

Peru's regulatory framework for carbon markets

Current legal and policy developments in the context of REDD+

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Key messages

- As REDD+ moves to its results-based payments phase in a context of increasing net-zero pledges from governments and companies, different countries are implementing laws and regulations to frame how they will be compensated for emission reductions through carbon markets.
- In Peru, one of REDD+'s early movers, these developments include the proposed guidelines for the National Registry of Mitigation Actions (RENAMI in Spanish) and for the nesting process for existing early REDD+ initiatives.
- To participate in carbon markets, initiatives will be expected to register in RENAMI, administered by the Ministry of the Environment (MINAM) – Peru's national REDD+ authority – which will verify, among other things, that the proponents hold carbon rights, are using an official quota of Peru's forest emissions reference levels, and are complying with social safeguards.
- However, some regulatory uncertainties remain, such as the legal validity of emission reductions from initiatives that fail to register in RENAMI, or the extent of Peru's National Environmental Fund (PROFONANPE in Spanish) mandate to receive, manage and distribute REDD+ results-based payments.
- Other countries will benefit from Peru's experience developing new regulations, technical rules and procedures for REDD+ carbon markets, including experiences with multistakeholder consultation processes that allow for feedback before the rules are finalized and implemented.
- In this Infobrief we take stock of Peru's regulatory framework to understand how public and private actors may sell emission reductions to carbon markets, and review draft regulations under public consultation to assess where government rules are heading. Once implemented, future research would be needed to assess the effectiveness of these regulations in the market and on the ground.

Introduction: Clear regulations enable REDD+ offsets for carbon markets

For public and private REDD+ initiatives to take advantage of the growing interest in net-zero pledges and concomitant trades in carbon emission reductions, countries require clear legal frameworks that are perceived as fair and legitimate by key actors. These frameworks must also promote the environmental integrity of REDD+ initiatives to ensure avoidance of double-counting, additionality, permanence, sound reference levels, as well as consideration of uncertainties and the risk of leakage.

In this context, governments are either amending existing regulations or developing new ones to clarify important aspects regarding REDD+'s engagement with carbon markets. These include who holds carbon rights in specific areas and under what conditions they can use them, as well as the competencies of government agencies, and the rules for monitoring, reporting and verification (MRV). In some contexts, this process is mediated by complex – but necessary – consultation processes with different actors, including Indigenous Peoples and other forest-dependent groups.

Peru, one of REDD+'s early movers and the country with the fourth largest forest cover globally, is exemplary of these legal developments and can provide lessons for other REDD+ countries undergoing similar processes. This Infobrief presents a review of its regulatory framework, with a focus on REDD+ carbon markets. We also review draft regulations under public consultation to tease out where rules in the country may be heading.

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Background: Peru's experience with carbon markets

Peru has been an early supporter of international market mechanisms to achieve mitigation outcomes, including through the Clean Development Mechanism (CDM) under the Kyoto Protocol and through its Nationally Determined Contribution (NDC). Peru's 2015 INDC expressed the country's willingness to engage in international carbon markets as a seller of emission reductions, "provided this is not an obstacle for the compliance with the national commitment" (Peru 2015b). Similarly, its 2020 updated NDC noted that one of the benefits of Peru's National Registry of Mitigation Actions (RENAMI, *Registro Nacional de Medidas de Mitigación*) is to "conduct the transfer of GHG reductions produced by the mitigation actions of [private and public] actors in order to participate in national and international carbon markets" (Peru 2020).

Over the past decade, REDD+ early initiatives implemented by NGOs and private sector actors in Peru have engaged in carbon transactions. The International Database on REDD+ projects and programmes (IDRECCO) lists 32 projects at different stages in Peru, some of which have sold carbon credits in the voluntary market. In the process, some developers of private REDD+ initiatives in Peru have been accused of deceiving Indigenous communities.¹ These unethical engagements are one of the reasons why Indigenous organizations have requested more government oversight and clearer regulation over carbon markets.²

