

# Making the Forest Sector Transparent

## Annual Transparency Report 2012



Prepared by Global Witness, February 2013



**Making the Forest Sector Transparent** is coordinated by Global Witness and works with a coalition of leading NGOs in Cameroon, the Democratic Republic of Congo, Ecuador, Ghana, Guatemala, Liberia and Peru to engage policymakers and advocate for accountable forest sector governance.

This document presents a compendium of the programme-wide report and the seven country reports that make up the Annual Transparency Report 2012.

[foresttransparency@globalwitness.org](mailto:foresttransparency@globalwitness.org)

[www.globalwitness.org/gtf](http://www.globalwitness.org/gtf)

[www.foresttransparency.info](http://www.foresttransparency.info); [www.transparenceforestiere.info](http://www.transparenceforestiere.info); [www.transparenciaforestal.info](http://www.transparenciaforestal.info)

**References in the country reports:** The maps of estimated % forest cover are adapted from the FAO Global Forest Resources Assessment 2010 and derived from Global Land Cover Facility data of vegetation continuous fields. Land area, forest area and estimated annual deforestation rate drawn from FAO Global Forest Resources Assessment 2010, accessed at <http://www.fao.org/forestry/fra/fra2010/en/>. Data for 2011 on total population and GDP per capita based on purchasing power parity (PPP) converted to current international dollars are drawn from the World Bank open data catalogue at <http://data.worldbank.org/>.

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## Forest sector reforms are not being translated into practice

Since 2009, *Making the Forest Sector Transparent* has documented how well governments have met their commitments to improve forest sector governance and transparency. Forests are under severe threat from logging, mining and other industries, yet poor management and corruption facilitate their destruction and mean that the rights of those who live in them are often ignored. This summary presents findings from our efforts to monitor and help improve forest management systems in seven forest-rich countries. It is accompanied by country-specific report cards.

Transparency is essential for ensuring that people get the information they need to have a real say in decisions affecting their forests. Governments have made numerous commitments to improve forest sector transparency, and governance, but too few of them are effective in practice and not one forest authority is meeting all of its obligations. In the last four years there have been some positive steps towards improving access to information and participation in decision-making, but progress has been slow and implementation has been weak. At the same time, bureaucracies characterised by secrecy and corruption have allowed vested interests to continue to exploit forest resources and contribute few real benefits to either local communities or the national economy.

### Key findings from the programme

- Forest authorities often fail to comply with their duty to publish key documents and data as required by freedom of information laws and forest sector-specific obligations.
- Customary rights of indigenous forest peoples and forms of community forest management have received little attention from governments compared to commercial forest resource exploitation. They need to be prioritised.
- New regulations and laws are liable to be undermined from one side by popular resistance and the other by corruption unless developed through an explicitly open and consultative process. Efforts to include all stakeholders in decisions must be improved.
- Unless international efforts to stamp out illegal timber focus on transparency in producer countries alongside entry controls in importing countries to determine where timber comes from, they risk rubber-stamping a corrupt status quo.
- The timber industry avoids and delays paying its dues and funds are not reaching local forest communities. Governments, industry and civil society need to become more transparent in distribution and investment of forestry royalties and incentives.
- Too little consideration is given to what the best use of the forest is, particularly in an era of climate change. Mining, oil, agro-industry and other projects on forest lands are frequently agreed behind closed doors with little consideration of strategic environment impacts.



Community Meeting in Saamang, Ghana. (Photo © New Generation Concern)

*Making the Forest Sector Transparent* is a partnership between Global Witness and leading NGOs in seven countries: Cameroon, the Democratic Republic of Congo (DRC), Ecuador, Ghana, Guatemala, Liberia and Peru. Each year, the partners produce a report card using a common set of indicators. This process monitors progress in forest sector reforms, like the Voluntary Partnership Agreements (VPAs) with the European Union on Forest Law Enforcement, Governance and Trade (FLEGT). Each NGO also carries out country-specific studies to focus on particular issues and document the perceptions of local people, and administers small grants to promote grassroots activism and capacity building. The programme has used these activities to advocate for inclusive forest governance and hold officials to account in each country.

# Report Card Indicators

The 2012 report card consisted of 20 'yes' (green), 'partial' (yellow) or 'no' (red) indicators – 12 of which tested whether key provisions exist in the legal, policy and regulatory framework ('framework indicators') and eight tested whether key documents and data are regularly published ('data indicators'). Full information on the indicators with supporting analysis and data sources is available on the interactive website in English, French and Spanish: [www.foresttransparency.info](http://www.foresttransparency.info), [www.transparenceforestiere.info](http://www.transparenceforestiere.info), and [www.transparenciaforestal.info](http://www.transparenciaforestal.info).

|   |  |  |  |  |  |  |  |
|---|---|---|---|--|---|---|---|
| <b>Framework indicators:</b> are applicable policies, laws and norms in the public domain?                              |   |   |   |  |   |   |   |
| ● Yes; ○ Partial – they have only been drafted, are out of date or lack regulations; ■ No – they have not been approved |   |   |   |  |   |   |   |
| Freedom of information legislation  | ○   | ○   | ●   | ○  | ●   | ●   | ●   |
| National forest policy  | ○   | ○   | ●   | ○  | ○   | ●   | ○   |
| Codified forest law and supporting norms  | ●   | ●   | ●   | ●  | ●   | ●   | ●   |
| Signed VPAs and other agreements on forest products   | ●   | ○   | ■   | ●  | ○   | ●   | ●   |
| Provisions for transparency in forest laws and norms  | ●   | ○   | ●   | ●  | ●   | ●   | ●   |
| Recognition of customary rights in forest laws and norms  | ○   | ○   | ●   | ○  | ●   | ○   | ●   |
| Formal procedures for consultation on new forest norms  | ■   | ○   | ●   | ○  | ○   | ●   | ●   |
| Legal right to free prior and informed consent  | ■   | ■   | ○   | ●  | ○   | ●   | ●   |
| National land tenure policy   | ○   | ○   | ○   | ○  | ●   | ●   | ■   |
| Consultation before commercial logging allocation   | ■   | ○   | ■   | ●  | ●   | ●   | ■   |
| Regulation of environmental services  | ■   | ■   | ■   | ●  | ○   | ●   | ○   |
| Strategic environmental assessment  | ■   | ■   | ●   | ○  | ○   | ●   | ●   |
| <b>Data indicators:</b> are key documents and data regularly published?   |   |   |   |  |   |   |   |
| ● Yes; ○ Partial – they have only been drafted, are out of date or lack regulations; ■ No – they have not been approved |   |   |   |  |   |   |   |
| Forest ownership and resource use maps  | ○   | ■   | ○   | ■  | ○   | ○   | ○   |
| Legal documents for commercial logging operations   | ○   | ○   | ○   | ○  | ○   | ○   | ○   |
| Reports on the verification process of eligibility of commercial operators  | ○   | ○   | ■   | ○  | ○   | ○   | ■   |
| Forest management plans   | ○   | ○   | ○   | ○  | ○   | ○   | ■   |
| Reports from independent forest monitoring  | ●   | ○   | ■   | ●  | ○   | ●   | ■   |
| Data on the distribution of forest royalties or incentives  | ○   | ○   | ●   | ●  | ○   | ●   | ○   |
| Information on forest law infractions   | ●   | ■   | ○   | ●  | ○   | ●   | ○   |
| Annual forest authority report  | ■   | ■   | ●   | ○  | ●   | ○   | ○   |

Overall, the report card indicators present a picture of many yellows and reds, showing that there are gaps in the framework and data on the forest sector in all of the countries. This is particularly apparent in relation to the eight data indicators – of this total of 56 'traffic lights' across the seven countries, only six are green to show that the relevant information is comprehensively and regularly published. Not one country publishes comprehensive maps showing all forest owners and resource uses, nor do any publish legal documents and management plans for all commercial operations. This means that local people rarely have the information necessary to know what logging and other activities are happening in their forests, whether these activities are legal, or what revenues are being generated.

In comparison, there are more greens across the twelve framework indicators; 36 out of 84 indicators across the seven countries show that they have adequate provisions for forest sector transparency and management. By this measure, Peru, Ecuador and Liberia have relatively complete legal and regulatory frameworks. In addition, all countries have made progress towards reforming their policies and laws, but applying them transparently, equitably and consistently in practice remains a challenge.

# Important Developments and Achievements

The report cards have documented progressive reforms and initiatives in each country. Programme partners have played a part in advocacy work in pursuit of these developments, and in some cases have achieved important changes in how the forest sector is managed.

|   |  |
|---|--|
| <b>Cameroon</b><br>    | <ul style="list-style-type: none"> <li>The VPA and forest law reform herald the advent of new framework for forest governance, including a binding obligation on authorities to regularly publish specific documents and data.</li> <li>Participation in the development of new forest norms has opened up opportunities for the inclusion of historically marginalised groups, as exemplified by the representation of indigenous peoples.</li> <li>Following civil society campaigns, the new Minister of Forests took more concerted actions to suspend 'small permits' linked to illegal logging.</li> </ul> |
| <b>DRC</b><br>         | <ul style="list-style-type: none"> <li>Contract documents and management plans for converted forest concessions began to be published online for the first time.</li> <li>Civil society exposés of the misallocation of artisanal logging permits lead to the revocation of six permits and a ministerial decree reconfirming who has the right to issue them.</li> <li>The government made a commitment to sign the decree on community forest management following a major mobilisation of civil society calling for it to finally do so.</li> </ul>   |
| <b>Ecuador</b><br>     | <ul style="list-style-type: none"> <li>Forest authorities have improved their fulfilment of the FOI law and the Public Ombudsman has developed systems to apply the law more consistently.</li> <li>The Government has developed a bill on prior consultation, which may establish a legal mandate for participation of civil society, in particular indigenous peoples, in decision-making.</li> </ul>  |
| <b>Ghana</b><br>      | <ul style="list-style-type: none"> <li>A new forest policy has been agreed with proposals to address long-standing issues of tree tenure, customary rights and community forest management.</li> <li>A District Assembly and a group of traditional authorities have adopted byelaws and charters respectively to guide their management of forest resources and royalties.</li> </ul>   |
| <b>Guatemala</b><br> | <ul style="list-style-type: none"> <li>A participatory evaluation of the forest policy identified its failings and laid the ground for the development of a new policy.</li> <li>Inequities in the incentives programmes were addressed in a new law, which sets a precedent for reviewing it when the current programme ends in 2016.</li> </ul>  |
| <b>Liberia</b><br>   | <ul style="list-style-type: none"> <li>The VPA includes an annex on public information that reinforces application of the Freedom of Information law to the forest sector, including a distinction between proactive disclosure and items available on request.</li> <li>The President issued an Executive Order reinforcing a moratorium on Private Use Permits, and a criminal investigation into the perpetrators, to address serious failures highlighted by civil society.</li> <li>The European Union supported civil society-led monitoring initiatives as part of VPA implementation.</li> </ul>         |
| <b>Peru</b><br>      | <ul style="list-style-type: none"> <li>Public bodies, in particular regional forest authorities, have improved their compliance with the FOI law and the Public Ombudsman has proposed independent oversight of compliance with the law.</li> <li>A guide for strengthening the forest sector through a participatory and decentralised process was published by the forest authority.</li> <li>Lessons learnt from the development of the law on prior consultation of indigenous peoples have informed the role of participation in legislative reform.</li> </ul>   |

Over four years, the report cards have shown that positive-sounding agreements, commitments and initiatives do not necessarily result in effective implementation across the sector. The 'business as usual' model of forest resource exploitation can find ways around the best laid laws. Nine core recommendations from *Making the Forest Sector Transparent* on the next page are key to future improvements in transparency, accountability and governance in the sector.



'Business as usual'? (Photo © Global Witness)

## Conclusions

### Access to Information

Even where there are freedom of information laws and forest sector-specific agreements on public information, forest authorities often avoid their duty to publish key documents and respond to requests for information.

Central authorities often make decisions arbitrarily behind closed doors, and information stays at this level instead of reaching the local communities that most need to know what is happening to their forests. Ill-informed and disempowered front-line staff fear retribution if they release 'confidential' information.

The capacity of civil society organisations and the media to analyse and disseminate information so that it can be understood and used by people is limited.

### A rights-based approach

Indigenous peoples often have little say over decisions to exploit natural resources on land that they have been living on for centuries. Customary rights are increasingly recognised in forest reforms, but too often are disregarded by authorities.

Innovations in community forestry are under-resourced, and lag years behind investments in industrial-scale timber extraction, mining operations and agricultural plantations, reflecting a reluctance by the state to relinquish power.

### Participation in rule-making

There are encouraging signs that civil society and forest communities have participated more actively in forest sector reforms in recent years. However, there remains a risk that consultation processes are largely lip service. If citizens are denied a real say the outcomes are liable to be contested through popular resistance and undermined by corruption.

### Rule of law

New forest laws have set out more rigorous procedures for regulating timber rights, but authorities have often failed to apply them and vested interests have exploited loopholes whenever possible. Civil society oversight combined with persistent demands for information has proven effective in exposing irregularities and holding officials to account.

### Revenue transparency

There is a lack of accountability on the collection, distribution and investment of revenues, and little sign that national governments are taking the necessary measures to ensure that the timber industry stumps up its dues on time. There is more transparency in incentives programmes to support social and conservation objectives, but concerns persist over whether they are reaching the most marginalised groups as intended.

### Best use of the forest

As competition over diminishing resources intensifies, poor coordination and unclear planning processes are preventing forests from being valued for their environmental services.

## Recommendations

Legal obligations need to be backed by strong independent ombudsmen and compliance monitoring. Considerable further work is necessary to change institutional cultures and develop information management systems.

Authorities should more clearly delegate responsibilities to ensure front-line staff have the information and guidance they need to work constructively with communities. They should seek opportunities to present themselves positively and proactively, including through greater use of websites and new media.

Efforts to promote transparency must strengthen civil society's ability to use information. NGOs and their constituencies should determine priority information needs, develop activities for collection, synthesis and dissemination, and promote openness in their own work.

Land use decisions must fundamentally recognise indigenous peoples' rights, and then ensure that they understand what is proposed for their forest land and are able to give or withhold consent.

The current situation where forms of community forest management receive little attention – both in policy and practice – compared to commercial forest resource exploitation urgently needs to be reversed.

The inclusion of citizens in decision-making must be strengthened by legal backing for consultation processes; appropriate, complete and timely information; and adequate representation, and integration of inputs.

Efforts to build authorities' capacity need to be backed by strong independent monitoring, and effective use of sanctions provided for in international processes such as FLEGT. Importer governments must therefore place greater emphasis on bringing civil society oversight mechanisms into forest governance.

Civil society groups should strengthen links with other work to improve fiscal transparency – such as the Extractive Industries Transparency Initiative and the Open Budget Initiative – to share lessons on how to improve transparency and management of forest sector financial flows.

Efforts to promote better forest management must include lobbying political and business elites to consider alternative – and more climate friendly – uses of forest land than deforestation, mining, large-scale agriculture or infrastructure projects. Thereafter, governments need to set out clear, consistent legal parameters for assessing trade-offs between these, and make their strategic land-use decisions in a transparent way.

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## Country Specific Report: Cameroon

Prepared by the Centre for Environment and Development (Centre pour l'Environnement et le Développement – CED) and Global Witness, February 2013

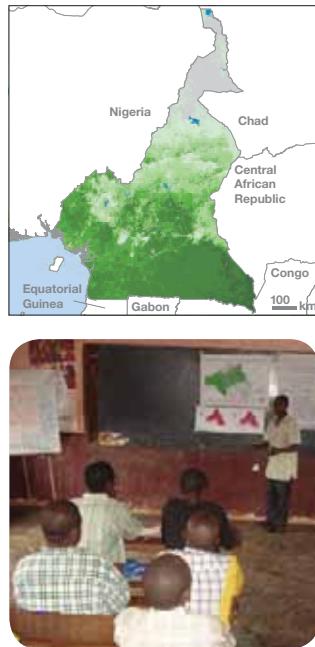


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## Introduction

Since 2009, CED and Global Witness have produced annual report cards on Cameroon for the *Making the Forest Sector Transparent* programme. These have assessed whether citizens, in particular local communities and indigenous peoples that depend on forests for their livelihoods, are able to access the information they need to have a say in decision-making. The report cards have informed advocacy work to promote accountability and good governance. A mini-grants fund has also supported grassroots advocacy and capacity building. This summary presents the key findings from the final report card for the programme in 2012, which consisted of 20 'yes' (green), 'partial' (yellow) or 'no' (red) indicators – 12 of which tested whether key provisions exist in the legal, policy and regulatory framework ('framework indicators') and 8 tested whether key documents and data are regularly published ('data indicators'). It also highlights changes in the forest sector and achievements of the programme. Complete analyses and reports are available at [www.foresttransparency.info](http://www.foresttransparency.info).

