OCCASIONAL PAPER

The distribution of powers and responsibilities affecting forests, land use, and REDD+ across levels and sectors in Peru

A legal study

Patrick Wieland Fernandini

Ronnie Farfan Sousa

CIFOR

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Occasional Paper 129

ISBN 978-602-1504-99-4
DOI: 10.17528/cifor/005649

Wieland Fernandini P and Sousa RF. 2015. *The distribution of powers and responsibilities affecting forests, land use, and REDD+ across levels and sectors in Peru: A legal study*. Occasional Paper 129. Bogor, Indonesia: CIFOR.

Photo by Peter Cronkleton/CIFOR

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We would like to thank all donors who supported this research through their contributions to the CGIAR Fund. For a list of Fund donors please see: https://www.cgiarfund.org/FundDonors

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Acknowledgment

We acknowledge the contributions of the following people: Lorena Zuazo, Diana Lizárraga, Juan Manuel Casalino, Claudia Pacora, Alexandra Carranza, Natalia Zúñiga, Oscar Ballón and Mary Cielo Núñez. We also thank Pablo Peña, Jazmín Gonzales Tovar, Anne Larson, Ashwin Ravikumar and Laura Kowler for their useful reviews. CIFOR's Global Comparative Study on REDD+ is supported by the Norwegian Agency for Development Cooperation (Norad), Australian Aid, the Department for International Development (DFID) of the United Kingdom, the European Commission (EC), and the CGIAR Research Program on Forests, Trees and Agroforestry.

Introduction

This report was commissioned under CIFOR's Global Comparative Study on REDD+, as part of a research project on multilevel governance and carbon management at the landscape scale. Its purpose is to describe the distribution of powers and responsibilities related to land use, forests, ecosystem services and, by extension, REDD+ among levels and sectors of the Peruvian government. To that end it reviews laws dealing explicitly with different sectors that affect land use and also decentralization. It is intended as a reference for researchers and policy makers working on land use issues in Peru, and is therefore largely descriptive in its content.

The first section describes decentralization in Peru. It discusses the recent legal history of decentralization, distinguishing powers held exclusively by one level of government and those shared among multiple levels. It also describes the stages of the decentralization process, covering the sources of revenue available to the different government levels and mechanisms for public participation in decentralized governance spaces, and indicates challenges to the decentralization process.

The following section outlines the sources of revenue available to different levels of government, including an outline of new legislation around payments for ecosystems services.

The final section details the specific distribution of powers and areas of responsibility related to particular land use sectors across levels and between offices within levels. These include land use planning; defining of land use vocation; titling of agricultural lands; titling of native lands with forest vocation; and governmental ownership and administration of lands, natural protected areas, mining concessions, hydrocarbons, forest concessions, oil palm, and roads and infrastructure concessions. For each of these processes or sectors, an overview of which government level or division is responsible for what is provided.

1 Overview of the different levels of government

1.1 The decentralization process in Peru

The 1993 Peruvian Constitution establishes that Peru is a decentralized, unitary State[1] with three levels of government[2]: national, regional and local (which include provinces, districts and municipal governments).

*Decentralizatio*n in Peru is an ongoing process designed to occur progressively through phases in an orderly fashion. Its aim is to ensure an appropriate distribution of powers among government levels, requiring the transfer of resources from the national government to sub-national governments.[3]

According to Law No. 27783, the ***Decentralization Law***, the objective of the decentralization process is to achieve Peru's comprehensive, harmonious and sustainable development. It aims at a balanced division of powers and functions among the three government levels. Decentralization is legally described further as a permanent policy that applies to the entire State and should ensure a fairer and more equitable country in the long term.

Other objectives of the decentralization process are: (a) political representation of the national, regional and local government agencies; (b) equitable redistribution of state funds; (c) administrative simplification of formalities in all branches of public administration; (d) public participation in all forms of organization and social control; and (e) sustainable use of natural resources and improvement of environmental quality.[4]

The decentralization process is also supposed to democratize the decision-making process through public participation mechanisms. Regional and local governments are therefore required to promote public participation in the formulation, discussion and consensus-creation of budgets and development plans, as well as in public management.[5]

1.2 The autonomy of local and regional governments

Autonomy refers to the capacity of certain entities to make decisions and approve their own legal norms without being subject to the intervention or authorization of other entities. Peru, as a decentralized State, distributes its powers among all government levels, establishing each one's autonomy.

For the full exercise of powers and faculties, the Peruvian Constitution[6] has granted political, economic and administrative autonomy to the regional and local governments to regulate and manage the matters within their own range of powers. In this regard, the Decentralization Law[7] has prescribed the following three dimensions of autonomy:

- *Political autonomy* is the power to (a) establish policies and rules regarding the matters within their purview and (b) approve and issue their own laws and regulations.
- *Economic autonomy* is the power to (a) create, collect and manage their income and earnings and (b) approve their own institutional budgets.
- *Administrative (or regulatory) autonomy* is the power to (a) organize internally and (b) determine and regulate the public services within their purview.

1 Article 43 of the Constitution.

2 Article 189 of the Constitution.

3 Article 188 of the Constitution.

4 Article 6 of the Decentralization Law.

5 Article 17 of the Decentralization Law.

6 Articles 191 and 194 of the Constitution.

7 Article 9 of the Decentralization Law.

Furthermore, the Decentralization Law[8] establishes three types of powers:

- *Exclusive powers* are those whose exercise corresponds exclusively to each level of government.
- *Shared powers* are those involving two or more levels of government, where the law indicates the specific role and responsibility of each level.
- *Delegated powers* are those that one level of government delegates to another level, renouncing its decision-making powers.

Powers are assigned and delegated according to the *subsidiarity principle.* This principle states that "the government closest to the people is best suited to exercise governance powers and functions, thus the national government should not assume roles that may be more efficiently fulfilled by regional governments, and regional governments in turn should not assume roles that local governments can fulfill, avoiding redundancy and overlapping powers."[9]

The aforementioned principle is complemented by the *specificity principle (taxatividad)* and the *residuary clause*. The specificity principle stipulates that powers may be explicitly designated to regional and local governments, while the residuary clause establishes that those powers that are *not* explicitly ascribed to the regional or local government remain within the scope of the national government.[10]

1.3 National, regional and local government powers[11]

1.3.1 The national government

The national government exercises its powers through the executive branch, which is made up of the following entities:[12]

- *The President of the Republic* is elected through general elections every five years. S/he may not be re-elected for consecutive periods. His/her principal functions are to: (a) observe and enforce the Constitution, international treaties, laws and other legal regulations, as well as court judgments and the decisions of the National Elections Board (*Jurado Nacional de Elecciones*); (b) conduct foreign policy and international relations; (c) approve the general policy of the government and (d) issue extraordinary measures through binding emergency decrees.[13]
- *The Council of Ministers* is composed of ministers appointed by the president of the republic and chaired by the president of the Council of Ministers. Its main responsibilities are to coordinate and assess government policies, make decisions regarding matters of public interest and ensure the welfare of civil society.[14]
- *The president of the Council of Ministers* is responsible for coordinating the national and sectoral policies of the executive branch. It also coordinates with the other branches of the State, constitutional bodies, regional and local governments and civil society.[15] The president of the Council of Ministers is appointed by the president of the republic.
- *The Ministries* are agencies of the executive branch that are created in accordance with the government sectors of the Peruvian State.[16] Ministers are in charge of their ministries, which are responsible for directing and managing the public matters under their purview. Ministers are appointed by the president of Peru. The ministries' main functions are to: (a) formulate, plan, direct, implement, monitor and evaluate their policies as sectoral authorities, (b) approve the regulatory provisions within the scope of their economic sector and (c) coordinate the legal defense of the entities of their government sector.[17]

8 Article 13 of the Decentralization Law.

9 Article 14.2 of the Decentralization Law.

10 Constitutional Court Judgment No. 0020-2005-PI/TC.

11 A summary table regarding exclusive and shared national, regional and local powers has been included as Annex 1.

12 Article 2 of Law No. 29158, the Executive Power Law.

13 Article 8 of the Executive Power Law.

14 Article 16 of the Executive Power Law.

15 Article 17 of the Executive Power Law.

16 Currently, there are 15 ministries: the Presidency of the Council of Ministers; Ministry of Foreign Affairs; Ministry of Defense; Ministry of Economy and Finance; Ministry of the Interior; Ministry of Justice; Ministry of Education; Ministry of Health; Ministry of Agriculture and Irrigation; Ministry of Labor and Employment Promotion; Ministry of Production; Ministry of Foreign Trade and Tourism; Ministry of Mines and Energy; Ministry of Transport and Communications; Ministry of Housing, Construction and Sanitation; Ministry of Women and Vulnerable Populations; Ministry of the Environment; Ministry of Culture and Ministry of Development and Social Inclusion. The following link shows the names of the Ministers of State: http://www.presidencia.gob.pe/ministros.

17 Article 23 of the Executive Power Law.

Other public entities of the executive branch include:

- *Public Agencies*: entities of the executive branch that are associated with a particular ministry and have responsibilities of a national scope. These public agencies may be: (a) public executor agencies or (b) specialized public agencies (which are classified in regulatory agencies and specialized technical agencies).[18]
- *Committees of the Executive Branch*: agencies created to comply with the functions of monitoring, control, proposals or issuing reports (e.g. Multisectoral Committee for the Implementation of the Open Government Action Plan / *Comisión Multisectoral para la Implementación del Plan de Acción del Gobierno Abierto*).
- *Special programs and projects*: created in critical circumstances to implement a policy specified within the purview of the entity to which they belong.
- *Social Security Entities:* such as social health insurance (ESSALUD).
- *State-owned companies.* In accordance with the Constitution,[19] business activities performed by the State must be authorized by a law passed by the Congress and only when justified by public interest (i.e. Electroperú S.A.).

The national government holds the following *exclusive powers*:[20]

- Preparation of national and sectoral policies
- Defense, national security and armed forces
- Justice
- Currency, banking and insurance
- Taxation and national public debt
- Regulation of public services under its responsibility and the public infrastructure of anational scope.

The Executive Power Law[21] states that the exercise of *shared powers* is described in several documents including the Peruvian Constitution, the Decentralization Law, the Regional Governments Law and the Municipalities Law, as well as in the organizational laws of the ministries and executive entities.

1.3.2 Regional governments

Regional governments are elected by popular vote and are organized following the political "departments" in order to organize and conduct regional public management. According to Law No. 27867, the ***Regional Governments Law***, the structure of a regional government is made up of the following bodies:

- *Regional Council*: The regional government's policy-making and supervisory body is composed of regional councilors elected by direct vote for a period of four years. Its primary functions are to: (a) approve, amend or repeal the laws under the purview of regional government; (b) approve the creation, sale, disposition and concession of regional property; (c) propose the creation, modification or removal of regional tax[22] and (d) propose to the National Congress legislative initiatives on matters within its purview.
- *Regional President*: S/he is the regional government executive body and may be re-elected for consecutive terms. The regional president is elected by direct vote along with the vice president for a term of four years. S/he manages the regional government and proposes and implements the regional government budget.
- *Regional Coordination Council:* It is the regional government's coordinating and advisory entity with local governments and civil society. It is made up of the region's provincial mayors and representatives of civil society organizations.

The main *exclusive powers* of the regional government are to[23]:

- Plan the integral development of its region
- Adopt its internal organization and institutional budget
- Promote and implement public investment at the regional level
- Sign accords and agreements with other regions for the promotion of economic, social and environmental development

18 PROINVERSION is an example of a Peruvian public agency.

19 Article 60 of the Constitution.

20 Article 26 of the Decentralization Law.

21 Article 5 of the Executive Power Law.

22 According to Article 38 of the Decentralization Law, the Executive Branch proposes to National Congress the approval of regional taxes, which will be managed by the regional government and considered a direct account of such governments.

23 Article 36 of the Decentralization Law.

- Enforce laws and regulations related to matters under its purview
- Propose legislative initiatives to the National Congress
- Promote the sustainable use of forest resources and biodiversity.

Its most important *shared powers* are the following[24]:

- Education and public health
- Promotion, management and regulation of economic and productive activities in the region in sectors such as agriculture, fishing, industry, trade, tourism, energy, hydrocarbons, mining, transport, communications and environment
- Sustainable management of natural resources and improvement of environmental quality
- Preservation and management of the region's natural protected areas
- Diffusion of the region's culture
- Facilitation of public participation (dialogue between public and private interests at all levels)
- Drafting, development and implementation of programs to sell ecosystem services from natural forests or protected areas
- Promotion of the implementation of payment for ecosystem service (PES) schemes pursuant to the decentralization process framework
- Raising of economic funds and their transfer to the contributors of ecosystem services to foster the implementation of PES schemes.

1.3.3 Local governments

Local governments are elected by public vote and constitute the core entities of the State's territorial organization in accordance with Law No. 27972, ***The Municipalities Law***. Local governments are the immediate channels of participation in public affairs given that they occupy the lowest level of government. The term "local government" refers to both provincial and district governments, with districts housed within provinces.[25] This section refers to both levels collectively. In practice, their functions differ somewhat, as will be shown in later sections of this report.

The basic structure of local governments includes the following entities:

- *The Municipal Council* is formed by the mayor and the number of councilors set by the National Elections Board. It is the policy-making and supervisory body of local government. Its main functions are to: (a) approve, amend or repeal laws within the purview of local government; (b) create, modify, delete or exempt from contributions, taxes, licenses and rights, under the purview of local government and (c) supervise the management of local government officials.[26]
- *Mayor's Office*: It is the executive entity of local government. The mayor, as the legal representative of local government and its highest administrative authority, is elected by direct suffrage for a term of four years. The mayor may be re-elected for a consecutive term.[27]
- *Local coordination bodies:* The Local Coordination Council (provincial or district) and the Neighborhood Correspondents Meeting are in charge of promoting public participation mechanisms.[28]

The main *exclusive responsibilities / powers* of local governments are the following[29]:

- Plan and promote urban and rural development
- Manage and regulate public services under their authority
- Approve their internal organization and institutional budget
- Approve and promote mechanisms for public participation under local government management
- Enforce the laws and regulations of matters under their authority
- Propose relevant legislative initiatives to the National Congress.

The most important *shared powers* are the following[30]:

- Education and public health
- Citizen security

24 Ibid.

25 The Provincial Municipality has jurisdiction over the territory of the province and the District Municipality has jurisdiction over the territory of the district. It is relevant to note that the district territory is physically smaller than the provincial one.

26 Article 9 of the Municipalities Law.

27 Article 20 of the Municipalities Law.

28 Article 100 of the Municipalities Law.

29 Article 42 of the Decentralization Law.

30 Article 43 of the Decentralization Law.

- Conservation of archaeological and historical monuments
- Public transport, movement and urban transit
- Housing and urban renewal
- Management of social programs
- Solid waste management
- Promotion of PES schemes pursuant to the decentralization process framework
- Raise funds and transfer them to the contributors of an ecosystem service to foster the implementation of PES schemes.

According to the Organizational Municipalities Law, local government powers are *distributed* to the provincial and district governments based on their jurisdiction. In this regard, certain functions established in the Organizational Municipalities Law are under the purview of provincial governments while others are under the purview of districts, as detailed in Appendix 1 in accordance with article 79 of the aforementioned law.

1.3.4 Levels of government coordination

Given that Peru is both unitary and decentralized, coordination is necessary between the three levels of government. The Intergovernmental Coordination Council / *Consejo de Coordinación Intergubernamental* (CCI) is in charge of broader coordination between levels in the service of decentralization, while the organization and management of the shared powers are in charge of the *intergovernmental commissions*.

The CCI, created in 2007 by the Executive Branch Law, is an institution subject to the presidency of the Council of Ministers. Its purpose is to issue policy recommendations and implement strategies and actions that guarantee and strengthen the decentralization process. The CCI consists of members representing the three levels of government.[31]

The main *functions* of the CCI are the following[32]:

- To arrange and promote policy recommendations, strategies and actions to ensure protection of the principles[33] guiding the decentralization process, as well as achievement of its purpose
- To strengthen the dialogue among the levels of government
- To assist in the coordination and articulation of national, sectoral, regional and local policies, and promote joint actions among the different government levels.

Intergovernmental commissions, in contrast, are organized by sectoral ministries. Each sector works in coordination with regional and local governments to organize the exercise of shared powers by defining their respective roles and responsibilities. In this way, these commissions ensure compliance with public policies relating to the powers the three government levels share.

Peru's legal system provides for the possibility of creating associations by joining two or more regional or local governments for providing public services, investing in or co-financing the execution of works to promote integration, regional or local development and participation in society. Law No. 29768 regulates regional associations while Law No. 29029 regulates municipal associations,[34]

At the regional or local level, the associations (a) promote and implement projects that exceed the investment capacity of individual jurisdictions; (b) develop, promote and implement projects with domestic and foreign entities that promote economic, productive and social development and (c) develop and implement technological research plans in partnership with universities, colleges and other educational institutions.

Furthermore, the Decentralization Law created the National Council of Decentralization (CND) to guide the decentralization process. The CND board of directors is composed of two mayors, two regional presidents, two representatives of the Ministry of Economy and Finance and two representatives of the presidency of the Council of Ministers.

However, in 2007 this entity became the Decentralization Secretariat, which is attached to the presidency of the Council of Ministers. Its main functions are developed in article 39 of the ROF of the presidency of the Council of Ministers

31 Article 4 of Supreme Decree No. 079-2009-PCM.

32 Article 3 of Supreme Decree No. 079-2009-PCM.

33 Subsidiarity, selectivity, proportionality, provision and powers distribution.

34 Examples of regional and local associations are the Regional Association of Exporters of Lambayeque and the Association of Urban and Rural Municipalities of Peru, respectively.

approved through Supreme Decree No. 063-2007-PCM, which includes the following:

- To lead and evaluate the powers and resource transfers to regional and local government
- To promote regional and local integration and strengthening
- To strengthen coordination between the different government levels within the framework of dialogue and deliberation
- To approve and propose regulations for the decentralization process.

1.3.5 Conflicts of powers

In a decentralized State such as Peru, there may be cases in which different government levels hold overlapping powers. In such cases, there may be "conflicts of powers." Such conflicts are adjudicated by the Constitutional Court.

