

# Timber Legality Risk Assessment Colombia

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The mark of  
responsible forestry  
FSC™ A000535

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In that time, NEPCo has developed timber risk assessments for more than 60 countries, illustrated in Figure 1.



The risk assessments are developed in collaboration with local forest legality experts and use an assessment methodology jointly developed by FSC and NEPCon. A detailed description of the methodology can be found on NEPCon's website.

## B. Overview of legality risks in Colombia

**Timber Risk Score:** 15 / 100 in 2017

This report contains an evaluation of the risk of illegality in Colombia for five categories and 21 sub-categories of law. We found:

- **Specified risk for 18 sub-categories.**
- **Low risk for 2 sub-categories.**
- **No legal requirements for 1 sub-category.**

The Timber Risk Score for Colombia is 15 out of 100. The key legality risks identified in this report concern legal rights to harvest, taxes and fees, timber harvesting activities, third parties' rights, and trade and transport.

For **Legal Rights to Harvest**, there is a risk that:

- Legal landholders are forcefully dispossessed of their land (Sub-category 1.1)
- Land tenure is held informally, resulting in uncertainty of legal landholders (1.1)
- Corruption is involved in obtaining land tenure (1.1)
- Logging takes place without a management plan (when it is legally required), and that management plans are not implemented in practice (1.3).
- Harvesting takes place without a harvest permit, or before a permit is granted (1.4)
- Corruption is involved in obtaining harvest permits (1.4)

For **Taxes and Fees**, there is a risk that:

- Poor, outdated definitions of categories used to estimate volume-based fees leads to intentional (illegal) avoidance of harvest fees for natural forests (1.5)
- Harvest fees for natural forests are not paid at all (1.5)
- VAT is not paid (1.6)
- Income/profit taxes are not paid (1.7)

For **Timber Harvesting Activities**, there is risk that:

- Forest management plans are not adhered to (1.8)
- Protected areas are illegally harvested (1.9)
- Environmental laws such as those designed to safeguard water sources (e.g through requirements for buffer zones) are not followed (1.10)
- Health and safety laws are not followed (1.11)
- Employees are not affiliated with a pension scheme, as required (1.12)
- Minimum wage is not paid to employees (1.12)
- Child labour occurs (1.12)

For **Third Parties' rights**, there is risk that:

- Customary and indigenous peoples' rights are violated (1.13, 1.15)

- Free, prior, and informed consent is not obtained from communities where required, or consultation is used to take advantage of the indigenous territories, rather than to protect indigenous peoples' rights (1.14)
- Indigenous peoples' rights are violated (1.15)

For **Trade and Transport**, there is a risk that:

- Illegally harvested timber is laundered by transporting it through authorized harvest areas/with legal timber and/or as different species (1.16, 1.17)
- Timber is exported illegally through informal markets (1.19)
- CITES species are harvested illegally and sold without permits (1.20)

## Timber source types and risks

There are four timber source types found in Colombia. Knowing the "source type" that timber originates from is useful because different source types can be subject to different applicable legislation and have attributes that affect the risk of non-compliance with the legislation. We have analysed the risks for all source types and found the risks differ between them.

<b>Natural forest within protected areas and on uncultivated land</b>	Timber from natural forest within protected areas and on uncultivated land (state-owned property)
<b>Natural forest within collective territory</b>	Timber from natural forest within collective territory (collective title)
<b>Natural forest on private property</b>	Natural forest on private property
<b>Forest plantation or agroforestry system on private property</b>	Timber from forest plantations or agroforestry systems on private property



This matrix summarises the findings of the timber legality risk assessment set out in this report.

Legal Category	Sub-Category	Risk conclusion	
		Natural forest source types	Forest Plantation or agroforestry system
Legal rights to harvest	1.1 Land tenure and management rights	Specified	Specified
	1.2 Concession licenses	Low	Low
	1.3 Management and harvesting planning	Specified	Specified
	1.4 Harvesting permits	Specified	Specified
Taxes and fees	1.5 Payment of royalties and harvesting fees	Specified	N/A
	1.6 Value added taxes and other sales taxes	Specified	Specified
	1.7 Income and profit taxes	Specified	Specified
Timber harvesting activities	1.8 Timber harvesting regulations	Specified	Specified
	1.9 Protected sites and species	Specified	Specified
	1.10 Environmental requirements	Specified	Specified
	1.11 Health and safety	Specified	Specified
	1.12 Legal employment	Specified	Specified
Third parties' rights	1.13 Customary rights	Specified	Specified
	1.14 Free prior and informed consent	Specified	Specified
	1.15 Indigenous/traditional peoples rights	Specified	Specified
Trade and transport	1.16 Classification of species, quantities, qualities	Specified	Specified
	1.17 Trade and transport	Specified	Specified
	1.18 Offshore trading and transfer pricing	Low	Low
	1.19 Custom regulations	Specified	Specified
	1.20 CITES	Specified	Low
	1.21 Legislation requiring due diligence/due care procedures	N/A	N/A



## C. Overview of the forest sector in Colombia

Colombia covers a total area of 2,070,408 Km<sup>2</sup> and has a continental surface area of 1,140,408 Km<sup>2</sup>, of which 59.1 million hectares are covered with natural forest, which is to say approximately 51.8%. As such the country is considered to have a strong forestry potential. Native forests constitute the main source of wood and grain for nearby communities and local industries. As at 2009, the country's forestry industry came from natural forests (84.1%), plantations (12.4%) and imports (3.5%).

According to information from the Ministry of the Environment and Sustainable Development, the ownership of natural forests is distributed in the following way:

1. Indigenous community lands (25.73%);
2. Black community lands (3.39%);
3. National Nature Parks (9.25%); and
4. Others (among which Forestry Reserves and vacant lands together make up 22.88%)<sup>1</sup>.

The National Nature Parks bring together 59 natural areas which cover approximately 142,682 km<sup>2</sup> of the country's surface area, with indigenous communities and Afro-descendants in 26 of them and 0.50% in private and rural areas. These areas are governed by the Ministry of the Environment and Sustainable Development, the Special Administrative Unit for National Nature Parks. Licences for forestry land-use are processed through the Regional Autonomous Corporations, of which there are currently 34<sup>2</sup>.

In order to access the forestry resources of the natural forest, it is necessary to comply with the *Forestry Land-use System (Decree 1791 of 1996)*, which is to say:

1. requesting the authorisation of the Regional Autonomous Corporation;
2. prior compliance with their terms of reference, which depending on the ownership (private or state) demands a formal application;
3. accreditation of ownership; and
4. a forestry management plan.

If the land is state owned, a statistical forest inventory must also be supplied, and in both cases it is essential to guarantee the presence of remaining individuals from the different classes. The procedure is always carried out with the Regional Autonomous Corporation of the administrative area where the natural resource is located, no matter what the ownership system.

If the resource is found on communal land, the documentation must include an authorisation from the community leader and the results of a prior consultation (if it was necessary for the approval of a permanent forestry project).

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<sup>1</sup> Ministry of Environment and Sustainable Development (*Ministerio de Ambiente y Desarrollo Sostenible*). Forest Policy in Colombia (*Política de Bosques en Colombia*). Available online at <

<http://es.slideshare.net/NIXONCUEVA/politica-de-bosques-en-colombia>> in Spanish, accessed 30 January 2017.

<sup>2</sup> National Natural Parks of Colombia, undated. National Natural Park System. Available online at <<http://www.parquesnacionales.gov.co/portal/es/sistema-de-parques-nacionales-naturales/>>, accessed 30 January 2017.

To date there are no forestry concessions in the country, however there is forestry land-use in the natural forest of owners and private individuals, following the parameters laid down in the forestry land-use system. IDEAM reports from 2011 indicate forestry land-use in natural areas of 17 million cubic metres between the years 2000 and 2011. The Pacific region contributes the most to this figure<sup>3</sup>.

As for forestry plantations, and according to Ministry of Agriculture and Rural Development and Finagro figures, between 1995 and 2014 a total of 487,702<sup>4</sup> hectares have been reforested. Of this, 258,076<sup>5</sup> hectares have received CIF funding, which is to say that 53% of all plantations are commercial<sup>6</sup>. Plantations are primarily located on the Atlantic coast (Córdoba and Magdalena Bajo), the Andina region (Antioquia, Cauca) and Orinoquía. The region with the greatest planted area is Antioquia (94,716 ha), but Vichada has been increasing its share in recent years (65,079 ha). The current areas with planted forest contrast with the country's potential of 7.2 million hectares that have forestry capacity<sup>7</sup>.

Of a total of almost 70 species tried and tested in commercial reforestation, there are primarily 12 species used in the country, including: teak (*Tectona grandis*), melina (*Gmelina arborea*), acacia mangium (*Acacia mangium*), rose gum eucalyptus (*Eucalyptus grandis*), eucalyptus (*Eucalyptus tereticornis*), kapok (*Bombacopsis quinata*), oak (*Tabebuia rosea*), walnut (*Cordia alliodora*), cypress pine (*Cupressus lusitanica*), Caribbean pine (*Pinus caribea*), patula pine (*Pinus patula*), tecunumanii pine (*Pinus tecunumanii*) and oocarpa pine (*Pinus oocarpa*).

Any agroforestry system or forestry cultivation with commercial ends must register with the Colombian Agricultural Institute (ICA), a body delegated by the Ministry of Agriculture and Rural Development. However, if the plantation is protective-productive, it registers with the Regional Autonomous Corporation of the administrative area where the property that is to be reforested is located. That said, if the plantation has accessed the incentive for the promotion of investment in reforestation called the Forestry Incentive Certificate (CIF), it should register with the ICA (Decree 1498 of 2008) and present a forestry establishment and management plan, however this is not a legal requirement.

When it is time to transport the product of the forestry land-use (from wild species or plantations), a permit of mobilisation is requested from the body with whom the site is registered (ICA or Autonomous Corporation), a document that quotes the unique registration number, species, origin, volume or weight and the destination of the product being transported. Without this document unprocessed timber cannot be transported. From the second processing it is not necessary to carry the mobilisation document. Colombia has maintained an export ban on roundwood from natural forests since 1997 (resolution 12 of the Board of Overseas Trade).

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<sup>3</sup> Institute of Hydrology, Meteorology and Environmental Studies, 2014. Forest Information Bulletins. Available online at <<http://www.ideam.gov.co/web/ecosistemas/boletines-informacion-forestal>>, accessed 30 January 2017.

<sup>4</sup> Estimates by the Ministry of Agriculture and FINAGRO. This includes the area of reforestation carried out by private individuals who do not have a CIF.

<sup>5</sup> This figure takes into account: (i) 228,000 hectares from projects established between 1995 and 2012; (ii) 23,949 hectares approved and promised during 2013; and (iii) 6127 hectares approved and promised in 2014.

<sup>6</sup> Ministry of Agriculture and Rural Development, Ministry of Environment and Sustainable Development, 2015. Distribution of resources for the Forest Incentive Certificate for Commercial Purposes (CIF of reforestation), effective 2015. Available online at <<https://colaboracion.dnp.gov.co/CDT/Conpes/Econ%C3%B3micos/3827.pdf>>, accessed 30 January 2017.

<sup>7</sup> MADR – UPRA. (2014). Estudio Zonificación por Aptitud Forestal, quoted in World Bank. 2015. *Colombia - Potencial de reforestación comercial : diagnóstico*. Washington, D.C. : World Bank Group. <http://documents.worldbank.org/curated/en/239641467991950710/Colombia-Potencial-de-reforestación-comercial-diagnóstico>, accessed 30 January 2017.

In Colombia the products of silviculture and timber extraction represent 0.2% of national GDP and 1.1% of agricultural GDP (encompassing farming, silviculture, hunting and fishing), showing very little growth compared to the other activities of this agricultural line.

Approximately 3 million cubic metres of timber are supplied by the forestry industry, and the generation of employment is estimated to be 74,000 jobs. This volume primarily supplies the demand associated with sawn timber and pulp for paper and cardboard. In spite of increasing demand for the products mentioned before, Colombia extracts 11 million m<sup>3</sup> of timber from Colombian natural forests every year, of which over 70% is used for fuel and coal.

Colombia has devolved many state responsibilities to the regional level through the Regional Autonomous Corporations and Sustainable Development Corporations. These are dealt with in Heading VI of Act 99 of 1993 as public corporative entities, made up of territorial entities that because of their geographical characteristics constitute one single ecosystem or make up a geopolitical, biogeographic or hydro geographic unit. They have financial and administrative autonomy, their own assets and legal status, and are charged by law with administering, within the area of their jurisdiction, the environment and renewable natural resources and working for their sustainable development, in accordance with legal provisions and the policies of the Ministry of the Environment<sup>8</sup>.

Article 33 of the aforementioned Heading VI, indicates the existing Autonomous Corporations, those created by the law and new denominations. The list is as follows (list includes name of the body, abbreviation, jurisdiction (administrative area) and website)<sup>9</sup>:

1. Alto Magdalena Regional Autonomous Corporation (CAM) - Huila Province - <http://www.cam.gov.co>
2. Cundinamarca Regional Autonomous Corporation (CAR) - Cundinamarca Province, with the exception of the municipalities included in the jurisdiction of the Guavio Regional Autonomous Corporation and the municipalities of the Cundinamarca Province that make up part of the CORPORINOQUIA jurisdiction - <http://www.car.gov.co>
3. Risaralda Regional Autonomous Corporation (CARDER) Risaralda Province - <http://www.carder.gov.co>
4. Canal del Dique Regional Autonomous Corporation (CARDIQUE) -Cartagena de Indias Province and the municipalities of Turbaco, Turbaná, Arjona, Mahates, San Estanislao de Koztka, Villanueva, Santa Rosa, Santa Catalina, Soplaviento, Calamar, Guamo, Carmen de Bolívar, San Juan, San Jacinto, Zambrano, Córdoba, and María la baja in the Bolívar Province - <http://www.cardique.gov.co>
5. Sucre Regional Autonomous Corporation (CARSUCRE) - Sucre Province, except for the municipalities that fall under the jurisdiction of the Sustainable Development Corporation of la Mojana and San Jorge, CORPOMOJANA - <http://www.carsucre.gov.co>
6. Santander Regional Autonomous Corporation (CAS) - 74 municipalities of the Santander Province, those which do not fall under the jurisdiction of CDMB - <http://www.cas.gov.co>

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<sup>8</sup> <http://www.cornare.gov.co/Estrategico/estructura-corporaciones.pdf>

