

JMB

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Society, Economy, Nature

18 November 2011

Analyzing Governance in the Peruvian Amazon through a Comparison of Law N° 27308
and Law N° 29763

Introduction

Peru is home to approximately thirteen percent of the entire Amazon, and is the country with the second most rainforest coverage in the continent of South America (Pulgar 1979). Historically, the law has been absent from the isolated forests of Peru for many reasons, but mainly because of the high costs associated with monitoring in this difficult terrain (Sears and Piñedo-Vazquez 2011). In response to the absence of police and authorities, Amazonian settlers adapted to the hardships of the forest and developed complex informal systems. Over the years, the Peruvian government launched several attempts to establish formal systems of governance in the Amazonian region, but failed most of the times (Smith *et al* 2006). As a result, the reaches of the law remain weak and informal practices persist as an important component of the livelihoods of Amazonian people. Over time, informal practices in the forest have developed into a well-accepted norm of complex social and economic relationships between multiple stakeholders. A norm is a commonly held cultural construct that guides behaviors and interactions between peoples of a specific group (Amelunke & Napierala 2009).

The longstanding economic norm in the Peruvian Amazon is called *habilitado-enganche*, and centers on timber extraction. The *habilitado-enganche* is a complex debt-peonage system where moneylenders or logging companies enable loggers with start-up capital and expect substantial profit in return (Salisbury 2007). There are significant risks associated with timber extraction, and therefore loggers usually fall short of extracting

the quota of timber expected (Salisbury 2007). Loggers commonly end up indebted to those that finance their expeditions, and this is why the *habilitado* system is associated with debt-peonage (Salisbury 2007). Important questions of equity arise in this informal system, where investors profit and loggers expose themselves to significant risks for minimal wages (Granoff 2007).

Peru must coordinate an effective system of law and order for the rainforest to become a safer place where the rights of peoples and the forest matter. Put simply, Lima needs to spearhead an effort to create systems of governance in remote Amazonian communities. Governance refers to a cooperative endeavor where all stakeholders participate in the creation of a system with fair and practical policies (Christy *et al.* 2006). The purpose of governance is to formalize local norms, improve communication between peoples, and eradicate dangerous and unethical practices (Christy *et al.* 2006). Successful governance attempts often involve support from Non-Governmental Organizations (NGO's) such as Conservation International and the World Wildlife Fund because they are efficient at procuring funds and arranging these sorts of enterprises (Goldman 2005). Other key players are businesses and foundations like the Moore Foundation because they are willing to offer resources needed to make efficient governance a reality.

Setting up effective governance in secluded areas is important for reducing crime, empowering locals, and improving management of economic resources (Granoff 2007). As soon as norms are formalized and rules made clear in a village, people tend to stick to legal activities and make sure others do the same (Granoff 2007). After the law is made clear, criminals begin to stand out and can be more easily persecuted by a police force (Granoff 2007). People working in the Amazon are much less likely to be abused by criminals and businessmen when a law is set in place to protect their rights. The Peruvian government has an important role in setting up governance systems with enforceable

laws, but Non-Governmental Organizations also play their part in the process. NGO's do a good job of releasing field data to state actors and monitoring labor conditions (Goldman 2005). When governance systems are established, workers are also given the chance to voice their concerns in public hearings or the media. With the tools of information and communication, the weak and abused can now fight for better lives (Granoff 2007). With governance also come financial agreements to manage forest resources sustainably and efficiently. Businesses are attracted to areas that have formalized norms and laws, and so they bring new economic opportunities to traditionally poor areas. Concessions are distributed, jobs created, and forests managed in ways much more efficient than in previous times (Granoff 2007).

In this paper, I will weave through both the new and the old forestry law in order to analyze the quality of changes being implemented by the Peruvian government. Experts such as Granoff, Smith, Sears and Pinedo-Vazquez have challenged Peruvian forest legislation by pointing out flaws in the system. Peruvian authorities, with the help of INGO's, responded to these criticisms by enacting law 29763, with the intention of addressing issues like inequality, illegality and environmental degrading. I argue changes in the new law are vague and do not adequately outline the process of implementing these new policies. The ambiguity of the new law suggests the Peruvian government is trying hard to respond to criticisms on paper, but not putting enough effort to really solve issues being criticized.

