



MAKING THE FOREST SECTOR TRANSPARENT

TRANSPARENCY INDICATORS 2009

1 Transparency norms

Do official mechanisms – policies, laws, regulations, decrees, procedures, international agreements, and public statements of commitment, etc – exist that permit public access to information? So does the law provide a legal obligation on public institutions to be transparent?

1.1 *Is there a Freedom of Information Act?*

1.2 *What other rules provide for transparency?*

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

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

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

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

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

2 Legal Standing

Do groups of ordinary citizens have collective legal standing? This indicator is not about transparency per se, but is required to understand the extent, if any, that communities (or NGOs) have rights.

This question is not about transparency per se, but is included to understand the context of other questions.

2.1 *Do communities have legal standing?*

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

2.2 Do NGOs have legal standing?

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

3 Forest Legal Framework

Is the forest legal framework available to the public?

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

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

3.2 Is the forest law available?

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

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

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

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

3.5 Has the country signed up to international agreements?

Which forest-related international agreements or processes has the country signed up to, for example EU Voluntary Partnership Agreement (VPA), free trade agreement, ITTO, CITES, UNFCCC, Convention on Biological Diversity (CBD), World Bank Forest Carbon Partnership Facility (FCPF), UN-REDD...

4 Transparent access to decision-making

Are there legal mechanisms for civil society participation in public decision-making on issues relevant for the management of forest resources? If so, to what extent are these actually implemented?

4.1 Is there a national forest forum?

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

4.2 Are there local forest forums?

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

4.3 Is there a procedure for consultation on new norms?

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

4.4 Is there an established list of stakeholders?

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

4.5 Are reports on consultation processes public?

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

5 Tenure and land use

Is most forest land under a clear ownership title, so that (theoretically) it is possible to point to any part of the country's forested land and there is a clear ownership of that location?

5.1 Is there a published policy on forest tenure?

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

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

Where private forestland ownership is possible within the Constitution and legal framework, can the ownership of each area of forest be publicly accessed? (This indicator relates to outright ownership; indicator 5.5, and Sections 7-10 relate to concessions and other permits for use of the forest).

5.3 Is there a difference in law between ownership and use?

Does the law make a clear difference between owners and users of forests / forest products?

5.4 Is the ownership of different forest products clear?

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

5.5 Can you provide examples of forest tenure disputes?

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

5.6 Is there a dispute-settlement process for tenure conflicts?

Are there clear, documented, understood and accessible steps for resolving the types of conflicts identified in indicator 5.5?

5.7 Are ownership and forest land use maps available?

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

6 Allocation of permits / user rights

Is the permit allocation process transparent? Allocation refers to all types of permit including those for logging, conservation, ecotourism, conversion, environmental services, carbon, non-timber forest products etc.

6.1 Do permits exist for all uses / services?

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

6.2 Is there any forest land unallocated to users?

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

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

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

6.4 Is there a stakeholder consultation process prior to permit allocation?

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

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

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

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

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

6.7 Is the final permit allocation decision-making process transparent?

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

6.8 Have there been efforts to reform the permit allocation system?

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

6.9 Are the final permit / contract documents made public?

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

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

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

7 Logging operations

Once a logging permit or concession has been finalised and issued, are citizens informed about subsequent logging operations?

7.1 Is information on logging locations given to the public?

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

7.2 Is there a stakeholder consultation process on individual logging locations?

In addition to any consultation on the general location, timing and allocations of logging concessions (these are covered in Section 6), are stakeholders subsequently given a chance to comment on the location / impact / mitigation of logging at the local level, for example as part of developing a forest management plan?

7.3 Is information on permitted logging volumes (quotas) public?

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

8 Extraction of other forest products

Are citizens informed about the extraction of other forest products? What rules apply to collection of non-timber forest products and other tangible forest products like wildlife hunting? (Non-forest products are covered in Sections 9 to 12).

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

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

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

In addition to any consultation on the general location, timing and allocations of permits (these are covered in Section 6), are stakeholders subsequently given a chance to comment on the location / impact / mitigation of the extraction of non-timber forest products at the local level, for example as part of developing a forest management plan?

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

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

9 Environmental services

Are citizens informed about permits for environmental services? Do the public know about any permits for water or carbon storage, biodiversity conservation or other services provided by forests?

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

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

9.2 Is there a stakeholder consultation process on environmental services locations?

In addition to any consultation on the general location, timing and allocations of permits (these are covered in Section 6), are stakeholders subsequently given a chance to comment on the location / impact / mitigation of the environmental services permits at the local level, for example as part of developing a forest management plan?

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

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

10 Cultural services

The existence of any permit or concession system for 'cultural services' (tourism or ecotourism, shrines, sacred groves or other historic sites) provided by forests in your country was covered in Indicator 6.1. Are citizens informed about any permit system or regulations regarding these services? Do the public know about any specific permits for (eco)tourism or other cultural services provided by forests?

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

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

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

In addition to any consultation on the general location, timing and allocations of permits (these are covered in Section 6), are stakeholders subsequently given a chance to comment on the location / impact / mitigation of the tourism or ecotourism concessions at the local level, for example as part of developing a forest management plan?

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

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

11 Extra-sectoral activities affecting forests

Are decisions about extra-sectoral operations such as mining, road building, large-scale agriculture, hydropower or other infrastructure transparent? What transparency rules apply to these? Are there extra-sectoral threats to the forest? How?

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

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

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

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

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

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

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

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

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

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

12 Fiscal regime: tax collection and redistribution

To what extent does the law provide for taxes, royalties, or other any other benefits to be collected from permit holders and given to affected communities? Are any laws or regulations regarding this implemented effectively?

12.1 Is there a system of tax / royalties redistribution?

Does the law provide for a portion of the taxes or royalties collected from permit holders to be redistributed to affected communities?

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

Does any tax / royalties redistribution system work in practice?

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

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

12.4 Are figures for collection and distribution published?

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

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

In addition to taxes, are there any obligations for permit holders to provide benefits to affected communities, in cash or in kind?

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

Does the social obligations system work in practice?

12.7 Is there a stakeholder consultation process?

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

12.8 Is information on social obligations published?

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

13 Forest law enforcement

Are citizens encouraged to assist with law enforcement? For example, are there any formal or semi-formal ways for citizens to help forest law enforcement agents do their job?

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

Do any forest forums (see Section 4) include representatives from the police or judiciary for example? Or are there other formal mechanisms to discuss law enforcement issues with officials from other (non-forest) agencies?

13.2 Are citizens actively participating in control operations?

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

13.3 Do (some) forest communities condone 'illegality'?

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

13.4 Is there an Independent Forest Monitor?

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

13.5 Does the government publish lists of infractors?

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

13.6 Does the government publish lists of debarred / suspended operators?

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

14 "Anti-transparency" norms

Are there laws, procedures etc. that obstruct transparency? Do any caveats in the laws on public access to information (for example for reasons of commercial confidentiality or national security) significantly diminish the availability of information?

14.1 Do parts of any law affecting forests limit transparency?

Are there caveats or exclusions to transparency laws, for example 'commercial confidentialities' or 'national security'? What exactly do they exclude?

14.2 Do any extra-sectoral operations overrule forest laws?

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

14.3 Is it commonplace for authorities to ignore obligations?

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

14.4 Are there any reforms to improve transparency or reduce confidentiality?

In particular, are there any 'quick wins' - issues where transparency could be improved and no significant vested interests are against this?

15 Publications

How proactive is the forest authority in publishing? What, if any systems does it have in place for managing and providing information?

15.1 Does the forest authority publish an Annual Report?

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

15.2 Does the forest authority have a central point of information?

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