<sup>9</sup> <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=297>

7. Sustainable Development Corporation of the North and East of the Amazon (CDA)- Vaupés, Guainía and Guaviare Provinces - <http://www.cda.gov.co>
8. Regional Autonomous Corporation for the Defence of la Meseta de Bucaramanga (CDMB) - Thirteen municipalities that make up the Province of Soto: Rionegro, El Playón, Suratá, Vetás, California, Matanza, Charta, Tona, Bucaramanga, Girón, Floridablanca, Lebrija and Piedecuesta - <http://www.cdmb.gov.co>
9. Regional Autonomous Corporation for the Sustainable Development of Chocó (CODECHOCO) - Chocó Province - <http://www.codechoco.gov.co>
10. Sustainable Development Corporation for the Archipelago of San Andrés, Providencia and Santa Catalina (CORALINA) - Archipelago of San Andrés, Providencia and Santa Catalina - <http://www.coralina.gov.co>
11. Centre of Antioquia Regional Autonomous Corporation (CORANTIOQUIA) - Municipalities of the province of Antioquia, except the land of the municipalities that form part of the jurisdiction of the Urabá Sustainable Development Corporation, CORPORINOQUÍA, and of the Regional Autonomous Corporation of the Ríonegro and Nare rivers, CORNARE - <http://www.corantioquia.gov.co>
12. Sustainable Development Corporation of the La Macarena Area of Special Management (CORMACARENA) - La Macarena Area of Special Management, mapped out in Decree 1989 of 1989, except for those that fall within the jurisdiction of the East Amazon Corporation for Sustainable Development, CDA and CORPORINOQUIA - <http://www.cormacarena.gov.co>
13. The Basins of the Rivers Negro y Nare Autonomous Regional Corporation (CORNARE) - Rionegro, Alejandría, Guatapé, Sonsón and San Luis in the province of Antioquia - <http://www.cornare.gov.co>
14. Magdalena Autonomous Regional Corporation (CORPAMAG) - Magdalena Province except the areas included in the jurisdiction of the Sustainable Development Corporation of the Sierra Nevada de Santa Marta - <http://www.corpamag.gov.co>
15. Sustainable Development Corporation for of the South of Amazonia (CORPOAMAZONIA) - Amazonas, Putumayo and Caquetá provinces - <http://www.corpoamazonia.gov.co>
16. Boyacá Regional Autonomous Corporation (CORPOBOYACÁ) - Boyacá province except the municipalities of Chiquinquirá, Saboyá, San Miguel de Sema, Caldas, Buenavista and Ráquira which are part of CAR; the municipalities of Pajarito, Labranzagrande, Paya, Pisba and Cubará which are part of CORPORINOQUIA; and the municipalities that belong to the Chivor Autonomous Regional Corporation CORPOCHIVOR - <http://www.corpoboyaca.gov.co/>
17. Caldas Regional Autonomous Corporation (CORPOCALDAS) - Caldas Province - <http://www.corpocaldas.gov.co>
18. Cesar Regional Autonomous Corporation (CORPOCESAR) Cesar province except the areas included within the jurisdiction of the Sustainable Development Corporation of the Sierra Nevada de Santa Marta - <http://www.corpocesar.gov.co>
19. Chivor Regional Autonomous Corporation (CORPOCHIVOR) - Ventaquemada, Boyacá, Turmequé, Nuevo Colón, Viracachá, Ciénaga, Ramiriquí, Jenesano, Tibaná, Umbita, Chinavita, Garagoa, La Capilla, Tenza, Sutatenza, Guateque, Guayatá, Somondoco,

- Almeida, Chivor, Macanal, Santa María, San Luis de Gaceno and Campohermoso provinces - <http://www.corpochivor.gov.co>
20. La Guajira Regional Autonomous Corporation (CORPOGUAJIRA) - The province of Guajira with the exception of the areas included in the jurisdiction of the Sustainable Development Corporation of the Sierra Nevada de Santa Marta - <http://www.corpoguajira.gov.co>
  21. Guavio Regional Autonomous Corporation (CORPOGUAVIO) - Gachalá, Medina, Ubalá, Gama, Junín, Gachetá, Fómeque, Mámbita and Guasca in the Cundinamarca province - <http://www.corpoguavio.gov.co>
  22. La Mojana y El San Jorge Sustainable Development Corporation (CORPOMOJANA) - Provinces of Majagual, Sucre, Guarandá, San Marcos, San Benito, La Unión and Caimito in the Sucre province - <http://www.corpomojana.gov.co>
  23. Nariño Regional Autonomous Corporation (CORPONARIÑO) - Nariño Province - <http://www.corponarino.gov.co>
  24. Regional Autonomous Corporation of the North-eastern Border (CORPONOR) - North of Santander Province - <http://www.corponor.gov.co>
  25. La Orinoquia Regional Autonomous Corporation (CORPORINOQUIA) - Arauca, Vichada, Casanare, Meta provinces; the municipalities of the Cundinamarca province, namely: Guayabetal, Quetame, Une, Paratebueno, Chipaque, Cáqueza, Fosca, Gutiérrez, Choachí and Ubaque; and the municipalities of Pajarito, Labranzagrande, Paya, Pisba and Curabá in the Province of Boyacá - <http://www.corporinoquia.gov.co>
  26. Urabá Sustainable Development Corporation (CORPOURABA) - San Pedro de Urabá, San Juan de Urabá, Arboletes, Necoclí, Turbo, Vigía el Fuerte, Murindó, Apartadó, Carepa, Chigorodó, Mutatá, Uramita, Dabeiba, Frontino, Peque, Cañasgordas, Abriaquí, Giraldo, and Urrao municipalities in the Province of Antioquia - <http://www.corpouraba.gov.co>
  27. Tolima Regional Autonomous Corporation (CORTOLIMA) - Tolima Province - <http://www.cortolima.gov.co>
  28. Atlantic Regional Autonomous Corporation (CRA) - Atlantic Province - <http://www.crautonomia.gov.co>
  29. Cauca Regional Autonomous Corporation (CRC) - Cauca Province - <http://www.crc.gov.co/>
  30. Quindío Regional Autonomous Corporation (CRQ) - Quindío Province - <http://www.crq.gov.co>
  31. South of Bolivar Regional Autonomous Corporation (CSB) - Bolívar province except the municipalities included within the jurisdiction of the Regional Autonomous Corporation of Canal del Dique (CARDIQUE) - <http://www.csbcor.gov.co>
  32. Valle del Cauca Regional Autonomous Corporation (CVC) - Valle del Cauca Province - <http://www.cvc.gov.co>
  33. Valles del Sinú and del San Jorge Regional Autonomous Corporation (CVS) - Córdoba Province - <http://www.cvs.gov.co>

## Actions in response to illegal logging

According to Chatham House, illegal logging is a serious problem in Colombia<sup>10</sup>. In terms of governmental and non-governmental efforts to ensure the supply of legal timber, the country has made important steps in the framework of the Intersectoral Pact for Legal Timber in Colombia (PIMLC), an endeavour by public and private bodies with the aim of ensuring that timber that is extracted, transported, processed, marketed and used comes from legal sources<sup>11</sup>. Its administrators were the Ministry of the Environment and Sustainable Development, the Risaralda Regional Autonomous Corporation (CARDER) through the forest project FLEGT which was co-financed by the European Union, the World Wildlife Fund (WWF) and Fedemaderas<sup>12</sup>.

This pact came into force in 2009 and in 2016/7 is in its third phase, with 69 associated entities, inclusion in the 2014-2018 PND "Everybody for a new country", 18 Provincial Agreements for legal timber and it covers the *Guadua angustifolia* Kunth species, due to it being highly represented in the country's coffee belt. Among the tools that have been developed in this framework are the following:

1. Development of digital applications for forestry control and surveillance. With the aim of making these activities easier for the Regional Environmental Authorities and support bodies such as the public force, two free tools have been put out to the public that can be downloaded via playstore or appstore:
  - a. *cubimadera* to reduce technical differences when calculating the cubic meterage of timber;<sup>13</sup>
  - b. *especies maderables* 100 forest species of registered timber, which permits the identification of timber during control and surveillance processes.<sup>14</sup>
2. Protocols for forestry monitoring and control: four protocols for control and surveillance in the forestry chain<sup>15</sup>:
  - a. Protocol zero: to revise and evaluate forestry management plans<sup>16</sup>
  - b. Protocol 1: to follow and control forestry land-use in natural forest<sup>17</sup>
  - c. Protocol 2: for control and surveillance of the transportation of timber and non-timber products from the forest<sup>18</sup>

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<sup>10</sup> Chatham House, 2016. Illegal Logging Portal – Colombia. Available online at < <http://www.illegal-logging.info/regions/colombia> >, accessed 31 January 2017.

<sup>11</sup> Corzo Garcia, 2014. *Presentation - Legality and the Intersectoral Pact for Legal Timber in Colombia (PIMLC)*. Available online at [http://www.illegal-logging.info/sites/default/files/Marcel%20Corzo%20Garcia%20Presentation\\_0.pdf](http://www.illegal-logging.info/sites/default/files/Marcel%20Corzo%20Garcia%20Presentation_0.pdf) >, accessed 31 January 2017.

<sup>12</sup> Ministry of Environment, Housing and Territorial Development (MAVDT), the Regional Autonomous Corporation of Risaralda (CARDER), the National Federation of Timber Industries (Fedemaderas) and WWF Colombia, 2015. Intersectoral pact for legal timber in Colombia. Edition 4, 2015-2018. Available online at <[http://www.bosquesflegt.gov.co/sites/default/files/publicaciones/PIMLC\\_VF\\_impresa\\_baja-resol.pdf](http://www.bosquesflegt.gov.co/sites/default/files/publicaciones/PIMLC_VF_impresa_baja-resol.pdf)>, accessed 30 January 2017.

<sup>13</sup> <http://www.bosquesflegt.gov.co/sites/default/files/publicaciones/cubimadera.pdf>

<sup>14</sup> <http://www.bosquesflegt.gov.co/sites/default/files/publicaciones/Especiesmaderables.pdf>

<sup>15</sup> <http://www.bosquesflegt.gov.co/?q=publicaciones&page=2>

<sup>16</sup> [http://capacitacion.siac.ideam.gov.co/SIAC/PROTOCOLO\\_0\\_REVISION\\_EPMF.pdf](http://capacitacion.siac.ideam.gov.co/SIAC/PROTOCOLO_0_REVISION_EPMF.pdf)

<sup>17</sup> [http://capacitacion.siac.ideam.gov.co/SIAC/PROTOCOLO\\_1\\_APROVECHAMIENTO\\_VF.pdf](http://capacitacion.siac.ideam.gov.co/SIAC/PROTOCOLO_1_APROVECHAMIENTO_VF.pdf)

<sup>18</sup> [http://capacitacion.siac.ideam.gov.co/SIAC/PROTOCOLO\\_2\\_MOVILIZACION\\_VF.pdf](http://capacitacion.siac.ideam.gov.co/SIAC/PROTOCOLO_2_MOVILIZACION_VF.pdf)



- d. Protocol 3: to follow and control industries and companies that process or market forestry products.<sup>19</sup>
3. Development of the concept of legal timber: from 2011 to 2016 this concept was built collectively, being defined as “that which is exploited, transported, processed and marketed in accordance with current legislation”, enabling its providence to be identified at any given point in the forestry chain.
4. Eljamaderalegal site: a growing virtual space where you can find forestry companies throughout the chain that comply with the legal parameters.<sup>20</sup>
5. Scheme to recognise legality in the natural forest and in forestry industries: a voluntary scheme that has been developed where the Regional Authorities, following a verification process, can recognise via a document that the Organisation complies with the legal parameters. It is hoped that this scheme will be implemented in 2017<sup>21</sup>.

Colombia is also a member of the Amazon Cooperation Treaty Organization (ACTO) and has worked with the other seven member countries to develop strategies aimed at curbing illegal logging in the Amazon.<sup>22</sup>

#### Legal Instruments

In Colombia there is an abundance of legislation that covers all sectors of the timber industry. In 2015 a rationalisation, using unique regulatory decrees, was carried out, and it is the aim of these new decrees to group together and rationalise the regulations.

Those with the greatest relevance for the forestry sector are as follows:

1. Decree 1071 of 2015 “Whereby the Unique Regulatory Decree for the Agriculture, Fishing and Rural Development Administrative Sector is issued”. This is made up of three books: the structure of the sector, the regulatory system and final provisions respectively. In part 3 of book 1 reference is made to the forestry system, picking up decree 1824 of 1994, which governs the Forestry Incentive Certificate.<sup>23</sup>
2. Decree 1072 of 26th May 2015 “Unique regulatory decree for the job sector”. This has two parts: general provisions and regulations. It is divided into three books as follows: the structure of the job sector, the sector’s regulatory system and final provisions. It covers aspects of employment, health and safety at work.<sup>24</sup>
3. Decree 1076 of 26th May 2015 “Whereby the Unique Regulatory Decree for the Environmental and Sustainable Development sector is issued”. In this decree approximately 1650 articles that were spread across 84 regulatory decrees were brought together. The decree contains three books, the first of which refers to the structure of the environmental sector, the second to the regulatory system of the environmental sector and

<sup>19</sup> [http://capacitacion.siac.ideam.gov.co/SIAC/PROTOCOLO\\_3\\_INDUSTRIAS\\_VF.pdf](http://capacitacion.siac.ideam.gov.co/SIAC/PROTOCOLO_3_INDUSTRIAS_VF.pdf)

<sup>20</sup> <http://www.eljamaderalegal.com/>

<sup>21</sup> [http://www.bosquesflegt.gov.co/sites/default/files/publicaciones/Esquema\\_Bosque-Natural.pdf](http://www.bosquesflegt.gov.co/sites/default/files/publicaciones/Esquema_Bosque-Natural.pdf)

<sup>22</sup> Dam, Jinke van and Savenije, Herman. 2011. Enhancing the trade of legally produced timber. A guide to initiatives. Tropenbos International, Wageningen, the Netherlands. Available online at < <http://www.euflegt.efi.int/documents/10180/23029/Enhancing+the+trade+of+legally+produced+timber+-+A+guide+to+initiatives/27ec5d94-3c5e-467b-8164-c688ed54bbcb>> , accessed 31 January 2017. See page 122.

<sup>23</sup> <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=62505>

<sup>24</sup> <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=62506>



the third to final provisions. Decree 1791 of 1996 (Forestry Land-use System) was collated in Chapter 1, Wild Flora, of Heading 2, book 2 of decree 1076.<sup>25</sup>

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<sup>25</sup> <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=62511>.

