



global witness

Making the Forest Sector Transparent

Annual Transparency Report

Country:

Partner: Asociación de Forestaría Comunitaria de Guatemala - Ut'z Che'

Year: 2011

Language: English

© Making the Forest Sector Transparent

This country specific information is independently managed by the relevant organisation from that country. [See disclaimer on the website.](#)

Date file created: 01-Sep-21



Making the Forest Sector Transparent

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

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

Indicator assessment

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

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

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

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

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

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

Freedom of Information Law

Is there a Freedom of Information Act, which has been passed by the government and established in law?
Is the Act publically available in full from official sources (websites and/or offices)?

The Congress approved the Law of Access to Public Information in 2008. The Law is available on a number of government websites. One of the objectives of this instrument is to guarantee the transparency of public administration and every person's right to free access to public information. The Finance Ministry has summarised the Law of Access to Public Information for a wider public (http://www.minfin.gob.gt/laip_mfp/index.html), and the National Association of Municipalities has also created a Guide (http://www.promudel.org.gt/cms/index.php?option=com_k2&view=item&id=94:presentaci%C3%B3n-de-gu%C3%ADas-anam) for the implementation of the law by municipalities.

There is a law (the Languages Law) which makes it compulsory for the state to translate laws into indigenous languages, but according to this research no environmental law has been translated into any indigenous language.

In theory, civil society and the communities can request this information from the public information units in the municipalities. In practice, there are a number of obstacles to increase freedom of information in the country, such as:

- a) 40% of the population of Guatemala is indigenous and 34% of the indigenous peoples do not speak Spanish (http://www.desarrollohumano.org.gt/sites/default/files/INDH_2005_1.pdf); furthermore, there is no state budget for implementing translation initiatives.
- b) According to the Office of the Human Rights Ombudsman (PDH) there is a lack of compliance with parts of the law on access to public information by the public forest organisations, and in particular by the municipalities.
- c) There is a lack of funds allocated to the Public Information Units which prevents them from fulfilling their duties appropriately.
- d) The PDH also points out that there is a lack of dissemination of knowledge of the Law at a local level, which does not encourage a culture of transparency.
- e) There is a lack of knowledge amongst those who are subject to the requirements of the law on how to comply with the law.

Opportunities exist to:

- a) Broaden knowledge of the law by means of community workshops
- b) Translate and distribute it in the local language, increasing the financial budget to comply with the obligations in the Languages Law and the Law of Access to Public Information.
- c) Train those subject to such requirements on how to comply correctly with the law.

Title: Law of Access to Public Information – Decree Number 57-2008

Organisation: Ministry of Environment and Natural Resources (MARN)

Date: 2008

Source: Public Information System of MARN http://www.sip.marn.gob.gt/public/docs/decreto_57_2008.pdf and printscreen/or: <http://www.congreso.gob.gt/ley-de-acceso-a-la-informacion-publica.php>

National Forest Policy

Is there an explicit current document described as the national forest policy? Is the policy document available in full to the public from official sources (websites and/or offices)?

According to our research, the policy has not been translated into the indigenous languages and there is no summary of this policy. Local communities can request information on the policy by applying to the regional public information unit of the National Institute of Forests (INAB).

In the introduction to the Forest Policy document, it states that it is valid over the long term (20 years) and thus, in theory, is up-to-date. The policy was created four years after the forest law. There is an official evaluation, which is being promoted nationwide through departmental workshops. These involve the participation of important stakeholders in the forest sector and explain the challenges and the shortcomings of the policy, using a series of indicators (<http://pfnguate.org/pages/noticias.htm#politicaguatemala>). The summary indicates that development of forest plantations, and investment and employment in the forest sector are satisfactory. Conservation of the Guatemala System of Protected Areas, development of agro-forestry systems, expansion and modernisation of primary and secondary forest industry and competitiveness must all improve, while the conservation of strategic forest ecosystems and the development of management of natural forests have made no progress at all.

Title: Forest Policy of Guatemala

Organisation: Secretariat of Planning and Programming of the President (SEGEPLAN)
National Institute of Forests (INAB)

Date: 2001

Source: http://www.segeplan.gob.gt/2.0/index.php?option=com_remository&Itemid=274&func=startdown&id=224 and printscreen as well as <http://www.inab.gob.gt/>



Codified Forest Laws and Norms

Is there a codified forest law and lower level norms (regulations, procedures, decrees, technical directives etc) that make the forest laws operative? Are the law and supporting norms available in full to the public from official sources (websites and/or offices)?

The Forest Law was decreed in 1996 and, together with the 2005 regulations, regulates the system of governance for the forest sector in Guatemala, but in a study drawn up by the Institute of Agriculture, Natural Resources and Environment (IARNA) in 2009 <http://www.profor.info/profor/sites/profor.info/files/publication/Guatemala-forestfees.pdf>, there is evidence that forest legislation is not being applied uniformly across the country, because of a number of factors in the application of environmental law, such as limitations in forest management, limitations in assigning value to forest resources and in aspects of the market as well as in monitoring illegal activities. The study indicates that forest legislation has particular deficiencies in the area of implementation: it estimates that 95% of forest activities are carried out illegally.

The most recent law to be approved in relation to the forest sector was the PINPEP Regulation on 17 November 2010, which demonstrates that there are processes underway to develop forest norms. There is a discussion taking place at the national level on the passage of a Law of Climate Change, which will define more precisely the topics related to the REDD issue, and to trade agreements and the forest sector.

