

CIVIL SOCIETY PERCEPTIONS AND RECOMMENDATIONS
**PERU'S FOREST SECTOR: READY FOR THE
NEW INTERNATIONAL LANDSCAPE?**

US-PERU FTA, REDD, CITES, LACEY ACT AND SIMILAR LAWS



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INTRODUCTION

Logs waiting to be transported in Pucallpa, heart of the Peruvian forest industry.

EIA

This document, the results of a series of workshops carried out in Lima, and the capital cities of Peru’s three principal Amazonian regions, Ucayali, Loreto, and Madre de Dios, brings together the perceptions and recommendations of Peruvian civil society regarding the advances made by the Peruvian government in strengthening the governance of the forest sector in the context of several significant policy developments at the international level: the US-Peru Trade Promotion Agreement (herein called FTA), laws prohibiting trade in illegal forest products (such as the US Lacey Act), and new international tools for forest conservation, such as the rapidly evolving mechanism for Reduction of Emissions from Deforestation and Forest Degradation, known as REDD.

In January and February of this year 2010, EIA — with support from the Peruvian Society for Eco-development [SPDE]¹ — convened civil society experts who have been actively monitoring and working in the forest sector,

in order to carry out a joint evaluation and analysis of the state of the implementation of the Forestry Annex one year since the inception of the FTA with the United States, while also maintaining an open dialogue on the state of the forest sector and priorities for improving it. During these workshops, EIA committed itself to organizing the results and making them available to the public and governments in Peru and the United States.

In the framework of the US-Peru FTA, the Peruvian government accepted the inclusion of Annex 18.3.4, “Annex on Forest Sector Governance,” commonly called the Forestry Annex. Through said Annex, the Peruvian government commits itself to comply with a series of minimum requirements and standards for transparency and forest governance that should be verifiable by American authorities.

According to the agreement, Peru has a period of 18 months from the inception of the FTA [at the end of January 2009] to comply with all of these requirements. This period ends at the end of July 2010. If it does not comply with the implementation of the Forestry Annex, there could be several consequences including a formal dispute process or, in the most serious case, all aspects of the US-Peru FTA could be suspended — not only for the forest sector, but also for all products that Peru exports to the US.

Simultaneously, in the international climate change negotiations, there has been intense work carried out on the design of a mechanism

to compensate developing countries for the Reduction of Emissions from Deforestation and Forest Degradation (REDD). This mechanism could, in theory, benefit Peru and those communities that conserve their natural forests. It is necessary to include REDD in the discussion and design of Peru’s new legal framework for the forest sector, as well as to include key reforms to the forest sector within the national REDD strategy planning that Peru has been undertaking in order to access several sources of funding. Nonetheless, up till now, these two processes have been managed separately: while REDD is within the purview of the Ministry of the Environment, the forest sector reform is administered by the Ministry of Agriculture.

Another advance in recent years that is relevant to the Peruvian forest sector is a new law in the US, the Lacey Act, which prohibits the import, export, or any type of trade in wood or derivative products made from material coming from illegal sources. This law entails a new level of risk for U.S. businesses and as such, there is more and more interest on their part in understanding the situation “in the field” from where Peruvian wood comes. A similar law is being considered in the European Union. In both cases, the laws would apply even if the material is transported or processed through China or other countries prior to arriving at final markets.

EIA feels it is important to inform stakeholders in Peru’s forest regions of these new legal tools that exist at the international level which will influence forest management in Peru (as

well as many other countries), and at the same time to understand the advances and challenges that Peru confronts in the search for a healthy, legal sector that is capable of selling its products in international markets and being sustainable in the long term. In this context, the FTA Forestry Annex presents us with a useful conceptual framework with which to evaluate the current state of the Peruvian forest sector.

With 70% of the 18-month period of the Forestry Annex elapsed, we felt it relevant to posit the following questions: Is Peru on its way to complying with the commitments it took on? Or is it still a long way off? Either way, what are the next steps that should be taken?

Although we have used the Annex to structure this analysis, this does not imply that the requirements included in the Annex represent a complete framework of necessary reforms to the sector. Participants in the workshops mentioned key issues such as land titling, corruption in the justice system and others outside the sphere of the FTA. Thus, this report does not strive to be an exhaustive assessment of the problems and solutions, but rather one more contribution to the process.

METHODOLOGY

The Forestry Annex covers a variety of issues related to the sector. With an eye to organizing our discussion by issue area, we have placed the commitments into four large subject areas:

- Transparency and Participation
- Institutional Strengthening
- Land Use Planning and Management
- Combating Corruption

Based on this division, we produced four working matrices and invited participants to analyze the requirements established in the Forestry Annex, evaluating their perception of the level of implementation of each of these. In each case, the text of the commitment was read and a discussion was begun using the following questions: what has Peru done to comply with this commitment? And what is still left to be done? Additionally, as the discussion of each matrix concluded, we posited the question: what more should or must be done on this issue? Although some of the articles in the Forestry Annex are very technical or specialized, we consciously decided to work with the language of the original text, in order to prevent our own interpretation of the text from introducing bias into the discussion.

To identify and organize local actors for the regional workshops, EIA developed alliances with local groups. In Ucayali we worked with the indigenous federation's Forest Oversight program (ORAU-Veeduria Forestal de Ucayali), in Loreto with the Loreto Environmental Network (RAL), and in Madre de Dios with Forests, Society and Development (BSD). In each place, invitations went to a combination of indigenous and community organizations, NGO representatives, forest concessionaires, loggers, union representatives, research centers, universities and other interested actors in the forest sector.

QUALITATIVE PERCEPTIONS AND RESULTS

The results presented in this report are qualitative and based on civil society's

perceptions of a process and a sector that have been managed with little transparency. As perceptions, they are not necessarily 100% correct, but rather are a response to the quantity and quality of information received, as well as peoples' own interpretation. It is possible, for example, that Peru may be working on certain processes that civil society has not yet learned of. To the extent this is the case in any of the points presented here, let it serve as a warning to Peru that it should strengthen its communication strategy in relation to those points.

We hope that this work can complement the results of Peru's Human Rights Ombudsman's report N. 030-2009-DP/AMASPP/MA, "The Peruvian State and the Sustainable Use of Natural Forests: Follow-on to Annex 18.3.4 'On the Management of the Forest Sector' of the Protocol Amendment to the Trade Promotion Agreement Between Peru and the United States of America," which is the official State version of advancements in the implementation of the Forestry Annex (through the end of 2009).

The goal of this report is to contribute to the process of reforming the Peruvian forest sector, bringing to the table the voices, opinions, and suggestions of a series of actors who are directly involved in the use of our forests. We are convinced that there cannot be sound, lasting reform if we do not pay attention to the concerns, needs, and recommendations of those who are in daily contact with the sector's problems. Some of these actors have unfortunately lost confidence in the participatory processes convened by the central government, because they do not identify with the results, and have marginalized themselves. This report also contains several of those voices.

Finally, it is important to consider that, as human beings, we make decisions based on our perceptions, whether they correspond to reality or not. Social conflicts are generated by collective perceptions, and whether or not they are based on real deeds will not make the results any less tragic.





Control post along the Interoceanica, which upon completion will be the first paved highway from the Peruvian Amazon out to the Pacific coast. Can new mechanisms like REDD prevent this highway from causing the same deforestation that other countries have seen accompanying roads?

1. TRANSPARENCY AND PARTICIPATION

The perception is that Peru has actually backslid on the issue of transparency. Much of the official information related to the sector was previously found on the website of INRENA— the forest authority until November 2008 — but upon the deactivation of this institution, the information was no longer updated and what was there was removed. Meanwhile, the participation announced by Peru has lost credibility among civil society actors who do not see their contributions reflected.

TRANSPARENT, COMPETITIVE, AND PUBLIC CONCESSION PROCESS

» Forestry Annex: 3.g.(i), 3.g.(ii)

In general, the participants feel that there have been no advancements made in “build on existing mechanisms to implement a competitive and transparent process to award concessions,” such as is required by the Forestry Annex. The indigenous people opined that there were few advances and many steps backwards.

Regarding the obligation to make approved Annual Operating plans available to the public, the different participants agreed that it is very difficult to access this information. The web

pages are not up-to-date, and while citizens who request information in Madre de Dios are sent to Lima to make their request, others who make requests in Lima are told that they must go to the province to look for the information directly, and that no database exists that compiles all the information.

This lack of transparency generates a series of additional confusions. For example, a participant in Madre de Dios explained that the concessionaires in Pucallpa do not want Annual Operating Plans (POA) to be made public, since they could be hijacked. Others opine that the authorities do not provide information simply because they do not have the staff or budget to do so. Meanwhile, explained one participant in Madre de Dios, in the face of frustration due to the lack of information, the communities end up blaming the concessionaires, generating even more social tension. The concessionaires of Madre de Dios, for their part, expressed that they are not to blame for the lack of transparency in the system, nor do they have the time to go around disseminating information, and that they pay the State for harvesting rights in order to carry out their work.

A suggestion made in Iquitos is that public audiences should be held for the purposes of providing information on concessionaires’ activities, but it was felt that the limiting factor is the government budget.

In Pucallpa, it was pointed out that the majority of concessions have General Forest Management Plans and Annual Operating

Plans (POAs) containing false information, something that can be seen if field verifications are conducted. This generates a negative perception of the forestry businessmen on the part of civil society.

Regarding the review of the Annual Operating Plans, in Lima the sense was that the verification is not timely and that the information is not made public. “If the POAs were actually reviewed, the experts would realize that the species and/or volumes requested are many times more than what is appropriate to the zone,” it was noted. “Making something public is not just saying that one can review something, but rather that according to the transparency law, the State should facilitate the review on behalf of the public,” it was noted further.

CITES PRIOR INSPECTIONS AND TRANSPARENCY OF REPORTS

» Forestry Annex: 3.g.(iii)

As in the prior case, the State’s ability to truly make public documentation and reports was questioned. This, noted the participants, does not just mean providing copies, but also having appropriate places in government offices where citizens who wish to review documentation can go and do so in situ at no cost. Unfortunately, most forest sector offices — both in the interior of the county as well as in Lima — do not have the appropriate space, and as such prefer not to receive citizens, going against the transparency law.

The FTA and the Forestry Law

When the government of Peru signed the Free Trade Agreement (FTA) with the United States in December 2007, it committed to implementing a series of reforms in different areas of Peruvian legislation that would permit a better and more transparent management of international commerce, as well as guaranteeing a series of minimum standards in the environmental and labor sectors, areas which have been strongly impacted by the prior experiences of similar agreements between an economically powerful country and another not quite as strong. In this context, the “Forestry Annex” was created (for the complete text, see back cover). The objective of the Annex is to prevent “free trade” from facilitating “illegal commerce” through provisions that encourage the legal use of natural forests, while promoting more transparent and participatory management and seeking to end the corruption in the sector.

THE 99 DECREES

In June 2008, the Peruvian President issued 99 legislative decrees under the pretext of adapting Peruvian law to the requirements of the FTA with the United States.¹ Many of these decrees were unconstitutional, as they did not refer specifically to the FTA, because they dealt with issues whose modification was within the Congress’ purview, or because they went against the Constitution, as was demonstrated by analyses carried out by constitutional expert Francisco Eguiguren for Oxfam and by Peru’s Human Rights Ombudsman². In other cases, complaints were made that the decrees did not comply with ILO Convention 169, and that indigenous communities should receive prior consultation on legal norms affecting them. Additionally, other decrees were rejected by the public, accused of worsening conditions instead of improving them.

Among the most controversial decrees that affected the forestry sector was DL 1090, which in practice was a new forestry and wildlife law.

LEGISLATIVE DECREE 1090: 45 MILLION HECTARES OF FORESTS AT RISK

The NGOs that specialize in forestry and indigenous issues, the College of Engineers, and La Molina Agrarian University — among other institutions at the national level — warned from the beginning that the entry into force of Legislative Decrees 1090 and 1064 would immediately endanger 45 million hectares of Peruvian forest land. Peru has approximately 72 million hectares of forest lands, of which some 27 million are protected forests (that is, protected areas) and the remaining 45 million correspond to lands whose primary use is forest production (that is, where wood is legally extracted).

