Making the Forest Sector Transparent
Annual Transparency Report 2011
Country Specific Report: **Ecuador**
Prepared by Grupo FARO and Global Witness, October 2012

global witness

Introduction

Ecuador is one of seven forest-rich countries where the *Making the Forest Sector Transparency* programme is working. The Annual Transparency Report is published each year to assess whether the right information is being made available to citizens to ensure that they have a say in how their forests are managed. This summary presents the main findings from the second assessment of the forest sector in Ecuador carried out by Grupo FARO (Fundación para el Avance para las Reformas y las Oportunidades) in 2011. It applies a set of 20 'yes 🟢' 'partial 🟡' or 'no 🔴' indicators to test whether the necessary provisions in the legal framework exist in the public domain and whether important documents and data are made publicly available. Changes in the last year are also highlighted. The assessment was largely carried out using desk research to December 2011. The complete analyses from all the report cards and more recent updates are available at www.foresttransparency.info

Ecuador Vital Statistics

Estimated % Forest Cover

0-10%	51-75%
11-25%	78-90%
26-50%	91-100%

Forests
98,650 km² total forest area (35.6%)
-1.90% estimated deforestation rate 2005-10

People
98 per km² of forest

Income
$ $ $ $ $
GDP (PPP) per capita $2,284

Forest in Napo, Ecuador. Photo:
Juan Carlos Izurieta, Grupo FARO

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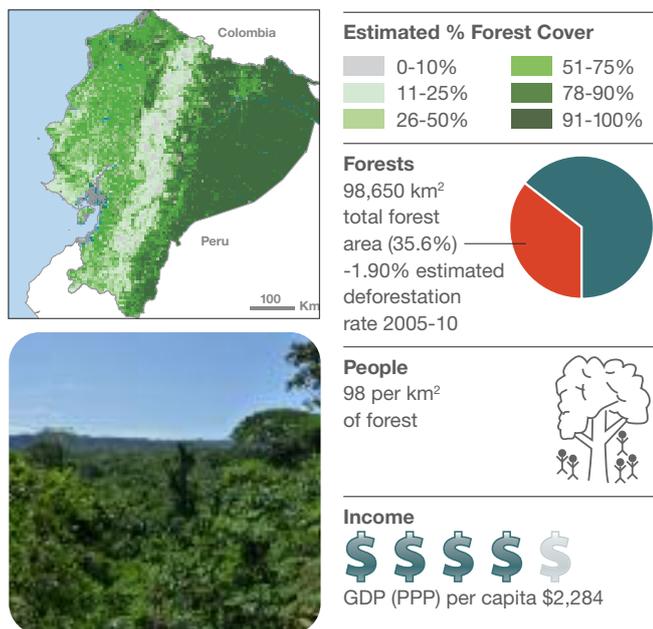
Key Conclusions from 2011

Despite the Transparency and Access to Public Information Law (Ley Orgánica de Transparencia y Acceso a la Información Pública – LOTAIP) providing a general framework for public bodies, greater will and resources are necessary to ensure that key forest sector data is published. In 2011 there were positive signs, such as the recognition of transparency in the model of forest governance published by the Ministry of Environment (Ministerio del Ambiente – MAE) and integration of the Forest Administration and Monitoring System (Sistema de Administración Forestal – SAF), but a specific norm is needed on forest information.

Forest land ownership and customary rights are complicated because there is no specific land policy document or comprehensive forest land register. Outside the state protected areas, forests are largely privately owned, in particular by indigenous peoples. The constitution recognises customary resource rights, but there are not clear mechanisms for exercising these. The lack of formal procedures to consultation and consent of all affected stakeholders also contributes to conflicts over decision-making.

The state does not allocate timber rights, but logging operators are required to have a licence and management plan. In practice, it can be difficult for local people to monitor activities and offences. Grupo FARO accessed provincial lists of infractions through requests for information, but this data is not proactively published. Information also needs to be better shared, and actions better coordinated across authorities.

The state has prioritised extra-sectoral activities such as gas, oil and mining for the strategic development of the country, which impact on forests and communities. The scope of the Socio Bosque programme to promote forest conservation is comparatively limited. The anticipated Environmental Code to operationalise the principles set out in the 2008 constitution could represent an opportunity to regulate all forest-related activities more effectively, but it also remains to be seen how the state will implement its provisions to control environmental services.