No environmental law has been found which has been translated into indigenous languages by the state. Some regulations have been summarised on the website of the National Institute of Forests (INAB). Local communities can request information from their regional INAB office, which is obliged to reply. The legislation and the norms are up to date.

Title: a) Forest Law Decree Number 101-96
b) Code of the Forest Law contained in Resolution 4.23.2005 of Executive Council

c) Decree Number 4-89 Law of Protected Areas

Organisation: National Institute of Forests

Date: a) 1996
b) 2005
c) 1989

Source: <http://200.30.150.38/Paginas%20web/Descargas.aspx>
<http://www.sifgua.org.gt/Documentos/Legislacion/Areas%20Protegidas.pdf>

Signed International Trade Agreements on Forests

Has the country signed an international trade agreement that relates to forest products (logging and other products)? Are the agreements, including official discussions on their content, available in full to the public from official sources (websites and/or offices)?

In 2004, civil servants from Guatemala, Honduras, El Salvador and Nicaragua completed negotiations with the United States on the Central American Free Trade Agreement (CAFTA), and there is information available on this. Central America is currently negotiating an Agreement of Association with the European Union. There are some summaries of the trade treaties, but the agreements have not been translated into indigenous languages (although there are translations on some duties in indigenous languages). Local communities can obtain information on these agreements via a request to the Ministry of Foreign Relations (by telephone if they do not have internet access).

On the websites of Guatemala's state agencies there is no information on the participation of communities and civil society in the specific process of regulating forest products covered in the CAFTA, and no specific information on this was found in the current negotiations for the Association Agreement between Central America and the European Union. Although there is economic information on levels of imports and exports of forest products (<http://uim.mineco.gob.gt/documents/10438/17026/F14.pdf>) as far as the free trade agreement (CAFTA) is concerned, there is little information on how civil society can have an impact on this process with regard to the treaties which have still to be ratified (such as the possible Agreement of Association with the European Union), or on how civil society has influenced this process in the treaties already ratified. However, as far as current negotiations on the possible ratification of the Association Agreement between Central America and the European Union are concerned, on the website of the European Union Delegation for Guatemala, there is a document on civil society participation in the current negotiations on the possible ratification of the Association Agreement (http://www.delgtm.ec.europa.eu/pubs/guia_2011.pdf and <http://190.120.10.43/db/libcat/edocs/CUADERNO2-ACUERDOSDEASOCIACION.pdf>)

Title: a. Free Trade Agreement between the Dominican Republic, Central America and the United States of America (already in force)
b. Agreement of Association between the European Union and Central America

Organisation: Ministry of Economy

Date: a. 2004
b. In negotiations

Source: a. <http://www.mineco.gob.gt/Presentacion/ExplorarDirectorio.aspx?titulo=TituloAdministracionComercioExterior&subtitulo=Tratados+de+Libre+Comercio&llaveExploracion=Tratados+de+Libre+Comercio>

Provisions for Transparency in Forest Laws

Are there any forest-specific written laws and regulations that develop the right to access public information on the sector? Are the provisions in laws and regulations available to the public through official websites and other sources?

Although there are no specific forest laws and norms which regulate the right of access to public information in the forest sector, it could be argued that the Law of Access to Public Information is broad, and stipulates the obligations of all public institutions in the forest sector to provide the required information. A number of requests have already been made to the public institutions in the forest sector under the Law of Access to Public Information, so there is no movement in civil society to include new provisions on transparency specifically in the forest sector. In addition, there is a process of strengthening forest information in Guatemala between the relevant public institutions and the FAO (as well as ITTO), and a website (<http://www.sifgua.org.gt/>) was created to centralise forest information, which is still being developed. One possible suggestion which might be useful would be for the public information units of the National Institute of Forests (INAB) and the National Council for Protected Areas (CONAP) to consistently comply with aspects of the Law of Access to Public Information, such as the compulsory production of an annual report detailing all the freedom of information requests received and replied to and not replied to, to the Office of the Human Rights Ombudsman, which is required to publish an annual transparency report. Neither INAB nor CONAP were consistent with this requirement over the last two years (although they have complied with this requirement for 2011, they failed to comply for the years of 2009 and 2010), which demonstrates that there are difficulties in consistent compliance with the law so far as the forest sector is concerned.

Legal Recognition of Customary and Traditional Rights

Are customary and traditional rights recognised in codified forest law and norms? Are the provisions in the law and norms available in full to the public from official sources (websites and/or offices)?

Even though the State of Guatemala is obliged to recognise customary rights due the Peace Accords signed in 1996, by means of the Agreement on Identity and Rights of the Indigenous Peoples, and even though these rights are recognised in the Constitution and in the Municipal Code, there is no specific recognition of them in forest laws or norms. Furthermore, there is a lack of compliance with the Peace Accords which affects the recognition of customary rights provided for in the constitution and other laws. The progress report on the 2010 Peace Agreements by the Secretariat of Peace (<http://www.sepaz.gob.gt/documentacion/descarga-publicaciones>) states that although a series of institutions have been created which, in theory, should guarantee the rights of the indigenous peoples (and their customary rights), in fact there are a series of financial and legal obstacles that prevent this recognition. On the financial issue assigned to this task, the report states that “the concentration of financial resources in the state institutions dealing with generalised demands” reflects “the direction of state policies, where indigenous peoples (and women in particular) are still not visible in the distribution of the budget.” On the subject of access to justice for indigenous peoples, the report states that this topic has seen no progress, concluding that such failures “create a complex and adverse scenario for implementation and compliance.”