## Cameroon Vital Statistics



## Key Findings in 2012

The indicators reveal many gaps in the framework and data for the forest sector in Cameroon, but also show potential for improvement in particular due to the advent of the Voluntary Partnership Agreement (VPA) with the European Union (EU) on Forest Law Enforcement, Governance and Trade (FLEGT).

| Framework | Data      |   |  |
|-----------|-----------|---|--|
|           | Yes       | 3 |  |
|           | Partial   | 4 |  |
|           | No        | 5 |  |
|           | Improving | 5 |  |
|           | No change | 7 |  |
|           | Worsening | 0 |  |
|           | Improving | 2 |  |
|           | No change | 6 |  |
|           | Worsening | 0 |  |

The VPA establishes a new binding obligation on the forest authority to regularly publish specific information and respond to requests, but it needs better information management and dissemination to fulfil it. In the past a culture of discretion has made it difficult to obtain some forest sector information.

In 2012 reforms focused on a new legislative framework for forests. The VPA negotiations and reforms have enabled unprecedented levels of civil society participation, including by indigenous peoples, but there are concerns that impetus could be lost. In addition the state has shown little inclination to recognise customary rights and prioritise community forest management.

The Ministry of Forests and Wildlife (MINOF) exercises control over forest resources and has allocated them to logging concessions and permits without consulting local people. There is also little accountability in the distribution and investment of forestry royalties. However, the new Minister finally took concrete actions to suspend small permits linked to illegal logging.

Forests face many pressures from the rapid development of mining and agro-industrial projects. A national land policy is long overdue and laws and planning processes applied to different sectors need to be harmonised so that environmental impacts are strategically assessed.



## Cameroon 2012 Framework Indicators: are policies and laws in the public domain?

**Indicator:**  Yes;  Partial – they have only been drafted, are out of date or lack regulations;  No – they have not been approved

**Change since 2011:**  Significantly Improved  Improved  No Change  Worsened  Significantly Worsened

|  |   |   |  |
|--|---|---|--|
| Freedom of information legislation                       |    |    | The Constitution recognises the right to information but there is no freedom of information legislation that obliges authorities to publish documents. There has been little progress towards such legislation, despite civil society campaigns revealing that a culture of secrecy prevails within public bodies.   |
| National forest policy                                   |    |    | The national forest policy was first issued in 1993 and has not been updated since 1995. As part of the forest sector reform process, it was under review and amendment in 2012 and has the potential to build a common vision for forest management and consolidate actions aimed at promoting sustainability.  |
| Codified forest law and supporting norms                 |    |    | The forest law from 1994 has been reviewed in recent years through a participative process. This was prioritised in 2012, leading to a draft bill in October. It has the potential to establish an improved framework, but it could be hastily approved without addressing key issues. Over 2012, there was also progress in preparation of decrees to implement the VPA and resolve some gaps in implementation of the 1994 law.  |
| Signed VPAs and other agreements on forest products      |    |    | The VPA with the EU officially came into force in December 2011, and represents a significant opportunity to improve forestry governance. Over 2012, Joint Implementation Committee meetings were held and a priority action plan was developed to push forward key elements such as legality grids, traceability systems and auditing, but there are doubts over operational capacity to start issuing licenses in time for when the EU Timber Regulation comes into force in March 2013. |
| Provisions for transparency in forest laws and norms     |   |   | Annex VII of the VPA commits the parties to publish a specific set of documents and data on the forest sector through different methods and channels, and make all information available on request. This places a new, binding obligation on the forest authorities in Cameroon. Analysis by CED and Global Witness in 2012 showed that many of the specified documents and data were not currently available.  |
| Recognition of customary rights in forest laws and norms |  |  | Forest resources and land belong to the state; whereas customary rights are restricted to personal consumption and can be suspended. Supporting norms for exercising these rights also have not been developed, and this has contributed to local disputes. Proposals have been made for greater recognition of community rights as part of the reform process, but the state has tended not to prioritise this.   |
| Formal procedures for consultation on new forest norms   |  |  | There are no formally established procedures for consultation on new forest norms, but a National Monitoring Committee for implementation of the VPA was established by decree in September 2012. There are risks that the recent openings for participation may be closed: acceptance of civil society and indigenous peoples' representation is erratic and marginalises them; furthermore, the National Forest Forum was not held in 2012.  |
| Legal right to free prior and informed consent           |  |  | The right of indigenous populations to give their free, prior and informed consent to activities that affect them is not recognised in the forest law and its associated regulations. Despite calls for this consent to be recognised in reforms and other initiatives like REDD+, the state has maintained its control over forest uses.  |
| National land tenure policy                              |  |  | There is no clear national policy on land tenure. With regard to forests, a zoning plan from 1995 sets out the permanent and non-permanent forest domain in southern Cameroon, but it is inaccurate and out of date. Guidelines on territorial planning set out in 2011 have not been effectively applied in practice and there are disputes over over-lapping land uses.  |
| Consultation before commercial logging allocation        |  |  | The law does not oblige the authorities to carry out consultation with stakeholders before granting commercial forest permits. There is an Independent Observer that sits on the commission that allocates titles, but it does not represent other stakeholders. In 2012 MINFOF opened up new forest concession titles in areas previously restricted for conservation without consulting local people.  |
| Regulation of environmental services                     |  |  | There is no national law or regulations that govern the use of environmental services. Civil society organisations have developed proposals linked to initiatives such as REDD+ and payments for environmental services, but it remains to be seen how benefit sharing will be resolved. As with other tenure issues, ownership of 'carbon' – i.e. who is actually providing these services – is unclear.  |
| Strategic environmental assessment                       |  |  | There is no formal process for strategic environmental assessment or planning aimed at identifying the priorities for land use amongst different options such as forestry and mining operations, large-scale agriculture, and infrastructure development. CED has highlighted the problems with over-lapping permits of different extractive uses of forest areas.   |

## Cameroon Data Indicators 2012: are key documents and data regularly published?

**Indicator:**  Yes;  Partial – they are only published on some relevant activities, or only available on request;  No – they are not published

**Change since 2011:**  Significantly Improved  Improved  No Change  Worsened  Significantly Worsened

|  |   |   |   |
|--|---|---|---|
| Forest ownership and resource use maps                                     |    |    | Since 2002, MINFOF and the World Resources Institute have produced maps showing the areas of the forest domain allocated to Forest Management Units, sales of standing timber, communal forests, community forests and protected areas. Improvements have been made to the most recent ones for 2011. The maps are available online and have been distributed on request to local communities and NGOs. However, some smaller titles are not mapped. Participatory mapping with communities of their rights and uses have also been conducted in some areas but they are not officially recognised.   |
| Legal documents for commercial logging operations                          |    |    | Forest Management Units and sales of standing timber are allocated through an open tendering process. Some legal documents are available, but contracts, social agreements and others are not consistently published. Other smaller logging titles are granted by auction or mutual agreement, but there is little public information on them. The allocation of Timber Salvage Authorisations and Timber Removal Authorisations has contravened due process, and they have been linked with illegal logging. Pressure by civil society led to some holders of these permit-types being suspended and convicted in 2011, and the new Minister of Forests finally halted their allocation in 2012 until there are more rigorous regulations. |
| Reports on the verification process of eligibility of commercial operators |    |    | An inter-ministerial committee verifies the eligibility of bidders for forest concession titles (but there is no verification process for the allocation of smaller permits). MINFOF regularly publishes the results on official notice-boards and its website, but this process has several limitations. Bid documents are often lacking and even though an Independent Observer (IO) sits on the committee, it has had little power to influence decisions or halt them in the event of fraud. The IO's reports have not been published. Furthermore, the observer since 2003 was sidelined in the recruitment process for a new IO that commenced in May 2012, seemingly due to disagreements with MINFOF.                               |
| Forest management plans  |  |  | Forest management plans are mandatory for Forest Management Units, communal forests, community forests and protected areas. For the Forest Management Units, they are drawn up by the operator and validated by an inter-ministerial committee with the aim of balanced and sustainable timber harvesting. In recent years, publication of plans online has improved, but this is still not done systematically. It is often difficult for local communities to access the forest management plans that affect them; however some certified companies produce summaries and disseminate them.   |
| Reports from independent forest monitoring                                 |  |  | There has been an Independent Monitor (IM) of forest activities and infractions since June 2000, which carries out field missions and produces reports. Since 2010, the Belgian research institute AGRECO has played this role in partnership with the Cameroonian NGO CEW. Its reports are published once they have been reviewed by a committee and cleared by MINFOF. The IM also does not feel able to conduct missions without MINFOF having ordered it first. Civil society organisations have proposed greater recognition of community monitoring as part of the forest law reform.   |
| Data on the distribution of forest royalties                               |  |  | Data on the revenues from forest operations are published by the Forestry Revenue Securement Programme, but comprehensive information on the amounts distributed locally is not systematically made available. Some companies and NGOs have provided this detail for particular areas. Following protests from municipal councils over a 2010 ministerial order on the management of revenues, a new order was issued in 2012 that returned power to mayors to chair municipal committees.  |
| Information on forest law infractions                                      |  |  | Data on forest law infractions was regularly published over 2012 in summaries in the national daily newspaper and on the MINFOF website. The summaries outline cases in the courts, cases dealt with by the forest administration, and cases settled. Details include names of companies involved, references to the inspection report, and the fines imposed and collected. The publication of these summaries is a step forward from recent years, but further work is necessary to disseminate it to local people so that they know about infractions in their region.   |
| Annual forest authority report   |  |  | Each department of MINFOF is charged with producing an annual report for presentation to the Minister, but these annual reports are not publicly available. Under Annex VII of the VPA, annual reports on timber exports and imports and activities to support the FLEGT system are meant to be published by the Joint Implementation Committee. The publication of these reports and the other data and documents specified in the VPA will allow greater public monitoring of the sector.   |

# Achievements

Many documents and map data on logging concessions in Cameroon are published online, but information on other forest activities is not usually available. Local forest communities also rarely access the internet and can have difficulty interpreting technical documents. NGOs have helped to overcome these barriers in some areas, but the forest authorities need to dedicate more resources towards better information management systems and dissemination processes. The VPA annex on public information provides an important framework for pressing forward this work. Following a gap assessment by CED and Global Witness in 2012, further annual monitoring will be important to help ensure that the requirements of the VPA annex are fulfilled.

Historically the government has dictated a top-down approach to decision-making on the forest sector, but the VPA negotiations and forest law reform process have opened up opportunities for participation. In particular, work with marginalised forest peoples has given them a real say. The RACOPY network has been recognised as the indigenous peoples' representative in the forest law reforms. Over 2012, CED facilitated a unified civil society proposal to the reforms, but there are concerns that the government may neglect it in its haste to approve a new law.

Under the law, the state exercises control of all forest resources, and affords little recognition of customary forest rights and community forest management. This was exemplified in 2012 by MINFOF allocating new logging concessions, including in protected areas, without any local consultation. Nonetheless, some projects have challenged this dynamic. For example, the customary rights of Baka communities were formally recognised for the first time in the management of Mboumba Bek and Nki national parks. In another area, the rights of Baka people to a share of forestry royalties were recognised. Capacity building work has also helped to develop better models of community forest management and infractions reporting. These examples set important precedents that need to be integrated into the national reforms.

There are concerns over the political will and capacity of MINFOF to regulate the forest sector and enforce the law. An on-going campaign over the course of *Making the Forest Sector Transparent* exposed the links between illegal logging and discretionary allocation of

'small permits' by MINFOF officials. As a result, some officials were sanctioned in 2011 and the new Minister of Forests suspended all such permits in 2012. These steps forward need to be consolidated under the VPA through implementation of systems to rigorously verify, manage and enforce all permit allocations. Unlike many countries, Cameroon does at least have an established Independent Monitor; and the EU has supported community-led monitoring.

Besides logging, forests in Cameroon face multiple threats from mining permits, agro-industrial concessions and infrastructure projects. CED has collaborated in investigations to reveal overlapping claims on the land. This work highlights the importance of a major overhaul of strategic planning and laws to ensure that the environmental and social values of forests are protected.

## Key Recommendations

### **To the government of Cameroon:**

- Guarantee protection of customary rights and indigenous communities in the forest reforms.
- Adopt the right of indigenous communities to free prior informed consent.
- Complete a mining cadastre to inform a single reference of all natural resources titles.

### **To MINFOF:**

- Develop information management systems to facilitate dissemination of the information specified in Annex VII of the VPA.
- Incorporate civil society proposals in the draft Forest Law and consult them on the final bill.
- Revise the new forest policy and use it to review the forest zoning plan and protect forests against conversion.
- Develop a legal framework for consultation with local communities on allocation of timber rights.
- Revitalise national and local forums to support civil society decision-making.
- Publish maps of all smaller timber permits as part of the existing mapping system.

### **To civil society:**

- Lobby proactively for customary rights and community management in forest reforms.
- Summarise technical information for communities, and support them to participate in forest sector decision-making.

### Contacts

Centre pour l'Environnement et le Développement: [www.cedcameroun.org](http://www.cedcameroun.org)  
Project Leader: Patrice Kamkuimo  
Global Witness: [www.globalwitness.org/gtf](http://www.globalwitness.org/gtf); [www.foresstransparency.info](http://www.foresstransparency.info)  
Team Leader: David Young  
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# Making the Forest Sector Transparent Annual Transparency Report 2012

## Country Specific Report: The Democratic Republic of Congo

Prepared by the Natural Resources Network (Réseau Ressources Naturelles – RRN) and Global Witness, February 2013

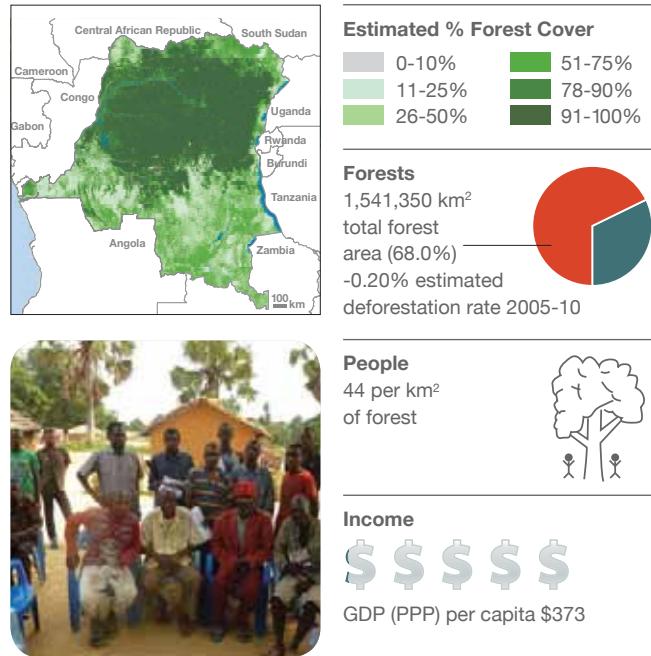


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## Introduction

This is the second annual report card on the Democratic Republic of Congo (DRC) for the *Making the Forest Sector Transparent* programme, produced by RRN and Global Witness. These have assessed whether citizens, in particular local communities and indigenous peoples that depend on forests for their livelihoods, are able to access the information they need to have a say in decision-making. The report cards have informed advocacy work to promote accountability and good governance. A mini-grants fund has also supported grassroots advocacy and capacity building. This summary presents the key findings from the final report card for the programme in 2012, which consisted of 20 'yes' (green), 'partial' (yellow) or 'no' (red) indicators – 12 of which tested whether key provisions exist in the legal, policy and regulatory framework ('framework indicators') and 8 tested whether key documents and data are regularly published ('data indicators'). It also highlights changes in the forest sector and achievements of the programme. Complete analyses and reports are available at [www.foresttransparency.info](http://www.foresttransparency.info).