Methods

This paper is only a small part of an effort to analyze the current forestry system in Peru. An undergraduate-level class of fifteen students tackled the challenge by dividing into five groups, each one in charge of addressing a main topic of Peruvian forestry. The five groups are: ecology/management, norms, livelihoods, structure, and

governance. This paper falls under the category of “governance”, and focuses on understanding and criticizing the evolution of forestry laws in Peru. The papers of the other two students in my group also engage the topic of governance extensively, but focus on different aspects. Mackenzie Price examines the challenge of enforcing governance systems in Peruvian forests, where criminality thrives. Will Gordon focuses on land titling procedures and how this facilitates governance. Mackenzie, Will and I met twice to discuss our individual papers and make sure our topics complemented each other without repeating same ideas or using same sources. The goal is to fit our papers together in a way that is clear and makes sense to interested readers with background in the topic.

I began my own individual work by brainstorming ideas and looking for potential sources on the web. I found some interesting sources and cited them on RefWorks for future reference. It was difficult to choose a specific research topic, but I soon decided to engage the topic of forestry laws. In this paper, I perform a detailed analysis of how forestry laws in Peru are changing to address the many criticisms made by experts. For this task, I became an expert on law 27308 and law 29763 and then read several academic papers on forestry laws. I noticed there were strong criticisms of the old law (law 27308) that were addressed in the law passed in 2009. My goal was then to read the new law and predict whether changes implemented to the new law would be effective in solving old issues or not. After comparing both legislations and using literature reviews as references of what did not work in the past, I started putting the paper together and developing my thesis that the Peruvian government is not getting to the root of the problems to solve long-standing issues like criminal activity, human rights abuse, illegal logging, and violence.

When all five groups finish putting together their individual papers, the class will then attempt to fit together the works of all five groups. This will be a major challenge, but with hard work and time, I am confident the final product will come together. The

next step is to create attractive posters in English and Spanish that summarize important findings of each of the six groups. The final step is to take these posters to conferences in New York and Mexico and present results to scholars and leaders that will hopefully use our results to cause positive changes in the Peruvian Amazon and other similar

Literature Reviews

Granoff (2007) identifies two main benefits to formalizing the 2001 forestry law's presence in the forests of Peru: fight criminality and facilitate social justice. By strengthening regulations and controls, drug dealers, poachers, illegal loggers, and other opportunists will either change their illegal habits to adapt to governance, or find themselves persecuted and ostracized (Granoff 2007). Granoff (2007) also claims greater monitoring of the law would allow local people to legally access forest resources in a more just way. This would result in better living conditions for all, but at the same time would result in greater profits for businesses. Transparency in the law reduces risks for businesses, which translates to stable revenues. But how is the law effectively established in a society?

In a good type of governance, multiple stakeholders coordinate with a national or regional authority to create legal frameworks and establish a system that works efficiently for all (Christy *et al.* 2006). The goal is to bring these actors together, share knowledge, and create fair and effective policies for that specific community. Christy *et al.* (2006) also express the importance of third parties, such as NGO's and development banks, in providing managerial and financial assistance.

In the 2001 law, law N° 27308, Peruvian government functions in the forest sector are mostly managed by the National Institute of Natural Resources, or INRENA. This agency is completely separate and sovereign from the Ministry of Agriculture. But in the 2009 law, also known as law N° 29763, INRENA is terminated and its role in the

management of forests is replaced by a newly created agency within the Department of Agriculture: National System of Forest and Wildlife Management, or SINAFOR.

INRENA proved to be inefficient at enforcing laws and budgeting: going bankrupt in 2008 (Sears & Pinedo-Vazquez 2011). SINAFOR is created as a branch of MINAG, the Ministry of Agriculture, because the Peruvian government believes MINAG can oversee SINAFOR and make sure responsibilities are completed efficiently. Under law N° 29763, SERFOR, or National Forest and Wildlife Service, is also created but as the governing body of SINAFOR. SERFOR is also part of MINAG, and heavily monitored by MINAG officials. People from national, regional and local scales of government constitute SERFOR.