Title: Agreement on Identity and Rights of Indigenous Peoples

Organisation: Secretariat of the Peace

Date: 1996

Source: <http://www.sepaz.gob.gt/#>

● Legally Recognised Procedure for Consultation on New Forest-Related Norms

Are there any documented procedures (in the form of regulations, official guidance etc) that lay out the methodology for consultations that should take place regarding new forest-related policies, laws, regulations etc (for example on REDD)? Are the reports from consultation processes available?

The System of Development Councils (SISCODE) ensures that there is a formal procedure for consultation on implementation of forest policy and law, while the FAO financed PFN's National Forest Agenda creates a series of informal consultation methods which evaluate forest policies and laws and that suggest improvements. The procedures have not been translated into indigenous languages, but there are several institutions which provide summarised information for a wider public.

There are a number of social participation forums related to the forest sector, including SISCODE, which is the formal consultation procedure regulated by the Law on Development Councils, operating at national, regional, departmental, municipal and community levels; and the Forest Coordination Roundtables created by the National Forest Agenda, which are informal forums at a regional level. The purpose of these mechanisms, both formal and informal, is to act as consultation processes so that civil society can influence the laws, norms and policies being discussed that are relevant to the forest sector.

SISCODE should update its website ([http://sistemas.segeplan.gob.gt/siscodew/ddpgpl\\$modulo.nacional](http://sistemas.segeplan.gob.gt/siscodew/ddpgpl$modulo.nacional)) with all relevant reports, briefs and documents of all of the various councils at the different levels; but to date only the national council has such information. Consequently, an assessment of how forest issues are dealt with in other councils cannot be carried out, because of lack of access to information, and the representative nature of these councils cannot be assessed.

Regarding the informal participation forums that exist, there is information on the National Forest Programme website (http://www.pfnguate.org/pages/foros_regionales.htm), although it is by no means exhaustive. One problem with this informal mechanism is that there is still no national forum with formalised participation and consultation procedures specific to the forest sector. Such a forum, although stipulated as an objective of the National Forest Agenda, is still being developed, despite 10 years of planning.

Title:	System of Development Councils (SISCODE) National Forest Agenda Forests, Biodiversity and Climate Change Group Forest Coordination Roundtables
Organisation:	System of Development Councils National Forest Programme of Guatemala Ministry of Environment and Natural Resources
Date:	SISCODE 2002 Forest Agenda 2003
Source:	SISCODE: http://sistemas.segeplan.gob.gt/discode/sche\$portal/documentos/ley_concejos_desarrollo_guatemala.pdf National Forest Programme (http://www.pfnguate.org/pages/agenda_forestal.htm) REDD (http://www.conap.gob.gt/events/lanzamiento-grupo-de-implementadores-redd-guatemala) National Roundtable on Climate Change (http://mncc-guatemala.blogspot.com/) Forests, Biodiversity and Climate Change Group (http://www.forestcarbonpartnership.org/fcp/sites/forestcarbonpartnership.org/files/Documents/PDF/Aug2011/RPP%20Guatemala%20Draft%201Agosto2011.pdf)

Law Recognising Right to Free Prior Informed Consent

Is there any law that recognises the right to consent of indigenous peoples and communities on forest uses? Is the law available in full to the public from official sources (websites and/or offices)?

There are a number of laws available to the public which recognise the right of consent for indigenous communities, but this right has not been regulated, which renders these rights difficult to implement. These laws have also not been translated into indigenous languages.

For reasons of historical discrimination, the debate on prior, free and informed consent in Guatemala is focused on indigenous peoples. Now that the international treaties and conventions ratified by Guatemala take priority over internal law, Guatemala has the duty to consult the indigenous peoples under several of these treaties; however, according to the United Nations Special Rapporteur on the rights of the indigenous peoples the “state’s duty to consult the indigenous peoples is not regulated in the Political Constitution of Guatemala, [and] the provision in the constitution which provides for the adoption of a law regulating matters relating to the indigenous peoples has, to date, not been developed.”

Regulation on prior, free and informed consent is needed so that indigenous peoples can be consulted; this must be governed by law and have the approval of the indigenous peoples and civil society. There is a regulation being developed for the consultation process guaranteed by Convention 169 on Indigenous and Tribal Peoples in Independent Countries (24 January 2011) drawn up by an Inter-sectoral Commission of the Office of the President of the Republic; however, this process has not been agreed by the indigenous peoples and, furthermore, it was not carried out in accordance with the required legal stipulations, and cannot therefore be considered a solution to this problem.

Title:

- a. Convention 169 of the International Labour Organisation
- b. Declaration of the United Nations on the rights of indigenous peoples
- c. Constitution of the Republic of Guatemala
- d. Municipal Code of Guatemala
- e. Law of the Councils of Urban and Rural Development

Organisation:

- Office of the Human Rights Ombudsman (PDH)
- Constitutional Court
- Ministry of Labour

Date:

- a. Ratified in 1996
- b. 2007
- c. 1993
- d. 2002
- e. 2002

Source:

- PDH http://www.pdh.org.gt/index.php?option=com_phocadownload&view=category&id=9:leyes-y-tratados y
- Court of Constitutionality http://www.cc.gob.gt/index.php?option=com_content&view=article&id=219&Itemid=67 y
- Ministry of Labour http://www.mintrabajo.gob.gt/index.php?option=com_content&view=article&id=114:convenios-internacionales-119-al-182&catid=56:conveniosinternacionales&Itemid=2
- Secretariat of Planning and Programming of the President [http://sistemas.segeplan.gob.gt/discode/sche\\$portal/documentos/ley_concejos_desarrollo_guatemala.pdf](http://sistemas.segeplan.gob.gt/discode/sche$portal/documentos/ley_concejos_desarrollo_guatemala.pdf)

National Land Tenure Policy

Is there an explicit current document that sets out the national policy on land tenure, including forest tenure? Is the policy document available in full to the public from official sources (websites and/or offices)?