The government has also been involved in facilitating or co-developing REDD+ initiatives aimed at carbon markets. For example, the National Protected Areas Service (SERNANP, *Servicio Nacional de Áreas Naturales Protegidas por el Estado*) participates in three REDD+ initiatives in protected areas that have traded carbon credits and are under co-management agreements with NGOs.³ Peru also committed to more than 6M tCO₂e in emissions reductions under the World Bank's Forest Carbon Partnership Facility (FCPF),⁴ but did not to finalize an Emissions Reductions Purchase Agreement (ERPA) as it failed to complete key documents and to address legal

issues including clarity over MINAM's authority to conduct international carbon credit transactions in representation of the Peruvian Government.⁵



Image 1:
'Peru Carbon Footprint' mechanism.

Although Peru does not have an official domestic carbon market, the "Peru Carbon Footprint" mechanism,⁶ managed by MINAM's Directorate of GHG Mitigation,⁷ is implicitly developing one. Using this mechanism, the private sector can get official recognition of their climate efforts if they calculate their emissions, independently verify them, reduce them, or offset their remaining emissions. In this last step, organizations can

purchase emission reduction units, including from local REDD+ initiatives, to obtain a four-star Peru Carbon Footprint official certification.⁸ This can be thought of as a soft approach to add incentives to carbon finance in a larger framework of carrots and sticks to address deforestation.

REDD+ carbon markets in Peruvian policy and law

Carbon markets are included in some planning instruments and official policies at the national level, though inconsistently. Peru's National Forestry and Wildlife Policy mentions the importance of including forest ecosystem services in the national and international markets (MINAGRI 2013). Meanwhile, Peru's 2015 National Climate Change Strategy and National REDD+ Strategy promote "the use of international and national market mechanisms for reduction, capture and increase of carbon sinks" (Peru 2015a) and "the establishment of markets and valuing forest ecosystem services through [PES mechanisms]" (Peru 2016a). Similarly, the 2016 Financial Plan for the Natural Protected Areas System identified REDD+ projects and the commercialization of their carbon credits as important funding mechanisms (Peru 2016b). This recognizes a clear link between the

1 See <https://revistaideele.com/ideele/content/piratas-del-carbono>

2 See https://aidesep.org.pe/wp-content/uploads/2022/09/Carta_N%C2%B0_270-2022-Aidesep.pdf

3 These projects are in the Alto Mayo Protection Forest and the Cordillera Azul National Park (both mainly in San Martín region) and the Tambopata National Reserve and the Bahuaja Sonene National Park (both mainly in Madre de Dios region). See: <https://www.gob.pe/institucion/sernanp/noticias/491188-proyectos-redd-en-peru-marcan-la-transicion-hacia-la-gestion-efectiva-y-sostenible-de-las-areas-naturales-protegidas>

4 See Peru's Emissions Reductions Program Document (ER-PD) under the FCPF: <https://www.forestcarbonpartnership.org/system/files/documents/ERPD%20PERU%20Final.pdf>

5 <https://redd-monitor.org/2021/02/19/peru-cancels-its-world-bank-fcpf-carbon-fund-programme/>

6 Article 55 of the Regulations of the Framework Law for Climate Change

7 Article 85, e), Regulations for the Organization and Functions of the Ministry of the Environment (Ministerial Resolution No. 153-2021-MINAM)

8 See <https://huellacarbonoperu.minam.gob.pe/huellaperu/#/funciona>

mitigation measure by MINAM.²⁰ The latter requirement will be a key step to align and nest subnational initiatives, including jurisdictional programmes or private projects, with the national REDD+ effort.²¹

