



global witness

Making the Forest Sector Transparent

Annual Transparency Report

Country: Peru

Partner: Derecho, Ambiente y Recursos Naturales (DAR)

Year: 2009

Language: English

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Making the Forest Sector Transparent

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

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

Indicator assessment

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

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

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

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

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

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

Is there a Freedom of Information Act?

Yes, the right of access to information includes the right and duty to inform. The latter has to be interpreted as the freedom to inform as set forth in Article 2 numeral 4 of the Political Constitution of Peru.

Title: Political Constitution of Peru of 1993

Date: 30/12/1993

Source: <http://spij.minjus.gob.pe/CLP/contenidos.dll?f=templates&fn=default-constitucion.htm&vid=Ciclope:CLPdemo>

Language: Spanish

Timeliness: Yes

Completeness: Yes

What other rules provide for transparency?

In addition to any specific freedom of information laws, are there references to transparency in the Constitution, general laws, regulations, decrees etc. that all public institutions must adhere to (the next indicator is specifically about the forest sector)

There used to be different norms which contributed to transparency. Among the current norms, issued by the relevant public bodies, four are the main ones...

Title: Law of the Rights of Citizen Participation and Control, approved by Law N° 26300; Regulations on Transparency, Access to Public Environmental Information and Citizen Participation and Consultation

Date: 26/09/2001

Source: <http://spij.minjus.gob.pe/>

Language: Spanish

Timeliness: Yes

Completeness: Yes

Are there any forest sector specific laws / rules / statements that provide for transparency?

Are there any forest-specific written laws and regulations, key announcements or speeches that develop the right to access public information on the sector, for example a Service Charter.

Yes

Title: Regulations on Transparency, Access to Public Environmental Information and Citizen Participation and Consultation in Environmental Issues, approved by Supreme Decree N° 002-2009-MINAM.

Date: 17/01/2009; 15/12/2008

Source: <http://spij.minjus.gob.pe/>

Language: Spanish

Timeliness: Yes

Completeness: Yes

Is there any settlement process for disputes regarding access to information?

Are there clear, documented, and understood steps for resolving conflicts between transparency and confidentiality norms, or where / when authorities fail or refuse to provide information?
If so, is this dispute-settlement process well-advertised, not prohibitively costly and therefore realistically accessible to most people?

Yes, as stated in Article 11 of the Transparency and Access to Public Information Law, after completed the administrative channel, there is an option to initiate a dispute settlement administrative process (regulated by the Law No.27584), or the constitutional process of Habeas Data (regulated by the Constitutional Procedural Code). If no reply is provided through the administrative channel within the time set by law after access to information has been requested, or if the access to information is denied, the right to appeal can be claimed. If the latter is denied or not solved within the time set by law, the administrative channel is considered concluded.

31/05/2004. Constitutional Procedural Code, approved by Law N°28237. Partially accessible. Despite there being laws that develop and encourage access to dispute-settlement processes related to access to public information, in practice economic resources are required to cover the Judicial Process, time invested and legal advice.

The measures aimed at promoting accessibility include, among others:

- the principle of free-of-cost action by the plaintiff regulated by Article III of the First Title of the Constitutional Procedural Code.
- the optional support by the Lawyer in the case of Habeas Data Process, according to Article 65 of the Constitutional Procedural Code

Title: Consolidated Text of the Transparency and Access to Public Information Law, approved by Supreme Decree N° 043-2003-PCM; Consolidated Text of Law N° 27584

Date: 24/04/2003; 29/08/2008

Source: <http://spij.minjus.gob.pe/>
<http://spij.minjus.gob.pe/CLP/contenidos.dll?f=templates&fn=default-codproconstitucional.htm&vid=Ciclope:CLPdemo>

Language: Spanish

Timeliness: Yes

Completeness: Yes

Do communities have legal standing?

Does any part of the codified law recognise 'a community' as 'a legal person', for example able to hold property titles or sue and be sued?

Yes, according to Article 89 of the Political Constitution of Peru, Native and Peasant Communities are granted legal existence and legal capacity..

Despite this, in order to be registered in the Register of Legal Persons, previous administrative recognition is required, as established in Article 2 of the Regulations of the General Law of Peasant Communities, approved by Supreme Decree No.008-91-TR, and in Numeral 4.1 of the Guideline which defines the applicable normative framework and establishes the norms regulating the registration procedure for Native Communities, approved by the Resolution of the National Superintendent of Public Registers No.157-2001-SUNARP-SN.

Title: Political Constitution of Peru 1993; Law of Native Communities and Agricultural Development of the Forest and eyebrow of the jungle, approved by Law Decree N° 22175; General Law of Peasant Communities

Date: 30/12/2003; 09/05/1978; 14/04/1987; 15/02/1991; 10/06/2001

Source: <http://spij.minjus.gob.pe/CLP/contenidos.dll?f=templates&fn=default-constitucion.htm&vid=Ciclope:CLPdemo>

<http://spij.minjus.gob.pe/>

Language: Spanish

Timeliness: To be assessed

Completeness: To be assessed

Do NGOs have legal standing?

Does any part of the codified law recognise NGOs as 'a legal person', for example able to hold property titles or sue and be sued?

Yes, in order to achieve legal recognition they need to establish themselves as association, foundation or committee, the first and second options being the more common.

Title: Civil Code, approved by Legislative Decree N° 295

Date: 25/07/1984

Source: <http://spij.minjus.gob.pe/CLP/contenidos.dll?f=templates&fn=default-codcivil.htm&vid=Ciclope:CLPdemo>

Language: Spanish

Timeliness: Yes

Completeness: Yes

Is there a national forest policy document? Is it available?

Is there an explicit current document described as the national forest policy? If so, has it been used to inform the forest law and other norms (or has it been produced after the forest law)? Is it up-to-date or does it require revisions in the light of REDD, mining, or other threats and opportunities?