The Agrarian Policy 2009-12 defines national policy on land tenure. This policy has not been translated into the indigenous languages, but summaries are available. The Agrarian Policy “refers to the transformation of land ownership and tenure, promoting its democratisation and discouraging consolidation” and contains an analysis of the effect of consolidation of land tenure on poverty levels. One of the objectives of the National Policy for Integrated Rural Development is to “reform and democratise the system of access, use, tenure and ownership of land, discouraging its consolidation, in such a way that the subject prioritised by this Policy [the poor] has access to land”. These two Policies are only in force in the short term (2009-2012 and 2009-2015 respectively).

According to the Guatemala Agriculture and Livestock Census (<http://www.ine.gob.gt/np/agropecuario/index.htm>) the Gini coefficient for land distribution is 0.84 (where 0 equates to perfect equality and 1 equates to perfect inequality). This demonstrates that Guatemala has a high concentration of land in just a few hands. According to a UN report (http://hdr.undp.org/en/reports/global/hdr2005/papers/HDR2005_Krznicaric_Roman_17.pdf), 77% of small landowners have fewer than 7 hectares per person and work on just 15% of the productive land.

There is a national movement of rural and indigenous organisations that created a bill for Law 40-84 on the National System of Integrated Rural Development, the intention of which is to democratise and redistribute land tenure. This law was brought to the attention of Congress on 11 August 2009 and was transferred to the Agriculture, Livestock and Fisheries Commission, which gave it a favourable opinion. However, the Congress agenda to discuss the law has never materialised, and is currently on hold. The social movements involved believe that this bill answers a need to ensure long-term development which goes beyond the existing policies on land tenure, going beyond existing policies on land tenure, but some members of Congress see it as a threat to private ownership.

Title: a. Agrarian Policy 2009
b. Government Agreement No. 169-2009 National Policy for Integrated Rural Development

Organisation: Secretariat of Agrarian Affairs

Date: a. 2009-2012
b. 2009

Source: <http://portal.saa.gob.gt/images/stories/DocsPage/Politica%20Agraria.pdf>
http://portal.saa.gob.gt/index.php?option=com_content&view=article&id=129&Itemid=191
http://www.segeplan.gob.gt/downloads/clearinghouse/politicas_publicas/Desarrollo%20Rural/Pol%C3%ADtica%20Desarrollo%20Rural%20Integral.pdf
<http://www.pti.org.gt/publicacion/pdf/publi8.pdf>
<http://publicacion/pdf/publi8.pdf>

Land Ownership and Forest Use Maps

Are there official maps showing current forest ownership by title and/or forest areas where concessions, permits and other authorisations have been granted? Are the maps available in full to the public from official sources (websites and/or offices)?

Although there is no map showing overall forest tenure, there is an interactive map <http://200.30.150.38/Aplicaciones/web/index.html>) of permanent plots which have benefitted from a reforestation incentive scheme in the past, and which includes some details on forest tenure of the beneficiaries. As far as forest licences are concerned, there is a map showing the licences granted by the National Council for Protected Areas. Regarding forest incentives, there are maps of the PINFOR and PINPEP incentives, available on the SIFGUA website (<http://www.sifgua.org.gt/Paginasweb/Sectorforesdgua.aspx>), which stipulates the location, the name of the beneficiary and details of the project, although this lacks precision (<http://200.30.150.38/Paginas%20web/Pinfor.aspx>).

The limitations on creating land tenure maps is that there is no detailed information on land tenure on a national level (only municipal), and there are currently 1,367 land conflicts nationwide affecting 1,137,000 people (<http://www.diariowebcentroamerica.com/region/guatemala-mil-360-conflictos-por-tierras-hay-en-el-pais/>). The Land Information Register is creating a map to clarify existing ambiguities, which centralises all the details on land tenure nationwide. They believe this work will be completed in more or less 15 years time. This could be the starting point for the creation of official maps showing tenure of forest areas. There are also municipal land registers, and in theory access to information on land tenure could be gained by this method. The United Nations Food and Agriculture Organisation estimated that forest ownership in 2004 was: 38% private, 34% public national, 23% public municipal-communal and 5% not determined, but there is no up to date and reliable information on this subject.

Title: Maps of the National Institute of Forests

Organisation: National Institute of Forests

Date: no dates are given

Source: <http://www.sifgua.org.gt/Paginasweb/Sectorforesdgua.aspx>
<http://200.30.150.38/Aplicaciones/web/index.html>
<http://200.30.150.38/Aplicaciones/web/index.html>

Regulated Permit System for Commercial Logging Operations

Is there a formally regulated system of permits for commercial logging operations? Are the contracts/permits granted under the system publically available from official sources (websites and/or offices)?

In the forest management plans all the information referring to the duration of contracts, the locations and the quantity of trees felled or conserved is legally required. Communities and civil society can obtain these permits by requesting the information from regional INAB offices.