The purpose of this judicial process is to protect the division of powers. Conflicts may be: (a) *positive*, when two constitutional entities (such as two regional governments) consider themselves entitled to exercise the same function; and (b) *negative*, when each of two entities considers the other to be entitled to exercise a function.

The judgment issued by the Constitutional Court at the end of the judicial process determines which entity may or must exercise a particular function.

On the other hand, the Peruvian Constitutional Court[35] has established that conflicts of powers may arise between:

1. The executive power and one or more regional or local governments
2. Two or more sub-national governments
3. Two or more constitutional entities or other state bodies.

The court also established that the dispute should concern powers arising directly from the Constitution or corresponding laws.

Notwithstanding the above, the *ad hoc* procedure is the *unconstitutionality judiciary process*[36] in cases where the conflict concerns a power stated in a rule with a lower rank (i.e. a law issued by the National Congress or ordinances issued by regional and local governments).

35 Constitutional Court Judgment No. 0013-2003-CC/TC.

36 Article 110 of the Constitutional Process Code.

1.4 Financial resources throughout the three government levels

According to the Decentralization Law, financial resources are assigned to each government depending on its decentralization level. In this regard, the financial sources for the national, regional and local governments are the following:

1.4.1 National government resources

The national government's revenues are obtained mainly from taxes, such as the income tax, value-added tax, selective consumption tax, financial transactions tax and temporary tax on net assets, as well as municipal taxes (property tax, alcabala excise tax, vehicle property tax) and municipal *arbitrios* tax (for public cleaning, municipal police and parks and gardens).

1.4.2 Regional government resources[37]

Regional government revenues are obtained from:

- Assets and real estate
- Specific contracts
- Taxes created in its favor
- The economic rights generated by privatizations and concessions they grant and those they receive from the national government
- The resources of the regional compensation fund
- The resources distributed by monthly fees
- Their own income

1.4.3 Local government resources[38]

Local government revenues are obtained from:

- Their own income, which includes taxes, fees and other items
- Intergovernmental transfers from the national government to the decentralized governments, which are, among others, the "canon" from the exploitation of natural resources, the municipal compensation fund, mining royalties and the Camisea development fund.

1.5 The stages of the decentralization process

Article 188 of the Constitution establishes that the decentralization process be carried out in phases, in a progressive and orderly way, and in

37 Article 37 of the Decentralization Law.

38 Article 46 of the Decentralization Law.

accordance with criteria that allow an adequate transfer of powers and resources from the national government to the regional and local governments.

Five phases are described: (a) preparatory; (b) installation and organization of regional and local governments; (c) consolidation of the regionalization process; (d) transfer and reception of sectoral powers and (e) transfer and reception of sectoral powers regarding education and health.

While the Regional Government and Municipalities Laws set forth certain powers for regional and local governments, these powers may not be executed until they are transferred through specific regulations.

Accordingly, Article 5 of the Executive Power Law sets forth the following rule:

> The transfer of powers, resources and functions of the Executive Branch entities to the regional and local governments is made pursuant to the rules of decentralization, pointing out the responsibility of each government level in each area and the appropriate forms of coordination, as well as rationalizing the roles and responsibilities of those entities.

The stages of the decentralization process are summarized below.

Preparatory stage
This stage was intended to complete the regulatory framework and operations of the decentralization process. In this phase, new instruments required to ensure a sustainable decentralization process were designed and tested. Such instruments include participatory budgeting, management strengthening tools and information systems.

This stage was foreseen to take eight months from the enactment of the Decentralization Law and may occur concurrently with the first stage described below.

First stage. Installation and organization of regional governments
This stage began with the installation of the new regional governments, which had to be prepared to receive new powers. In this stage, the national government establishes the powers and responsibilities that will be transferred and the mechanisms to conduct transfers. At the same time, the regional governments define what they will receive.

Second stage. Consolidation process
This stage was modified by Law No. 29379 dated June 13, 2009. In this stage, a national regionalization plan should be approved by a supreme decree. This plan shall be published with the proposals and additions of the regions.

Third stage. Transfer and reception of sectoral powers
In this stage, the transfer of powers, sector-specific functions and responsibilities are transferred from the national government to the regional and local levels. Once the transfers are conducted, the decentralized governments are able to exercise their powers. The intent is that they will exercise them in accordance with the needs of their constituents in order to promote the welfare of their localities.

Powers transferred during this stage relate to agriculture, fisheries, industry, agro-industry, trade, tourism, energy, mining, transportation, communications, environment, housing, sanitation, natural resource sustainability, roads and transit, tourism, conservation of archaeological and historical heritage, culture, and recreation and sports.

The powers that are subject to any transfer shall be included in the annual plan for transfer of sectoral responsibilities, approved by a supreme decree issued by the presidency of the Council of Ministers. The aforementioned annual plan shall be developed based on the sectoral plans submitted by each national government sector and should include the sectoral functions that are intended to be transferred, as well as the human and budgetary resources linked to each of these powers.

Fourth stage. Transfer and reception of powers regarding health and education
The transfer of these functions was left to the last stage, as they are the more socially sensitive sectors. They are also politically more complicated because they involve many public employees.

The abovementioned stages are summarized in Figure 1.

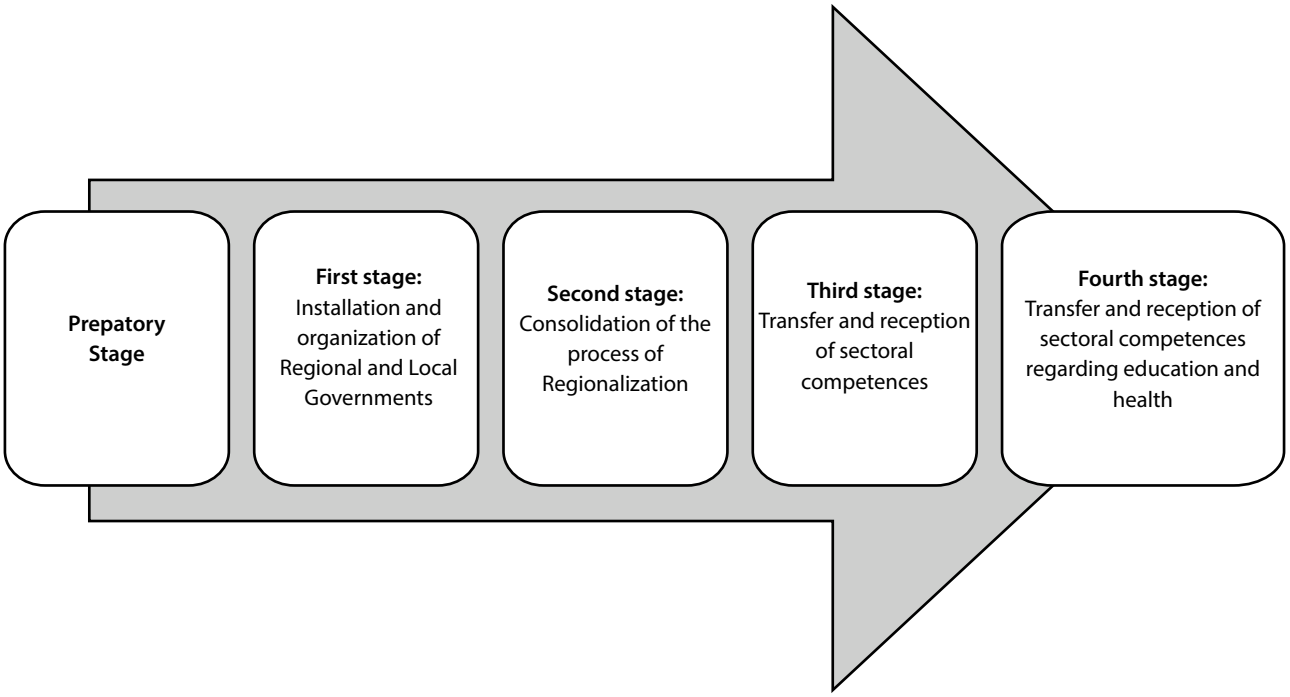

Figure 1. The stages of the decentralization process

1.6 Public participation mechanisms

1.6.1 Public Participation mechanisms in the decentralization process

Political participation, wherein citizens contribute to decision-making processes, is a basic principle of democracy. Participation requires mechanisms that allow citizens to play an active role in governance. Law No. 26300, ***Law of Public Participation Control,*** distinguishes the following rights of participation associated with different legal initiatives:

- *Constitutional reform initiative,* which requires a minimum of 0.3 % of the national electorate
- *Law initiative,* which requires a minimum of 0.3% of the national electorate
- *Referendum,* which is the right of citizens to speak on legislative matters consulted in accordance with the Constitution. It may be requested by a number of citizens not fewer than 10% of the national electorate.[39]

Furthermore, the *rights of citizen control* are the following:

- *Recall (revocatoria de autoridades),* which is the right of citizens to dismiss mayors, local government council members, regional authorities and judges chosen by popular election.
- *Removal (remoción de autoridades),* which is the right of citizens to remove authorities appointed by the national or regional government in the regional, departmental, provincial or district jurisdiction. This occurs when more than 50% of the citizens of an electoral or judicial jurisdiction request it.
- *Demand for accountability (demanda de rendición de cuentas),* which is the mechanism by which citizens have the right to challenge authorities regarding the use of resources and public budget (the authority is obliged to answer).

Political participation is closely linked to decentralization, as governments closer to citizens can offer more possibilities for participation in governance.

In this regard, Article 17 of the Decentralization Law obliges the decentralized governments to promote citizen participation in the formulation, discussion and conclusion of their development plans and budgets. It also establishes that,

39 Article 39 of Law No. 26300. The Referendum will proceed in the following cases: (a) the total or partial reform of the Constitution, in accordance with Article 206; (b) the approval of laws, regional rules and municipal ordinances; (c) the disapproval of laws, legislative decrees and emergency decrees, as well as the rules referred to in the preceding paragraph and (d) the matters referred in Article 190 of the Constitution, according to special law.

in addition to legal initiatives and control rights described above, participation is channeled through the consultation, coordination and monitoring arenas established by local and regional governments.

The following important legal mechanisms for participation exist:

- *Accountability hearings are held* by regional and local authorities with the members of the Coordination Council to inform the population about regional and local governance. In the case of the regional governments, Article 24 of the Regional Governments Law states that they are obliged to hold at least two accountability hearings per year.
- *Participatory Development Plans* (PDC) are planning tools developed through participatory processes that constitute guides for long-term management. They must be oriented to coordinating resources and individual and institutional efforts. They establish the criteria that must guide the initiatives and investments of various economic and institutional actors involved. They therefore serve as guides for formulating regional and local policy.
- *Access to Public Information* is a right recognized in Article 2.5 of the Peruvian Constitution. This right entitles citizens to search for and obtain public state information, except for that which compromises personal privacy or is specifically excluded by law or for national security reasons. Article 10 of Law No. 27806, ***Law of Transparency and Access to Public Information***, thus establishes that any citizen may access any non-confidential information that has been generated or obtained by a public entity. The law also specifies that citizens have the right to access information about public investment projects, including their budgets and costs. Sub-national governments are obliged to make available online information that is under their purview.
  This right of access to public information has a positive and negative dimension. In accordance with the Peruvian Constitutional Court,[40] (a) the positive dimension of this right compels the public entities to report; and (b) the negative dimension requires that the information provided by the public entities not be false, incomplete, fragmentary, circumstantial or confusing.
  Specifically, citizens have the right to "true, current, accurate and complete" information, so a false and partial delivery of information will not satisfy this right. For that reason, the public entity must provide "the information requested in reasonable terms, which means that it shall be true, complete, clear and up to date."[41] Thus, the right of access to public information is an "instrumental right" because through its exercise it allows the exercise of other personal rights: to participate in order to compel authorities to report on the use of public funds; to ensure a healthy environment by allowing the public to obtain an environmental impact study; and freedom of speech, in which expressing an opinion requires having enough information, among other things.
- *Public Hearings ("audiencia pública")*[42]*:* through these hearings citizens have the opportunity to participate in the implementation of public policies of the different government levels. In accordance with Article 182 of the General Law of Administrative Procedure, the administrative rules provide that invitations to public hearings are an essential formality for the effective participation of third parties[43] when the issue at hand is likely to affect the rights or interests of unspecified persons especially with respect to environment, consumer rights and urban planning.
- *Participatory Budgeting:* Article 199 of the Constitution states that regional and local governments must "formulate their budgets with the participation of the population and are accountable for their implementation, annually…in accordance with the law." Law No. 28056, the ***Participatory Budget Law***, precisely defines the participatory budget process as a mechanism to strengthen civil state-society relations, by which priorities are defined on the actions to be implemented by local government with the participation of organized society, creating commitments on the part of all the agents.

40 Constitutional Court Judgment No. 01797-2002-HD.

41 Constitutional Court Judgment No. 00007-2003-AI.

42 Legal public hearings are organized by governmental authority. In case hearings are convened by other social agents, they will not have legal effects, but they will be valid, based on the right to free association.

43 A third party is a person who is not directly involved in the public hearing process (or any process in general), but could have a particular interest in it.

1.6.2 Public participation mechanisms during the evaluation of environmental impact assessments (EIA)

Law No. 28611, the ***Environment Act,*** recognizes the right both to access environmental information and to participate in the environmental management decision-making process. Indeed, any person in Peru has the right to (1) access public information in a timely manner regarding policies, rules, works and activities that might affect the environment and (2) participate responsibly in the decision-making processes as well as in defining and implementing policies concerning the environment. Accordingly, public authorities are responsible for developing guidelines for the design of formal mechanisms to facilitate public participation in environmental management.

Public participation instruments are aimed at (1) gathering the social, environmental and economic concerns of the population comprised within the area of influence of a project and (2) providing adequate information on the potential and real environmental impacts of the project. Thus, the objective of public participation is to promote dialogue and consensus among the involved parties, serving as a mechanism to avoid immediate or future social conflicts.

The entity in charge of evaluating EIAs for public or private projects depends on the sector in which said project is executed. Each ministry is responsible for approving the public participation rules (through guidelines or directives) applicable to the EIA evaluation process, which must comply with the rules set forth by MINAM.

The public participation procedure is generally divided into three different phases: before the submittal of the EIA, during the EIA evaluation process and after its approval.

Ministries generally establish both compulsory and voluntary public participation mechanisms such as informative workshops, public hearings, mailboxes for observations and suggestions, public participation, information office guided tours and community monitoring programs. The project developer must address the population's concerns during the submittal of the EIA. (Refer to Appendix 2 for a reference list of applicable public participation mechanisms by economic sector).

There are three categories of EIAs, depending on the magnitude of the project and the effects it may produce:

- Environmental statement (DIA), through which the authority evaluates projects that may produce minor environmental impacts;
- Semi-detailed environmental impact assessment (EIASDs), through which the authority evaluates projects that may produce moderate environmental impacts; and
- Detailed environmental impact assessment (EIADs), through which the authority evaluates projects that may generate significant negative environmental impacts.

On December 20, 2012, Law 29968 came into force, which created the National Service for Environmental Certification of Sustainable Investments (SENACE). According to the law, SENACE will be responsible for reviewing and approving the EIADs for activities that may cause significant environmental impacts. Therefore, SENACE is to be appointed as the exclusive public authority in charge of the EIAD, with the corresponding sectoral authorities retaining the powers in connection with DIAs and EIAs.

On the other hand, Peru is party to Convention 169 of the International Labor Organization, which recognizes the right of indigenous peoples to be consulted when a project might potentially affect their rights and lands. This treaty was implemented in Peru through Law No. 29785, ***Law that Recognizes the Right to Prior Consultation by Indigenous or Native Peoples***, in force since December 2011, and its associated regulation (Supreme Decree No. 001-2012-MC).

In accordance with these rules, the prior consultation procedure shall be performed by the authorities when the collective rights of indigenous peoples may be affected directly by an administrative measure, law or decision. Prior consultation does not grant the right of veto to indigenous peoples over any specific activity or project.

In 2013, the Ministry of Culture published the list of indigenous peoples in Peru that are formally vested with the right of consultation. It is important to note that this list is merely referential, and thus is not a registry. The Ministry of Culture shall regularly update the information contained in

the list. For example, the Ministry of Energy and Mines must follow prior consultation procedures before authorizing mining exploration or exploitation areas in areas inhabited by indigenous people. According to INGEMMET, prior consultations do not need to be conducted when mining concessions are being granted, because mining concessions do not necessarily authorize mining activities.

1.7 Progress of decentralization

1.7.1 Ombudsman's Office Report (2009)[44]

This report assessed the progress of decentralization. It concluded that the first stage, related to the installation of regional governments, was fulfilled.

The following stages have not been fulfilled at this point, however. The transfer of powers corresponding to the 3rd and 4th stage has been initiated without the fully crystallized regional governance structures corresponding to the 2nd stage. The 3rd and 4th stages have also been developed in parallel, losing the gradualism of the decentralization process.

All functions regarding education and health matters were transferred to the regional governments. However, some regional governments, such as Madre de Dios, lack powers in fisheries and industry.

Finally, the report states that the resources related to the sectoral powers to be transferred to the regional governments is one of the weakest points in that transfer process.

The lack of clear procedures and timelines for identifying and quantifying the resources that need to be transferred together with the functions has delayed the completion of decentralization.

1.7.2 Annual report regarding the decentralization process (2012)[45]

The USAID/Peru Pro-Decentralization Program to promote dialogue between government levels and civil society issued a report in 2012 that provides recommendations to improve the decentralization process in Peru. The report offers the following key findings:

1. The decentralization secretariat did not meet its objectives in 2012 and its failure hindered consensus-building in the decentralization process. USAID/Peru recommends reforms to its structure, organization and decision-making process in the future.
2. The decentralization secretariat lacks sufficient autonomy because it is housed under the Council of Ministers. The report recommends strengthening its autonomy. It argues that it should be granted all the powers it needs to fulfill its mandates and assess the impacts of measures taken as part of the decentralization process.
3. It is necessary to assess and define the functions related to social conflicts that are under the power of the regional governments.
4. Participation has been relatively low. There have been low public participation levels, few resources earmarked for investment projects through the participatory budget and weak participatory dynamics in accountability hearings. USAID/Peru recommends reformulating the public participation mechanisms' regulations.
5. Ninety-two percent of the national government's functions had been transferred to the regional governments, although several problems occurred in the process, such as the lack of human and financial resources. The report emphasizes the urgency of tackling this issue and recommends that the national government provide resources to the regional governments so they can effectively fulfill their responsibilities.