An explicit National Forest Policy does not exist, however there are some guidelines developed within a broader range of political tools

Title: Public Constitution of Peru of 1993
National Environmental Policy, approved by Supreme Decree N° 012-2009-MINAM
National Agreement
Protocol of Amendment to the Peru-US Trade Promotion Agreement: Annex 18.3.4. Annex on the Forest Sector Management, approved by the Congress of the Republic by means of Legislative Resolution N° 29054, and ratified by Supreme Decree N° 040-2007-RE
National Strategy to Fight Illegal Logging in Peru, declared of national interest by Supreme Decree N° 019-2004-AG;

Date: 30/12/1993
25/05/2009
22/07/2002
25/06/2007
05/05/2004

Source: <http://spij.minjus.gob.pe/CLP/contenidos.dll?f=templates&fn=default-constitucion.htm&vid=Ciclope:CLPdemo>
http://www.minam.gob.pe/index.php?option=com_docman&Itemid=65
<http://www.acuerdonacional.gob.pe/DocumentosAN/finalacuerdonacional.pdf>
<http://www.tlcperu-eeuu.gob.pe/index.php?ncategoria1=222&ncategoria2=223>
<http://spij.minjus.gob.pe/>

Language: Spanish

Timeliness: Yes

Completeness: Yes

Is the forest law available?

The current law is the Law of Forestry and Wildlife adopted in 2000. In June 2008 Legislative Decree No. 1090 was approved, but it was repealed in June 2009.

Title: Forests and Wildlife Law, approved by Law N° 27308;
Regulations of the Forests and Wildlife Law, approved by Supreme Decree N° 014-2001-AG;
Law suspending the application of the Legislative Decrees Nos. 1090 and 1064, approved by Law N° 29376;
Law revoking Legislative Decrees No. 1090 and 7064, approved by Law N°29382.

Date: 16/07/2000
09/04/2001
11/06/2009
19/06/2009

Source: <http://spij.minjus.gob.pe/>

Language: Spanish

Timeliness: Yes

Completeness: Yes

Are all forest regulations, procedures, decrees, etc. available?

Are all lower level norms (regulations, procedures, decrees, technical directives etc) that make the forest laws operative available? (This indicator refers to rules directly related to forest operations. See next indicator for rules related to other operations affecting forests).

Partially. Part of the forest legal framework of 2008 and 2009 is accessible in the Official Website of the Ministry of Agriculture.

The Ministry of Agriculture has no website which allows access to the forest legal framework previous to 2008.

Date: Search in the Intsitution Website: 18 Oct. 2009

Source: <http://www.minag.gob.pe/normas-legales/leyes.html>

Are forest-related policies, laws, agreements etc public?

Are all other significant regulations, procedures, decrees, technical directives etc. that affect forests available (for example norms related to carbon and REDD; agriculture and biofuels; conservation and national parks; roads, energy and other infrastructure)?

The regulations from other sectors that affect the forest are available. DAR has compiled these policy tools in the report "Compilation and mapping of stakeholders in deforestation processes in the northern Peruvian IIRSA South Axis"

Title: National Environmental Policy, approved by Supreme Decree N° 012-2009-MINAM; Policy tools gathered in the document "Systematization and Mapping of the Actors in the Deforestation Process in the IIRSA Hubs North and South Peru", developed by DAR Forest Programme.

Date: 25/05/2009;
April 2009;

Source: http://www.minam.gob.pe/index.php?option=com_docman&Itemid=65
<http://www.dar.org.pe/transparenciaforestal/indexdocumentos.html>

Language: Spanish

Timeliness: No

Completeness: No

Has the country signed up to international agreements?

Which forest-related international agreements or processes has the country signed up to? (See www.foresttransparency.info/report-card/downloads/ for the list of agreements monitored.)

Yes, Peru has signed several international agreements.

Title: The state approves the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) by Law Decree N° 21080;
The state approves the International Tropical Timber Agreement 1994, adopted in Geneva and signed by Peru, by Legislative Resolution N° 26515;
The State approves the International Tropical Timber Agreement 2006 by Legislative Resolution N° 29474;
The state approves the Convention on Biological Diversity adopted in Rio by Legislative Resolution N° 26181;
The state approves the UN Framework Convention on Climate Change, approved by Legislative Resolution N° 26185;

Protocol of Amendment to the Peru-US Trade Promotion Agreement: Annex 18.3.4. Annex on the Forest Sector Management, approved by the Congress of the Republic by means of Legislative Resolution N° 29054, and ratified by Supreme Decree N° 040-2007-RE. Supreme Decree N° 009-2009-MINCETUR establishes 17 January 2009 as the come into force and implementation date.

Date: 22/01/1975;
04/08/1995;
14/12/2009;
11/05/1993
12/05/1993
25/06/2007

Source: <http://spij.minjus.gob.pe/>
<http://www.tlcperu-eeuu.gob.pe/index.php?ncategoria1=222&ncategoria2=223>

Language: Spanish

Completeness: Yes

Is there a national forest forum?

Is there any form of government-recognised national level roundtable dialogue which meets regularly (annually or more often) to allow citizens to raise issues of concern with the national forest authorities? If so, what is the status of any discussions or decisions made (are they documented; are they legally binding in any way)?

Partially. As far as permanent dialogue spaces goes, Article 5 of the Forests and Wildlife Law, approved by Law No.27308, establishes the creation of the National Consultative Council of Forest Policy (CONAFOR) which, similarly to the National Table for Forest Dialogue and Consensus (MNDCF), formalised by Ministerial Resolution No.235-2005-AG, has not been implemented so far.