## The DRC Vital Statistics



Local management committee of Komanbi in the DRC (Photo © Global Witness)

## Key Findings in 2012

There have been attempts to reform the forest sector in the DRC over the last ten years, including a moratorium on new logging concessions and a legal review of contracts, but the 2012 report card reveals that the reform process has had only mixed results in terms of improving access to information. Whilst there have been steps forward in publication of some contracts, management plans and independent monitor reports, none of the key data are published regularly, and reports on forest revenues were discontinued.

| Framework | Data      |    |
|-----------|-----------|----|
|           | Yes       | 1  |
|           | Partial   | 8  |
|           | No        | 3  |
|           | Yes       | 0  |
|           | Partial   | 5  |
|           | No        | 3  |
|           | Improving | 0  |
|           | No change | 11 |
|           | Worsening | 1  |
|           | Improving | 3  |
|           | No change | 4  |
|           | Worsening | 1  |

The authorities refuse to make certain documents public, and local communities usually have little or no information on activities that affect them. Participation in the development of new norms has increased somewhat in recent years, but this does not extend far beyond selected stakeholders in Kinshasa.

The poor functioning and limited capacity of tiers of central, provincial and local authorities present many challenges. There have been flagrant abuses of the moratorium on new concessions, notably the exploitation of artisanal permits for industrial scale logging.

Forest management plans and social agreements need to be prepared with affected local communities prior to the signing of new concession contracts to convert former titles, but this process has been poorly conducted in many cases. Furthermore the government has stated a willingness to relax requirements.

Progress towards responsible forest management has been slow; for example measures to create local community forests have not been prioritised. There is a lack of political will to take corrective and preventative measures to clean up the sector, whilst threats to forests and rural livelihoods from oil exploration, mining and agricultural plantations are mounting.



## DRC 2012 Framework Indicators: are policies and laws in the public domain?

**Indicator:** ● Yes; ○ Partial – they have only been drafted, are out of date or lack regulations; ● No – they have not been approved

**Change since 2011:** ☝ Significantly Improved ☚ Improved ☚ No Change ☚ Worsened ☚ Significantly Worsened

|  |   |   |  |
|--|---|---|--|
| Freedom of information legislation                       | ○ | ☝ | The 2006 Constitution states that all citizens have the right to information, but there is no Freedom of Information legislation that substantiates this right. A network of civil society stakeholders presented a bill to the Senate prior to the November 2011 elections, and undertook further mobilisation actions in 2012, but the government has not moved forward on passing it into law.  |
| National forest policy                                   | ○ | ☝ | The priority agenda drawn up by the World Bank in 2007 serves as a guide to forest policy until the Ministry of Environment, Nature Conservation and Tourism (MECNT) adopts one. The FAO prepared a document through a participatory process in 2011, but it is very general, and MECNT does not consider it to be a draft policy. The situation evolved little in 2012.   |
| Codified forest law and supporting norms                 | ● | ☝ | There is a Forest Code from 2002, and 37 regulatory measures have been approved out of the expected 45, as well as about 20 operational guides for forest management. In practice, there are gaps and inconsistencies in the application of this framework at the provincial and local administrative levels due to conflicting interests, limited capacity and insufficient financial resources. Copies of the legal texts are rarely available at a local level, even to officials.  |
| Signed VPAs and other agreements on forest products      | ○ | ☝ | The first round of negotiations on a VPA with the EU took place in February 2011 in Kinshasa, but they were subsequently suspended because of the general election and lack of funding. Activities were re-launched in 2012 with a new focal point in MECNT. Civil society participation has been limited to date. While the negotiation and signing of a VPA would be a positive initiative, it is difficult to see how it could be implemented given the weakness of forest governance in the DRC.                           |
| Provisions for transparency in forest laws and norms     | ○ | ☝ | The Forest Code does not include clear provisions for transparency and its procedures are insufficient for guaranteeing access to information. The forest authorities are often reluctant to make key documents and data publicly available. A decree from May 2011 makes it compulsory to publish any contract relating to natural resources, and to date only some logging contracts have been published.  |
| Recognition of customary rights in forest laws and norms | ○ | ☝ | The Forest Code broadly recognises customary and traditional rights to use forests, but it also prioritises written law and establishes state ownership of forests. A decree for implementing the creation of community forests was drafted several years ago, but it has not been signed by the prime minister despite strong appeals from civil society and donors. A major mobilisation in 2012 elicited a commitment to sign it, but this had still not happened by the end of the year.                                   |
| Formal procedures for consultation on new forest norms   | ○ | ☝ | Some legal texts require consultation on certain forest sector activities, such as classification of forests, and consultation is increasingly part of the development of new norms. However, there are no recognised procedures regarding the methods of consultation. Communities do not always receive comprehensive information and their opinions are often not taken into account.   |
| Legal right to free prior and informed consent           | ● | ☝ | The concept of free, prior and informed consent (FPIC) is not recognised in the Forest Code or the wider legal framework that applies to the forest sector. It is increasingly cited as an essential element in the REDD+ process, but this has not translated into law or practice. A specific law on FPIC would allow the clear and strong establishment of the rights of indigenous forest peoples.   |
| National land tenure policy                              | ○ | ☝ | There is no national policy on land tenure. The Land Code has not been amended since 1980; there are proposals to review it but it is too early to anticipate their results. There are contradictions and conflicts between the legislation applied to different sectors. The Forest Code divides forests into established, permanent production, and protected areas, but there is confusion over their adjudication. A new zoning process needs to include customary tenure and use of forests.                              |
| Consultation before commercial logging allocation        | ○ | ☝ | The Forest Code and its implementing decrees refer to prior consultation in the classification of forests and preparation of forest management plans. Concession contracts are also meant to only be signed after the negotiation of social agreements with affected communities. In practice, this requirement is not being met. Furthermore a ministerial circular relaxed the regulations relating to the management plans, and local people have not been consulted regarding the allocation of artisanal logging permits. |
| Regulation of environmental services                     | ● | ☝ | The Forest Code mentions environmental services as a guiding factor for management of the sector, but there are no further details or supporting regulations. The REDD+ process, which could value the carbon stored provided by the forests, has not made real progress in clarifying the ownership of carbon.  |
| Strategic environmental assessment                       | ● | ☝ | Requirements for environmental impact studies are written into the Law on Protection of the Environment passed in July 2011, but there are still no texts to implement them. The framework for planning and decision-making on development priorities also does not set out a process for strategic environmental assessment whereby consideration is given to alternative land uses.  |

## DRC Data Indicators 2012: are key documents and data regularly published?

| <b>Indicator:</b>  Yes;  Partial – they are only published on some relevant activities, or only available on request;  No – they are not published<br><b>Change since 2011:</b>  Significantly Improved  Improved  No Change  Worsened  Significantly Worsened |   |   |   |
|--|---|---|---|
| Forest ownership and resource use maps   |    |    | General maps are available showing areas of logging concessions and some other permits, but they do not include coordinates. More detailed maps identifying local villages are produced by concession holders, but they are not published, although the Forest Inventories Department could reproduce them easily when contracts are signed. There are no maps of artisanal logging permits. Only a few maps have been produced by international and national environmental organisations and local communities to show customary tenure and use of forest resources.   |
| Legal documents for commercial logging operations  |    |    | Eighty former logging titles are being converted to new concessions. In a major advance, the contract documents for 24 concessions were published online in February 2012. However, this list is still incomplete, and it remains unclear how many contracts have been formally signed. Furthermore, details the number of artisanal logging permits have not been updated for 2012, and do not reflect the scale of illegal logging under such permits. Central, provincial and local administrations have issued their own permits, contravening the moratorium on new allocations and undermining reforms. Civil society exposés in 2012 resulted in the government cancelling some permits.                                       |
| Reports on the verification process of eligibility of commercial operators   |    |    | An inter-ministerial committee published the results in 2008 of the legal review to convert old logging titles into concessions with signed contracts under the provisions of the Forest Code 2002 and subsequent regulations. A moratorium on new concessions continues to apply in the DRC, but in recent years it has been violated by the growing number and scale of artisanal logging permits, which the law intended to apply to only small-scale domestic activities in community forests. These permits have not been subjected to any due diligence process to verify a permit-holder's eligibility.  |
| Forest management plans  |  |  | The Forest Code requires concession holders to produce a 25-year forest management plan and a 5-year operations plan. Preparation of the former requires a socio-economic survey, participatory zoning and other studies – as well as negotiation of social agreements – that need to involve the local communities. The forest management plans for 12 signed concessions were published for the first time in 2012. In practice, however, local communities often do not have access to plans that affect them. Furthermore, a Ministerial circular relaxed the requirements for a full forest management plan prior to the signing of new contracts, apparently in response to industry concerns about the costs of preparing one. |
| Reports from independent forest monitoring   |  |  | Resource Extraction Monitoring (REM) was formally appointed as an Independent Monitor to work with forest authorities, civil society and the private sector. It has conducted missions to observe logging sites in Equateur province and published its first annual report for 2011, which documented findings and presented tools for improving forest law enforcement. However, mission reports have not been published – a Ministerial Order in October 2012 finally established a review committee to validate them for publication. REM's contact terminated at the end of 2012, and it remains to be seen how this role will continue.  |
| Data on the distribution of forest royalties   |  |  | Following pressure from civil society and demands from international donors, the government started to publish online quarterly reports on the tax revenues collected from the mining, forest and oil sectors, but these reports were discontinued in 2012 and donors have not demanded that they be reinstated. Furthermore, the previous reports had no information on the distribution of forest sector revenues; the Forest Code requires 40% of revenues to be transferred to the provinces, of which 15% is for decentralised administrative bodies, but there are no details on what has been distributed in reality.  |
| Information on forest law infractions  |  |  | The Forest Inspections Unit in MECNT is charged with investigating infractions of the forest law, but is under-resourced and no information is published on infractions and the sanctions imposed. The Independent Monitor has carried out joint site visits with the inspectors to help them compile records and undertake prosecutions, but there is no information published about these cases. Société Générale de Surveillance has also been contracted to develop the timber traceability system, and it has made complaints to MECNT about possible infractions committed by the operating companies, but there is no evidence to suggest that MECNT has followed up these complaints.   |
| Annual forest authority report   |  |  | Annual reports on the forest sector are not published by the authorities, nor are they required by the government. Such reports could provide public information on the activities in the sector over the course of time, which would help to improve forest governance, but they do not appear to be a priority for the government.  |

## Achievements

The DRC has a long history of natural resources exploitation and conflict, which the forest sector reform process has attempted to address. Transparency is essential for monitoring this process and holding authorities to account. Some steps forward have been achieved in this regard, such as publication of logging concession contracts, but others have been reversed, such as the lack of follow up of an economic governance matrix agreed with international donors in 2010.

There have been many difficulties in developing a coherent set of legal instruments to manage resource use in the country, in particular due to inconsistencies in the approaches taken by ministries responsible for different sectors. The forest zoning process is at risk of overlooking customary tenure systems that support the rural livelihoods of the majority of the population. Measures to create community forests have also been delayed, which means that local people do not have the right to manage their forests. However, a major civil society mobilisation in 2012 led to a commitment by the government to finally sign a decree addressing this issue.

In 2012 civil society exposed the extent of illegal artisanal permits issued to private and some foreign companies. At the same time, genuine artisanal loggers often lack legal recognition. This shows that in the absence of a functioning system of forest governance and law enforcement, legal vacuums have been exploited at provincial and local levels to sidestep the moratorium on new logging concessions. It also demonstrates the value of stronger civil society oversight and independent monitoring.

The legal requirements for signing new concession contracts have also not been consistently followed in practice. Despite the efforts of partners in *Making the Forest Sector Transparent* in some locations, overall there have been many problems in the negotiation and fulfilment of social agreements by companies to provide local communities with development funds based on the volume of timber felled. MECNT has not ensured the contracting process is conducted consistently, and has reversed the requirement for full forest management plans to be prepared. Until the necessary conditions of the conversion process are met and participative micro-zoning of forests is completed, the moratorium of new concessions must be maintained.

## Key Recommendations

### To the government of the DRC:

- Adopt the decree on local community forests as it was drafted with civil society stakeholders.
- Maintain the moratorium on new concessions until the conversion process has been improved and participative micro-zoning has been completed.
- Standardise legislation on land use to remove contradictions between different sectors.

### To the Ministry of Environment, Nature Conservation and Tourism:

- Publish all contracts signed in the title conversion process with supporting maps and plans.
- Develop regulations for the creation of local community forests.
- Strengthen the Forest Code with provisions on transparency and access to public information.
- Improve its ability to investigate forest infractions, issue fines and seize illegal timber.
- Prioritise consultation with local communities through micro-zoning to identify customary uses.
- Publish an annual report on its performance and that of the sector.
- Publish details of the tax revenues collected by concession and distributed to provinces.
- Strengthen processes for consulting all stakeholders in REDD+ and VPA preparations.

### To provincial and local authorities:

- Issue artisanal logging permits in accordance with the law and regulate permit holders' exploitation of timber.

### To civil society:

- Assist local communities further in their negotiations with logging concession holders.

### To international donors:

- Maintain the transparency requirements linked to the matrix of economic governance.
- Encourage the government to maintain the moratorium on new concessions until the necessary conditions are met.
- Support the participation of civil society in REDD+ and VPA processes.

### Contacts

Réseau Resources Naturelles: [www.rrnrdc.org](http://www.rrnrdc.org)

National Coordinator: Joseph Bobia Bonkaw

RRN is a platform of civil society organisations across the country, of which four members based in North Kivu, Orientale, Bandundu and Equateur are focal points in the programme.

Global Witness: [www.globalwitness.org/gtf](http://www.globalwitness.org/gtf); [www.foresstransparency.info](http://www.foresstransparency.info)

Team Leader: David Young

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# Making the Forest Sector Transparent Annual Transparency Report 2012

## Country Specific Report: Ecuador

Prepared by the Foundation for the Advance of Reforms and Opportunities (Grupo FARO) and Global Witness, February 2013

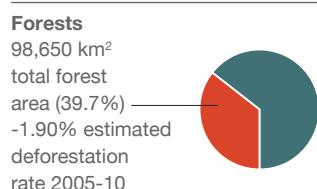
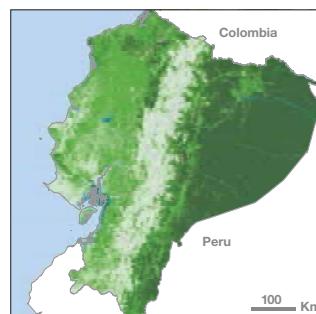


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## Introduction

Since 2010, Grupo FARO and Global Witness have produced annual report cards on Ecuador for the *Making the Forest Sector Transparent* programme. These have assessed whether citizens, in particular local communities and indigenous peoples that depend on forests for their livelihoods, are able to access the information they need to have a say in decision-making. The report cards have informed advocacy work to promote accountability and good governance. A mini-grants fund has also supported grassroots advocacy and capacity building. This summary presents the key findings from the final report card for the programme in 2012, which consisted of 20 'yes' ●, 'partial' ○ or 'no' ● indicators – 12 of which tested whether key provisions exist in the legal, policy and regulatory framework ('framework indicators') and 8 tested whether key documents and data are regularly published ('data indicators'). It also highlights changes in the forest sector and achievements of the programme. Complete analyses and reports are available at [www.foresttransparency.info](http://www.foresttransparency.info).