A study carried out by the Rafael Landívar University (<http://www.profor.info/profor/sites/profor.info/files/publication/Guatemala-forestfees.pdf>) concludes that illegal forest use amounts to 95.2% of all forest related activity, while only 4.8% is legal, and the reasons for this are the "...high demand for forest products; procedures which do not promote legal forest management and the existence of a market in illegal products. Added to this is the poor ability of the institutions to supervise lawful activities and to pursue illicit activities..." There is a high degree of impunity reflected in the few cases that are taken to legal action and that achieve a conviction. This means that there are problems related to how to ensure that forest logging complies with the law in force, which requires the need to create a culture accustomed to drawing up forest management plans and to apply for exploitation licences.

Title: Forest Law, Article 49 – Licence of Forest Use

Organisation: National Institute of Forests

Date: 1996

Source: http://www.sifgua.org.gt/Documentos/Legislacion/ley_forestal.PDF

Legal Requirement for Stakeholder Consultation before Allocation of Commercial Logging Permits

Is there a requirement in the forest law and norms for stakeholder consultation prior to the allocation of commercial logging permits? Are the reports from consultation processes available?

Title VIII of the Regulation of Evaluation, Monitoring and Tracking details a series of basic requirements for public participation in all industrial activities, construction and other projects which might have an environmental impact. There is a database (<http://www.marn.gob.gt/aplicaciones/consultapub/Default.aspx>) detailing all the consultations carried out under this regulation, and local communities can request more information from their regional office of the Ministry of Environment and Natural Resources (MARN) (http://www.marn.gob.gt/aplicaciones/Impambnuevo/TM_ESTUDIOS_IMPAMB/ShowTM_ESTUDIOS_IMPAMBTablePage.aspx), but detailed information of the environmental impacts is not available online.

However, according to an evaluation of this process carried out by the Institute of Agriculture, Natural Resources and Environment (<http://www.infoiarna.org.gt/article.aspx?id=239>), a problem which has still not been resolved is the participation of civil society in this process, and the study concludes that there has been little participation in such processes, which makes it impossible to know the position of civil society with regard to certain projects.

In addition, the process of consultation related to the environmental impact assessments (EIA) processes is at the discretion of MARN, which determines whether or not there will be public participation. Furthermore, MARN has few resources to administer the EIA process, which also affects the capacity for consultation. Finally, the EIA processes, and the required consultations, are considered time-consuming by the people legally obliged to carry them out.

Title: Government Agreement 431-2007, Regulation of Evaluation, Monitoring and Tracking

Organisation: Ministry of Environment and Natural Resources (MARN)

Date: 2007

Source: http://www.marn.gob.gt/sub/portal_sao/documents/leyes/gub-431-2007.pdf
http://www.marn.gob.gt/aplicaciones/Normas10g/NORMA/Todas_normas.aspx

Verification Process (Due Diligence) of the Eligibility of Permit Applicants

Prior to the allocation of permits for logging or other extractive use (e.g. mining) of forest land, is there a formal process in the regulations for independent “due diligence” checks to verify the eligibility, suitability and capability (technical and financial) of applicants? Are the findings and conclusions of the verification process made available to the public?

There is a process of ‘due diligence’ which is required by Forest Law and by the regulations governing forest management plans. If the forest use is greater than one hundred cubic metres per year, a Forest Manager must be contracted to draw up the management plans. This Manager must be duly registered with the National Institute

of Forests (INAB), which ensures 'due diligence'. There is also a regulation on Forest Managers, which sets out that people with academic training suitable for forest management who wish to carry out the role, may exercise this activity subsequent to a process of evaluation. This process is the responsibility of a committee formed of representatives from various universities, a representative of the National Central School of Agriculture and the INAB General Manager. These requirements for the evaluation and assessment of a Forest Manager, and the other regulations stipulated in the forest law, ensure that there is, in theory, "due diligence" with regard to the issue of forest managers and with regard to those applying for forest use permits. The information on the verification process for the applicants is available through the management plans, which can be accessed by request from the appropriate regional INAB offices, although they are not available on the INAB website.

Title:
a. Forest Law and Resolution 4.23.97
b. Regulation of the National Forest Register Resolution 02.43.2005
c. Regulation for Forest Managers Resolution 01.25.2001

Organisation: National Institute of Forests

Date:
a. 1997
b. 2005
c. 2001

Source: <http://200.30.150.38/Paginas%20web/Descargas.aspx>
<http://200.30.150.38/>

Forest Management Plans

Once a permit or concession has been issued, is there a formal requirement for the completion of forest management plans on the operations? Are the forest management plans available to the public from official sources (websites and/or offices)?

There are requirements in the regulations for the completion of forest management plans. The local communities may apply for a forest management plan from the corresponding regional office of the National Institute of Forests (INAB), which contain detailed information on the duration of the plan, the locations and the volume of planned operations. The National Forest Register Resolution requires all of the information relevant to this topic. There are also formal planning processes which determine how a forest operation process must be completed, and which should be stipulated in the management plan and in the annual operating plans. These measures provide the formal basis for completing a forest management plan. As far as the influence of civil society in this process is concerned, formally there is a process of opposition to the forest licences which communities or civil society have at their disposal should they want to have a say in these plans, but they can only do so if the management plan in some way affects the rights they have over their property (Article 43 sub-section b of the National Forest Register Resolution 02.43.2005.) In terms of access to information, there are no obstacles preventing the availability of the management plans, merely that these have not been posted on a website (<http://www.sifgua.org.gt/Documentos/Reglamentos/Reglamento%20de%20la%20Ley%20Forestal.pdf>) to facilitate access.

