



Rainforest Foundation US



global witness



**Comments on the Perú's Readiness Preparation Proposal  
By Rainforest Foundation Norway, Rainforest Foundation UK, Rainforest Foundation US,  
Environmental Investigation Agency and Global Witness**

Guyana, June 2010

Both the process of developing Perú's REDD Readiness Preparation Proposal (R-PP) and the document itself have serious weaknesses and omissions. This is especially true with regards to certain fundamental issues such as the evaluation of the deforestation and forest degradation scenarios and their drivers, the rights of indigenous peoples and local communities, participation by key rights-holders, governance and monitoring.

The process and the R-PP proposal fail to meet the FCPF standards as established by the World Bank (See Charter Establishing the Forest Carbon Partnership Facility). Perú's R-PP will not meet these standards unless it addresses the following issues:

- The R-PP must provide a more comprehensive analysis of the underlying drivers of deforestation and degradation, many of which are linked to export-oriented agriculture, timber and energy production. Actions that donor countries can take to limit these drivers should also be considered.
- Indigenous peoples and their legitimate representative organizations are key actors and rights-holders over the majority of Peru's forest lands, yet they have not been properly taken into account.
- The R-PP must establish a more comprehensive vision of consultation. In the current document, "consultation" is regarded as merely keeping actors informed.
- Despite good governance being internationally acknowledged as key to REDD success, the section on governance in Perú's R-PP (Component 2a) is brief and poorly developed.
- There is no discussion of monitoring of social and environmental safeguards, or of monitoring governance. It is necessary to develop Component 4b.
- The process going forward should follow the new Consultation Law in Peru, which represents a significant step forward for indigenous rights.
- Perú's R-PP process has thus far been entirely driven by the Ministry of Environment. If Perú's REDD strategy is to have any weight or legitimacy from stakeholders within its own government, a far greater level of inter-sectoral discussion and coordination must occur.

For the reasons we explain below, we call for a thorough review of the R-PP to address these matters. This should be done in a transparent and inclusive way, and should engage all stakeholders, most importantly indigenous peoples and local communities.

## 1. Evaluation of the situation in terms of deforestation and forest degradation

The R-PP paints a biased and inadequate picture of Perú's reality. Crucially, it ignores serious problems that strongly affect indigenous peoples and other forest dependent communities, and does not thoroughly identify the underlying drivers of deforestation and forest degradation.

Logging (both legal and illegal), extractive industries and large-scale infrastructure projects are only briefly mentioned in passing and are not clearly acknowledged as major causes of deforestation and forest degradation. A national REDD Strategy cannot ignore the allocation of forest concessions, agricultural or biofuel plantations, hydroelectric dams and/or mining concessions. These activities in Perú, as elsewhere, have historically been carried out in ways that have detrimental impacts on indigenous peoples and other local communities, as well as on biodiversity. Furthermore, no matter how well they are implemented, they will result in increased emissions that must be considered in the planning process.

The Peruvian national government has reiterated its interest in attracting national and international capital through natural resource exploitation – there is even a decree declaring investments in biofuel crops as a priority of national interest.<sup>1</sup> Instead of taking advantage of already deforested lands, investors are demanding intact lands, ideally in riparian habitat. The recent case of the project “Palma del Oriente<sup>2</sup>” in the district of Barranquita, province of Lamas, department of San Martín – where earlier this year thousands of hectares of natural forests were clear-cut in order to prepare the land for biofuel crops – illustrates the scale of the threat hanging over Peruvian forests.

It is important to note that these large-scale plantations for biofuels – as well as some new hydroelectric investment projects such as Inambari<sup>3</sup> – are developed in large part in response to international demand originating in developed countries that are the donors to the FCPF<sup>4</sup>. This dynamic highlights the need for donor countries to commit, within the context of the FCPF, to taking actions beyond funding that address the role of their own demand for products that generate deforestation and forest degradation in REDD countries.

The Peruvian R-PP also fails to account for the role of illegal logging as a catalyst for deforestation and forest degradation. In the search for increasingly remote stands of commercially valuable old-growth mahogany, cedar and other species remaining on protected areas, indigenous lands or state forests, illegal loggers open paths and roads that then provide access to other actors, further increasing deforestation and forest degradation.

