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## Overview

This brief provides an overview of Peru's Agency for Supervision of Forest Resources and Wildlife (*Organismo de Supervisión de los Recursos Forestales y de Fauna Silvestre*), OSINFOR, an autonomous government entity with sanctioning powers that has conducted thousands of field inspections of logging operations since 2009. OSINFOR's contribution to increasing forest oversight and supply chain transparency offers a unique model with lessons relevant to other countries for improving governance in a complex, troubled sector.



# Transparency and Accountability, Tree by Tree

## Peru's Independent Forest Sector Oversight Body, OSINFOR

### KEY POINTS

- » The concept of an independent oversight body was embedded in Peruvian law in 2000 but only fully put into action by legislative measures passed in 2009 to comply with the US-Peru Trade Promotion Agreement (TPA) Annex on Forest Sector Governance.
- » Between January 2009 and December 2014, OSINFOR conducted 3,498 supervision visits, covering an area of 42,471 square miles and verifying the presence or absence of 321,019 trees. Of these supervisions, 72 percent have produced evidence of false information or illegal activity meriting a sanction or cancelation of the logging permit. Personnel operate in remote locations at serious personal risk.
- » OSINFOR has launched two online databases, SISFOR (*Geographic Information System for Forestry and Wildlife Supervisions*) and SIGO (*OSINFOR management information system*) to provide detailed, georeferenced information to the public, companies and enforcement agencies regarding the results of monitoring over 3,700 sites ("annual operating plans" or POAs) within concessions, communities or private lands where logging took place.
- » In making this degree of information publicly available in an online platform, Peru sets a new standard for forest sector transparency. To further improve the model, OSINFOR should continue working towards making full supervision reports publicly available online.
- » Inter-institutional collaboration and joint operations between OSINFOR, customs, and enforcement agencies have demonstrated the way that fully transparent supply chain information can identify and dramatically reduce illegal timber exports.
- » Formal agreements with national and regional indigenous federations for information sharing and training are a critical element of OSINFOR's strategy.
- » Key measures to increase OSINFOR's effectiveness include broadening its legal mandate, improving information flow with the National Forest and Wildlife Service (SERFOR) and from regional forest authorities and companies, maintaining institutional independence, and increasing collaboration with law enforcement agencies in Peru and trading partner countries. Its ongoing institutional independence is critical to maintain.
- » Peru should strongly support and share broadly the model and lessons from OSINFOR's work, as many countries and companies seek ways to improve access to information about legality in supply chains and hold illegal operators to account.

## Tackling a seemingly intractable problem

Suppose you are a tropical timber importer selling Peruvian hardwoods in the United States, trying to comply with the law, trying to do right by the environment and your customers. The US Lacey Act makes clear that you need to know if your product is legal.<sup>1</sup> You probably ask your exporters to provide “all the relevant documents” – whatever those may be. You may try to dig a bit deeper into the supply chain, Google the logging company to see what, if any, news articles come up, ask around with trusted colleagues. But when you’re dealing with timber in a country where estimates have put illegal logging at 80 percent of all production,<sup>2</sup> where by all accounts the permits and papers are still frequently falsified,<sup>3</sup> how do you exercise this due diligence with any real confidence?

Perhaps you are a government official on either end of the supply chain, whose job it is to ensure that timber trade laws are followed. From your desk in Washington DC, or Amsterdam, or Lima, you are trying to enforce laws that require, ultimately, a firsthand inspection in jungles that lie across an ocean, up and over the Andes, and several days plying the headwaters of the Amazon. Finding the resources for that investigation in your annual work plan would be difficult at best.

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OSINFOR’s work... is bringing greater transparency and accountability to an exceedingly opaque, troubled sector.

You might hope that NGOs will bring this kind of information to light. In 2012, the Environmental Investigation Agency (EIA) undertook just such an investigation, traveling a six days’ journey from Lima by planes, cars, boats, and boots, to painstakingly compare a list of the trees “on paper” with what was actually found in a forest concession. Not a single stump that EIA looked for existed. All those trees on paper had been laundered from somewhere else: perhaps an indigenous community, a national park, private or government lands – and illegally sent to the United States. But this was one concession, a few shipments. Even if NGOs *could* cover more area, more often, there is no guarantee that the illegalities they find will be formally recognized and held to account. This type of investigation will never be, and is not intended to be, a systematic monitoring approach to an Amazon-wide problem.

What is remarkable is that Peru does have a systematic approach to this problem. In the midst of a forest sector still riddled with falsification, laundering, corruption, and violence against forest defenders, Peru has established a



legitimately independent agency that not only effectively monitors and sanctions illegal logging but is making its information public for companies, government officials and communities to access. It’s called OSINFOR, the Agency for Supervision of Forest Resources and Wildlife (*Organismo de Supervisión de los Recursos Forestales y de Fauna Silvestre*).

OSINFOR’s work, on its own and in partnership with other Peruvian agencies and Amazonian indigenous organizations, is bringing greater transparency and accountability to an exceedingly opaque, troubled sector. While not without its limitations, it’s a unique and effective model that offers a vision of fully traceable supply chains and important lessons for other countries. It’s a story worth telling.