Title:
a. Government Agreement 431-2007, Regulation of Evaluation, Monitoring and Tracking
b. Regulation of the National Forest Register Resolution 02.43.2005

Organisation:
a. National Institute of Forests
b. Ministry of Environment and Natural Resources

Date: a. 2007

b. 2005

Source: <http://www.sifgua.org.gt/Paginasweb/Sectorforesdgua.aspx>
<http://www.marn.gob.gt/>

Regulation of Environmental Services

Is there a formally agreed system for the regulation of environmental services, such as water, carbon and biodiversity, as it affects forests? Are the regulations for the system available to the public from official sources (websites and/or offices)?

There are some regulations, such as one on biodiversity, but other environmental services such as water are not regulated. There is a Climate Change Bill (<http://mncc-guatemala.blogspot.com/p/informe-de-actividades-del-primer.html>) which, if approved, will regulate some environmental services, such as carbon sequestration. As far as the Hydrological system is concerned, there are different bills which have never led to a specific law.

There are also forums like the National Climate Change Committee, the Indigenous Committee for Climate Change and the Forests, Biodiversity and Climate Change Group, with participation of civil society, which are involved in talks on the Climate Change Law, which is intended to regulate environmental services.

The opportunities exist to ensure that the Climate Change Law serves as an instrument which can benefit the indigenous communities with communal lands, through payment for environmental services such as carbon sequestration. Advisers to the talks on the implementation of REDD (from the National Council of Protected Areas, National Institute of Forests and the Ministry of Environment and Natural Resources) are reaching an agreement with the Office of the Attorney General to ensure that the distribution of payments for environmental services is in agreement with the percentage of owned land that provides this service. There may be a tax to cover administration of state services. The talks are ongoing and thus the opportunities still exist to influence the law in the aforementioned forums – but the mere fact that 8% of agriculture and livestock producers have 78.2% (<http://www.ine.gob.gt/hp/ena/contenido.htm>) of the productive land means that payments for environmental services might primarily benefit the richest; this could promote further inequality if there are no proposals for redistribution.

Title: a. Law of Protection and Improvement of the Environment DL-68-86
b. Ratification of Convention on Biological Diversity 1992, approved through Decree 5-95.

Organisation: Ministry of Environment and Natural Resources

Date: a. 1986
b. 1995

Source: <http://www.ccad.ws/legislacion/Guatemala.html>
http://www.marn.gob.gt/aplicaciones/Normas10g/NORMA/Todas_normas.aspx

Strategic Environmental Assessment of Development Priorities

Is there a formal strategic process set out in policy to determine the priorities for land use between forests, mining, large-scale agriculture, infrastructure development and other demands? Is the policy available in full to the public from official sources (websites and/or offices)?

There are a number of policies on development priorities, but none of them constitutes a strategic environmental assessment to inform priorities between different uses of the land and of natural resources. The Secretariat of Planning and Programming of the President (SEGEPLAN - <http://www.segeplan.gob.gt/downloads/ODM/III%20informe/ODM7.pdf>) states that the “current political framework is made up of 43 policies of a sectoral and trans-sectoral nature, of which 23% correspond to policies whose principal purpose is the protection and management of the environment and natural resources. It is noted that the majority of these policies take environmental priorities into account for their implementation; however, only 9% of them have specific objectives related to the environment and natural resources.” There is information available on all the policies which prioritise land use, and civil society can access them. Furthermore, civil society took part in the formulation of a number of these policies.

Furthermore, analysts and civil society have criticised the last government’s unsustainable approach to land use, including an increase in operating permits for large scale open-cast mining projects, the approval of licences for oil operations in protected areas, the approval of the construction of large scale hydroelectric plants, the construction of long roads and the cultivation of agro-fuels (sugar cane/African palm) for biofuel market, which affect the environment contrary to the priorities set out in the principles of the 2008-2012 Government Plan and in other policies. They also criticise the lack of coordination and institutional stability which would allow implementation of strategies for sustainable land use.

Title:

- a. Government Plan
- b. Framework and Current Plan of Public Policies in Guatemala
- c. National Policy for Integrated Rural Development
- d. Agrarian Policy
- e. Forest Policy
- f. Conservation, Protection and Improvement of the Environment and Natural Resources Policy

Organisation:

General Secretariat of Planning (SEGEPLAN)
Ministry of Environment and Natural Resources (MARN)
Secretariat de Agrarian Issues
Government of the Republic of Guatemala

Date:

- a. 2008-2012
- b. 2009
- c. 2009
- d. 2009
- e. 1999
- f. 2007

Source:

- a. http://www.mcd.gob.gt/wp-content/uploads/2009/05/plan_de_la_esperanza.pdf
- b. http://docs.google.com/viewer?a=v&q=cache:PnYuWvub_pAJ:www.segeplan.gob.gt/downloads/politicas_publicas/Marco%2520y%2520mapa%2520de%2520politicas%2520mayo%252009.pdf+Marco+y+Mapa+Actual+de+las+Pol%C3%ADticas+P%C3%BAblicas+en+Guatemala&hl=es&gl=gt&pid=bl&srcid=ADGEEsGwQlBg7c73ngi64QNFhIhBG3kMKMT42-evryRW68DC3Bfywi7bTQdiOfyhUWI2pGdnCHckljg34PPUdXIXE1MAI_EyGobPtE6UqgZaA5ySvCUM
- c. http://www.google.com.gt/url?sa=t&source=web&cd=1&ved=0CBsQFjAA&url=http%3A%2F%2Fwww.segeplan.gob.gt%2Fdownloads%2Fclearinghouse%2Fpoliticas_publicas%2FDesarrollo%2520Rural%2FPol%25C3%25ADtica%2520Desarrollo%2520Rural%2520Integral.pdf&ei=w7ZdTuj6G-nJ0AG1wsXuAg&usg=AFQjCNE52ee8nRf_fRSCo1yAtQfgztpwkA
- d. e. f. <http://www.marn.gob.gt/documentos/politicas/conservacion.pdf>