In contrast to previous forestry laws, DL 1090 reduced the definition of “forest resource” and “forest patrimony” exclusively to protected forests, excluding the production lands. In this fashion, 45 million hectares of forest land — equivalent to 60% of Peru’s forested territory and 40% of the entire territory of Peru — fell outside the forestry scheme (and the biodiversity protection and sustainable use that that entails), and became a part of the agrarian scheme, where the priority is agricultural production. In January 2009, DL 1090 was

quickly modified by Law 20317, but even so it continued to be strongly questioned by national and international NGOs, as well as other institutions in the forestry sector.

DL 1090, Law 20317, and DL 1064 were finally revoked by the Peruvian government as a result of the violent indigenous protests that occurred in June 2009 in Bagua.

THE CONFRONTATION IN BAGUA: FROM THE DECREES TO THE FORESTRY LAW

On June 5, 2009, in the province of Bagua, Amazonas department, there was a violent confrontation between indigenous people and the police which resulted in 33 dead and 200 injured. This confrontation was the tragic dénouement of a series of indigenous demands and protests produced by their rejection of the attempts at legislative reforms in the area of forestry and their communal land rights. In his report to the Congress of the Republic on this issue, the Human Rights Ombudsman explained that this conflict had originated in December 2006, when the indigenous people perceived a bill introduced by the President to reform forestry legislation, known as “The Law of the Jungle,” as being a threat to the forest.

The “Law of the Jungle” was publically rejected by indigenous organizations, the Human Rights Ombudsman, NGOs, and individuals in the forestry sector — including the current Minister of Environment, Antonio Brack. Following strikes, protests, and roadblocks by the indigenous peoples, the Congress ended up rejecting the President’s proposal.

In mid-2008, when the Peruvian President issued the 99 Legislative Decrees, he took advantage of the opportunity to once again take up controversial sections of the Law of the Jungle. According to AIDSESP, the largest indigenous organization in Peru, this new phase of the conflict began when the government did not comply with the obligation to consult the indigenous peoples as required by ILO Convention 169 with regards to DL 994, 995, 1020, 1060, 1064, 1080, 1083, 1089, and 1090, and Law 29338. According to this Convention — signed by the Peruvian government and as such holds constitutional rank — the indigenous people should be consulted before the enactment of norms or administrative measures which could possibly affect them directly.

The dimension and number of indigenous work stoppages, protests, and blocking of public roads once again grew without the government paying much attention, until on June 5, 2009, the order was given to forcibly remove people, which generated a confrontation with the abovementioned results, as well as substantial material damages.

Peruvian law explicitly prohibits blocking roads during protests. In this case, once more, the government only reacted to indigenous demands after the road blocks and their violent dénouement.

As recorded by the Human Rights Ombudsman, on June 19 the government revoked DL 1090 and 1064, and that same day the Amazon strike was lifted. Some days earlier, on June 10, the President created the National Coordination Group for the Development of the Amazonian Peoples — known as the National Group — that brought

together the different sectors of the government and the two most important indigenous organizations, AIDESEP and CONAP. This group organized itself into four Working Groups: Group 1, to investigate the events in Bagua; Group 2, to work on the new forestry law; Group 3, to develop a mechanism for prior consent; and Group 4, to develop a proposal on the sustainable development of the Amazon.

According to the accords assumed by the National Group, the contributions of Group 2 were to be included in the proposed new forestry and wildlife law that was being developed by the president with the participation of civil society. Nonetheless, some of the civil society participants have complained that in the last meetings of the Forestry Law Platform, their contributions are not being incorporated. AIDESEP has maintained that only 30% of the contributions of Group 2 have been incorporated into the draft law, even though the government assures that it has incorporated 100% of what relates to the law. Other organizations feel that close to 80% of the agreements of Group 2 have been incorporated, which demonstrates that there is still a long way to go before being able to reach an understanding.

THE PROCESS FOR THE NEW FORESTRY LAW

In 2010, the President restarted the process to create a new forestry and wildlife law. This time, he committed to a more transparent and participatory process: a national referendum to develop forestry policy and update the forestry and wildlife law. The Forestry Law Platform was created for this process. Representatives of civil society, indigenous organizations, universities, research centers, and professional organizations were invited to participate, as well as representatives of other government agencies.

Through face-to-face meetings, email lists, and a “Google Group” (a virtual community that permits the sharing of documents between users), the contributions of the actors interested in participating were compiled and published. The last process of contributing to the law ended during the first half of April, and to date the new draft of the law has still not been distributed. During the open comment period, the government received 112 contributions. Once the new draft of the law is developed, it will be sent to the Congress of the Republic. It will be up to the Congress to decide if they will approve the version they received, or if they will modify it, or develop a new one.

During the last sessions of the platform, the participants recognized the advances made in this participatory process with respect to the previous attempts, and they congratulated the government on that. But they also took advantage of the opportunity to note that the modality chosen for this process, of presenting contributions without having a space for debate, is not ideal. Several agreed that without having a debate, there is no possibility of arriving at a consensus. There was also frustration on the part of some participants who asked why their contributions had not been considered, and they requested explanations as to the criteria used to decide what should and should not be incorporated into the law.

1. Law 29157, “Law that Delegates to the Executive Branch the Power to Legislate on Diverse Issues Related to the Implementation of the Peru-United States Agreement of Trade Promotion, and Supporting the Economic Competitiveness for its Use,” issued on December 20, 2007.
2. Eguiguren, Francisco. 2008. Análisis de la conformidad constitucional del uso de las facultades legislativas otorgadas por el Congreso al Poder Ejecutivo mediante la ley N. 29157 [Analysis of the Constitutionality of the Use of Legislative Powers Given by the Congress to the Executive Branch Through Law No. 29157], developed by request of Oxfam America. Human Rights Ombudsman. 2008. Lawsuit of unconstitutionality against DL 1015. Human Rights Ombudsman. 2009. Lawsuit of unconstitutionality against DL 1064.

On this point, the participants took advantage of the opportunity to call attention to the species not listed in CITES and the need to also conduct prior inspections in those cases.

Precisely due to the lack of transparency regarding these inspections, participants did not know for sure if the forest authority had carried out physical inspections or not for the current harvest of 2010-2011.

LOCAL ACTORS' VIEWS

» Forestry Annex: 3.h.(i)

While the Forestry Annex requires “taking into account the view of local and indigenous communities, non-governmental organizations, and the private sector, including operators of timber harvesting concessions,” no one is clear on what this truly entails. The perception

is that frequently the opinion of civil society is gathered, but that later it is not reflected in the final documents.

The same applies to the specific case of indigenous communities: as indigenous representatives stated in the Pucallpa workshop, the official dialogue process sponsored by the State has lost credibility because it is limited to receiving the contributions of indigenous peoples, which, however, are later not incorporated into final decisions.

The participants’ suggestion was to find a way in which civil society’s opinions and contributions can be made binding for the State. In the case of the indigenous communities, there was a demand for the recognition and application of ILO Convention 169.

TIMBER PRODUCTION IN INDIGENOUS COMMUNITIES

» Forestry Annex: 3.i.

The perception is that Peru has not complied with its commitment to “strengthen, protect, and increase indigenous communities’ capacity to manage their lands for commercial timber production,” although it is recognized that some NGOs have been working on this issue.

The case of the Romero Group’s biofuels project in Barranquita was discussed in Lima as well as in Pucallpa as an example of the State’s regression with respect to native communities’ rights to the use of their forests. “By authorizing the change in the use of the Chayahuita native communities’ lands, the State has tried to dispossess the indigenous peoples of their forests and has promoted

the deforestation of primary forests,” they explained. This authorization for change of use was approved by the Ministry of Agriculture in 2008, and later overturned in 2010 by the San Martín Regional Agrarian Directorate due to “irregularities in the process.”²

what the criteria were for including some and rejecting others.

These antecedents explain the lack of credibility in Peru's participatory processes, which has led in certain cases to stakeholders consciously not attending, as they feel they have only been

forest canon to guarantee their sustainability. Additionally, the issue of representation needs to be guaranteed: if a single business has five concessions in a zone, it should only have one representative in order to prevent that business from controlling the committee.

Other ways of promoting and encouraging participation, proposed in Iquitos, deal with softening the verticality of State institutions and developing a complete online database, available to all forest users and the general public. It was suggested that in the case of the native communities, their limited access to computers should be compensated for by transmitting radio programs with the same information.

“The State’s participation mechanism does not guarantee that the public’s opinion is truly taken into consideration, but it is all we have now. That is why civil society must be vigilant that the State fulfills its commitments. In the near future, we should begin to look for a binding mechanism.”

The participants opined that Peru could strengthen native communities' forest management and trade in forest products by simply implementing the laws that are already on the books but are not obeyed. In Lima they gave as an example the case of the Sawawo native community, for whom the government had developed a General Forest Management Plan at the request of the community. But they maintained that if other communities learned of this possibility and made the same request, the government would not have the ability to attend to all of them.

They also stressed the need for the government to organize workshops with the goal of training native communities in forest management.

PARTICIPATION AND TRANSPARENCY IN FOREST PLANNING AND MANAGEMENT

>> Forestry Annex: 4.d.

The first question when we speak of participation is exactly what we mean by ‘participation.’ Unfortunately, in the tradition of the Peruvian State, participation has been limited to convening civil society actors to inform them of decisions that have already been taken or, in the best of cases, that are about to be taken. In the most “participatory” situations, various actors are even invited to present their opinions and contributions, and probably some of them are incorporated into the process, but without understanding

convened to validate certain processes but without a true interest in their contributions. In other cases, attempts are made to manipulate or deliberately exclude certain actors who are considered difficult. It was said in Lima that “the State's participation mechanism does not guarantee that the public's opinion is truly taken into consideration, but it is all we have now. That is why civil society must be vigilant that the State fulfills its commitments. In the near future, we should begin to look for a binding mechanism.”

One participatory mechanism envisaged in the forest legislation is the Committees of Forest Management. Nonetheless, the participants pointed out that in practice, these Committees' institutional operation is not respected. It was noted in Madre de Dios that “when you want to go to high government offices, they close the doors.” It was said that these committees need members of civil society who are accredited and known by the authorities in order to guarantee an effective transparency. They said that “the intention of the government in the face of the forest management committees is clear: DL 1090 would make them disappear. Now we need to see how they will be with the new forest law that is being prepared.” (See box on legislative decrees and DL 1090.)

It was suggested in Madre de Dios that a way to strengthen participation through the forest management committees would be the possibility of giving the committees the force of law and reviewing the distribution of the

WHAT MORE CAN BE DONE?

A problem that was identified is that the market still does not pay more for sustainably-extracted wood. The real problem is that illegal wood ends up being comparatively very cheap. The urgent task consists of increasing the level of risk — and thus the cost — of illegal wood, in order to have a market with greater incentives for legality.

While it is recognized that native communities also produce illegal wood, it is commonly related to the indigenous peoples' needs. The role of the State in these cases is to train communities in the sustainable and legal use of their wood, as well as in identifying and promoting alternative, viable legal activities for these actors, simultaneous to their activities of controlling and sanctioning.

INRENA office in the town of Alerta, Madre de Dios, where a local official was killed in 2008 for detaining an illegal mahogany shipment. Forest personnel in the field face high risks and have minimal institutional protection.



2. INSTITUTIONAL STRENGTHENING

The issue of institutional strengthening is one that has advanced little from the perspective of Peruvian civil society.

FOREST SECTOR PERSONNEL

» Forestry Annex: 3.a.(i)

In some of the regions of the country, there is no clear idea about whether or not new personnel have been hired, mainly due to the lack of public information on the topic. That is, some people who have contacts within the system, or know someone who has applied for new posts, have information on new hires, but even so it is not clear if new posts have been created or if this is simply a case of replacing personnel.

In any event, the participants agreed that hiring people to comply with the FTA commitment to “increase the number of personnel in charge of enforcing the law” in national parks, concessions, and indigenous areas is not sufficient for improving the capacity of the institution. Those in Madre de Dios opined that “more personnel will not solve the problem. It is like having more police officers: if they do not have resources, training, and support, it will not improve anything.” In Pucallpa it was also proposed that while it is important to increase personnel, it may be even more important to have a system for supervising personnel that guarantees that they correctly comply with their duties.