In the 2001 forestry law, CONAFOR, or the Consejo Nacional Consultivo de Política Forestal, is established as an agency within MINAG whose purpose is high level consulting in forest politics. They inform and make recommendations to many other agencies, NGO's, and the general public regarding environmental politics. CONAFOR is composed of specialists from institutions, public agencies, and the private sector. The 2009 forestry law still acknowledges the existence of CONAFOR, but the name of the agency is modified to Comisión Nacional Forestal y de Fauna Silvestre. This name indicates the agency now also makes recommendations for wildlife protection. In the 2001 law, CONAFOR served mainly INRENA but now serves mainly SERFOR.

Another Peruvian agency that plays a crucial role in Peruvian forestry is OSINFOR, which enforces and oversees the sustainable nature of forest activities. In the law N° 27308, OSINFOR is the “Organismo Supervisor de Recursos Forestales Maderables”, an agency with the specific role of supervising and enforcing adherence to timber concessions laws and related permits. Checks by OSINFOR officials are by law supposed to occur every five years. OSINFOR and INRENA are encouraged to work closely together to provide each other with geographic information and local land

conditions. In fact, a supreme decree passed in 2004 to absorb OSINFOR into INRENA. But after the INRENA agency is closed, OSINFOR became part of MINAG. In the law N° 29763, the responsibilities of OSINFOR change very little, except for its new work partner of SERFOR and the change in name to “Organismo de Supervision de los Recursos Forestales y de Fauna Silvestre”. This name change suggests OSINFOR’s reach becomes broader to include the supervision of other forest resources instead of just timber, and also wildlife protection.

The 2009 laws formally acknowledged other smaller groups as ones having important roles in the governance of remote areas at smaller spatial scales. Forest and Wildlife Management Units, or UGFFS, refers to the regionalization of administrative and enforcement duties. Each UFFS, or management unit, is free to develop its own specific strategies for sustainable development, with the condition they pursue basic regional and national goals. Forest and Wildlife Management Committees, or CGFFS, are small local groups composed of local stakeholders that work with leaders of UGFFS to voice concerns and communicate ideas of how to solve local issues. The Police and Coast Guards (DICAPI) also play an important role in maintaining order in the forest. These enforcement agencies oversee drug trafficking, illegal logging, human exploitation, and other illegal activities that occur in the Amazon.

Table 1. Agencies Involved in the Process of Forest Governance in Peru

Government Agencies in Law N° 27308	INRENA (<i>Instituto Nacional de Recursos Naturales</i>) is the National Institute of Natural Resources → Sovereign agency in charge of all enforcement, monitoring and management of forest		
Government Agencies in both laws	CONAFOR (<i>Comision Nacional Forestal y de Fauna Silvestre</i>) is the Forest and Wildlife National Comission → This agency serves as a specialized consultant for other agencies. Composed of experts that can offer valuable insights to other agencies.	OSINFOR (<i>Organismo de Supervision de los Recursos Forestales y de Fauna Silvestre</i>) is the Organism of Forest and Wildlife Supervision → Government organism in charge of supervising and regulating the sustainable use of forest resources and conservation of these	
Government Agencies in Law N° 29763	SINAFOR (<i>Sistema Nacional de Gestión Forestal y de Fauna Silvestre</i>) is the National System of Forest and Wildlife Management → The national forestry and wildlife authority. Branch of the Ministry of Agriculture(MINAG)	SERFOR (<i>Servicio Nacional Forestal y de Fauna Silvestre</i>) is the Forest and Wildlife National Service → The governing body of SINAFOR and the agency managing the forestry system.	UGFFS (<i>Unidad de Gestion Forestal y de Fauna Silvestre</i>) are Forest and Wildlife Management Units → These are regional forms of governance in Peru. They influence regional management but also enforce and monitor practices within their areas.

One of the main criticisms of the Peruvian forestry system is the law seldom applies to the existing norms and informal practices of the forest. Salisbury (2007) explains there is an existing norm of conduct that drives the timber industry in the Peruvian Amazon: the *habilitado* system. This system is informal, and based on complex geographical and social web of actors that make the timber industry work. Sears and Piñedo-Vazquez (2011) argue the best way to improve laws and governance is to incorporate the *habilitado-enganche* system to the law. As long as laws enacted in Lima ignore the current livelihoods of local people in the remote rainforest, people will continue with their illegal practices. Transitioning to legal practices may cost local peoples their jobs and even their lives (Sears and Piñedo-Vazquez 2011). Peruvian laws are often beautifully written, but in reality can be impractical to the reality of civilians. The solution is not creating a system of governance based on ideals, but creating one based on existing norms (Sears and Piñedo-Vazquez 2011).