---

<sup>1</sup> Presidential Decree (Decreto Supremo) 004-2008-AG, January 2008, declares certain biofuel crops as of national interest.

<sup>2</sup> The project Palma del Oriente, by the Agrícola Caynarachi, is owned by the Romero group, the most important Peruvian investor group. Once the local communities were able to prove the deforestation generated by the Romero group in Barranquita, the Ministry of Environment intervened to stop the project.

<sup>3</sup> The hydroelectric project of Inambari would be the largest in Peru and fifth largest in Latin America, and would provide energy to Brazil as the largest of six hydroelectric projects in process. The project has generated strong opposition from the local communities affected: 65 communities in three regions of the country would have to be relocated. For more details, see the Bank Information Center website: <http://www.bicusa.org/en/Project.aspx?id=10078>.

<sup>4</sup> According to the Peruvian El Comercio newspaper, the Romero group exported its first shipment of ethanol to the Netherlands, last December. The projections for this year are that Romero group and Maple would produce about 800,000 liters of ethanol a day, almost all of which would be exported mainly to Europe. (El Comercio, December 13, 2009: “La exportación de etanol peruano ya es una realidad”.)

The proposal identifies “subsistence agriculture” and “migratory agriculture” as the main causes of deforestation. It argues that deforestation rates are higher in indigenous areas. This statement contradicts recent studies (Oliviera et al 2007; Hvalkoff 2006<sup>5</sup>). The proposal does not analyze, nor does it define, who the actors behind deforestation are. This is problematic given the high rates of legal and illegal deforestation that affect the Peruvian forests and which involve powerful economic groups.

The document briefly mentions national policies that have driven deforestation, but it does not propose how to change them.

## **2. Land tenure and respect for the rights of indigenous peoples**

The R-PP does not recognize indigenous peoples as rights-holders, despite this being guaranteed by the Peruvian Constitution and international instruments recognized or adopted by Perú, such as the International Labor Organization, ILO 169 and the United Nations Declaration of Indigenous Peoples. This is a serious flaw. Furthermore, it neglects the organizational processes of these peoples. It mentions native communities, but it does not refer to the existing indigenous organizations. Indigenous peoples and their organizations are key actors and rights-holders, yet they have not been properly taken into account.

The proposal fails to comprehensively acknowledge that the Peruvian environmental legislation and the legal framework for indigenous peoples’ rights have serious deficiencies. Indeed, the Peruvian legal framework for the recognition of indigenous ancestral lands is one of the weakest and most inadequate in the region. Legislation in neighbouring countries – Brazil, Bolivia, Ecuador and Colombia – has been modified and currently recognises, to a greater or lesser extent, the social and environmental importance of titling sufficient tracts of land that are in accordance with the use and ancestral possession of the various indigenous groups. However, the only property rights for indigenous groups recognized by Peruvian legislation are those which are also guaranteed to native and peasant communities. The area of land granted is small and far from coinciding with ancestral uses. Moreover, in recent years, several governmental decrees have attempted to further weaken both environmental legislation and the limited rights of forest communities.

There is no reference to the conflicts resulting from the insufficient recognition of indigenous territories and the lack of an adequate land titling policy. The current state of titling enables these territories to be regarded as “free areas” for REDD projects or large-scale exploitation. The R-PP not only ignores the weakness of the Peruvian framework with respect to indigenous lands and territories, but also fails to mention that there have been serious problems in its implementation. Currently, there are more than 300 new communities awaiting land titling, and another 500 waiting for the expansion of their existing titles; at the same time, the technical dossiers of the proposals to create communal reserves and territories for communities in voluntary isolation presented to the government are still pending approval.

---

<sup>5</sup> Oliveira, P.C., G.P. Asner, D. E. Knapp, A. Almeyda, R. Galván Gildemeister, S. Keene, R. F. Raybin, R.C. Smith. 2007. “Land-Use Allocation Protects the Peruvian Amazon”, *Science* 317. ( 5842): 1233 – 1236.  
Hvalkof, S. 2006 “Progress of the Victims. Political Ecology in the Peruvian Amazon”. In: Reimagining Political Ecology, “Ecologies for the Twenty-First Century Series” pp. 195-233, (eds.) Aletta Biersack and James B. Greenberg, Duke University Press, Durham.