## What is OSINFOR?

### The origins of an independent supervisory agency

The concept of OSINFOR emerged from the arduous process of negotiating Peru’s revised Forestry Law 27308, approved in 2000. This law, which created the current system of 5,000-40,000 hectare concessions given for 40 years, was intended to do away with the excesses of a previous system of short-term harvest permits that had produced utterly unsustainable and largely illegal logging.

In recognition of the need for greater oversight, Article 6 of the new law called for creation of a supervision organism. This body was not to be the “forest authority” itself, responsible for implementing the law and regulating

# OSINFOR's legal mandate and core functions

Supreme Decree 1085 created OSINFOR as “the entity, at the national level, charged with supervision and audit of the harvest and conservation of forest and wildlife resources, as well as the environmental services derived from the forest, for their sustainability.” Its core functions, as defined by SD1085 and subsequent regulations, are the following:

- » Supervise and audit compliance with the law and respective management plans by those who have received “enabling titles” (*títulos habilitantes*). This technical term encompasses:
  - **Concessions** for (i) timber, (ii) non-timber forest products (NTFP), (iii) wildlife extraction, (iv) conservation or (v) ecotourism;
  - **Permits** for timber extraction from (i) native and peasant communities or (ii) private properties;
  - **Authorizations** for (i) timber harvest in dry forests, (ii) NTFP extraction or (iii) wildlife management *ex situ*, such as zoos, rescue centers, or animal breeding centers.
- » Additional kinds of authorizations, such as for salvaged timber, industrial clearance or on-farm “agroforestry” trees, are not currently included in this remit. Protected areas are specifically excluded as well.
- » Verify the validity of annual export quotas for CITES

(the Convention on International Trade of Endangered Species)-listed species.

- » Supervise inspections that the forest authority is required to conduct prior to approval of the annual operating plan for logging any CITES-protected species, currently limited to mahogany (*Swietenia macrophylla*) or cedar (*Cedrela odorata*).
- » Conduct audits at least every five years of concession General Management Plans.
- » Sanction infractions of forest and wildlife laws, including the right to cancel harvest rights in cases of incompliance.
- » Conduct training and capacity building with relevant actors.

Regional and local governments, Forest Management Committees, National Police and “other government bodies” are obligated to provide support to OSINFOR in its capacity as national authority of the above duties.

The President of OSINFOR, among other requirements, cannot be a holder of stock (>1%), a director, legal representative, advisor, consultant, employee or in any way related to companies that conduct the activities it supervises, or have been so within two years prior.

OSINFOR's budget may come from the following sources: the annual national budget; donations from national, foreign and international institutions; income from stumpage fees; 100 percent of income from any fines or penalties imposed; other as legally allowed.

activities, including granting concessions and annual permits. This regulatory role was assigned to an agency called INRENA, which later evolved into the General Directorate for Forestry and Wildlife (DGFFS), and under the new Forest Law 29158 (not yet fully into force) is an entity called the National Forest and Wildlife Service (SERFOR). Rather, the body defined by Article 6 was to operate independently in order to avoid possible conflicts of interest and to add a degree of checks and balances to the system. However, when finally established by Supreme Decree in 2004, this new entity was a mere “Office for Concession Supervision” within INRENA, itself part of the Ministry of Agriculture. It was given little authority and fewer resources.

In 2008, the United States and Peru signed a Trade Promotion Agreement which included a groundbreaking Annex on Forest Sector Governance. One of the stipulations in this Annex was that “Peru shall establish OSINFOR as

required under Forest Law No. 27308. OSINFOR shall be an independent and separate agency and its mandate shall include supervision of verification of all timber concessions and permits.”<sup>4</sup> In this context, Supreme Decree 1085, part of a controversial legislative package to implement provisions of the TPA, established OSINFOR as an entity apart from INRENA, answering to the Presidential Council on Ministers (PCM). This move gave the agency new political autonomy and sheltered its budget or decision making from forest sector politics and economic interests.

Since its [re]creation, OSINFOR has had three directors. Since 2011, the director has been Rolando Navarro, a forester who worked for both a non-profit conservation organization and a forestry concession before joining OSINFOR staff in 2009. A recent analysis of forest sector oversight by one of Peru's most respected environmental law organizations states that “during Rolando Navarro's administration, a



supervision and oversight regime has been consolidated, management has been modernized...and the procedures for supervision, manual writing, information transparency, etc have improved.”<sup>5</sup> Interviews conducted for this briefing with members of civil society, government agency staff, and reporters suggest that under Navarro’s leadership the agency has managed to maintain credibility and independence in a complex political environment.

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### How is OSINFOR structured?

OSINFOR reflects the ongoing process of decentralization in Peru, whereby most responsibility for giving out logging permits now belongs to “regional forest authorities” which answer directly to regional governments, not SERFOR. A central office in Lima houses administrative and management personal and deals with legal processes that result from the fieldwork conducted by seven regional decentralized offices (DOs). Some 45 supervisors (as technical personnel are called) are spread out among these offices and Lima. These supervisors work within two directorates: one focused on concessions of various types and another on permits and authorizations.