In the specific case of Loreto, it was proposed that a certain number of personnel should be distributed per number of hectares, instead of using arbitrary numbers that civil society has no clue as to how they were determined. One of the participants questioned the paradigm of the distribution of personnel in the municipality, wondering, for example, how many people the municipality hires to repair the roads and how many for forest management, given that Loreto is “all forest.”

In all the venues, the hiring method commonly used by the forest authority was identified as a serious problem. Most hires do not pass through the budget process and as such, do not offer legal social benefits, job security, or security to those working in dangerous areas, which impacts personnel morale, work, and output. This situation, combined with what is identified as weak ethical training, is reflected in the lack of interest on the part of most officials to see and report even flagrant illegal logging or deforestation. The participants identified the forest sector in general as one which does not value ethical work nor provide incentives to good practices, and that ends up corrupting the young people who work there. In Pucallpa, for example, it was noted that the officials who report on the crimes are identified as troublemakers and those who do not “look for problems” are rewarded with renewed contracts and promotions.

An official of the Loreto regional government explained that up till 2009, the policy of not replacing those who reported on crimes was

applied in his zone, resulting in a *de facto* reduction in personnel. He also said that the number of park rangers has been cut, and that while there is a proposal for seven new positions, it has yet to be implemented due to a lack of funding. This official noted that he himself was hired as a “third party” and not within the regional government’s budgets, precisely because of budgetary problems.

In all the venues, the hiring method commonly used by the forest authority was identified as a serious problem.

In the case of Madre de Dios, civil society thinks that the 2010 Budget Law prohibits increases in personnel. They note that there may have been some confusion because personnel were hired for the Inter-Oceanic Highway Project; however, these contracts end in March.

Likewise, in the different regions of the country, it was agreed that the hiring of personnel without training, or not providing the budget and resources necessary for them to carry out their duties, makes no sense.³ One of the main problems identified is the lack of support and work security given to government employees. The proposals involve providing clear

incentives to create job permanence or the development of a career track in the sector for those officials who efficiently fulfill their duties. “The officials have one-month contracts. Offering them the opportunity to stay five years if they demonstrate forest conservation would be a huge incentive for them to carry out their jobs well,” suggested one participant in Iquitos.

ORGANIZATION FOR THE SUPERVISION OF FOREST RESOURCES AND WILDLIFE (OSINFOR)

» Forestry Annex: 3.h.(iii)

The different regions have different perceptions as to the quality of the work being carried out by OSINFOR, possibly because the offices have only recently been created and begun functioning. In zones such as Madre de Dios, for example, OSINFOR is perceived as operating with a large budget and very intensely, while in Loreto the participants feel that it continues to be as inefficient as ever. In Ucayali, they feel that OSINFOR is advancing inasmuch as it has opened offices in Pucallpa, Madre de Dios, and San Martín, but it is criticized because up till now, there is only one employee in each office. Likewise, OSINFOR was criticized because its hiring processes are centralized in Lima.

In all cases, a concern for the quality of the personnel was expressed, and the need to attract better-trained professionals to the institution and keep them was mentioned.

FOCAL POINT FOR INVESTIGATION OF INFRACTIONS

» Forestry Annex: 3.h.(iv)

One of the key failings identified by consensus was that Peru has yet to identify a Focal Point for the investigation of forest sector infractions. In accordance with FTA commitments, a Focal Point must be identified within the government “with appropriate and sufficient authority and staff to investigate violations of laws and regulations for forest sector governance; this focal point should have a transparent process for citizens’ reporting of crimes, for ensuring coordination and information flow among different entities, and — if necessary — reporting crimes and carrying forward judicial processes.

Participants took advantage of the opportunity to point out that inter-sectoral coordination within the Peruvian State is very limited, due on one hand to the fact that the institutions are still weak, but mainly because of the lack of funding for this purpose. In general, the institutions work with limited budget items and avoid activities that are not explicitly covered in their budgets and that entail the use of personal and material resources, such as the coordination with their peers. The identification of a Focal Point that has among its duties to “ensure the coordination and correct and timely flow of information between pertinent technical and financial entities” must have a sustainable budget specific to this purpose, or it will fail.

Likewise, they agreed on the need to create this Focal Point since, they explained, citizens do not know where to go to report crimes, and so they end up going to various government offices, and none takes on the case in an efficient fashion. In Pucallpa, they concluded that the only way to have a Focal Point that can fulfill the proposed functions is to create a new government ministry that has the role of the forest authority.

Added to this is the complaint regarding the lack of security for complainants, as well as the lack of follow-through on open cases. The issue of security and guarantees is not only a problem for complainants in the general public, but also for government officials, since on occasion they are the subject of charges by timber merchants who are being investigated or sanctioned by the officials, and the officials must then retain lawyers using their own money. In Madre de Dios, the participants noted that the police “run away from” reports of illegal logging, and they recalled the case of the murder in February 2008 of Julio García Agapito, the lieutenant governor of the town of Alerta, in the district of Tahuamanau, at just a few meters’ distance from the police station. García Agapito was killed with seven shots by illegal timber merchants on the premises of INRENA, in revenge for his having intervened in a transaction of illegal mahogany. One of the suggestions made was that the Human Rights Ombudsman — one of the few government institutions, if not the only one, that still has the respect of the public —

maintain a website that can track complaints, the legal cases that result, and the progress or outcome.

While the participants in several of the workshops recognized that in many areas there is no access to the internet, they suggested that operators install public internet cafes in districts and capitals of rural areas in order to guarantee the access of local inhabitants to public information on these issues that the State should provide on its websites, as set out in the Law on Transparency.

STRENGTHENING THE LEGAL FRAMEWORK AND INSTITUTIONAL CAPACITY

» Forestry Annex: 4.a., 4.b.

Civil society does not feel that there have been advancements in these aspects. There is consensus on the need to strengthen regional and local institutions, as well as to reconcile local law and the functions and powers of the different institutions and agencies involved.

Far from considering that it has been strengthened — as required by the commitment assumed under the FTA framework — civil society questioned the current situation of the “legal, policy, and institutional framework governing the forest estate and the international trade in forest products,” as well as the institutional capacity for complying with the law, noting that there is no credibility regarding the documentation that accompanies and supposedly guarantees the legality of forest products. The black market in Forest Transport Permits (GTF) that is used to “launder” wood of an illegal origin makes it so that all wood exported from Peru is susceptible to doubt and, as such, is hurt in the international market. This reality and its systematic illegality have not improved since the signing of the FTA and demonstrate the large challenges that the sector still confronts (see box on Forest Transport Permits).

The participants in the workshop in Pucallpa explained that only 20% of the wood that is processed in the region comes from concessions, while 80% comes from native communities; for this reason, it is crucial to

know which individuals or economic groups are financing the extraction from native communities and under what conditions. Problems in this area are not related only to the legality of the origin of the products, but also to the human and commercial treatment the indigenous people receive.

From the perspective of the timber merchants, there is a lack of recognition on the part of the State toward those concessionaires who are making an effort to fulfill their obligations. They complain that there is excessive persecution that is quick to sanction and penalize, but that does not produce incentives to improve practices, such as recognitions or “certificates of good conduct.” They complain that the government is permanently seeking ways to “take them down,” but that it does not make the effort — for example — to comply with the time periods of the procedures.

Participants identified the current process of developing the new forest law as a step toward improving the legal framework. While the participants recognized that there is an effort to integrate the participation of the different forest actors, everyone agreed that the process needs to be more transparent in terms of being able to see and understand what civil society contributions are taken into consideration in the final version, with what rationale.

WHAT MORE CAN BE DONE?

One suggestion that was repeated in all the workshops was the urgency of providing support and stability to the officials who fulfill their duties and confront corruption. It was suggested that the government should establish a clear professional career track, with merit-based competition that has defined indicators and awards.

On a related note, a recurring proposal was the need to modify the basic approach for enforcement and control such that it is focused on the point of extraction in the forest, in contrast to how it is currently done: reviewing documentation such as the Forest Transport Permits that are falsified and utilized to launder wood. By prioritizing prior inspections and field verifications, civil society believes that the authority’s scarce resources could be reoriented, reducing the number of checkpoints — which in practice do not have the capacity to verify the legality of the documents received — and increasing efficiency.





Peru's sawmills are a crucial focal point for cleaning up the timber trade. Currently they are the point past which wood cannot be traced, either back to the forest or onwards to exporters.

3. LAND-USE PLANNING AND MANAGEMENT

The absence of a national system of land-use planning, which is the responsibility of several different parts of the Peruvian government, is a significant deficiency that opens the door to a series of confusions and social conflicts. Likewise, the lack of scientific studies that support technical decisions explains the low level of credibility and respect accorded to the forest authority.

EXPORT OF ILLEGAL PRODUCTS

» Forestry Annex: 3.c.(ii)

In accordance with the FTA commitment, the country must “suspend the right to export the product as to which a law, regulation, or other measure has been violated”. Nonetheless, the perception of participants was that, notwithstanding such a prohibition, these products leave with illegitimate Transport Permits (see box on Forest Transport Permits).

Additionally, a CITES permit is only needed for the export of roundwood (logs) or sawn wood (boards). As was noted in Pucallpa, if a shipment of illegally-extracted mahogany is transformed one step further into boards (for example, converted into doors or pieces of furniture), it no longer needs a special CITES

export permit, and can leave the country with no problem.

CITES SPECIES: INVENTORIES, YIELD COEFFICIENT STUDIES, AND PUBLIC INFORMATION

» Forestry Annex: 3.d.(i), 3.d.(ii), 3.d.(iii)

The participants feel that in general there is a lack of seriousness in the studies on the part of the CITES Scientific Authority. They explained that studies are not undertaken, or at least are not made available for forest users and other interested parties, as would be dictated by logic and is established in the commitments assumed under CITES and within the FTA framework.

In Puerto Maldonado, for example, they complained that quotas have been established for mahogany without knowing how many trees there really are in the concessions. “Who can show yields of 70%? That does not exist,” declared a concessionaire in Puerto Maldonado. In Pucallpa, participants drew attention to Peru’s backsliding in 2008 on the issue of species-specific yield coefficients, which had occurred when new leadership in the forest authority overturned the lower coefficients that its immediate predecessors had briefly instituted in keeping with existing technical studies. These new coefficients reduced the percentage of a standing tree that could be exported to figures slightly higher than international standards, which apparently was not to the liking of a group of influential timber merchants. (See more detail in box on Transport Permits.)

CITES: BROAD-LEAF MAHOGANY

» Forestry Annex: 3.e, 3.f.(i), 3.f.(ii), 3.f.(iii)

We were able to collect very little information regarding these points, since in general the participants were not up to speed on what the government is doing on this issue. If it is in fact making progress, it is failing to disseminate the information. It is also possible that there is not a great deal of interest on the part of civil society to understand and monitor CITES issues.

CHAIN OF CUSTODY FOR CITES SPECIES

» Forestry Annex: 3.h.(ii)

The participants agreed that traceability in the chain of custody is very weak and permits many “undetectable” illegalities in the process. Only with great difficulty can wood be tracked from the forest to the sawmill — at which point wood of different origins is mixed and so one loses the trail — and there is no real way to track it backwards, that is, from the exporter back to the forest.

It was proposed in Pucallpa that “a system is needed that guarantees the origin of the wood, but the most important thing is to designate more resources to implement this system.” Participants also stressed that more control is needed in the forest to prevent illegal logging. A note in the Forestry Annex itself defines some of the characteristics of “an efficient system” for the chain of custody: “[it] should provide management oversight, document control, material separation and tracking, purchasing and receiving, processing,

CITES and Peruvian Wood

The Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES) is an international accord signed by 175 countries, among them Peru. The goal — as its name suggests — is to prevent trade from putting species in danger of extinction. At this moment, CITES has 5,000 species of animals and 28,000 species of plants registered at different levels of risk.

Depending on the level of risk, the species are classified in three levels of appendices. The decision on the first two appendices is taken by the Conference of the Parties — that is, the meeting of all member countries — while the third level is developed upon request of a party, that is, a single country.

Appendix I: species at high risk of extinction. Their international trade is prohibited.

Appendix II: species that as of yet are not at a high risk of extinction, but whose indiscriminate trade could bring them to such a state. An export permit issued by the CITES authority in the country of origin — which must guarantee that the products were legally extracted and that their trade will not put at risk the survival of the species — is required to trade them internationally.