The R-PP mentions that under the Peruvian Constitution all forests belong to the State. However, the proposal does not mention the need to define usufruct rights. If the indigenous peoples can harvest and sell non timber forest products such as Brazil nuts, can they do the same for carbon? The R-PP does not address questions related to carbon ownership. The benefits, including carbon rights, should belong to indigenous peoples and local communities that conserve the forests through their sustainable production systems.

The proposal mentions the need to complete a land use planning process as well as the creation of a forest registry as important parts of a forestry policy in the country. However, it does not describe how the State will ensure civil society participation, particularly that of indigenous peoples and their legitimate representatives, in this process. This is of great concern given that the process as proposed will certainly affect some of the indigenous peoples' lands and territories.

### **3. Consultation and Participation of civil society, in particular indigenous peoples**

Component 1b (Stakeholder Consultation and Participation) recognizes the importance of consultation and participation with stakeholders in the development and implementation of national strategies (p.20). It is suggested that existing platforms for communication used by both the government and civil society – including indigenous peoples and local communities – are capitalized on. However, there is no discussion about how this will function in reality, or who will be in charge of ensuring that engagement is meaningful.

It is important to stress that any consultation process must involve all structural levels of the indigenous organisations, from the respective villages and federations, to the regional and national organization. In the R-PP document, consultation is merely reduced to keeping the actors informed. At no point does it discuss how indigenous peoples are going to participate in the benefits of REDD initiatives or which actors from indigenous civil society will represent the indigenous communities in this process.

Indigenous peoples are mainly regarded as recipients of benefits from REDD projects and not as actors whose participation is essential in the design and implementation of a National REDD Strategy. It is important to remember that the first drafting of the R-PP was done without any consultation with indigenous organizations, which resulted in its rejection by the World Bank. We recognize that since that time some efforts have been made to request input from indigenous representatives. However, the State and other stakeholders must recognize and take into account the huge demands on institutional capacity, time and resources that are put on legitimate indigenous representatives by the numerous simultaneous processes currently in play in Perú, with respect not only to REDD but also to a number of key legal reforms. Moreover, the aftermath of the Bagua conflict in 2009 – both formal dialogue with the government as well as the persecution of several key leaders – has occupied a great deal of time and capacity. Given that indigenous peoples are rights holders over the majority of Perú's forest lands, they are not incidental to the REDD strategy process but rather central to it, and we argue that the state should re-orient its processes and timelines with this fact in mind.

#### **4. Capacity Building**

The “REDD Technical Group” mentioned in the R-PP includes several organizations from civil society and government, but it does not incorporate the indigenous regional organizations. According to the R-PP this group will grow in size, have a more active role and participate in the “Strategy for the Preparation Phase of REDD in Perú”. Indigenous organizations and federations should have an active role in the design of policy documents on REDD. Indigenous peoples should also actively participate in all the R-PP phases: design, implementation, monitoring and benefit sharing.

Despite the fact that the R-PP states the need for capacity building at all levels, there is no discussion about what the objective and target groups should be or how and when it is going to be delivered. The current proposal does not explain, for example, how information will be available in advance and how the evaluation and suggestions of key rights-holders, such as the indigenous peoples and their organizations, will be taken into account. Nor does it explain how questions raised during the consultation phase will be included in the National strategy for REDD implementation after the consultation phase is completed.

Capacity building activities only make sense if they result in a process in which key rights-holders such as indigenous groups and their organizations have real influence in the design of the proposal and the implementation of a REDD strategy. However there is no mechanism to evaluate the quality of this participation.

#### **5. Governance**

Despite good governance being internationally acknowledged as key to REDD success, the section on governance in Perú’s R-PP, presented under Component 2a (Assessment of Land Use, Forest Policy and Governance) is brief and poor. It mentions a new National Forest Policy being developed, as well as an ongoing decentralization process. Language around governance is limited to a single paragraph where corruption is singled out as one of the main causes behind weak governance. No discussion is included on how to address this problem, and no other references are made to governance challenges or how to address them.