Over the past two years, the agency has consolidated personnel with a particular focus on increasing the efficiency of legal processes that result from its inspections; each of the two directorates now has 8-10 lawyers. This is the team responsible for oversight of approximately 6,500 ‘enabling titles’ currently on the books in Peru (see page 3, “OSINFOR’s legal mandate and core functions”). Among these titles, 1,985 are concessions across 10.08 million hectares of forest, predominantly for logging (608 contracts, 78.2 percent of total area), conservation (38 contracts, 10.8 percent), and Brazil nut extraction in the southern department of Madre de Dios (988 contracts, 8.6 percent).<sup>6</sup> The rest are permits and authorizations, the vast majority of which are for forest extraction activities.<sup>7</sup>

## Forest sector oversight, tree by tree

OSINFOR’s first fundamental task is to provide independent oversight of logging activities across a sector historically plagued by illegality and corruption.<sup>8</sup> This task boils down to one thing: get into the forest.

As investigations done by EIA and various journalists have documented, most timber in Peru is laundered into the supply chain through an ingenious trick: (i) fictitious trees are invented within a legitimate logging area like a concession’s annual harvest parcel; (ii) legitimate permits and transport papers are issued for these non-existent trees; and (iii) real trees logged elsewhere then take their place.

This mechanism works, of course, only because several professionals are willing to sign off on documents containing false information: first, a private forestry engineer consultant who theoretically prepares the annual logging plan, complete with georeferenced maps that pinpoint every tree supposedly to be harvested; second, a bureaucrat in one of the local forest authority offices, who is supposed to conduct an inspection before approval if there are any protected species slated for logging; and third, this bureaucrat’s superiors in regional and national offices, responsible for assuring the timber industry’s compliance with both national and – in the case of species protected under CITES – international laws.

The job of OSINFOR supervisors is to sort out what’s real and what’s not, as well as to see whether logging activities have been conducted in line with regulations to limit damage to soils, waterways, ecosystems, and adjacent communities. The only way to do this is to visit the site itself, carrying the logger’s annual operating plan (known as POA, for its acronym in Spanish) in one hand and a GPS unit in the other, and verify if what was put on paper corresponds to what was done. These visits are carried out in communication with the local forestry

authority office and the contract holder (concession owners, private landowner or community), who is notified in advance, asked to provide all relevant documentation for review, and expected to send a legal representative to accompany OSINFOR supervisors into the field.

It's a job done tree by tree; one supervision visit may take several days to complete, plus travel time. In this painstaking manner, OSINFOR's personnel inspected over 321,000 individual trees between 2009 and December 2014. During the same time period, they covered 42,471 square miles of forest, an area equivalent to the state of Tennessee or the country of Honduras, and in 2014 they covered 7,722 square miles, an area slightly less than the state of Massachusetts or the country of El Salvador. In aggregate during these five years, they have inspected at least one annual logging parcel within roughly 50 percent of all identified enabling titles in Peru, including the overwhelming majority of active logging concessions.<sup>9</sup>

At least 72% of the supervisions conducted by OSINFOR from 2009 to 2014 have found irregularities serious enough to initiate a sanction process.

The resulting formal reports are a treasure trove of information, at once both amusing and sobering. The lengths to which some concessionaires go to delay inspections, justify "mistakes" or hide their fraud before a supervision visit can be extreme; in a 2011 inspection for example, OSINFOR found disks of wood strategically inserted into the ground at the precise coordinates where stumps were supposed to be found.<sup>10</sup> The level of deception also impresses: a concession POA where 31 of the 43 cedar trees approved for harvest simply didn't exist, 11 remained standing, and the only tree actually cut was found abandoned in the forest; however, 311m<sup>3</sup> of cedar timber had supposedly been extracted and sold into the market.<sup>11</sup>

At least 72 percent of the supervisions conducted by OSINFOR from 2009 to 2014 have found irregularities serious enough to initiate a sanction process,<sup>12</sup> representing a total of 858,000m<sup>3</sup> in stolen and laundered timber, worth well over US\$134 million dollars.<sup>13</sup>

## Pushing for accountability

Conducting field supervisions, as arduous as it sounds, is perhaps the most straightforward part of the monitoring process. What follows is the grinding legal and bureaucratic work to hold people and companies to account. Back in the office, OSINFOR lawyers review each Supervision Report and determine what, if any, consequences to assign. In the past year, the agency has formalized a protocol for the evaluation of level of damage to standardize penalties according to volume, species, area affected and other factors, in response to criticisms about differential sanctions for similar infractions.