Appendix III: when a country considers that the survival of a species within its territory is endangered, it asks for help from the rest of the countries to monitor and restrict trade in said product. The country of origin must issue an export permit similar to that in Appendix II to accompany the wood to its final destination in international markets.

Currently, Peru trades two species of wood internationally that are affected by CITES: mahogany (*Swietenia macrophylla*), in Appendix II, and cedar (*Cedrela odorata*), in Appendix III.

Since 2006, the high levels of illegal felling of mahogany documented in Peru have generated concern at the Secretariat of the Convention of the Parties, and a series of mandates and recommendations have been given to that country related to, for example, the export quotas, output indices, sight verifications, and the treatment of the volumes left over from one year to the next after filling the quota (which becomes another way to launder wood). Concern has also been expressed about the trade in cedar, “the next mahogany,” whose export volumes have grown at the same time as those of mahogany have dropped.

These strong concerns of CITES carried weight in the design of the Peru-USA FTA’s Forestry Annex, since CITES also has to do with international trade and its impacts. During recent years, due to the FTA, there has been growing will on the part of Peru to coordinate with the Secretariat of the Convention, provide the information requested, and comply with the requirements.

Nonetheless, there is much more to be done — both in Peru and in the importing countries. In March 2010, during its most recent meeting, the CITES Standing Committee (the entity that makes decisions between the Conferences, composed of one country per region) decided to recommend that Peru impose a voluntary moratorium until such time as a functioning information and tracking system were in place that would permit the legality of the mahogany to be guaranteed from the moment of extraction.

For more information, see <http://www.cites.org/esp/index.shtml>.

shipping and sales, claims and training, and may employ innovative tracking technologies, such as barcodes.”

At this time, the so-called “CITES timber species” in Peru are mahogany and cedar. According to CITES, the export of these species involves a series of special procedures and requirements, among them preparation of a dossier and the issuing of a special permit for export, known respectively as the “CITES dossier” and “CITES permit.” The office in charge of assembling the dossier and issuing the permit is located within the forest and wildlife authority (see box on CITES).

According to what EIA was able to verify, even a complete CITES dossier does not contain sufficient documentation to permit complete tracking “backwards” of timber to the place where it was extracted from the forest. This is obviously a problem for verifying the product’s

chain of custody from the forest to the importer, and from there to the final consumer. The dossiers contain a Forest Transport Permit for sawn wood -- that is, for wood after it leaves the sawmill; however, the dossier does not show its previous path, that is, the point of harvest or the sawmill where it was processed, critical information for carrying out a verification should one be considered necessary.

It should be noted that in July 2009, the CITES Standing Committee agreed to urgent implementation of the following recommendation: “All countries that export mahogany should consider including information on the authorized and verified concession or other type of forest management area from which the wood was extracted, in point 5 of the CITES permit and its annexes.”⁴ To date, Peru has not complied with this request.

While those in the forest authority office in Lima — where all CITES permits are issued and archived, no matter from which port they leave— explained to us that the Technical Administrations of Forest and Wildlife (ATFFS) (local offices of the forest authority) are the entities that issue the Forest Transport Permit for sawn wood, and as such, the ATFFS does keep data on the sawmill and point of harvest, such information is not integrated into the same database of the Lima authority, nor is it made available to the public. That is, civil society cannot carry out an effective independent monitoring role, since it does not have sufficient information to do so. This also limits the capacity of the merchants, exporters, and importers to carry out due diligence on the products they acquire, putting them at risk of eventually having products decommissioned or even being subject to criminal sanction on the part of authorities

including the US government,⁵ if it is shown that a product's origin is illegal.

Until a couple of years ago, the INRENA website published a great deal more information related to concessions, management plans, and CITES permits, among other things. Nonetheless, since the deactivation of INRENA at the end of 2008, new information ceased being published and all the preexisting information was removed from the website. When EIA informally asked an official about this, she explained that now they need express authorization from the Ministry of Agriculture to upload any information onto the website, and that as of yet they have not received it.

The participants agreed that traceability in the chain of custody is very weak and permits many “undetectable” illegalities in the process.

Another noteworthy point is that the directives on how to complete information for CITES permits and which procedures to follow are not made public. They circulate only inside the governmental office, but are not available on the forest authority's website, nor published in the official gazette *El Peruano*.

On a related note, a group of concessionaires in Madre de Dios asked that prior inspections actually be carried out for the CITES species, and complained that sometimes these inspections are done on the stumps⁶ of trees that have already been felled. “The inspectors come and, based on the stump, they have the magic power to reconstruct the tree. That is not the way it is. The stump does not necessarily reflect the true timber that was the tree when standing, and that harms us, as they authorize us to market and export a lesser quantity of wood,” explained one local businessman.

Another important point that was proposed in this session was the importance and follow-through that must be given to the other wood species and their illegal extraction and

marketing. Mahogany and cedar are not the only species that are being extracted and marketed illegally, but they are the only ones that receive the scant attention of the State. There are other species that forest actors fear might disappear due to the lack of attention; see below.

IDENTIFYING PROTECTED AREAS AND CONCESSIONS

» Forest Annex: 3.i.

The absence of a unified national land use planning system for the different productive and non-productive sectors of Peru leads to the ongoing problem of concessions and protected natural areas overlapping, as was noted in Pucallpa. In Madre de Dios, they warned that this is one of the reasons for the latent conflict between forest users, a situation that could get out of control at any moment.

The protected areas are generally delimited by natural borders, such as rivers or streams. However, the concessions are generally quadrilateral, and as such, few people know where their concession really ends and overlaps are thus produced on communities. In Iquitos, they used the example of a conflict between businessmen and a native community in Mazán, where the natives can no longer fish in a local lagoon due to the overlap of a tourist concession.

SYSTEM OF CONCESSIONS

» Forestry Annex: 4.c.

None of the participants felt that improvements have been made in the system of concessions “to comply with the economic, social, and ecological objectives” as required by the Forestry Annex. They noted with particular concern the case of Madre de Dios, where rural people are not happy with the system and that this is a problem that can have multiple social repercussions. As in other issues, the participants felt that much could be improved by having better personnel, and they stressed the need for public, transparent and competitive hiring processes.

Concessionaires in Madre de Dios explained that Peru's intention of with the current system was to benefit the producers, but that in practice it ended up benefitting only large

transnational companies. The concessionaires have been racking up huge debts as a result of paying for the rights to their inventories, but as they do not have access to an adequate credit system for financing forestry activity, many cannot find the necessary funds to go into the forest and extract the wood. This has caused many concessionaires to go bankrupt and have to sell their concessions to large Chinese corporations that are massively buying in the area.

In Iquitos it was reported that the system of intermediaries (*'habilitadores'* in Spanish), which that is extremely common in the commercial relations of the timber industry, constitutes in practice a relationship of slavery, in which those who extract the wood receive a financial advance and later become trapped in abusive financial relationships from which only with great difficulty can they escape. To prevent this situation, they proposed that better financing mechanisms should be sought for the activities in the Annual Operating Plans (POA). “The market for the timber industry in Loreto needs to be developed, a round table of timber businesses is needed to break the chain of the *habilitadores'*, and the regional government needs to connect the local market to the international market,” said the local participants.

Participants in Madre de Dios opined that a grave problem in the concession system is the lack of competitiveness, as they consider private lands to be an unfair competition for the forest concessions, and that Peru has done nothing to resolve this problem. Another “unfair competitor” identified is illegal logging. Legality has a series of costs that illegal logging does not. This, added to the low levels of risk for the illegal logger — due to corruption and the lack of application of the law, among many other factors — makes it a lot more profitable to work illegally, and this in turn removes from the market others who wish to act legally. “Those who buy wood tell you: I don't care about your Forest Transport Permit, all I care about is the wood. And you can't compete with that,” they commented.

Another complaint that emerged in Madre de Dios refers to the unfair competition promoted by the government itself since, they maintain, when a public procurement

“The job of the businessman is to do business. The job of the State is to care for the forest, and to that end it should provide us with serious scientific studies and information. We will cut down all the shihuahuaco just like we did with mahogany, and nobody will even realize.”

competition for wood products is convened, the government does not always establish a requirement that the wood must come from managed forests. It was recognized that this does occur in some cases such as in Pucallpa, where there is a municipal ordinance that requires the purchase of products extracted legally. The participants felt that the rest of the government should do the same.

WHAT MORE CAN BE DONE?

Of significant concern to the participants, especially to those who live and work directly in the forest, is the complete absence of studies and inventories of the other commercial species that are currently being overexploited due to their export demand, such as the shihuahuaco (*Dipteryx spp.*), lupuna (*Ceiba Pentandra*), and estoraque (*Liquidambar styraciflua*). The concessionaires, as well as the indigenous people and representatives of different NGOs, expressed their profound concern that these species might disappear at any moment, as there is no scientific information on their regeneration cycles.

“The job of the businessman is to do business. The job of the State is to care for the forest, and to that end it should provide us with serious scientific studies and information. We will cut down all the shihuahuaco just like we did with mahogany, and nobody will even realize,” warned a concessioner in Madre de Dios. “Of the 170 species that we have in our forests, only 10 are exported,” they noted.

In addition to complaining that the government should carry out case studies to prevent the plunder of these species, the participants suggested as a complementary measure that Peru be attentive to the demand in national and international markets and continually adapt the harvest fees for those

species in highest demand. They also asked that the government and institutions such as the College of Engineers carry out studies on the use of different species of wood and make them available to the public, and in that way diversify extraction and commerce.

On a related note, there is consensus on the complete inefficiency of the system of Forest Transport Permits (GTF). The participants recognize that at this time there is no way to prove that a GTF actually corresponds to the wood it accompanies (see box on GTFs). Again, a recommendation made in the workshops is that the administration’s scarce resources be focused on monitoring undertaken closer to the point of harvest, instead of wasted later in the physical checkpoints whose work is limited to looking at the GTFs that accompany truckloads of wood, without having the real capacity to

verify if the wood was in fact extracted from where the documents say it was.⁷

Another interesting suggestion on this same problem was to have at least a single document that accompanies the wood throughout its trajectory, from the point of extraction in the forest to its export destination, since the consecutive replacements of documents throughout the chain of custody represents one of the principal problems of traceability. Having multiple documents with uncorrelated numbering systems, essential information that is omitted (such as the point of extraction, sawmill, etc.), and the absence of publically accessible databases that allow this chain of papers to be connected, makes it in practice impossible to carry out the tracking required by international commercial and donor standards. It is the responsibility — and the obligation — of the Peruvian State to resolve this grave problem in the shortest period possible.



Participants agreed that it was necessary to focus more attention and resources on supervising the timber harvest in the forest, rather than post hoc controls.

How to Launder Illegal Wood in Peru: The Forest Transport Permit

Current Peruvian law — as well as the latest draft of the new Forest and Wildlife Law of March 2010 — holds that the legality of wood is demonstrated by showing a Forest Transport Permit (“GTF” for its Spanish name).

Nonetheless, as international markets demand ever greater requirements, it is not sufficient for a wood trader to show a document. Rather he/she increasingly must be able to demonstrate in practice the legal origin of the wood.

Until now, the person prosecuted for the illegal extraction of wood in Peru has been the person who enters the forest and cuts down the tree. That is, the person who receives the smallest percentage of profit and who generally acts under pressure due to a situation of extreme poverty and limited — or no — income alternatives. Meanwhile, the forestry engineer who produces the false inventory, the trader who presents it, the authority who approves it — after supposedly verifying it in the field — the financier who provides the resources for the illegal extraction, the buyer of the illegal wood, the person who markets the illegal wood, and the exporter of the illegal wood, in practice receive minimal or no penalties. According to current law, all they must do is show the Forest Transport Permit in order to “prove” a wood shipment’s legality — those same GTFs that exist plentifully in the black market due to inflated yield coefficients and nonexistent inventories.