44 Ombudsman's Office Report N. 141 (2009) "Towards a decentralization in the service of the people: recommendations on the process of transfer of competencies to the Regional Governments" http://www.gycperu.com/descargas/1_Abril/Defensoria%20Informe%20141%20Descentralizacion%20Transferencia%20GR.pdf

45 http://www.propuestaciudadana.org.pe/sites/default/files/sala_lectura/archivos/Informe%20Anual%20del%20Proceso%20de%20Descentralizacion%202012.pdf

1.7.3 Annual Report (2012 – 2013) of the Commission on on Decentralization, Regionalization, Local Governments and Modernization of the State Management[46]

In order to guide the development of the decentralization process, the National Congress annually evaluates the process and delivers a report to the president of the Council of Ministers. This report is prepared with the participation of the regional government presidents.[47]

The report for 2012 – 2013 was submitted to the Commission on Decentralization, Regionalization, Local Governments and Modernization of State Management, which developed an analysis and consultation process to assess the state of the decentralization.

This report concludes that, despite the time elapsed, the decentralization process has a series of problems. It finds that the institutional reforms of powers required to make the State operate efficiently in a decentralized context have not been achieved. Among the problems are poor coordination and lack of clarity in the division of powers between government levels, which affects the delivery of services and increases conflicts in everyday relations between state entities.

Moreover, the report identifies inefficient resource distribution and allocation of funds without a determined purpose as persistent problems in the decentralization process. On the other hand, the report shows that the public participation mechanisms can serve as tools to prevent corruption and supervise authorities. At the same time, they require political will and enabling legislation to be effective in practice.

The report notes that 10 years into decentralization in Peru, it is a non-consolidated and complex process with limited achievements and still faces numerous challenges. Therefore, it is essential for the State to undertake a thorough review of the process to identify and deal with the main challenges identified.

46 http://www.propuestaciudadana.org.pe/sites/default/files/sala_lectura/archivos/Evaluación%20del%20proceso%20de%20descentralización%20-%20Com%20Desc.pdf

47 Article 19 of the Executive Power Law.

2 Mechanisms for distributing financial resources

2.1 Forest fees and other royalties

Law No. 26821, the ***Natural Resources Law***, defines natural resources as "every component of nature that can be used by humans to satisfy their needs and that have an actual or potential value in the market." These include water, soil, biodiversity, hydrocarbons, minerals and forests. This law establishes that all natural resources are part of the national heritage.[48]

The Constitution stipulates that natural resource exploitation must serve the national interest. Thus, the benefits generated from such exploitation must be distributed throughout the nation. In accordance with this principle, the government, as the political expression of the nation, is the titleholder of all natural resources and has the power to regulate, manage and assign titles over them.

Constitutional court case law has established that natural resource users must compensate the nation for using such resources. Such compensation must be based on economic, social and environmental criteria and be approved by ad hoc laws. These payments may be materialized through a consideration fee and/or a good standing fee.[49]

Likewise, the Natural Resources Law stipulates that a percentage of the rents associated with natural resource exploitation are shared with regional and local governments (this percentage is called "canon" in Peru).[50] Law No. 27506, the ***Canon Law***, defines the canon as the share of income obtained by the national government from economic natural resource exploitation and due to regional and local governments. This law creates a canon for the exploitation of the following natural resources: oil, hydrocarbons, forests, minerals, hydropower and fisheries.

The income regional and local governments receive as canon shall be used exclusively to fund or co-finance projects or infrastructure of regional and local impact. The regional governments shall provide 20% of the canon's total amount to public universities under their jurisdiction.[51] (Bear in mind that "canon" is different from "royalties").[52]

2.1.1 Consideration fees for forest concessions

According to Law No. 27308, the ***Forestry Law***, the use of forest products is subject to the payment of a consideration fee *(derecho de aprovechamiento)* to the national government. It is important to note that this fee is not considered a tax; rather, it is the payment that forest concession holders owe for exploiting forest resources that belong to the nation.

In the case of timber concessions, concessionaires pay based on the timber value estimated by hectares of forest, taking into consideration the forest's productive potential, the volume of timber extracted and the value of the species extracted.[53]

48 Article 4 of the Natural Resources Law.

49 Articles 20 and 29 of the Natural Resources Law.

50 There is no translation of canon to English.

51 Articles 46 and 77 of the Decentralization Law and Article 69 of the Municipalities Law.

52 The national government has created a type of fee over mining resources known as the "mining royalty," defined by the Mining Royalty Law as the amount paid to the State by the holders of mining activities for the exploitation of metallic and non-metallic mineral resources.

53 Article 19 of the Forestry Law.

The amount of the consideration fee varies according to the type of right. For forest concessionaires, it is established in the concession agreement and is paid per hectare/year of the concession.[54] For ecotourism concessionaires in areas unsuitable for forestry production, it is calculated according to the requested surface area. For ecotourism concessionaires within permanent production forests, it is applied according to the rules for forestry products.[55] Conservation concessions in protection forest lands are not subject to the payment of consideration fees because they are considered a voluntary contribution to maintenance of these areas.[56]

Fifty percent of consideration fees are distributed according to the Forestry Law and the other 50% is distributed according to the Canon Law.[57] Distribution according to each of these laws is described below.

Distribution according to the Forestry Law

In the case of *forest concessions*, the consideration fees are distributed as follows[58]:

- 60% to the corresponding regional government (part of this amount will go to the promotion of forest management committees).
- 30% to MINAGRI.
- 10% to OSINFOR.

Consideration fees from *other types of concessions* and deforestation rights are distributed as follows[59]:

- 60% to the appropriate regional government.
- 40% to MINAGRI.

The entity in charge of collecting these fees is MINAGRI[60] and the regional governments (if they have received such powers on an *ad hoc* basis).[61]

The fees are allocated for forest development, improving monitoring capabilities and surveillance systems; and for promoting afforestation, reforestation and recovery of degraded ecosystems.[62] The Forestry Law indicates that non-payment of fees causes termination of the concession agreement.[63]

Distribution according to the Canon Law

The Canon Law indicates that the canon will be distributed to all local governments within the region where the natural resources were exploited, with preference given to the district and province where exploitation actually took place.[64]

The forest canon is distributed as follows:

- 10% to the district government where the natural resources are exploited.
- 25% to the district governments of the province where the natural resources are exploited.
- 40% to the provincial governments of the region where the natural resources are exploited.
- 25% to the regional government where the natural resources are exploited.[65]

The resources that regional and local governments receive must be used to fund or co-finance projects with a regional or local impact. Also, regional governments will give 20% of the canon to the public universities in their jurisdiction, which may be used only for science and technology research.[66] When a forest concession is located in two or more districts, the canon will be equally distributed among such districts.[67] The canon is also applicable to the income obtained from permits and authorizations filed with the forestry authority.

2.2 Payment for Ecosystem Service (PES) schemes

PES schemes are commonly defined as mechanisms to improve the provision of indirect ecosystem services in which (a) those providing said services get paid for doing so, and (b) those benefiting from environmental services pay for their provision.

54 Article 70 of the Forestry Law Regulations.

55 Article 70.5 of the Forestry Law Regulations.

56 Article 70.6 of the Forestry Law Regulations.

57 Article 14 of Law No. 27506.

58 Article 74.1 of the Forestry Law Regulations.

59 Article 74.2 of the Forestry Law Regulations.

60 Article 73 of the Forestry Law.

61 Supreme Decree No. 011-2007-AG (Approves transfer of powers from INRENA to Regional Governments).

62 Article 73 of the Forestry Law Regulations.

63 Article 18 of the Forestry Law.

64 Article 4 of the Canon Law Regulations.

65 Article 5 of the Canon Law.

66 Article 6 of the Canon Law.

67 Article 4 of the Canon Law Regulations.

2.2.1 Status of PES in Peru

On June 30, 2014, the Peruvian Congress enacted the Payment for Ecosystem Services Law, which aims to promote, regulate and supervise PES schemes to ensure the generation of economic, social and environmental benefits provided by ecosystems.

Among the most relevant provisions of this law, we highlight the following:

- Ecosystem services are defined as the direct and indirect economic, social and environmental benefits that people obtain from the correct functioning of ecosystems such as watershed regulation, maintenance of biodiversity and carbon sequestration, among others.
- The promotion of public and private investments for the conservation, restoration and sustainable use of the sources of ecosystem services is declared of national interest.
- Ownership of ecosystem services is defined. Ecosystem services are considered national heritage.
- PES schemes are defined as the mechanisms, tools, instruments and incentives applied to generate, channel, transfer and invest economic resources for the conservation, restoration and sustainable use of the sources of ecosystem services. The law recognizes contractual freedom for the contributors and beneficiaries to agree on PES schemes to be implemented. However, the mechanism proposal must be assessed and approved by MINAM.
- Ecosystem service "contributors" are defined as: (i) owners, possessors or titleholders of lands; (ii) those to whom the Peruvian government has granted a title to use renewable natural resources; (iii) NGOs holding management agreements over natural protected areas and (iv) others recognized by MINAM.
- "Beneficiaries" for the provision of ecosystem services are defined as the private or public, natural or legal persons that, obtaining a social, ecosystem or economic benefit, compensate the contributors for the ecosystem services they provide.
- The creation of a PES scheme registry is established. MINAM is in charge of managing the registry of PES schemes. The purpose of the registry is to validate the PES schemes agreed upon by contributor and beneficiary, as well as regulating and supervising them. The registry will be implemented progressively, in accordance with regulations.
- The role of regional and local governments is described. Sub-national governments shall promote the implementation of PES schemes in accordance with the decentralization framework. These governments shall consider conservation, restoration and sustainable use of sources of ecosystem services in their budgets.
- The law states that public entities may raise funds and transfer them to the contributors of ecosystem services.
- The law requires that specific regulations bringing it into force be passed within 120 calendar days of the law's passage.
- The PES Law does not regulate the distribution of economic benefits between the parties involved in the PES scheme or the State.

In addition, SERNANP issued Resolution No. 26-2014-SERNANP in early 2014. This resolution contained a directive regulating the sale of carbon certificates generated from conservation projects within Natural Protected Areas (NPAs). The directive allows those in charge of management agreements with SERNANP to operate PES schemes within the NPA and commercialize the carbon credits in accordance with the procedures established by the resolution. This includes selling carbon credits derived from REDD+ projects in NPAs. Notably, the directive also requires REDD+ project operators in NPAs to reinvest the income obtained from the sale of the carbon credits in the NPA or NPA system (SINANPE).

Several programs involving compensation for ecosystem services already exist. They are described below.

National Forest Conservation Program for Climate Change Mitigation/*Programa Nacional de Conservación de Bosques para la Mitigación del Cambio Climático* (PNCB)

The PNCB was created by Supreme Decree No. 008-2010-MINAM as a voluntary initiative to help conserve 54 million hectares of forest through the execution of forest conservation agreements with local and regional governments and peasant and native communities.

The idea behind it is to promote specific interventions that conserve tropical forests to mitigate climate change. The main aims of PNCB are to (1) identify forest conservation areas, (2) promote the development of sustainable and productive systems that generate income for local people in the forests and (3) enforce the capabilities of the regional and local governments to conserve forests.

In order to comply with the PNCB objectives, the following types of agreements may be entered into:

- Agreements executed with the regional governments
  For a period of 4 years, MINAM grants the regional government economic incentives administered by PNCB. These incentives involve investments in strengthening the capabilities of regional public servants to protect the region's primary forests and to prepare work plans and inclusive business plans for tourism and the green economy.
- Agreements executed with peasant and native communities
  For a period of 5 years, peasant and native communities are paid for the conservation of the primary forest in the area of the community. The economic incentive amounts to S/.10.00 (USD4.00) per hectare and is granted directly to the community for its administration through investment plans and/or inclusive business plans, prepared by each community with the advice of PNCB.
- Agreements executed with national government ministries
  Incentives are granted to national government ministries to strengthen their capacities to help improve preventive and control activities ensuring forestry conservation.

To date, there are: (a) 48 native communities and 3 regional governments (Amazonas, San Martin and Pasco) associated with PNCB; (b) 2,325 participating families; (c) an economic incentive of S/.4,315,403.00 (US$1,659,770.00) per year; (d) 5.5 million hectares of forest committed to be conserved; and (e) two inter-institutional cooperation conventions, one with SERNANP and the other with OSINFOR.[68]

The San Martín Experience

On December 13, 2011, the San Martín regional government issued Regional Executive Resolution No. 1397-2011-GRSM/PGR recognizing two protection and ecological conservation zones[69] as "public domain," i.e. belonging to the State. The purpose of these zones is to guarantee the provision of ecosystem services in accordance with San Martín's Economic Ecological Zoning / *Zonificación Ecológica Económica* (ZEE). Article 38 of the regulation for the application of the San Martín ZEE, approved by Regional Decree No. 002-2009-GRSM/PGR, precisely establishes that "the zones of protection and ecological conservation shall be identified in order to grant legal safeguards through their registration."

In this case, the regional government registered the two zones as public property, specifically under liens and encumbrances. Thus, it appears that the target of this resolution is to protect certain areas for their particular ecological characteristics and the ecosystem services they provide. This strategy does not therefore qualify as a PES scheme, strictly speaking.

68 http://bosques.minam.gob.pe/

69 "*Zona de Conservación y Recuperación de Ecosistemas Rumicalarina – Huiswinchos*" and "*Zona de Conservación y Recuperación de Ecosistemas Juanjuicillo.*"

3 Description of roles of different government levels in land use decision/ policy arenas affecting forests

3.1 Land use planning/*Ordenamiento Territorial*

Land Use Planning / *Ordenamiento Territorial* (OT) is a planning tool designed to define criteria and environmental indicators that enable efficient land use allocation, as well as the ordered occupation of land. OT responds to the need to plan and organize the territory, assigning use priorities based on socioeconomic, cultural and ecological aspects.[70] While OT was conceived of as a strategy for land use planning, it was never binding. An economic stimulus package passed in July 2014 clarified that it is merely referential.[71] OT is largely based on physical, biological, environmental, social, economic and cultural variables that are characterized through a process called Economic Ecological Zoning / *Zonificación Ecológica Económica* (ZEE). There are several subsequent components of the process, but this section focuses on ZEE, as it has the most direct bearing on non-binding land use classification.

ZEE is introduced by Article 11 of the Natural Resources Law as a mechanism to prevent conflicts related to overlapping titles and improper land uses. It is a basic component of OT used to identify different alternatives for the sustainable use of a given area, with the aim of informing decision-making regarding the best uses of the land, considering people's needs and harmony with the environment.[72] ZEE is an instrument that provides technical information and the applicable referential framework to promote and guide public and private investment.

The authority in charge of managing the ZEE process in Peru is MINAM. The Executive Branch, as per the proposals made by MINAM in coordination with the decentralized levels of government, sets forth the national ZEE policy. The national sectoral ministries and sub-national governments are in charge of executing the ZEE within their corresponding jurisdictions.[73]

Specifically, MINAM is in charge of: (a) preparing the national ZEE strategy; (b) preparing the biennial operating plan[74] and submitting it to the Multisectoral Environmental Commission[75]; (c) proposing the appropriate laws for viable ZEE processes; (d) developing and disseminating ZEE procedure manuals; (e) promoting, coordinating and monitoring ZEE processes at the national level; (f) resolving contradictions between sectoral decisions and those of other government levels concerning the use categories defined in the ZEE; (g) promoting and participating in ongoing training on issues related to the ZEE; and (h) promoting the diffusion of completed ZEE studies.

In sum, while MINAM directs the ZEE process (policy-making), each sectoral ministry is in charge of putting it into practice (see Table 1).

Participation and consultation are key elements of ZEE. At all stages, ZEE processes must be transparent and participatory. ZEE requires the commitment of the public and private sectors as well as civil society. Arenas for outreach, training, public consultation and, if appropriate, public hearings are mandatory.

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70 Chirinos, Carlos and Ruiz, Manuel. "Concesiones sobre Recursos Naturales: Una Oportunidad para la Gestión Privada. "Sociedad Peruana de Derecho Ambiental SPDA. Lima, Primera Edición. Año: 2002. P.81-86.

71 Ley 30230, "Ley que Establece Medidas Tributarias, Simplificación de Procedimientos y Permisos para la Promoción y Dinamización de la Inversión en el País."