## D. Legality Risk Assessment

### LEGAL RIGHTS TO HARVEST

#### 1.1. Land tenure and management rights

*Legislation covering land tenure rights, including customary rights as well as management rights that includes the use of legal methods to obtain tenure rights and management rights. It also covers legal business registration and tax registration, including relevant legal required licenses. Risk may be encountered where land rights have not been issued according to prevailing regulations and where corruption has been involved in the process of issuing land tenure and management rights. The intent of this indicator is to ensure that any land tenure and management rights have been issued according to the legislation.*

##### 1.1.1. Applicable laws and regulations

###### General Legislation

- 1991 Political Constitution of Colombia. National Constituent Assembly. Heading II- On rights, guarantees and duties. Article 58, Guarantee of private property and article 72, Cultural Heritage. Provisional article 55, Recognition of black communities occupying vacant land in waterfront areas of the Pacific Basin. Article 329, Formation of Indigenous Territorial Bodies. Date of publication: 4th July 1991. Available at: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=4125>
- Colombian Civil Code. Act 57 of 1887. Heading VII, On ownership. Chapter I, On ownership and its different Qualities. Article 762 to 781. Date of publication: 26th May 1873. Available at: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=39535>
- Act 1448 of 2011. Whereby measures on attention, aid and integral reparation are laid down for victims of the internal conflict, and other regulations are laid down. Articles 72 and 75. Date of publication: 10th June 2011. Available at: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=43043>
- Act 1474 of 2011. Anti-corruption Statute. Whereby rules are laid down that are aimed at strengthening the prevention, investigation and sanction mechanisms to do with acts of corruption and the effectiveness of control of the government administration. Date of publication: 12th July 2011. Available at: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=43292>

###### For natural forests, plantations and agroforestry systems on communal lands

- Act 70 of 1993. Whereby provisional article 55 of the Political Constitution is developed. On the recognition of the right of black communities that have occupied vacant lands in rural waterfront areas of the rivers of the Pacific Basin to communal property. Articles 4 and 5. Date of publication: 27th August 1993. Available at: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=7388>
- Act 21 of 1991. Through which is passed Agreement number 169 on indigenous and tribal peoples in independent countries, adopted by the 76th meeting of the ILO General

Conference, Geneva 1989. Article 14. Date of publication: 4th March 1991. Available at: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=37032>

- Decree 1791 of 1996. Through which is established the system of forestry land-use. Chapter III, On permanent forestry land-use and Chapter XI, on forestry plantations. Article 44. Date of publication: 4th December 1996. Available at: [http://www.minambiente.gov.co/images/BosquesBiodiversidadyServiciosEcosistemicos/pdf/Ordenaci%C3%B3n-y-Manejo-de-Bosques/dec\\_1791\\_041096.pdf](http://www.minambiente.gov.co/images/BosquesBiodiversidadyServiciosEcosistemicos/pdf/Ordenaci%C3%B3n-y-Manejo-de-Bosques/dec_1791_041096.pdf)

For natural forests, plantations and agroforestry systems in protected areas

- Act 99 of 1993. Whereby the Ministry of the Environment is created, the Public Sector charged with the management and conservation of the environment and of renewable natural resources is reorganised, the National Environmental System (SINA) is organised, and other regulations are laid down. Articles 5 and 35. Date of publication: 22nd December 1993. Available at: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=297>
- Decree No. 3572 of 2011 National Nature Parks of Colombia were created as a Special Administrative Unit. Chapter I Functions. Article 2. Date of publication: 27th September 2011. Available at: [http://www.minambiente.gov.co/images/normativa/decretos/2011/dec\\_3572\\_2011.pdf](http://www.minambiente.gov.co/images/normativa/decretos/2011/dec_3572_2011.pdf)

For natural forests, plantations and agroforestry systems on private property

- Act 200 of 1936. On system of Lands. Validation of Private Property. Articles 1, 10 and 14. Date of issuing: 16th December 1936. Available at: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=16049>
- Act 1579 of 2012. Whereby the statute on registry of public instruments is issued and other regulations are laid down. Chapter II, Article 4. Acts, titles and documents subject to registration. Date of issuing: 1st October 2012. Available at: [http://www.secretariassenado.gov.co/senado/basedoc/ley\\_1579\\_2012.html](http://www.secretariassenado.gov.co/senado/basedoc/ley_1579_2012.html)
- Decree 1498 of 2008. On the registry and mobilisation of forestry systems with commercial ends. Article 3. Date of publication: 7th May 2008. Available at: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=30098>
- Resolution 000037 of 6th February 2013. Whereby regulations on the registration of agroforestry systems or forestry cultivations with commercial ends are established, issued by the Ministry of Agriculture and Rural Development (MADR). Date of publication: 6th February 2013. Available at: [http://www.icbf.gov.co/cargues/avance/docs/resolucion\\_minagricultura\\_0037\\_2013.htm](http://www.icbf.gov.co/cargues/avance/docs/resolucion_minagricultura_0037_2013.htm)

#### 1.1.2. Legal authority

- Colombian Agricultural Institute (Instituto Colombiano Agropecuario)
- Ministry of Agriculture and Rural Development (Ministerio de Agricultura y Desarrollo Rural)
- Ministry of the Environment and Sustainable Development (Ministerio de Ambiente y Desarrollo Sostenible)

- Regional Autonomous Corporation of the Administrative Area (Corporación Autónoma Regional de la Jurisdicción)
- Home Office (Ministerio del Interior)
- Registration of Public Instruments Office (Oficina de Registro de Instrumentos Públicos)
- Land Restitution Unit (Unidad de Restitución de Tierras)

### **1.1.3. Legally required documents or records**

For natural forests in protected areas, vacant and private lands

- Ruling by the Regional Environmental Authority
- Forestry management plan
- Documents to certify the legal representative
- Documents that certify the status of the applicant vis-à-vis the property (owner, holder or tenant)
- Copy of the property's public deed

For natural forests on communal land

- Ruling from the Home Office declaring the area as communal land of an ethnic community
- Permission, association or consent from the Regional Environmental Authority of the administrative area
- Forestry management plan
- Authorisation from the leader of the communal land for the forestry activity

For forestry plantations and agroforestry systems on private property

- Public deed
- Certificate of Freedom and tradition
- Registration of the plantation before the ICA (If it is productive and/or a beneficiary of the Certificate of Forestry Incentive) or ruling of the Regional Environmental Authority (if it is productive-protective)
- Document that certifies the status of the applicant vis-à-vis the property (owner, holder or tenant).

### **1.1.4. Sources of information**

#### *Government sources*

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#### *Non-Government sources*

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- Forjando Futuros Foundation (2016). *Five years have gone by and land restitution is not progressing*. [online] Available at: [http://forjandofuturos.org/documentos/publicacion-restitucion-de-tierras-no-avanzas\\_1500-sentencias\\_abril-2016-fundacion-forjando-futuros-version-web.pdf](http://forjandofuturos.org/documentos/publicacion-restitucion-de-tierras-no-avanzas_1500-sentencias_abril-2016-fundacion-forjando-futuros-version-web.pdf) [Accessed 23 November 2016].

### *Interviews with experts*

Conversations with various experts, carried out during October 2016, helped the authors of this report to better understand the applicable legislation and the risks associated with each category of legislation. With regard to this sub-category representatives of different organisations were interviewed, including: Colombian Agricultural Institute (ICA), World Wildlife Fund (WWF), National Agency for Environmental Licences (ANLA), La Fundación, Social and Environmental Management, Organisation of Indigenous Peoples of Antioquia and companies in the private sector.

#### **1.1.5. Risk determination**

##### *Overview of Legal Requirements*

##### General Legislation

#### Political Constitution of 1991

The Colombian constitution, put forward under a legal, democratic and participative framework that guarantees a fair political, economic and social order, makes reference to the rights of ownership and land management in the following sections:

- Article 58. Private property and other rights acquired in accordance with civil laws are guaranteed, these cannot be repudiated or broken by subsequent laws. When the application of a law issued for reasons of public good or social interest, shall result in a conflict of the rights of the individuals who are by necessity recognised by it, the private interest must cede to the public or social interest. Ownership of property is a social function that implies certain obligations. As such, an ecological role is inherent in it. The State shall protect and promote associative and joint forms ownership.
- Article 72. The cultural heritage of the Nation is under the protection of the State. Archaeological heritage and other cultural assets that make up the national identity belong to the Nation and are indissociable, immune from seizure and indefeasible. The law shall establish the mechanisms to reacquire them when they are found in the hands of individuals and shall regulate the special rights that ethnic groups settled in archaeology-rich lands may have.

The Political Constitution makes reference to communal ownership in:

- Article 329. The creation of indigenous land entities shall be subject to that which is laid down in the Organic Law on Land Management (la Ley Orgánica de Ordenamiento Territorial), and its demarcation shall be done by the National Government, with the participation of representatives of indigenous communities and prior opinion of the Commission on Land Management. The safeguards are communal property and are inalienable. Legislation shall determine the relationships and coordination of these entities with those institutions that they are part of. In the case of indigenous territory that comprises the land of two or more provinces, it will be administered by the indigenous councils in coordination with the governors of the respective provinces. In the case that this territory decides to establish itself as a territorial body, that shall be done by complying with the conditions established in the first section of this article.
- Provisional Article 55. Within the two years following the coming into force of this Constitution, Congress shall issue, previous analysis by a special commission that the Government shall create for the purpose, a law that recognises the black communities who have over time occupied vacant lands in the rural waterfront areas of the rivers of the Pacific Basin, in accordance with their traditional production methods, the right to communal property in the areas that the same law shall delineate. In each case, representatives elected by the communities that are involved shall participate in the special commission mentioned in the paragraph above. Ownership recognised in this way shall only be alienable by the terms that the law lays out. This law shall establish mechanisms for the protection of cultural identity and the rights of these communities, and for the encouragement of their economic and social development.

#### Colombian Civil Code. Act 57 of 1887

In Chapter I, on ownership and its different qualities, it makes reference to the definition of ownership in Article 762, which is "the possession of a specified thing with the intent of master or owner, be it that the owner or he who believes himself to be such, has the thing

for himself, or by another person who has it in the place and name of him". Good faith in ownership is defined as follows in Article 768 "...the understanding of having acquired mastery of the thing by legitimate means exempt from fraud and all other vices".

Act on Victims and Restitution of Lands. Act 1448 of 2011

Due to the armed conflict that the country has seen over the last 60 years and the desire to make peace, the *Act on Victims and Restitution of Lands* has been created, in which people who own or possess properties or users of vacant land who have been or will be victims of the dispossession or forced abandonment of their lands because of the armed conflict between 1st January 1991 and 10th June 2021 are restituted for the losses. The Act strives to ensure that displaced peasant families, among others, can return to reoccupy their land, as outlined in articles 72 and 75 on acts of restitution for displaced persons and holders of the right to restitution respectively.

FOR NATURAL FORESTS ON COMMUNAL LAND

Collective Property of Black Communities. Act 70 of 1993.

This law defines collective occupation as "the historical and ancestral settlement of black communities on lands for their collective use, lands which constitute their habitat, and on which they are at the present time carrying out their traditional methods of production". The articles with implications regarding the ownership of land are:

1. Article 4. The State shall allocate to black communities, the collective property in areas that, in accordance with the definitions contained in the second article, include the vacant lands of the rural waterfront areas of the rivers of the Pacific Basin and those located in areas that the second subsection of article 1 of the current act deals with, that they continue to occupy according to their traditional methods of production. The land regarding which the right to communal ownership is determined shall be called, by all legal effects, "Lands of the Black Communities".
2. Article 5. In order to receive the attributable land as communal property, each community shall form a Community Council as an internal administrative mechanism, whose conditions shall be set by the legislation that the National Government issues.

In addition to that which the legislation stipulates, Community Councils shall have the following functions: demarcating and allocating areas within the attributable land; ensuring that the rights of communal property are preserved and protected; preserving cultural identity; using and conserving natural resources; choosing a legal representative for the community to act as legal entity; and acting as friendly mediator in any internal conflicts where conciliation is possible.

Indigenous and Tribal Peoples Convention. Act 21 of 1991

Section II, which talks about Land, makes reference to the term as territory, which is to say that which covers the total habitat of the regions that the people concerned occupy or use in any other way. Article 14 talks specifically about ownership of land:

- The right to ownership and possession of the lands that they traditionally occupy should be recognised for the people concerned. Furthermore, where appropriate, measures should be taken to safeguard the right of the people concerned to use land that is not exclusively occupied by them, but to which they have traditionally had access for their



traditional activities and subsistence farming. In this regard, particular attention shall be paid to the situation of nomadic peoples and itinerant farmers.

- The authorities should take the necessary measures to determine the lands that the people concerned traditionally occupy and guarantee the effective protection of their rights to ownership and possession.
- Adequate procedures should be introduced in the framework of the national legal system in order to resolve the claims on land formulated by the people concerned.

Forestry land-use System. Decree 1791 of 1996.

Article 44 of this legislation addresses forestry land-use being carried out by indigenous communities in areas of preservation or indigenous reserves, or by black communities that are covered by Act 70 of 1993, indicating that these shall be governed by the special regulations that the administration issues regarding management and use of renewable natural resources by these communities.

FOR NATURAL FORESTS IN PROTECTED AREAS, VACANT LANDS AND PRIVATE LAND

Act 99 of 1993.

This act stipulates the functions of the Ministry of the Environment and of the Regional Autonomous Corporations, stating the following in section 18 of Article 5 on the functions of the ministry: "to reserve, to mark out the boundaries, and to set aside those areas that form the System of National Nature Parks and national forestry reserves, and to regulate how they are used and operated". Section 16 of Article 31 outlines the role of the Corporations: "to reserve, to mark out the boundaries, and to administer, according to the terms and conditions that the law and regulations set out, integrated management areas, soil conservation areas, regional forestry reserves and nature parks, and to regulate how they are used and run. To administer National Forestry Reserves in the area of their jurisdiction.

Decree 3572 of 2011.

In 2011 the administration and regulation of the use and operation of areas within the System of Nature Parks was given to the Special Administrative Unit for National Nature Parks. Article 2, subsection 7 indicates as one of their functions:

"...7. To grant permits, concessions and other environmental authorisations for the use and exploitation of renewable natural resources in areas of the System of National Nature Parks and to issue recommendations in the context of the environmental licencing of projects, works or activities that affect or may affect areas of the System of National Nature Parks, remaining consistent with activities that are permitted by the Constitution and the law."

FOR FORESTRY PLANTATIONS AND AGROFORESTRY SYSTEMS ON PRIVATE PROPERTY

System of Lands. Law 200 of 1936

This law recognises private property and the difference from vacant lands, stating in Article 1: It is assumed that estates owned by individuals are not vacant lands, rather they are private property, it being understood that this ownership involves the economic exploitation of the land via positive developments by the owner, such as plantations or crop fields, occupation with cattle and others of equal economic significance. Other articles of interest to forestry are:

- Article 10: The government shall undertake to indicate the areas within which forests must be protected or repopulated, whether they are on vacant land or private property, with a view to protecting or increasing the water level. The Government continues to be authorised to appoint forestry reserve areas on vacant lands and to regulate the industrial exploitation of forestry products that it considers convenient, either on vacant lands or on private property, as well as to indicate the sanctions that anyone who contravenes the provisions laid down under this Article shall be subject to.
- Article 14: Cultivated land shall be considered to be that on which there is replantation of forests, that on which construction timber or other forestry products that are used in commerce or industry grows, and plantations that make up national forests, in accordance with the legislation, whatever its size.