The *Making the Forest Sector Transparent* programme is coordinated by Global Witness and works with a coalition of leading local NGOs in Cameroon, the Democratic Republic of Congo, Ecuador, Ghana, Liberia and Peru to engage policymakers and advocate for capable, responsive and accountable forest sector governance. Each partner has administered a mini-grants fund to support grassroots advocacy in their country.

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Ecuador Indicators 2011

Indicator	Status	Change	Comments
Freedom of Information Legislation	🟢	👉	The Public Ombudsman specified minimum standards of information publication in 2011 related to LOTAIP. This legal framework has facilitated access to information, but there is still a lack of political will and public demand to promote more open public bodies.
National Forest Policy	🟢	👉	The Strategy for Sustainable Forest Development was designed in 2000 and updated in 2004, which orientates forest policy. The Sub-Secretary for Natural Heritage published a document in 2011 which explains and defines the model of forest governance and the MAE is developing a national forest policy.
Codified Forest Law and Supporting Norms	🟢	👈	The forest law and norms are available through the webpage of the MAE, but local people are generally not aware of the regulations. The Forests and Conservation of Natural Areas and Wildlife Law is being updated. The 2008 Constitution set out new principles, which makes an Environmental Code necessary.
Signed International Agreements Related to Forest Products	🟢	👈	Ecuador is a signatory of various international agreements related to forests. It pulled out of the negotiations for a trade agreement between Andean countries and the EU, but hopes to negotiate a separate agreement in 2012. It was unclear at the time of the report card whether this would refer to forest products or adopt standards for transparency.
Provisions for Transparency in Forest Laws and Norms	🟡	👉	There are no forest laws or norms that point to transparency; however, the model of forest governance published in 2011 includes commitments to transparency and access to information. The MAE has been improving SAF to generate national information on forest sector activities.
Legal Recognition of Customary Rights in Forest Laws and Norms	🟢	☝	The 2008 Constitution, as well as the environmental and forest laws, recognises the rights of indigenous peoples and communities over their territories. The laws establish that indigenous peoples have priority in use of community lands and forest products, but the mechanisms for applying these laws are not clear.
Legally Recognised Procedure for Consultation on New Forest Norms	🟡	☝	There is a Citizens' Participation Law and an autonomous Citizens' Participation Council, and the Environmental Management Law sets out principles for participation, but in practice it was difficult to find information on consultation processes in 2011.
Legal Recognition of the Right to Free Prior and Informed Consent	🔴	👈	The 2008 Constitution guarantees the right to free prior informed consultation; however it does not require consent and there are no specific mechanisms in the regulations. The implementation of projects in indigenous areas has caused conflicts, and indigenous people have requested that obtaining their consent be made compulsory.
National Land Tenure Policy	🟡	👉	Various laws and public bodies have had a direct or indirect relationship to forest tenure over the years, but there is no national land policy. The forest law guarantees the right of private ownership. A Land Law was being elaborated in 2011, which has the potential to develop a simpler process of land tenure regularisation.
Forest Ownership and Resource Use Maps	🟢	👉	Maps of the National System of Protected Areas are available and some municipalities also have a land registry that approximates land tenure, however these registers are not very accurate. The MAE has made progress in mapping forest coverage and determining rates of deforestation, but some data was still missing.

Ecuador Indicators 2011

Indicator: ⬤ Yes ⬤ Partial ⬤ No ⬤ Not applicable
Change since 2010: 👆 Significantly Improved 👇 Improved 👈 No Change 👈 Worsened 👇 Significantly Worsened