THE YIELD COEFFICIENT

Technical studies carried out in different countries have demonstrated that the yield coefficient for the export of tropical forest species such as mahogany and cedar almost never goes beyond 50% of the volume of the standing tree, and normally is around 30%. The conclusion of a serious analysis of the yield from Peruvian mahogany trees found that the exportable yield coefficient is around 26% of the volume of a standing tree (an “optimistic” conclusion, according to the authors, since another study by the World Bank concludes that it should be less than 20%).¹ The difference between the volume of wood actually taken from a tree and the volume permitted by a physically impossible yield coefficient constitutes a massive laundering of illegal wood.

In February 2008, INRENA (National Institute of Natural Resources, the forest authority until November 2008) attempted to correct the problem of excess GTFs due to unreal yield coefficients, by applying a figure of 29% for mahogany and 37% for cedar.² During the year prior to this change, Peru had been permitting the export of 67% of the volume of standing trees, and in previous years up to 80% had been used. Nonetheless, shortly after the executive orders were issued with lower coefficients, provoking a strong reaction on the part of industry, the heads of INRENA and of the forestry authority were removed from their positions. The first reaction of the new administration was to partially retreat from the readjustments.³ Thus, to date mahogany is exported with an assumption of 37% yield and cedar with 52% yield. A technical study was ordered to be undertaken in a transparent fashion, guided by a working group, but insofar as EIA has been able to learn, this study was never carried out, even though the establishment of a credible yield coefficient is one of the commitments assumed by Peru under both CITES and the FTA with the US.⁴

In recent years, these high yield coefficients have been the primary trick that permits thousands of cubic meters of illegal wood to be laundered and enter the international market: an average of 86% of the mahogany (~US\$273.4 million) and 70% of the cedar (US\$113.2 million) between 2000 and 2007.⁵ Although the current coefficients are lower than before, in practice traders and permit-holders can still market quite a bit more than is physically possible to obtain solely from trees that have been legally authorized for extraction. In addition, traders and permit-holders currently can increase these high percentages even further if they declare that they are exporting wood that comes from tree branches.

The large-scale laundering of high-value woods has been able to function due to the thriving illegal market of ‘legal’ documents.

NONEXISTENT INVENTORIES

There are concession zones in which rare trees, such as mahogany and cedar, were overexploited years ago and from where they have since disappeared. Nonetheless, fraudulent inventories continue to be prepared by corrupt forestry engineers, presented by the concessionaires, and authorized by the government. GTFs are then allocated based on these falsified inventories.

One notorious example of this occurred in 2007, when inspections carried out by a team from the forestry authority — which shortly thereafter was punished for doing its job by being removed — found that of the 150 management plans approved by the State up till then, only 62 reflected the actual existence of real mahogany trees. The other 88 concessions had serious problems with false information. Several plans were rescinded at that time; however, many of the control measures applied by this team from the then-INRENA have since been rescinded, generating impunity.

THE TRAFFIC IN FOREST TRANSPORT PERMITS (GTFs)

Method 1: Inflated yield. Upon receiving a quantity of GTFs based on inflated numbers, for up to three times of what actually exists in his/her inventory, from every three trees that a concessionaire sells, one or two would be illegal. Under the yield coefficients in effect, a concessioner who exports 100% of the wood allocated by his/her GTFs is necessarily exporting illegal wood.

Method 2: Sale of Permits. Concessioners who cannot or do not want to use the permits that they do not need for exporting the wood that they in fact extract from their concession can, in practice, sell them in the black market. For example, GTFs from concessions might be used to launder wood that private landowners are selling off without authorization.

Method 3: falsified Annual Operating Plans (AOP). There are concessions in which there has not been any mahogany or cedar for years because these species were overexploited. In spite of this, these concessions’ inventories (supposedly approved after being verified in the field by forestry authority personnel) show standing cedar and mahogany trees on paper that do not in fact exist. Since no cedar or mahogany exists in these concessions, the GTFs submitted serve

THE MAHOGANY TRADE

1 THE STANDING TREE

The tree is identified within the concession by loggers in the zone.

Its measurements and volumes are calculated 100%.

2 THE FELLING OF THE TREE

Before cutting, the concessioner presents to INRENA, within his Annual Operating Plan (POA), the number of species he/she will fell as well as the volume he/she will obtain (the output).

When the tree is felled, nearly 29% is lost (in the case of mahogany, there is always a hole in the lower part of the trunk).

3 CUT TIMBER

Once felled, the tree is cut into several rolls. The wood should have a Forest Transport Guide regarding its natural state, in which the number and dimensions of the pieces of wood are detailed. The Guide is used to transport the wood to the saw mill and is presented in INRENA's controls so that it can be compared to the POA.

In this cutting process, more than 34% of the mahogany is lost.

4 SAW MILL

The pieces of wood are converted into planks. A Re-Transport Guide is issued.

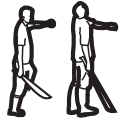
The volume of wood is reduced in this process by an additional 12%.

5 COLLECTOR

The collectors select the best wood to sell to the export company. A guide for the finished product is issued.

In this process, all of the wood arrives with the papers in order, since it is assumed that only 20% has been lost.

Illegal loggers cut the mahogany trees in zones located outside of the concession. Mainly from natural areas.



Timber merchants declare that 29% is not lost in the felling, only 5 or 10%.

From this point on, the differences in yield percentages will be covered by illegal wood.



Here, illegal wood can be introduced, as more is declared in the Guide than what they really had remaining.

There are concessioners who sell blank Transport Guides in order to transfer illegal wood.



Illegal wood can also be introduced during this stage.



6 EXPORTER

They need a CITES certificate (international convention that regulates the commerce in endangered species of flora and fauna) for exporting.



Stage of the process in which the illegal mahogany is 'laundered' (declared as being legal).

exclusively for the concessioners to "launder" illegal wood or to sell in the black market. In 2007, for example, an inspection of 11 concessions in the Yavarí watershed found that not one of the cedar tree stumps registered in the POAs existed.

SOLUTION: CHANGING THE INCENTIVES TO ENCOURAGE DUE CARE

Several suggestions are made in this report for a system of Permits and control in the field that are more trustworthy. Another of EIA's proposals to confront this problem is to modernize Peruvian law in accordance with international standards that increasingly demand a more responsible attitude on behalf of traders. One way to draw it up is as follows:

"Any person who harvests, cuts, removes, holds, transports, or sells any species of wild flora or product made from said specimen, and any person who captures, hunts, collects, holds, transports, or sells any specimen of wild fauna or a product made from said specimen, upon being so required by government authorities, must demonstrate the legal origin of the specimen of flora or fauna, or of the products made from said specimens.

"If the legal origin cannot be demonstrated, the products will be decommissioned; nevertheless, other administrative and legal actions, civil or criminal, may also be initiated.

"If the owner of the products did not know, or had no way of knowing, of the illegal origin of the products or specimens, it will be sufficient to simply decommission the products.

"If the person knew, or in undertaking due care should have known, about the illegal origin of the specimens or products, the principle of good faith will not be applied."

This proposal is compatible with the commitments assumed by Peru in the framework of the FTA, as well as with the demands for due care and information about legal origins that are increasingly coming from markets in the United States and Europe. In this way, exports of Peruvian wood would acquire more respect in the international market, better positioning the country's serious exporters.

In addition, these standards should become part of the requirements for a country to qualify to participate in international cooperation schema in the framework of climate change, such as REDD+. By adopting them, Peru would not only be complying with obligations it has already acquired, but would also gain ground by beginning to prepare for new international trends.

1. See, for example, Grogan, J. and M. Schulze. 2008. Estimating the Number of Trees and Forest Area Necessary to Supply Internationally-Traded Volumes of Big-Leaf Mahogany (*Swietenia macrophylla*) in Amazonia. *Environmental Conservation* 35(1): 26-35; Kometter, R. and E. Maravi. 2007. Methodology for Developing National Volume Conversion Tables (Standing Volume & Export Grade Sawnwood). World Bank.
2. Executive Orders 002-2008 (mahogany) and 017-2008 (cedar).
3. Executive Order 032-2008.
4. Executive Order 075-2008.
5. Statistics from INRENA. *Balance de Gestión de la Intendencia Forestal y de Fauna Silvestre* (Management Balance in Forestry and Wild Fauna Maintenance). July '07- January '08.

4. COMBATING CORRUPTION

It is currently impossible, in practice, to follow wood backwards to its point of extraction, from the exporter to the forest. One immediate priority is making chain of custody information available to the public — both civil society and importers who want to know what they're buying.

H. Berninzon/EIA

Participants in the workshops recognized that there have been advancements in changing the Criminal Code. Nonetheless, the majority pointed out that we are still far from having the institutional and legal bases to efficiently combat the corruption in the sector. The sense is that there are indeed already laws — perfectible, in some cases — but that the real problem is that they are not obeyed nor enforced.

ANTI-CORRUPTION PLAN

» Forestry Annex: 3.a.(ii)

There was not a consensus among the participants on whether or not Peru has any “anti-corruption plan for officials in charged with the administration and control of forest resources,” but there was consensus in that —if it even existed — there is no evidence of its implementation.

The participants recognized the need for a national plan, and among the suggestions — whether the plan is already in existence or just being developed — stood out the urgency of disseminating it among government officials and the entire citizenry, in the areas of extraction of raw materials as well as areas of processing and even consumption. In any event, the participants' first suggestion to

begin the fight against corruption was to apply the laws that already exist.

In the different work sessions, participants reiterated that any anti-corruption plan should include a Registry of Forestry Consultants which notes the trained consultants and records those consultants “who make trees appear out of thin air” (e.g. with a history of inappropriate or illegal activity). The proposal was made to remove the license or academic registration fees of those forestry consultants who sign Management Plans or POAs with false or adulterated inventories, that is, plans which show trees that do not exist and whose extraction permits later serve to “launder” trees actually extracted from prohibited zones.

Another aspect discussed as one of the first necessary steps that should be taken to confront corruption is the urgency for sector personnel to feel legally and financially protected and to enjoy job security.

Work contracts are needed that provide a certain degree of guarantee of stability. According to the commentaries of specialists in the forest sector, as well as employees— it is common that personnel are hired “outside the budgets”, that is, without being given legal benefits such as vacation, medical leave, and bonuses, being placed within the State's administrative career track. “If employees knew that they could keep their posts, even for years at a time, they would have greater incentives to do a good job. But if they know they are only going to be there a couple of months and that afterwards they may be

unemployed for a long time, they feel pressure to ‘look the other way’ and receive a ‘tip,’” opined participants in Lima.

Legally, officials need to know that they are supported by the government in fulfilling their duties. “It is not fair that an official who is prosecuted for carrying out his job should have to defend himself alone and hire a lawyer out of his own pocket,” complained a concessionaire in Madre de Dios. Additionally, he explained that while a mid-level official in Lima, where there is no forest, receives a monthly salary of some 5,000 Soles, that same official in Madre de Dios receives only 1,000 Soles. Moreover, officials do not receive their salaries on time. “A bad salary should not be a justification for corruption, but in practice it forces you to it: if the official is lucky enough to be paid every two months, he has his child crying at home, and the quantity of money he sees moving under the table is very high, the temptation is great, and the risks are low. We have to put ourselves in those employees' shoes and think how to change the conditions so that the results will change,” he said.

“If an employee of a company commits an infraction, the company is tried. But if an official of the General Directorate of Forests and Wildlife (DGFFS) commits an infraction, the DGFFS does not assume any responsibility; the official must defend himself/herself alone, many times he/she is fired from his/her position, and if he/she is found guilty, he/she must respond on his/her own. This is not reasonable,” they explained in Pucallpa. This situation is not fair to the officials in the sector who want to do their job and end

“It is not fair that an official who is prosecuted for carrying out his job should have to defend himself alone and hire a lawyer out of his own pocket.”

up being intimidated by offenders who threaten to report them; it is also unfair to the victims of bad officials who abuse their office without the State assuming any responsibility for having hired inadequate employees.

