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. These unethical engagements are one of the reasons why Indigenous organizations have requested more government oversight and clearer regulation over carbon markets.

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 Areas 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. Peru also committed to more than 6M tCO₂e credits and are under co-management agreements with Indigenous communities. These unethical engagements are one of the reasons why Indigenous organizations have requested more government oversight and clearer regulation over carbon markets.

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Although Peru does not have an official domestic carbon market, the "Peru Carbon Footprint" mechanism, managed by MINAM’s Directorate of GHG Mitigation, 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. 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 policy 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
3 These projects are in the Alto Mayo Protection Forest and the Cordillera Azul National Park (both mainly in San Martin 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
5 https://redd-monitor.org/2021/02/19/peru-cancels-its-worldbank-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
policy goals of biodiversity conservation and of climate change mitigation, with carbon financing as a connecting bridge. Other key policies, such as the Final Report of the Multisectoral Working Group to Implement the NDC in Peru (2018) or the National Competitivity and Productivity Plan (Peru 2019), do not explicitly assign a role to international or national carbon trading to support national climate ambitions.

The role of the Ministry of the Environment
Peru’s Framework Law for Climate Change (Law No. 30754) and its regulations gave MINAM broad mandates to oversee and develop rules for Peru’s climate efforts, including the authority to “coordinate, articulate, direct, design, implement, monitor, assess, and redesign climate change public policies at the national level related to its sectoral competencies, as well as the [NDC], in line with the international commitments.” MINAM also received a general mandate to oversee and regulate REDD+, including the authority to establish and update the Forest Reference Emissions Level (FREL) in coordination with forest authorities, and to monitor and evaluate the emissions reductions from “deforestation and forest degradation, and to inform about its implementation to the Secretariat [of the UNFCCC].” MINAM holds specific mandates regarding results-based payments for REDD+, including the design of “the process of receiving, administering, and distributing benefits” derived from such payments, as well as to “administer, register, and conduct the accounting of emissions reduction units.”

The National Registry of Mitigation Actions (RENNAMI)
MINAM administers and regulates RENAMI, part of Peru’s monitoring, reporting and verification system. Proponents of mitigation measures that fit the criteria of “REDD+ actions” would need to register them in RENAMI, for which they will need to prove – among other things – compliance with REDD+ safeguards.

In August 2022, MINAM released draft guidelines for RENAMI for public consultation; the draft divided mitigation measures for carbon markets into those under Article 6 of the Paris Agreement that provide emissions reductions towards a foreign NDC (and will thus require corresponding adjustments), and those outside Article 6’s scope. RENAMI’s draft guidelines include the registration requirements for REDD+ mitigation measures: proof of land or forest tenure rights (or an authorization by the titleholders); confirmation that the measure complies with REDD+ safeguards; and a document determining the quota of the FREL that has been assigned to this third category of mitigation measure for those adopted by the government as part of Peru’s NDC. Verified emissions reductions from this third category “cannot be subsequently transferred through cooperative approaches [between States under Article 6 of the Paris Agreement], without the authorization of [MINAM].”

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9 Article 6.1. Framework Law for Climate Change
10 Article 7, Regulations of the Framework Law for Climate Change (Supreme Decree No. 013-2019-MINAM)
11 Article 53, Regulations of the Framework Law for Climate Change
12 Article 17.1, Framework Law for Climate Change
13 Fourth Complementary and Final Provision, Framework Law for Climate Change
14 Article 56.5, Regulations of the Framework Law for Climate Change
15 See the Guidelines for the Identification and Classification of the REDD+ Actions (Ministerial Resolution No. 143-2021-MINAM)
16 Article 56.6, Regulations of the Framework Law for Climate Change
18 Article 8 of the draft RENAMI guidelines. There is also a third category of mitigation measure for those adopted by the government as part of Peru’s NDC. Verified emissions reductions from this third category “cannot be subsequently transferred through cooperative approaches [between States under Article 6 of the Paris Agreement], without the authorization of [MINAM].” Article 56.3 of the Regulations of the Framework Law for Climate Change
19 Article 13 of the draft RENAMI guidelines explains the specific procedure to request and obtain the determination of the quota FREL/FRL by MINAM. See also Section 4.4. Guideline 4, b) and c) of Ministerial Resolution No. 011-2022-MINAM
mitigation measure by MINAM. The latter requirement will be a key step to align and nest subnational initiatives, including jurisdic- tional programmes or private projects, with the national REDD+ effort.

Emission reduction units and their transfer

RENAMI will also register emission reduction units (URE, unidades de reducción de emisiones) and their transfer. The draft guidelines for “the implementation of REDD+ and the administration of its [URE],” released in January 2022 for public consultation, state that REDD+ actors would need to nest their initiatives following MINAM’s guidelines, “to obtain the [official] recognition of their UREs.” MINAM is in charge of authorizing the transfer of UREs, 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 MINAM – and to authorize their transfer. MINAM would take up to 30 working days to evaluate the transfer request 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. Once authorized, UREs could be transacted in any carbon market, including internationally, with MINAM’s encouragement to “allocate a percentage, or the total, of the produced [UREs], towards Peru’s NDC.”

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 definition of emissions reductions units is broad. Under this interpretation, those who claim and transact emissions reductions outside of RENAMI would be doing so illegally, and could be engaging in misleading advertisement or false information, prohibited under Peru’s unfair competition and consumer protection laws.

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 registries – which can pose questions about its efficiency and reliability. To be effective, RENAMI should plan to have built-in interoperability and coordination mechanisms 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.
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).
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”. 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. 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.

### 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.

### Acknowledgements

This research is part of CIFOR’s Global Comparative Study on REDD+ (www.cifor.org/gcs). The funding partners that have supported this research include the Norwegian Agency for Development Cooperation (Norad), the International Climate Initiative (IKI) of the German Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (BMU), the United States Agency for International Development (USAID) and the CGIAR Research Program on Forests, Trees and Agroforestry (CRP-FTA), with financial support from the donors contributing to the CGIAR Fund. The authors thank Deborah Delgado, José Luis Capella and Pham Thu Thuy for their insightful comments to the drafts of this Infobrief.
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