The R-PP does not deal with issues of illegality and enforcement in sufficient detail. The lack of relevant policies – a National Forest Policy, a Land Planning Policy, a Biodiversity Conservation Policy, etc – is mentioned as a weakness enabling illegal logging to continue. There is no substantial discussion, however, about how illegal logging, law enforcement and capacity are going to be addressed.

In 2009 and 2010, inspections by OSINFOR – the national office in charge of the monitoring and verification of the sustainable use of forests – found that in 51% of the 180 verifications conducted the timber being commercialized had been extracted from unauthorized areas, in other words, illegally extracted. This timber is being laundered into national and international markets with legal documents. In the same report, OSINFOR concluded that the 2008 and 2009 quotas for protected timber species breached Perú’s commitment to CITES, demonstrating non-compliance with international instruments.

The current R-PP draws no connection between REDD readiness and the systemic governance failures that perpetuate illegal logging. However, this same inability to exert basic control over forest sector activities will also be a key concern of any donors or investors in REDD activities. The factors identified as contributing to systematic illegal logging<sup>6</sup> – including unprotected and poorly paid personnel, lack of transparent and adequately resourced control systems or independent monitoring, corruption and judicial impunity – are the same issues that will undermine REDD implementation.

Transparency and the distribution of information related to REDD is acknowledged as fundamental (p.66). There is recognition of the importance of this to enable better citizen control and monitoring. The R-PP also states that permanent participation of all stakeholders must be established throughout the REDD process. The document does not, however, discuss how this participation and transparency is going to be realized. Furthermore, a recent transparency report card produced in Perú (<http://www.dar.org.pe/transparenciaforestal/inicio.html>) has concluded that the levels of transparency in the forest sector are lower than the average in the country's public institutions.

The R-PP proposal states the need for public consultation in the development of a National Environmental Strategy (SESA). It also mentions the need to have environmental impact studies, and commits Perú to adopting all the social safeguards recommended by FCPF. Nonetheless, it does not explain which measures will be adopted or how they are going to be implemented. For example, the establishment of clear mechanisms to resolve conflicts related to REDD projects, such as conflicts over land, carbon ownership or benefit sharing, is not discussed. According to the Peruvian Ombudsman (*La Defensoría del Pueblo*), over 50% of social conflicts in Perú are over environmental issues<sup>7</sup>. The dramatic June 2009 events in Bagua illustrated that Perú lacks effective democratic mechanisms for tackling and resolving conflicts. The response from the current government was the persecution and criminalization of indigenous leaders. In this context, it is urgent to consider the creation of appropriate conflict resolution mechanisms and also clarify how it will ensure the participation of indigenous peoples and their organizations and federations in the treatment and resolution of conflicts that affect them directly or indirectly.

In addition, the R-PP proposal does not explain how the Peruvian Government will guarantee the transparency of this process in relation to goals, budgets, schedule and distribution of the REDD benefits. It is uncertain how Peruvian civil society, in particular indigenous peoples and their organizations, will participate in these matters. Without the active and full participation of indigenous peoples, the National REDD Strategy will lack legitimacy.

## 6. Monitoring

The draft proposal identifies a number of institutions directly and indirectly involved with REDD (p. 7-10). It states that the implementation of REDD schemes and their supervision and monitoring is the responsibility of the Ministry of Environment (MINAM), which is also the focal point of the UNFCCC. The agency tasked with supervising and monitoring forest activities on the ground is OSINFOR, which falls under the Presidency of the Council of Ministers.

---

<sup>6</sup> See for example World Bank (2006) "Análisis Preliminar sobre Gobernabilidad y Cumplimiento de la Legislación del Sector Forestal en el Perú"; Environmental Investigation Agency (2010) "Peru's Forest Sector: Ready for the new International Landscape? Civil Society Perceptions".

<sup>7</sup> Ivan La Negra, Adjunto Defensorial, "Una Reforma Incompleta." *El Comercio Perú*, 12 May 2010.