Emission reduction units and their transfer

RENAMI will also register emission reduction units (URE, *unidades de reducción de emisiones*) and their transfer.²² The draft guidelines for “*the implementation of REDD+ and the administration of its [URE]*”, released in January 2022 for public consultation,²³ state that REDD+ actors would need to nest their initiatives following MINAM’s guidelines, “*to obtain the [official] recognition of their UREs*”.²⁴ MINAM is in charge of authorizing the transfer of UREs,²⁵ but it would not be involved in the negotiations for each transfer. Instead, the authorization of URE transfers would be an ex-ante review of a set of requirements. Proponents would submit a request to MINAM to recognize UREs that have been verified and validated through officially recognized third-party standards – which would need to be accredited with MINAM²⁶ – and to authorize their transfer.²⁷ MINAM would take up to 30 working days to evaluate the transfer request²⁸ considering the following criteria: that the UREs are not being claimed under two different mitigation measures; that the UREs have not been transferred previously; that there is consistency with the information in the REDD+ mitigation measure; that REDD+ safeguards have been followed; and that the actors involved have not been convicted of environmental or human rights crimes.²⁹ Once authorized, UREs could be transacted in any carbon market, including internationally,³⁰ with MINAM’s encouragement to

“*allocate a percentage, or the total, of the produced [UREs], towards Peru’s NDC*”.³¹

An important question is whether emission reductions could be produced at all outside of RENAMI’s authorization process or from a mitigation measure that is not registered in RENAMI. Under the proposed RENAMI regulations, it could be interpreted that no emissions reductions can be claimed outside of RENAMI because the procedure of URE registration and transfer is mandatory for all emissions reductions, independent of the name that it is being used, considering that the legal definition³² of emissions reductions units is broad. Under this interpretation, those who claim and transact emissions reductions outside of RENAMI would be doing so illegally,³³ and could be engaging in misleading advertisement or false information, prohibited under Peru’s unfair competition and consumer protection laws.³⁴ A less stringent interpretation would be that RENAMI is not mandatory, but that emission reductions transacted outside of it would be relegated by serious standards, third-party verifiers, and carbon markets more generally. This point is important as RENAMI would not eliminate the need for privately-ran carbon registries developed around independent REDD+ standards, such as VCS or the Gold Standard. It seems that RENAMI would co-exist with those registries, and the information in private registries will reflect that of RENAMI, and vice versa. RENAMI’s draft guidelines note that some of this information exchange would be done manually by project proponents themselves – e.g., through an affidavit indicating that there is not a double transfer of URE in other registries³⁵ – which can pose questions about its efficiency and reliability. To be effective, RENAMI should plan to have built-in interoperability and coordination components to engage with private registries.

Apart from regulations and clear mandates to government agencies, other key enabling conditions should accompany RENAMI. These include providing MINAM with sufficient human and financial resources to operate the registry; developing multisector coordination mechanisms to exchange relevant information between

20 Article 17.1 d), e) and g); and article 17.3 of the draft RENAMI guidelines

21 Sixth Final and Complementary Disposition of the draft RENAMI guidelines

22 Article 56.1 and 56.2, Regulations of the Framework Law for Climate Change

23 See the Ministerial Resolution No. 011-2022-MINAM

24 Section 4.4. Guideline 4., a) of the draft “Guidelines for the Implementation of REDD+ and the Administration of its [URE]” (Ministerial Resolution No. 011-2022-MINAM)

25 Articles 56.2 and 54.5, Regulations of the Climate Change Framework Law: Authorizing URE transfers is also part of MINAM’s role of administering Peru’s adaptation and mitigation MRV system (see Article 6.9 of these regulations)

26 Article 11 and Annex II, draft RENAMI guidelines. See also Article 49.2, Regulations of the Climate Change Framework Law that determine the characteristics of third-party verifications and the fact that other actors could collaborate in this process, such as Indigenous Peoples.

27 Article 26, draft RENAMI guidelines

28 Article 28.1, draft RENAMI guidelines

29 Article 28.6, draft RENAMI guidelines

30 See also Section 4.6. Guideline 6., a) of the draft “Guidelines for the Implementation of REDD+ and the Administration of its [URE]” (Ministerial Resolution No. 011-2022-MINAM)

31 Section 4.3. Guideline 3., b) of the draft “Guidelines for the Implementation of REDD+ and the Administration of its [URE]” (Ministerial Resolution No. 011-2022-MINAM)

32 Articles 5.23 and 5.24 of the Regulations of the Framework Law for Climate Change

33 Albeit with no legal penalty since the proposed guidelines do not develop rules about violations. Also, in theory, if the registration of mitigation measures and authorization of URE transfers are mandatory then a private contract that does not follow this regulation could be void, because all environmental regulations fall under the “Public Order” doctrine (see Article 7, General Law of the Environment).