OSINFOR has the authority to do one of two basic things in the case of infractions: suspend the concession, permit or authorization altogether (*caducidad*), or assess a sanction, monetary or otherwise, in accordance with damages. The resulting Directorial Resolution details the infractions, assigns the penalty, and initiates an Administrative Procedure (known as PAU, for its acronym in Spanish) during which the local forest agency and concessionaire have the opportunity to respond. Ultimately, a second Resolution is issued to finalize the PAU. Since 2009, OSINFOR has issued some 2,290 final Resolutions indicating an infraction serious enough to assign penalties – 65 percent of all supervisions it has initiated. The addition of more lawyers to the agency's team doubled the amount of Resolutions issued in 2014, thus reducing the backlog in case processing.<sup>15</sup>

However, Final Resolutions may be, and often are, appealed to a secondary body called the Forestry Tribunal – once an appeal is lodged, operators sometimes continue to log the forest while waiting for their cases to be decided.<sup>16</sup> This Tribunal was defined by the same

	2014	2009-2014
Number of supervisions conducted	613	3,498
Area covered by supervisions	2.0 million ha (7,722 square miles)	11.1 million ha (42,471 square miles)
Number of trees inspected	75,841	321,019
Number of final resolutions issued placing sanctions or canceling logging permit	1,050 (includes cases supervised in previous years)	2,290 (65% of all supervisions thus far)

Table 1: OSINFOR's work in numbers, showing the most recent year's statistics as well as aggregate figures from the past five years. (Data from SIGO and OSINFOR's "Achievements through 2014" Report<sup>14</sup>)

Supreme Decree that created OSINFOR, but seven years later it is still not operating (see more below). This institutional vacuum has hobbled efforts to hold many illegal operators to account.

## Bringing transparency to the sector: SISFOR and SIGO

The monitoring, accountability, and enforcement activities described above are certainly valuable for cleaning up the sector. However, without a platform to make it publicly available, the data OSINFOR generates is of limited utility to companies trying to obtain better information about specific actors in their supply chains, to communities working to protect their territories, or even to other government agencies. (During EIA's 2012 investigation for example, OSINFOR reports were only obtained by using Peru's equivalent of a Freedom of Information Act and making a series of in-person visits to the office over months.) It is in the realm of transparency, then, that OSINFOR's recent innovations are a particularly compelling model.

To date, OSINFOR has launched two major online systems to make its information more broadly available and consistently updated.

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### SISFOR: Geographic information system for forestry and wildlife supervisions

SISFOR (Sistema de Información Geografica de Concesiones Forestales; (<http://sisfor.OSINFOR.gob.pe/wms/UI/>)) is an online interactive map designed to provide a visual tool for exploring information about areas authorized for timber extraction or other activities and their legal status. The interface shows the different categories of enabling titles – logging, wildlife or conservation concessions, native community permits, private property authorizations, etc – in color-coded blocks across the country. Other map layers show where supervision visits have already been conducted by OSINFOR. Click on a block, and basic information about the owner, contract number, type and area of concession, and status – e.g. “canceled” – comes up. The platform is built with menus to upload or download reports and files related to each area's supervision visit and subsequent legal process, although few documents are yet uploaded. Additional layers provide information about mining concessions and deforestation.

OSINFOR also recently signed an agreement with the World Resources Institute to incorporate its information into WRI's Global Forest Watch, an online global mapping platform for information on deforestation, and to explore use of technologies for satellite-based monitoring and real-time illegal logging alerts.<sup>17</sup>

### SIGO: OSINFOR management information system

Launched only in May 2015, SIGO (Sistema de Información Gerencial; (<http://www.OSINFOR.gob.pe/portal/documentos.php?idcat=144&idaso=129>)) complements the spatial resources of SISFOR with a database on the status and underlying facts of thousands of legal or administrative processes initiated as a result of OSINFOR supervisions. When fully built out, the system is intended to contain relevant documentation related to every supervised forest area in the country: management plans, annual plans, transport permits, volume extraction balance sheets, forest authority inspection reports, OSINFOR supervision reports and all associated notifications, correspondence and official resolutions.

As with SISFOR, the objective is to facilitate information flow in real-time or as close as possible, to improve decisions about monitoring priorities and facilitate enforcement by OSINFOR and other relevant government agencies. The system coordinator in Lima receives data entered at each

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OSINFOR decentralized office about newly approved logging operations as well as supervisions conducted. As of this report's writing, Peru's national customs and tax authority (*La Superintendencia Nacional de Aduanas y de Administración Tributaria*, SUNAT) already had access to the full database for some 3,600 enabling titles and 26,000 related documents; OSINFOR was in the process of signing data sharing agreements with various other Peruvian institutions, as well as beginning to integrate SIGO with SISFOR.<sup>18</sup>

Not all of these documents are downloadable by the casual visitor. However, a publicly available section does generate reports which helpfully list all logging operators supervised to date as belonging to one of three groups: "at risk for illegal timber trade" (977 operators), "at potential risk for illegal timber trade" (1,560 operators), and "not at risk for illegal timber trade" (1,174 operators).<sup>19</sup> These categories are defined with respect to the degree of problems encountered during supervisions.<sup>20</sup> The database provides one-page summary reports of each concession's infractions in terms of species and volumes. OSINFOR states that is working to make more types of reports available for the public in the future.