## Ecuador Vital Statistics



Logs transported by small informal operators. (Photo © Alfredo Carrasco Valdivieso)



## Key Findings in 2012

Ecuador has developed a comprehensive legal and regulatory framework for freedom of information and forest sector management, and further reforms are proposed. Public agencies have made some improvements in access to information in recent years, and documents and data can also be requested. Nonetheless, there is a need to proactively publish more information, in particular on law enforcement and infractions.

| Framework | Data      |   |  |
|-----------|-----------|---|--|
|           | Yes       | 7 |  |
|           | Partial   | 2 |  |
|           | No        | 3 |  |
|           | Improving | 3 |  |
|           | No change | 9 |  |
|           | Worsening | 0 |  |

The Law on Transparency and Access to Information was approved in 2004, but public institutions have been slow to fulfil their legal obligations. Grupo FARO has monitored compliance by the institutions that oversee environmental issues, and this has shown some notable improvements despite mixed responses. Transparency was acknowledged as essential to forest governance in a policy document in 2011, and the Ministry of Environment (MAE) has endeavoured to develop integrated information management systems. Further work is needed to build on these promising beginnings.

The forest sector is characterised by a fragmented mix of state, communal and private land ownership, including a large proportion held by indigenous peoples. There are many conflicts over access to natural resources but also prospects for a new Land Law and a Law on Prior Consultation to establish a more constructive framework to address insecure land tenure and indigenous peoples' rights to prior 'consultation leading to agreement'. Better information, including a comprehensive land register, will be essential.

Although commercial logging operations require a licence, a more rigorous system is needed to verify the legality of timber products. In addition, enforcement activities are hampered by a lack of coordination between authorities and poor information sharing with the public. Government, the private sector and civil society need to come together on measures to tackle illegal activities and develop more effective ways to value forests for their environmental services.



## Ecuador 2012 Framework Indicators: are policies and laws in the public domain?

**Indicator:** ● Yes; ○ Partial – they have only been drafted, are out of date or lack regulations; ● No – they have not been approved

**Change since 2011:** ⬅ Significantly Improved ⬇ Improved ⬇ No Change ⬈ Worsened ⬉ Significantly Worsened

|  |   |   |   |
|--|---|---|---|
| Freedom of information legislation                       | ● | ⬇ | The Organic Law on Transparency and Access to Public Information (LOTAIP) was approved in 2004. The Public Ombudsman is responsible for promoting the law and ensuring that its requirements are complied with by public institutions. In 2012, the Ombudsman adopted a number of strategies to improve compliance and facilitate the right of access to public information at a local level.   |
| National forest policy                                   | ● | ⬇ | The Under-Secretariat for Natural Heritage in the Ministry of Environment (MAE) published a document in 2011 explaining and defining a 'model for forest governance' in Ecuador. In 2012, the secretariat for forest production at the Ministry of Agriculture, Livestock, Aquaculture and Fisheries (MAGAP) has been drafting a national forestation and reforestation policy.   |
| Codified forest law and supporting norms                 | ● | ⬇ | There are numerous laws and regulations relating to the environment and forest sector that promote sustainability. The 2008 Constitution set out principles to improve the well-being and rights of nature, and the prospect of an Environmental Code and new institutional structure to reflect these principles was raised, but to date the government has published no further information on these innovative proposals.  |
| Signed VPAs and other agreements on forest products      | ● | ⬇ | Ecuador has signed a number of international agreements related to environmental issues, and also has trade agreements with other countries, in particular with those in Latin America. However, it has not signed any agreements which include specific clauses stipulating requirements for forest governance and associated trade.   |
| Provisions for transparency in forest laws and norms     | ● | ⬇ | The laws and regulations for the forest sector include provisions related to access to information, and the forest governance model refers to transparency. The MAE has developed a new version of the Forest Administration System (SAF) to bring together data on all activities. However updates on its progress have not been published, the system was not online at times in 2012, and access is limited somewhat by the need to register and use a password.                               |
| Recognition of customary rights in forest laws and norms | ● | ⬇ | Both the Constitution and environmental and forest regulations recognise the rights of indigenous peoples and communities in decision-making affecting their territories. The forest law also states that indigenous peoples will have priority in the use of community lands. In practice, the processes for applying these rights are not clear and there are disputes over oil operations and other projects.  |
| Formal procedures for consultation on new forest norms   | ● | ⬇ | The Organic Law on Citizen Participation establishes the right to prior, free and informed consultation, and it also sets out a variety of consultation methods. There is also a Citizen Participation Council, and the MAE has embarked on a process to establish Sectoral Citizens Councils.  |
| Legal right to free prior and informed consent           | ○ | ⬇ | Clauses in the 2008 Constitution and the Organic Law on Citizen Participation are insufficient to ensure consultation is binding, so in effect decision-making does not require any rights-holder's consent. There have been conflicts with indigenous peoples in relation to projects that affect them. Consequently the draft organic law on prior consultation with communities, peoples and nationalities is intended to strengthen 'consultation for the purpose of reaching agreement'.     |
| National land tenure policy                              | ○ | ⬇ | A variety of state, communal and private tenure systems cover forests, including large areas owned by indigenous peoples, but there are problems in securing tenure, and although there are public agencies covering land tenure, the current national land policy is still uncertain. A new Land Law was proposed in 2011, but is not yet approved. In 2012, indigenous peoples' organisations drew up proposals for redistributing land, issuing title deeds and creating a National Land Fund. |
| Consultation before commercial logging allocation        | ● | ⬇ | The allocation of licences for forest operations originates in the right of the owner to use, enjoy and dispose of his/her property, including forests. If the forest is privately owned, no consultation is required before allocating it to commercial logging. In communal forests the communities themselves may carry out internal consultations but this is not formally regulated.   |
| Regulation of environmental services                     | ● | ⬇ | Article 74 of the 2008 Constitution states that "environmental services may not be appropriated; their production, provision, use and operation shall be regulated by the State", but the rules on how to regulate these services and share the benefits remain incomplete. For example, initiatives like REDD+ will require a forest register in order to evaluate environmental services.   |
| Strategic environmental assessment                       | ● | ⬇ | The National Planning Secretariat has specified the procedures for carrying out impact studies for projects and programmes and set out the methodology for prioritisation of public investment projects. The MAE has also developed initiatives and agreements to promote economic and environmental sustainability. While these various instruments exist, further analysis is necessary to determine whether they are systematically applied to decision-making.                                |

## Ecuador Data Indicators 2012: are key documents and data regularly published?

**Indicator:** ● Yes; ● Partial – they are only published on some relevant activities, or only available on request; ● No – they are not published  
**Change since 2011:** 👉 Significantly Improved 👉 Improved 👉 No Change 👉 Worsened 👉 Significantly Worsened

|  |                                       |                                      |   |
|--|---------------------------------------|--------------------------------------|---|
| Forest ownership and resource use maps                                     | <span style="color: yellow;">●</span> | <span style="color: red;">👉</span>   | Maps of forest areas that form part of the National System of Protected Areas and the Socio Bosque programme are available on the MAE website. There are also maps of forest cover, which help to identify deforestation, but these are incomplete and are being updated. With regard to forest ownership, MAGAP has made some progress in creating land registers for some of Ecuador's municipalities but there are no complete maps. Details are held in the title deed directorate of the Under-Secretariat for Land of MAGAP, which can only be accessed by means of a formal request for information. |
| Legal documents for commercial logging operations                          | <span style="color: yellow;">●</span> | <span style="color: red;">👉</span>   | Private forest landowners can grant commercial logging activities but operators are required to obtain licences and waybill documents from the forest authority confirming that they meet requirements set out in forest regulations. Despite these regulations being clear, illegal logging continues and greater transparency is needed to promote the legality of timber products. The SAF includes basic information on registered operations but copies of these documents are only available to the public following a formal request for information and with the necessary justification.           |
| Reports on the verification process of eligibility of commercial operators | <span style="color: red;">●</span>    | <span style="color: red;">👉</span>   | The regulations regarding licensing of logging companies do not include a due diligence process to independently verify the eligibility, suitability and capability (technical and financial) of the applicant. As a result, forest offenders are not barred from accessing confiscated timber, for example. The development of SAF as a tool for integrating information is expected to help coordinate actions to verify legal operations.  |
| Forest management plans  | <span style="color: yellow;">●</span> | <span style="color: red;">👉</span>   | A management plan must be prepared by the operator as part of the licensing process. The MAE monitors plans and licences through the SAF, and copies of the management plans can be accessed through a formal request for information. The MAGAP also has a role in supervising production forests, but there needs to be greater coordination between these institutions and with others responsible for forest management in the country.   |
| Reports from independent forest monitoring                                 | <span style="color: red;">●</span>    | <span style="color: red;">👉</span>   | No organisation is contracted to carry out independent forest monitoring in Ecuador. The forest governance model published by the MAE in 2011 considers monitoring and assessment as a key element in forest management. In 2012, the MAE published terms of reference for contracting a firm to implement a system of independent verification of the legal origin of timber and compliance with forest management requirements, which is a potential step forward.  |
| Data on the distribution of forest incentives                              | <span style="color: green;">●</span>  | <span style="color: green;">👉</span> | Whilst there is no direct redistribution system of taxes collected on timber harvesting, the sector benefits from a variety of incentives to promote conservation and reforestation activities by landowners. The Socio Bosque programme supports conservation of forests by communal and private owners with the aim of protecting ecosystems and improving livelihoods. Data on the amounts invested and other details are publicly available from the programme's website.   |
| Information on forest law infractions                                      | <span style="color: yellow;">●</span> | <span style="color: red;">👉</span>   | It is possible to obtain a list of forest law offenders at a provincial level through formal requests for information, but the MAE only publishes general news on some offences. The lack of public information on the parties committing infractions is an on-going problem. Better information sharing and coordination between institutions and the public is necessary to prevent offenders from benefitting from further activities in the sector. Public information would also allow citizens to demand that the authorities enforce the law and impose penalties for infractions.                   |
| Annual forest authority report   | <span style="color: green;">●</span>  | <span style="color: green;">👉</span> | The MAE publishes online an annual report on its activities. The 2011 report included a section on forest governance. In addition, through the SAF it publishes various reports. The most recent report documents a number of achievements in relation to mapping forests, providing incentives, monitoring timber production, enforcing the law and other activities, highlighting the progress it has made to improve the sector.   |



Conocaco river flowing through Yasuni National Park. (Photo © Alfredo Carrasco Valdivieso)

# Achievements

Over the course of *Making the Forest Sector Transparent*, the provision of information by public bodies responsible for the forest sector has increased. Nonetheless, there remain barriers to accessing comprehensive data. For example, different ministries hold a number of maps on tenure and resource use, but there is no one source for comparing them. Copies of forest management plans and details of infractions at a provincial level can be requested, but such documents and data are not proactively published. The Public Ombudsman has developed better systems and links to promote LOTAIP, but this needs to be complemented by forest sector-specific standards.

There are laws and procedures to support participation in the development of new policies, laws, and regulations, and authorities have made some efforts to develop citizens' councils as forums for discussion. However there are also disputes over many issues related to land use and prior consultation and consent. More public information is needed on national proposals like an overarching Environmental Code and a MAGAP forest policy. Grupo FARO has supported dialogue wherever possible, which has resulted in improvements at a provincial and local level in particular. For example, work with the provincial government of Pichincha has provided a basis for the actions necessary to ensure the legality of timber products through the supply chain.

There is also a lack of coordination between authorities to tackle illegal activities. In 2012, *Making the Forest Sector Transparent* supported research to compile information on offences in mangrove forests, which are under serious threat from illegal shrimp farms. This showed that many offences are not investigated, and even when a fine or other sanction is imposed, there are no systematic mechanisms to ensure that they are followed through. This demonstrates that local communities need more support to monitor activities and report infractions, and that the enforcement processes need to be strengthened.

Ecuador has reached a decisive point in the direction that it takes regarding natural resource management. The government has used incentives programmes to promote conservation and reforestation, most notably the Socio Bosque programme. However, this strategy

is contradicted by its prioritisation of mining, oil and agricultural projects. There is a growing understanding and appreciation of forests as carbon stores and providers of environmental services, and this has contributed to some useful initiatives and proposals. But greater transparency will be important in developing a shared commitment across all of society to protect the value of forests for the future.

# Key Recommendations

## **To governmental and legislative bodies:**

- Create standards of transparency and access to information specific to the forest sector and mechanisms for their application and monitoring.
- Develop the Sectoral Citizen Councils and other clear mechanisms for timely information sharing and consultation on forest legislative developments and activities.
- Publish draft documents for all proposed laws and policies to facilitate greater participation.
- Produce summarised and translated information to support wider understanding of forest issues.
- Develop the SAF and other integrated systems as more user-friendly tools to access information.
- Publish lists of individuals that have committed infractions and create a cross-referenced register of them.
- Establish an ongoing multi-stakeholder dialogue between different sectors on strategies to address deforestation and climate change.

## **To civil society organisations, indigenous peoples and other community groups:**

- Press public bodies to comply with LOTAIP
- Use the law more effectively for requesting information.
- Develop pilot projects in partnership with public and private sector groups to demonstrate the benefits of transparency to forest management.

## **To international donors:**

- Require that the outputs from all of the projects that they fund are made available to the public.
- Promote agreements to develop broader opportunities for active participation of civil society organisations and forest landowners in public policy decisions.

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## Contacts

Grupo FARO: [www.grupofaro.org](http://www.grupofaro.org)

Project Leader: Sigrid Vásconez

Global Witness: [www.globalwitness.org/gtf](http://www.globalwitness.org/gtf); [www.foresstransparency.info](http://www.foresstransparency.info)

Team Leader: David Young

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# Making the Forest Sector Transparent Annual Transparency Report 2012

## Country Specific Report: Ghana

Prepared by the Centre for Indigenous Knowledge and Organisational Development (CIKOD) and Global Witness, February 2013

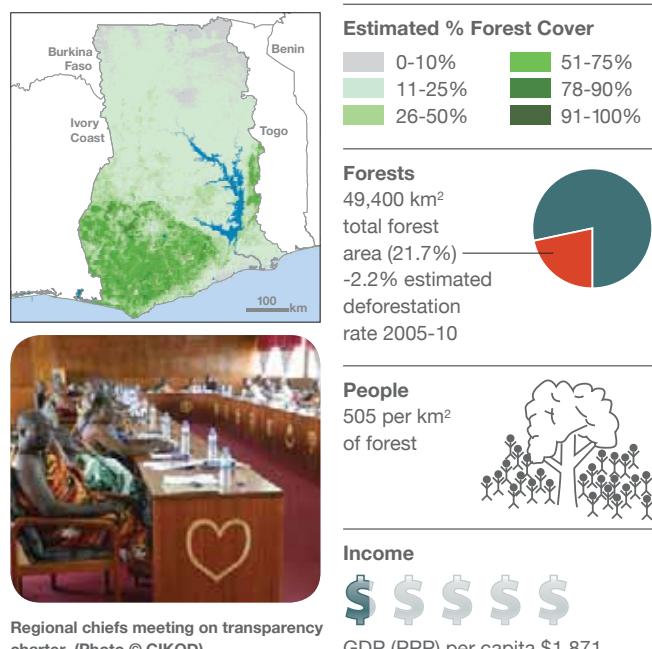


global witness

## Introduction

Since 2009, CIKOD and Global Witness have produced annual report cards on Ghana for the *Making the Forest Sector Transparent* programme. These have assessed whether citizens, in particular local communities and indigenous peoples that depend on forests for their livelihoods, are able to access the information they need to have a say in decision-making. The report cards have informed advocacy work to promote accountability and good governance. A mini-grants fund has also supported grassroots advocacy and capacity building. This summary presents the key findings from the final report card for the programme in 2012, which consisted of 20 'yes' (green), 'partial' (yellow) or 'no' (red) indicators – 12 of which tested whether key provisions exist in the legal, policy and regulatory framework ('framework indicators') and 8 tested whether key documents and data are regularly published ('data indicators'). It also highlights changes in the forest sector and achievements of the programme. Complete analyses and reports are available at [www.foresttransparency.info](http://www.foresttransparency.info).