34 See, for example, Article 13 of the Law to Counter Unfair Competition (Legislative Decree No. 1044) and Article 3 of the Consumer Defence and Protection Code (Law No. 29571).

35 Article 27.1, d), draft RENAMI guidelines

government agencies (and, eventually, with international actors for Article 6 transactions); implementing simple and culturally-aware procedures for Indigenous Peoples to request information, report concerns or submit complaints; and raising awareness and disseminating information about RENAMI's objectives and functions among relevant actors, including investors and potential buyers in the voluntary carbon market.

REDD+ financial mechanism for results-based payments and benefit sharing

In 2022, MINAM received the mandate to “*design the process of receiving, administering, and distributing the benefits from diverse sources, national and/or international, for the implementation of the [REDD+] phases*”, while Peru's National Environmental Fund (PROFONANPE), will carry out “*the administration of the funds that are derived from this process*”.³⁶ It is unclear what this apparent centralization of REDD+ funding entails. A possible interpretation is that all REDD+ results-based payments – including those from private or jurisdictional initiatives or programmes that are registered in RENAMI and that engage in carbon market transactions – will go through PROFONANPE in some way. PROFONANPE could then distribute the funds to the developers of these initiatives or programmes and other relevant actors. In public meetings, however, MINAM has argued that this mandate should be understood as applying to government mitigation measures only (i.e., excluding private REDD+ projects). Under this interpretation, results-based payments from the three REDD+ projects in protected areas co-managed by NGOs could still end up being managed by PROFONANPE as the UREs are in fact owned by the government through SERNANP.³⁷ As of October 2022, two bills had been introduced in the Peruvian Congress to eliminate PROFONANPE's mandate to administer REDD+ funds, in part arguing that it hinders private investments in carbon markets.³⁸

36 See Article 3.2 of the Supreme Decree that Declares that the Climate Emergency is of National Interest

37 See Paragraph 1, Section IV of SERNANP's regulations that govern REDD+ initiatives in national protected areas (Directive N° 001-2014-SERNANP, approved by Presidential Resolution No. 26-2014-SERNANP, which explicitly recognize that the “carbon certificates generated [by REDD+ projects in protected areas under co-management agreements] belong to SERNANP, who can transfer the power to trade them [to the organizations that have the administration contracts] with [SERNANP's] prior authorization”

38 See bills 3116/2022-CR and 3136-2022-CR, from September 2022

Conclusions

Peru's ongoing development of its legal framework for the trade of emission reduction units is indicative of the broader legal issues that other REDD+ countries are and will face as they move towards results-based payments. The Peruvian Government has been developing various pieces of its REDD+ legal puzzle to regulate how to engage with carbon markets. Since many of these regulations are not yet finalized, and other pieces of the legal puzzle are not in place yet, some uncertainties remain. As the process moves onwards, it is important that the government continues to engage with all REDD+ actors to produce regulations that facilitate climate finance, ensure environmental integrity, and comply with strong social safeguards. Future research should focus on assessing the effectiveness of these new regulations to drive these goals, particularly as it pertains to positive change on the ground to people and their environment.

Other countries wishing to attract REDD+ finance should consider Peru's experience developing a regulatory framework that aims to align national mitigation goals and respect for Indigenous Peoples' rights, with the benefits offered by carbon markets. The Peruvian regulatory process shows that creating substantive rules, such as those related to nesting or the technical aspects of an official registry, are as important as procedural rules that determine how actors will comply with the new requirements under those substantive legal norms. An important aspect of this new regulatory process is the fact that Peru has released draft proposals for broad public consultations, a process that sometimes takes months, if not years. There are definite trade-offs in this approach, which may seem too fast for those who are comfortable with the current lax regulatory environment, or too slow for those who are eager to engage in carbon trading with legal certainty. Countries should consider these trade-offs when designing their own regulatory processes, maintaining transparency over the incoming regulations, as well as opportunities for feedback to ensure that their new legal rules are broadly discussed before implementation begins.

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