No less serious is the physical security of forestry employees. A recent report by the Human Rights Ombudsman sheds light on the high level of risk experienced by officials. According to said report, 92% of the officials of the Technical Administrations of Forests and Wildlife (ATFFS) have been threatened, attacked, or intimidated during the exercise of their duties. In the case of the checkpoints, it is 76% and in the satellite offices it is close to 35%.⁸

“Most officials take actions or adopt procedures that do not speak to their integrity; they simply comply with their duties by informing those they consider pertinent regarding whatever acts that took place, by requesting personal guarantees, and by avoiding walking alone and preferably not very late at night. . . . What they generally do is coordinate with the Peruvian National Police (PNP); nonetheless, they say they need to be very cautious, as they can be taken as ‘informers,’ and as such possible victims of criminal organizations.”⁹

DETERRENCE AND CIVIL AND CRIMINAL RESPONSIBILITY

» **Forestry Annex: 3.b.(ii), 3.b.(iii), 3.b.(iv), 3.b.(v)**

The Forestry Annex clearly establishes that “levels of deterrence and civil and criminal responsibility” should be defined for inappropriate activity in all areas of the forest sector: for extraction, marketing, monitoring, and control of forest products trade; for those who develop or present false information

or documentation to the authorities; for those who obstruct verifications or control mechanisms or activities; for those who extract, acquire, market, or transport products of illegal origin, and for those who deliver (as private individuals) or receive (as officials) benefits (i.e. bribes) in exchange for a particular action in relation to the extraction of or commerce in forest products.

The participants did not feel that efficient deterrence mechanisms exist; that is, those that put forward comparative risks and advantages sufficient to prevent actors from committing misdemeanors and crimes. In terms of sanctions, it was emphasized in Pucallpa that Law 27308 (the forest law from the year 2000 that once again came into partial force after the repeal of DL 1090 in June 2009) already included a series of penalties for offenders, but the law has not worked because the penalties have not been enforced. That is, experience has shown that having a law that establishes sanctions is not enough if the resources and political will to implement it in an effective manner do not exist.

Criticisms were also made with respect to the application of the laws, that many times the administrators of justice do not comply with that which is established by laws and codes, and instead they apply lesser sentences than are prescribed. Complaints were made in Madre de Dios that “the Attorney General’s office and the judicial branch often attack small offenders, but they would rather not go after the ‘big fish.’” One issue that had already been floated in other discussions and that should be reiterated in this section is the perception that the investigation processes into crimes of illegal logging are never seen through.

In Pucallpa, participants felt that a serious limitation to law enforcement is the common practice of complainants in a case of forest crime being obliged to pay for the logistics that would enable government officials to travel to the site for conducting inspections and verifications. Many times, complainants are indigenous communities whose forests are being invaded by illegal timber merchants or ‘*habilitadores*’, and it is very difficult for them to raise the funds to pay for the trips of the public prosecutors, specialists, and police, which may include in some cases

travel by helicopter and even the per diem of participants in an operation.¹⁰ Nonetheless, in other areas — such as Madre de Dios — the participants noted that OSINFOR now has a very large budget to carry out operations.

The businessmen present in the workshops demanded that crimes reported to the authorities be checked out efficiently, to ensure that the complaints are not based only on rumors or third parties’ interests.

In all cases, it is clear that there is a strong demand for transparency in the investigations, processes, and their monitoring, in such a fashion that the various civil society actors can begin to regain confidence in a system that is now perceived as being utterly permeated with corruption.

It is clear that there is a strong demand for transparency in the investigations, processes, and their monitoring.

The lack of an office of “debt collection” (*cobranza coactiva*) in the forest authority was criticized. According to what was explained in Madre de Dios, the fines imposed on the sector do not make much sense since because there are no personnel to enforce them, they simply prescribe debts. One participant affirmed that he/she had information that “in 2007 the fines that were not collected rose to US\$1,800,000, at the exchange rate of 3.3 Soles to the dollar and one Taxable Unit for Tribute (*Unidad Impositiva Tributaria*) of 3,450 Soles.” In the case of Iquitos, the participants commented that of the fines imposed by INRENA, only one has been paid.¹¹

Members of the police in Iquitos, for example, explained that they have to base what they do on what the forest authority says. That is, police may seize cargos of wood of dubious origin, but if they are shown documentation demonstrating the legality of the product, they have to let it go. As pointed out in the

And the Multi-Sectoral Commission for the Fight Against Illegal Logging?

The Multi-Sectoral Commission for the Fight against Illegal Logging (CMLTI) was created in 2004 by Supreme Decree (SD) 019-204-AG. The items in this SD are a bit confusing, since they refer to a previous Multi-Sectoral Commission for the Fight against Illegal Logging created by SD 052-202-AG and modified by SD 011-2003-AG, which designated a “National Multi-Sectoral Strategy for Fighting Illegal Logging,” which in turn proposed the creation of a Multi-Sectoral Commission for the Fight against Illegal Logging. Beyond the impression of a serpent biting its own tail and the apparent multiplication of efforts with the same objective, what is certain is that at the present, the State cannot explain where the CMLTI process is, what it is doing, who chairs it, and who the other members are.

The CMLTI that was created in 2004 was meant to function attached to the Presidency of the Counsel of Ministers (PCM), be chaired by the representative of the PCM, and be composed of representatives of other relevant government ministries and institutions. Included among its duties, it should design, coordinate, and carry out actions, produce an effective information and alert system, take charge of public dissemination of information, and manage and channel the cooperation and donations geared towards the fight against illegal logging. Among

other things, this entity should now be carrying out an important role in the design of a mechanism for the Reduction of Emissions from Deforestation and Forest Degradation (REDD) that is being developed now in Peru and attracting international technical and financial cooperation.

However, the CMLTI is no longer in the PCM. It is not listed among the organizations that are attached to the PCM that the PCM makes public on its website, and in the PCM’s Legal Assistance office they could not give us a precise answer as to what has happened to this commission. Unofficially, we know that the last president of the CMLTI was Manuel Ernesto Bernales Alvarado, who at the time was president of the National Environment Commission (CONAM). This would have meant in practice that the CMLTI was transferred to CONAM, although without the execution of any resolution that would order it to be so.

The last reference that we have regarding the CMLTI was a series of meetings organized by Bernales in 2008. Since CONAM merged with the Ministry of Environment (MINAM) in November 2008, we tried to learn if the CMLTI had been absorbed by this ministry, but MINAM was unable to provide us with information regarding this important, though apparently vanished, commission.

Human Rights Ombudsman’s report, one of the large gaps in monitoring the chain of custody of wood is that the checkpoints do not have access to a database or archives that would permit them to verify the authenticity or legality of the documents that they are shown.¹² Furthermore, they continued, “the police force sometimes fills out the report, but the public prosecutor’s office does not take it into consideration and the complaint is never completed.” Faced with this, the participants pointed out that there is a need for some kind of modification in the procedures so that the report from the police force holds greater validity or at least can be made public.

Regarding the obstruction of investigations and reprisals against complainants, the specific case of organized groups in the area of the Pacaya Samiria National Park was mentioned — that they have confronted the authorities with firearms, forcing the police to call in reinforcements from the Navy in order to be able to patrol the area. “Because of that, it is oftentimes easier for the park rangers to let things ‘pass on by’ rather than to try to prevent them,” they explained in Iquitos. These types of stories are repeated throughout the country, as recorded in the previously cited Ombudsman’s report which reported that 92% of ATFFS officials have been threatened,

attacked, or intimidated in the course of trying to fulfill their duties.¹³

With respect to corruption within the forest authority, a grave problem of “leaking information” prior to field operations was reported. In the case of Iquitos, for example, participants said that in the area of Mazán, the loggers learn about a supervision operation three or four days prior to the team’s arrival, and thus have enough time to hide illegal products. “Corruption is very strong within the institution, and as a result the complaints never go farther than the fiscal police. We have made specific complaints to INRENA and nothing happens,” they complained in Iquitos with a high degree of frustration.

CRIMINAL SANCTIONS

» Forestry Annex: 3.c.[i]

There was no consensus on the clarity of the Criminal Code reform, and if in fact it now includes all the actors involved in the chain of illegal logging, or if it continues to leave some excluded from risk. Most participants said, for example, that the “*habilitadores*” — the middlemen who finance the illegal extraction of wood — are not considered in the Criminal Code. Others even doubt that the exporters are included. Additionally, there are doubts about

the functioning of the principal of “good faith” and how and to whom “bad faith” would ever be demonstrated.

The participants in Pucallpa, for example, were very critical of the new Criminal Code, warning that sentences — as always — are only going to be given to the small extractors, while the large businessmen do not receive any punishment, thanks to the fact that the concept of “good faith” purchasing continues. “There was a bill that provided for businessmen and exporters under the ambit of illegal logging crimes, but once the final bill passed through the Executive Branch, this part was modified and the Congress ended up publishing the version with the Executive’s changes, once more leaving the ‘big fish’ above the law,” they explained. “The small extractor who commits a logging crime goes to prison, but the intermediaries, financiers and large exporters who promote illegal logging are not penalized, since they purchase ‘in good faith.’ The law should be changed to prevent injustice in judicial processes and redistribute the responsibility for illegal logging,” they demanded.

A profound deficiency identified by the participants is awareness; the new Criminal Code requires a large effort of public

The law should be changed to prevent injustice in judicial processes and redistribute the responsibility for illegal logging.

dissemination among civil society, especially among *campesino* and native communities — and additionally, of course, among sectors within the government. They explained that there are people in the forest who know irregularities and crimes are occurring but do not make formal complaints about them because they do not know the new Code, nor before whom to present their complaint.

WHAT MORE CAN BE DONE?

One of the first steps, suggested and reiterated by all of the actors, is the urgency to disseminate the regulations in force. Another equally urgent step is reform of the government's system of career tracks in the forest sector; changes include guaranteeing job security of good officials, as well as ongoing training and support for their

work through both the necessary material resources as well as their physical and legal protection. A national “forest service” with a civil service career track is needed.

There is also a need to improve the systematization of information that comes from the field, in order to allow subsequent investigation or tracking and to better guarantee the chain of custody of Peruvian wood products.

On a related note, there is a need for stronger political will to battle corruption in the sector, to follow through and deliver on investigations and to allow interested members of civil society to keep tabs on the progress of these cases. It was also requested that there be at least minimal personal guarantees for complainants who bring forward information on illegal logging crimes. It was further suggested that information-sharing agreements be established between the forest authority and the customs authority (SUNAT) and the tax authority (SUNAT), which would permit the detection of irregularities during trade and export processes.

Another deficiency identified in the workshops was the lack of information within the forest authority of the export volumes of non-CITES

wood species. Forest actors — including the concessionaires — complain that the lack of information on the existence, regeneration, and marketing of these other species is what is making them disappear from the forests.

One question put forward by several participants related to where the money collected by the reforestation canon goes. People complained, yet again, that Peru does not have a true policy of transparency regarding its resources.