Public Instruments Charter. Law 1579 of 2012

The real estate Register is a traditional tool concerning the possession of real estate and of other rights, and it acts as evidence for all public instruments, the following being subject to be registered according to article 4:

- Any act, contract, or decision contained within public deeds, judicial, administrative or arbitrary order that implies establishment, declaration, clarification, allocation, modification, limitation, tax, interim measure, translation or termination of the territory or other main or accessory right over real estate;
- Public deeds, judicial, arbitrary or administrative orders that provide for the cancellation of the preceding registrations and the administrative expiry in cases of law;
- Open and closed testaments, as well as for their recall or reform according to the law..."

Registry of forestry plantations. Decree 1498 of 2008

It is stated in article 3 that it is necessary for "Any agroforestry system or forestry cultivation with commercial ends to be registered with the Ministry of Agriculture and Rural Development or with another entity decreed by the Ministry". Registration shall happen only once, after checks on the information provided and a visit to the place where the plantation is established. Each agroforestry system or forestry cultivation with commercial ends shall have a consecutive number allocated to it, which will be added to the Tax Identification Number (NIT) or to the citizens identity card number of the holder of the register, depending on the case.

In resolution 37 of 2013 it is noted that the register of forestry plantations and agroforestry systems with commercial ends is a control mechanism to avoid the later movement of timber other than that which comes from these plantations, and it grants legal security to the holder, because their right to freely use their plantation and the free movement of primary processing products is set down.

### *Description of risk*

Risk of illegal/violence related dispossession

- It is estimated that 6.6 million hectares were dispossessed due to violence in recent decades, which is 15% of the country's agricultural land. Lastly, 18% of owners do not have their deeds formalised, whilst the informality of small producers is over 40%. According to the special report in the magazine Semana (2012), for more than four

decades the countryside has been the scene of violence, poverty and failed or inconclusive reforms. 94 percent of the country's territory is rural, and 32 percent of the population lives there. The concentration of land and inequality measured on the rural Gini coefficient (which measures the degree of inequality in a country) went from 0.74 to 0.88 between the years 2000 and 2010. In 2012, 77% of land is in the hands of 13% of owners.

- Although the government has announced that it will recognise the legal ownership of land for victims of forced dispossession who are claiming the restitution of their lands via the Law of Victims and Restitution of Lands of Colombia (Ley de Víctimas y Restitución de Tierras en Colombia) (Law 1448 of 10th June 2011), this law has many limitations. By 2012, the administration Unit for the Restitution of lands had registered 31,111 applications for 2,246,664 ha. With regard to forests, the restitution of 6060 ha reclaimed in Montes de María, which were acquired by a someone intending to carry out reforestation, went ahead.
- Forjando Futuros (April 2016) states that, out of 1500 sentences, 94% have found in favour of the victims of dispossession, and 5467 people have benefitted from this. Where communal restitution is concerned, 31 indigenous communities (7270 people) and 9 communities of Afro-descendants (5472 people) have benefitted.
- Comments by OIA (the Indigenous Organisation of Antioquia), pose the question what consequences will the post-conflict have for ownership of land? They infer that until the conflict is over, it may be difficult to improve the land ownership situation.

#### Risk of uncertain and informal land tenure

- It is estimated 18% of owners do not have their deeds formalised, whilst the informality of small producers is over 40% (Semana, 2012).
- Expert comments during the consultation process suggested that there is a "country" risk in the concept of tenure/ownership of land: there is neither clarity nor coherence in State policies vis-à-vis ownership, which means that "the forestry sector lives in a state of confusion". There are also gaps in the legislation, which can lead to multiple interpretations of the same situation. The risk is exacerbated in regions where there are restitution of land processes, such as in Montes de María and the Antioquia area of Urabá, the latter being a source of risk of illegal timber, due to among other things the high regeneration of cedar and oak. In 2015, in the area of Urabá, 15,000 ha of teak plantations and 4500 ha of other crops were registered via the ICA, many of the applications for registration could not be progressed due to problems regarding land ownership.
- Similarly, experts comment that this reality represents a risk for future forestry projects, given that there is a real problem in new acquisitions of property, for which a thorough study of title deeds is necessary. Even then there can be no guarantee that a process of restitution will not be brought about by a third party.

#### Corruption risks

- Transparency International's Corruption Perception Index (2016), which gives 168 countries a mark between zero (perception of high levels of corruption) and one hundred

(perception of negligible levels of corruption), puts Colombia in 90th position with 37 points, indicating a medium-high level of perceived corruption.

- Another relevant gauge of perceptions of corruption risk is The Americas Barometer, carried out by Latin American Public Opinion Project (Lapop), which measures the values and the democratic behaviours of the countries where it is applied. For 2014, the survey results brought about the conclusion that the perception of corruption by citizens for Colombia reached a point score of 79.6, the second highest in the region (García Sanchez, 2015).
- The National Strategy of Integral Anti-corruption Public Policy (document nº 167, CONPES) recognises the existence of this phenomenon in the country and its occurrence in public institutions, pointing out that the Global Integrity Index (IGI), concluded in 2011 an optimal legal anti-corruption structure in Colombia by awarding 94 points, but a regular implementation with 67 points. In terms of internal control of prevention of corruption, the Comptroller General of the Republic pointed out in 2011 that, of 214 bodies evaluated, 39% do not have an internal control system that mitigates risk.
- The main Colombian anti-corruption regulations are laid down in the Penal Code (Act 599 of January 2000) and in Act 1474 of 2011, known as the Anti-corruption Statute, by means of which rule were established aimed at strengthening the mechanisms for protection, investigation and sanction of corrupt acts and the effectiveness of the public administration. Public and private organisations with anti-corruption policies accept the bans and sanctions.

#### *Risk conclusion*

This indicator has been evaluated as specified risk. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by the relevant authorities.

#### **1.1.6. Risk designation and specification**

Specified risk

#### **1.1.7. Control measures and verifiers**

- In forestry plantations: request the record of the plantation before the ICA if it is a commercial plantation, or the Administrative Deed from the Regional Autonomous Corporation of the Administrative Area if it is a protective-productive site.
- The owner of the property should hold a Certificate of Liberty and Tradition for the property, and if s/he is the holder, should have a document that certifies him/her as such (rental contract, joint venture accounts, loan agreement, etc).
- If necessary, a copy of the property's public deed.
- If necessary, consult the Colombian Agricultural Institute (ICA) regarding the validity of the Record of the plantation.
- In the case of communal lands: ruling number or Home Office Administrative Order that declares the Town Council (indigenous community) of Community Council (Afro-descendent community).

## 1.2. Concession licenses

*Legislation regulating procedures for the issuing of forest concession licenses, including use of legal methods to obtain concession license. Especially bribery, corruption and nepotism are well-known issues in connection with concession licenses. The intent of this indicator is to avoid risk related to situations where organizations are obtaining concession licenses via illegal means such as bribery, or where organizations or entities that are not eligible to hold such rights do so via illegal means. Risk in this indicator relates to situations where due process has not been followed and the concession rights can therefore be considered to be illegally issued. The level of corruption in the country or sub-national region is considered to play an important role and corruption indicators (e.g., Corruption Perception Index, CPI) should therefore be considered when evaluating risks.*

### 1.2.1. Applicable laws and regulations

FOR NATURAL FORESTS IN PROTECTED AREAS, ON STATE LAND AND ON COMMUNAL LANDS

- Decree 2811 of 1974: Whereby the National Code for Renewable Natural Resources and Conservation of the Environment is enacted. Chapter IV Concessions. Date of publication: 18th December 1974. Available at: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=1551>
- Decree 877 of 1976: Whereby priorities concerning the different uses of the forestry resource, its utilisation and the granting of permissions and concessions are laid down, and other provisions are enacted. Date of publication: 10th May 1976. Available at: [http://www.icbf.gov.co/cargues/avance/docs/decreto\\_0877\\_1976.htm](http://www.icbf.gov.co/cargues/avance/docs/decreto_0877_1976.htm)
- Decree 2151 of 1979: whereby articles 55, 216 and 217 of Decree Number 2811 of 1974 are partially regulated. Article 3. Concessions for land in the public domain with an area greater than 20,000 ha. Date of publication: 29th August 1979. Available at: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=8577>
- Act 99 of 1993. Whereby the Ministry of the Environment is created, the Public Sector charged with the management and conservation of the environment and renewable natural resources is reorganised, the National Environmental System (SINA) is organised, and other provisions are enacted. Heading II- On the Ministry of the Environment and the National Environmental System. Article 5. Date of publication: 22nd December 1993. Available at: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=297>
- Decree 1791 of 1996. Whereby the system of forestry land-use is established. Date of publication: 4th December 1996. Articles 7, 24, 35 y 60. Available at: [http://www.minambiente.gov.co/images/BosquesBiodiversidad/ServiciosEcosistemicos/pdf/Ordenaci%C3%B3n-y-Manejo-de-Bosques/dec\\_1791\\_041096.pdf](http://www.minambiente.gov.co/images/BosquesBiodiversidad/ServiciosEcosistemicos/pdf/Ordenaci%C3%B3n-y-Manejo-de-Bosques/dec_1791_041096.pdf)

### 1.2.2. Legal authority

- Ministry of the Environment and Sustainable Development
- Regional Autonomous Corporation of the administrative area

### 1.2.3. Legally required documents or records

- Decision of the Regional Environmental Authority that grants the concession
- Forestry management plan

- A 100% inventory of the trees to be taken out

#### 1.2.4. Sources of information

##### *Non-Government sources*

- Fabíola Ortiz (2014). *News story: Forestry concessions do not respect community rights*. [online] Available at: <http://www.scidev.net/americas-latina/derechos-humanos/noticias/concesiones-forestales-no-respetan-derechos-comunales.html> [Accessed 30 August 2016].
- Kari Keipe (ed) (2000). *Forest Resource Policy in Latin America*. [online] Available at: <https://publications.iadb.org/bitstream/handle/11319/436/Forest%20Resource%20Policy%20in%20Latin%20America.pdf?sequence=2> [Accessed 31 January 2017].
- El Colombiano (2011). *On how Canadians are exploiting the Choco jungle*. [online] Available at: [http://www.elcolombiano.com/historico/de\\_como\\_canadienses\\_explotan\\_la\\_selva\\_chocona-FGEC\\_126425](http://www.elcolombiano.com/historico/de_como_canadienses_explotan_la_selva_chocona-FGEC_126425) [Accessed 31 August 2016].
- International Office for Human Rights Colombia Action (2013). *Land in Colombia; between dispossession and business. Presentation of the current situation of a problem that is central to the conflict*. [online] Available at: <http://www.oidhaco.org/uploaded/content/article/666329106.pdf> [Accessed 20 September 2016].

##### *Interviews with experts*

Conversations with various experts, carried out during October 2016, helped the authors of this report to better understand the applicable legislation and the risks associated with each category of legislation. Concerning this sub-category, representatives of organisations such as the following ones were interviewed: Ministry of the Environment and Sustainable Development (MADS), Antioquia Indigenous Organisation (OIA), Risaralda Regional Autonomous Corporation (CARDER), Cundinamarca Regional Autonomous Corporation (CAR), National Environmental Licences Agency (ANLA).

#### 1.2.5. Risk determination

##### *Overview of Legal Requirements*

Decree 2811 of 1974 regulated by decree 2151 of 1979

The forest licencing system that was established in 1974 refers to five types of contracts for forestry land-use for territories with natural coverage:

- Permission to log for local users limited to 20m<sup>3</sup> per year: no management plan is required
- Permission to log limited to 200m<sup>3</sup> per year for 10 years: this does not demand a management plan and technical help is available from the government
- Permission to log limited to 2000m<sup>3</sup> per year for 10 years: requires a technical logging plan

- Permission to log limited to 10,000m<sup>3</sup> per year for 10 years: demands a management plan and a technical logging plan
- Unlimited area permits, for which a complete management plan is required.

Article 60 mentions that the term is fixed "...taking into account the nature and duration of the economic activity for whose exercise it is granted, and the need for the licensee to have the resource available for a sufficient length of time for the respective exploitation to be economically profitable and socially beneficial.", whilst Article 61 gives guidelines for what the agreement or contract should contain:

- a. A detailed description of the asset or resource that the licence revolves around;
- b. The licensee's financial charges and the way in which these can be periodically subject to modification;
- c. The licensee's obligations, including those that are imposed on the licensee to prevent the deterioration of the resources or the environment;
- d. The financial constraints in case of non-compliance;
- e. The term of duration;
- f. The provisions relating to the restoration of the assets upon termination of the licence;
- g. The grounds for expiry of the licence or revoking of the agreement;
- h. The guarantees to ensure that the licensee complies with their obligations, in particular those concerning replenishment or restoration of the resource.

On the other hand, article 216 indicates that ongoing forestry land-use of natural or artificial forests on private land also require authorisation.

Act 99 of 1993 regulated by Decree 2041 of 2014

Act 99 of 1993 defines the roles of the Regional Autonomous Corporations, among which are found under number 9 of Article 31 that of "Granting licences, permits, authorisations and environmental licences required by law for the use, utilisation or mobilisation of renewable natural resources or for the undertaking of activities that affect or may affect the environment. Granting permits and licences for forestry land-use, licences for the use of surface and underground water and establishing closures for hunting and recreational fishing".

Decree 1791 of 1996. System of forestry land-use

In chapter III it makes reference to the forestry licence as being allowed in forests located on land in the public domain. In order to achieve this, within the forestry management plan the interested party must present a statistical inventory for all species from ten centimetres (10 cm) in diameter at chest height (DAP), with a sampling intensity such that the error rate shall not be above fifteen percent (15%) with a ninety-five percent (95%) probability.

For land-use of less than twenty (20) hectares, it is also a requirement to present a one hundred percent (100%) inventory of the species that are to be made use of, from a DAP of ten centimetres (10cm) for the area in question.



If the land-use is for twenty (20) hectares or more, it is a requirement to present a one hundred percent (100%) inventory of the species that are to be made use of, from a DAP of ten centimetres (10cm) on the first cutting unit annually, and so on and so forth for each unit until completion of the land-use. This inventory must be presented ninety (90) days before beginning exploitation on the unit in question.

According to article 11, the owners of ongoing exploitations of natural forests (located on land in the public domain or privately owned land) must guarantee that they will leave in situ individuals in the different diameter categories of the forest subject to exploitation, with the aim of contributing to the sustainability of the resource.