## Ghana Vital Statistics



## Key Findings in 2012

The framework for the forest sector in Ghana is currently in a state of flux. New laws and regulations have slowly been consolidated to build on the Voluntary Partnership Agreement (VPA) signed with the European Union (EU) in 2010, but greater impetus is needed to develop and implement them. Few documents and data are proactively published, which mean that it is very difficult to identify existing timber rights.

| Framework | Data      |
|-----------|-----------|
|           |           |
|           |           |
| Improving | Improving |
| No change | No change |
| Worsening | Worsening |

There is no legal obligation on public institutions to publish information. A Right to Information Bill first introduced in 2010 should have been passed into law by now, but it has been repeatedly delayed and politicians have attempted to introduce restrictive clauses. Regarding the forest sector, the VPA includes provisions for transparency, but unlike in other countries it does not include an annex with binding obligations to publish specific information.

The state exercises effective control of all forest resources, including trees on farms, and the Forestry Commission (FC) has shown little commitment to reform the sector in line with current laws. Renewed impetus has been given to these issues in the participatory process that led to a new Forest and Wildlife Policy approved in 2012. Although it has not yet been officially published, it offers a progressive vision for the future management of Ghana's dwindling forests, including secure tree tenure and the recognition of other community rights.

The policy needs to be developed further into a strategy and a new forest law, but experience gives reason for caution: the commitment to convert old concessions to a new, competitive process in the previous, 1994 policy, was never implemented. Until confronted by civil society, the FC also granted large numbers of dubious 'timber salvage permits', exploiting a contested part of the forest law.



## Ghana 2012 Framework Indicators: are policies and laws in the public domain?

**Indicator:** ● Yes; ○ Partial – they have only been drafted, are out of date or lack regulations; ● No – they have not been approved

**Change since 2011:** ⌘ Significantly Improved ⌘ Improved ⌘ No Change ⌘ Worsened ⌘ Significantly Worsened

|  |   |   |  |
|--|---|---|--|
| Freedom of information legislation                       | ○ | 👉 | The Right to Information Bill was first tabled in Parliament in February 2010, but has made no real progress since. Civil society organisations have raised concerns over the slow progress and restrictive clauses. Freedom of information legislation is badly needed to compel public authorities to regularly publish information and to respond to citizens' requests consistently.   |
| National forest policy                                   | ○ | 👉 | The Forest and Wildlife Policy from 1994 was reviewed in 2011 and a new policy has been approved, but this document has not yet been officially published by the government. The new policy was developed following a participatory review process and addresses some key issues in the sector such as tree tenure, community rights and benefit sharing.  |
| Codified forest law and supporting norms                 | ● | 👉 | There are the several laws and regulations on forest management dating from 1998 to 2003, but important parts of this framework have never been applied, notably the conversion of older logging titles into new Timber Utilisation Contracts (TUCs). A substantial review and consolidation of the forest law started in 2012. Measures to implement the VPA also progressed in 2012, including the passage of a new Legislative Instrument in July to create the Timber Validation Council.        |
| Signed VPAs and other agreements on forest products      | ● | 👉 | Ghana ratified its VPA with the EU in March 2010, but has been slow to implement it. The VPA covers both foreign and domestic markets, which has led to discussions about domestic lumber procurement during the forest policy and law reviews. The first legality licences are anticipated in 2013, following finalisation of the wood tracking and legality verification systems.  |
| Provisions for transparency in forest laws and norms     | ● | 👉 | The new FC Service Charter of 2008 includes commitments to transparency under its core functions and sets out service standards for public reporting, but this is not being monitored or adhered to fully. The VPA highlights the importance of transparency in the legality assurance system, but unlike other countries' VPAs it does not include a specific annex on public information.  |
| Recognition of customary rights in forest laws and norms | ○ | 👉 | In the Constitution, communal forest lands are vested in the institution of chieftaincy and its traditional councils, in accordance with customary law. Even though the forest regulations require the involvement of traditional councils in the granting of timber operations, this falls short of explicit recognition of customary rights to manage and use forest resources. Rather, the state is said to 'hold the forest in trust' and in effect exercises control over all forest resources. |
| Formal procedures for consultation on new forest norms   | ○ | 👉 | Although there are directives to consult on some specific issues in the forest sector, there is no legally backed procedure for consultation on new forest-related legislation. There has been considerable consultation on initiatives such as the VPA, and the new forest policy recognises multi-stakeholder interests in forest management, but civil society organisations have called for consultation processes to be backed by legislation.  |
| Legal right to free prior and informed consent           | ● | 👉 | Timber regulations indicate that before logging rights are granted outside forest reserves, written consent of the owners is required. Procedures for obtaining consent and resolving conflicts are also established in the regulations. In practice, these provisions are sometimes not followed and concerns persist over non-transparent, discretionary granting of some permits without the prior consent of communities.  |
| National land tenure policy                              | ○ | 👉 | A 1999 land policy led to a series of projects aimed at addressing insecure tenure, but these issues have not been resolved and the policy has not been updated. The ownership of a forest reserve by traditional authorities is mentioned when the reserve is originally gazetted, but it is not usually confirmed with title documentation. State control of trees outside reserves has proven to be a disincentive to farmers to allow natural regeneration, and is now under review.             |
| Consultation before commercial logging allocation        | ● | 👉 | Timber regulations set out the procedures to consult local people prior to the allocation of timber rights, including a requirement that a joint field inspection should take place to determine the suitability of the land. In practice these rules are rarely adhered to and some communities are unaware of their rights in this regard.   |
| Regulation of environmental services                     | ● | 👉 | The Environmental Protection Agency (EPA) is working on plans for regulating environmental services, but no formal system has been proposed yet. The emergence of REDD+ initiatives has led to a discussion on the ownership of carbon in forests, but the different authorities responsible for environment services have not coordinated their work and there is currently no clear basis for reforms.   |
| Strategic environmental assessment                       | ○ | 👉 | The EPA has developed a strategic environmental assessment (SEA) manual for the development of district plans and sector policies. However, to date the Ministry of Lands and Natural Resources has not published any sector-wide SEA to inform land use priorities. In practice, there is no transparent decision-making process for resolving conflicting options such as between forests and mining, despite the fact the same ministry oversees both.  |

## Ghana Data Indicators 2012: are key documents and data regularly published?

**Indicator:**  Yes;  Partial – they are only published on some relevant activities, or only available on request;  No – they are not published

**Change since 2011:**  Significantly Improved  Improved  No Change  Worsened  Significantly Worsened

|  |   |   |   |
|--|---|---|---|
| Forest ownership and resource use maps                                     |    |    | There are no maps showing ownership of forest land and holders of TUC or other timber rights. General maps of gazetted forest reserves are accessible at district Forest Services Division (FSD) offices and some digital maps can be obtained from the national Resource Management Support Centre; however these maps do not include details of rights-holders. In practice, there are disputes between different claimants to land, who may have maps of varying quality. In 2011 the FC received finance from Japan to produce detailed maps, which should have been completed by 2013.   |
| Legal documents for commercial logging operations                          |    |    | The legal contracts for TUCs, Timber Utilisation Permits (TUPs), and other permits are not published online. Some of these have successfully been accessed from FSD offices, but it is difficult to gather comprehensive national data on existing timber rights. TUPs have also been allocated to logging companies, even though they are meant to be limited to non-commercial purposes. Over 2010 and 2011, exposés by civil society also revealed that the FC had allocated over 100 'administrative' timber salvage permits without following any transparent procedures. Condemnation led to the FC implicitly acknowledging that these permits are incompatible with the legal standards in the VPA and the Ministry of Lands and Natural Resources (MLNR) has undertaken to address these concerns. |
| Reports on the verification process of eligibility of commercial operators |    |    | The Timber Rights Evaluation Committee validates the pre-qualification and competitive bidding processes for the allocation of timber rights to logging companies. Some summary reports are available online and documents on the winners of the auctions can be obtained on request, but in practice the process has not been consistently followed. For example, TUCs have been granted since 2003 without being subject to competitive bidding, and they are supposed to be ratified by Parliament, but no TUCs have been ratified for several years. The VPA has the potential to improve the validation of the legality of timber rights, but this will depend on how effectively it implements sections of the agreement related to permit allocation.  |
| Forest management plans  |  |  | Forest Management Plans are produced but they are not available on the FC website. Since 2010, strategic management plans for forest reserves have been updated or developed, in a process led by the FC, to reflect their socio-economic, cultural and environmental values, and copies of them are available from FSD offices. Operational plans provide details of timber harvesting and may be made available on request but there is no obligation on authorities to provide them. Typically they bear little relationship to the strategic plans.   |
| Reports from independent forest monitoring                                 |  |  | The FC initiated a tender process in 2011 to recruit an Independent Monitor (IM), akin to the Independent Auditor in other VPAs. Bids were invited, and it was reported in the Aide Memoire of the EU-Ghana Joint Monitoring and Reporting Mechanism mission in March 2012 that this role would be contracted the following May, but since then there has been no further announcement. Although the wood tracking system and other key VPA systems that need to be monitored have not yet been established an IM would be a welcome contribution to forest governance.   |
| Data on the distribution of forest royalties                               |  |  | The FC has consistently published six-monthly reports since 2002 on the land rents and stumpage revenues collected from timber companies and disbursed to chiefs, District Assemblies and traditional councils. The last three editions have been released online as downloadable documents that are easy to print and disseminate. While this data is useful there are unresolved issues over the lack of transparency and accountability in the collection of revenues from companies, the adjustment of stumpage fees over time, the amounts distributed to different bodies, and the projects invested in locally. Crucial data on the volume of timber extracted, which might then be reconciled with revenue generated, is not included in the disbursement reports.                                  |
| Information on forest law infractions                                      |  |  | There is no official publication of data on forest offenders and fines. In some cases details of people arrested and prosecuted appear in the newspapers, but these tend to focus on small-scale illicit 'chainsaw operations'. Information on enforcement activities to combat corruption in the forest sector is not published, and there have been no actions to counter large-scale tax avoidance.  |
| Annual forest authority report   |  |  | The FC Service Charter requires it to publish an annual report and present it to parliament. The last annual report was produced in 2006, but more recent reports from sub-divisions of the FC such as the National Forest Plantation Development Programme have been published annually. In 2012, Ghana also published an annual progress report for 2009/10 on implementation of the VPA. It contains little detail and mentions a number of initiated but uncompleted activities. The VPA states that the Joint Monitoring and Reporting Mechanism should report on efforts to make the forest sector transparent, including details on timber rights and harvesting, so it can be expected that future reports will contain more information.   |

# Achievements

Without a legal framework to compel public authorities to disclose information, a culture of selective disclosure has continued to prevail. An assessment coordinated by Global Witness and Forest Watch Ghana in 2012 also showed that the great majority of documents and data in the VPA legality assurance system are also not currently published. Nonetheless, the work by CIKOD to help make available reports on the disbursement of forest royalties demonstrates that the challenges are not insurmountable.

Since the *Making the Forest Sector Transparent* programme started monitoring in 2009, participation of civil society in forest sector processes has increased significantly at the national level. The Ministry of Land and Natural Resources, as well as other ministries have shown a willingness to support consultation. A variety of local forest forums have also evolved, but further work is necessary to integrate them into decision-making and strengthen the exercise of consultation and free prior informed consent in practice.

While the availability of information on the disbursement of royalties has improved somewhat, there is a lack of transparency and accountability throughout the processes for collecting, distributing and investing these funds. Many timber companies have huge debts and are consistently in arrears on payments due to the state by about six months, or nearly US\$2 million. Furthermore, the FC has not fulfilled its duty to increase stumpage fees in line with international timber prices since 2005. The investments district assemblies and traditional authorities have made with their revenue-share has also been unclear to local people, and *Making the Forest Sector Transparent* has supported two local agreements to address this: in 2012 a byelaw was passed on natural resource management in the Wassa Amenfi East District; and the Brong Ahafo Regional House of Chiefs developed a transparency and accountability charter. These bold initiatives need to be replicated elsewhere in the country to help ensure that royalties directly benefit local people.

The VPA, and the REDD-related Forest Investment Programme have forced discussion on measures to clarify long-standing problems, such as customary rights in community forest management, tree tenure, and regulation of the domestic lumber market. Despite improvements in policy consultation, the government is still intolerant of criticisms of its management of natural resources, and civil society monitoring for example could be stifled. Support from international partners is still needed, but it appears that they may withdraw from measures like the Natural Resources and Environmental Governance (NREG) sector budget support mechanism.

## Contacts

Centre for Indigenous Knowledge and Organisational Development: [www.cikod.org](http://www.cikod.org)

Project Leader: Wilberforce Laate

Global Witness: [www.globalwitness.org/gtf](http://www.globalwitness.org/gtf); [www.foresttransparency.info](http://www.foresttransparency.info)

Team Leader: David Young

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# Key Recommendations

## To the government:

- Prioritise passing the Right to Information bill into law and developing an action plan to implement it.
- Tackle illegal activities by requiring all key state institutions to collaborate in enforcing the rule of law on foreign and domestic companies.
- Prioritise the review and conversion of old concessions into TUCs under current laws.

## To the Forestry Commission:

- Construct a website to show key sector information, such as timber rights and production.
- Publish the new Forest and Wildlife Policy and summarise, translate and disseminate it locally.
- Develop the ten-year strategic plan in consultation with civil society to take forward collaborative forest management.
- Incorporate measures in the consolidated forest law under development to ensure that logging revenues are transparently calculated and distributed.
- Review stumpage fees on a quarterly basis and apply them consistently to logging companies.
- Issue directives with other government bodies to integrate local and regional forest forums into decision-making.

## To Traditional Authorities:

- Adopt a transparency and accountability charter and produce regular reports on their activities.

## To District Assemblies:

- Develop byelaws on community use and management of natural resources.
- Support communities to sign Social Responsibility Agreements with logging companies.

## To wider civil society:

- Lobby the newly elected government on the need for transparency in the environmental sector.
- Support wider community participation, such as by women and youth, to hold authorities to account.

## To international donors:

- Strictly apply the achievement of the governance targets in the NREG framework as the trigger for release of funds to the government.



# Making the Forest Sector Transparent Annual Transparency Report 2012

## Country Specific Report: Guatemala

Prepared by the Guatemalan Association of Community Forestry Ut'z Che' and Global Witness, February 2013

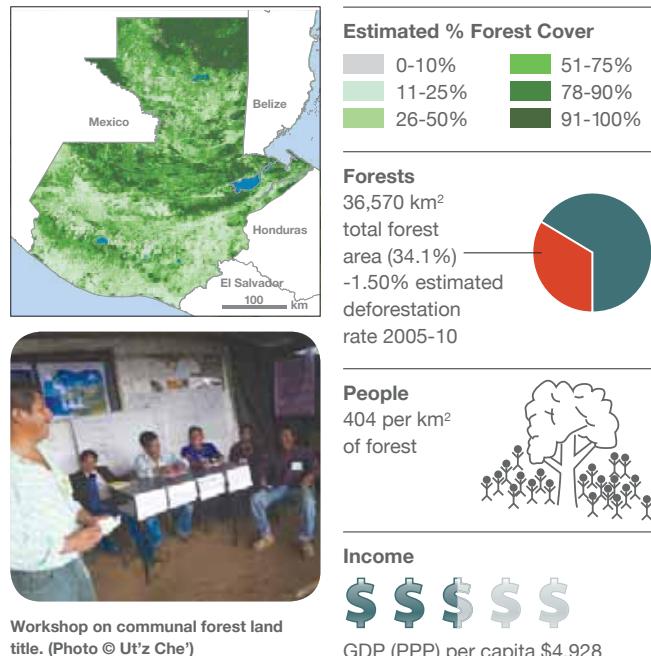


global witness

## Introduction

This is the second annual report card on Guatemala for the *Making the Forest Sector Transparent* programme, produced by Ut'z Che' and Global Witness. These have assessed whether citizens, in particular local communities and indigenous peoples that depend on forests for their livelihoods, are able to access the information they need to have a say in decision-making. The report cards have informed advocacy work to promote accountability and good governance. A mini-grants fund has also supported grassroots advocacy and capacity building. This summary presents the key findings from the final report card for the programme in 2012, which consisted of 20 'yes' (green), 'partial' (yellow) or 'no' (red) indicators – 12 of which tested whether key provisions exist in the legal, policy and regulatory framework ('framework indicators') and 8 tested whether key documents and data are regularly published ('data indicators'). It also highlights changes in the forest sector and achievements of the programme. Complete analyses and reports are available at [www.foresttransparency.info](http://www.foresttransparency.info).