Independent Monitoring of Forest Governance and Operations

Is there an independent monitor, auditor, ombudsman or any other body with an officially recognised role to scrutinise forest governance and operations? Are reports by the independent body available to the public?

There are a number of officially recognised bodies which monitor the forest sector, such as the National Forest Programme and, to a lesser degree, the Office of the Human Rights Ombudsman, but they do not specifically oversee governance and forest operations. Civil society can access the information published on these institutions on the internet or through publications disseminated at a municipal level.

The National Forest Programme (PFN) influences state decision-making through its monitoring and evaluation of forest policies. One example can be seen in the national dissemination of the Evaluation of Forest Policy in Guatemala. The evaluation explains the challenges and shortcomings of the current Forest Policy, using a series of indicators, which should influence the reform of current Forest Policy (<http://pfnguate.org/pages/noticias.htm>). The PFN does not necessarily oversee governance and forest operations, but rather tries to influence public forest policies. The other officially recognised supervisory body is the Environmental Office of the Human Rights Ombudsman, which only produces an annual report with very little information on the forest sector. However, there are a number of academic institutions which monitor forest operations efficiently and in depth, such as the Rafael Landivar University and its Institute of Agriculture, Natural Resources and Environment (IARNA); they are recognised (although not officially) as one of the supervisors of the forest sector most able to monitor forest operations and forest governance. They publish an Environmental Profile of Guatemala (http://www.url.edu.gt/PortalURL/Principal_01.aspx?s=51) every year which is highly respected, and assist the Ministry of the Environment and Natural Resources with its annual reports. There are also other initiatives, such as the Environmental Observatory (<http://www.oag.org.gt/>), which act as a point of coordination for monitoring of the environmental/forest sector. One problem which exists is how to involve the indigenous organisations and communities in these forest monitoring processes to encourage an improved forest culture. Finally, the Forest Stewardship Council counts on an office in Guatemala and applies the directive of its membership to develop forest management and chain of custody standards, deliver trademark assurance and provide accreditation services to a global network of committed businesses, organizations and communities.

Title: Strategy of the Office of Human Rights Ombudsman (carried out periodically)
Forest Action Plan, National Forest Programme

Organisation: Environmental Office of the Human Rights Ombudsman (PDH)
National Forest Programme (PFN)

Date: PDH - 2006
PFN - 1997

Source: http://www.pdh.org.gt/index.php?option=com_content&view=category&layout=blog&id=19&Itemid=34
http://www.pfnguate.org//pages/sobre_pfn.htm

Forestry Tax Collection and Funding Systems

Is there a regulated fiscal system to collect taxes and redistribute royalties from forest operations, or provide subsidies and funding to support forest operations? Are figures on the amounts collected and distributed available to the public from official sources?

The tax system of the National Institute of Forests (INAB) is regulated by the Forest Fund Regulation, created by the Forest Law (Article 84). The Ministry of Finances has information on the incomings and outgoings of these taxes, while the INAB has information on the incentives which communities and the public can access. On forest incentives: according to article 83 of the Forest Law (<http://200.30.150.38/Paginas%20web/Pinpep.aspx>), the INAB should distribute annually up to 50% of the total amount of incentives to small owners in areas with fewer than fifteen hectares. But the INAB does not specify, either in the Bulletin of Statistics for 2009, or in the Annual Work Report of 2009, or on its website, the types of individuals who benefited from PINFOR under this category of small landowners. There is a great difference between an owner with fifteen hectares and another with less than 1 “manzana” [a plot of approx. 0.7 hectares]. Furthermore, the INAB Work Report of 2009 shows that the amount of forest incentives distributed to landowners of small areas in forests (PINPEP) was Q12, 637,180, whereas PINFOR distributed a quantity of Q153, 592,605. This clearly reflects an inequality in the funds allocated for the recipients of each incentive. For this reason, the community forest sector fought for the approval of the PINPEP Law in 2010, with which it hopes to increase the amounts allocated to poorer forest landowners. The law will also be applied to people living on the land who do not have a title deed, thus including the participation of the poorest. For more information on this please read the narrative section of this report.

Title:

- a. Forest Law
- b. Regulation of the Exclusive Forest Fund
- c. Regulation PINFOR, Decree 51-2010
- d. Law of PINPEP

Organisation:

- Ministry of Agriculture, Livestock and Food
- Ministry of Finance
- National Institute of Forests

Date:

- a. 1996
- b. 1999
- c. 2010

Source:

- <http://transparencia.minfin.gob.gt/transparencia/> y <http://faolex.fao.org/docs/pdf/gua17254.pdf>
- <http://200.30.150.38/Documentos/Reglamentos/Reglamento%20PINFOR.pdf>

Forest Infractions

Is the Forest Authority obliged under the norms to collect information on any infractors of the forest law?
Are lists of infractors available to the public from official sources?