### *Description of Risk*

- From 1980-2000, no licences were granted due to the applicants being unable to present an adequate management plan. The exception to this was *Cartón de Colombia*, which received a 30-year licence in 1974 for 61,000 hectares of tropical forests. In 1993 Johnson y Cabaric cited *Cartón de Colombia* as an example of a sustainable forestry land-use initiative. The licence was eventually abandoned due to high production costs and because of the encroachment of settlers upon production lands (*Políticas forestales en América Latina*, 2000).
- In 2016, there have been reports of permits for land-use being granted to individuals on private property and inhabitants of communal lands. It is not anticipated that there will be any interest from organisations to implement forestry projects under licence on State territories.
- Discussions with experts have highlighted the difficulties in Colombia with securing large forestry concessions in the short or medium term:
  - The terms of reference required imply substantial costs before the project even begins, and can be a disincentive or spook companies out of applying.
  - There are significant costs (both time and money) associated with the requirements for prior consultation.
  - Companies who exploit natural forests often have a negative public image. This in turn generates high visibility and pressure from public institutions;
  - The infrastructure that exists in areas of forest is minimal, and this implies high economic and environmental costs associated with transporting the timber.
- Taking into account the results of a study by *Munden Project* on forestry concessions in Latin America, Asia and Africa with 93% disrespect to local communities and indigenous peoples, the information on concessions in communal territories for mining, and the two experiences of concessions in the country (Carton Colombia and Los Delfines) in which difficulties arose: in the first because of the impossibility of controlling the invasion of forested areas and in the second for non-compliance with the clauses of the licence, it is considered necessary to carry out an exhaustive revision of the proper process for obtaining a concession and the ongoing monitoring of the fulfilment of the criteria stipulated in the licence.
- For 30 years there have been no licences granted in the country, according to a consultation with the Ministry of the Environment and Sustainable Development.

### *Risk conclusion*

This indicator has been evaluated as low risk. Identified laws are upheld. Cases where law/regulations are violated are efficiently followed up via preventive actions taken by the authorities and/or by the relevant entities.

#### **1.2.6. Risk designation and specification**

Low risk

#### **1.2.7. Control measures and verifiers**

N/A

### **1.3. Management and harvesting planning**

*Any legal requirements for management planning, including conducting forest inventories, having a forest management plan and related planning and monitoring, as well as approval of these by competent authorities. Cases where required management planning documents are not in place or are not approved by competent authorities should be considered. Low quality of the management plan resulting in illegal activities may be a risk factor for this indicator as well.*

#### **1.3.1. Applicable laws and regulations**

##### **FOR NATURAL FORESTS**

- Decree 1791 of 1996: Whereby the system for forestry land-use is established. Compiled in Decree 1076 of 2015: whereby the sole regulatory decree from the environment and sustainable development sector is issued. Article 23. Date of publication: 4th December 1996. Available at: [http://www.minambiente.gov.co/images/BosquesBiodiversidadyServiciosEcosistemicos/pdf/Ordenaci%C3%B3n-y-Manejo-de-Bosques/dec\\_1791\\_041096.pdf](http://www.minambiente.gov.co/images/BosquesBiodiversidadyServiciosEcosistemicos/pdf/Ordenaci%C3%B3n-y-Manejo-de-Bosques/dec_1791_041096.pdf)

##### **FOR FORESTRY PLANTATIONS**

- Decree 1824 of 1994: Whereby Act 139 of 1994 is regulated. Chapter III – Forestry Establishment and Management Plan. Article 20. Date of publication: 30th August 1994. Available at: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=30217>
- Act 139 of 1994. It regulates the Forestry Incentives Accreditations, and outlines and regulates Forestry Plantations and Agroforestry Systems with Commercial Ends. Article 5. Date of publication: 21st June 1994. Available at: <https://www.minagricultura.gov.co/Normatividad/Leyes/Ley%20139%20de%201994.pdf>
- Decree 1498 of 2008: whereby paragraph 3 of article 5 of Act 99 of 1993 and article 2 of Act 139 of 1994 are regulated. Article 5. Harvesting forestry cultivations with commercial ends. Date of publication: 7th May 2008. Available at: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=30098>
- Decree 4600 of 2011. "Whereby the Forestry Single Window is created". Article 3. Date of publication: 5th December 2011. Available at: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=45820>
- Decree 2448 of 2012 - Whereby Decree 1824 of 1994 is partially modified. Article 1. Defines the concept of plantations and of the Forestry Establishment and Management

Plan. Date of publication: 3rd December 2012. Available at:

<https://vuf.minagricultura.gov.co/Documents/1.%20Normatividad%20CIF/1.2.%20Decreto%202448%20de%202012.pdf>

### 1.3.2. Legal authority

- Colombian Agricultural Institute (ICA)
- Regional Autonomous Corporation of the administrative area
- Fund for the Financing of the Farming Sector (FINAGRO)

### 1.3.3. Legally required documents or records

In areas of natural forest (of the state or communal land)

- Forestry management plan in accordance with the terms of reference of the Regional Environmental Authority

Plantations and agroforestry systems

- Forestry establishment and management plan, if it has CIF funding
- Implementation contract for the reforestation project if it has CIF funding
- Productive-protective plantations will need the plan, if it is requested in the terms of reference of the Corporation, prior to the issuing of the agreement.
- Commercial plantations without CIF do not need a Forestry Management Plan

### 1.3.4. Sources of information

#### *Government sources*

- ICA (N.Y). *Anti-corruption and citizen information plan*. [online] Colombian Agricultural Institute. Available at: <http://www.ica.gov.co/Modelo-de-P-y-G/Transparencia-Participacion-y-Servicio-al-Ciudadano/Plan-Anticorrupcion-y-de-atencion-al-ciudadano.aspx> [Accessed 23 September 2016].

#### *Non-Government sources*

- FAO (2002). *Current status of the information on forestry management*. [online] Available at: <ftp://ftp.fao.org/docrep/fao/006/AD392S/AD392S00.pdf> [Accessed 23 September 2016].
- Transparency Corporation for Colombia (2015). *Final results report. National transparency index 2013-2014*. [online] Available at: [http://indicedetransparencia.org.co/portals/0/Documentos/Fichas\\_NAL\\_2013-2014/InstitutoColombianoAgropecuarioICA%20FICHA.pdf](http://indicedetransparencia.org.co/portals/0/Documentos/Fichas_NAL_2013-2014/InstitutoColombianoAgropecuarioICA%20FICHA.pdf) [Accessed 23 September 2016].

#### *Interviews with experts*

Conversations with various experts, carried out during October 2016, helped the authors of this report to better understand the applicable legislation and the risks associated with each category of legislation. Concerning this sub-category, representatives of organisations such as the following ones were interviewed: Colombian Agricultural Institute (ICA), Risaralda Regional Autonomous Corporation (CARDER), Cundinamarca Regional Autonomous

Corporation (CAR) Antioquia Forestry Network, *La Fundación*. Social and Environmental management and private companies.

### **1.3.5. Risk determination**

#### *Overview of Legal Requirements*

##### **FOR NATURAL FOREST**

Decree 1791 of 1996. Forestry Land-use System

Forestry land-use is regulated by the Forestry Land-use System, included in Decree 1791 of 4th October 1996, which determines the following types of forestry land-use: single, ongoing and domestic.

What is understood by single forestry land-use is that it is carried out only once, in areas that, in accordance with technical studies, show better suitability for uses other than forestry, or that which is carried out for reasons of public and social interest. Ongoing land-use is implemented with criteria of sustainability and under the obligation of preserving the usual yield of the forest with silviculture techniques that enable its restoration. And domestic land-use is that which is carried out exclusively to satisfy vital domestic needs without commercial ends.

Article 23 of the Forestry Land-use System establishes the procedure that must be followed in order to obtain authorisation for exploitation of natural forests or wild flora products. An applicant must present to the Regional Autonomous Corporation an application that contains:

- Name of the applicant;
- Location of the property, administrative area, boundaries and surface area;
- System of ownership of the area; Species, approximate quantity that is to be exploited and use to which the products will be put; and
- Map of the area according to the extent of the property.

If the interested party wishes to negotiate the permit for single forestry land-use of natural forests located on private land, it is necessary for the interested party to present at least:

- Formal application (form that can be found on the website of the relevant Regional Autonomous Corporation)
- A technical study showing better suitability for land use other than forestry;
- Copy of the public deed and of the certificate of liberty and tradition issued less than two months previously which certifies the applicant as owner or holder or tenant.
- Forestry land-use plan.

The last item on the list consists of a description of the systems, methods and equipment to be used in the harvesting of the forest and removal of the products. If the exploitation is in areas larger than 20 hectares, the plan should contain environmental considerations detailing the actions necessary to prevent, mitigate and correct negative impacts caused by the activity.

Once the documentation has been presented and evaluated by the environmental authority, the authority will grant permission, which shall contain at least the following:

- Name and identification of the user;
- Geographical location of the property, determining its boundaries by means of natural demarcations;
- Surface area of the area to be exploited;
- Species that will be exploited, number of individuals, volumes, weight or quantity and established cutting diameters;
- Management and land-use systems, derived from the studies already presented and passed;
- Obligations that the holder of the forestry land-use permit is subject to;
- Mitigation, compensation and restoration measures for the environmental impacts and effects;
- Duties and taxes;
- Validity of the exploitation;
- Six-monthly reports

The forestry establishment and management plan is defined in the regulations as the "Study prepared using as its basis the array of technical rules of forestry that regulate the actions to be carried out on a forestry plantation, with the aim of establishing, developing, improving, preserving and exploiting cultivated forests according to rational principles of utilisation and sustainable management of renewable natural resources and of the environment"

#### FOR FORESTRY PLANTATIONS

Decree 1498 of 2008

This decree regulates forestry plantations and productive agroforestry systems, for which Article 5 states the following:

- Article 5. Harvesting of products obtained from forestry cultivations with commercial ends. The harvesting of products obtained from agroforestry systems or forestry cultivations with commercial ends that are duly registered, shall not require any authorisation from the environmental authority.
- Paragraph. The Ministry of Agriculture and Rural Development, or any body delegated by the Ministry, shall establish a mechanism to identify the products that come from agroforestry systems or forestry cultivations with commercial ends, which must be adopted by the holders of the records.

The record of forestry cultivation is carried out according to what is stated in Article 4 of the aforementioned decree: criteria for completing registration. In order to register agroforestry systems or forestry cultivations with commercial ends, the Ministry of Agriculture and Rural Development or any body delegated by the Ministry, shall ensure that the following criteria are met:

- That they be productive forestry plantations of an industrial or commercial nature or commercial agroforestry systems, which have been set up and registered as such prior to the issuing of the current title deed.

- That they be established within national and regional plans that consider the development and promotion of productive forestry plantations and forestry hubs, previously defined by the Ministry of Agriculture and Rural Development.

Act 139 of 1994 and Decree 1824 of 1994: Forestry Incentive Certificate (CIF)

The Forestry Incentive Certificate is a way of the State recognising the positive impacts of reforestation while the environmental and social benefits generated are appreciable by the whole of the population. Its aim is to promote direct investment in new forestry plantations, both productive and protective-productive, on land that is able to cultivate forest. In order to be granted a CIF, item 1 of Act 134 of 1994 asks for "the approval of a Forestry Establishment and Management Plan, on the part of the organisation responsible for the administration and management of renewable natural resources and the environment".

Article 20 of decree 1824 of 1994 outlines what the forestry establishment and management plan must contain in order to apply for the CIF:

- Individualisation of the property on which the Project is to be progressed, indicating its location, its boundaries and the area it covers;
- When the applicant is acting as a tenant, s/he shall supply the relevant tenancy contract;
- Previous use of the land, ensuring that the areas on which new plantations are to be established are not already covered with natural forests or native vegetation that serves a protective function, nor have they been in the last 5 years under the previous usage system;
- Bio-physical conditions of the land, making reference to the general characteristics of the region, morphology and quality of soils, meteorological and hydrological conditions, current use of the property, faunal and botanical aspects of interest and areas of natural forest;
- Characteristics of the Project, detailing the programme of cultivation and development of the plantation, forestry species to be made use of, style of working and working conditions, and systems for maintaining, protecting and regenerating the plantation. The programme for exploitation of the forest, the harvesting plan and the plan for replacing the resource should also be established;
- Schedule for sowing activities, maintenance and exploitation of the forest, and planned dates for the recognition of the values of the CIF;
- Financial planning, showing calculations of the costs commanded by the Project, sources of funding, if there are any, and a cashflow plan.

### *Description of Risk*

#### Natural Forest

- In consultation with experts it has been pointed out that of the three types of land-use (ongoing, domestic and single), a management plan is only needed for ongoing use. For the others, a land-use plan is required, but it is not always checked on the ground, which may lead to poor implementation of the regulations/procedures that exist to respect the environment.

- In terms of administration, it has been noted that there is no adequate direct presence or effective action on the part of the State on the ground: monitoring, evaluation and overseeing have been scarce or insufficient. This is attributed to institutional weakness, low budgets, lack of appropriate or suitable staff, the apathy of some public servants and the idiosyncrasies of people who are inclined to evade control measures.
- According to FAO (State of forestry Information in Colombia, 2002), in general terms there is a lack of knowledge of the legal regulations that govern forestry land-use, as well as of many of the technical aspects that the regulations cover with regard to the utilisation and management of the resource. A small number of users have an adequate knowledge of the forestry statutes and that is due to the fact that they basically have an interest in obtaining the letter of safe passage to move timber. According to the report, the entities responsible for the administration of the resource barely disseminate the regulations. This lack of awareness is also recognised by the experts that have been consulted in the preparation of this report.
- The same FAO document points out that the procedures for granting a licence lack flexibility. In their study they detected a considerable quantity of timber that came from logging activities that had not followed any procedure, or that having formally followed one, they had allowed themselves some leeway when going through the established steps.
- According to experts consulted, the timeframe for granting of licences, which includes management planning, (especially where Regional Environmental Authorities are concerned) can be very long. This can lead to timber owners commencing harvesting activities without the necessary documentation, either to lose their crop to harm from pesticides or to meet obligations under pre-established commercial relationship with a buyer.
- FAO (2002) also noted that exploitation sometimes begins before a permit or authorisation has been granted. Likewise, the work of a forestry professional is only required, in practice, at the moment the management plan is written and presented, therefore there is limited technical assistance with the ongoing management of the forest.
- The most recent case of a large land-use permit was in the Chaco forest with the Los Delfines General Community Council. This brings together 15 communities and had an agreement with the organisation REM-Prima, with Canadian investment for the extraction of more than three million cubic metres over 44,596 hectares. There were shortcomings in the execution of this concession: the construction of a road in a sensitive area where this was prohibited; logging of trees near water sources and of non-authorised species; and an expansion of the concession in 2010, in spite of its negative technical design. Eventually, due to social pressure and because of discrepancies between the Company and the Community Council, the government resolved to annul the licence.
- In consultation with experts it was pointed out that the existence of many environmental authorities, over-regulation and the minimal control that the Ministry of the Environment can exercise over the Autonomous Corporations, together make it difficult to effectively implement legislation.
- With the Intersectoral Pact for Legal Timber in Colombia, important advances have been made to ensure legality in the natural forest. Thanks to the forestry governance Project headed up by CARDER, with European Union funding, 4 technical protocols have been



developed, as well as a pilot scheme for recognising legality, which will be implemented in 2017, and two applications for Android and IOS on measuring cubic metres of timber and recognising species in the forest. This will strengthen technical parameters in the field and control security systems, such as appears in the summary information of this document.