72 Articles 1 and 2 of the ZEE Regulations, approved by Supreme Decree No. 087-2004-PCM.

73 Article 11 of the ZEE Regulations.

74 Article 19 of the ZEE Regulations.

75 Article 9 of Legislative Decree No. 1013.

Table 1. Distribution of Powers and Responsibilities Related to Land Use Planning

Function	Central	Deconcentrated central office	Regional	Provincial/Local	District	Other/comments
Policy and norms	According to the Environmental Law,[a] the Executive Branch establishes the national ZEE policy based on the proposal of MINAM[b] in coordination with the decentralized levels of government.	N/A	The Environmental Law[c] authorizes regional[d] and local governments[e] to coordinate their land use planning policies with each other and with the national government, considering the proposals formulated by civil society.	The Environmental Law[f] authorizes regional[g] and local governments[h] to coordinate their land use planning policies with each other and with the national government, considering the proposals formulated by civil society.	N/A	To date, MINAM has not approved ZEE at a national level as a part of the "OT" policy. The Regional Governments Law authorizes the regional governments to approve their own ZEE, subject to any limitations from national OT.
Authorization (decision over each case)	At the national level, the Council of Ministers approves the ZEE applicable for Peru through supreme decree.	N/A	At the regional level, the regional governments approve ZEE by regional ordinance. If the ZEE includes two or more regions, it must be approved by all regional governments involved.	At the local level, provincial governments are responsible for the first approval of the ZEE by municipal ordinance. The regional government must then ratify the decision. If the ZEE includes two or more provinces, it must be approved by every provincial government involved and ratified by the corresponding regional government.	N/A	N/A
Administration (implementation)	Once approved, MINAM is responsible for the administration of ZEE.	N/A	Regional governments are jointly in charge of implementing the ZEE.	Provincial governments are jointly in charge of implementing the ZEE.	N/A	Once the ZEE is approved, all institutions may use it as a referential tool for land use planning.
	Approved ZEE results are passed on to sectoral ministries to inform decision-making.		Regional governments must promote workshops and/or other participatory mechanisms for ZEE, and disseminate the results once approved.	The provincial governments must promote workshops and/or other participatory mechanisms for ZEE, and disseminate the results once approved. They must also support dissemination through environmental education programs.		

continued on next page

Table 1. Continued

Function	Central	Deconcentrated central office	Regional	Provincial/Local	District	Other/comments
Control/ monitoring	MINAM is in charge of control and monitoring of ZEE and OT at the national level.	N/A	Regional governments are in charge of control and monitoring in their jurisdictions. Other organizations, including the technical committees and citizen surveillance, are also involved.	Provincial governments are in charge of control and monitoring in their jurisdictions. Other organizations, including the technical committees and citizen surveillance, are also involved.	N/A	The creation of a ZEE Technical Committee is optional when micro-zoning is performed.
Auditing	N/A	N/A	The regional government is subject to permanent auditing by the Congress, Regional Council and citizens. The Regional Internal Control Entity, which depends functionally on the National Comptroller Office,[i] is in charge of executing environmental control measures regarding natural resources as well as goods constituting the national cultural heritage.	The provincial government is subject to permanent auditing by an official who depends functionally on the National Comptroller's Office.[j] The Internal Control Entity is in charge of executing environmental control measures regarding natural resources, as well as goods constituting the national cultural heritage.[k]	N/A	N/A
Processing crime/ sanction	N/A	N/A	N/A	N/A	N/A	N/A

a Articles 21 and 22 of the Environmental Law; Article 6 of the Framework Law of the National Environmental Management System, Law No. 28245; Articles 22, 53, 54 and 55 of the Regulation of Law No. 28245.
b Articles 11 and 37 of the Organization and Functions Regulation of MINAM.
c Article 22 of the Environmental Law.
d Article 22 of the Framework Law of the National Environmental Management System; Article 38 of the Regulation of Law No. 28245 and Article 50 of the Regional Governments Law.
e Article 24 of the Framework Law of the National Environmental Management System; Article 46 of the Regulation of Law No. 28245 and Article 73 of the Municipalities Law.
f Article 22 of the Environmental Law.
g Article 22 of the Framework Law of the National Environmental Management System; Article 38 of the Regulation of Law No. 28245 and Article 50 of the Regional Governments Law.
h Articles 24 of the Framework Law of the National Environmental Management System; Article 46 of the Regulation of Law No. 28245 and Article 73° of the Municipalities Law.
i Articles 75 and 76 of the Regional Governments Law.
j Article 30 of the Municipalities Law.
k Article 22 of Law No. 27785, amended by Law No. 28422.

The degree of participation will depend on the level of study performed to define the potential and the limitations of an area. ZEE studies are conducted at multiple levels: (a) the macro level, which generates information for the drafting and approval of policies, development plans and land use planning, mainly at the national and regional levels; (b) the meso level, which generates information for the drafting and approval of development plans and land use planning, as well as the identification and promotion of development projects, mainly at the regional and watershed levels or in specific areas of interest and (c) the micro level, which generates information for the drafting, approval and promotion of development projects, area management plans and specific subjects at the local level.[76]

The ZEE process includes the following 5 stages[77]: (a) initial stage; (b) formulation stage; (c) approval stage; (d) application stage and (e) monitoring, evaluation and updating stage.

The initial stage involves the decision of the corresponding authority at the appropriate government level to begin preparing the macro, meso or micro planning process, according to the provisions of the biennial operating plan. Each ZEE process developed at the national or regional level (macro or meso) requires the formation of a technical committee, but is optional for micro studies. It is important to note that the ZEE must be considered a Public Investment Project.

The functions of the technical committee are to: (a) propose, review, monitor and coordinate the implementation of the regional and local ZEE process, as well as issues related to national macro-zoning and (b) propose consultation, participation, outreach and training mechanisms.

Technical committees are constituted through ordinances issued by regional and/or local government, and are composed of the following members:

- A representative of the regional government.
- The mayor of the local government where the ZEE is to be conducted
- A representative of a scientific institution located in the work area.
- A representative of a university located in the work area.
- Representatives of the government sectors and levels with jurisdiction over granting authorizations for the use of land or natural resources in the area where the ZEE will be developed.
- Two representatives of indigenous peoples' organizations.
- Two representatives of the private sector.
- Two representatives of NGOs.

The ZEE's objectives and methodological framework are defined in the formulation stage, including training, technical and public consultation and the development of technical documents and mapping. A multidisciplinary technical team[78] shall prepare a work plan before making a proposal to the relevant authority, depending on the level of government. After the ZEE is approved by the relevant authority (Table 1), it is applied through participatory mechanisms involving all sectors in charge of granting authorizations for land or natural resource use.

As a result of a dynamic, flexible and participatory process, the ZEE may be updated when monitoring and evaluation activities are performed, especially in cases where socioeconomic processes justify the change of land use, scientific and technological improvements, land use changes due to natural events, or identification of new undiscovered natural resources, for example.

The consultation[79] includes the participation of regional, provincial and district governments, sectoral directorates and representatives of civil society organizations such as professional associations, business associations, media and NGOs. Public and private institutions with direct activities in the territory, peasant and indigenous communities, and business associations also participate. Public institutions and citizens are allowed to participate in the monitoring stage.[80]

76 The macro, meso and micro level studies require a working scale of: less than or equal to 1:250,000, 1:100,000 and 1:25,000, respectively.

77 Article 18 of the ZEE Regulations and the Directive "Methodology for the ZEE."

78 This team will be formed during the formulation stage and will gather professionals specialized in the material.

79 Consultation of the ZEE proposal is performed in the formulation stage. Before its approval, the proposal needs to be ratified and validated by the people involved through workshops, according to the study level. The final document must include the observations formulated by all social actors in order to have a consented and consensual final ZEE proposal.

80 "Methodology for the ZEE" Directive.

3.2 Defining land vocation and conversion rights

The Natural Resources Law establishes that the soil and subsoil and the agricultural, livestock, forest and protection lands (in accordance with vocation) are regarded as "natural resources." The vocation (*capacidad de uso mayor*) of a given geographic area is defined as its natural ability to produce consistently under continuous treatment and for specific uses.[81]

Land classification according to vocation is a technical-interpretive system for assigning a potential determinate use, value and proper management type for each unit of land, which involves translating the results of technical soil studies into a practical language through an interpretation process. The results of that process are predictions regarding the likely behavior of land and soils under certain weather and terrain conditions and a determinate best land use and management. In this way, the soil can be classified in three hierarchical categories: vocation group, vocation class and vocation subclass.[82]

The authority in charge of classifying as well as implementing, monitoring, promoting and distributing the land according to its vocation is MINAGRI, through the General Directorate of Environmental Agricultural Affairs, in coordination with MINAM at the national level (see Table 2).

Notwithstanding the above, the law enables other public and/or private organizations besides MINAGRI to classify land.[83] This classification must not only comply with the rules set forth by MINAGRI, but also be approved by it in coordination with MINAM.[84]

Once the lands are classified, the Forestry Law[85] still permits changing non-forestry lands to other sustainable uses. This change does not imply an aptitude change of the land (as the soil aptitude depends on its chemical composition), but rather removal of forest cover on the land previously classified as suitable for "clean farming," "permanent cultivation" or "pasture." Five general types of changes in land use can be identified: forest harvesting, forest conversion, agricultural cycles, agricultural transitions and direct changes.

The provisions regarding conversion rights are provided in the Forestry Law and its regulations, and said proceeding must be performed in compliance with Resolution No. 212-2005-INRENA. It is important to note that both proceedings – the classification of the vocation of land and the conversion rights – do not require the participation of affected populations, NGOs or the private sector.

3.3 Titling of Agricultural Lands

The titling of agricultural lands in Peru has evolved significantly since the agrarian reform of 1969. Nowadays, different processes are recognized in order to obtain a land title for agricultural and livestock lands. (Note: Titling of forest lands is described in the following section of this report).

Agricultural and livestock land titling can be classified into:

1. Titling process requested by a private person, regulated by Legislative Decrees No. 653 and No. 1089[86] and
2. Titling process requested by native and/or peasant communities, ruled by Law No. 22175, Law No. 26845 (for communities in the coast) and Law No. 24657.

It is important to note that in both processes the right granted is a property title, unlike in the case of native lands with a forest vocation (described in the subsequent section), where the right granted by the government is a use right (usufruct). The most important difference between these two rights is that the first one confers full access, use, exclusion and alienation rights to land, whereas usufruct rights only entail some of these rights, and never full alienation rights.

81 Article 8 of the Regulation of Classification of the Land by its Vocation, approved by Supreme Decree No. 017-2009-AG.

82 Article 9 of the Regulation of Classification of the Land by its Vocation.

83 Articles 13, 14, 15 and 16 of the Regulation of Classification of the Land by its Vocation.

84 Article 64 of the Supreme Decree No. 031-2008-AG.

85 Approved by Supreme Decree No. 014-2001-AG.

86 The Regulation of Legislative Decree No. 653 was approved by Supreme Decree No. 048-91-AG, whereas the Regulation of Legislative Decree No. 1089 was approved by Supreme Decree No. 032-2008-VIVIENDA.

Table 2. Distribution of Powers and Responsibilities Related to Defining Land Vocation and Conversion Rights

Function	Central	Deconcentrated central office	Regional	Provincial	District	Other/comments
Policy and norms	MINAGRI, in coordination with MINAM, is the authority in charge of approving the policies and rules applicable to classification of the lands and conversion rights.[a]	N/A	N/A	N/A	N/A	N/A
Authorization (decision over each case)	MINAGRI is the only authority with powers to classify lands according to vocation. The classification of the land is approved through directorial resolution.	N/A	According to Ministerial Resolution No. 0443-2010-AG, the regional governments of departments with forests, through their regional directorates of agriculture, are in charge of authorizing conversion rights and approving conversion.	N/A	N/A	SERNANP will issue a technical opinion in cases where a natural protected area is involved.
Administration (implementation)	MINAGRI is the only authority in charge of executing, supervising and disseminating land classification at a national level.[b]	N/A		N/A	N/A	In practice, regional governments may play a role in administration and "control" over land classification.
Control/ monitoring	MINAGRI is the only authority in charge of executing, supervising and publicizing land classification at the national level.[c]	N/A	The regional government is in charge of controlling and monitoring fulfillment of the conversion rights, but this authority cannot sanction should an irregularity be discovered.[d]	N/A	N/A	N/A
Auditing	N/A	N/A	N/A	N/A	N/A	N/A

continued on next page

Table 2. Continued

Function	Central	Deconcentrated central office	Regional	Provincial	District	Other/comments
Processing crime/ sanction	MINAGRI, through its General Directorate of Environmental Agricultural Affairs, is the authority in charge of sanctioning non-compliance with environmental regulations. It sanctions conversion rights if they were not contained in the environmental certification of the project.[e] The Criminal Code[f] has also included an article pursuant to which a person who uses lands designated by the authority for agricultural or other uses without authorization for changing land use will face a penalty of 2-4 years. This penalty also applies to whoever sells or offers to sell lands defined as agricultural. On the other hand, there is still no regulation for special sanctions in case of non-compliance with regulations related to classification of the land by vocation.		The Criminal Code states that it is a crime for an official to grant authorization or any rights over natural resources without complying with environmental laws.[g] The Criminal Code also criminalizes inappropriate use of agricultural lands,[h] pursuant to which the person who uses land with an agricultural vocation for urban development, extraction or construction purposes will be punished with a penalty of no less than 2 years and no more than 4 years. Following the same logic, article 313 of the Criminal Code applies in the case of environmental degradation.			

a In its quality as the National Agriculture Authority, according to Supreme Decree No. 013-2010-AG.
b Article 12 of the Regulation of Classification of the Land by its Vocation.
c Article 12 of the Regulation of Classification of the Land by its Vocation.
d Ministerial Resolution No. 0443-2010-AG.
e Article 22 of Law No. 27785, amended by Law No. 28422, amended by Law No. 28422.
f Article 311 of the Criminal Code.
g Article 314 of the Criminal Code.
h Article 311 of the Criminal Code.

3.3.1 Titling process requested by a private person

Legislative Decree No. 653 sets forth regulations for agricultural and livestock land titling in favor of private sector natural and/or legal persons (i.e. investors). The purpose of this law is to promote private investment in the forest, grant legal tenure security and ownership of rustic lands, and promote efficient production and capitalization of the agricultural sector. Land titling is executed through purchase agreements subject to total payment of the property's price. The agreement may be formalized by a signed and notarized private contract, which is sufficient title for land registration.

The authority in charge of conducting the titling process in favor of investors is the corresponding regional government, depending on the land requested, in accordance with subparagraph *n* of Article 51 of the Regional Governments Law, which establishes that regional governments are authorized to promote, manage and administer agricultural lands, with the participation of stakeholders, safeguarding the imprescriptible, inalienable and indefeasible character of native and peasant community lands.

This titling process involves several steps, all of which are performed before the corresponding regional directorate of agriculture. This process does not involve any public participation because the property title is granted as a result of a purchase agreement and not by an administrative process.

On the other hand, Legislative Decree No. 1089 and its regulations set forth the process to *formalize* (through adverse possession) the property of villagers and small farmers, which is also handled by the corresponding regional government. It is important to mention that this process is applicable to rustic lands only, understood as those with agricultural use, located in a rural area and dedicated to agricultural activities, as well as lands located in an urban expansion area destined to any farming activity.

This process starts at the initiative of the regional government, and involves the prior determination of the "land unit" to be formalized. According to Legislative Decree No. 1089, there are two possible scenarios regarding agricultural and livestock land titling: (a) a private entity possesses land owned by the State, or (b) a private entity possesses land owned by another private entity. In both cases the process is very similar, except for the requirement to exercise possession as an owner in the second scenario.

Finally, these processes involve a participatory stage in which promotion and diffusion are performed before the cadastral survey. In the case of adverse possession in private lands, the participatory stage is more intense. It requires notification to the owner and third parties and recording in the Public Registry of the adverse possession process being initiated.

3.3.2 Titling process requested by native and peasant communities

To apply for a title, a native community must be previously recognized by the government. To be recognized, the community must go through a specific process that ends with a directorial resolution of recognition in favor of the native community. The authority in charge of this titling process is the corresponding regional government through the regional directorate of agriculture.

Briefly, the process has three stages: (a) preliminary stage, in which communities are notified of upcoming field work; (b) field work stage, in which the work team collects information about the land and any natural protected areas; and (c) processing stage, in which reports are prepared to approve or dismiss the community's application. If the application is approved, a directorial resolution is issued, and the community is registered.

It is important to note that prior to all land titling processes in favor of private parties or native or peasant communities, land classification[87] and verification of the existence of any natural protected areas or forestry resources[88] must be conducted. If there are natural protected areas or forest resources in the area, the regional directorate of agriculture must request the opinion of SERNANP or the General Directorate of Forests and Wildlife, respectively. Table 3 describes how functions related to titling of agricultural lands are distributed among government offices.

87 According to the first final complementary provision of Legislative Decree No. 1089 and article 5° of Law Decree No. 22175.

88 According to Supreme Decree No. 037-99-AG.

Table 3. Distribution of Powers and Responsibilities Related to Titling of Agricultural Lands

Function	Central	Deconcentrated central office	Regional	Provincial	District	Other/comments
Policy and norms	MINAGRI is in charge of approving the national land titling policy.[a]	N/A	The regional governments have the power to regulate their own titling processes, including the requirements under their provisions.[b] National policy limits the powers of regional governments, whose provisions cannot overlap with national policy.	N/A	N/A	N/A
Authorization (decision over each case)	N/A	N/A	The regional governments, through the regional directorates of agriculture, are the authorities responsible for land titling.[c]	N/A	N/A	Authorities such as SERNANP and the forestry authorities participate in the titling process by giving their opinion when forest resources or natural protected areas are involved. The General Directorate of Environmental Agricultural Affairs is also involved, as titled lands must first have their vocation declared.
Administration	N/A	N/A	Once the ownership title is granted, the regional governments stops administering the land. After the resolution is issued, the land becomes the property of the private party, which means that the applicable rules are now the provisions contained in the Civil Code.[d]	N/A	N/A	N/A
Control/ monitoring	N/A	N/A	N/A	N/A	N/A	Once the ownership title is issued there is no need to control or monitor the activities executed by the owner on his/ her land, because it is understood that the land is agricultural.
Auditing	N/A	N/A	N/A	N/A	N/A	N/A
Processing crime/sanction	N/A	N/A	N/A	N/A	N/A	N/A

a According to Supreme Decree No. 013-2010-AG.
b Article 51 of the Regional Governments Law.
c Article 51 of the Regional Governments Law.
d Article 923 of the Civil Code, approved by Legislative Decree No. 295.

3.4 Titling of native lands with forest vocation[89]

Article 2 of the Forestry Law stipulates that forest resources may not be used for agricultural and livestock purposes or other activities that may affect the vegetation cover, sustainable use or forest resource conservation.

Therefore, private property and the execution of agricultural and livestock activities are expressly forbidden on lands with forestry vocation. Additionally, article 37 of the Forestry Law states that the granting of ownership titles or possession certificates over state-owned lands with forest vocation is prohibited.

It is important to note that, according to Law Decree No. 22175, native lands with forest vocation will not be granted to native communities as a property right but in usufruct (right to use).[90] This rule authorizes the government to assign the use of a specific area in favor of native communities, through assignment agreements executed with the regional directorate of agriculture, pursuant to Directorial Resolution No. 0499-2009-AG. The assignment of the lands does not include a public participation phase.