Although SISFOR and SIGO are nascent and OSINFOR is still working out the systems' technical kinks, these two sites are a potential gold mine of publicly available data for conducting due diligence. A buyer of Peruvian timber could now request that his exporter provide the name or numbered code of the concession(s)/community(ies) of origin and then look for this source's legal status in both platforms within a matter of minutes. In making this degree of information about monitoring, infractions and legal processes publicly available in an online platform, Peru is setting a new standard for forest sector transparency.

It bears mentioning that SERFOR is also preparing a database and software system whose goal is to enable greater traceability and control in Peru's timber trade. The *Sistema Nacional de Información Forestal y de Fauna Silvestre*

(National Forest and Wildlife Information System, SNIFF) and its control sub-system, *Sistema Nacional de Información y Control* (National Information and Control System, SNIC), were originally slated to come online in 2013 but have yet to be launched. It is unclear if or how this system will be linked to OSINFOR information.

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## Institutional coordination for law enforcement and legal trade

In most countries, one of the biggest hindrances to efforts to hold actors accountable for illegal or corrupt activity is the lack of communication or coordination between a government's own entities. In Peru, different key bits of information about timber supply chains from stump to export are gathered separately by the National Forest Service, regional forest authority offices, OSINFOR, and SUNAT (the national customs and taxes authority); putting together the full picture and identifying holes or irregularities can seem like a jigsaw puzzle in which one or two critical pieces are always missing. Moreover, any criminal investigations must involve other government agencies responsible for law enforcement: public defender's offices (*Procuradorías*), comptrollers' offices (*Contralorías*), and public prosecutors' offices (*Fiscalías*).

Over the past few years, OSINFOR has been notably



proactive in providing information to other agencies in order to facilitate actions that it is not mandated to undertake, and in building bridges with the private sector to help promote greater legality in the sector. For example, the agency has sent multiple formal communications to SERFOR, regional governments, the professional forest engineers association, and various enforcement agencies with lists of private forestry engineers who have signed off on demonstrably falsified documents, requesting that these individuals be sanctioned in some form. As of late 2014, almost half (153 of 309) of the engineers registered on SERFOR's official list of approved professionals were involved in providing false information within 1,146 false logging plans. (SERFOR sustains that it is trying to address this problem but is also legally limited in what actions it can take; to date these engineers remain authorized to sign off on logging plans.)<sup>21</sup>

In the Amazon, most communities are not doing the commercial logging themselves, but rather signing contracts with outside loggers.

OSINFOR has also invested considerable effort in building alliances with Peruvian law enforcement bodies to improve their knowledge of and investigations into the mechanisms of fraud, laundering and illegality in the forest sector. The most visibly successful result of this coordination was 2014's "Operation Amazonas," a three-month operation led by the tax and customs agency SUNAT, with cooperation from OSINFOR, the Specialized Environmental Prosecutor (FEMA), the Minister of Environment's Public Defender's Office, the World Customs Organization and INTERPOL. The nationwide Operation resulted in seizures at highway

control posts, sawmills and borders of some 6 million board feet of timber – enough to fill six Olympic-size swimming pools and worth US\$20 million dollars.<sup>22</sup>

One core aspect of Operation Amazonas was a "simple" data analysis: cross-referencing OSINFOR's first-hand data from forest inspections with SUNAT's transport and export data. In addition, for the first time, SUNAT requested exporters to indicate the source – i.e. legal contract number for concession, community etc – of any and all wood. (Under current regulations, mahogany and cedar are the only woods for which this information is required). OSINFOR found evidence of falsified information for 68 percent of the timber sources provided by the exporters to SUNAT during the operation.<sup>23</sup>

In a sign of how effective greater supply chain transparency can be in reducing illegality, wood exports from Peru's largest port fell by 50 percent in the third month of the Operation as exporters evidently decided it was better to stay away from the ports rather than provide information about their laundered timber sources.<sup>24</sup>

## Engagement with native communities

While forest concessions are the most visible face of laundering in Peru, other forms of authorized logging are not exempt from illegality. One-third of the infractions found by OSINFOR are in supervisions of native or *campesino* communities.<sup>25</sup> Here, the dynamic is distinct. In the Amazon, most communities are not doing the commercial logging themselves, but rather signing contracts with outside loggers who cut and transport the wood with their own crew and pay the community – or at least its leader – a price per board foot. As most communities know very little about forestry laws, timber markets, or technical aspects of mechanized logging, these negotiations are conducted with highly unequal

information. The result is a disadvantageous contract in which the community is not sufficiently remunerated for their trees and is left legally responsible for false information or infractions committed by the loggers.<sup>26</sup> In other cases, loggers enter into agreements with native communities to essentially generate fake forest inventories, and then proceed to launder timber from other sites, never returning to the communities to harvest, and exposing them to fines and legal action.