Currently, the participatory and decentralised process of revision and up-date of the Legislation on Forests and Wildlife is underway. This is established by Ministerial Resolution No.0544-2009-AG, whose conclusions will have to be merged with the agreements of the National Group of Coordination for the Development of Amazonian Peoples, which is in charge of outlining a Comprehensive Sustainable Development Plan for Amazonian Peoples, with regard to Education, Health, Titling and Formalisation of Lands and other necessary measures, according to what Supreme Resolution No.117-2009-PCM establishes, and which is modified by the Supreme Resolution No.211-2009-PCM

Title: Forests and Wildlife Law, approved by Law N° 27308;
The state formalises the Roundtable for Forest Dialogue and Consensus (MDCF), by Ministerial Resolution N° 235-2005-AG;
The state declares a priority the review and update of the Forests and Wildlife Legislation, by Ministerial Resolution N° 0544-2009-AG;
The state sets up the National Group of Coordination for the Development of Amazonian Peoples, which is in charge of outlining a Comprehensive Sustainable Development Plan for Amazonian Peoples, with regard to Education, Health, Titling and Formalisation of Lands and other necessary measures, by the Supreme Resolution No.117-2009-PCM;

Date: 16/07/2000
01/03/2005
01/08/2009
11/06/2009

Source: <http://spij.minjus.gob.pe/>

Language: Spanish

Are there local forest forums?

Are there any government-recognised local roundtable dialogue forums which meets regularly (annually or more often) to allow citizens to raise issues of concern with the forest authorities? If so, what is the status of any discussions or decisions made (are they documented; are they legally binding in any way)?

The state has set up a Rountable of Forest Consensus in some regions.

Title: The state sets up the Rountable of Forest Consensus in the Region of Lambayeque, in accordance with Regional Ordinance N° 005-2003-GR.LAMB-PR;
The state establishes the Regional Rountable of Dialogue and Forest Consensus of Madre de Dios, in accordance with Regional Ordinance N° 015-2009-GRMDD-CR;
Roundtable Dialogue on Biological Diversity of the Junín Region, recognised by Regional Ordinance of Junín Regional Government;
Roundtable to Fight Illegal Logging in the Iquitos Region, recognised by Regional Decree by Loreto Regional Government;
Roundtable for Dialogue and Consensus of Leoncio Prado y Marañon;

Date: 28/05/2003
07/06/2009

Source: <http://spij.minjus.gob.pe/>
http://www.regionhuanuco.gob.pe/Gerencias_regionales/recursosnaturales/images/Mesa%20de%20Dialogo/images/DIPTICO%20TALLER%20MANEJO%20BOSQUES%20FINAL.swf
<http://www.regionhuanuco.gob.pe/orci/recursosnaturales/images/Mesa%20de%20Dialogo/index.html>

Language: Spanish

Timeliness: Yes

Completeness: Yes

Is there an established, government-recognised list of stakeholders?

Is there an official list of individual stakeholders or stakeholder types whom the government is obliged to consult or to share information with?

An official identification of the actors of the sector does not exist. However, some stakeholders can be identified as part of different institutional assessments and according to their participation in the design of some policy tools.

Some actors of the forest sector are recognised by Ministerial Resolution No.315-2005-MINAG, which formalises the structure of the National Roundtable for Dialogue and Consensus.

Are reports on consultation processes public?

Does government publish the results of any forest-related consultation processes?

No (So far, no consultation process in the forest sector has been carried out)

Is there a procedure for consultation on new norms?

Are there any documented procedures (in the form of regulations, official guidance notes etc) that lay out the methodology for consultations that should take place regarding new forest-related policies, laws, regulations etc? If so, is it implemented?

The development of Concerted Development Plans at regional level and the Participatory Budgets can be included, but these are regional norms that we are not analyzing in the first year of the Report Card.

Yes. Among others, there is the case of the Organic Law of Municipalities, approved by Law No.27972, whose Title VIII regulates the Rights to Local Participation and Control.

Title: Law on the Right of Citizens Participation and Control, approved by Law No 26300; Regulations over Transparency, Access to Environmental Public Information and Citizens Participation and Consultation in Environmental Issues, approved by Supreme Decree N° 002-2009-MINAM; Organic Law of Municipalities , approved by Law N° 27972.

Date: 26/09/2001
17/01/2009
27/05/2003

Source: <http://spij.minjus.gob.pe/>

Language: Spanish

Timeliness: Yes

Completeness: Yes

Is there a published policy on forest tenure?

It there an explicit current document which defines or describes land and forest tenure policy? If so, has it been used to inform the forest law and other norms (or has it been produced after the forest law)? Is it

up-to-date or does it require revisions in the light of REDD, mining, tenure conflicts, or other threats and opportunities?

No. But, as a natural resource, lands with major forest use potential cannot be sold (Political Constitution of Peru, and Constitutional Law of Natural Resources Use). The Forests and Wildlife Law, approved by Law No.27308, sets the form for their use.

Title: Political Constitution of Peru of 1993 (Art. 66^o);
Constitutional Law for the sustainable use of natural resources, approved by Law N° 26821;
Forests and Wildlife Law, approved by Law N° 27308.

Date: 30/12/1993
26/06/1997
16/07/2000

Source: <http://spij.minjus.gob.pe/CLP/contenidos.dll?f=templates&fn=default-constitucion.htm&vid=Ciclope:CLPdemo>
<http://spij.minjus.gob.pe/>

Language: Spanish

Timeliness: Yes

Completeness: Yes

Is there a register of private forestland owners? Is it accessible to the public?

Where private forestland ownership is possible within the Constitution and legal framework, can the ownership of each area of forest be publically accessed?

There is no register of ownership of forest lands. Though there is a Register of Concessions of Forests, Wildlife and for Forestation and Reforestation.

Title: Directive N° 001-2006-SUNARP/SN which regulates the registration of concessions on Forests, Wildlife and for Forestation and Reforestation, regulated by the Forests and Wildlife Law, Law N° 27308, approved by Resolution of the National Supervisor of Public Registers N° 070-2006-SUNARP-SN.

Date: 14/03/2006

Source: <http://spij.minjus.gob.pe/>

Language: Spanish

Timeliness: Yes

Completeness: Yes

Is there a difference in law between ownership and use?

Does the law make a clear difference between owners and users of forests / forest products? If so, please explain it.

Yes. Ownership implies the possibility to use, enjoy, manage and claim a good - while rights over forest lands are limited to the use of their fruits and products by those entitled to such rights. However, natural and forest resources are National Heritage, recognized by the Political Constitution of Peru; for this reason, natural resources are not given out to third parties as private property, as they are not property of the state.