Finally, the new Forestry Law,[91] which will come into force when its regulations are approved, establishes that in order to grant rights over other natural resources, the authorities in charge must request the prior opinion of SERFOR when the land involved may affect forest resources. The purpose of this rule is to compel authorities to assure that no forest resources are involved when they grant rights over natural resources other than forest concessions. Table 4 summarizes these powers and responsibilities.

3.5 Government ownership and administration of land

According to Law No. 29151, the National System of State-owned Assets Law, movable assets and real estate under private or public domain – such as the soil – are considered state-owned property, which means they are under the control of the State. Lands that are not recorded in the public registry and do not constitute private or communal property are also considered state-owned assets.[92]

Supreme Decree No. 054-2013-PCM, passed in 2013, describes the procedures for the titleholder of investment projects to request the land easements from sectoral authorities considered necessary for the project. If granted, the sectoral authority then presents its authorization to the Superintendence of National Assets (SBN) in order to obtain a temporary or permanent easement over such land, whether or not it is recorded in the Peruvian Registry. Through this proceeding the SBN also decides which authority is in charge of granting the easement.

The public entities that make up the SBN are entitled to acquire, administer, dispose of, register and supervise[93] State-owned assets, provided that they use them in licit activities. The SBN is made up of: (a) the SBN itself, as the governing entity; (b) the national government; (c) public bodies with autonomy under the Constitution; (d) the entities, projects and programs of the State, whose activities are developed by virtue of the powers legally granted; (e) the regional governments; (f) the local governments and their companies under public regulation and (g) the state companies.

The actions executed by regional governments regarding the assets of their properties[94] are governed by the provisions of the Regional Governments Law, which requires regional governments to register their assets with SBN. Local governments also execute actions regarding their own property and administer assets given by virtue of the decentralization process. Regional governments administer and grant property rights over state-owned urban and barren lands within their jurisdiction, except for such assets that fall within the scope of the national government,[95] projects of national interest[96] and municipal lands.

89 This section does not refer to forestry concessions; please refer to the specific section.

90 Article 11 of Law Decree No. 22175.

91 Article 62 of Law No. 29763.

92 Article 23 of Law No. 29151.

93 Article 4 of Law No. 29151.

94 Article 3 of the Regional Governments Law.

95 Article 1 of Legislative Decree No. 994 and Article 2 of Supreme Decree No. 023-2004-PCM.

96 Article 4 of Supreme Decree No. 020-2008-AG.

Table 4. Distribution of Powers and Responsibilities Related to Titling of Native Lands with Forest Vocation

Function	Central	Deconcentrated Central office	Regional	Provincial	District	Other/comments
Policy and norms	MINAGRI is the authority in charge of approving the national land titling policy.[a]	N/A	The regional governments are in charge of formulating and executing policies and concrete actions regarding inclusion, prioritization and promotion of native and peasant communities.[b]	N/A	N/A	N/A
Authorization (decision over each case)	N/A	N/A	The regional governments, through the regional directorates of agriculture, are the authorities responsible for signing the assignment agreements with native communities.[c]	N/A	N/A	Prior to forming agreements with native communities, the regional government conducts studies to define the vocation of the land to be assigned. Also, authorities such as SERNANP and the General Directorate of Forests and Wildlife participate in the titling process by giving their opinion when NPAs or forest resources may be affected.
Administration	N/A	N/A	Once the assignment agreement is executed, the native community administers its own land.[d]	N/A	N/A	N/A
Control/ monitoring	N/A	N/A	The regional governments are the authorities in charge of controlling and monitoring compliance with the national forestry policy, which includes fulfillment of the agreements executed.[e]	N/A	N/A	N/A
Auditing	N/A	N/A	The regional government is subject to permanent auditing by the Congress, Regional Council and citizenry. The authority with audit powers is the Regional Internal Control Entity, which depends functionally and organically on the National Comptroller's Office.[f]	N/A	N/A	N/A

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Table 4. Continued

Function	Central	Deconcentrated Central office	Regional	Provincial	District	Other/comments
			The Regional Internal Control Entity is the authority in charge of executing environmental control measures regarding natural resources as well as goods constituting the National Cultural Heritage.[g]			
Processing crime / sanction	N/A	N/A	The Criminal Code has regulated a crime for the official who grants an authorization or any right over natural resources without complying with the environmental laws.[h] On the other hand, if a native community does not comply with the provisions set forth in the Assignment Agreement or forestry regulation, it will be sanctioned according to Supreme Decree No. 017-2012-AG.[i]	N/A	N/A	N/A

a According to Supreme Decree No. 013-2010-AG.
b Article 60 of the Regional Governments Law.
c Article 1 of the Ministerial Resolution No. 0499-2009-AG and Article 51 of the Regional Governments Law.
d Article 109 of Supreme Decree No. 003-79-AG.
e Article 51 of the Regional Governments Law.
f Articles 75 and 76 of the Regional Governments Law.
g Article 22 of Law Nl. 27785, amended by Law No. 28422.
h Article 314 of the Criminal Code.
i Table of Infractions and Sanctions in the Agricultural Sector.

3.6 Natural protected areas

According to Law No. 26834, the ***Natural Protected Areas Law***, NPAs are continental or marine regions of the territory recognized and established as such due to their importance for the conservation of biodiversity and their contribution to the country's sustainable development.[97] NPAs are based mostly on a criterion of biodiversity representativeness, which leaves aside important areas that are not representative. NPAs are part of the "natural heritage" and thus the government has the constitutional duty to promote and protect them.[98] The areas recognized as NPAs are part of the public domain, which is why they cannot be transferred to private parties upon their designation as a protected area.[99] The natural condition of NPAs is to be kept in perpetuity; the government regulates the use and exploitation of the resources located within them (see Table 5).

NPAs that are part of the National System of NPAs (SINANPE) are created by Supreme Decree, endorsed by MINAM. However, the reduction or modification of NPAs can only be approved by law passed by the National Congress. Private conservation areas are created by ministerial resolution at the request of the landowner.

NPAs are classified as follows:

- Those that are part of SINANPE, characterized as spaces with high significance and importance for the nation, highlighting the quality of the biodiversity values they contain.
- Regionally administered Regional Conservation Areas consist of areas that, despite having ecological importance, do not contain the biodiversity needed to belong to SINANPE. These areas are directly administrated by regional governments.
- Private Conservation Areas are complementary conservation areas that may be created at the request of landowners. They are created by ministerial resolution of MINAM for a period of 10 years.

When a designated NPA includes privately owned land, restrictions on property may be imposed. The NPA administration authority will promote the execution of agreements with the landowners so that their rights are guaranteed. In addition, the law indicates that although rights existing before the creation of NPA are still valid, the exercise of property rights must be done in harmony with the objectives and purposes of the NPA.[100]

Here it is important to note that the creation of Municipal Conservation Areas is forbidden, which means that local governments have no power to create NPAs or similar figures.

MINAM has the power under the National Environmental Management System to develop, implement, monitor and evaluate national environmental policy applicable to all levels of government. For this, the directing council of SERNANP has the power to create national NPA policy and propose it to MINAM. The management directorate of NPAs also proposes policies for NPA management to the SERNANP directing council.

SERNANP is the authority in charge of administrating NPAs. It may retain third parties to support their management and administration. The law provides that the State recognize and promote private participation in NPA management. Thus, SERNANP may enter into administration contracts with nonprofit legal entities for a maximum period of 20 years[101] and has the power to modify or terminate such contracts. These contracts do not undermine SERNANP's powers of oversight, regulation and sanction within NPAs. It is important to mention that administration contracts will be assessed every five years or every time the master plan is revised. Administration contracts are granted through a public tender conducted by SERNANP.[102]

On the other hand, Regional Conservation Areas are administrated by the corresponding regional government, while private conservation areas are administrated by the private owner of the land.[103]

97 Article 1 of the NPA Law.

98 According to article 68 of the Political Constitution of Peru, "The State is obligated to promote the conservation of biological diversity and NPA."

99 Article 1 of Supreme Decree No. 038-2001-AG, NPA Law Regulations.

100 Article 4 and 5 of Law No. 26834.

101 Article 17 of the NPA Law and 117 of the NPA Law Regulations.

102 Article 119 of the NPA Law Regulations.

103 Article 30 of the NPA Law Regulations.

Table 5. Distribution of Powers and Responsibilities Related to Natural Protected Areas

Function	Central	Deconcentrated central office	Regional	Provincial	District	Other/comments
Policy and norms	MINAM Develop, implement, monitor and evaluate national environmental policies. Promote the conservation and sustainable use of natural resources, biodiversity and protected areas.[a] SERNANP[b] Directing Council of SERNANP creates and proposes national NPA policies to MINAM.[c] Directorate of NPA Management proposes policies for correct management of the NPAs to the SERNANP Directing Council.[d]	N/A	Formulate, approve, control and manage policies related to environmental matters.[e]	N/A	N/A	Land-owners establish their own policies for private conservation areas.
Authorization (decision over each case)	MINAM NPAs and private conservation areas are created by supreme decrees endorsed by MINAM.[f] Private conservation areas are recognized by ministerial resolutions.[g] SERNANP Authorization for the use of natural resources in the NPAs. Authorization for the use of natural resources in private conservation areas is granted by SERNANP and regional governments.	Headquarters of NPAs are the basic management units of national NPA administration, and are located wherever any NPAs exist. They are responsible for maintaining the registry of the authorizations and keeping it updated.	Natural Resources Department proposes the creation of regional conservation areas.[h] Authorization for the use of natural resources in regional conservation areas is granted by the regional governments and SERNANP.	N/A	N/A	The landowners apply for recognition of private conservation areas.[i] For this purpose, the landowner should present an application to SERNANP.

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Table 5. Continued

Function	Central	Deconcentrated central office	Regional	Provincial	District	Other/comments
Administration	SERNANP Administers NPAs directly or through third parties. For this, SERNANP signs administration contracts with nonprofit legal entities for a maximum period of twenty (20) years.[j] Guides the management of regional and private conservation areas.	NPA headquarters manage the national NPA administration.[k]	Natural Resource Department Administers regional conservation areas in cooperation with municipalities, local communities and private and public institutions.[l] Administration may be delegated to private legal persons who demonstrate interest and management skill.[m]	N/A	N/A	The landowners of private conservation areas have the right to administer their own areas. Management committees[n] collaborate in the administration and management of NPAs.[o]
Control/ monitoring	SERNANP, through Management Directorate: Supervises and monitors the activities that take place in NPAs.[p] Supervises to verify compliance with the master plan in private conservation areas.[q]	Regional Internal Control Entity of the National Comptroller's Office.[t]	Natural Resources Department Controls and supervises compliance with the regulation, contracts, projects and studies related to environment and reasonable use of natural resources.[r]	N/A	N/A	The landowners establish their own control and monitoring policies.
	National Comptroller's Office Technical body that organizes and develops government control.[s]		The internal control entity for regional conservation areas.	N/A	N/A	N/A
Auditing	OCI[u] of MINAM Exercises internal control of SERNANP's acts and external control at the request of the National Comptroller's Office. Acts on its own when SERNAN's acts indicate evidence of illegality. Conducts control of MINAM's acts when the National Comptroller's Office or the ministry requires it. Receives and attends to complaints formulated by citizens or public servants.	Deconcentrated entities that have the power to direct, implement and evaluate the control actions in decentralized entities.				

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Table 5. Continued

Function	Central	Deconcentrated central office	Regional	Provincial	District	Other/comments
	Applies actions directly to controlled entities and public servants for infringements specified by law.[v] According to the Criminal Code, it may be a criminal liability when a public servant authorizes an activity opposed to the plan.[w]					
Processing crime/sanction	SERNANP, through NPA Management Directorate Exercises sanctioning powers in NPA areas and in private conservation areas, applying sanctions as warning, fine,[x] confiscation, closure, or suspension of the licenses or authorizations.[y] Establishes administrative sanctions.[aa] Some of the activities penalized are as follows: • Entering a protected area without authorization • Realizing commerce activities without permission • All kinds of illegal occupation or invasion • Movement on unauthorized areas Establishes and administers an offender registry.[bb] Coordinates with judiciary powers when there are signs of criminal activity against NPAs.[cc]	NPA Headquarters Exercises sanctioning powers.	Natural Resources Department Imposes punishment for the violation of regional environmental standards in regional conservation areas.[z]	N/A	N/A	N/A

continued on next page

Table 5. Continued

a Article 4 of Legislative Decree No. 1013.
b Second Supplemental Final Disposition of Legislative Decree No. 1013.
c Article 9 of ROF of National SERNANP.
d Article 23 of ROF of National SERNANP.
e Article 53 of Regional Governments Law.
f Article 7 of ROF of MINAM.
g Article 71 of the NPA Law Regulations.
h Article 53 of Regional Governments Law.
i Article 71 of the NPA Law Regulations.
j Article 3 of ROF of National SERNANP.
k Article 27 of ROF of National SERNANP.
l Article 69.1 of the NPA Law Regulations.
m Article 69.2 of the NPA Law Regulations.
n Article 17 of the NPA Law Regulations: The NPA and Private Conservation Areas have a Management Committee formed by no fewer than 5 members, who are representatives of regional governments, local people and members of peasant communities.
o Article 15 of the NPA Law Regulations.
p Article 3 of ROF of National SERNANP and Article 6 of the NPA Law Regulations.
q Article 10 of Resolution No. 144-2010-National SERNANP.
r Article 53 of the Regional Governments Law.
s Article 7 of Law No. 27785.
t Article 38 of Law No. 27785.
u Article 22 of ROF of MINAM.
v Article 41 of Law No. 27785.
w Article 312. Authorization for an activity contrary to the plans or uses specified by law:
The public servant who authorizes or pronounces favorably on a project for an activity contrary to the plans and uses specified by law will be punished by imprisonment for not less than two years and not more than four years and disqualified from one year to three years.
x Article 16 of Supreme Decree No. 019-2010-MINAM: Fines may not be higher than 10,000 Tax Unit.
y Article 3 of the ROF of National SERNANP.
z Article 53 of Regional Governments Law.
aa Article 2 of Legislative Decree No. 1013.
bb Article 9 of Supreme Decree No. 019-2010-MINAM.
cc Article 304. Environmental Pollution:
Whoever, violating laws, regulations or maximum limits, induces or performs discharges, toxic gas emissions, noise emission or radiation pollution in the atmosphere, soil, subsoil, water land or groundwater, which causes or may cause damage or serious damage to the environment or its components, environmental quality and environmental health, will be punished by imprisonment for not less than four years or more than six years and one hundred to six hundred days of fine.
Article 313. Alteration of the environment or landscape:
Whoever, contrary to provisions of the authority in charge, alters the natural environment or landscape, or modifies the flora or fauna, through construction or tree felling will be punished by imprisonment for not more than four years and sixty to ninety days of fine.

Depending on the nature and objectives of each NPA included in SINANPE, they are further classified into the following categories[104]:

- Indirect Use: the exploitation of natural resources is forbidden. This category includes national parks, national sanctuaries and historical sanctuaries.
- Direct Use: these areas are spaces that allow the exploitation of natural resources in harmony with the purposes for which they were created and observing the applicable legal limitations. This category includes landscape reserves, wildlife refuges, national reserves, communal reserves, protection forests and hunting areas. The law establishes that regional conservation areas are always of direct use.

Considering the above, the rule indicates that it is possible to exploit natural resources within an NPA classified as direct use. In addition, according to article 27 of the NPA Law, the exploitation of natural resources within an NPA can only be authorized if it is compatible with the NPA master plan's zoning categories. Applications for exploiting natural resources within these areas will be handled by the authorities in charge, and the positive opinion of SERNANP is required. The same applies for regional conservation areas.[105]

All NPAs and regional conservation areas should have a master plan,[106] which is the most important strategic planning document. It is important to indicate that the master plan should contain the following: (a) zoning; (b) the organization, objectives, specific plans and management programs and (c) cooperation, coordination and participation framework related to the area and its buffer zones.[107] Zoning is crucial for discerning what kind of extractive activities may be performed within the NPA.

SERNANP and the regional governments are the respective entities in charge of controlling and supervising the activities within NPAs and regional conservation areas. For private conservation areas, the owner has the power to establish the control and monitoring policies for those areas, but SERNANP has the power to supervise the compliance of master plans in them.

In order to control the decisions made, SERNANP and MINAM work with the Institutional Control Body (OCI), which is in charge of evaluating and controlling the activities they perform. The OCI follows the policies imposed by the National Comptroller's Office.

3.7 Mining Concessions

Supreme Decree No. 014-92-EM, the Mining Law, is the key legislation governing all mining activities in Peru. It recognizes that actors may only exploit mineral resources under the concession system.[108]

The development of any mining activity requires a concession, with the exceptions[109] of reconnaissance,[110] prospecting,[111] storage[112] and trading. In accordance with the Mining Law, there are four types of concessions[113]: (a) mining concessions, (b) processing concessions, (c) general service concessions and (d) mining transport concessions. The analysis of this section will focus solely on mining concessions, since they represent the most common and relevant concessions for mining activities (see Table 6).

Concessions are property rights that are distinct and independent from ownership of the superficial land on which they are located.[114] Therefore, in order to develop a mining project, the titleholder

104 Article 21 of the NPA Law and article 69 of the NPA Law Regulations.

105 Article 28 of the NPA Law.

106 Article 20 of the NPA Law.

107 Buffer Zones are those zones adjacent to NPAs that require special treatment for conserving the protected area. All activities conducted in buffer zones should not compromise fulfillment of the NPA's purposes.

108 Article 66 of the Peruvian Constitution and Article II of the Mining Law.

109 Article VII of the Mining Law.

110 Reconnaissance is the activity aimed at revealing levels of mineralization through elementary mining.

111 Prospecting is the research aimed at identifying potential mineral deposits by means of physical and chemical indicators measured using precision techniques and instruments.

112 Storage of mineral concentrates outside the mining operation areas is considered a mining activity that does not operate under the mining concession system.