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NOTES

1. The Peruvian Society for Ecodevelopment (*Sociedad Peruana de Ecodesarrollo*), or SPDE, is a Peruvian NGO whose mission and work focus on contributing to the building of participatory and coordinated processes, promoting the building of local capacity with the goal of establishing competitiveness in the forest sector.
2. It was overturned in February 2010 through Regional Directorial Resolution 021-2010-GRSM/DRASAM of the San Martín Regional Agrarian Directorate, due to irregularities in the process; among these, the lack of an environmental impact statement stands out.
3. The Human Rights Ombudsman's Report identifies as one of the principal problems the lack of budget and logistics for enforcement actions, beginning with the basic lack of fuel for operations and computers to archive and monitor documentation. See Human Rights Ombudsman (*Defensoría del Pueblo*), 2009. *El Estado Peruano y el Aprovechamiento Sostenible de los Bosques Naturales: Seguimiento del Anexo 18.3.4 "Sobre el manejo del Sector Forestal" del Protocolo de Enmienda al Acuerdo de Promoción Comercial entre Perú y Estados Unidos de Norteamérica. Serie Informes de Adjuntía [Series of Adjunct Reports]*. Report No. 030-2009-DP/AMASPPI.MA. 163p.
4. See: <http://cites.org/eng/com/SC/58/sum/E58-SumRec.pdf>
<http://cites.org/eng/com/SC/58/E58-39.pdf>.
5. Through the Lacey Act, the United States government now administratively, civilly, and even criminally sanctions those who import, export, transport, or otherwise trade forest products that have been extracted in such a way as to violate the laws of the country of origin. That is, he/she who imports into the US wood that was illegally extracted in Peru is subject to having it decommissioned and — if it is shown that the person knew or could have known the illegal origin of the product — can even go to prison for up to five years. The Lacey Act Importers can protect themselves from these most severe penalties by carrying out “due care” prior to acquiring their products. If importers do not feel able to conduct such due diligence — due to a lack of transparency on the part of the authorities, for example — this may have negative impacts on Peruvian products in the American market. Peruvian wood processed in China but destined for the US market is subject to the law as well.
6. The stumps are the piece of the trunk and roots that are left in the field after a tree has been felled and extracted.
7. Human Rights Ombudsman, 2009. p. 57 — 79. In its report, the Ombudsman identifies a series of limitations faced by forest sector personnel in fulfilling their functions efficiently: lack of resources; delays in transferring funds to the satellite offices; absence of basic services such as water, electricity, telephone, and internet; lack of transportation and gas; lack of access to databases; and significant difficulty in verifying the content of the documentation received. These are just some of the logistical limitations identified.
8. Human Rights Ombudsman, 2009. p. 72.
9. Human Rights Ombudsman, 2009. p. 71 — 73.
10. In Pucallpa, EIA accompanied an indigenous representative to a meeting at the public prosecutor's office for environmental crimes (*la Fiscalía Ambiental*) to verify the progress made on an important complaint of illegal logging that had been filed months before. The response from the public prosecutor's office was that they were ready to schedule an inspection once the indigenous community made the arrangements with a helicopter and other forms of transport and the necessary costs. “If you can do all the logistics, you tell me the date, we will notify the police, and we will go,” said the person who spoke with us at the public prosecutor's office.
11. EIA was not able to obtain official confirmation of these figures; however, a high official of the Forestry Council of INRENA confirmed that there did not exist an office of this nature and that the debt collections of all accounts in the sector (including fines and harvest rights) was very disorderly and they lacked exact figures on the debits and credits.
12. “The falseness or adulteration of the GTFs is difficult for the officials of the satellite offices and checkpoints to detect, as they have neither the tools nor the information to verify the GTFs and the information they contain.” Human Rights Ombudsman, 2009. p. 75.
13. Human Rights Ombudsman, 2009. p. 71 — 74.

CONCLUSIONS

TOWARDS A HEALTHY FOREST SECTOR: CIVIL SOCIETY RECOMMENDATIONS FOR FORESTRY ANNEX IMPLEMENTATION AND THE CREATION OF A NATIONAL REDD STRATEGY

This report compiles the perceptions and suggestions of Peruvian civil society regarding the state of the Peruvian forest sector in the context of the implementation of the Peru-US FTA Forestry Annex as well as other relevant advances in international law and policy. In the framework of the FTA, the Government of Peru assumed a series of commitments to improve governance in the forest sector within a period of 18 months that expires at the end of July 2010.

EIA presents here the results of four workshops carried out in different cities: Lima, Pucallpa, Iquitos,

TRANSPARENCY AND PARTICIPATION

PERCEPTIONS

Instead of advances, there has been regression: previously, for example, there was more and better information on the forest authority's website.

People demand more participation. They complain that the government, in the best of cases, merely informs.

Different actors blame each other for the lack of transparency, which generates social conflict.

RECOMMENDATIONS

The forest authority should post all possible information on the web. When the decision is taken to not make certain data public, the reason should be made clear on the website.

The forest authority should consolidate the systems of information storage and databases among regional and national offices, and have national databases available to the public. Conditions for accessing public documents should be guaranteed, as well as a place where the public can review them.

The government should organize public audiences to disseminate relevant information to the public (and provide a budget for this purpose). Radio programs should also be considered.

The government should more clearly define and explain what 'participation' is and what the 'rules of the game' are for participatory processes, to prevent its processes from losing credibility (refer to ILO Convention 169).

The Forest Management Committees could be strengthened and the representativeness of their membership assured. The forestry canon could be evaluated as a possible source of funding.

and Puerto Maldonado, in which approximately 120 people representing 69 entities participated. This document complements a report from the Human Rights Ombudsman in December 2009, in which the Ombudsman brings together the government's version of the advances made towards implementation of the Forestry Annex.

It is worth noting that some of the activities mentioned in the recommendations below are already being carried out in some form within the framework of bilateral cooperation efforts between Peru and the U.S. (as well as within other collaborations and initiatives).

These suggestions are also relevant for the formulation of a national strategy for the Reduction of Emissions from Deforestation and Forest Degradation (REDD) — a process currently underway in Peru under the auspices of the World Bank, within the framework of international negotiations on climate change. In this forum, Peru has publicly offered to reduce its deforestation to 0% in the next decade. We do not need to start from zero to formulate a plan to curb the plunder of Peru's forests. We already know a great deal about how to confront existing problems. Now it is time to act.

INSTITUTIONAL STRENGTHENING

PERCEPTIONS

Much of the staff is inefficient, lacks sufficient training and ethics for the job, and operates under poor labor conditions that undermine morale and motivation.

The personnel lack minimum resources to complete their work, such as computers, access to databases, and office materials on the one hand, and gas and budget for patrolling and reacting to local complaints, on the other.

There is no institutional Focal Point that leads and coordinates enforcement efforts.

There is a complete lack of credibility in the documents that accompany wood (Forest Transport Permits or GTFs).

RECOMMENDATIONS

Hiring personnel is not enough; they need training, resources, and adequate supervision.

Working conditions need to be improved: formal contracts should be drawn up, physical security should be ensured, legal support should be provided in case a complaint is filed against an official as a result of his/her carrying out his/her duties.

The government should create a professional career track in the forest sector, with clear, transparent rules and incentives and fair, competitive public hiring processes.

The government could calculate the necessary number of personnel depending on the area of forest to be protected in the region.

The government should identify a Focal Point that leads the monitoring and control of the sector and:

- is independent, autonomous, has resources, and carries political weight;
- has the political capacity and budget to coordinate across sectors;
- becomes the single clear and public place to receive and follow up on complaints.

The Ombudsman could monitor forest sector complaints and judicial processes and make them available to the public. [It was suggested that large concessionaires be asked to install internet cafes for the local citizenry.]

Supervision and control should be focused on the point at which wood is extracted from the forest. There are not sufficient resources or adequate procedures to ensure that the wood can be tracked once it leaves the forest.

The good concessionaires want some type of recognition from the government.

LAND USE PLANNING AND MANAGEMENT

PERCEPTIONS

The country lacks a national system of land use planning; this lack is a source of social conflicts.

The sector lacks scientific and technical studies as the basis for decision-making. This contributes to the lack of respect and credibility towards the forest authority. The tree yield coefficients are an example of the problem.

Legal logging oftentimes is rarely profitable for the concessionaires and the communities due to factors such as the low risk in illegal logging (which lowers market prices for wood), the lack of access to credit, the lack of capacity in indigenous communities, etc.

Forest Transport Permits (GTFs) are used to launder illegal wood.

It is impossible to track wood from the forest. There is no access to the necessary documentation to reconstruct the chain of custody.

RECOMMENDATIONS

A national system of land use planning is urgently needed.

Research and monitoring is urgently needed for other species not found in the CITES Appendices. The shihuahuaco (*Dipteryx spp.*), lupuna (*Ceiba pentandra*), estoraque (*Liquidambar styraciflua*), and other wood with international demand are at high risk.

The government should monitor international demand for different species of wood and react to the changes in this demand by attempting to guarantee the sustainability of the species and correspondingly adapting fees for harvest rights.

The concessionaires ask that ocular inspections be carried out prior to extraction, explaining that estimating the dimensions of a tree by using the stump is detrimental to them.

The State should confront the problem of the “*habilitadores*” (middlemen) who finance illegal logging. Concessionaires complain that the concession system requires a financial instrument that provides access to credit.

Government offices that procure wood should require that the wood be legally extracted.

Provide viable alternative economic activities for those indigenous communities involved in illegal logging.

With respect to the issue of abuse of the GTF system and the lack of traceability:

- The databases of the different national and regional offices should be integrated so that it is possible to reconstruct chain of custody;
- The possibility of having a single document that is difficult to falsify, which accompanies the wood from the forest to the importer, should be evaluated;
- Real yield coefficients are needed. This would reduce the number of Forest Transport Permits (GTFs) that circulate in the market for laundering wood.

COMBATING CORRUPTION

PERCEPTIONS

There are laws, but they are not applied.

In practice, it is more efficient to be outside the law: less cost, less risk, less bureaucracy, higher profit margins.

The incentives for action on the part of forestry personnel, police, or other officials are few, while “looking the other way” can produce benefits.

A community or individual that makes a complaint about irregular activity has to finance the authorities’ supervision and control actions.

RECOMMENDATIONS

Implementing the laws that already exist would help the sector greatly.

A national cross-sectoral plan for fighting corruption in the forest sector is needed. If one already exists, the participants have not heard of it and they demand that it be disseminated publicly as soon as possible.

The government should implement clear sanctions for independent foresters who “make trees appear” in the management plans. Consider withdrawing their license and/or tuition fees.

Forestry personnel should feel secure in the fulfillment of their duties in terms of job stability, personal security, and legal support.

If a bad official commits an intentional error, the forest administration should retain the legal responsibility for having hired that official.

Being outside the law should be more expensive than complying with the law: Peru must increase the cost (risk) of illegal wood, for example through stronger penalties for the financiers, and through more systematic legal monitoring regarding how misdemeanors committed are followed up on.

The government should implement a clear and transparent mechanism to monitor the complaints in the sector. This is critical for the public to regain confidence in the system.

The forest authority should implement cross-sectoral agreements to share relevant information in a compatible fashion. For example, with Customs and Taxes.

The personnel in positions of control throughout the wood transport route urgently need access to databases that would permit them to at least verify the authenticity of the documents they are shown.

A fair legal structure is needed to redistribute the responsibility among the different actors involved in illegal logging based on their earnings, and not concentrate only on the person who cuts down the tree.

“Due diligence” should be the standard that replaces “good faith.” Given the pervasive black market for GTFs, this document cannot be used to prove the legality of origin.

The State should recognize the value of local actors in monitoring and controlling the forests: guarantee them access to relevant information, listen to their legal and other complaints, permit them to monitor investigative and judicial processes, and make available to them training and the necessary updates on legal reforms in the sector.

It is urgent to publically disseminate the laws, Criminal Code, and other regulations that affect the sector. The forestry personnel and local public prosecutors, as well as indigenous communities and local NGOs, should be prioritized.

Annex 18.3.4

Annex on Forest Sector Governance¹

1. The Parties recognize that trade associated with illegal logging, and illegal trade in wildlife, including wildlife trafficking, undermine trade in products from legally harvested sources, reduce the economic value of natural resources, and weaken efforts to promote conservation and sustainable management of resources. Accordingly, each Party commits to combat trade associated with illegal logging and illegal trade in wildlife. The Parties recognize that good forest sector governance is critical to promoting the economic value and sustainable management of forest resources. Accordingly, each Party commits to take action under this Annex to enhance forest sector governance and promote legal trade in timber products.

STRENGTHENING FOREST SECTOR GOVERNANCE

2. The Parties recall their joint efforts, both through bilateral initiatives and in relevant international fora, to address matters relating to trade in timber products. The Parties also note the considerable progress that Peru has made in developing the institutions and legal and regulatory framework necessary to ensure the sustainable management of its forest resources.

3. In order to further strengthen the governance of its forest sector, Peru shall, within 18 months after the date of entry into force of this Agreement, take the following actions:

(a) Increase the number and effectiveness of personnel devoted to enforcing Peru's laws, regulations, and other measures relating to the harvest of, and trade in, timber products, with a view to substantially reducing illegal logging and associated trade in these products. In this context, Peru shall:

(i) Increase the number of enforcement personnel in national parks and concessions and in forest regions designated under Peruvian law as "indigenous protected" areas; and

(ii) Develop and implement an anti-corruption plan for officials charged with the administration and control of forest resources.