Regional Governments are acknowledged to have ‘an important role’ in controlling forest activities under their jurisdiction and compliance with national forest policy.

There is no discussion of a system of checks and balances, which makes it difficult to assess whether transparency, accountability and equity will be ensured.

Component 4b of the R-PP, which is to address monitoring of benefits and impacts other than carbon, is not included in the narrative of the R-PP, despite being referenced in the table of contents. There is therefore no discussion of monitoring of social and environmental safeguards, or governance. Only monitoring of carbon is discussed. The proposed monitoring system is thus not comprehensive and will fail to provide adequate information on REDD implementation.

Similarly, there is no discussion of how REDD will be monitored independently, involving civil society and stakeholders, as required under components 4b and 2c. This should be an essential building block of the overall architecture for monitoring REDD governance, providing credibility that Perú is implementing effectively the governance reforms it commits itself to deliver. A properly functioning system for independent monitoring would identify and publicly report on systemic failures that undermine the success of REDD activities in Perú, and in so doing support the functioning of law enforcement. Independent monitoring would need to be implemented by a range of actors, of which empowered local civil society organizations are key. An effective system for independent monitoring in Perú needs to be proposed as part of Component 4b of the R-PP before it is approved. This will require a participatory approach including indigenous peoples, local communities and civil society.

## **7. REDD implementation schedule**

According to the schedule drafted in this proposal, Perú expects to implement the REDD strategy and enter carbon markets in 2013, only three years from now.

We believe that it is very unlikely that Perú will be able to make all the necessary legal reforms that allow for the implementation of a REDD strategy that respects indigenous peoples and local communities’ rights within this timeframe. It is equally unlikely that all necessary baselines studies will be completed or that indigenous peoples and their organizations will have participated actively in these initiatives. Moreover, it is improbable that national indigenous federations such as AIDSESEP, let alone regional indigenous organizations and federations or the communities themselves, will have sufficient and appropriate knowledge and information about the implications of the national REDD strategy proposed by the government and REDD projects.

It is important to remember that the draft forest law currently under discussion has been strongly criticized by AIDSESEP because it violates indigenous peoples’ rights. The Peruvian Ministry of Environment (Ministerio del Ambiente - MINAM) was only created in 2008 and it is improbable that by 2013 it will have enough technical capacity to implement a monitoring system that considers and respects the suggestions and experiences of indigenous peoples and other sectors of civil society.

The proposal points out that 19 pilot projects will be planned with the participation of civil society. AIDSEEP and other indigenous federations have not been informed, nor have they been invited to participate in the design of such projects.

## **8. Non-compliance with the FCPF Charter**

Article 3.1(d) of the FCPF Founding Charter provides that the FCPF will “Comply with the World Bank’s Operational Policies and Procedures, taking into account the need for effective participation of Forest-Dependent Indigenous Peoples and Forest Dwellers in decisions that may affect them, respecting their rights under national law and applicable international obligations “. Neither the process for developing the R-PP nor the R-PP itself meet this requirement. Indigenous peoples have not participated in the process, and their rights are not secured.

Article 3.1(c) of the Charter requires the FCPF to “Seek to ensure consistency with the UNFCCC Guidance on REDD”. An agreement on REDD is yet to be finalized under the UNFCCC. However, the draft text incorporates safeguards, which include respect for indigenous peoples’ rights and their full and effective participation. Perú’s R-PP would fail to comply with these provisions.

## **9. Impact of Perú’s Consultation Law on the R-PP**

On May 19, 2010, the Peruvian Congress approved the “Consultation Law”<sup>8</sup> which codified for the first time the obligations towards its indigenous peoples that Perú had accepted when it ratified the International Labor Organization’s Convention 169 in 1994. It is worth noting that even the Consultation Law does not entirely meet Peru’s obligations under Convention 169. In particular, the law does not explicitly grant indigenous groups the right of “veto” over legislation or projects that directly impact them. Nevertheless, the passage of the Consultation Law was greeted as a landmark victory by Perú’s indigenous communities, and a vindication of the indigenous people’s protests against the legislative decrees issued without consultation in 2008 that led to the violence in Bagua in June 2009. At present the President of Perú has yet to sign and publish the law, but it is expected to become binding law in the near future. The law will take effect 90 days after its publication; thus the State could argue that the Consultation Law did not apply to the promulgation of the first draft of the R-PP. However, the process should follow the new legislation as the R-PP is now finalized, and will cover the implementation of the R-PP, during which time period the Consultation Law is anticipated to apply.