113 Article 7 of the Mining Law.

114 Article 9 of the Mining Law.

must obtain a title over the land through one of the following mechanisms:

1. If the surface lands are privately owned, their use for mining activities requires prior agreement with the landowner. If an agreement cannot be reached, the titleholder of a mining concession is entitled to apply to the MEM for a legal mining easement over the surface lands.
2. If the surface land is state-owned property, the titleholder of a mining concession may apply for a mining easement from MEM over the barren lands where the mining activities will be developed. In this case, MEM shall submit this application to the SBN in order for this authority to grant such easement, temporarily or permanently, over the state lands.
3. Also, if the surface land is state-owned property, the titleholder of a mining concession may only acquire it if the project has been officially declared by the authorities as a project of national interest. In such case a request to purchase the land from the State must be submitted to the SBN. It is important to mention that if the surface land is state-owned, the State may also give it in usufruct to the titleholder of a mining concession for a period of time, and the titleholder of the mining concession shall pay an amount of money to the State as a consideration fee for the usufruct right.
4. If the surface land is owned by a peasant community, the following rules apply in order to sell, rent, lease or perform any other act of disposal of it: (a) for peasant communities located in the coast, a favorable vote of no less than 50% of members attending the assembly is required and (b) for peasant communities located in the highlands and jungle, a favorable vote of at least 2/3 of all members of the community is required.

It is important to note that mining activities are restricted in some areas, such as: (i) natural protected areas and their buffer zones,[115] (ii) special project areas, (iii) archeological sites, (iv) areas reserved for tourism and (v) urban areas.[116] Thus, if a mining concession is requested in such areas, the sectoral authorities in charge must be consulted prior to the granting of the mining title.[117]

The mining concession grants its titleholder the exclusive right to explore and exploit mineral resources (both metallic and non-metallic substances) within the area covered by the concession, which may range from 100 hectares to a maximum of 1,000 hectares (concessions located at sea may extend to an area of 10,000 hectares).[118] The government is prevented from granting mining concessions in urban areas, though some exceptions apply.[119] In the event that a mining concession claim involves areas of "urban expansion," the provincial government must issue a binding opinion and the authority in charge must only grant the mining concession if a positive response is granted.[120]

MEM is in charge of the mining sector. Its mandate is to ensure sustainable development of the mining activities, as well as promote private investment. Through its General Directorate Bureau (DGM), MEM rules and promotes activities to assure the rational use of the mineral resource. MEM's General Directorate of Mining Environmental Matters (DGAAM) regulates the environmental aspects of mining projects, including approval of Environmental Impact Assessments.

MEM's Geological, Mining and Metallurgical Institute (INGEMMET) is an autonomous decentralized public agency of the Mining Sector in charge of granting and terminating mining concessions for the development of medium- and large-scale mining. It is also responsible for managing the national concession register and geo-scientific information.

Although there are 5 INGEMMET offices (besides the main one in Lima), in Arequipa, Cusco, Madre de Dios, Trujillo and Puno, all concession applications submitted in such offices are re-directed to INGEMMET-Lima for evaluation and approval.

115 Article 88 of Supreme Decree No. 038-2001-AG.

116 Article 2 of Law No. 27560.

117 Article 21 of Supreme Decree No. 018-90-EM.

118 Article 11 of the Mining Law.

119 Article 1 of Law No. 27560.

120 Article 2 of Law No. 27560.

Table 6. Distribution of Powers and Responsibilities Related to Mining Concessions

Function	Central	Deconcentrated central office	Regional	Provincial/Local	District	Other/ comments
Policy and norms	MEM Elaborates, approves, proposes and applies the policies and regulations applicable to the mining sector.[a]	N/A	Regional Governments[b] Promote the sustainable use of the natural resources. Make the regional environmental policy.	Local Governments In urban areas, promote the sustainable use of the natural resources.[c] Make the local environmental policy.[d]	Local Governments In urban areas, promote the sustainable use of the natural resources.[e] Make the local environmental policy.[f]	N/A
Authorization	MEM Evaluates and grants processing, general service, and mining transport concession titles. Evaluates and grants the authorization to start / restart exploration and exploitation activities.[g] INGEMMET Evaluates and grants mining concession titles for medium- and large-scale mining.[h] Establishes the termination of mining concessions, according to the causes given by the mining law.[i] The President of the Republic Authorizes the acquisition of Mining Concessions by foreigners in border areas (this authorization shall be requested when the mining property is located within 50 kilometers of Peru's borders).[j]	INGEMMET Redirects the applications for mining concessions of medium- and large-scale mining to INGEMMET office in Lima.	Regional Governments Evaluate and grant mining processing concession titles for artisanal and small-scale mining.[k]	Provincial Municipalities Issue binding opinions regarding the granting of mining concessions in areas of urban expansion.[l]	N/A	N/A
Administration	MEM Manages the affidavits submitted by titleholder of mining concessions regarding their activities Manages mining statistics.[m] INGEMMET Manages the national concession register and geo-scientific information.[n] Manages and distributes the mining good standing fee and penalty payments.[o]	N/A	N/A	N/A	N/A	N/A

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Table 6. Continued

Function	Central	Deconcentrated central office	Regional	Provincial/Local	District	Other/ comments
Control/ monitoring	MEM Monitors compliance with the Mining regulations.[p] OSINERGMIN Supervises the legal and technical aspects related to safety of the mining activities.[q] OEFA Supervises the environmental obligations applicable to mining activities.[r] Ministry of Labor Supervises the labor-safety obligations of the mining activities.[s] National Comptroller's Office[w] Supervises, monitors and verifies the actions and results of public management.	OSINERGMIN There are deconcentrated OSINERGMIN offices in each region of Peru, which are in charge of supervising the legal and technical aspects related to safety of the mining activities. OEFA There are deconcentrated offices of OEFA in 18 different regions of the country, which are in charge of supervising environmental compliance by mining activities within its jurisdiction.	Regional Environmental Monitoring Institutions[t] Monitors compliance with the environmental regulations of mining activities, with functional independence from OEFA.	Local Environmental Monitoring Institutions[u] Monitor compliance with the environmental regulations of mining activities, with functional independence from OEFA.	Local Environmental Monitoring Institutions[v] Monitor compliance with the environmental regulations of mining activities, with functional independence from OEFA.	N/A
Auditing	Internal Control Entity of the MEMx In charge of the internal audit of the procedures of the Ministry. Audits the Ministry's financial statements. Delivers to the General Controller's Office reports on the results of its control actions.	N/A	N/A	N/A	N/A	N/A

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Table 6. Continued

Function	Central	Deconcentrated central office	Regional	Provincial/Local	District	Other/ comments
Processing crime/sanction	OSINERGMIN Imposes sanctions in case of breach of (technical) safety obligations related to mining facilities.[y] OEFA Imposes sanctions in case of breach of environmental obligations related to mining activities.[z] Ministry of Labor Imposes sanctions in case of breach of labor-safety obligations.[aa] Public Ministry The Criminal Code has regulated a crime for officials who grant an authorization or any right over natural resources without complying with the environmental laws.[bb]	N/A	N/A	N/A	N/A	N/A

a Article 4 of the ROF of the MEM.
b Article 9 of the Regional Governments Law.
c Article 141 of the Municipalities Law.
d Article 73 of the Municipalities Law.
e Article 141 of the Municipalities Law.
f Article 73 of the Municipalities Law.
g Article 98 of the ROF of the MEM.
h Articles 2, 4.13 and 4.14 of the ROF of the INGEMMET.
i Article 18 of the ROF of INGEMMETROF.
j Article 71 of the Peruvian Constitution, Article 71 and Legislative Decree No. 757.
k Article 5 of Supreme Decree No. 020-2012-EM.
l Article 2 of Law No. 27560.
m Article 105 of the ROF of the MEM.
n Article 4.8, 4.22 and 4.23 of the ROF of the INGEMMET.
o Article 4.24 of the ROF of the INGEMMET.
p Article 16 of Law Decree No. 25962.
q Article 5 of Law No. 26734, article 4 of Law No. 29901, Article 3° and Title V of Chapter III of Supreme Decree No. 054-2001-PCM.
r Law No. 29325, Supreme Decree No. 001-2010-MINAM and Resolution No. 003-2010-OEFA/CD.
s Second Complementary Final Disposition of Law No. 29783, Article 2 of Law No. 29901, Articles 2 and 123 of Supreme Decree No. 005-2012-TR.
t Articles 4 and 7 of Law No. 29325.
u Articles 4 and 7 of Law No. 29325.
v Articles 4 and 7 of Law No. 29325.
w Articles 3 and 6 of Law No. 27785.
x Articles 29 and 27 of the ROF of the MEM.
y Article 5 of Law No. 26734, Article 3 of Law No. 29901, Article 3 and Title V of Chapter IV of Supreme Decree No. 054-2001-PCM.
z Law No. 29325, Supreme Decree No. 001-2010-MINAM and Resolution No. 003-2010-OEFA/CD.
aa Second Complementary Final Disposition of Law No. 29783, Article 2 of Law No. 29901, Article 2 and Article 123 of Supreme Decree No. 005-2012-TR.
bb Article 314 of the Criminal Code.

On the other hand, there is a special regime applicable to miners who qualify as artisanal[121] or small-scale.[122] Miners who obtain this qualification and intend to apply for a mining concession must do so with the corresponding regional government (with jurisdiction over the requested area), which is responsible for evaluating and approving the mining title. Additionally, regional governments are responsible for supervising the development of mining activities in the region. Given that these institutions have sometimes been abused by individuals who did not actually qualify, the law now enables OEFA to unveil the use of artisanal or small-scale mining façades to escape national control.[123]

As part of the process of granting a mining concession, the concession applicant is required by INGEMMET or the regional government to publish an announcement in two newspapers by which the mining concession request in a certain area becomes public knowledge. As a result, any third party (such as citizens, NGOs or peasant communities) that considers that the granting of such title affects his/her rights is entitled to submit an opposition recourse (*recurso de oposición)* with the authority in charge, which will adjudicate the dispute.

Also, SERNANP could intervene during the process of granting a mining concession should the area requested for that concession overlap with an NPA. It will issue a binding technical opinion that is required to grant the mining title.

Regarding supervision of the mining industry, there are three responsible authorities. First, OEFA is in charge of supervising and enforcing environmental laws. It has the faculty to sanction violations to environmental regulations with fines up to approximately US$42 million[124] and other ancillary measures. However, Law 30230 established that for the three years following its passage in July 2014, fines may not be applied unless particular conditions are met. Moreover, even in these circumstances, only up to half of the maximum allowable fine may be applied. Second, OSINERGMIN is in charge of supervising compliance with the regulations on mining safety. Finally, the Ministry of Labor is in charge of supervising compliance with labor regulations on occupational health and safety matters.

3.8 Hydrocarbon Rights

Pursuant to Law No. 26221, the Hydrocarbons Law (known as HOL), PERUPETRO S.A. was created as a state-owned company subject to private law and put in charge of promoting, negotiating, executing and supervising the agreements for the exploration and production of hydrocarbons in Peru.

In accordance with Article 8 of HOL, the hydrocarbons “in situ” (at their source) are owned by the Peruvian State, which in turn "transfers" ownership of the extracted hydrocarbons to PERUPETRO so it can execute agreements for exploring and producing such hydrocarbons with private entities (see Table 7).

For the purposes of executing agreements, PERUPETRO may either call for a public bidding round or negotiate directly with the private oil companies.

To be entitled to bid in a public tender, negotiate and execute an agreement with PERUPETRO, an oil company first needs to be (a) qualified by PERUPETRO as a “petroleum company” that meets the technical, economic, financial and experience requirements to operate in a certain area (also known as a “block”), and (b) registered as a qualified petroleum company at the hydrocarbons public registry. Once the company is granted the qualification certificate by PERUPETRO, it may request inclusion by MEM as a contractor (petroleum company) in the hydrocarbons public registry.

3.8.1 Hydrocarbon agreements

As provided by Article 10 of HOL, upstream activities (exploration and production) may be conducted by petroleum companies under license agreements, service agreements or other contracting forms authorized by MEM.

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121 Artisanal mining is considered a subsistence activity and the special regimen is applicable for those miners who hold up to 1,000 hectares of mining concessions with a limited production and/or processing capacity. Article 2 and 10 of Law No. 27651.

122 The special regimen for small-scale mining is applicable for those miners who hold up to 2,000 hectares of mining concessions with a limited production and/or processing capacity. Article 2 and 10 of Law No. 27651.

123 See Article 17, Law No. 30011.

124 According to Supreme Decree No. 007-2012-MINAM, the maximum typified fine is up to US$14 million. However, the Congress later passed Law No. 30011 stating that the maximum fine allowable was US$42 million.

Table 7. Distribution of Powers and Responsibilities Related to Hydrocarbon Rights

Function	Central	Deconcentrated central office	Regional	Provincial	District	Other/comments
Policy and norms	MEM Draws up, approves, proposes and applies the policies and regulations applicable to the hydrocarbon sector, such as National Energy Policy 2010-2040.[a]	N/A	Regional Governments, through the Regional Directorates of Energy and Mines[b] Formulates, approves, executes, assesses, controls, directs and manages the plans and policies related to hydrocarbons in the region, in accordance with national policies and plans. Fosters projects for the exploitation of hydrocarbons. Inventories and evaluates the hydrocarbons resources. Prepares and promotes socio-environmental assessments needed for the development of hydrocarbon activities, and environmental protection and sustainable development programs.	Approves the provincial territorial reconditioning plan, identifying urban areas, areas of urban expansion, areas of protection or safety due to natural risks, agricultural areas and environmental protection areas. Promotes and coordinates planning for local development and territorial management. Promotes private investments in projects of local interest. Formulates, approves, executes and monitors local policies and plans regarding the environment in accordance with national and regional policies and plans.	Approves the local development plans and local territorial management. Promotes private investments in projects of local interest. Promotes and coordinates planning for local development and territorial management. Promotes private investments in projects of local interest. Formulates, approves, executes and monitors local policies and plans regarding the environment in accordance with national, regional and provincial policies and plans.	N/A
Authorization (decision over each case)	PERUPETRO S.A.[c] Evaluates and qualifies the companies able to engage in license or service Agreements. Proposes the delimitation of the contracted area. Negotiates and finalizes agreements to assign ownership over the extracted hydrocarbons (license agreements) or to hire a company (service agreements). Performs a public participation procedure for the negotiation or public bidding phase to inform and explain the hydrocarbons project and related actions to the local population.[d] Coordinates with other government authorities. Coordination with SERNANP is mandatory during the negotiation or bidding stage if there is a protected area within the block and with the Ministry of Culture if there are indigenous populations in isolation and / or initial contact.[e] Conducts the prior consultation to indigenous and native communities, when applicable, prior to issuance of Supreme Decrees approving the Agreements.[f]	N/A	N/A	N/A	N/A	Where the collective rights of Indigenous and Native Communities might be affected by a hydrocarbon exploration and/or exploitation project, the Peruvian government, through PERUPETRO, must inform and consult such communities about the project before issuing the supreme decree authorizing the signing of the license or service agreements.

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Table 7. Continued

Function	Central	Deconcentrated central office	Regional	Provincial	District	Other/comments
	Ministry of Energy and Mines, Ministry of Economy and Finances and the President of the Republic of Peru[5] The Agreements' terms and the block shall be approved by Supreme Decree signed by the president of Peru and endorsed by the Ministries of Energy and Mines and of Economy and Finance.					
Administration	PERUPETRO S.A.[g] Administers the database of upstream hydrocarbon activities, which includes the blocks awarded or to be awarded for upstream activities.	N/A	N/A	N/A	N/A	N/A
Control/ monitoring	Ministry of Energy and Mines[h] In charge of enforcing the hydrocarbon laws. PERUPETRO S.A. Through its Supervision Management Agreements, it supervises execution of the agreements with respect to both technical and administrative obligations. According to causes specified in each agreement, it may execute the bond letters guaranteeing the committed minimum work program for the exploration phase, apply moratorium interests in case of delay in the payment of royalties, terminate the agreement and request (to an arbitration panel or a judge, depending on each agreement) the payment of damages and harm derived from noncompliance.	PERUPETRO's decentralized offices[i] at Tarapoto, Cusco, Iquitos, Pucallpa and Talara support the supervision of the agreements' execution (i.e., they can make visits to the contractors' operation sites, check on the progress with commitments to local populations, and coordinate evaluation of the work methods employed by the contractor to avoid adverse socio- environmental impacts).	N/A	N/A	N/A	N/A

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Table 7. Continued

Function	Central	Deconcentrated central office	Regional	Provincial	District	Other/comments
	PERUPETRO S.A. and the contractor will form a supervision committee (led by PERUPETRO's agreements supervision manager) which, among other purposes, will allow both parties to exchange information regarding the operations, assess the execution of the minimum exploration work programs and annual exploitation works program to verify and coordinate the execution of the operations and compliance with all obligations related to the operations foreseen in the agreement or agreed by both parties in another document. OSINERGMIN[i] Supervises the legal and technical aspects related to safety of the hydrocarbon activities. OEFA[j] Supervises the environmental obligations applicable to the hydrocarbon activities. Ministry of Labor[k] Supervises the labor-safety obligations of the hydrocarbons activities	Deconcentrated offices of OSINERGMIN[m] are in charge of supervising the legal and technical aspects related to safety of the hydrocarbon activities within its geographical area. Deconcentrated offices of OEFA[n] are in charge of supervising environmental compliance with the hydrocarbon activities within its geographical area.				
Auditing	Government Control Entity[o] Supervise, monitor and verify the acts and operation of public servants and institutions. Internal Control Entity of PERUPETRO[p] Conducts the internal control subsequent to the acts and operations of PERUPETRO S.A., as well as the external control required by the Government Control Office. Alerts ex-officio the Ministry of Energy and Mines when there is reasonable evidence of illegality, omission or unfulfillment in PERUPETRO's acts and decisions. Receives and deals with complaints filed by public servants and citizens. MEM Internal Control Entity Conducts the internal control subsequent to the ministry's acts and operations, as well as the external control required by the Government Control Entity. Alerts ex-officio the Minister when there is reasonable evidence of illegality, omission or unfulfillment in any level of the ministry's acts and decisions. Receives and deals with complaints filed by public servants and citizens.	Regional Control Offices[q] Directs, implements and evaluates the control actions in decentralized entities, including provincial and district municipalities under its competences.	Regional Government Internal Control Entity Conducts the internal control subsequent to the acts and operations of the regional government, as well as the external control required by the control entity.	Provincial Municipality Internal Control Entity Conducts the internal control subsequent to the provincial government's acts and operations, as well as the external control required by the government control entity.	District Municipality Internal Control Entity Conducts the internal control subsequent to the district government's acts and operations, as well as the external control required by the government control entity.	