Title: Civil Code, approved by Legislative Decree N° 295;
Constitutional Law for the sustainable use of natural resources, approved by Law N° 26821;
Forests and Wildlife Law, approved by Law N° 27308.

Date: 25/07/1984
26/06/1997
16/07/2000

Source: <http://spij.minjus.gob.pe/CLP/contenidos.dll?f=templates&fn=default-codcivil.htm&vid=Ciclope:CLPdemo>
<http://spij.minjus.gob.pe/>

Language: Spanish

Timeliness: Yes

Completeness: Yes

Is the ownership of different forest products clear?

Is it codified and understood who has rights to timber, minerals, non-timber forest products, wildlife, water, carbon etc? Are all these types of product available to all, or is there some form of differentiation (for example, private forest owners can issue the right to log, but only the state can issue the right to mine; or only the state can issue the right to log, but local communities who own the land can issue the right to collect non-timber forest products).

Yes, according to what established in Article 4 of Law 26821, Constitutional Law on the Use of Natural Resources: "Natural resources, kept in their original place, being these renewable or not, are National Heritage. The fruits and products of natural resources obtained in the form established by the Constitutional Law on the Use of Natural Resources, i.e. by means of award of concessions, belong to the owners of the rights granted"

Title: Constitutional Law for the sustainable use of natural resources, approved by Law N° 26821;
Forests and Wildlife Law, approved by Law N° 27308.

Date: 26/07/1997

16/07/2000

Source: <http://spij.minjus.gob.pe/>

Language: Spanish

Timeliness: Yes

Completeness: Yes

Can you provide examples of forest tenure disputes?

What information can you provide on the extent of disputes over either (i) the right to land, (ii) the right to forest use or products, or (iii) the ways in which these rights are administered?

Forest lands cannot be sold.

However, the following conflicts emerge:

Rights referred to the ownership of forest lands: conflicts of superposition of other rights conferred on native communities' lands (Amazonians indigenous communities) or peasant communities (Peasant indigenous communities) or rural properties.

Over resources: conflicts caused by illegal logging and other activities affecting the forest resource.

On resource management: issuing special procedures that contradict the general rule. For example, the Ministerial Resolution No. 0192-2009-AG

Yes. According to the Monthly Report on Social Conflicts No.67 of the Ombudsman, 132 socio-environmental conflicts have been registered in September 2009 (most of them related to the implementation of high-impact extractive activities in indigenous peoples' territories), 16 communal conflicts, 14 conflicts for land boundaries and 4 specifically related to selling lands illegally. Furthermore, there might be an undetermined number of unregistered overlaps.

Title: Monthly Report N° 67 on Social Conflicts, produced by the Department for Conflicts Prevention and Governance Governability of the Ombudsman.
Ministerial Resolution N° 192-2009-AG

Date: 22/02/2009

Source: <http://www.defensoria.gob.pe/modules/Downloads/conflictos/2009/conflictos-67.pdf>
<http://www.asesorempresarial.com/web/pdf/22022009.pdf>

Language: Spanish

Accuracy: Yes

Is there a dispute-settlement process for tenure conflicts?

Are there clear, documented, understood and accessible steps for resolving tenure conflicts?

Yes. However it's not possible to determine the exact number of lawsuits because the government has not systematized such information.

Title: There is no detailed information about the judicial process on land issues.

Date: Date of review: 18 October 2009

Source: <http://www.pj.gob.pe/CorteSuprema/cij/index.asp?opcion=estadistica>

Language: Spanish

Accuracy: No

Timeliness: Yes

Are ownership and forest land use maps available?

It is possible, at national or sub-national level, to view or obtain maps indicating forest ownership and current permit-holders for different forest use? So, for example, it is possible to calculate what proportion of forest land has documented title, or what proportion is under logging concessions? Are such maps digitised?

There is no Unified National Register, but (according to the Resolution N° 090-2007-COFOPRI/DE) there is the project to set up a National Plan of Formalisation with the aim of achieving the sustainability of the Process of Formalisation implemented by the National Body for the Formalisation of Ownership (COFOPRI).

Title: Resolución Directoral N° 090-2007-COFOPRI/DE

Date: 20/11/2007

Source: <http://www.cofopri.gob.pe/pnf.asp?i=0>
<http://www.cofopri.gob.pe/pdf/pnf/RS-090-2007-COFOPRI-DE.pdf>

Language: Spanish

Accuracy: Yes

Timeliness: Cannot be assessed

Completeness: Cannot be assessed

Do permits exist for all uses / services?

In addition to logging permits, are there any permits for conservation activities, environmental services (e.g. water conservation, or carbon storage), or eco-tourism services provided by forests?

Yes, these rights are regulated in titles relating to land use planning, and management and utilization of forest resources of the Forests and Wildlife Law, as well as in its regulation. Among those are: the purpose timber forest concessions, forest concessions for non-wood (concessions for other forest products and concessions for ecotourism, conservation and environmental services).

Title: Forests and Wildlife Law, approved by Law N° 27308;
Regulation of the Forests and Wildlife Law, approved by Supreme Decree N° 014-2001-AG.

Date: 16/07/2000
09/04/2001

Source: <http://spij.minjus.gob.pe/>

Language: Spanish

Timeliness: Yes

Completeness: Yes

Is information on any forest land unallocated or not under any type of concession published?

Is there a 'pool' of forest, owned by the state or others, for which permits or user-rights are potentially available?

Yes. 18.743,775 ha of Permanent Production Forests might be open to concession. 7.115,368 ha were allocated in 2005. No new forest concession allocation process has been launched, because of the current process of decentralisation to Regional Governments.

Title: PAUTRAT, Lucila and others. "Preliminary Analysis on Governance and Compliance with the Forest Law Legislation in Peru". Washington;
SUÁREZ DE FREITAS, Gustavo. "Vision of the National Forest Authority as part of the Framework of the Sustainable, Competitive and Inclusive Forest Development in the Peruvian Amazon". Paper presented in the International Seminar "Programme of Sustainable, Competitive and Inclusive Forest Development in the Peruvian Amazon", Lima.