Another major problem with forestry laws in Peru is the lack of trust people have in the effectiveness of governance, therefore exacerbating resistance to change. Smith *et al* (2006) argue consistent historical failures to establish governance systems in remote regions of Peru discredits efforts to improve forestry systems. Loggers then develop short-term timber perspectives, which ignore the law and embrace the norm. In other words, loggers are predisposed to reject top down legal impositions to their norm of operating in the forest. For Smith *et al* (2006), Peru must calibrate the law and existing norms in order to reduce inconsistencies between the two. This process will be slow and difficult, but is the only way real change can occur. Simply making changes to the law will not solve the problems of Peruvian forestry because there needs to be an adaptation to the current situations.

Analysis

Soon after the Forestry Law N° 27308 went into effect in year 2001, local stakeholders and academic experts began to notice the law was falling short from its initial expectations. The Peruvian government had set out with the main goal of promoting the creation of a competitive extractive timber market based on principles of sustainability and equity, yet results were turning out to be far from conclusive (Sears & Piñedo-Vazquez 2011). The law itself clearly addressed sustainable logging practices and monitoring/enforcement techniques, meaning the failures could not be clearly attributed to the legislation. The main problem with Law N° 27308 was the difficulty of translating the written policies effectively to practice. Government agencies in the forestry sector responsible for monitoring and enforcing do not have the economic and human resources to operate in the remote regions of the Amazon (Sears & Piñedo-Vazquez 2011). For this reason, authorities only checked paperwork when loggers brought felled logs to mills for processing. This means that officers had absolutely no way of knowing where these logs were really coming from. All they could really know is whether loggers did or did not have authorizations to log somewhere upstream.

Law N° 29763 acknowledge the challenges enforcement agencies had in the past to trace the origin of timber, but offer only vague and unviable solutions. Article 127 of the 2011 law explains how SERFOR “develops transparent mechanisms to verify the legal origin and chain of custody of timber species” (Law 29763 2011). This may seem like an adequate solution, but the writing fails to clearly explain how authorities attempt to achieve this impossible goal. Creating transparency by forcing loggers to have proper documents is a start, but deep in the Amazon, authorities are absent. No one will be able to guarantee loggers are felling trees from their designated concession and not illegally from other lands until authorities access the forests and monitor from there. Following

paper trails to get a complete picture of players involved in the business is a start, but not good enough to ensure legal compliance.

Article 53 of the 2011 law emphasizes the responsibility of concessionaires to make certain logging practices sustainable within their concessions and adhere to the annual operating plans approved by the forest authorities. As good as this may seem, increased government efforts to control and restrict extraction within concessions is not addressing the main cause of illegal activity. As Sears and Piñedo-Vazquez (2011) concluded, loggers are not taking advantage of lax monitoring within their concessions, but are in fact taking advantage of the still extensive unmonitored timber resources in areas surrounding their concessions. Opportunistic and profit-seeking loggers will likely get orders to log sustainably inside concession land to avoid problems with the law, but exploit any and all valuable resources that are accessible to them in nearby areas. Loggers can get away with cutting down trees from areas they are not supposed to because they can blame other loggers in the region, ribereño settlements, or indigenous communities for felling trees outside their concessions. Again, there is no way authorities can prove loggers obtained wood illegally because they are absent from the field.