continued on next page

Table 7. Continued

Function	Central	Deconcentrated central office	Regional	Provincial	District	Other/comments
Processing crime/sanction	PERUPETRO S.A. May terminate the Agreements for incompliance of commitments assumed.[r] OSINERGMIN Imposes sanctions in case of breach of (technical) safety obligations related to hydrocarbon facilities.[s] OEFA Imposes sanctions in case of breach of environmental obligations.[t] Ministry of Labor Impose sanctions in case of breach of labor-safety obligations.[u] Public Ministry The Criminal Code has regulated a crime for public servants who grant an authorization or any right over natural resources without complying with the environmental laws.[v]	N/A	N/A	N/A	N/A	N/A

a Articles 3 and 4 of Law No. 26221, Articles 5 and 6 of Law No. 25962, Article 4 of Supreme Decree No. 031-2007-EM and Article 9 of Supreme Decree No. 043-2007-EM.
b Articles 10, 45 and 59 of Law No. 27867, Article 36 of Law No. 27783, Supreme Decree No. 021-2006-PCM and Supreme Decree No. 037-2007-EM.
c Articles 6, 8 and 14 of Law No. 26221, Article 2 Supreme Decree No. 030-2004-EM and Resolution of the Board of Directors of PERUPETRO No. 093-2012.
d Supreme Decree No. 012-2008-EM.
e Articles 21, 22 and 23 of Resolution No. 571-2008-MEM-DM.
f Law No. 29785, Supreme Decree No. 001-2012-MC and Ministerial Resolution No. 350-2012-MEM/DM.
g Law No. 26221.
h Article 3 of Law No. 26221.
i Article 3 and 5 of Law 26221, Article 5 of Law No. 26734, Article 3 of Law No. 2990. Article 3 and Title V of Chapter IV of Supreme Decree No. 054-2001-PCM.
j Article 87 of Law No. 26221, Law No. 29325, Supreme Decree No. 001-2010-MINAM and Supreme Decree No. 002-2011-MINAM.
k Second Complementary Final Disposition of Law No. 29783, Article 2 of Law No. 29901, Articles 2 and 123 of Supreme Decree No. 005-2012-TR.
l Resolution of Board of Directors of PERUPETRO No. 093-2012.
m Articles 45 And 46 Resolution No. 459 - 2005 - OS/CD.
n Articles 41 And 42 OF Supreme Decree NO. 022-2009-MINAM.
o Articles 3 and 6 of Law No. 27785.
p Articles 29 and 27 of the ROF of the MEM.
q Article 5 of Law No. 26734, Article 3 of Law No. 29901, Article 3 and Title V of Chapter IV of Supreme Decree No. 054-2001-PCM.
r Article 70 of Law No. 26221.
s Article 5 of Law No. 26734, Article 3 of Law No. 2990, Article 3 and Title V of Chapter IV of Supreme Decree No. 054-2001-PCM.
t Article 87 of Law No. 26221, Law No. 29325, Supreme Decree No. 001-2010-MINAM and Supreme Decree No. 002-2011-MINAM.
u Second Complementary Final Disposition of Law No. 29783, Article 2 of Law No. 29901, Articles 2 and 123 of Supreme Decree No. 005-2012-TR.
v Article 314 of the Criminal Code.

In a license agreement, the petroleum company (licensee) is granted authorization to explore and/or produce the hydrocarbons located inside the block at its own expense and risk. Pursuant to this agreement, PERUPETRO transfers ownership rights of all the hydrocarbons produced to the licensee, which must pay a cash royalty to the Peruvian State. Currently, this is the type of agreement preferred by PERUPETRO and the Peruvian government.

In a service agreement, PERUPETRO hires the petroleum company (service provider) to conduct exploration and exploitation activities in the block. The service providers are paid by PERUPETRO with retribution for their services subject to the volumes of hydrocarbons produced. The compensation may be paid in kind or in cash.

These agreements are governed by private law and, once approved by the Peruvian government and executed, may only be amended by written agreement between the parties, which also must be approved by the Peruvian government.

3.8.2 Agreements approval procedure

Once the company and PERUPETRO have agreed on the terms and conditions to be included in the agreement, its draft must first be approved by the PERUPETRO Board of Directors. Then PERUPETRO will request the following from the Peruvian government:

- Approval of the extension, delimitation, location and name of the block to be explored and/or exploited.
- Approval of the agreement's terms and conditions.
- Authorization to sign the agreement. Figure 2 describes the procedure in detail.

If any information is missing or additional information is required, MEM or MEF will require PERUPETRO to complete it; if there is any legal or technical change to the agreement's conditions or to the technical, legal or economic report, the government will request that PERUPETRO send a new agreement or amend the report. In cases in which PERUPETRO does not agree with an observation made by the MEM or MEF, it will send to such entities a legal-technical report detailing the reasons why it considers such observation unfounded and will insist on approval of the agreement.

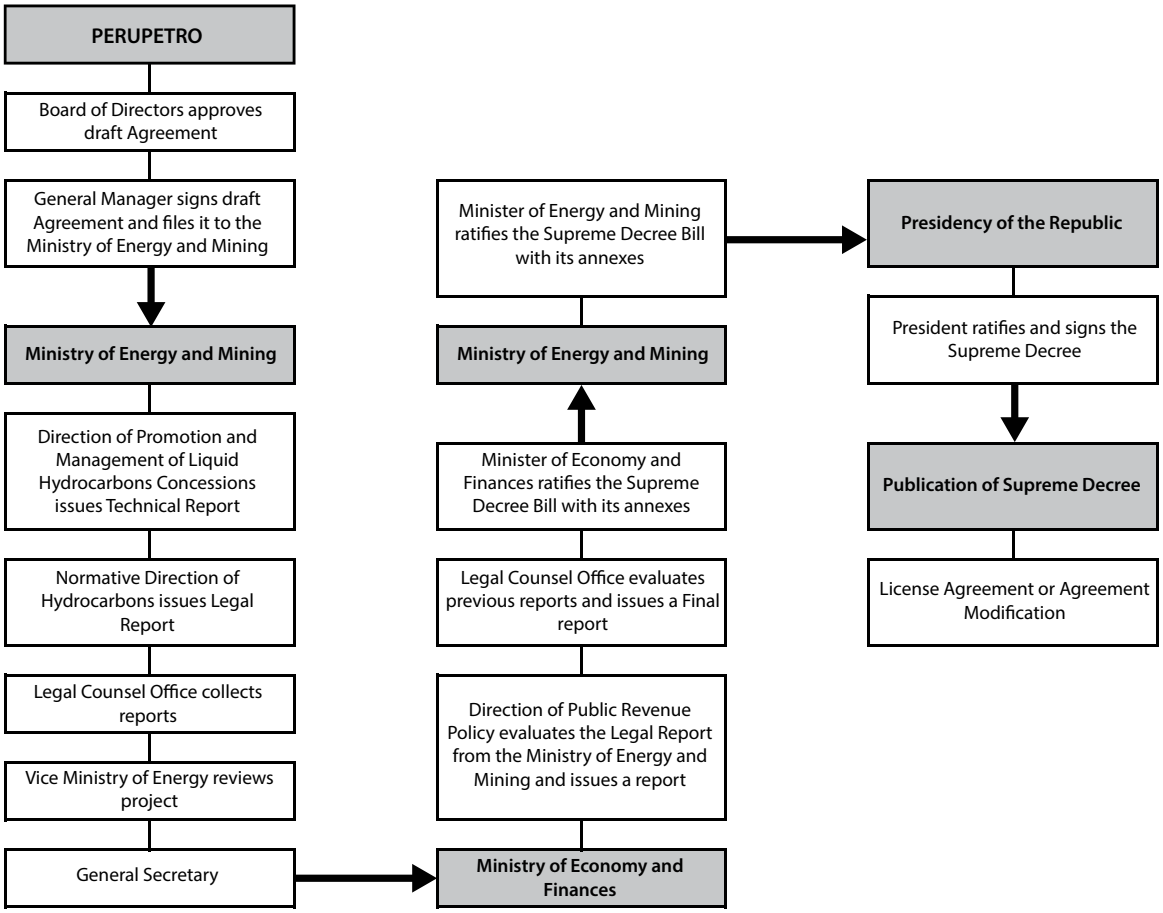

Figure 2. The approval process for hydrocarbon agreements

3.8.3 Rights of the petroleum contracting company related to land use and other resources

According to Articles 31 and 83 of HOL and Title VII of the regulations approved by Supreme Decree No. 032-2004-EM, the petroleum company contracting with PERUPETRO has the right to freely access and extract from the block; and if necessary, it may request that MEM grant by supreme resolution rights of way or easements for the use of public or private lands.

Said regulations state that in case of concurrent requirements for the same area (between the requested easement and any other mining-energy right), MEM will have to decide which right supersedes the other.

In exceptional cases, the petroleum company may request that MEM expropriate the lands owned by private entities that are inside the block or are necessary for the operations. If MEM considers that such requests should proceed, the expropriation will be considered of public and national interest and will be formalized in accordance with the applicable legislation, as stated by article 84 of HOL.

A petroleum company may only explore for or produce hydrocarbons, and not any other natural resources that may be found within that specific area. Exceptionally, minerals may be exploited if this is authorized in the agreement. However, the petroleum company has the right to use the water, wood, gravel and other materials for construction necessary for its operations, provided it does not affect the existing or future rights of third parties and that it respects the legislation in force.

3.9 Forestry Concessions

The Forestry Law indicates that natural forests, forest plantations and lands that have the capacity for forestry production and forest protection are considered forest resources.[125] The use of forest resources is subject to concession rights, which enable the use of natural forestry resources. Forest concessions may not be awarded to third parties in territories of native and peasant communities. Also, no concession will be granted for non-timber forest products (NTFP) if a previous right to use forest resources in the area is proposed.[126]

MINAGRI is responsible for regulating and promoting the sustainable use and conservation of forest resources, through the DGFFS. This directorate proposes policy and norms for the administration, control and promotion of the forest resources' sustainable use and conservation, and proposes and formulates the norms for granting concessions or authorizations. OSINFOR also has the power to propose legal norms related to supervision and control activities.

Regional governments have the power to formulate, approve and execute policies in agrarian matters of their region. It is important to note that provincial and district authorities do not have powers regarding forest resources, nor may they grant rights over forest concessions.

The Forestry Law recognizes two types of concessions[127]: forestry concessions for timber products and forest concessions for NTFPs.

The power to regulate forest concessions has recently been transferred to some regional governments. For example, Ucayali, San Martín, Amazonas, Tumbes, La Libertad, Ayacucho and Loreto have these powers as of early 2014.[128] Said regional governments may now grant permits, authorizations and forest concessions, as well as promote and control compliance with national forest policy.[129] They have created or will create a directorate in charge of agrarian matters. For example, in Madre de Dios this directorate is the *Administración Técnica de Flora y Fauna Silvestre*/ Technical Wildlife and Flora Administration and in Loreto it is the *Programa Regional de Flora y Fauna Silvestre* / Regional Wildlife and Flora Program.

Today, the powers related to forest and wildlife are exercised by the DGFFS. It is, however, important to mention that as of July 14, 2014, these are assumed by SERFOR.[130] As a result, SERFOR will act as the DGFFS as of that date and the latter will disappear. The government offices with powers and responsibilities related to forestry concessions are described in Table 8.

125 Article 2 of the Foresty Law.

126 Article 109, 1) of Supreme Decree No. 014-2001-AG.

127 The "Forestry Concessions" reference includes both types of concessions.

128 Supreme Decree No. 011-2007-AG approves transfer of powers from INRENA to Regional Governments.

129 Article 51 of Regional Governments Law.

130 Article 1 of Supreme Decree No. 001-2014-MINAGRI.

Table 8. Distribution of Powers and Responsibilities Related to Forestry Concessions

Function	Central	Deconcentrated central office	Regional	Provincial	District	Other/ Comments
Policy and norms	MINAGRI, through DGFFS Proposes policies and norms for the administration, control, management and promotion of conservation and sustainable use of forest resources. Establishes rules and guidelines for the granting of forest concessions. Coordinates the implementation of national forestry policy with regional governments. Evaluates, at national level, compliance with regulations and policies.[a] Proposes to authorities legal norms related to the supervision of natural resources. Sub-directorate of Forest Concessions Regulation and Control Proposes norms that regulate the procedures related to forest concessions and norms to sanction and declare the expiration of the concession.	N/A	Regional Directorate of Agriculture Formulates, approves, executes, directs and controls the region's policies on agrarian matters, according to national forestry policy.[b]	N/A	N/A	N/A
Authorization (decision over each case)	MINAGRI, through DGFFS Grants, recognizes, modifies or cancels rights given through authorizations or forest concessions.[c] The DGFFS has the power to grant forest concessions over all regions, except for the powers transferred to the regional governments.	Forestry Technical Management Units Deconcentrated offices that carry out functions in regions.	Regional Directorate of Agriculture Grants forest concessions in areas inside the regions where functions have been transferred.[d]			
Administration	MINAGRI, through DGFFS Conducts the administration activities of forest and wild fauna, with the object of conservation and exploitation.[e]	Forestry Technical Management Units Deconcentrated offices that conduct functions in regions.	Regional Directorate of Agriculture Administers and supervises the management of agricultural activities.[f]	N/A	N/A	N/A
Control/ monitoring	OSINFOR (Supervision Office of Forest Concessions),[g] through the Directorate of Forest Concession Monitoring Inspects and evaluates compliance with the forest concession contracts.[h] Monitors through specialized entities every five years, according to the concession contracts.[i] For this, OSINFOR will have a record of legal or natural persons that are accredited to implement this function.	Deconcentrated Office of OSINFOR Supports, within geographic limits, the monitoring and control of the forest concessions.[j] Communicates to the central office of OSINFOR any infringement of the use and conservation of forest resources.	Regional Directorate of Agriculture_ Exercises control activities, in strict compliance with national forestry policy[k] in regions where functions have been transferred.	N/A	N/A	N/A

continued on next page

Table 8. Continued

Function	Central	Deconcentrated central office	Regional	Provincial	District	Other/ Comments
Auditing	National Comptroller's Office Organizes and develops government control.[l] OCI of MINAGRI Exercises internal control of ministry operations, and external control at the request of the National Comptroller's Office. Acts on its own when the entity's operations indicate evidence of illegality.[m]	Regional Control Entity Deconcentrated bodies with the power to direct, implement and evaluate the control actions in decentralized entities.[n]	The OCI of the Regional Government Audits only in the regions where functions related to forestry have been transferred.			
Processing crime/ sanction	OSINFOR, through the Directorate of Forest Concession Monitoring: Exercises sanctioning powers. Declares the expiration of the right of use of forest resources given through Forest Concessions when the holder does not fulfill the conditions of the contract.[o] Judicial Power, in case of criminal charges Art. 310 of the Penal Code states that forest crimes shall be punished with imprisonment of not less than three years or more than six years, with community service of forty to eighty days, for any person who destroys, burns or damages forest in whole or in part without permit, license, authorization or concession granted by the authority in charge.	Deconcentrated Offices of OSINFOR Communicate to the central office of OSINFOR any infraction related to forestry resources or conservation. Support in the execution of coercive actions.[p]	Regional Directorate of Agriculture Exercises sanctioning powers in regions where functions related to forestry have been transferred.	N/A	N/A	N/A

a Article 58 of the ROF of MINAGRI.
b Article 51 of Regional Governments Law.
c Article 5.1.11 of ROF of MINAGRI.
d Article 51 of Regional Governments Law.
e Article 58 of the ROF of MINAGRI.
f Article 51 of the Regional Governments Law.
g Legislative Decree No. 1085.
h Article 40 of the ROF of OSINFOR.
i Article 6 of the Forestry Law.
j Article 50 of the ROF of OSINFOR.
k Article 51 of the Regional Governments Law.
l Articles 7 and 8 of Law No. 27785.
m Article 18 of the ROF of OSINFOR.
n Article 38 of Law No. 27785.
o Article 40.8 of the ROF of OSINFOR.
p Article 50 of the ROF of OSINFOR.

3.9.1 Forest concessions for timber products

These concessions are granted for the use of forest resources in Permanent Production Forests (BPP), which are areas with primary natural forests available to individuals preferably for the use of timber and other forest resources.[131] BPPs are created by ministerial resolution of MINAGRI. Concession rights are granted for a renewable period of forty years. These rights are granted in a public tender to small and medium-size entrepreneurs when the area is between 5,000 and 10,000 hectares, while a public auction applies when the area is between 10,000 and 40,000 hectares.

These processes are conducted by PROINVERSION or the regional government. The DGFFS or the regional government will sign the concession contract with the successful bidder.

3.9.2 Forest concessions for non-timber forest products[132]

Concessions for NTFPs

These are granted for the utilization of forest products other than timber, such as collecting leaves, flowers, fruits, seeds and other products for industrial and/or commercial use. These concessions are granted on permanent production forests or protected forests. In the latter case, the felling and destruction of forest resources are outlawed. According to OSINFOR's website, there were 1,008 NTFP concessions as of late 2013. Concessions for NTFPs are exclusive, meaning that other concessions, authorizations or permits may not be granted on the same land.

Concessions for ecotourism

These concessions grant the right to exploit the natural landscape as a resource. According to the forest registry, there are 5 concessions for ecotourism in the regions of Ancash, Cusco, Ica, Junín, Loreto, Madre de Dios, Tumbes and Ucayali.[133]

Concessions for conservation and environmental services

These are granted for the development of biological conservation project diversity and ecosystem services. There are 38 concessions for conservation in the regions of Amazonas, Cusco, Ica, Junín, Loreto, Madre de Dios, Pasco, Piura, San Martín, Tumbes and Ucayali.[134] Concessions for environmental services have not been granted (ad hoc regulations were not approved).