## Guatemala Vital Statistics



## Key Findings in 2012

There is a diffuse range of legal and regulatory instruments that apply to the environment and forest sector, but the overall framework lacks significant provisions for recognising customary rights, formalising consultation and assessing strategic environmental impacts. Key documents and data are not comprehensively published, and this situation deteriorated over 2012 as data on the incentives programmes was not updated and annual reports were not made available.

| Framework | Data      |   |
|-----------|-----------|---|
|           | Yes       | 3 |
|           | Partial   | 6 |
|           | No        | 3 |
|           | Yes       | 0 |
|           | Partial   | 6 |
|           | No        | 2 |
|           | Improving | 3 |
|           | No change | 9 |
|           | Worsening | 0 |
|           | Improving | 0 |
|           | No change | 6 |
|           | Worsening | 2 |

The Law on Access to Public Information was approved in 2008, but the main public authorities responsible for the forest sector have complied poorly with its requirements. The law has not been backed by sufficient resources, training and awareness raising to promote a culture of transparency. Perhaps as a result, citizens have made few requests for forest information under its provisions.

Guatemala is characterised by a high level of inequality in land ownership and there are many disputes over tenure and resource use, including in relation to the fragmented mix of state, municipal, communal and private forests. Indigenous peoples enjoy little formal support for their rights. Forest incentives programmes have also not realised their potential to support smallholders.

The forest authorities have little capacity to ensure that operations comply with the law and studies suggest that the majority of logging activities are illegal. At the same time, the government is prioritising the granting of mining, agriculture, energy and infrastructure projects to the detriment of forests and local people. There is growing dialogue on initiatives such as REDD+ that value forests for their environmental services, but so far they have had little impact on the ground.



## Guatemala 2012 Framework Indicators: are policies and laws in the public domain?

**Indicator:**  Yes;  Partial – they have only been drafted, are out of date or lack regulations;  No – they have not been approved

**Change since 2011:**  Significantly Improved  Improved  No Change  Worsened  Significantly Worsened

|  |   |   |   |
|--|---|---|---|
| Freedom of information legislation                       |    |    | The Law on Access to Public Information guarantees the transparency of public bodies and the right of citizens to obtain information. Public bodies are obliged to create information units dedicated to comply with the legal requirements. There are major obstacles to implementation of the law in the forest sector due to authorities' lack of compliance, resources and training. Nonetheless, the creation of a national Secretariat for Monitoring and Transparency in 2012 is a step forward. |
| National forest policy                                   |    |    | The 1999 Forest Policy was evaluated through a series of participatory workshops with relevant stakeholders in 2011, which found that there had been no progress in several key areas related to forest management and conservation. Based on the findings from this evaluation, the National Forests Institute (INAB) with the support of the UN Food and Agriculture Organisation has promoted a participatory process to develop a new policy.   |
| Codified forest law and supporting norms                 |    |    | The current Forest Law was enacted in 1996 and regulations to implement it were passed in 2005. Despite this legal and regulatory framework setting out a fairly comprehensive system of forest governance, studies have shown that it is not applied uniformly due to limitations in management and monitoring. Forests are being destroyed across the country by mining and agro-industrial activities. It is estimated that the great majority of logging activities are illegal.                    |
| Signed VPAs and other agreements on forest products      |    |    | Guatemala has signed agreements with various countries, notably a free trade agreement between the United States, Central America and the Dominican Republic, but they do not include specific clauses or annexes related to forest products. It also signed the Association Agreement between the European Union and Central America in June 2012, which includes a general commitment to improve forest law enforcement and governance.   |
| Provisions for transparency in forest laws and norms     |   |   | The forest law and regulations do not specify requirements on access to public information, but the Law on Access to Public Information stipulates obligations on all public bodies. A National System of Statistical Forest Information has been developed by INAB with the support of the International Tropical Timber Organisation to consolidate and disseminate online information on the sector.   |
| Recognition of customary rights in forest laws and norms |  |  | The Constitution and the Peace Accords include commitments to recognise, respect and promote the customary and traditional laws of communities. However, there is no specific recognition of them in forest laws and regulations. Despite a series of institutions having been set up to guarantee indigenous peoples' rights, there is little genuine recognition of customary rights in practice due to various financial and legal obstacles.  |
| Formal procedures for consultation on new forest norms   |  |  | General legislation sets out how communities should be consulted in the development of new legal norms, and forest sector bodies have instigated various consultation processes, but there are no binding procedures on the methods of consultation on forest issues. There is insufficient information to assess how the tiers of Development Councils consult the public at regional and local levels, and many forums do not have websites to provide information for consultation.                  |
| Legal right to free prior and informed consent           |  |  | The Constitution, Peace Accords and general laws refer to the right of indigenous communities to free prior informed consent over the use of natural resources. However, regulations to implement this have not been produced, which makes it difficult to implement in practice. This situation contributes to the high degree of social conflict in the country over land use projects.   |
| National land tenure policy                              |  |  | The National Policy for Integrated Rural Development 2009-2015 and the Agriculture Policy 2009-2012 are designed to democratise and secure land tenure. Guatemala is characterised by extreme land inequality. Rural worker and indigenous people's organisations proposed a Bill for a National System of Integrated Rural Development to promote longer-term reform, but it was never taken forward by Congress, seemingly because it was seen as a threat to private property.                       |
| Consultation before commercial logging allocation        |  |  | The forest law does not require consultation with interested or affected groups before granting forest use licences for commercial operations. In buffer zones around protected areas, there is a requirement for an environmental impact assessment to be carried out, including public participation, but the conduct of this exercise is at the discretion of the Ministry of Environment and Natural Resources (MARN).  |
| Regulation of environmental services                     |  |  | There is no specific law regulating the use and operation of forest environmental services, but some relevant regulations are contained in environmental regulations. Public policies and legal initiatives focusing on improving environmental regulations, such as the Climate Change Bill, have been developed and gained the support of MARN and environmentalist organisations.  |
| Strategic environmental assessment                       |  |  | The current environment and land use laws refer to territorial planning intended to evaluate the priorities for development, but they do not constitute a system of strategic environmental assessment. General policies refer to environmental issues, but few include specific priorities. In reality, there are many criticisms of the increase in licences approved for mining, oil, agro-industrial, and infrastructure projects that are contrary to the principles set out in government plans.  |

## Guatemala Data Indicators 2012: are key documents and data regularly published?

**Indicator:** ● Yes; ○ Partial – they are only published on some relevant activities, or only available on request; ● No – they are not published

**Change since 2011:** ☝ Significantly Improved ☺ Improved ☺ No Change ☹ Worsened ☹ Significantly Worsened

|  |   |   |
|--|---|---|
| Forest ownership and resource use maps                                     | ● | Due to the lack of a complete national land register, Guatemala does not have official maps showing forest tenure and use across the country. There are many conflicts over land, but information is being collected under the Land Information Register Law, which represents an opportunity to clear up uncertainties and to secure tenure. Various initiatives by government, academic and civil society organisations have drawn up maps showing forest cover, licences, incentives and communal lands.   |
| Legal documents for commercial logging operations                          | ● | Commercial operations on forest land require licences granted by state for their use of timber and non-timber resources. To obtain a licence, the operator must have a management plan authorised by INAB together with certificates and other requirements established by the forest law and regulations. These documents are not published but copies can be requested from INAB offices. In practice, studies have found that the authorities have little capacity to ensure that operators comply with the law.   |
| Reports on the verification process of eligibility of commercial operators | ● | The requirements for obtaining a licence are stipulated in the forest law, in particular the preparation and verification of a management plan in line with technical specifications. However this process does not equate to a due diligence process to verify the eligibility, suitability and capability (technical and financial) of the operator as set out in international best practice.  |
| Forest management plans  | ● | Authorised forest management plans are not published, but interested parties may request them from the relevant regional office of INAB. The regulation on the National Forest Register sets out the information required in these plans, including details on the duration, locations and volume of products extracted. Local people affected by operations are not involved in the preparation of the management plans, and in some cases this has caused conflicts due to resistance to logging activities by indigenous peoples and other groups adversely affected by deforestation. |
| Reports from independent forest monitoring                                 | ● | There are no specific initiatives for independent forest monitoring, but there are related initiatives on environmental issues. Officially recognised bodies evaluate and monitor activities in the forest sector, including the National Forest Programme and, to a lesser degree, the Office of the Human Rights Ombudsman, but they do not directly oversee logging operations. The Institute of Agriculture, Natural Resources and Environment in the Rafael Landivar University is also a respected observer of the sector.  |
| Data on the distribution of forest incentives                              | ● | A forest incentive programme (PINFOR) running from 1997 to 2016 supports landowners to manage their forests and develop agro-forestry projects. Some data on the distribution of incentives is available, but it does not include sufficient detail to identify beneficiary groups, in particular smallholders. As a result of a civil society campaign, a new law was passed in 2010 to target incentives at smallholders (PINPEP), including the most marginalised groups without a land title deed. However, no data on the distribution on incentives has been published since 2009.  |
| Information on forest law infractions                                      | ● | The forest law and regulations set out the offences and penalties applicable to the sector, but there are no requirements to publish details on infractions. Information on cases can be requested from the public prosecutor's office, but access may be restricted. There is an inter-institutional plan and committee for the prevention and reduction of illegal logging, but there are many challenges to forest law enforcement in practice, not least that the police division responsible has limited capacity and only has a presence in half the country's regions.             |
| Annual forest authority report   | ● | INAB has not produced an annual report on its work, including activities and budgets, since 2009. Furthermore, with the organisational restructuring of INAB and the updating of its website in 2012, neither this report nor the previous ones can be located. The failure to publish more recent reports indicates it has not complied with the requirements stipulated in the Law of Access to Public Information.   |



Forest area in Palin where the indigenous community received formal land title. (Photo © Ut'z Che')

# Achievements

There are several challenges to improving forest sector transparency and governance in Guatemala. First and foremost, the government consistently fails to provide an adequate budget to ensure that public bodies have the capacity and commitment to apply the legal and regulatory framework in practice. The key bodies responsible for the forest sector – INAB, CONAP and MARN – have not complied with the stipulated requirements in the Law on Access to Public Information; in fact, there are indications that their levels of compliance have deteriorated in the last year. Information is not regularly published, and it is also not summarised and translated to enable the wider public, including a large indigenous population, to understand how their forests are governed.

Guatemala has a history of inequality and marginalisation of large parts of the indigenous and rural population, which continues to cause conflicts over land and resources. Projects supported by Ut'z Che' have also achieved some progress, such as handing over collective title for a forest to local indigenous people, recognition of community forest rights by municipalities, and procedures to recognise the significance of fuelwood consumption. Such positive examples need to be consolidated and expanded nationally, yet proposals such as the National System for Integrated Rural Development to address inequalities in the long-term have stalled in Congress. At the same time, an INAB initiative to improve practices at municipal level is a welcome move towards decentralisation.

The participation of civil society organisations and community groups in the review, evaluation and agreement of public policies for the environment and forest sectors has increased in recent years. Better opportunities for dialogue have been created, for instance Ut'z Che' helped to improve participation in REDD+ preparations by supporting more appropriate methods of consultation with indigenous peoples. There are a range of formal and informal forums, including the tiered System of Development Councils, that relate to the forest sector, albeit in a disjointed way. Better integration is needed to support participation. With regard to climate change, a renewed impetus is needed to take forward dialogue and approve the proposed Climate Change Bill.

The forest sector is characterised by a high level of illegal activity, and the state has a tendency to write plans rather than to actually act to deal with the problem. The current government has given more priority to granting

large-scale exploitation of natural resources by extractive industries. Meanwhile strenuous lobbying by civil society has been needed to secure the budget for the forest incentive programmes to support marginalised rural groups. Further efforts will be necessary to build greater transparency into successor incentives programmes when the current ones end in 2016.

# Key Recommendations

## ***To the government and congress:***

- Ensure that the forest sector authorities are allocated adequate budgets to allow them to fulfil their role and comply with legal requirements.
- Prioritise the approval of the Bill on the National System for Integrated Rural Development and the Climate Change Bill.

## ***To the public bodies responsible for the forest sector, the environment and natural resources:***

- Improve compliance with the Law on Access to Public Information.
- Draw up summaries and translations of forest and environmental laws, policies and regulations.
- Integrate the different forums that discuss issues related to the forest sector.
- Meet commitments for information and participation in national REDD+ planning and climate change initiatives.
- Publish data on the types of landowners receiving forest incentives.
- Promote public participation in the development of the new forest policy and the forest incentives programme (before the current one ends in 2016).

## ***To the System of Development Councils:***

- Publish and disseminate key information on forest sector activities at all levels.

## ***To civil society and indigenous peoples' organisations:***

- Share information to raise public awareness on the Law on Access to Public Information.
- Develop a website on progress made in the negotiation of new policies, laws and regulations.
- Press for an increase in public spending allocated to address environmental issues.
- Participate more actively in the System of Development Councils to ensure that environmental issues are considered.

## Contacts

Asociación de Forestería Comunitaria de Guatemala Ut'z Che': [www.utzchecomunitaria.org](http://www.utzchecomunitaria.org)

Project Leader: Víctor López Illescas

Global Witness: [www.globalwitness.org/gtf](http://www.globalwitness.org/gtf); [www.foresttransparency.info](http://www.foresttransparency.info)

Team Leader: David Young

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# Making the Forest Sector Transparent Annual Transparency Report 2012

## Country Specific Report: Liberia

Prepared by the Sustainable Development Institute (SDI) and Global Witness, February 2013

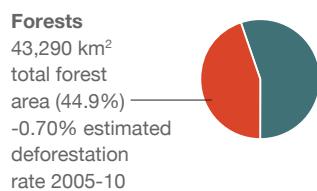
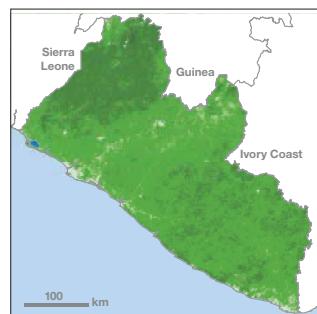


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## Introduction

Since 2009, SDI and Global Witness have produced annual report cards on Liberia for the *Making the Forest Sector Transparent* programme. These have assessed whether citizens, in particular local communities and indigenous peoples that depend on forests for their livelihoods, are able to access the information they need to have a say in decision-making. The report cards have informed advocacy work to promote accountability and good governance. A mini-grants fund has also supported grassroots advocacy and capacity building. This summary presents the key findings from the final report card for the programme in 2012, which consisted of 20 'yes' (green), 'partial' (yellow) or 'no' (red) indicators – 12 of which tested whether key provisions exist in the legal, policy and regulatory framework ('framework indicators') and 8 tested whether key documents and data are regularly published ('data indicators'). It also highlights changes in the forest sector and achievements of the programme. Complete analyses and reports are available at [www.foresttransparency.info](http://www.foresttransparency.info).

## Liberia Vital Statistics



Community meeting on the impacts of agricultural plantations on local people and forests. (Photo © Global Witness)

## Key Findings in 2012

Since the end of the civil war in 2003, major reforms have been undertaken in the forest sector in Liberia. While this has resulted in the development of a comprehensive framework for forest management, there are gaps in its implementation. The failure to publish key documents, in particular on Private Use Permits (PUPs) over 2012, has concealed systemic failures regarding permit allocation, community rights, and benefit sharing. This has in turn threatened the very existence of Liberia's richest forests.

| Framework | Data      |
|-----------|-----------|
|           |           |
| Yes       | Yes       |
| Partial   | Partial   |
| No        | No        |
| Improving | Improving |
| No change | No change |
| Worsening | Worsening |

Liberia approved the Freedom of Information (FOI) Act in 2010. Together with provisions in forest laws, and in the Voluntary Partnership Agreement (VPA) initialised with the European Union (EU) in 2011, this provides a strong set of over-arching and forest sector-specific binding obligations on public bodies to publish documents and data. In practice though, the Forestry Development Authority (FDA) makes little information available online and it is difficult for local communities to obtain hard copies of documents. More broadly, the VPA also holds much promise for improving forest governance, including community-led monitoring, but worryingly, its ratification process has stalled in Liberia.