#### Forestry Cultivations

- In Colombia it is not necessary to present a forestry management plan for forestry cultivations unless it is a beneficiary of the Forestry Incentive Certificate, in which case this is a condition of being granted a certificate. Between 1995 and 2014 a total of 487,702 hectares have been reforested (according to MinAgricultura and FINAGRO estimates. Including the area of reforestation carried out by individuals who do not have a CIF), of which 258,077 hectares have received CIF funds (This figure includes: (i) 228,000 hectares of projects established between 1995 and 2012; (ii) 23,949 hectares passed and promised during 2013; and (iii) 6127 hectares passed and promised in 2014), which is to say that 53% of all plantations have commercial ends and require management plans.
- Information from the 2013 national index of transparency suggest that the Ministry of Agriculture, which is responsible for the CIF, is considered to be high risk (52.1 points), in 80th place out of 85 organisations assessed.
- There are forestry organisations – particularly large ones - that progress their activities based on a forestry management plan, without it being a legal requirement, because they recognise that this is necessary in order to give direction to their technical and economic activities. As the law does not insist on these plans, unless there is a CIF in place, there have been no legal instruments put in place to monitor and control these, and they go no further than being an administrative requirement in order to receive the Certificate. For example in Antioquia, there are around 16 medium-large companies who rely on clear planning and the application of that planning; of the 2600 records that the ICA has for the Antioquia region, 40% are large reforesters and 60% small.
- The Colombian Agricultural Institute has in place a strategy for fighting corruption and citizen information, in accordance with that which is stated in article 73 of Act 1474 of 2011. Among other tools they have the institutional map of risks for corruption and the control mechanisms to mitigate it. In terms of the results, in the operational process of “permits” a high risk is noted, but with the implementation of mitigation measures the risk is reduced to moderate. In a national ranking of risk of corruption, the Colombian Agricultural Institute (ICA) was placed at number 44 out of 85, with a medium risk.

One of the most enlightening references for the study of the scale of illegal felling of natural forests is the survey commissioned by IDEAM and conducted by ECOFOREST in 2009 (IDEAM, 2009), where authorised volumes of timber felling — as registered by the Regional Autonomous Corporation (CAR) in charge— are compared against volumes of wood consumption, based on estimates obtained from interviews and the set-up of extensive systems. The study concluded that the percentage of unregistered timber was between 33% and 55%, depending on the model being used. Illegal felling concentrates mainly in natural forest areas, with a higher occurrence rate in the Pacific region (Chocó- Darién) and the Amazon.

#### *Risk Conclusion*

This indicator has been evaluated as specified risk. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

### 1.3.6. Risk designation and specification

Specified risk

### 1.3.7. Control measures and verifiers

- In forestry plantations: request to register the plantation with the ICA if they are commercial, or the Administrative Act of the Regional Autonomous Corporation of the administrative area if they are productive-protective, revise the approved species and special measures in the Administrative Act.
- In forestry plantations that have a CIF, approved forest management plans shall exist for the FMU where the harvesting is taking place.
- Forestry land-use in natural forest: forestry management plan if this activity is ongoing and Administrative Act that grants permission for the land-use shall exist for the FMU where the harvesting is taking place.
- Forest management plans shall contain all legally required information and procedures.
- Annual operating or harvesting plans shall be in place and approved by legally competent authorities.
- Annual operating or harvesting plans shall contain information and procedures, according to all legal requirements.
- The contents of the operating and harvesting plans shall be consistent with approved forest management plans.
- Plans for carrying out harvesting operations shall be subject to public disclosure and objections prior to commencement if legally required.
- Harvesting restrictions shall be identified in management plan and maps if legally required.
- Harvesting inventories shall be conducted according to legal requirements.
- Field verifications shall indicate that the contents of the harvesting plans are adhered to in the field.
- Stakeholder consultation shall indicate that the forest management plan has been approved according to legally prescribed process.

## 1.4. Harvesting permits

*Legislation regulating the issuing of harvesting permits, licenses or other legal document required for specific harvesting operations. It includes the use of legal methods to obtain the permit. Corruption is a well-known issue in connection with the issuing of harvesting permits. Risk relates to situations where required harvesting is carried out without valid permits or where these are obtained via illegal means such as bribery. In some areas, bribery may be commonly used to obtain harvesting permits for areas and species that cannot be harvested legally (e.g., protected areas, areas that do not fulfil requirements of minimum age or diameter, tree species that cannot be harvested, etc.). In cases where harvesting permits classify species and qualities to estimate fees, corruption and bribery can be used to classify products that will result in a lower fee. The level of corruption in a country or sub-national*

*region is considered to play an important role and corruption indicators should therefore be considered when evaluating risks. In cases of illegal logging, harvesting permits from sites other than the actual harvesting site may be provided as a false proof of legality with the harvested material.*

#### **1.4.1. Applicable laws and regulations**

##### **FOR NATURAL FORESTS**

- Act 99 of 1993 whereby the Ministry of the Environment was created, reorganises the Public Sector charged with the management and conservation of the environment and of renewable natural resources, organises the National Environmental System (SINA), and sets down other provisions. Article 5 item 42. Date of publication: 22nd December 1993. Available at: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=297>
- Decree 1791 of 1996: Whereby the Forestry land-use system was established, Article 7 and Chapter VI –on procedures. Date of publication: 4th October 1996. Available at: [http://www.minambiente.gov.co/images/BosquesBiodiversidadyServiciosEcosistemicos/pdf/Ordenaci%C3%B3n-y-Manejo-de-Bosques/dec\\_1791\\_041096.pdf](http://www.minambiente.gov.co/images/BosquesBiodiversidadyServiciosEcosistemicos/pdf/Ordenaci%C3%B3n-y-Manejo-de-Bosques/dec_1791_041096.pdf)

##### **FOR PLANTATIONS**

- Decree 1498 of 2008: whereby paragraph 3 of article 5 of Act 99 of 1993 and article 2 of Act 139 of 1994, Heading 3 – forestry cultivations with commercial ends - are regulated. Date of publication: 7th May 2008. Available at: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=30098>

#### **1.4.2. Legal authority**

- Colombian Agricultural Institute (ICA)
- Ministry of Agriculture and Rural Development
- Environmental Authority

#### **1.4.3. Legally required documents or records**

For productive plantations that do not have CIF funding

- Record of the Plantation

For productive or productive-protective plantations that are getting CIF funding

- Record of the Plantation
- Forestry management plan

For productive-protective plantations that do not have CIF funding

- Decision of the Environmental Authority of the administrative area
- For natural forests
- Decision of the Environmental Authority of the administrative area
- Forestry management plan

#### **1.4.4. Sources of information**

*Government sources*

- Colombian Agricultural Institute (2015). *Anti-corruption and citizen information plan*. [online] Available at: <http://www.ica.gov.co/Modelo-de-P-y-G/Transparencia-Participacion-y-Servicio-al-Ciudadano/Plan-Anticorrupcion-y-de-atencion-al-ciudadano.aspx> [Accessed 23 September 2016].
- IDEAM (2012). *Forestry Bulletin for 2011. Sub-directorate of Ecosystems and Environmental Information*. [online] Available at: <http://www.ideam.gov.co/web/ecosistemas/boletines-informacion-forestal> [Accessed 23 September 2016].

#### *Non-Government sources*

- FAO (2002). *Current status of the information on forestry management*. [online] Available at: <ftp://ftp.fao.org/docrep/fao/006/AD392S/AD392S00.pdf> [Accessed 23 September 2016].
- Transparency Corporation for Colombia (2015). *Final results report. National transparency index 2013-2014*. [online] Available at: [http://indicedetransparencia.org.co/portals/0/Documentos/Fichas\\_NAL\\_2013-2014/InstitutoColombianoAgropecuariaICA%20FICHA.pdf](http://indicedetransparencia.org.co/portals/0/Documentos/Fichas_NAL_2013-2014/InstitutoColombianoAgropecuariaICA%20FICHA.pdf) [Accessed 23 September 2016].
- La Cometa (2016). *Radio story: Due to not having environmental permits, CAS has confiscated more than 40m3 of timber in 2016*. [online] Available at: <http://lacometaradio.com/por-falta-de-permisos-ambientales-cas-ha-confiscado-mas-de-40m3-de-madera-en-2016/> [Accessed 25 September 2016].
- El Universal (2015). *Timber that was being transported illegally in Bolívar was confiscated*. Available at: <http://www.eluniversal.com.co/sucesos/se-decomiso-madera-que-era-transportada-ilegalmente-en-bolivar-208893> [Accessed 25 September 2016].
- El Tiempo (2015). *Warning on increase of timber trafficking in the country*. Available at: <http://www.eltiempo.com/politica/justicia/trafico-de-madera-en-colombia/16425136> [Accessed 10th November 2016].

#### *Interviews with experts*

Conversations with various experts, carried out during October 2016, helped the authors of this report to better understand the applicable legislation and the risks associated with each category of legislation. With regard to this sub-category representatives of several organisations were interviewed, such as: Colombian Agricultural Institute (ICA), Risaralda Autonomous Regional Corporation (CARDER), Cundinamarca Autonomous Regional Corporation (CAR), Antioquia Forestry Channel, La Fundación Social and Environmental Management and private sector companies.

#### **1.4.5. Risk determination**

##### *Overview of Legal Requirements*

##### **FOR NATURAL FORESTS**

Forestry Land-use System. Decree 1791 of 1996.

Forestry land-use is regulated by the Forestry Land-use System, which appears in Decree 1791 of 4th October 1996, which mentions in article 23 the procedure to allow exploitation of

natural forests or wild flora products, for which an application should be presented to the applicable Regional Autonomous Corporation which contains the following:

- Name of applicant;
- Location of the property, administrative area, borders and surface area;
- System of ownership in the area; Species, approximate quantity that is intended for exploitation and use to which the products will be put; and
- Map of the area showing the extent of the property.

If the interested party wishes to negotiate the unique forestry land-use permit for natural forests located on private land, s/he must present at least the following:

- Formal application. (A form that can be found on the website of the relevant Regional Autonomous Corporation)
- Technical study that shows better fitness for use of the land for something other than forestry;
- Copy of the public deed and of the certificate of liberty and tradition that has been issued within the last two months certifying the fact of their ownership or tenancy or possession.
- Forestry land-use plan.

The last item consists of a description of the systems, methods and equipment to be used in the harvesting of the forest and extraction of the products. If the exploitation is on land larger than 20 hectares, the plan must contain environmental considerations which outline the necessary actions to be carried out in order to prevent, mitigate and correct the negative impacts caused by the activity.

Once the documents have been assessed by the environmental authority, it will grant permission, which shall contain at least the following:

- Name and ID details of the customer;
- Geographical location of the property, identifying its boundaries using natural limits;
- Extent of the area that will be exploited;
- Species that will be exploited, number of individual specimens, volumes, weight or quantity and established cutting diameters;
- Exploitation and operational systems, derived from studies that have been presented and approved;
- Obligations that the holder of the forestry land use shall be subject to;
- Ways in which the environmental impacts and effects will be mitigated, compensated and restored;
- Duties and fees;
- Validity of the land-use;
- Six-monthly reports

FOR PLANTATIONS

#### Decree 1498 of 2008

This decree regulates productive forestry plantations and agroforestry systems, for which in Article 5 the following is stated: Harvesting the products obtained from forestry cultivations with commercial ends. Harvesting the products obtained from duly registered agroforestry systems or forestry cultivations with commercial ends, shall not require any authorisation from the environmental authority. The Paragraph also mentions: The Ministry of Agriculture and Rural Development, or any body delegated by the Ministry, shall establish a way of identifying products that come from agroforestry systems or forestry cultivations with commercial ends, and this method must be adopted by the record holders.

The forestry cultivation register is carried out following that which is stated in Article 4: Criteria for registration. In order to register agroforestry systems or forestry cultivations with commercial ends, the Ministry of Agriculture and Rural Development, or any body delegated by the Ministry, shall meet the following criteria:

- That they be productive forestry plantations of an industrial or commercial nature or commercial agroforestry systems, established and registered as such prior to the publication of the current licence.
- That they be established within national and regional plans that take into account the development and encouragement of productive forestry plantations and forestry hubs, previously identified by the Ministry of Agriculture and Rural Development.

On the other hand, paragraph 4 of Article 3 of this decree, makes reference to when they should be registered with the Regional Autonomous Corporation: Registering protective and protective-productive forestry plantations shall continue to be done by the Regional Autonomous Corporations, in accordance with what is laid down in Decree 1791 of 1996 or any regulations that modify or substitute it. When a protective-productive forestry plantation is established within the framework of the Forestry Incentive Certificate created by Act 139 of 1994, it shall register with the Ministry of Agriculture and Rural Development or any body delegated by it.

#### *Description of Risk*

##### Natural Forest

- According to experts consulted, the timeframe for granting of licences, which includes management planning, (especially where Regional Environmental Authorities are concerned) can be very long. This can lead to timber owners commencing harvesting activities without the necessary documentation, either to lose their crop to harm from pesticides or to meet obligations under pre-established commercial relationship with a buyer.
- FAO (2002) also noted that exploitation sometimes begins before a permit or authorisation has been granted. Likewise, the work of a forestry professional is only required, in practice, at the moment the management plan is written and presented, therefore there is limited technical assistance with the ongoing management of the forest.
- According to FAO, (State of forestry information in Colombia, 2012), in general there is an evident lack of knowledge of the legal regulations that govern forestry land-use as well as of many of the technical aspects that they cover with regard to the use and management of the resource. A small proportion of users have an adequate knowledge of

forestry statutes, and this is due to their interest in obtaining the letter of safe passage in order to transport timber, as well as the fact that the bodies that are responsible for administering the resource barely disseminate the legislation.

- On the other hand, it has been shown that in many cases the holders of licences are different individuals to those who actually carry out the land-use, which means that right from the beginning, there is a doubling of the number of people involved, which makes it easier to evade the control measures. Besides not generating an ownership behaviour over the forest as a source of continuous work, rather favouring an extractivist outlook, this doubling makes it difficult to follow control measures, meaning that the protected timber does not always correspond to the licenced site.
- The letter of safe passage is the document that has been designed to legitimise the product, and it has not fully carried out its intended role. Sometimes, licences are requested and obtained with the almost exclusive objective of getting a letter of safe passage, and with it a proof of the legality of extraction, without going fully into the control aspects that emanate from it.
- Between 2000-2011 a total of 17 million cubic metres of natural forest were registered, granted in different regions of the country, which means that every year approximately one million four hundred thousand hectares are being used formally. The participation of three Regional Environmental Authorities stand out - CRQ, CORPONARIÑO and CODECHOCO – which represent 46% of the volume granted nationally. The amount granted in 2009 for the Pacific region reached a million cubic metres.
- According to comments made by ANLA, the information from the Regional Environmental Authorities on issuing licences and volumes, is not uniform or does not tally when information is cross checked. At the present time mechanisms to make this information public via the web are being evaluated, with the idea that this would become a tool for looking up land-use licences, much like what can be done with the Colombian Agricultural Institute (ICA). At the moment only Corpouraba has an online facility for users to check mobilisation and balances, which can be consulted at [http://sisf2.corpouraba.gov.co:3128/www/consulta\\_salvoconductos\\_usuarios\\_externos.php](http://sisf2.corpouraba.gov.co:3128/www/consulta_salvoconductos_usuarios_externos.php)
- During the development of this work, it was not easy to get statistics from the administration or from customs on forestry violations, however, to support the information some statistics from recent newspapers are included: in October 2015 the National Navy seized 32 cubic metres of timber transported illegally in Bolívar and Chocó because the transporter did not have the necessary permit to transport the timber. On the other hand, so far in 2016 the Santander Regional Autonomous Corporation confiscated 407.6 cubic metres of timber which were being transported on the highways of Santander without following the requisite regulations. According to El Tiempo, in the first 10 months of 2015, 7100 cubic metres of timber were confiscated, whilst in 2014 the figure was 4000 cubic metres.