The Forest Law, the Regulation of the Forest Law and the Regulation on the Movement of Forest Products has rules on the penalties for forest infractions, and also Chapter II, Title VI, of Book I of the Penal Code and the Penal Procedure Code applies to forest matters. The Ministry of Interior publishes articles on forest infractions, which it is obliged to do by the Law of Access to Public information, but there is no specific section for this purpose.

The Public Prosecutor for Crimes against the Environment is the body responsible for exercising criminal proceedings and directing investigations into environmental crime, while the Division for Protection of Nature (DIPRONA) is a unit of the National Civil Police responsible for surveillance of natural assets/resources across the national territory, but only has a presence in eleven departments of the country, out of a total of 22. This means that there is no institutional capacity to comprehensively deal with the problem of forest infractions. Not a great deal of information is available on the website of either the Ministry of the Interior, the Judicial Body or the National Institute of Forests, but a freedom of information request for information can be made to these entities. DIPRONA meanwhile does not count on a webpage.

In addition to the above, the National Institute of Forests has just formed an Inter-institutional Committee on Illegal Logging (<http://200.30.150.38/Paginas%20web/plandeaccion.aspx>), which includes a plan to deal with the problem of illegality, in coordination with the Judicial Body, the Public Prosecutor, DIPRONA and the Ministry of the Interior, amongst others. According to the report published by this Committee (<http://www.profor.info/profor/sites/profor.info/files/publication/Guatemala-forestfees.pdf>), illegal uses of forest products amount to 95.2%, while only 4.8% is legal. A report produced by the Institute of Agriculture, Natural Resources and Environment points out that the causes of the illegality are the “high demand for forest products, procedures which do not promote in legal forest management, the existence of a market for illegal products [and] the poor ability of institutions to supervise lawful activities and to pursue illicit activities.” However, this analysis must be taken with caution, given that many illegal forest activities relate to the informal use of forests by rural communities unversed in forest legislation, as opposed to the consciously illegal use of forest products.

Title:

- a. Penal Code
- b. Forest Law
- c. Regulation of the Forest Law
- d. Regulation on the Movement of Forest Products
- e. Law of Access to Public Information

Organisation:

Ministry of Interior
National Institute of Forests
National Police, Division for Protection of Nature
Public Ministry

Date:

- a. 1973
- b. 1996
- c. 2005
- d. 2004
- e. 2008

Source:

http://200.35.163.189/laipmingob/images/a/a4/POLICIANACIONAL_ESTRUCTURA_ORGANICA_Y_FUNCIONES.pdf

http://www.sip.marn.gob.gt/public/docs/decreto_57_2008.pdf y
<http://www.oj.gob.gt/es/QueEsOJ/EstructuraOJ/UnidadesAdministrativas/CentroAnalisisDocumentacionJudicial/cds/CDs%20leyes/2004/PDFs/Codigos/CODIGO%20PROCESAL%20PENAL.pdf>

Annual Forest Authority Report

Is there a requirement set out in the norms for the Forest Authority to produce an annual summary of its activities? Is the report available in full to the public from official sources (websites and/or offices)?

At the time of writing, the latest annual report of the National Institute of Forests (INAB) about its overall activities was the Annual Work Report of 2009, whereas the National Council of Protected Areas (CONAP) has a more recent publication from 2010. The INAB report deals with the majority of its activities carried out that year. The CONAP report in 2010 is exhaustive. The INAB Report is produced with the help of a public information organisation on the forest sector in Guatemala called SIFGUA, composed of the International Tropical and Timber Organization, INAB, CONAP, the Forest Cluster and the Forest Association (Gremial Forestal). The report has not been translated into the indigenous languages and there is no summary, but the communities can access the report with a request to their regional INAB office. The Work Report from 2009 includes details of forest operations, while the 2009 Statistical Bulletin includes information on INAB’s budget and information on the audited annual account. But both reports only cover the 2009 period. There is a lack of up-to-date information for 2010 and 2011.

In the presentation of the report of the Statistical Bulletin, it is stipulated that “Statistical information, systematically collected, technically analysed and disseminated in a timely manner is a powerful tool to support decision-making.” In this way the report influences the process of drawing up next year’s annual plans.

Article 10, sub-section 5 of the Law of Access to Public Information stipulates that “the entities subject to such obligations must maintain, update and make available their annual operating plans”. Meanwhile, article 39 of the same law stipulates that “the entities subject to these obligations shall establish, as a method of access to public information, amongst others, electronic information systems. The information published in the electronic information systems, amongst others, must coincide exactly with the financial administration, accounting and auditing systems and must be updated within the deadlines established in this law.” Given these requirements, no Annual Operating Plan for the INAB or the CONAP has been found on their websites, which indicates a degree of non-compliance with the law.

Title: a. Work Report and Statistical Bulletin
b. National Report on Fulfilment of the Agreements of the Convention on Biological Diversity

Organisation: a. National Institute of Forests and Ministry of Environment and Natural Resources
b. National Council of Protected Areas

Date: a. 2009
b. 2010

Source: http://www.sip.marn.gob.gt/public/docs/decreto_57_2008.pdf y
<http://200.30.150.38/Documentos/Boletines/Bolet%C3%ADn%202009%20Final.pdf>
<http://www.conap.gob.gt/Members/admin/documentos/otecbio/IV%20Informe%20cumplimiento%20CDB%20-version%20final%20para%20divulgacion.pdf>
<http://200.30.150.38/Documentos/Memoriadelabores2009.pdf>