Despite the legal recognition of customary rights and the establishment of Community Forestry Development Committees (CFDCs), the FDA and other state actors have maintained their powers over forests and approved logging operations without following due process. They have also failed to ensure that royalties and social agreements actually result in benefits being shared with local communities. The revelation in 2012 that PUPs had been agreed for forests covering a quarter of the country was a stark example of mismanagement and the abuse of power. NGOs exposed the situation, prompting a moratorium and presidential Executive Order to take sweeping actions against officials and logging companies. These are promising initial signs of efforts to address immense challenges.

## Liberia 2012 Framework Indicators: are policies and laws in the public domain?

**Indicator:**  Yes;  Partial – they have only been drafted, are out of date or lack regulations;  No – they have not been approved

**Change since 2011:**  Significantly Improved  Improved  No Change  Worsened  Significantly Worsened

|  |   |   |  |
|--|---|---|--|
| Freedom of information legislation                       |    |    | The FOI Act was signed into law in 2010, but progress towards its implementation has been slow. An Independent Information Commissioner was nominated by the President in May 2012, but by the end of the year had still not yet been confirmed by the Senate. Civil society organisations have campaigned for implementation of the law and revealed that public bodies do not disclose information as required by the law.   |
| National forest policy                                   |    |    | The National Forest Policy of 2006 sets out a vision for the sector designed to balance commercial conservation and community activities (the '3Cs'), but decision-making has primarily focused on commercial gains. As a part of the government's Poverty Reduction Strategy II development process, forest sector stakeholders in June 2012 concluded a roadmap which will inform a possible review of the policy.   |
| Codified forest law and supporting norms                 |    |    | The National Forestry Reform Law (NTRL) 2006, Ten Core Regulations 2007 and Community Rights Law (CRL) 2009 provide the foundation for forest sector management. Nonetheless, there are gaps and inconsistencies in the legal and regulatory framework, most notably exploited by PUPs. An important step forward in 2012 was the approval of the Chain Saw Milling regulation, which aims to support rural livelihoods and mitigate the negative environmental impacts of artisanal logging.            |
| VPAs and other agreements on forest products             |    |    | Liberia and the EU initialled a VPA in May 2011. The EU ratified the Agreement in April 2012 and the Liberian Government is expected to do so. The VPA has the potential to strengthen governance, reduce corruption and combat illegal logging, but its impact will depend on how effectively it is implemented.  |
| Provisions for transparency in forest laws and norms     |   |   | The forest laws and regulations include requirements for public information and transparency, and Annex IX of the VPA specifies data to be routinely published or provided on request under the FOI Act. In practice, access to key documents and data is limited. The Forestry Development Authority (FDA) unofficially opened an 'Info Shop' in Monrovia in 2012 but it holds little information, and even less is available in regional offices.  |
| Recognition of customary rights in forest laws and norms |  |  | The Constitution broadly recognises customary and traditional rights, and the definition of customary land in the CRL implies that control of this land is determined by historic right. However, there are several challenges relating to how the government limits the ability of communities to exercise their customary rights. The CRL regulations approved in 2011 do not reflect the intent of the law, and many Private Use Permits have been approved on land with unsubstantiated title deeds. |
| Formal procedures for consultation on new forest norms   |  |  | The NTRL and Regulation 101-07 on public participation in promulgation of regulations, codes and manuals set out clear procedures for consultation. In line with these procedures, citizens have been consulted during development of recently approved regulations, and civil society and communities have also participated actively in the VPA. Community Forestry Development Committees (CFDCs) have developed as potentially important groups for representing community interests.                |
| Legal right to free prior and informed consent           |  |  | Regulation 102 on Forest Land Use Planning requires that in order to undertake commercial logging on customarily held forest land, a CFDC has the right to free, prior and informed consent. Regulation 104 on Major Forest Use Permits also requires a social agreement to be negotiated. Despite these provisions, Forest Management Contracts (FMCs) and Timber Sales Contract (TSCs) were signed in 2008 and 2009 before CFDCs were established, and PUPs have further eroded communities' rights.   |
| National land tenure policy                              |  |  | There are long-standing unresolved issues over land tenure. No current document sets out the national policy, but a Land Commission has been established to coordinate reforms. Over 2012 it made progress towards documenting disputes and producing a policy to address different categories of land rights, including customary rights, and this has the potential to develop into a system of secure tenure and equitable access to land.  |
| Consultation before commercial allocation                |  |  | Regulation 104 on Major Forest Use Permits requires the FDA to consult affected communities before seeking to allocate an area for concession. It sets out processes for notifying communities, including CFDC representation. In practice, the allocation of all permits since 2008 has been characterised by poor facilitation and documentation.  |
| Regulation of environmental services                     |  |  | There is neither applicable legislation nor policies for environmental services. The government has established a National Climate Change Steering Committee to develop a policy on climate change, but it has not yet produced one.   |
| Strategic environmental assessment                       |  |  | The government has not established a formal process for evaluating environmental impacts and determining future priorities. Concessions have been granted with little apparent regard for the environment and communities. For example, it came to light in 2012 that Private Use Permits had been agreed covering two million hectares without any strategic oversight of this major change in land use.  |

## Liberia Data Indicators 2012: are key documents and data regularly published?

**Indicator:** ● Yes; ● Partial – they are only published on some relevant activities, or only available on request; ● No – they are not published

**Change since 2011:** 👉 Significantly Improved 👉 Improved 👉 No Change 👉 Worsened 👉 Significantly Worsened

|   |                                       |                                       |  |
|---|---------------------------------------|---------------------------------------|--|
| Forest ownership and resource use maps                    | <span style="color: yellow;">●</span> | <span style="color: orange;">👉</span> | Maps for FMCs and TSCs are available in contract documents, and the FDA has produced maps of these concessions and protected areas, which are made available to the public on request. There are no maps that show current forest ownership in relation to customary or private land and these are needed to address current conflicts over competing claims. Furthermore, it became apparent in 2012 that there is no complete map of PUPs. Copies of some PUP contracts with sketch maps were released, but they presented a partial picture of the full extent of such permits.   |
| Legal documents for commercial logging operations         | <span style="color: yellow;">●</span> | <span style="color: red;">👉</span>    | The Public Procurement and Concession (PPC) Act, as well as forest laws and regulations, require transparent processes for allocating forest use permits, including publication of the final contract. Documents for most FMCs and TSCs are publicly available from the Liberia Extractive Industries Transparency Initiative website. Over 2012, it came to light that PUPs covering over two million hectares of land had been signed but only a few of the documents requested were released. Information about PUPs has been grossly inadequate and justifies the 'significantly worsened' score.  |
| Reports verifying the eligibility of commercial operators | <span style="color: yellow;">●</span> | <span style="color: orange;">👉</span> | The PPC Act and forest laws establish requirements for verifying applicants for major permits, but not all of the due diligence reports conducted on companies awarded timber contracts have been made public. Furthermore, even though the due diligence committee found problems with the capabilities of the provisional winners in the bidding process contracts, they were still awarded contracts. No formal due diligence procedures have applied to the agreement of PUPs, which represents a major gap in forest sector management.   |
| Forest management plans                                   | <span style="color: yellow;">●</span> | <span style="color: orange;">👉</span> | The forest law requires that concession holders should not be issued a harvesting certificate until the holder has an approved forest management plan. In practice, these plans have typically not been published on the FDA website or made available to local communities. When a visit by community representatives was organised in 2012, the Info Shop in Monrovia had copies of two of the existing seven FMCs, which represented a small step forward in public information.  |
| Reports from independent forest monitoring                | <span style="color: red;">●</span>    | <span style="color: orange;">👉</span> | Regulation 108-07 on Chain of Custody states that the sector will move over time toward a formal system of Independent Forest Monitoring. There has been little progress in establishing this, but the VPA includes scope for civil society monitoring and over 2011 and 2012 several Liberian NGOs have received funding from the EU to participate in capacity-building and monitoring work to prepare for implementation of the VPA. The eventual reports from these pre-implementation exercises will be useful to informing the official, VPA-mandated Independent Auditor, which is expected to commence operating in late 2013 or early 2014. |
| Data on distribution of forest royalties                  | <span style="color: green;">●</span>  | <span style="color: orange;">👉</span> | Data on the collection and distribution of taxes and fees from logging companies is circulated in monthly updates from the chain of custody contractor Société Générale de Surveillance. The NFRL and regulations set out the entitlement of affected communities to a proportion of these royalties and also to financial benefits from social agreements with companies. The National Benefit Sharing Trust regulations approved in 2011 set out the responsibilities of the Trust Board in managing distribution and ensuring that affected communities benefit from the funds, but to date it had not received its share of land rental fees.    |
| Data on forest law infractions                            | <span style="color: red;">●</span>    | <span style="color: orange;">👉</span> | There is no official or systematic publication of data on infractions, even though the NFRL requires the FDA to annually report a list of infractors and progress on adjudication. There is little capacity to monitor activities and enforce the law, and the involvement of the Ministry of Justice has also been limited. The VPA is expected to improve legal compliance, but its impact will depend on how effectively it is implemented.   |
| Annual forest authority report                            | <span style="color: yellow;">●</span> | <span style="color: orange;">👉</span> | The FDA has only published a draft 2008 report on its website, but in 2012 it provided hard copies of 2009, 2010 and 2011 reports. This is an improvement, but the reports are still only summaries with little detail on forest sector activities. Delayed and incomplete annual reporting makes it difficult to monitor the activities in the sector and the performance of the FDA.   |



Atlantic Resources Logs in October 2012. The Special Independent Investigating Body Report on the Issuance of Private Use Permits later recommended "Atlantic Resource Limited should be [...] permanently barred from engaging in commercial forestry activities for violation of [the National Forest Reform Law] and for orchestrating fraudulent activities in Liberia's forest sector" (December 2012).

# Achievements

Experience to date has shown that the government of Liberia is proficient at approving progressive new laws, but much less adept at following them up with effective implementation. The FOI Act is one such example. Since it was signed in 2010, there has been no real progress toward establishing the structures necessary to implement the law. There have been some improvements: the Liberia Extractive Industries Transparency Initiative has published contracts online and the FDA has opened an ‘Info Centre’ in Monrovia (albeit with few documents or resources), but they are inadequate for ensuring that rural communities can access the information they need. An assessment by SDI and Global Witness revealed major gaps in routine publication of key documents and data specified in Annex IX of the VPA. Far greater commitment and better systems, including regular monitoring of compliance, will be needed to ensure that public bodies meet their obligations.

Forest laws and regulations regarding permit allocation have been flouted, both in the case of major logging concessions in 2008 and 2009 and then for PUPs in 2012. At the same time, there has been a increase in the ability of NGOs and communities to hold the authorities to account. *Making the Forest Sector Transparent* helped the NGO Coalition of Liberia to reveal the abuse of PUPs during 2012. This resulted in a moratorium being imposed and a Presidential Investigation Panel recommending criminal investigation into the perpetrators. Concerns raised over the imposition of large agricultural concessions have also led to a moratorium on new allocations.

The pre-eminent model of industrial scale logging has contributed few benefits to either local communities or the country as a whole. In addition there are large arrears in the payment of revenues and fees by companies operating in Liberia, and the National Benefit Sharing Trust Board set up to distribute revenue to CFDCs has not actually received any funds to date. More troubling still, there have been proposals to cancel the collection of the Land Rent Bid Premium, which would lose the country some US\$200 million over the 25 year term of FMCs. A major paradigm shift is needed to decentralise the forest sector by formalising customary land tenure and rights and developing CFDCs as fully functioning bodies. The VPA has the potential to support community monitoring and develop systems to verify the legality of logging on communal lands. At a strategic level, transparent and coordinated decision-making must protect the livelihoods of local communities, and sustainably manage the remaining forest in Liberia.

# Key Recommendations

## To the government and legislature:

- Fully implement the recommendations from the Presidential Investigation Panel on PUPs.
- Require all public bodies to develop clear action plans for fulfilling their obligations under the FOI Act.
- Confirm the appointment of the Independent Information Commissioner and provide the necessary resources to function.
- Veto the bill to repeal the Land Rent Bid Premium.
- Establish a unit to coordinate strategic planning and decision-making between ministries.
- Establish a framework to monitor implementation of sector reforms in line with the forest policy.
- Commit adequate financial resources to bodies responsible for regulating use of natural resources.

## To the FDA:

- Proactively publish information online and develop systems to facilitate public access to hard copies of key documents through local offices and CFDCs.
- Maintain the moratorium on PUPs until all of the recommendations of the Presidential Independent Panel have been implemented.

## To wider civil society:

- Campaign for the full implementation of the provisions of the FOI Act.
- Lobby for development of improved information management systems by the FDA.
- Support increased engagement of local communities in forest sector issues, in particular to strengthen the CFDCs.
- Support communities calling for the review of social agreements with logging companies.

## To the CFDCs:

- Strengthen information sharing on their work with all affected communities.
- Promote accountability in distribution of all fees from logging companies.

## To the NBSTB:

- Facilitate development of the CFDC model of benefit sharing.
- Strengthen its organisational structure and share information with affected communities in and around forest concessions across the country.

## Contacts

Sustainable Development Institute: [www.sdiliberia.org](http://www.sdiliberia.org)

Coordinator: Jonathan Yiah

Global Witness: [www.globalwitness.org/gtf](http://www.globalwitness.org/gtf); [www.foresttransparency.info](http://www.foresttransparency.info)

Team Leader: David Young

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# Making the Forest Sector Transparent Annual Transparency Report 2012

## Country Specific Report: Peru

Prepared by Law, Environment and Natural Resources (Derecho, Ambiente y Recursos Naturales – DAR) and Global Witness, February 2013

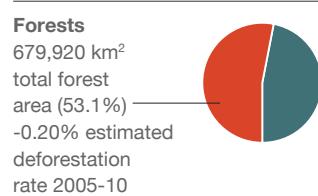


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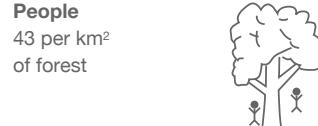
## Introduction

Since 2009, DAR and Global Witness have produced annual report cards on Peru for the *Making the Forest Sector Transparent* programme. These have assessed whether citizens, in particular local communities and indigenous peoples that depend on forests for their livelihoods, are able to access the information they need to have a say in decision-making. The report cards have informed advocacy work to promote accountability and good governance. A mini-grants fund has also supported grassroots advocacy and capacity building. This summary presents the key findings from the final report card for the programme in 2012, which consisted of 20 ‘yes’ ‘partial’ or ‘no’ indicators – 12 of which tested whether key provisions exist in the legal, policy and regulatory framework (‘framework indicators’) and 8 tested whether key documents and data are regularly published (‘data indicators’). It also highlights changes in the forest sector and achievements of the programme. Complete analyses and reports are available at [www.foresttransparency.info](http://www.foresttransparency.info).

## Peru Vital Statistics



Community member working in a reforestation project in the San Martin region. (Photo © DAR)



## Key Findings in 2012

Peru has undertaken major reforms of the legal framework for the forest sector following the signing of a free trade agreement with the USA in 2006, which included a specific annex on forest governance. Some authorities have made improvements to facilitate access to information, but key documents are not regularly published.

| Framework | Data      |   |  |           |   |
|-----------|-----------|---|--|-----------|---|
|           | Yes       | 8 |  | Yes       | 0 |
|           | Partial   | 2 |  | Partial   | 5 |
|           | No        | 2 |  | No        | 3 |
|           | Improving | 8 |  | Improving | 3 |
|           | No change | 4 |  | No change | 5 |
|           | Worsening | 0 |  | Worsening | 0 |

Since 2003, Peru has had a law that obliges public authorities to publish certain documents and respond to citizens’ requests; however government agencies responsible for the forest sector have not fulfilled its requirements. Since 2009, annual monitoring by DAR has encouraged improvements, notably amongst regional authorities covering the Peruvian Amazon; nonetheless, the amount of information published remains insufficient.