#### Forestry cultivations

- The Colombian Agricultural Institute has a strategy of fighting corruption and citizen information, in accordance with that which is established in article 73 of Act 1474 of 2011. Among the tools it has at its disposal is the map of institutional risks of corruption and the control mechanisms for mitigating it. With regard to the results, in the



operational procedure for granting “licences”, a high risk has been noted, but with the implementation of mitigation measures the risk is reduced to moderate. In a national ranking of risk of corruption, the Colombian Agricultural Institute (ICA), came in at number 44 of 85, with a medium risk.

- The Record of Forestry Cultivation is the document required to be able to carry out forestry land-use is as soon as the forest is established, during the growth of the plantation or prior to exploitation work. This document is issued by the ICA prior to a visit to the property, where it will carry out approximate calculations of the volume of timber and, with this form Mobilisation Permits are requested from the entity, which “deduct” from the volume that was initially registered.
- According to consultation with business owners, when the plantation’s case is closed, verification on the ground is inadequate due to how little technical training ICA workers have, together with the low number of staff, which means that it cannot cope with the number of applications.
- When consulted, the ICA stated that under the guise of “request for upgrade”, approximately 30% of users registered request a revision and increase of the volume authorised for extraction, for which the ICA carries out a visit to check the timber in situ and makes the decision of whether it is possible or not to grant an increase in volume.
- Observations from the consultation with business owners also seem to indicate that the relationship between the Company and the Environmental Authority often depends on the public official that is assigned to them. On the other hand they indicate the possible risk of corruption via bribes for the transfer of the quantities of available volumes that the company might have assigned for extraction.
- Statements by the ICA during the consultation signal that, where plantations are concerned, there is a greater risk of non-compliance on small plantations, given that often they decide to carry out exploitation before having the plantation registered and, when they come to transport the timber they do not get the mobilisation consignment, which leads them to have to find informal mechanisms to transport and sell it.

### *Risk Conclusion*

This indicator has been evaluated as specified risk for natural forest, plantations registered with the Regional Environmental Authority as protective-productive and small plantations. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

This indicator has been evaluated as low risk for large plantations. Identified laws are upheld. Cases where law/regulations are violated are efficiently followed up via preventive actions taken by the authorities and/or by the relevant entities.

### **1.4.6. Risk designation and specification**

Low risk for large plantations

Specified risk for natural forest, plantations registered with the Regional Environmental Authority as protective-productive and small plantations

### **1.4.7. Control measures and verifiers**

For small commercial plantations

- Check whether the plantation is registered with the Colombian Agricultural Institute (Instituto Colombiano Agropecuario - ICA).
- Check whether the ICA transport permit (remisión de movilización del ICA) is valid (check QR code, hologram and embossed stamp).
- Conduct a field visit to check that the area and species stated in the register match those of the harvesting site.
- When necessary, consult the ICA.

For natural forest and protector producer plantations

- Check the administrative act granting the harvesting permit (permiso de aprovechamiento forestal)
- Check the Unified National Laissez-Passer forms to transport biodiversity specimens (Salvoconducto Único Nacional para la movilización de especímenes de la diversidad biológica - SUN) and check whether they are valid (printed on original, sequentially numbered paper; free of corrections or amendments; stating the common and scientific names of the species, volume, the driver's details and the number of the permit-granting administrative act).
- Conduct a field visit to check that the area and species stated in the administrative act match those of the harvesting site.
- When necessary, consult the permit-granting Environmental Authority.

## TAXES AND FEES

### 1.5. Payment of royalties and harvesting fees

*Legislation covering payment of all legally required forest harvesting specific fees such as royalties, stumpage fees and other volume based fees. It also includes payments of the fees based on correct classification of quantities, qualities and species. Incorrect classification of forest products is a well-known issue often combined with bribery of officials in charge of controlling the classification.*

#### 1.5.1. Applicable laws and regulations

##### PUBLIC AND PRIVATE NATURAL FORESTS AND NATURAL FORESTS IN COMMUNITY LANDS OR THE SYSTEM OF NATIONAL NATURAL PARKS

- Decree N° 2811 of 1974: Establishing the Code on renewable natural resources and the protection of the environment. Sections 220-222. (Decreto N° 2811 de 1974: Por el cual se dicta el Código de recursos naturales renovables y de protección al medio ambiente. Artículo 220-222.) Published on: 18 December 1974. Available at: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=1551>
- Ministry of Agriculture Agreement N° 48 of 1982: Establishing the payment method and the various harvesting fees for natural, public and private forests. Sections 2, 4, 11. (Acuerdo N° 48 de 1982 del Ministerio de Agricultura: Por el cual se establece la forma de liquidación y se fijan los montos de las diferentes tasas, para el aprovechamiento forestal de los bosques naturales, públicos y privados. Artículos 2, 4, 11.) Published on: 15 December 1982. Available at: [https://www.redjurista.com/Documents/acuerdo\\_48\\_de\\_1982.aspx#/viewer](https://www.redjurista.com/Documents/acuerdo_48_de_1982.aspx#/viewer)
- Resolution N° 868 of 1983: Regulating Section 4 of Agreement N° 0048, of 15 December 1982. Section 1.v. (Resolución N° 868 de 1983: Por la cual se reglamenta el Artículo cuarto del Acuerdo N° 0048 de diciembre 15 de 1982. Artículo 1.) Published on: 6 June 1983. Available at: <http://observatorioirsb.org/web/wp-content/uploads/2015/11/resolucion-868-de-1983.pdf>
- Decree N° 1791 of 1996. Section 30.i: Taxes and fees for wild flora harvesting. (Decreto N° 1791 de 1996. Artículo 30, literal i: Derechos y tasas para el aprovechamiento de flora silvestre.) Published on: 4 October 1996. Available at: [http://www.minambiente.gov.co/images/BosquesBiodiversidadyServiciosEcosistemicos/pdf/Ordenaci%C3%B3n-y-Manejo-de-Bosques/dec\\_1791\\_041096.pdf](http://www.minambiente.gov.co/images/BosquesBiodiversidadyServiciosEcosistemicos/pdf/Ordenaci%C3%B3n-y-Manejo-de-Bosques/dec_1791_041096.pdf)
- Agreement N° 032 of 2015: Updating the forest harvesting fees. Sections 1, 2 and 4. (Acuerdo N° 032 de 2015: Por el cual se actualiza el valor de las tasas por concepto de aprovechamiento forestal. Artículos 1, 2 y 4.) Published on: 17 November 2015. Available at: <https://www.car.gov.co/index.php?idcategoria=71375&download=Y>

#### 1.5.2. Legal authority

- Competent Environmental Authority

#### 1.5.3. Legally required documents or records

- Administrative Act by the Environmental Authority including fees statement
- Proof of payment of the fee.

#### 1.5.4. Sources of information

##### *Non-Government sources*

- gerencie.com (2013). *Análisis de los impuestos verdes III: Tasa de aprovechamiento forestal*. [online] Available at: <http://www.gerencie.com/analisis-de-los-impuestos-verdes-iii-tasa-de-aprovechamiento-forestal.html> [Accessed 23 September 2016].
- vocerodelcafe.com (2013). *Proponen actualizar la tasa de aprovechamiento forestal*. [online] Available at: <http://www.vocerodelcafe.com/medio-ambiente/proponen-actualizar-la-tasa-de-aprovechamiento-forestal> [Accessed 23 September 2016].
- Jairo Andrés Navarro Garzón (2016). *Método de actualización de la tasa compensatoria por aprovechamiento forestal maderable en bosques naturales de Colombia*. [online] Available at: <http://repository.udistrital.edu.co/bitstream/11349/3579/1/NavarroGarzonJairoAndres2016.pdf>
- IIAP-MADS Convention 180 (2011). *Results presentation - Formulación de una propuesta de tasa compensatoria forestal y unos instrumentos económicos o financieros complementarios para la conservación y el uso sostenible de recursos forestales en Colombia*. [online] Available at: <http://www.bosquesflegt.gov.co/?q=download/file/fid/80> [Accessed 11 November 2016].

##### *Interviews with experts*

Conversations with various experts were carried out in October 2016. They helped the authors of this report to better understand the applicable legislation, as well as the risks connected to each legislation category. Within this subsection, representatives of the following bodies were interviewed: Cundinamarca Regional Autonomous Corporation (Corporación Autónoma Regional de Cundinamarca, CAR), Ministry of the Environment and Sustainable Development (Ministerio de Ambiente y Desarrollo Sostenible, MADS), FAO Representation in Colombia.

#### 1.5.5. Risk determination

##### *Overview of Legal Requirements*

In Colombia, the forest harvesting fee only applies to natural forests. The payment of this fee was first mentioned in the National Code on Natural Resources (Código Nacional de Recursos Naturales). The relevant sections reads as follows:

- Section 220: Concession holders or beneficiaries of one-time or permanent public forest harvesting permits shall pay, as national interest, a fee equal to no more than thirty percent of the price of the raw product at the market closest to the harvesting site. The payment shall be settled every time. The municipality under whose jurisdiction the forest is being harvested shall receive twenty percent of the amount described in the previous paragraph. This section does not apply to beneficiaries of domestic permits. The companies with the largest percentage of national capital shall be favoured when granting the concessions and permits referred to in this section.

- Section 221: Beneficiaries of one-time forest harvesting permits shall also pay a fee per cubic metre of usable wood on top of the fee described in the previous section. The full sum of money collected in line with this and the previous sections shall be allocated to reforestation programmes.

Other taxes and fees apply to forest harvesting and the exploitation of wild flora products. Decree N° 1791 of 1996, Section 30, regarding the content of the resolution authorising the harvesting, paragraph i: taxes and fees (Decreto N° 1791 de 1996, Artículo 30 sobre el contenido de la resolución para otorgar el aprovechamiento, en el literal i: derechos y tasas.)

According to Agreement N° 048 of 1982 (Acuerdo N° 048 de 1982), concession holders or beneficiaries of one-time or permanent public forest harvesting permits shall pay, as national interest, 10% of the basic value of a cubic metre of raw product in the market closest to the harvesting site, according to three categories. (Section 2), which are the following (section 4):

- Very special timber-yielding species. Very special timber-yielding species with a very high commercial value due to their technical characteristics: quality, colour, luster, grain, demand in the markets and use.
- Special timber-yielding species. Special timber-yielding species with a high commercial value due to their technical characteristics: quality, demand in the markets and use.
- Ordinary timber-yielding species. Any timber-yielding species not included in the previous categories.

For a list of the species included under each category, see the relevant section in Resolution N° 868 of 1983 (Resolución N° 868 de 1983). The basic value of the national interest and all other fees is subject to a 25% annual adjustment (section 11).

The Council of State (Consejo de Estado), as quoted by the Cundinamarca Regional Autonomous Corporation (Corporación Autónoma Regional de Cundinamarca) and Navarro (2016), points out that its consultation and civil service section referred to the legality of Agreements N° 48 of 1982 and N° 36 of 1983 (Acuerdos N° 48 de 1982 y N° 36 de 1983) in item n° 1101-03-06-000-2008-00031-00, of 21 August 2008, which included the following questions:

- "Can the competent regional autonomous corporations collect fees and contributions for the harvest of resources in private forests, as set out in Act N° 99 of 1993, section 31, paragraph 13 (Ley N° 99 de 1993, artículo 31, numeral 13)?"
- Indeed, regional autonomous corporations can apply Agreements N° 48 of 1982 and N° 36 of 1983 (Acuerdos N° 48 de 1982 y N° 36 de 1983) , and thus collect the retributive and compensatory fees established therein for the harvest of public and private forests. The National Interest and the additional fee described in sections 220 and 221 of the Code on Renewable Natural Resources (Código de Recursos Naturales Renovables) only apply to public forests. Thus, taking into account the aforementioned section 220 and the Agreements elaborating on it, owners of private forests are not liable to pay them.
- "Considering Section 63 of the Constitution of Colombia (Constitución Política, artículo 63), Act N° 70 of 1993, section 6, (Ley N° 70 de 1993, artículo 6) and the aforementioned environmental regulations, can environmental authorities collect fees and

contributions for forest harvesting in lands which have been collectively allocated to Afro-Colombian communities?”

- The National Interest and the additional payment described in sections 220 and 221 of the Code on Renewable Natural Resources (Código de Recursos Naturales Renovables) cannot be collected, because forests in lands owned collectively by Afro-Colombian communities are a collective property and no longer belong to the State. Retributive and compensatory fees, on the other hand, do apply to forests in collectively allocated lands, given the purpose of said fees.

Agreement N° 032 of 2015, section 2 (Acuerdo N° 023 de 2015, artículo 2), states that any individual or legal entity, be it public or private, that has been granted a one-time or permanent natural forest harvesting permit or authorisation is liable to pay the forest harvesting fee. The amount of the fee shall be established by means of the administrative act granting the forest harvesting permit (section 3).

The fee shall be paid as follows (section 4):

- Permanent harvesting permits: the entire volume that is expected to be harvested in one year. It shall be paid every year before the start of the first tree felling activities.
- One-time harvesting permits: the whole fee shall be paid before any harvesting can be conducted.
- Paragraph: the payable fee shall be equivalent to the gross volume of standing timber that was granted.