Date: October 2006
September 2009

Source: <http://siteresources.worldbank.org/EXTFORESTS/Resources/985784-1217874560960/PeruAnalysis.pdf>

Language: Spanish

Accuracy: Yes

Is it clear how the decision to start a round of permit allocation is made?

The first step in the allocation of permits is to decide where: Are there clear, documented, and understood steps for deciding to allocate permits, for example when to allocate which parts of the state forest to logging, mining, carbon, ecotourism or other concessions?

There are legal devices which identify the people in charge and the periods for the assignment of forest concessions in Permanent Production Forests. This is established in Title V of the Regulations of Law 27308 - Law of Forests and Wildlife.

Title: Forests and Wildlife Law, approved by Law N° 27308;
Regulations of the Forests and Wildlife Law, approved by Supreme Decree N° 014-2001-AG.

Date: 16/07/2000
09/04/2001

Source: <http://spij.minjus.gob.pe/>

Language: Spanish

Timeliness: Yes

Completeness: Yes

Is there a stakeholder consultation process prior to permit allocation?

At the time an area of forest is identified for allocation to any sort of concessionaire, are stakeholders (other than the forest owner) consulted, for example on any conditions to be attached to the permit?

No information was found on consultation and participation prior to the granting of concessions started in 2000.

Are the areas assigned for each round of permit allocation advertised?

When an area of forest is identified for allocation to any sort of concessionaire, is this publicly advertised so that the opportunity for new permits / user rights is open to anyone?

In the case of forest concessions for wood, before each competition the areas of forests to be assigned are published. In the case of other types of concessions and permits, the areas are primarily determined part request.

Title: For example: the state approves the Technical Study of the Procedure for the Promotion and Determination of the Size of the Unit of Use for Permanent Production Forests. Supreme Decree No. 019-2002-AG.

Date: 20/02/2002

Source: <http://faolex.fao.org/docs/texts/per31094.doc>

Language: Spanish

Is there transparent independent verification (due diligence) of the eligibility of any applicants for forest permits?

Prior to the final allocation of any area of state forest to logging, mining, carbon, ecotourism or other concessions are there "due diligence" checks on the eligibility, suitability, or (technical and/or financial) capability of applicants, and is this analysis made public?

The ad hoc Commission set up for the Process of Assignment of Timber Logging Concessions has been in charge of the supervision of compliance with the requirements and the management of the public competition for the assignment of Timber Logging Concession. Other kinds of forest, ecotourism or conservation concessions are evaluated by the forest authority.

Title: The state sets up the ad hoc Commission in charge of implementing the Process of Assignment of Timber Logging Concessions by public bidding. Head Office Resolution N° 032-2002-INRENA

Date: 30/01/2002

Language: Spanish

Is the final permit allocation decision-making process transparent?

Is the final decision to allocate any permit made in way which allows citizens to assure themselves that the correct process has been followed? – is the process documented and published?

The Forest Law establishes different modalities for the assignment of logging concessions.

Title: Forests and Wildlife Law, approved by Law N° 27308

Date: 16/07/2000

Source: <http://spij.minjus.gob.pe/>

Language: Spanish

Timeliness: Yes

Completeness: Yes

Has the permit allocation system improved?

Have there been recent attempts to make improvements to the permit allocation system? Have there been recent changes to the system to accommodate 'newer' forms of permits such as conservation, carbon storage, or ecotourism? If so please give details. Were these successful?

Legislative Decree N°1090 attempted to introduce a new procedure for the granting of logging concessions. There are also reports which illustrate the problems and limitations of the granting processes.

Title: Legislative Decree N° 1090;
"Are forest concessions sustainable in Peru?", by Elsa GALARZA and Karlos La Serna.
Lima, Universidad del Pacifico;
Preliminary Analysis on Governance and Accomplishment of the Forest Law Legislation in Peru, prepared for the World Bank by Lucila Pautrat and others.

Date: 2008
2003
October 2006

Source: www.congreso.gob.pe/ntley/Imagenes/DecretosLegislativos/01090.pdf
<http://www.consortio.org/CIES/html/pdfs/Forestal/per1.pdf>
<http://siteresources.worldbank.org/EXTFORESTS/Resources/985784-1217874560960/PeruAnalysis.pdf>

Language: Spanish

Accuracy: Yes

Are the final permit / contract documents made public?

Are all contracts / concession agreements / permits in the public domain? If so, which law or regulation specifies that they should be? Are they entirely in the public domain or are certain 'commercially confidential' clauses hidden?

Formats of forest concession contracts are approved by public standards that may be requested by any person. But signed contracts are not made public.

Title: The state approves the Format for Forest Concession Contracts for logging. Head Office Resolution N° 131-2003-INRENA

Date: 12/09/2003

Are any environmental / social impact assessments for forest operations available to the public?

Where an EIA or similar is a requirement for any concession, is it published? Is there any public consultation during the EIA, or any public presentation of the conclusions and recommendations?

No.

Is information on logging locations given to the public?

Are local people informed of where permits holders will be / are operating, so that they are aware operations should be happening in their area, and to give them the opportunity to know if loggers are legally in that location?

No.

Is there a stakeholder consultation process on individual logging locations?

In addition to any consultation on the general location, timing and allocations of logging concessions (these were covered in the previous 'permits' Theme), are stakeholders subsequently given a chance to comment on the location / impact / mitigation of logging at the local level, for example as part of developing a forest management plan?

No.

Is information on permitted logging volumes (quotas) public?

Once all preparations and forest management plans are completed and logging operations start, can local people find out how much timber is permitted to be extracted (for example on an annual basis from a specific area)?

No.

Is information on locations for other forest products given to the public?

Are local people informed of where permits holders for non-timber forest products, or wildlife hunting, will be / are operating, so that they are aware operations should be happening in their area, and to give them the opportunity to know if permit holders are legally in that location?

No.

Is there a stakeholder consultation process on non-timber permit locations?

In addition to any consultation on the general location, timing and allocations of permits (these were covered in the previous 'permits' Theme), are stakeholders subsequently given a chance to comment on the location / impact / mitigation of the extraction of non-timber forest products at the local level, for example as part of developing a forest management plan?