There are conflicts between indigenous peoples and the state over exploitation of forest land, but efforts have been made to improve participation. One such step was the approval of the Law on Prior Consultation in 2011. The process of developing this law provided valuable lessons on the importance of informed, timely, and culturally sensitive methods of consultation, but disputes continue, in particular over the right of indigenous people to give or withhold their consent.

A new Forest and Wildlife Law was approved in 2011 that provides a framework for decentralised forest management and a new national information system, and includes recognition of customary rights and community forest management. Over 2012, a roadmap for developing regulations and a forest policy was adopted. This heralds important improvements in forest governance, but it remains to be seen if it leads to better forest protection. The policy will need to address major threats from logging, mining and infrastructure projects.

## Peru 2012 Framework Indicators: are policies and laws in the public domain?

**Indicator:**  Yes;  Partial – they have only been drafted, are out of date or lack regulations;  No – they have not been approved

**Change since 2011:**  Significantly Improved  Improved  No Change  Worsened  Significantly Worsened

|  |   |   |  |
|--|---|---|--|
| Freedom of information legislation                       |    |    | Despite progress, some forest sector bodies still do not comply fully with the stipulated standards in the Law on Transparency and Access to Public Information. In 2012, the Public Ombudsman proposed the creation of an Autonomous National Authority to provide more effective oversight of compliance with the law.   |
| National forest policy                                   |    |    | A third preliminary version of a forest policy was updated in June 2010, but it has not been approved. In May 2012, a guide was produced by the General Directorate for Forests and Wildlife (DGFFS) and Inter-Governmental Group on the 'methodology for strengthening the forest sector', which sets out a participatory process to approve a National Forest and Wildlife Policy.   |
| Codified forest law and supporting norms                 |    |    | The current Forests and Wildlife Law dates from 2000. A revised law was introduced in 2009, but subsequently rejected following controversy over its approval. A new Forests and Wildlife Law was finally approved in 2011, and it will come into force once an implementing regulation has been established. In February 2012 a decentralised, inclusive process was initiated for developing consensus in the drafting of this regulation, and in May 2012 a roadmap document outlined the process to support active participation from different stakeholders.    |
| Signed VPAs and other agreements on forest products      |    |    | The Free Trade Agreement with the USA approved in 2006 includes an annex on the forest sector with a series of commitments on forest management and trade in timber products. This agreement triggered the subsequent reform of forest legislation, but compliance needs to be strengthened. An Agreement was also signed with the European Union in June 2012, which includes an article covering trade in forest products, and is pending parliamentary approval.  |
| Provisions for transparency in forest laws and norms     |   |   | There are provisions for transparency in the new Forest and Wildlife Law, which include the establishment of the National System for Forest and Wildlife Management (SINAFOR). Regulations on environmental information linked to the Law on Transparency and Access to Public Information also apply. Public bodies have improved their responsiveness to public requests, but some still do not provide good quality information on time. The National Anti-Corruption Plan for the Forest and Wildlife Sector proposes corrective measures to address this issue. |
| Recognition of customary rights in forest laws and norms |  |  | The new Forest and Wildlife Law incorporates principles not considered before in the legal framework for the sector, such as cross-cultural relations and respect for indigenous peoples' rights. The law explicitly recognises traditional knowledge of forest and wildlife use and management, and allows for autonomous community forest management. It remains to be seen how these principles will be implemented in the context of current conflicts over land use and tenure.   |
| Formal procedures for consultation on new forest norms   |  |  | The Law on the Right to Prior Consultation of Indigenous or Native Peoples approved in 2011 requires consultation before any legislative or administrative measure is adopted that affects these groups. The new Forest and Wildlife Law also stipulates recognition and fulfilment of this right. The roadmap document in 2012 builds on lessons learnt to establish formal procedures for consultation.  |
| Legal right to free prior and informed consent           |  |  | In accordance with International Labour Organisation Convention 169, the Law on the Right to Prior Consultation explicitly recognises the right of indigenous peoples to free, prior and informed consultation to reach 'agreement or consent' on activities that affect them. In practice, this right needs to be tested: there is a risk that its implementation could be seen as a procedural issue. The Constitutional Court made a landmark ruling in 2012 in favour of the right to indigenous self-determination.   |
| National land tenure policy                              |  |  | There is no specific national policy on land tenure. The Constitution identifies natural resources as a national asset and gives the state sovereign power over their use. Ownership of forests is therefore vested in the state and it grants rights to use forest resources. The new Forest and Wildlife Law recognises indigenous peoples' rights in principle, but a regulation is needed to establish their ownership and procedures for formalising tenure must be strengthened.   |
| Consultation before commercial logging allocation        |  |  | The state grants logging concessions in permanent production forests following a public tender, but there is no requirement for consultation with local people as part of this process, nor do the forest authorities carry out consultation prior to the granting of other permits and authorisations covering forests.   |
| Regulation of environmental services                     |  |  | A draft Law on Provision of Environmental Services has been prepared, which was brought back onto the congress agenda in early 2012 but did not seem to progress further by the end of the year. Other legal guidelines apply to environmental services, and some payment schemes have been developed for their use, but an overall legal and regulatory framework is lacking.   |
| Strategic environmental assessment                       |  |  | There are established planning processes for land zoning and environmental actions, and the Law on the Environmental Impact Assessment System sets out requirements for Strategic Environmental Assessment. In 2012, a draft ministerial ruling was proposed on its criteria and implementation.   |

## Peru Data Indicators 2012: are key documents and data regularly published?

| <b>Indicator:</b> <span style="color: green;">●</span> Yes; <span style="color: yellow;">●</span> Partial – they are only published on some relevant activities, or only available on request; <span style="color: red;">●</span> No – they are not published<br><b>Change since 2011:</b> <span style="color: green;">👉</span> Significantly Improved <span style="color: yellow;">👉</span> Improved <span style="color: grey;">👉</span> No Change <span style="color: red;">👉</span> Worsened <span style="color: orange;">👉</span> Significantly Worsened |                                       |                                       |  |
|--|---------------------------------------|---------------------------------------|--|
| Forest ownership and resource use maps   | <span style="color: yellow;">●</span> | <span style="color: yellow;">👉</span> | The DGFFS makes available technical maps on rights granted in forests, but these maps still lack sufficient detail to identify the rights-holders, uses and respective contracts and permits. The maps also do not include information on natural resources management across all sectors, and there are discrepancies between the information provided by different bodies. Nonetheless, there have been improvements since 2009 in the availability of maps with supporting details on concessions, and maps consolidating important forest sector information.  |
| Legal documents for commercial logging operations  | <span style="color: yellow;">●</span> | <span style="color: yellow;">👉</span> | There is a regulated system of rights granted in forests for timber and non-timber products, which are differentiated in law into concessions, permits and authorisations. The DGFFS does not publish the associated contract documents, but they can be accessed through a request for information. The DGFFS also produced registers of concessions in 2012 that help to identify the contracts. Integrated information systems are needed as the powers for granting forest rights are transferred to regional government authorities. SINAFOR is intended to support this function once it is implemented. |
| Reports on the verification process of eligibility of commercial operators   | <span style="color: red;">●</span>    | <span style="color: yellow;">👉</span> | There is currently no process, nor is one planned by law, to verify the technical and financial capacity of applicants for rights to commercial operations in forests. Applicants only need to meet minimum requirements to enter into a contract with the state, such as having a tax identification number, authorised representatives and a management plan. A verification process is needed to determine their suitability, given that experience shows that some holders begin operations without the necessary technical abilities or sub-contract their rights to third parties.                       |
| Forest management plans  | <span style="color: red;">●</span>    | <span style="color: yellow;">👉</span> | Although the holders of concessions or permits are required to draw up a forest management plan, these are based solely on timber harvesting methods and not on environmental impacts. Furthermore, the plans are usually not adhered to, and they are not available to the public. Forest management plans need to serve a broader function, in particular so that they enable oversight of sustainable use and conservation of forest resources. The new SINAFOR is charged with making plans accessible to the public with details on impacts.  |
| Reports from independent forest monitoring   | <span style="color: red;">●</span>    | <span style="color: yellow;">👉</span> | There is no independent monitor or auditor for the forest sector, nor has civil society advocated the need for one. The Public Ombudsman is an autonomous body that has played a pivotal role as an observer of the forest law reform process. The Supervisory Body for Forest and Wildlife Resources (OSINFOR) inspects logging activities and reports infractions, but even though it has a degree of independence it is still a state organisation.   |
| Data on the distribution of forest royalties   | <span style="color: yellow;">●</span> | <span style="color: yellow;">👉</span> | The collection and redistribution of forest sector taxes on a six-monthly basis to regional and local governments is set out in the Levy Law. Data on the amounts are partially available on government websites, but more information would help local people to find out about the distribution of revenue in their area and participate in proposals on its use in support of their livelihoods.  |
| Information on forest law infractions  | <span style="color: yellow;">●</span> | <span style="color: yellow;">👉</span> | The current forest law and regulations for OSINFOR include provisions for maintaining registers of individuals penalised for infractions and licences that have expired. These details are not published, but they can be requested under the Law on Transparency and Access to Public Information, although such an arrangement limits peoples' ability to have sufficient prior information to identify offenders before signing contracts. OSINFOR made some improvements in 2012 by publishing directorial rulings indicating penalties and fines imposed.   |
| Annual forest authority report   | <span style="color: yellow;">●</span> | <span style="color: yellow;">👉</span> | The current forest law and regulations requires the responsible authority to draw up and disseminate an annual report on forest sector activities, but to date it appears that no such reports have been published. The DGFFS only publishes a statistical forest yearbook, which cannot be considered an annual report. The creation of SINAFOR entails the production of plans with information that could be used as the basis for annual reports, which in turn would allow civil society organisations and indigenous peoples to contribute to future planning and decision-making.                       |



Logs transported down river from the Amazon to Pucallpa. (Photo © Global Witness)

# Achievements

DAR has conducted a range of projects to champion the 2003 Law on Transparency and Access to Public Information, and improve public authorities' ability to meet their legal obligations and citizens' capacity to demand greater access. From 2009, it has applied a rigorous methodology to scoring authorities' compliance with the law and used high profile events to draw attention to the annual results. This has encouraged some authorities to improve their scores markedly. Capacity building work with regional forest authorities responsible for large areas of the Peruvian Amazon has resulted in their greater commitment to transparency. Projects with civil society, indigenous peoples, and media organisations have also raised awareness of their rights and helped them coordinate demands for information. Whilst this work has engendered a wider recognition of the benefits of forest sector transparency, it is important to stress that information on forest activities is still incomplete. Proposals to improve information systems as part of the new institutional structure, combined with stronger monitoring of compliance with law, need to be implemented.

There are many tensions over land use and resource exploitation in Peru. Tragic events led to the deaths of over 30 people in a protest near Bagua in the Amazon region in 2009, which was linked to an executive decree that allowed forests inhabited by indigenous peoples to be handed over to agro-industrial plantations. In response, DAR in a joint effort with other civil society organisations helped indigenous peoples' representatives in their meetings and presentations with officials in a constructive process that led to the approval of the Law on Prior Consultation and the new Forest and Wildlife Law in 2011. Even though there are still disputes, lessons have been learnt on the methods of consultation required to support active participation in the development of new norms. There is reason to hope that the upcoming forest policy and implementing regulations will be developed through a genuinely participatory local and national process.

Even though the legal framework for freedom of information and forest management has progressed, and there are measures in the pipeline on environmental services and strategic environmental assessment, many issues remain to be resolved regarding how this framework is implemented. Studies have also raised concerns about how illegal logging continues despite the commitments made to address it. For example,

forest management plans for commercial logging operations do not currently serve as effective tools for planning and independent oversight, nor are they made available to the public. Transparency will be crucial to ensuring that the forest reforms results in the necessary improvements to forest management, including the formal recognition of the rights of indigenous peoples.

# Key Recommendations

## **To the state and forest authorities:**

- Develop SINAFOR as an integrated information system for ensuring public access to key forest sector documents and data.
- Appoint public officials whose role it is to promote transparency and reply to public requests.
- Strengthen monitoring and penalties to promote compliance with transparency requirements.
- Provide greater financial and technical support to the regional government authorities.
- Follow the decentralised, participatory process for strengthening regulations and institutions as stipulated in the published guide on methodology.
- Ensure free prior informed consultation with indigenous peoples on legislation that affects their collective rights.
- Complete the process to draft and approve the National Forest and Wildlife Policy.
- Approve the proposed law for creation of an Autonomous National Authority to monitor access to information.

## **To the congress:**

- Prioritise the debate and approval of laws and regulations for the forest sector, including the Law on Environmental Services.

## **To civil society and indigenous peoples' organisations:**

- Promote greater citizen and community demands for information and participation.
- Strengthen capacity and communications to coordinate actions that have a greater impact on political decision-making.

## **To international donors:**

- Monitor and publicly report on the projects that they are supporting.
- Ensure that proposed projects are agreed with local populations.

## Contacts

Derecho Ambiente y Recursos Naturales: [www.dar.org.pe](http://www.dar.org.pe)

President: Hugo Che Piu

Coordinator: Javier Martinez

Global Witness: [www.globalwitness.org/gtf](http://www.globalwitness.org/gtf); [www.foresstransparency.info](http://www.foresstransparency.info)

Team Leader: David Young

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## Making the Forest Sector Transparent Programme Partners



**Cameroon**  
Centre pour l'Environnement et le Développement,  
BP 3430, Yaoundé  
Secretary General:  
Samuel Nguiifo  
Project Leader:  
Patrice Kamkuimo  
[www.cedcameroun.org](http://www.cedcameroun.org)



**Democratic Republic of Congo**  
Réseau Resources Naturelles,  
Avenue du Progrès n°251,  
Kinshasa-Barumbu  
National Coordinator:  
Joseph Bobia Bonkaw  
Project Coordinator:  
Vivianne Faida  
[www.rrnrdc.org](http://www.rrnrdc.org)



**Ecuador**  
Grupo FARO,  
Gregorio Bobadilla N38-88 y  
Granda Centeno, Quito  
Director, Environment and  
Society: Sigrid Vásconez  
Coordinator: Mireya Villacís  
[www.grupofaro.org](http://www.grupofaro.org)



**Ghana**  
Centre for Indigenous  
Knowledge and Organisational  
Development,  
P.O. Box CT, 4131,  
Cantonments-Accra, Ghana  
Director: Bernard Guri  
Project Leader:  
Wilberforce Laate  
[www.cikod.org](http://www.cikod.org)



**Guatemala**  
Asociacion de Foresteria  
Comunitaria de Guatemala  
Ut'z Che',  
6ta Calle 0-29 zona 3,  
Palin Escuintla  
Executive Director:  
Victor López Illescas  
Coordinator: Sergio Leopoldo  
Dionesio Dionesio  
[www.utzchecomunitaria.org](http://www.utzchecomunitaria.org)



**Liberia**  
Sustainable Development  
Institute, PO Box 5678,  
Duarzon Village,  
Robertsfield Highway,  
Monrovia  
Coordinator: Jonathan Yiah  
[www.sdiiberia.org](http://www.sdiiberia.org)



**Perú**  
Derecho Ambiente y Recursos  
Naturales, Jr. Coronel Zegarra  
Nº260, Jesús María, Lima,  
President: Hugo Che Piu  
Coordinator: Javier Martinez  
[www.dar.org.pe](http://www.dar.org.pe)



**International Coordinator**  
Global Witness Limited,  
6th Floor, Buchanan House,  
30 Holborn,  
London EC1N 2H  
Team Leader: David Young  
[www.globalwitness.org/gtf](http://www.globalwitness.org/gtf)

Global Witness investigates and campaigns to prevent natural resource-related conflict and corruption and associated environmental and human rights abuses.

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Bottom left – Community in Quiche, Guatemala (Photo © Utz Che')

Bottom right – Workshop with indigenous people in Ucayali, Peru (Photo © DAR)

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



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