders.

On this point, the reports drawn up by the Public Ombudsman are available on its website, with public access. One of the most important is Report no. 151 “Forest Policy and the Peruvian Amazon: Progress and obstacles on the road to sustainability” (1) which forms a working document for decision-making, and played a role in the process of updating the forest legislation; the result was the recently approved Law 29763 - New Forest and Wildlife Law (which will come into force when there is a regulation to implement it).

However, there is no drive from civil society for a monitoring body or independent auditor for the forest sector to support and strengthen the functions of the National Forest and Wildlife Commission, and which is involved in acting as a monitor in conjunction with the Public Ombudsman (which acts on the State’s behalf).

(1) Public Ombudsman (2010) “Forest Policy and the Peruvian Amazon: Progress and obstacles on the road to sustainability”. Series of Ombudsman Reports – Report No. 151. Available at <http://servindi.org/pdf/Defensorialnf151Jul2010.pdf>

Data on the Distribution of Forestry Royalties and Incentives

 Is data regularly published on the distribution of forestry royalties and/or incentives to stakeholders?

The redistribution of taxes and royalties – a system called the Forest Levy – in favour of the regional and local governments is developed in Levy Law No. 27506. According to the provisions of sub-paragraph d) of article 7 of the Supreme Decree 005-2002-EF, Levy Law Regulation, modified by Supreme Decree 187-2004-EF, the amount of the Forest Levy shall be determined on a half-yearly basis. The National Institute of Natural Resources (INRENA) (whose powers were taken on by the General Directorate for Forests and Wildlife) is required to inform the Ministry of Economy and Finances of the location of concessions, authorisations and/or permits granted during this period within twenty working days following the last day of the month which ends the half year, for the purposes of determining the respective indices of distribution.

It would be important, by virtue of the right of access to information – and as a contribution to decision-making – to consider making public the documents remitted by the forest authority (they are currently not made public, either for the civil society organisations, or for the indigenous communities), so that the population can find out about the distribution of this economic benefit in their sector and can request it through a proposal for participation to their local and/or regional government to improve their livelihoods.

Articles 131 to 136 of Title II of Law 29763 - Forests and Wildlife Law (recently promulgated and which will come into force when there is a regulation to implement it), provides for actions for promotion, financing, certification and investment in forests and wildlife.

Title:

- a. Levy Law, Law No. 27506, 2001
- b. Law modifying several articles of Law No. 27506, the Levy Law. Law No. 28077, 2003
- c. Regulation for the Levy Law. Supreme Decree No. 005-2002-EF
- d. Forest Levy (Ministerial Rulings approving the index for distribution of the forest levy), 2010

Organisation: Ministry of Economy and Finances

Source:

- a. <http://www.legislacionforestal.org/law-de-canon/>
- b. http://www.mim.org.pe/marco_legal/law_general_de_mineria_y_canon/Law%2028077%20Modifica%20Law%20del%20Canon.pdf
- c. http://www.peru.gob.pe/docs/PLANES/94/PLAN_94_DS%20%20N%C2%BA%20005-2002-EF_2008.pdf
- d. http://www.mef.gob.pe/index.php?option=com_content&view=article&id=1547%3Acanon-forestal&catid=150%3Atransferencia-y-gasto-social&Itemid=100694&lang=es

Information on Forest Law Infractions

 Is information regularly published on infractions of forest law?

Compared to previous years, directorial rulings indicating penalties and corresponding fines imposed on offenders violating forest authorisations, concessions and permits have been published (<http://www.osinfor.gob.pe/portal/recursos.htm?id=21>). However, the list of offenders is still not published, which makes it difficult for citizens to identify individual offenders.

As background, Article 368 of the Regulation of Law 27308 – Forest and Wildlife Law (still in force) provides for the INRENA (whose powers were taken on by the General Directorate for Forests and Wildlife) to maintain a register of natural and legal persons penalised for infractions of Forest and Wildlife Legislation.

Currently, sub-sections 5 and 8 of article 43 of Supreme Decree No. 065-2009-PCM, which approves the Regulation on Organisation and Functions of the Body for Supervision of Forest and Wildlife Resources (OSINFOR), provide for the existence of an Administrative Register of licences which have expired and/or been penalised for infraction of the Forest and Wildlife Law.

It should be pointed out that although these registers are not published, they do exist, and anyone wishing to access them must present a request for access to public information. However, publicising this register is important, not only in compliance with the law, but also as a means of strengthening transparency in the management of these types of process and to promote access to decision-making. This would allow stakeholders in the forest sector to identify the offenders and have prior information before signing commercial contracts with forest operators, and also to identify the forest professionals involved in these types of processes.

- Title:**
- a. Article 5 of Legislative Decree No. 1085 (2008) which creates OSINFOR
 - b. Article 18 of Law 29763 Forest and Wildlife Law, paragraph 3, indicates expressly that SERFOR is the national authority and steering body.
- Organisation:**
- a. Office of the President of the Council of Ministers (PCM)
 - b. Executive Power and Congress of the Republic – through the Agricultural Commission
- Source:**
- a. http://www.osinfor.gob.pe/portal/archivos/recurso/dl_1085_-_law_osinfor.pdf
 - b. <http://dgffs.minag.gob.pe/pdf/Law29763.pdf>
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Annual Forest Authority Report

 Are annual reports published by the forest authority?

Paragraph g of article 6 of Supreme Decree No. 014-2001-AG, Regulation of the Forest and Wildlife Law, states that the INRENA (whose powers were taken on by General Directorate for Forest and Forest Wildlife - DGFFS - of the Ministry of Agriculture), as the responsible authority for drawing up and disseminating an annual report of forest and wildlife activities. However, to date there is still no annual report by the forest authority, which limits access to information and transparency in the management of the sector.

The authority responsible needs to regulate the obligation of every government body associated with this, presenting an Annual Report which identifies activities, obstacles, processes under way and opportunities for the forest sector.

On this point, it is important for the forest authority to meet its obligations by publishing an Annual Report of its activities, not only to comply with the law but also to use this tool to encourage production, generate currency and improve the quality of life of the populations involved. The General Directorate for Forests and Wildlife only publishes a statistical forest yearbook, which cannot be considered an Annual Report, rather a complement to such a report.

Law No. 29763 - Forest and Wildlife Law (recently approved but awaiting implementing regulation) provides for new bodies to come into operation - such as the National System for Forest and Wildlife Management (SINAFOR) and the National Forest and Wildlife Service (SERFOR) – which would consider producing plans which could be used as a basis for the Annual Reports, as they would periodically provide the type of information necessary to draw them up.

This would contribute to civil society organisations and indigenous communities having access to this information, with more accurate and expanded details of forest operations, which in turn would allow them to influence the decision-making for the plans for the following year.

Title: Forest Statistics

Organisation: Ministry of Agriculture through the General Directorate for Forests and Wildlife

Source: <http://dgffs.minag.gob.pe/index.php/produccion-y-comercio/estadistica-forestal>