No.

Is information on permitted quotas of non-timber products made public?

Once all preparations and permits are completed and extraction non-timber forest products starts, can local people find out how much of a product (for example wildlife hunting) is permitted to be extracted (for example on an annual basis from a specific area)?

No.

Is information on locations of environmental services permits given to the public?

Are local people informed of where permits holders for environmental services, will be / are operating, so that they are aware operations should be happening in their area, and to give them the opportunity to know if permit holders are legally in that location?

The legal framework for this exists in draft form. However, no permits for environmental services have been allocated yet.

Title: Ruling in Law Projects N° 2386/2007-CR, which proposes a Law of Promotion and Compensation for Environmental Services, and 3213/2008-PE, which proposes a Law on Environmental Services.

Date: 10/07/2009

Language: Spanish

Is there a stakeholder consultation process on environmental services locations?

In addition to any consultation on the general location, timing and allocations of permits (these were covered in the previous 'permits' Theme), are stakeholders subsequently given a chance to comment on the location / impact / mitigation of the environmental services permits at the local level, for example as part of developing a forest management plan?

The legal framework for this exists in draft form. However, no permits for environmental services have been allocated yet.

Title: Ruling in Law Projects N° 2386/2007-CR, which proposes a Law of Promotion and Compensation for Environmental Services, and 3213/2008-PE, which proposes a Law on Environmental Services

Date: 10/07/2009

Language: Spanish

Is information on the quality / quantity of environmental services made public?

Once all preparations and permits are completed and a provision of environmental services contract starts, can local people find out about the size / value / or limits on these services?

The legal framework for this exists in draft form. However, no permits for environmental services have been allocated yet.

Title: Ruling in Law Projects N° 2386/2007-CR, which proposes a Law of Promotion and Compensation for Environmental Services, and 3213/2008-PE, which proposes a Law on Environmental Services.

Date: 10/07/2009

Language: Spanish

Is information on locations of (eco)tourism or other cultural services permits given to the public?

Are local people informed of where permits holders for tourism, ecotourism, or other cultural services, will be / are operating, so that they are aware operations should be happening in their area, and to give them the opportunity to know if permit holders are legally in that location?

Yes. The granting and the location of conservation or ecotourism concessions are published in the official journal.

Title: For example: the state grants concessions for ecotourism in favour of the Association of miner artisan farmers and social tourism (AMAITUS), located in the Department of Madre de Dios, Head Office Resolution No. 172-2006-INRENA.

Date: 19/06/2006

Source: <http://www.asesor.com.pe/proapa/leyes/326246.pdf>

Language: Spanish

Is there a stakeholder consultation process on (eco)tourism locations?

In addition to any consultation on the general location, timing and allocations of permits (these were covered in the previous 'permits' Theme), are stakeholders subsequently given a chance to comment on the location / impact / mitigation of the tourism or ecotourism concessions at the local level, for example as part of developing a forest management plan?

No.

Is information on the quality / quantity of (eco)tourism services made public?

Once all preparations and permits are completed and a provision of tourism or ecotourism services contract starts, can local people find out about the size / value / or limits on these services?

No.

Is there a strategic process to assess priorities between development options?

Is there a Strategic Environmental Assessment to identify and resolve conflicting land uses between forests, mining, large-scale agriculture and infrastructure development? Does the National Forest Policy document seek to address this? Do any policy documents from the other sectors?

No.

Is it clear who decides if / when to make decisions between development options?

Are there clear, documented, and understood steps for making decisions over the use or conversion of forest lands for other purposes such as mining, large-scale agriculture or infrastructure development?

No.

Is there a stakeholder consultation process on decisions between different development options?

At the time an area of forest is identified for allocation to any sort of non-forest purpose, are stakeholders consulted, for example on any conditions or mitigation commitments?

With regard to Indigenous Peoples, the process of consultation set by the Agreement 169 of the International Labour Organization (ILO) has not been implemented. Currently, different Law Projects on the issue are awaiting judgement or debate in the Congress.

It is worth noting that, in accordance with the Alternative Report 2009 on the fulfilment of the Agreement 169 of ILO on Indigenous and Tribal Peoples in Peru, the existing rules for participation, applicable to mining and oil-extraction activities, wouldn't meet the requirements of a free prior and informed consultation. The same would be the case for the rules for citizen participation in the implementation of power-generation activities.

Title: Draft Law N° 033702008-DP which proposes the Framework Law on the Right to Consult Indigenous Peoples;
Draft Law N° 03344/2008-CR which proposes an amendment to the Regulations of the Congress, and establishes the procedure for the preliminary Consultation of the Indigenous Peoples of Peru, established in Article 6° of ILO Agreement 169.;
Law Project N° 02016/2007-CR that proposes a Law on Consultation and Participation of Indigenous Peoples in Environmental Issues;
Draft Law N° 00427/2006-CR which proposes the regulations of the right to consultation referred to in subsection (a) of Article 6 and in number 2 of Article 15 of the ILO Agreement No.169;
Law Project N° 00413/2006-CR which proposes including prior consultation with local communities for the exploitation of natural resources;
Alternative Report 2009 on the fulfilment of ILO Agreement 169 on Indigenous and Tribal Peoples in Peru.

Date: 06/07/2009
18/06/2009
18/12/2007
10/10/2006
10/10/2006
27/07/2009

Source: <http://www2.congreso.gob.pe/Sicr/TraDocEstProc/CLProLey2006.nsf/1a2c115721957e3a05256cdf006c92c0/ea3b507f1e13c8f7052575eb00704f07?OpenDocument>
<http://www2.congreso.gob.pe/Sicr/TraDocEstProc/CLProLey2006.nsf/1a2c115721957e3a05256cdf006c92c0/ea3b507f1e13c8f7052575eb00704f07?OpenDocument>
<http://www2.congreso.gob.pe/Sicr/TraDocEstProc/CLProLey2006.nsf/1a2c115721957e3a05256cdf006c92c0/ea3b507f1e13c8f7052575eb00704f07?OpenDocument>
<http://www2.congreso.gob.pe/Sicr/TraDocEstProc/CLProLey2006.nsf/1a2c115721957e3a05256cdf006c92c0/ea3b507f1e13c8f7052575eb00704f07?OpenDocument>

<http://www2.congreso.gob.pe/Sicr/TraDocEstProc/CLProLey2006.nsf/1a2c115721957e3a05256cdf006c92c0/ea3b507f1e13c8f7052575eb00704f07?OpenDocument>
www.pazyesperanza.org/documentos/informe_2009_final.doc

Language: Spanish

Accuracy: Yes

Completeness: Yes

Is the final decision-making process on different development options transparent?