Over the last few years, Peru's indigenous federations have made important headway in acknowledging and beginning to address these problems within their membership. They are developing a network of entities called *Veedurías Forestales* or Forest Observatories, housed within regional federations, which perform their own monitoring and work to build communities' capacity to negotiate fair contracts, conduct or supervise logging, and promote more and fairer enforcement by government agencies.<sup>27</sup>

OSINFOR has understood the importance of this work and of establishing collaborative relationships with communities in order to reduce legal infractions. It has now signed a total of nine memoranda with regional federations and Peru's national representative indigenous body, AIDESEP, as well as non-governmental organizations like the Institute for the Common Good (known as IBC, for its acronym in Spanish) that work closely with communities in various Amazon watersheds.<sup>28</sup>

The focus of these collaborations to date has been strengthening of the *Veedurías*, training for leaders and production of videos and materials in native languages. One key topic is timber measurement (*cubicación*): how to measure both standing trees and logs accurately so that communities are paid adequately and not left with legal problems or fraudulent documents. In 2014, OSINFOR conducted 25 trainings with over 1,500 indigenous participants. Discussions with AIDESEP about greater information sharing and innovative ways to allow communities to pay the fines from existing infractions are underway.

## Challenges

OSINFOR faces a series of obstacles in its efforts to improve transparency and accountability within Peru's forest sector.

### Risks to field personnel

OSINFOR supervisors travel to highly remote sites to collect data that has the potential to create serious legal problems for economically interested parties. Particularly given the atmosphere of ongoing impunity for illegal actors, its officials are operating at considerable personal risk when they enter the field. Threats are common. In August 2014, OSINFOR personnel were in Saweto, Ucayali, conducting a supervision visit in response to repeated complaints from an Ashaninka native community regarding three concessions superimposed on their traditional lands. OSINFOR had tried to conduct monitoring in one of these concessions, Eco Forestal Ucayali,

in 2011 but was refused entry by company representatives. On this new visit, in which they were also met with resistance and hostility, the supervisors found evidence of significant unauthorized activities. And the day after they left, the four leaders with whom they had gone out – Edwin Chota, Leoncio Quintisima, Francisco Pinedo y Jorge Ríos Pérez – were murdered.<sup>29</sup>

### Inconsistent information flow

OSINFOR is supposed to receive regular information from regional forestry offices about all authorized concession POAs, native community or private logging permits. However, Operation Amazonas 2014 demonstrated that close to 70 percent of the relevant documentation regarding timber flows was not in their database. Moreover, information often arrives partially or retroactively, after a supervision visit is conducted, "correcting" the original POA – a practice that smacks of corruption. Information flow between OSINFOR and SERFOR is also less than ideal.

### Full implementation of the law

Supreme Decree 1085 of 2008, which created today's OSINFOR, mandates the creation of a secondary body to review and make final decisions regarding appeals by concessionaires or permit holders. However, seven years later, this Forestry Tribunal had still not been established due to a combination of political resistance and difficult requisites for its three posts. As this brief was being written, modified requisites had finally been approved and a new call for candidates was being made, giving hope that by the end of 2015 it may finally be functional. Without the existence of the Tribunal, it has been difficult to hold the majority of operators to account for illegal activities documented by OSINFOR's fieldwork.

### Financial resources

OSINFOR's annual budget has remained relatively constant for the past few years at around US\$7 million. Most of this comes from the core Peruvian budget, with a percentage from concession stumpage fees and a small amount collected from fines paid by operators who decide not to appeal their cases. According to law, OSINFOR should receive 25 percent of the total of these fees, but many regions have been delinquent in transferring all or any of what is owed. The vast majority of income that the agency should be receiving from the fines it levies on illegal operators remains theoretical, with cases tied up in appeals. Of the s/21.5 million (US\$6.8 million) owed, OSINFOR has received less than 5 percent.<sup>30</sup>

Since 2008, from the US\$73 million dollars in funds appropriated and channeled into programs to support Peruvian forest sector reform,<sup>31</sup> OSINFOR has received a total of five copying machines and consultants' fees for facilitation of three workshops.<sup>32</sup>



## Limits to jurisdiction

As described earlier, OSINFOR's remit is limited to supervision of only certain types of logging rights – concessions, permits and authorizations ('enabling titles'). While this in itself is a big job, it actually covers only a fraction of the nation's forest lands. The current mandate excludes monitoring of any timber flows from the following sources:

- local government forests
- land use change permits (e.g. clearing for agroindustrial expansion)
- deforestation for infrastructure development (e.g. roads, mines or dams)
- salvaged wood or agroforestry systems.

History shows that corrupt logging operators lose no time in adapting their methodologies for laundering and fraud, and we should thus not be surprised to see timber flows increasing from these alternative permit types.

In October–December 2014, for example, OSINFOR received a one-time release of information from the Loreto regional forest authority regarding 85 authorizations for a total of 36 million board feet of timber from agroforestry "windbreaks" – timber planted in farming fencerows – in areas that turned out to be primary forest and seasonal wetlands. By the time OSINFOR notified the Loreto regional government, which promptly annulled these permits due to false information, half of the timber was already on the market. Without access to relevant transport permits, it was impossible to trace it any further.<sup>33</sup>

## Limits to information availability

As Operation Amazonas showed, the biggest missing piece for enabling greater supply chain transparency in Peru is the lack of a requirement for exporters to provide information

about forest origin to SUNAT. Inclusion of a single additional box on the Customs Merchandise Declaration form asking for the contract number of the original concession or permit would solve this problem, allowing OSINFOR and SUNAT to provide a complete picture of chain of custody for all tree species, from forest to port, that could eventually be linked into geospatially explicit databases via SISFOR. This information is already required for obtaining transport permits – which are a legal requirement to bring the product to the port – so it would not require additional resources on the part of industry to provide it.