Indicator	Status	Change	Description
Regulated System of Permits for Commercial Logging Operations	Not applicable	No Change	The majority of forested areas are owned by indigenous peoples or rural landowners, and forestry operations are treated as contracts between private entities, which mean that they should not necessarily be made public. This limits the availability of information on the extent of legal or illegal logging operations and consequent impacts on deforestation.
Legal Requirement for Consultation before Commercial Logging Allocation	Not applicable	No Change	The allocation of forestry operations originates from the right of the landowner to use, enjoy and dispose of the resources on their property, so there is no requirement that obliges the forest authority to consult other parties prior to the granting of these rights. If the forest is held by a community then it may carry out an internal consultation, but this is not a wider public process.
Verification Process (Due Diligence) on Eligibility of Commercial Operators	Yes	No Change	A ministerial agreement issued procedures for authorising licences for logging operators, which constitute a due diligence process. To grant a licence, the MAE requires complete applications, management plans, inspection reports and compliance certificates to grant a license. These licences are publicly available on request.
Forest Management Plans	Yes	Improved	The MAE has developed SAF through which it monitors plans and licences and grants timber transportation guides. This system has improved access to information such as forest management plans made publicly available through information requests.
Regulation of Environmental Services	No	No Change	Article 74 of the 2008 Constitution states that "environmental services will not be subject to appropriation; their production, provision, uses and operation shall be regulated by the State". There are on-going discussions on the regulations necessary to implement this article.
Strategic Environmental Assessment	Yes	Improved	The National Planning Secretariat assesses the impact of programmes across state institutions, which includes objectives on environmental sustainability. It published a guide to formulating public policies in 2011. Unlike several extractive industries, the forest sector is not identified as a 'strategic sector' by the government, but is often impacted by them.
Independent Forest Monitoring	No	No Change	There is no organisation contracted in Ecuador to carry out independent monitoring. However, the model of forest governance that the MAE is in the process of implementing recognises the importance of monitoring and evaluation of forest management.
Fiscal Systems to Distribute Forestry Royalties or Incentives	Yes	No Change	The Socio Bosque Programme provides financial incentives to rural communities and landowners to conserve their forests. Information on the amounts funded and distributed under this programme is publicly available from its website.
Information on Forest Law Infractions	Yes	No Change	Through an information request at a provincial level, a list of forest law offenders could be obtained. This information should be made available on the MAE website to support enforcement. Lack of information sharing between institutions also means that on occasion the actual offenders can bid in auctions of confiscated material.
Annual Forest Authority Report	Yes	Improved	The Transparency and Access to Public Information Law specifies that public bodies must present accountability mechanisms and deliver annual reports on their compliance with the law. The MAE publishes an annual report of activities, and reports are also published from SAF.

Analysis

Of the 18 indicators that were considered applicable to the context in Ecuador, 12 were rated 'green'. This would suggest that the legal framework and public information for the forest sector are largely adequate for providing transparency. There are policies and laws for the sector that meet most of the criteria in the report card, and key information such as forest maps, licences, management plans and lists of infractions are publicly available (in some cases though only on request). The remaining indicators reveal that there are still some important gaps, however. Information on consultation procedures is lacking, and there is no framework for free prior informed consent or independent monitoring, which is particularly important given that indigenous peoples own much of the forests. The indicators on a state regulated system of forestry permits and consultation prior to resource allocation were considered not applicable since they are effectively activities on private land.

Although LOTAIP guarantees citizens' access to information, greater political will and resources are still needed to improve transparency in practice. More requests from society for information and penalties on authorities for non-compliance could also drive change. A promising sign was that the model of forest governance published by the MAE in 2011 recognises the importance of transparency and monitoring, but it remains to be seen how its commitments are factored into the anticipated Environmental Code. SAF was also being developed as a better tool for information management; nonetheless it remained to be seen whether it will facilitate easier public access to data. Better coordination between government institutions is also needed to deal with forest offences.

State functions and laws promote public participation in decision-making, but there are not clear guidelines for implementing these provisions. Consultation processes have tended to be complex and difficult for the wider population to engage in. This has contributed to conflicts, principally with the indigenous communities, where projects such as crude oil extraction and mining are the economic priority of the state. There was also criticism of REDD+ preparations, but efforts were made to improve the time and opportunities for participation.

Key Recommendations

The Ministry of Environment should:

- Summarise and translate key information so that it is more widely accessible in local languages.
- Develop SAF further in collaboration with users to make it a publicly accessible system for obtaining information on forestry licences and infractions.
- Outline how the model of forest governance will fit into the new Environmental Code.
- Develop a permanent space for dialogue between all rights-holders and stake-holders on forest-related norms.
- Ensure that the process to construct the new Environmental Code and national REDD+ plan is participative.

Indigenous peoples and community groups should:

- Press the public authorities to comply with legal requirements on transparency and make requests for information.
- Coordinate actions and initiate dialogue on the impact of extra-sectoral activities on forests.

Civil society should:

- Investigate the consumption of forest products and demand that they are legally sourced.
- Develop forums and observatories to support wider participation in forest governance.
- Support information sharing to the public on policy implementation at regional, departmental, municipal and community levels.

The National Legislature should:

- Create specific standards for forest sector transparency with clear mechanisms for their application and monitoring.
- Specify the role of the proposed environmental regulator in relation to the Environmental Code.
- Establish cross-sectoral citizen participation councils to support the forest policy cycle.
- Ensure that sufficient time is given for public debate on new bills.

International donors should:

- Require all results from their funded projects to be made publicly accessible.
- Promote agreements on broader participation in forest policy and activities.