The complex set of actors across distant social and geographic networks is another factor that hinders the translation of policy to practice. The long-standing relationships between the various actors involved in the business of timber extraction were strategically developed to manage risk and lower costs throughout the chain of the business (Sears and Piñedo-Vazquez 2011). All of the different actors grew accustomed to the process, and are not willing to trade it for the government's still inefficient and costly framework. Sears and Piñedo-Vazquez (2011) explain that it is the adaptability and profitability of the *habilitado* system that incentivizes loggers to embrace the informal ways. The Peruvian government still has limited access to the Amazon to regulate the law, and so loggers use this as a reason to keep the more efficient *habilitado* system. The

truth of the matter is adhering to the law cripples the already volatile stream of profits for loggers. Given the remoteness of the Amazon and poor enforceability of the law, it is more economically feasible to maintain the habilitado system and log illegally (Sears and Piñedo-Vazquez). To be able to economically compete with other loggers that are breaking the law and achieving high returns, other loggers must do the same.

Law N° 29763 has several articles listing detailed consequences and emphasizing the severity of illegality. Article 152 and 155 are particularly informative of circumstances where illegal loggers may be subject to fines, logging license suspensions, and even imprisonment (Ley N° 29763, 2009). As much as the government would like to use these policies as ways to deter loggers from breaking the law, most workers will continue working illegally to maintain the business economically feasible. Most loggers are poor people and find that the logging business is not as profitable as it seemed when they joined it. Any government policies that threaten their salaries will be ignored. A good strategy for the Peruvian government is to help poor loggers deal with their economic situations. Until then, workers have no other choice than to log illegally in order to obtain the meager salaries they are entitled to.

Any man with morals or altruistic ideals in the business of timber is likely to forever remain indebted to their bosses. It is also less risky to cheat the law than to gamble your paycheck on the effectiveness of the law. Until following the law becomes economically feasible for loggers, or monitoring and enforcement become more efficient in the Amazon, there is little incentive to comply with the law. Article 131 of the 2011 law explains “the State promotes the development of forest and wildlife activities at a national scale, procuring competitiveness under an ecological focus that generates greater social and economic benefits” (Law 29763 2009). This statement portrays no concrete government incentives, only an ideal goal. The use of the word “promote” is widely used in this article, suggesting the Peruvian government is doing little more than passively

supporting the broad concept of sustainable logging. Currently, no real initiatives are being launched by the government to interest loggers to transition to more sustainable practices. Sticking to old traditions of exploitation are still better alternatives to the law.

Sears and Piñedo-Vazquez (2011) criticize how the 2001 Peruvian forestry law focuses monitoring and enforcement of timber on the products themselves. Most of the enforcement of timber laws in the Amazon occurs at waterways and at ports, where authorities ask for documents to quantify timber extraction from the Amazon. This, according to Sears and Piñedo-Vazquez (2011), is a flawed system because it does not take into account the process behind timber extraction. To better regulate timber extraction, government authorities must better understand actors involved in the timber business and the complex forces at play (Sears and Piñedo-Vazquez 2011). This way, they can find ways to modify the existing way stakeholders conduct their business in unsustainable ways and possibly even find ways to make their business more profitable and sustainable. For example, a simple policy that would drastically improve the nature of logging in Peru is facilitating credit to small and middle sized logging groups. Sears and Piñedo Vazquez (2011) argue the lack of financing and economic necessity is a major force driving illegality in the Peruvian Amazon. If loggers were able to work without the pressure of having to provide handsome returns to their moneylenders, they would not have the urge to break the law for marginal profits (Sears and Piñedo-Vazquez 2011). Breaking the law would become the more risky choice and logging under the safety of the law the better alternative.

The new law, Law N° 29763, mentions some new initiatives launched by the government to extend credit to loggers pursuing legal forms of logging in the Amazon. Article 134 establishes the possibility of workers taking loans, backed by valuables and trust, to finance trips to extract wood from the Amazon. Furthermore, Article 135 discusses the creation of government investments in the forestry business. To assess the

effectiveness of these new policies, we need to wait and see how they are translated to practice. It is possible that they may become essential to the transition from a predominantly *habilitado-enganche* culture to one more based on the law. Access to credit would not only alleviate pressures to repay moneylenders, but could also increase salaries for loggers and other poor workers. This, of course, would lead to greater equality and happiness in the region. All of this depends on how effective the Peruvian government can be in handing out credits and loggers being able to repay these debts. There is also the question of whether lending money to loggers is too big a risk for the Peruvian government to take.