(b) Provide criminal and civil liability at adequate deterrent levels for actions that impede or undermine the sustainable management of Peru's forest resources. Such actions shall include:

(i) Threats or violence against, or other intimidation of, government personnel engaged in enforcement of Peru's laws, regulations and other measures relating to the harvest of, and trade in, timber products;

(ii) Knowingly creating, using, presenting or providing false information on any material document relating to enforcement of Peru's laws, regulations and other measures relating to the harvest of, and trade in, timber products, including forest management plans, annual operating plans, applications for permits/concessions, and transportation documents;

(iii) Obstructing an investigation, verification, or audit conducted by government personnel engaged in enforcement of Peru's laws, regulations and other measures relating to the harvest of, and trade in, timber products;

(iv) Knowingly harvesting or purchasing timber or timber products from areas or persons not authorized under Peruvian law; or knowingly transporting timber or timber products taken from areas or persons not authorized under Peruvian law; and

(v) Providing to a government official, or receiving as a government official, compensation, whether monetary or in kind, in exchange for particular action taken in the course of that official's enforcement of Peru's laws, regulations and other measures relating to the harvest of, and trade in, timber products.

(c) Impose criminal and civil penalties designed to deter violations of laws, regulations and other measures relating to the harvest of, and trade in, timber products. This shall include:

(i) Substantially increasing criminal penalties prescribed in Article 310 of Peru's Penal Code (Código Penal, Decreto

Legislativo No. 635, 8 April 1991); and

(ii) Suspending the right to export the product as to which a law, regulation, or other measure has been violated.

(d) Adopt and implement policies to monitor the extent and condition of tree species listed in any Appendix of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), including by:

(i) Conducting a comprehensive inventory including analysis of the populations of these tree species to determine their geographic distribution, density, size, age-class structure and regeneration dynamics, as well as threats to their survival;

(ii) Conducting technical studies to determine product yields for the purpose of calculating accurate conversion factors and informing decisions on export quotas; and

(iii) Providing for technical review and periodic updating of these inventory and product yield studies and making their results publicly available.

(e) Finalize and adopt a strategic plan of action to implement the CITES Appendix II listing of Bigleaf Mahogany by decree or resolution promulgated by the central level of government, and endeavor to provide financial resources adequate to carry out the plan.

(f) Establish an annual export quota for bigleaf mahogany, covering logs, sawn wood, veneer sheets and plywood, at a level and in a manner consistent with Article IV of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and the advice of Peru's CITES Scientific Authority for forest species. Peru shall:

(i) Include in the annual export quota only bigleaf mahogany harvested from Native Communities or concessions for which Instituto Nacional de Recursos Naturales (INRENA) has approved and verified annual operating plans, subject to oversight by the Organismo Supervisor de los Recursos Forestales Maderables (OSINFOR);

(ii) Ensure that the export quota takes into account studies conducted under sub-paragraph (d); and

(iii) Ensure that the export quota does not exceed the range recommended by Peru's Scientific Authority for Forest Species.

(g) Improve the administration and management of forest concessions. Peru shall:

(i) Build on existing mechanisms to implement a competitive and transparent process to award concessions;

(ii) Review proposed annual operating plans for such concessions and, if a plan is approved, make it publicly available and regularly verify in a timely manner that a concessionaire is complying with the terms of the plan; and

(iii) Physically inspect area designated for the extraction of any CITES-listed tree species prior to approving or verifying an operating plan and produce a publicly available report detailing the results of the verification. OSINFOR, in its oversight of INRENA, shall supervise the physical inspections and, as necessary, participate in the physical inspections.

(h) Develop and promote the use of tools that complement and strengthen regulatory controls and verification mechanisms relating to the harvest of, and trade in, timber products. In this context, Peru shall:

(i) Take into account the views of local and indigenous communities, non-governmental organizations, and the private sector, including operators of timber harvesting concessions;

(ii) Develop systems to verify the legal origin and chain of custody of CITES-listed tree species and develop systems, including requirements for management oversight and record keeping, to reliably track specimens from harvest through transport, processing and export;^{2,3}

(iii) Fully implement existing laws and regulations for forest sector governance and strengthen institutions responsible for enforcing these laws and any aspect

of forest management in Peru. In this context, Peru shall establish OSINFOR as required under Forest Law No. 27308. OSINFOR shall be an independent and separate agency and its mandate shall include supervision of verification of all timber concessions and permits; and

(iv) Identify within the Government of Peru a focal point, with appropriate and sufficient authority and staff to investigate violations of laws and regulations for forest sector governance. The focal point shall (a) have a transparent process for the reporting of forest sector crimes; (b) ensure coordination and the accurate and timely flow of information between relevant technical and financial agencies; and (c) where appropriate prosecute or refer violations for prosecutions.

(i) Strengthen, protect and increase the capacity of indigenous communities to manage their lands for commercial timber production, including by ensuring that any commercial timber production has the approval of the Peruvian government.

(j) Appropriately identify protected areas and concessions.

4. The Parties are committed to work cooperatively to implement the actions required under the preceding paragraph, including through capacity-building and other joint initiatives to promote the sustainable management of Peru's forest resources. The Parties shall develop and implement any capacity-building activities they undertake pursuant to this paragraph in 18-19 accordance with the Environmental Cooperation Agreement, as provided for in Article 18.10. Such capacity building activities may include:

(a) Strengthening the legal, policy, and institutional framework governing the forest estate and the international trade in forest products;

(b) Building institutional capacity for forest law enforcement and the international trade in forest products;

(c) Improving the performance of the forest concession system in meeting economic,

social, and ecological objectives; and,

(d) Increasing public participation and improve transparency in forest resource planning and management decision-making.

VERIFICATION AND ENFORCEMENT MEASURES

5. The Parties shall cooperate for the purpose of enforcing or assisting in the enforcement, and deterring circumvention, of the laws, regulations, and other measures of each Party related to forest sector governance, including those related to the harvest of, and trade in, timber products.

AUDITS OF PRODUCERS AND EXPORTERS

6. (a) Peru shall conduct periodic audits⁴ of producers and exporters in its territory of timber products exported to the United States, and verify that exports of those products to the United States comply with all applicable laws, regulations, and other measures of Peru governing the harvest of, and trade in, timber products including, in the case of tree species listed in CITES Appendix II, relevant chain of custody requirements.

(b) In addition, on the written request of the United States, Peru shall conduct an audit of a particular producer or exporter in its territory as specified in the request, with a view to evaluating the compliance of that producer or exporter with those laws, regulations, and other measures. On written request of the United States, Peru shall provide a written summary of its finding of the request audit. The United States will treat any documents or information exchanged in the course of an audit as confidential if such documents or information had been designated by Peru as confidential under Article 5.6.

VERIFICATIONS

7. On the written request of the United States, Peru shall verify whether, with respect to a particular shipment of timber products from Peru to the United States, the exporter or producer of those products has complied

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with applicable laws, regulations, and other measures of Peru governing the harvest of, and trade in, those products.⁵

8. A request under paragraphs 6 or 7 shall identify:

- (a)** the relevant producer or exporter;
- (b)** Peru's laws, regulations, and other measures at issue; and
- (c)** the reason the United States considers an audit or verification to be warranted.

9. The United States shall, to the extent authorized under its law, provide Peru with trade and transit documents and other information that will assist Peru in conducting a verification under paragraph 7. Each Party shall treat any documents or information exchanged in the course of a verification as if such documents or information had been designated as confidential by the other Party under Article 5.6 (Confidentiality).

10. To facilitate a verification under paragraph 7, Peru shall, unless the Parties agree otherwise, visit the premises of the exporter or producer, or of any other enterprise in the territory of Peru in the chain of production or transportation for the product concerned. The following procedures shall apply with respect to such visits:

- (a)** Peru shall inform the United States in writing of a visit it proposes to conduct at least 20 days before it takes place.
- (b)** If the United States seeks to have its officials participate in the visit, its competent authorities shall transmit a request to Peru in writing no later than 10 days before the visit, identifying the names and titles of the officials the United States proposes to participate in the visit.
- (c)** Peru shall permit the United States officials identified in the request to participate in the visit unless Peru informs the United States competent authorities otherwise in writing at least five days before the visit.
- (d)** With respect to the shipment that is the subject of the verification under paragraph 7, Peru shall obtain and examine copies of documents relating to the enterprise's compliance with Peru's laws, regulations,

and other measures governing the harvest of, and trade in, timber products including, in the case of shipments of products derived from tree species listed in a CITES Appendix, relevant chain of custody requirements.

(e) No later than 10 days after a visit, the United States officials that participated in the visit shall provide Peru with their written observations, if any, regarding the shipment.

11. If Peru denies a request under paragraph 10(b) for the identified officials of the United States to participate in a visit, the United States may deny entry to the shipment that is the subject of the verification.

12. Unless the Parties agree otherwise, Peru shall provide the United States a written report on the results of any verification it conducts in response to a request under paragraph 7 within 45 days after the date the United States delivers the request or, if Peru conducts a verification visit in response to the request, within 75 days after the date the United States delivers the request. The report shall take into account any written observations that United States officials have provided under paragraph 10(e) and shall include an assessment, based on documents examined in the course of the verification, of whether the enterprise has complied with Peru's applicable laws, regulations, and other measures. The report shall append all relevant documents and facts supporting Peru's assessment.

COMPLIANCE MEASURES

13. Within a reasonable time after Peru provides a report under paragraph 12, the United States shall notify Peru in writing of any actions it will take with respect to the matter, and the duration of such actions, taking into account, inter alia, that report, information that United States customs authorities have obtained regarding the shipment or relevant enterprise, and information that United States officials obtained during the verification visit.

- (a)** These actions may include:
 - (i)** denying entry to the shipment that was the subject of the verification and
 - (ii)** where an enterprise has knowingly provided false information to Peruvian

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or United States officials regarding a shipment, denying entry to products of that enterprise derived from any tree species listed in Appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

(b) The United States shall cease action under sub-paragraph (a)(ii) by the later of

- (i)** the end of the period specified in its written notification, or
- (ii)** 15 days after the date on which Peru submits proof to the United States of an audit under paragraph 6 that concludes the enterprise complies with all applicable laws, regulations, and other measures of Peru governing the harvest of, and trade in, timber products.

14. If Peru does not provide a verification report under paragraph 12 within the time prescribed in that paragraph, the United States may take such actions with respect to the exporter's timber products as it considers appropriate, including those described in paragraph 13.

CITES COMMITMENTS

15. Each Party reaffirms its commitment to work within the framework of CITES to protect CITES-listed species. To this end, the Parties shall cooperate and take action under this Annex in a manner consistent with each Party's obligations under CITES and in a manner that takes into account decisions and resolutions of the CITES Conference of the Parties as well as its Standing Committee, Animals Committee, and Plants Committee. Furthermore, nothing in this Annex shall limit the authority of either Party to take action consistent with its legislation implementing CITES.

SUB-COMMITTEE ON FOREST SECTOR GOVERNANCE

16. In order to facilitate the cooperation provided for in this Annex, and provide a forum for them to share views and information on any matter arising under this Annex, the Parties hereby establish a Sub-Committee on Forest Sector Governance under both the Committee on Trade in Goods and the

Environmental Affairs Council.

17. The Parties shall consult regularly through the Sub-Committee and shall exchange appropriate, non-confidential information on bilateral trade in timber products to the extent consistent with and as authorized under their respective laws and policies. This shall include information such as: customs data, information on efforts to combat illegal logging and associated trade (including interdiction, confiscations, arrests, prosecutions and convictions), implementation of CITES requirements and other relevant information.

18. Unless they otherwise agree, the Parties shall make any information they exchange under paragraph 17 publicly available in a timely manner, subject to any conditions the Sub-Committee may establish.

PUBLIC COMMENTS

19. Each Party shall establish a procedure for the public to submit comments regarding any matter under this Annex. Each Party shall take these comments into account and transmit them to the other Party if they are not publicly available.

REVIEW

20. The Parties shall review the operation of this Annex within three years after the date of entry into force of this Agreement.

1. For greater certainty, this Annex is subject to Chapter Twenty-One (Dispute Settlement). No Party may have recourse to dispute settlement with respect to a matter arising under this Annex without first seeking to resolve the matter in accordance with Article 18.12.
2. An effective chain of custody system should provide management oversight, document control, material separation and tracking, purchasing and receiving, processing, shipping and sales, claims and training, and may employ innovating tracking technologies, such as barcodes.
3. The Parties note Peru has mechanisms in place to promote the use of voluntary certification programs that address legal origin and chain of custody issues for CITES-listed tree species.
4. Such audits shall be conducted at least every five years and may be conducted by a mutually agreed third party.
5. The United States may detain a shipment which is subject to a verification request pending the result of the verification and the notification provided under paragraph 13.



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