Is the final decision to allocate any forest to non-forest use made in way which allows citizens to assure themselves that the correct process has been followed? – is the process documented and published?

This cannot be established, in as much as the process of preliminary consultation has not been implemented in Peru.

Is information on implementation of non-forest use / conversion given to the public?

Once the final decision has been made, are local people informed of where mining, large-scale agriculture or infrastructure development in forests will be / is occurring, so that they are aware operations should be happening in their area, and to give them the opportunity to know if operations are legally in that location?

This cannot be defined, in as much as the process of preliminary consultation has not been implemented in Peru.

Is there a system of tax / royalties redistribution?

Does the law provide for a portion of the taxes or royalties collected from permit holders to be redistributed to affected communities? If so, please give details.

Yes. The forest canon allows for the distribution of 50% of the payments for the right to use forest and wildlife products , as well as of the permits and authorisations assigned by the relevant authority, to the Regional and Local Governments of the areas where such resources are available - or in which areas concessions, authorisations and permits have been assigned.

Title: Tax Law, approved by Law N° 27506; and its Regulations

Date: 10/07/2001

Source: <http://spij.minjus.gob.pe/>

Language: Spanish

Timeliness: Yes

Completeness: Yes

Is the system of tax / royalties redistribution effective in meeting any legal obligations?

Does any tax / royalties redistribution system work in practice?

Yes.

Is there a stakeholder consultation process regarding the use of community funds?

Are stakeholders aware of the tax redistribution system and are they given a chance to influence the use of any funds dedicated for their use?

No.

Are figures for collection and distribution published?

Does the relevant authority regularly publish the taxes collected from each forest area and the amount redistributed to those communities entitled to receive a share? If so, how often do they publish this information?

Yes, information at the local, regional and national level is available, but there is no information about distribution among communities.

Title: Economic Transparency Portal of the Ministry of Economics and Finance

Date: Date of review: 26 October 2009

Source: <http://ofi.mef.gob.pe/transferencias/cuadros/Hoja1.aspx>

Language: Spanish

Accuracy: Yes

Timeliness: Yes

Completeness: Yes

Is there a system of social obligations, where concession holders have to provide benefits directly to affected communities?

In addition to taxes, are there any obligations for permit holders to provide benefits to affected communities, in cash or in kind? Does the social obligations system work in practice?

Some concessionaires reach agreements with communities in order to avoid conflict.

Title: Consolidated Text of Legislative Decree N° 728, Law on Labour Productivity and Competitiveness, approved by Supreme Decree N° 003-97-TR;
Regulations of the Consolidated Text of the Law on Labour Productivity and Competitiveness, approved by Supreme Decree N° 001-96-TR

Date: 27/03/1997
26/01/1996

Source: <http://www.mintra.gob.pe/mostrarContenido.php?id=54&tip=54>

Language: Spanish

In practice does the social obligations system meet any legal obligations?

Does the social obligations system work in practice?

Yes

Title: Labour Procedural Law, approved by Law N° 26636;
General Law on Labour Inspection, approved by Law N° 28806.

Date: 24/06/1996
22/07/2006

Source: <http://www.mintra.gob.pe/mostrarContenido.php?id=62&tip=54>

Language: Spanish

Timeliness: Yes

Completeness: Yes

Is there a stakeholder consultation process?

Are stakeholders aware of the social obligation system and are they given a chance to influence the projects or use of any funds provided directly to them by the concessionaire?

Since the Law on the organisation and powers of the Ministry of Labour and Employment Promotion (approved by Law 29381) took effect, the National Council of Labour and Employment Promotion (CNTPE) disappeared as a forum for consultation among different actors in the labour sector. The existence of a Commission of Permanent Coordination is worth mentioning, but it only refers to the policies and actions related to forced labour, in different sectors, both at national and regional level.

Title: National Commission on the Fight against Forced Labour, set by Supreme Decree N° 001-2007-TR;
Law on the Organisation and Powers of the Ministry of Labour and Employment Promotion, approved by Law N° 29381.

Date: Date of review: 27 October 2009
16/06/2009

Source: http://www.mintra.gob.pe/trabajo_forzoso/index.html
<http://spij.minjus.gob.pe/>
http://www.mintra.gob.pe/archivos/file/transparencia/LEY_29381.pdf

Language: Spanish

Timeliness: Yes

Completeness: Yes

Is information on social obligations published?

Is the social obligation agreement publicly available? Are there regular reports on its implementation? If so, who is responsible for producing these?

Yes

Title: Results of the Labour Inspections.

Source: <http://www.mintra.gob.pe/mostrarContenido.php?id=95&tip=88>

Language: Spanish

Accuracy: Yes

Are there opportunities for citizens to discuss law enforcement issues as they arise?

Do any forest forums include representatives from the police or judiciary for example? Or are there other formal mechanisms to discuss law enforcement issues with officials from other (non-forest) agencies?

Yes. The state has created spaces for the discussion of the Forest Law.

Title: Supreme Decree that sets up the Multi-sectorial Commission to deal with the issue of the Amazonian Peoples, approved by Supreme Decree N° 031-2009-PCM;
The state declares a priority the review and update of the Forests and Wildlife Law, by Ministerial Resolution N° 0544-2009-AG;
The state sets up the National Group of Coordination for the Development of Amazonian Peoples, which is in charge of outlining a Comprehensive Sustainable Development Plan for Amazonian Peoples, with regard to Education, Health, Titling and Formalisation of Lands and other necessary measures, working according to what established by the Supreme Resolution No.117-2009-PCM;
The state modifies R.S N° 117-2009-PCM which established the National Group of Coordination for the Development of Amazonian Peoples, approved by Supreme Resolution N° 211-2009-PCM.