## Involvement of other institutions

OSINFOR is limited to giving administrative sanctions or, in the worst of cases, canceling enabling titles and their logging rights. It cannot hold individual actors to account for criminal acts of falsification or illegal trade. This level of accountability requires investment of resources by law enforcement agencies such as the Specialized Environmental Prosecutor and the Comptrollers and Public Defenders' offices of various ministries. Penalizing and disbarring corrupt private forest engineers requires action by SERFOR and Peru's professional association of forest engineers, *Colegio de Ingenieros*.

## Why the OSINFOR model matters

Shedding light on the dark corners of a historically opaque sector, holding bad guys to account – these are intuitively good things. But making it happen in practice is not easy. We may know illegality is rampant, but understanding and exposing its mechanisms in a systematic way almost never happens at an institutional level. This is why OSINFOR is such an interesting and important example – both for forest legality in Peru, and for advancing a concrete vision of abstract topics like "transparency" and "accountability" within global discussions of forest governance.

Each OSINFOR supervision report shows us, tree by tree, what fraud looks like; each Directorial Resolution levying sanctions, revoking a permit or canceling a concession is a concrete step towards accountability. The institutional collaborations that OSINFOR has been able to develop with customs and a variety of national enforcement entities are a model for better data sharing and integrated law enforcement. The online systems SISFOR and SIGO are one of the best examples anywhere in the world of a government forest agency making public the information necessary for law enforcement officers to trace timber back to its source or for companies to better evaluate risks of illegality in their supply chain.

OSINFOR's model is interesting to compare with formal "independent forest monitoring" (IFM) initiatives, an emergent concept over the past 20 years, the experience of which has now been well-documented in Cambodia, Cameroon, Honduras, Nicaragua, Republic of Congo and DRC. IFM is typically conducted by a third-party entity, whether non-profit NGO or private company, that is completely outside the official state apparatus. Honduras is alone in housing IFM within a government institution (the National Human Rights Commission), but throughout its existence the program has been entirely funded by external donors.

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### The full independence of a government-sponsored oversight body will always be at some risk.

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OSINFOR, on the other hand, is an entity established by Peruvian law and funded by the Peruvian basic budget. Its early lack of independence shows the inherent Catch-22 to that model: without sufficient governance or political will to fully implement the law creating an independent oversight body, that body will not be able to meaningfully improve governance. However, in the current institutional and political context, OSINFOR's official status and its ability to assess penalties help to resolve key weaknesses typically encountered in other IFM systems related to enforcement follow-up and long-term sustainability.

The full independence of a government-sponsored oversight body will always be at some risk. This, ultimately, is why the transparency and information access measures being championed by OSINFOR are so important. Individual leadership or political winds may change, but if information is made fully available, the eyes of many actors can remain on the forests.

## Recommendations for strengthening independent forest oversight

The Peruvian Congress should expand OSINFOR's jurisdiction beyond enabling titles (concessions, authorizations and permits) to include other modalities of logging allowed by law in Peru, as well as access to sawmill records.

SUNAT should incorporate the requirement for information regarding concession/permit of timber origin into the Customs Merchandise Declaration form required of all exporters in order to establish full timber traceability.

OSINFOR should make its complete supervision reports available to the public through its new online platforms.

Peru's National Forest Service (SERFOR), OSINFOR and regional forest authorities should coordinate closely to ensure a consistent, real-time information flow that feeds into SISFOR and SIGO as well as into SERFOR's existing and planned databases.

The Peruvian government should provide adequate resources in the near term to not only establish the Forestry Tribunal, but ensure that it is a functional entity with sufficient support to resolve the hundreds of appeals currently awaiting a hearing.

SERFOR should continue to engage with the relevant actors to find a way to remove from the list of registered consultants those professionals that have been found guilty of signing forest inventories with falsified information.

The *Colegio de Ingenieros* should open internal processes to sanction the professionals that have been found guilty of signing forest inventories with falsified information, including the possibility of disbarment.

The US government should ensure that provisions in the FTA Annex on Forest Sector Governance that explicitly mandate OSINFOR's autonomy are upheld.

The US Congress, US Forest Service and USAID should recognize OSINFOR's critical role in improving Peruvian forest sector governance and transparency through greater financial support to activities such as SISFOR and SIGO.

US enforcement agencies should establish close working relationships with OSINFOR and Peruvian agencies such as the Specialized Environmental Prosecutor and the Public Defender's Office on Asset Laundering in order to facilitate enforcement of CITES (the Endangered Species Act), the US Lacey Act, the US-Peru FTA Annex on Forest Sector Governance and related laws or regulations.