OSINFOR is the entity in charge of supervising and controlling fulfillment of concession contracts. It may contract third parties through a public tender for monitoring and supervision, which are conducted every five years. DGFFS has the general power to verify the conservation and sustainable use of natural resources. When the DGFFS performs control activities and identifies non-compliance with the concession contract, it must communicate this information to OSINFOR. The regional governments also have the power to exercise control activities in those regions that have received agrarian powers.

A breach of forest regulations can lead to administrative infractions. The entity in charge (OSINFOR or regional governments, depending on the case) has the power to sanction the titleholder with up to 600 tax units[135] and impose additional sanctions such as confiscation; revocation of the authorization, permit or license; and contract termination. DGFFS, the regional governments or SERFOR maintains a register of legal and natural persons sanctioned for Forestry Law violations. There may also be criminal implications, as illegal activities in forests are considered crimes. In such cases, the entity in charge is the judiciary.

In order to control the administration's decisions, OSINFOR and MINAGRI work with OCI, which is the body in charge of evaluating and controlling these agencies. OCI has the following functions: (a) to perform control activities of the Ministry's operations, when the National Comptroller's Office

131 http://dgffs.minag.gob.pe/index.php/ordenamiento-y-manejo-ffs/ordenamiento-forestal

132 Article 10 of the Forestry Law.

133 Forest Concessions Register prepared by the Direction of Information and Supervision of Forestry and Wild Fauna.

134 Forest Concessions Register prepared by the Direction of Information and Supervision of Forestry and Wild Fauna.

135 Article 365 and 363 of Supreme Decree No. 014-2001-AG.UIT: Tax Unit. For the year 2013, the UIT was equivalent to S/.3,700 or approximately US$1,370.00).

or the ministry requires it; (b) to receive and attend to the complaints formulated by citizens or public servants; and (c) to perform audits.

3.10 Oil Palm

The cultivation of oil palm does not require obtaining any concession right or permit from MINAGRI, since agro-industrial activities are not under a concession system. However, an entity must hold the rights to the land where the oil palm is to be developed. MINAGRI's only role is to promote the sustainable development of such activities and monitor compliance with the national agricultural policy.[136]

To promote sustainable development of the Amazon and the recovery of deforested lands, the government issued Supreme Decree No. 015-2000-AG on May 7, 2000, through which the installation of oil palm plantations was declared of "national interest" in areas with land vocation for plantations of such species. Article 3 of the aforementioned regulation stated that the DGFFS of MINAGRI will determine the "deforested areas" with potential to develop oil palm plantations. Such areas could be granted to persons or companies through a concession right. To date MINAGRI has not established such areas.

According to the Forestry Law, oil palm is a plantation species[137] so may be cultivated in areas classified as "forests for future use," which are lands being developed to produce timber products and other forest services[138] through the granting of permits and authorizations by the DGFFS or regional governments. Yet, while there is no explicit regulation, oil palm is an agro-industrial monocrop that degrades the land and should be developed in areas with land vocation for plantations of permanent crops[139] that do not fit within the Forestry Land Use Planning detailed in the Forest Law.[140] These inconsistencies are now corrected in the new Forestry Law (to come into force in 2015), which clearly states that neither agro-industrial crops nor agro-energy crops are considered forest plantations,[141] and thus are not forestry resources.[142]

3.11 Road infrastructure and concessions

An infrastructure concession is the administrative right by which the State grants the execution or exploitation of certain public infrastructure works to foreign or national legal persons for a period of time.

The Ministry of Transport and Communications (MTC) has established a hierarchy in the roads network:

- The national road network, which corresponds to roads of national interest, is made up of the main longitudinal and transversal axes that constitute the base of the *Sistema Nacional de Carreteras* / National Highways System (SINAC). It works as a receptive element of regional and rural roads.
- A regional road network is made up of the roads that connect the national road network and the rural road network.
- The rural road network is made up of the local roads. Its main function is to link the capital of the province with the capital of the district, and these with population centers or zones of local influence as well as with the national and regional networks.[143]

At the national level, the authority in charge of the transport sector is the MTC. Pursuant to Law No. 27181, this ministry: (a) grants concessions, permits or authorizations for the provision of services under its terms of purview, (b) administers and maintains the national road infrastructure that has not been privatized and (c) has normative and auditing powers (see Table 9).

136 Article 4 of the ROF of MINAGRI.

137 Article 29 of the Forest Law.

138 Article 8 of the Forest Law.

139 Article 9.1(b) of the Regulation of Classification of the Land by its Vocation, approved by Supreme Decree No. 017-2009-AG.

140 Article 8 of the Forest Law.

141 Article 11 of Law No. 29763.

142 Article 5 of Law No. 29763.

143 Article 4 of Supreme Decree No. 017-2007-MTC.

Table 9. Distribution of Powers and Responsibilities Related to Road Infrastructure and Concessions

Function	Central	Deconcentrated central office	Regional	Provincial	District	Other/comments
Policy and norms	MTC Proposes, approves and drafts policies and technical or administrative norms applicable to the road infrastructure sector.[a]	N/A	N/A	N/A	N/A	N/A
Authorization (decision over each case)	MTC Grants authorizations for the provision of public services and grants concessions.[b] PROINVERSION The entity in charge of granting authorizations for PPP investments.[c] MEF Has the power to grant authorizations in case the public budget is being used.[d]	N/A	Regional Governments Approve public transport infrastructure projects.[e]	Provincial Governments Authorize and give concessions over ground transport in saturated areas or roads. They also grant permissions or authorizations in non-saturated areas or roads, in conformity with the respective national regulations.[f]	N/A	N/A
Administration	In case the concession is already granted, the concessionaire would be in charge of administration. MTC In charge of a dministering and maintaining national roads and infrastructure.[g] PROVIAS In charge of administering and managing infrastructure projects for the national road network. [h]	Provias decentralized	Regional Governments Manage and administer the plans and policies regarding regional transport issues, in accordance with national policies and sectoral plans.[i] Provias decentralized Manages and administers rural and regional public infrastructure projects.[j]	Provias decentralized Manages and administers rural and regional public infrastructure projects.[k]	District Local Governments Build, rehabilitate, maintain and improve the road infrastructure under their jurisdiction.[l]	
Control / monitoring	MTC Controls and detects infractions in public transport infrastructure services and investments.[m] OSITRAN Supervises public transport infrastructure investments.[n]	N/A	Regional Governments In charge of controlling, monitoring and managing the regional road and transport infrastructure activities.[o]	OSITRAN Supervises public transport infrastructure investments.[p]	OSITRAN Supervises public transport infrastructure investments.[q]	The powers granted to OSITRAN to supervise public transport investments must be established in the contract. Otherwise the MTC would supervise the concession.

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Table 9. Continued

Function	Central	Deconcentrated central office	Regional	Provincial	District	Other/comments
Auditing	MTC In charge of auditing the concessions granted.[r]	N/A	Regional Governments Are authorized to audit the management of regional road and transport infrastructure activities.[s] National Comptroller's Office The regional government is subject to the permanent auditing of the Congress, the Regional Council and the citizens. The authority with powers to audit is the Regional Internal Control Entity, which depends functionally and organically on the Government Control Entity.[t]	Provincial Governments Are authorized to audit the concession of road infrastructure granted by the provincial governments of its respective jurisdiction.[u]	District Governments Are authorized to audit transport matters under their jurisdiction, in accordance with the provisions given by the provincial government.[v]	
Processing crime / sanction	MTC In charge of sanctioning in case of infractions.[w] OSITRAN Authorized to impose sanctions in case of non-compliance with legal obligations emanating from the concession contract.[x]	N/A	N/A	N/A	N/A	The powers granted to OSITRAN to supervise the public transport investment must be established in the contract. Otherwise the MTC would supervise the concessions.

a Article 57 of Supreme Decree No. 021-2007-MTC.
b Article 16 of Law No. 27181.
c Article 14 of Legislative Decree No. 1012.
d Article 9 of Legislative Decree No. 1012.
e Article 56 of Law No. 27867.
f Article 17 of Law No. 27181.
g Article 16 of Law No. 27181.
h Article 1 of Supreme Decree No. 033-2006-MTC.
i Article 56 of Law No. 27867.
j Article 3 of Supreme Decree No. 029-2006-MTC.
k Article 3 of Supreme Decree No. 029-2006-MTC.
l Article 18 of Law No. 27181.
m Article 16 of Law No. 27181.
n Article 32 of Supreme Decree No. 046-2007-PCM.
o Article 56 of Law No. 27867.
p Article 32 of Supreme Decree No. 046-2007-PCM.
q Article 32 of Supreme Decree No. 046-2007-PCM.
r Article 16 of Law No. 27181.
s Article 56 of Law No. 27867.
t Articles 75 and 76 of the Regional Governments Law.
u Article 17 of Law No. 27181.
v Articles 18 of Law No. 27181.
w Article 16 of Law No. 27181.
x Supreme Decree N. 046-2007-PCM.

The supervising agency that regulates the investment in transport infrastructure is the Supervising Body of Public Transport Infrastructure Investment (OSITRAN). This body is in charge of regulating and sanctioning infringements through fines or suspension orders. It establishes the tariff of the services and activities under OSITRAN terms. This agency is also in charge of verifying compliance with the legal, contractual or technical obligations of the suppliers and other companies that perform activities within the scope of its purview, ensuring that adequate services are provided to the users.

According to article 56 of the Regional Governments Law, regional governments (a) have normative, management and auditing powers in transport affairs, (b) may formulate, approve, perform, evaluate, manage, control and administer the plans and policies in regional transport issues in accordance with national policies and sectoral plans, and are able to (c) plan, manage and develop regional road infrastructure, properly prioritized in the plans of the regional development and (d) supervise and audit the management of regional road and transport infrastructure activities.

Pursuant to Article 17 of the Municipalities Law, provincial governments (a) have normative, management and auditing powers in transport affairs, (b) are able to establish a hierarchy on the road networks in its jurisdiction, (c) may grant concessions for ground transport in saturated areas or roads and (d) have the power to grant permits or authorizations in non-saturated areas or roads, in accordance with the respective national regulations.

In terms of auditing powers, the regional governments are able to (a) supervise, detect infractions and impose sanctions for non-compliance with transport and ground transit laws and regulations, (b) regulate fees by granting permits or authorizations for the use of non-saturated infrastructure areas or roads, in accordance with the respective national regulations and (c) audit road infrastructure concessions granted by the provincial governments in their respective jurisdictions.

In accordance with article 18 of the Municipalities Law, the district governments have powers (a) in transit matters, where they may manage and audit under their jurisdiction, in accordance with the given provisions by the provincial governments, and (b) in road matters, where they handle installation, maintenance and renovation of the transit signaling systems in accordance with national regulations. Additionally, district governments are the authorities in charge of building, rehabilitating, maintaining and improving the road infrastructure under their jurisdiction.

Public private partnerships (PPPs) are employed by the government to promote investment. PPPs are the means by which private investment participates in infrastructure projects where the State cannot completely finance them alone.

There are different kinds of promoting bodies. For example, in the case of the national government, the private investment promoting institution is the Agency of Promotion of Private Investments (PROINVERSION) for the projects that are assigned based on their national importance. The ministries may also promote investments through investment committees. Regional and local governments may also promote private investment.

It is important to mention that private investments are not the only way to improve road infrastructure. The State is also able to improve the road network infrastructure through PROVIAS and PROVIAS Descentralizado. PROVIAS is a project created by the MTC, which implements construction, improvement and rehabilitation projects for the national roads network. The main objective of PROVIAS is to provide users an efficient transportation means that contributes to the economic integrity of the country. PROVIAS Descentralizado is in charge of executing construction, improvement and rehabilitation projects for rural or regional road infrastructure. Its main purpose is to develop and enforce institutional capacities and decentralized management of rural and regional transport. The National Institute for the Defense of Competition and Intellectual Property (INDECOPI) must ensure the excellence of services provided to the users.

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Appendices

Appendix 1. Distinctions between the powers of provincial and district governments

	Specific Powers of the Provincial Municipalities	Specific Powers of the District Municipalities
Land Use Planning	To approve the Land Preparation plan at a provincial level, which identifies urban and urban expansion areas, as well as the areas for protection, agriculture and conservation. To decide on territorial demarcation activities implemented in the province.	To approve the urban or rural district plan, as appropriate, according to the provincial provisions on the matter. To prepare and maintain the district cadaster.
Provision and trade of goods and services	To set norms for ambulatory trade. To regulate the rules regarding collection, distribution, storage and trading of food and beverages, in accordance with the related national laws.	To promote the construction and maintenance of food markets to satisfy the needs of the residents of their jurisdiction. To conduct the control of weights and measures, as well as the hoarding, profiteering and adulteration of products and services.
Citizen Safety	To establish a citizen safety system, with the participation of civil society and the national police body. To coordinate the civil defense tasks in the province.	To coordinate with the civil defense committee of the jurisdiction on the measures to be executed in order to attend victims in natural disaster events. To establish the registry and control of the residents' associations that collect or administer local assets
Local Economic Development	To simplify administrative procedures for obtaining licenses and permits in the area of their jurisdiction. To arrange with public and private sectors the preparation and execution of support programs for the local economy.	
Social and Defense Programs and Rights Promotion	To plan and promote social development in their jurisdiction, in harmony with national and regional policies and plans. To regulate the actions of the Municipal Defenders of Children and Adolescents, DEMUNA, adapting national rules to the local social reality.	

Appendix 2. Referential list[144] of public participation mechanisms in environmental assessment

Sector	Legal Framework	Authority	Activity	Applicable Mechanism of Public Participation
Mining	Supreme Decree Np. 028-2008-EM Ministerial Resolution No. 304-2008-MEM-DM	The DGAAM of the MEM	Exploration Activities	**Environmental Impact Statement (DIA):** Workshop with the participation of the population located in the project's influence area. Presentation of the environmental studies. **Semi-detailed Environmental Impact Assessment (EIAsd):** Workshop with the participation of the population located in the project's influence area. Presentation of the environmental studies. Publication of ads in newspapers and on radios.
			Exploitation Activities	**Detailed Environmental Impact Assessment (EIAd):** Public Participation Plan. At least three workshops before, during and at closure. One public hearing will be held at the time and in the place determined by the authority. Information office or participatory environmental monitoring. Guided tours.
Hydrocarbons	Supreme Decree No. 012-2008-EM Ministerial Resolution No. 571-2008-MEM-DM	**The DGAAE of the MEM:** The authority responsible for conducting the Citizen Participation process for the development and evaluation of Environmental Impact Studies.	Assessment and development of Environmental Studies.	**EIAsd**: Public Participation Plan together with the EIA Terms of Reference. Workshop after submitting environmental studies to DGAAE. Public hearings after submitting the environmental studies to DGAAE. **EIAd**: Public Participation Plan together with the EIA Terms of Reference. Workshops before and after submitting the environmental studies to DGAAE. Public hearings after submitting the environmental studies to DGAAE. **Voluntary mechanisms:** Observations mailbox. Guided visits. Information office. Dissemination of information through radio, newsletter or tv.

continued on next page

144 This list is only to be used as a broad reference.

Appendix 2. Continued

Sector	Legal Framework	Authority	Activity	Applicable Mechanism of Public Participation
Electricity	Ministerial Resolution No. 223-2010-MEM-DM	**The DGAAE of the MEM**: The authority in charge of the public participation process.	Before and during the development and evaluation of environmental impact studies.	**DIA:** Make available to the public the content of the Environmental Impact Statement. **EIAsd**: After the submitting of the EIAsd, workshops will be held. Public hearings are compulsory during the evaluation phase. **EIAd**: During and after the preparation of EIAd, the implementation of workshops in the influence area will be compulsory. Public hearings are compulsory during the evaluation phase.
Agriculture	Supreme Decree No. 018-2012-AG	**The DGAAA of MINAGRI:** The entity in charge of the orientation and direction of citizen participation related to the agrarian sector activities.[a]		**DIA**: Workshops are obligatory during the evaluation of DIA. Observation Mailboxes. **EIAsd**: The DGAAA will determine if it is appropriate to perform public hearings. When DGAAA has determined that it is not suitable to hold a public hearing, it would be obligatory to hold workshops. Observation mailboxes. Public hearings are compulsory in the evaluation phase. **EIAd:** Workshops are obligatory during the evaluation phase. Public hearings are compulsory in the evaluation phase. Observation mailboxes.

a Article 3 of Supreme Decree No. 018-2012-AG.

ISBN 978-602-1504-99-4
DOI: 10.17528/cifor/005649

CIFOR Occasional Papers contain research results that are significant to tropical forest issues. This content has been peer reviewed internally and externally.

Which levels of government hold powers over forests and land use in Peru? Which powers and responsibilities are centralized, and which are decentralized? What role can citizens play?

This report reviews the statutory distribution of powers and responsibilities across levels and sectors. It outlines the legal mandates held by national, regional and local governments with regard to land and forests, including titling, forest concessions, oil and minerals investments, road infrastructure, oil palm plantations, conservation, land use planning, and more. The review considers national legislation as of 2014 and incorporates important reforms in early 2015.

The first section describes the decentralization process, including mechanisms for public participation. The second section outlines sources of revenue available to different government levels and new legislation on payments for environmental services. The third section details the specific distribution of powers and arenas of responsibility related to multiple land use sectors across levels and among offices within levels. Summary tables are included for each different policy arena to facilitate analysis across government levels and functions: policy making, authorizations, administration, control and monitoring, auditing and sanction.

The study was commissioned under CIFOR's Global Comparative Study on REDD+, as part of a research project on multilevel governance and carbon management at the landscape scale. It is intended as a reference for researchers and policy makers working on land use issues in Peru.

CGIAR RESEARCH PROGRAM ON Forests, Trees and Agroforestry

This research was carried out by CIFOR as part of the CGIAR Research Program on Forests, Trees and Agroforestry (CRP-FTA). This collaborative program aims to enhance the management and use of forests, agroforestry and tree genetic resources across the landscape from forests to farms. CIFOR leads CRP-FTA in partnership with Bioversity International, CATIE, CIRAD, the International Center for Tropical Agriculture and the World Agroforestry Centre.

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