Furthermore, as the Consultation Law represents a significant step forward for indigenous rights in Perú, the R-PP should explicitly refer to the need for the State to satisfy the law’s requirements in developing Perú’s national REDD policies and REDD pilot projects. The Consultation Law lays out principles of consultation that provide more detail and stronger requirements from the State for consultation than those laid out in the current draft of the R-PP. These include the requirement that the State provide all relevant information to indigenous organizations and federations with adequate time for them to use this information in their dialogue with the State. It also requires a “reasonable timeframe” (*plazo razonable*) for indigenous groups to discuss and come to a conclusion about their stance with regards to any law or program affecting them. The law does not define “reasonable timeframe”; this should

---

<sup>8</sup> The full name of the law is “Ley del Derecho a la Consulta Previa a los Pueblos Indígenas u Originarios Reconocido en el Convenio No. 169 de la Organización Internacional del Trabajo”, and is known in Spanish as the “Ley de Consulta”.



therefore be defined in the R-PP as the time needed by indigenous organizations and federations to reach an informed decision under the requirements of their internal laws and customs. The law states that the goal of the consultations should be “an agreement **or consent**” (*un acuerdo o consentimiento*, emphasis in original) between the indigenous federations and the State, and further that such agreement is obligatory for both sides. However, the law also allows for the government to make the final decision regarding the implementation of the legislation or program, and it asserts that in cases in which the “obligatory” agreement is not reached, the State can then implement the law or program so long as it also adopts all measures necessary to guarantee the collective rights of indigenous peoples (“*adoptar todas las medidas que resulten necesarias para garantizar los derechos colectivos de los pueblos indígenas u originarios*”). This is a vague and contradictory standard; thus the R-PP should clarify that in following the requirements of the Consultation Law any REDD national policy or pilot program will only be finalized if the State does indeed formalize such “obligatory” agreements with directly impacted indigenous federations.

### **10. Institution involved in REDD planning**

Perú’s R-PP process has thus far been entirely driven by the Ministry of Environment. There has been no concerted attempt to coordinate efforts with, for example, the Ministry of Agriculture - in which the Forestry Authority sits – or the Ministries of Mining and Oil, Trade, Energy, Housing, Economy or Transport. In practice, stakeholder meetings focused on the R-PP have overlapped with meetings about the Forestry Law making attendance at both meetings impossible, as though the latter were not integrally related to deforestation and degradation and vice versa. Decisions about allocation of agricultural and timber concessions are made by the Ministry of Agriculture. Decisions about allocation of mines are made by the Ministry of Mining and Oil. Land titling and zoning is the responsibility of the Ministry of Housing. Decisions about roads and infrastructure, energy policy, and financial incentives are made by other ministries. There is little indication that any serious coordination among Ministries has occurred. The Ministry of Environment has only existed for two years and is quite limited in its political capacity within the Peruvian government, while more traditional Ministries – especially those attracting and managing large-scale international investment projects – have considerably more political power and influence with the President. If Perú’s REDD strategy is to have any weight or legitimacy from stakeholders within its own government, a far greater level of inter-sectoral discussion and coordination must occur.

Guyana, June 2010

**Rainforest Foundation Norway – [www.rainforest.no](http://www.rainforest.no)**

**Rainforest Foundation UK – [www.rainforestfoundationuk.org](http://www.rainforestfoundationuk.org)**

**Rainforest Foundation US – [www.rainforestfoundation.org](http://www.rainforestfoundation.org)**

**Environmental Investigation Agency – [www.eia-global.org](http://www.eia-global.org)**

**Global Witness – [www.globalwitness.org](http://www.globalwitness.org)**