## Call to Action

## References

- 1 The US Lacey Act was amended in 2008 to prohibit the commerce or any plant products (including all wood products) produced or traded in violation of the laws of the country of origin or the United States. The EU Timber Regulation, which came into force in 2013, creates a similar prohibition for commerce in Europe.
- 2 EIA. 2012. The Laundering Machine: How fraud and corruption in Peru's concession system are destroying the future of its forests.
- 3 Acosta, C. 27 February 2015. "Relatos Salvajes." Revista Poder. <https://revistapoder.lamula.pe/2015/02/27/relatos-salvajes/poder/>
- 4 Annex on Forest Sector Governance 18.3.4 (3)(h)(iii). [https://ustr.gov/sites/default/files/uploads/agreements/fta/peru/asset\\_upload\\_file953\\_9541.pdf](https://ustr.gov/sites/default/files/uploads/agreements/fta/peru/asset_upload_file953_9541.pdf)
- 5 SPDA. 28 May 2015. [Publicación] Análisis legal: ¿Cómo funciona la fiscalización ambiental del sector forestal en el Perú? <http://www.actualidadambiental.pe/?p=30371>
- 6 <http://www.OSINFOR.gob.pe/portal/documentos.php?&idcat=5> Source data from MINAG-DGFFS 2013.
- 7 Between 2009 and 2012, 7.4% of OSINFOR's supervisions were conducted in relation to wildlife management ex situ.
- 8 OSINFOR's role includes oversight of wildlife-related concessions and authorizations as well. In this brief, however, we focus on its relationship with timber extraction activities.
- 9 OSINFOR. 2014. "Logros al 2014." Accessed at <http://OSINFOR.gob.pe/portal/logros2014/notalogro.html> Please note that the exact figure is impossible to provide, because permits and authorizations are given annually and there is no single national database that contains all enabling titles. An examination of the SISFOR map shows that OSINFOR has visited almost all active logging concessions.
- 10 Oroza Wood SAC, concession contract 16-IQU/C-J-228-04, Supervisory Report 209-2010-OSINFOR-DSCFFS.
- 11 Forestales Atacuari Concession, contract 16-IQU/C-J-207-04, Supervisory Report 195-2010-OSINFOR-DSCFFS.
- 12 OSINFOR data. The time lag between initiation and termination of an administrative sanctions process (called PAUs in Spanish) can result in different percentage calculations.
- 13 Acosta 2015. Please note that figures for totals change constantly as OSINFOR generates new information. This brief has relied primarily on data up to the end of 2014.
- 14 OSINFOR. 2014. "Informe: Logros al 2014". Available in English at <http://www.OSINFOR.gob.pe/portal/destacados.php?id=65>
- 15 Ibid. OSINFOR.
- 16 OSINFOR lawyers' explicit legal opinion (Informe Legal No. 349-2013-OSINFOR/06.1.2) is that new authorizations should not be emitted in the absence of case resolution.
- 17 See [http://www.OSINFOR.gob.pe/portal/data/recurso/archivos/Convenio\\_OSINFOR\\_WRI.pdf](http://www.OSINFOR.gob.pe/portal/data/recurso/archivos/Convenio_OSINFOR_WRI.pdf)
- 18 OSINFOR. 2015. Sistema de Información Gerencial OSINFOR.
- 19 As of 1 June 2015. [http://190.102.155.108-91/SIGO/Reporte\\_OBSERVATORIO.aspx?sigo=1&lstManMenu=3](http://190.102.155.108-91/SIGO/Reporte_OBSERVATORIO.aspx?sigo=1&lstManMenu=3)
- 20 For example, "at risk" includes operators with precautionary measures, canceled harvest rights or infractions with volumes above 400m<sup>3</sup> and evidence of falsified information. "Potential risk" operators have committed infractions involving lower volumes of timber and without clear evidence of false information.
- 21 Luna Amancio, Nelly. 10 December 2014. "Cuatro viudas contro el tráfico de madera." Ojo Público, <http://ojo-publico.com/16/el-millonario-negocio-del-trafico-de-madera>
- 22 SUNAT Intelligence and Tactical Operations Team. 2014. "Illicit trade in timber: an outline of the problems facing Peru." World Customs Organization News, N. 75.
- 23 OSINFOR 2014.
- 24 Acosta 2015, citing Customs superintendent Gustavo Romero.
- 25 OSINFOR 2014.
- 26 CATIE & PROFOR. 2014. Toolkit for Forest Control and Supervision.
- 27 See <http://www.aidesep.org.pe/conociendo-a-las-veedurias-forestales/>
- 28 See <https://www.youtube.com/watch?v=nqWzzvb4Dgc>
- 29 Luna Amancio 2014.
- 30 Acosta 2015.
- 31 Office of the United States Trade Representative. May 2015. "Standing up for the Environment: Trade for a Greener World." <https://ustr.gov/sites/default/files/USTR-Standing-Up-for-the-Environment-2015-Report.pdf>
- 32 Information from interviews with OSINFOR personnel. The in-kind support came via Perú Bosques.
- 33 Information from interviews with OSINFOR personnel.

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