Date: 20/05/2009
01/08/2009
11/06/2009
25/08/2009

Source: <http://spij.minjus.gob.pe/>

Language: Spanish

Timeliness: Yes

Completeness: Yes

Are citizens actively participating in control operations?

Is there any form of joint operations including citizens and forest law enforcement (e.g "vigilancia verde" or forest monitoring)?

No, citizens can participate in monitoring activities by means of the Committees of Forests Management, recognised by Article 3 of Law No.27308 and Article 51 of its Regulations, emended by Supreme Decree No.007-2006-AG, but currently these committees are not working.

Title: Forests and Wildlife Law, approved by Law N° 27308;

Supreme Decree N° 007-2006-AG, modifying the Regulations of the Forests and Wildlife Law.

Date: 16/07/2000
24/02/2006

Source: <http://spij.minjus.gob.pe/>

Language: Spanish

Timeliness: Yes

Completeness: Yes

Do (some) forest communities condone some 'illegal' activities?

Do any communities regard some laws as inequitable and so argue that they are justified in supporting or participate in illegal activities?

Some indigenous communities work with timber companies and NGOs. Few communities have been sanctioned for forest law offences.

Is there an Independent Forest Monitor?

Is there any organisation contracted to conduct Independent Forest Monitoring (IFM) to monitor forest governance and operations? For how long has this existed? What, if any, benefits does this bring?

No.

Does the government publish lists of infractors?

Does any authority regularly publish a list of infractors of the forest law? Is it obliged to do so under any law or other norm? Does such a list show the progress of each case through the legal system, and the amount of any fines paid?

No. According to what Articles 362 and 385 of the Regulations of the Forests and Wildlife Law, approved by Supreme Decree No.014-2001-AG, there is a legal obligation in this regard. However, there is no certainty over its fulfilment nor publication by the state.

Title: Regulations of the Forests and Wildlife Law, approved by Supreme Decree N° 014-2001-AG; Law creating the Body of Supervision of Forest Resources and Wildlife, approved by Legislative Decree N° 1085;

Regulations on the Organisation and Functions of the Agency for the Supervision of Forest Resources and Wildlife - OSINFOR, approved by Supreme Decree N° 065-2009-PCM.

Date: 09/04/2001
28/06/2008
08/10/2009

Source: <http://spij.minjus.gob.pe/>

Language: Spanish

Timeliness: Yes

Completeness: Yes

Does the government publish lists of debarred / suspended operators?

Does any authority regularly publish a list of individuals or companies barred or temporarily suspended from holding forest-related permits (perhaps as a penalty for a previous infraction)? Is it obliged to do so under any law or other norm?

In accordance with numbers 43.5 and 43.8 of Article 43 of the Supreme Decree No.065-2009-PCM, that approves the Regulations of the Organisation and Power of the Forest Supervision Body (OSINFOR), an Administrative Register of the expired and/or sanctioned concessionaires is planned. But this Register is not available online.

Title: Law creating the Body of Supervision of Forest Resources and Wildlife, approved by Legislative Decree N° 1085.

Date: 28/06/2008

Source: <http://spij.minjus.gob.pe/>

Language: Spanish

Timeliness: Yes

Completeness: Yes

Do parts of any law affecting forests limit transparency?

Are there any norms that prohibit or limit transparency in the forest sector? Or are there caveats or exclusions to transparency laws, for example 'commercial confidentialities' or 'national security'? What exactly do they exclude?

No.

Do any extra-sectoral operations overrule forest laws?

Do mining, road building, large-scale agriculture, hydropower or other infrastructure development have automatic veto over forest laws, thereby eliminating transparent access to decision-making?

Yes, there are problems with mining, road building, large-scale agriculture and fuel, in as much as the absence of information on an ecosystemic and sustainable management of forests causes the superposition of rights with respect to other extractive activities.

Is it commonplace for authorities to ignore obligations?

Has it become normal operating procedure for any public institution to avoid obligations to transparency? If so, please give examples.

Yes: though a law on access to information does exist, this is not completely fulfilled. Many institutions don't comply with publishing the minimal obligations established by the law on their websites. Currently, since there is no study or information in this regard, it is not possible to establish whether a practice of evasion by the public administration does exist.

Title: Consolidated Text of the Transparency and Access to Public Information Law, approved by Supreme Decree N° 043-2003-PCM.

Date: 24/04/2003

Source: <http://spij.minjus.gob.pe/>

Language: Spanish

Timeliness: Yes

Completeness: Yes

Are there any reforms to improve transparency or reduce confidentiality?

In particular, are there any 'quick wins' - issues where transparency could be improved, or where caveats and exclusions could be reduced, and no significant vested interests are against this? If so, please list any ongoing reforms.

The Law on Transparency and Access to Public Information puts an obligation to the Forest Authority to publish the information related to its sector, as in October 2009, but it has not complied with this norm.

Does the forest authority publish an Annual Report?

Is there an annual summary of activity by the forest authority and others they regulate? If so, how long after the year-end is it published? How comprehensive is it? Is it debated, for example by a 'forestry commission board' or by the legislature?

No.

Does the forest authority have a central point of information?

Is there a person or office advertised and functioning as the source of public information? Is there any written statement (for example a regulation) about its roles and responsibilities? Is it committed to respond to enquiries with a certain amount of time?

Yes, by means of the Head Office of Information and Control of Forests and Wildlife established in Article 62 of the Regulations of the Organisation and Powers of the Ministry of Agriculture.

Title: Regulations of the Organisation and Functions of the Ministry of Agriculture, approved by Supreme Decree N° 031-2008-AG.

Date: 11/12/2008

Source: <http://spij.minjus.gob.pe/>

Language: Spanish

Timeliness: Yes

Completeness: Yes