Sears and Piñedo-Vazquez (2011) argue the decentralization of the Peruvian government would be a positive modification to the forestry system if the credit reform were effective. Handing some regulative power to regional, municipal, and local levels of government would be more efficient under a government-sponsored credit system because it would facilitate money easier than if it were done from Lima or any other major town. Enforcement and monitoring would also be more effective at smaller scales because the reach of the law is greater in decentralized systems (Sears and Piñedo-Vazquez 2011). Governments at regional and municipal scales could also help develop management plans that understand and incorporate the unique needs of their communities. Governance systems of smaller scales usually enable bottom-up development initiatives that help communities develop their economies at lower costs and higher efficiency than top-down development strategies orchestrated from Lima. Sears and Piñedo-Vazquez (2011) are careful in explaining how decentralization can be a positive measure only if the credit system is improved. If decentralization is passed but credit remains tight and monopolized by seldom moneylenders, the result would be an increase in inequality because of the greater role of moneylenders in financing small-scale development projects. In short, decentralization can either solve or create problems.

Although it is still not clear whether the new government-sponsored credit and investment systems are in fact effective, decentralization is now a reality in the new forestry law. Forestry policy went from being predominantly centralized in the form of INRENA, to more complex divisions of regulative force. Today, there are regional offices for forest management (UGFFS) and even local/regional committees for public participation that hold real power in the development of local political strategies (Law N° 29763, 2011). In explaining, local and regional scale offices are now able to implement their own development and conservation strategies that are likely to better take into account geographic information. Sears and Piñedo-Vazquez (2011) believe more and more people would apply for permits to log and extract resources from their properties once regional offices established and it became easier to do so. This is why credit reform is such a crucial next step for the Peruvian government. Without credit from the government at fair interest rates and conditions, people would be forced to go to moneylenders that would charge excessive interest rates and increase inequality in the timber business.

There are some new policies in Law N° 29763 that hint at better protection of the rights and opportunities of indigenous peoples, but are vague enough to create skepticism about their effectiveness. Sears and Piñedo-Vazquez (2011) mention conflicts arise for indigenous peoples when loggers enter the forest to extract timber. The main conflict is when concessions are overlapped onto their native lands, therefore creating disputes about who has power over the land. The other type of conflict arises when indigenous peoples make informal contracts with loggers, where loggers are allowed into indigenous lands to extract timber and repay with cash or products. Conflict is common in these situations because contracts are informal and have no legal force (Sears and Piñedo-Vazquez 2011). Either the indigenous or the loggers can fail to comply with the agreement, and the law cannot do anything about it. These informal contracts many times

end in violence. Article 83 of the new 2011 law guarantees technical support and cooperation of regional governments in helping indigenous communities draft legal agreements with loggers and thus avoids conflict. Furthermore, Article 26 of the same law attempts to clarify and strengthen property rights in the Amazon. The article specifically mentions the goal is to solve problems with property overlaps and conflict that results from it. All of these new policies acknowledge previous issues with indigenous peoples and mention goals, but they do not explain how these goals will be specifically implemented. The failure to do so suggests the rights of indigenous peoples matter on legislation, but may just continue to be disregarded in the practice.

Conclusion

Peru has demonstrated interest in making modifications to written legislation, but there is little evidence to suggest conditions are improving in the field. Several experts criticize Peruvian legislation for different reasons. Among the most prominent criticisms of Peruvian forestry is Sears & Pinedo-Vazquez' argument that legislation is poorly translated into practice because of the disregard to existing norms. Loggers and other locals show resistance to government policies because in the past they have been costly and inefficient. A second criticism by Sears & Pinedo-Vazquez is how Peruvian authorities focus regulatory efforts on the number and types of products leaving the forest, but pays little attention to the process behind the production of timber. The new law responded to this criticism by stating the government will strive to understand the complex chain of people involved in the timber industry. Unfortunately, the article in the law that explains these changes is extremely vague in the way Peruvian government intends to understand the complex chain and use this information to their advantage. The Peruvian government must restore confidence and trust in its laws by creating systems that improve lives for locals, not make them more complicated. Even more important,

Peru needs to commit to the challenge of applying written legislation to practice. Law 29763 shows little progress in this criterion, since most articles responding to criticisms have vague goals and unclear implementation methods. Responding to criticisms by passing new legislation is not the solution to a better forestry system.

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