#### *Description of risk*

- Forest harvesting fees are payments made by a concession or permit holder in exchange for the right to harvest the timber-yielding and non-timber resources found in natural forests. The tax base is estimated per cubic metre of raw timber from very special timber-yielding species, special timber-yielding species and ordinary timber-yielding species. However, as shown in the Legal Requirements section, the definition of these categories in the country is unclear.
- The legal grounds are set out in Decree-Law N° 2811 of 1974 (National Code on Renewable Natural Resources and the Environment) (Decreto Ley N° 2811 de 1974, Código Nacional de los Recursos Naturales Renovables y del Ambiente), Decree N° 1791 of 1996 (Decreto N° 1791 de 1996) and specific regulations issued by a number of Regional Autonomous Corporations. These regulations are outdated, and the value of the fees stated therein has not been updated.
- According to a news item (Vocero del café), 57% of the 14 fee-collecting Corporations fulfill their obligation to update the fee every year. Most of them adjust the fee according to the CPI. One of the corporations does so according to the minimum legal daily wage in force.
- In 2011, the Environmental Research Institute of the Pacific (Instituto de Investigaciones Ambientales del Pacífico, IIAP) and the Ministry of the Environment and Sustainable Development (Ministerio de Ambiente y Desarrollo Sostenible, MADS) signed a convention with the aim of updating the forest compensatory fee. In 2012, a report stated that 41% of the Corporations (10) were not collecting harvesting fees, and that 43% of the 14 fee-collecting Corporations charged the same fee for the harvesting of all kinds of timber

(making no distinction between categories). Moreover, in the Amazonia and Orinoquia regions, there is a gap of up to 86.1% between the Authority which charges the most and that which charges the least. This led to the following conclusion in the study: *"until now, illegal processes have been encouraged; timber from a given Corporation was transported with a laissez-passer from a nearby Corporation with lower fees for the same kind of timber."*

- Expert consultation revealed the priority of the Ministry of the Environment and Sustainable Development (Ministerio de Ambiente y Desarrollo Sostenible, MADS): the unification of forest harvesting fee collection criteria by the Green Business Department (Oficina de Negocios Verdes) of the Ministry. To achieve this goal, it will build upon the points in common shared with the forest governance project. Currently, each Corporation applies the fees autonomously. For example, the Cundinamarca Corporation (Corporación Autónoma Regional de Cundinamarca, CAR) only charges administrative fees for the harvesting rights application, while the Environmental Authority in Urabá (Autoridad Ambiental de Urabá, CORPOURABA) charges forest harvesting fees.
- These significant gaps in fees/volumes between Corporations, especially regarding the ones not collecting fees, lead to a lack of funding for forest managing bodies. Besides, they have a harmful effect: the fact that timber harvested under a Corporation's jurisdiction is then transported with a laissez-passer from a Corporation with lower fees puts timber forests in Corporations with mistakenly low fees under greater pressure.

One of the most enlightening references for the study of the scale of illegal felling of natural forests is the survey commissioned by IDEAM and conducted by ECOFOREST in 2009 (IDEAM, 2009), where authorised volumes of timber felling — as registered by the Regional Autonomous Corporation (CAR) in charge— are compared against volumes of wood consumption, based on estimates obtained from interviews and the set-up of extensive systems. The study concluded that the percentage of unregistered timber was between 33% and 55%, depending on the model being used. Illegal felling concentrates mainly in natural forest areas, with a higher occurrence rate in the Pacific region (Chocó- Darién) and the Amazon.

### *Risk Conclusion*

This indicator has been evaluated as specified risk for natural forests. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

#### **1.5.6. Risk designation and specification**

Specified risk for natural forests (when forest harvesting fees are applicable)

N/A for plantations

#### **1.5.7. Control measures and verifiers**

- Receipts shall exist for payments of harvesting related royalties, taxes, harvesting fees and other charges.
- Volumes, species and qualities given in sales and transport documents shall match the paid fees.



- Classification of species, volumes and qualities shall match the royalties and fees paid.
- Review the Administrative Act granting natural forest harvesting rights. If it states that a forest harvesting fee was charged, request and check proof of payment of said fee.
- When necessary, consult with the competent Environmental Authority.

## 1.6. Value added taxes and other sales taxes

*Legislation covering different types of sales taxes, which apply to the material being sold, including selling material as growing forest (standing stock sales). Risk relates to situations where products are sold without legal sales documents or far below market price resulting in illegal avoidance of taxes.*

### 1.6.1. Applicable laws and regulations

#### GENERAL LEGISLATION

- Decree N° 624 of 1989: Issuing the Tax Statute on the Taxes Managed by the Directorate-General for National Taxes. Section 83: Deciding the sale cost in reforestation plantations, and Section 424: Tax-free goods. (Decreto N° 624 de 1989: Por el cual se expide el Estatuto Tributario de los Impuestos Administrados por la Dirección General de Impuestos Nacionales. Artículo 83: Determinación del costo de venta en plantaciones de reforestación, y Artículo 424: Bienes que no causan impuesto.) Published on: 30 March 1989. Available at: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=6533>
- Act 1819 of 2016 (Ley 1819 de 2016). "Por medio de la cual se adopta una reforma tributaria estructural, se fortalecen los mecanismos para la lucha contra la evasión y la elusión fiscal, y se dictan otras disposiciones". Artículos 99, 175 y 185. ("Adopting a structural reform of the tax system and strengthening the mechanisms to fight tax evasion, amongst other provisions"). Sections 99, 175 and 185. Published on: 29 December 2016. Available at: <http://es.presidencia.gov.co/normativa/normativa/LEY%201819%20DEL%2029%20DE%20DICIEMBRE%20DE%202016.pdf>

### 1.6.2. Legal authority

- Directorate for National Taxes and Customs (Dirección de Impuestos y Aduanas Nacionales, DIAN)

### 1.6.3. Legally required documents or records

- Purchase invoice

### 1.6.4. Sources of information

#### Government sources

- portafolio.co (2016). *Tax reform, Act 1891 of 2016, upon signature by president Santos* [online] News Article. (Ley 1819 de 2016, tras firma del presidente Santos). It will take effect from the first of January next year. Includes VAT increase from 16% to 19%. Available at: <http://www.portafolio.co/economia/reforma-tributaria-es-la-ley-1819-de-2016-502521> [Accessed 14 January 2017].

#### Non-Government sources

- elpais.com.co (2015). *Tax evasion in Colombia exceeds \$ 6 billion a year* [online] News Article by Alfredo García Sierra. Available at: <http://www.elpais.com.co/elpais/economia/noticias/evasion-impuestos-colombia-supera-6-billones-ano> [Accessed 24 September 2016].
- El Tiempo (2016). *The big business of Panama is the evasion in the country*. Investigative unit. [online] News Article. Available at: <http://www.eltiempo.com/mundo/latinoamerica/entrevista-con-exdirector-de-la-dian-sobre-evasion-de-impuestos-en-colombia/16559588> [Accessed 24 September 2016].
- Actualicese.com (2013). *Pecado nacional: se conocen las causas de la evasión, pero no se toman las medidas al respecto*. [online] News Article. Available at: <http://actualicese.com/actualidad/2013/05/06/pecado-nacional-se-conocen-las-causas-de-la-evasion-pero-no-se-toman-medidas-al-respecto/> [Accessed 24 September 2016].
- FEDEMADERAS.org (2016). *Reforestation in Colombia in the 21st century*. [online] Financing in the forestry sector. Available at: <http://fedemaderas.org.co/wp-content/uploads/2012/06/Contenido-y-autores-Reforestaci%C3%B3n-en-Colombia-en-el-Siglo-XXI.pdf> [Accessed 10 November 2016].

### *Interviews with experts*

Conversations with various experts were carried out in October 2016. They helped the authors of this report to better understand the applicable legislation, as well as the risks connected to each legislation category. Within this subsection, representatives of the following bodies were interviewed: National Federation of Timber Industrialists (Federación Nacional de Industriales de la Madera, FEDEMADERAS), Ministry of the Environment and Sustainable Development (Ministerio de Ambiente y Desarrollo Sostenible, MADS), FAO Representation in Colombia, Directorate for National Taxes and Customs (Dirección de Impuestos y Aduanas Nacionales, DIAN), Social and Environmental Management Foundation (Fundación Gestión Social y Ambiental) and private sector companies.

### **1.6.5. Risk determination**

#### *Overview of Legal Requirements*

The Tax Statute, article 424, (Estatuto Tributario, artículo 424), as amended by article 175 of Law 819 of 2016, explicitly lists the goods not subject to a sales tax when sold or imported. The goods are listed using the Andean customs nomenclature in force. Namely, Seedlings for sowing, including timber-yielding forest species: 06.02.20.00.00

In order to determine whether a good is subject to tax, the General Interpretation Criteria included in the Unified Sales Tax Concept (Concepto Unificado de Código) N° 00001 of 2003 apply. Specifically, in this case, Chapter II 1.1.2.1, paragraph c), Criteria for the identification of tax-free goods (literal c) del Capítulo II 1.1.2.1, Criterios para la determinación de los bienes excluidos) of the aforementioned Concept applies. It reads as follows: "When the law refers to a tariff item listing within it generic goods, the goods included in the generic description of said tariff item shall be tax free."

Additionally, the tax reform added 5% VAT to tariff item 44.03 – "wood in the rough, whether or not stripped of bark or sapwood", in accordance with the provisions in Section 185 of Act 819 of 2016, which amends Section 484 of the tax statute.

Until 31 December 2016, if a trader buys 44.03 tax-free wood in the rough and then strips it of bark or sapwood, the output shall belong in a different tariff item category, and shall be taxed accordingly.

Therefore, sales or imports of goods listed under tariff item 44.03 (Wood in the rough, whether or not stripped of bark or sapwood, or roughly squared) are free of sales tax.

If a dealer purchases wood in the rough, which under tariff item 44.03 is free of tax, and then saws and/or planes it, the resulting product shall belong to a different tariff item, and its sale will be subject to the relevant sales tax regime. That is why wood sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or end-jointed does not belong to tariff item 44.03, but to 44.07 or others, depending on its thickness, and, therefore, is subject to sales tax.

From 2017 wood under tariff item 44.03 shall be taxed with 5% VAT and the sale of cut and / or sawn timber is taxed with sales tax at the general rate and gives right to discardable taxes, which although not corresponding to the initially acquired good (raw wood, excluded) that transforms into taxed (Cut and / or brushed wood), if they can correspond to the overhead costs. In any case, deductible tax must fulfill the legal requirements set out in sections 485 and 488 of the Tax Statute. If both taxed and tax-free sale transactions have taken place and deductible tax cannot be directly allocated to each of them, the deduction shall be calculated proportionally, as set out in section 490 of the Tax Statute.

### *Description of Risk*

- There is a lack of tax-paying culture in Colombia. According to 2015 data, tax evasion amounts to over \$6 trillion USD. Most tax is paid by just a handful of companies and individuals. One of the challenges facing the Directorate for National Taxes and Customs (Dirección de Impuestos y Aduanas Nacionales, DIAN) is to increase the number of taxpayers in order to achieve a better distribution of the tax burden (Nancy Jara, taxpayer ombudswoman in an interview with El País, 2015).
- There are over 500 tax regulations, which people find difficult to understand. Sometimes, taxpayers do not know how to comply with their obligations. Some companies subject to tax operate in several municipalities with different ICA fees and tax bases. Sometimes, even the forms used are different. This leads to high compliance costs. Some companies need to submit up to 15 or 20 tax returns.
- In 2011, 9.4 trillion pesos in goods and services VAT went unpaid in the country. Between 2005 and 2011, the Inland Revenue lost 63 trillion pesos in unpaid VAT, according to website Actualicese on "accounting and tax research".
- When this report was drafted, no VAT had been collected for tariff item 44.03 (wood in the rough). However, the country is carrying out a tax reform. The idea of applying a 5% VAT rate to said tariff item is being considered in order to support the formalisation of a legal market. By January 2017, the final text of the Reform had been approved.  
<http://fedemaderas.org.co/2016/12/notifedemaderas-22-de-diciembre-de-2016/>

### *Risk Conclusion*

This indicator has been evaluated as specified risk. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

#### 1.6.6. Risk designation and specification

Specified risk

#### 1.6.7. Control measures and verifiers

- Check the Organisation's Unified Tax Register (Registro Único Tributario, RUT) to verify which taxes apply depending on its business activity.
- Check that tax has been paid to the Directorate for National Taxes and Customs (Dirección de Impuestos y Aduanas Nacionales, DIAN) in accordance with the RUT.
- Check the timber-product sales invoices and verify VAT has been charged in accordance with the product group.
- Sales documents shall include applicable sales taxes.
- Receipts for payment sales taxes shall exist.
- Volumes, species and qualities given in sales and transport documents shall match the fees paid.
- Sales prices shall be in line with market prices.
- Harvested species, volume and qualities shall match the sales documents.
- Authorities shall confirm that operation is up to date in payment of applicable sales taxes.
- Consultation with financial authority to verify that all required income and profit taxes have been paid.

### 1.7. Income and profit taxes

*Legislation covering income and profit taxes related to the profit derived from sale of forest products and harvesting activities. This category is also related to income from the sale of timber and does not include other taxes generally applicable for companies or related to salary payments.*

#### 1.7.1. Applicable laws and regulations

FOR FOREST PLANTATIONS

- Decree N° 624 of 1989: Issuing the Tax Statute on the Taxes Managed by the Directorate-General for National Taxes. Section 157: Special deductions for investment. Section 173: Deductions for reforestation plantations. Chapter X: Tax discounts. Section 253: Reforestation. (Decreto N° 624 de 1989: Por el cual se expide el Estatuto Tributario de los Impuestos Administrados por la Dirección General de Impuesto Nacionales. Artículo 157: Deducciones especiales por inversiones. Artículo 173: Deducciones en plantaciones de reforestación. Capítulo X: Descuentos tributarios. Artículo 253: por Reforestación.). Published on: 30 March 1989. Available at: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=6533>
- Act N° 788 of 2002: Issuing national and regional tax and criminal regulations, as well as other regulations. Section 18: Other tax-exempt income. (Ley N° 788 de 2002: Por la cual se expiden normas en materia tributaria y penal del orden nacional y territorial; y se dictan otras disposiciones. Artículo 18: Otras rentas exentas.) Published on: 20 December 1995. Available at: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=7260>

- Decree N° 2755 of 2005: By means of which sections 13 and 14 of Decree N° 2755 of 2003 are amended and section 191 of the Tax Statute is partially regulated. Section 1. (Decreto N° 2755 de 2005: Por el cual se modifican los artículos 13 y 14 del Decreto 2755 de 2003 y se reglamenta parcialmente el artículo 191 del Estatuto Tributario. Artículo 1.) Published on: 10 August 2005. Available at: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=17293>
- Act N° 139 of 1994: By means of which the Forest Incentive Certificate is established and other regulations are issued. Section 8, paragraph C. (Ley N° 139 de 1994: Por la cual se crea el Certificado de Incentivo Forestal y se dictan otras disposiciones. Artículo 8, literal C.) Published on: 21 June 1994. Available at: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=30220>
- Act N° 939 of 2004: Correcting the procedural flaws which appeared while Act N° 818 of 2003 was being processed; stimulating the production and marketing of biofuels of plant or animal origin for diesel engines; and issuing other regulations. Section 1. (Ley N° 939 de 2004: Por medio de la cual se subsanan los vicios de procedimiento en que incurrió en el trámite de la Ley 818 de 2003 y se estimula la producción y comercialización de biocombustibles de origen vegetal o animal para uso en Motores diesel y se dictan otras disposiciones. Artículo 1.) Published on: 31 December 2004. [http://www.minambiente.gov.co/images/normativa/leyes/2004/ley\\_0939\\_2004.pdf](http://www.minambiente.gov.co/images/normativa/leyes/2004/ley_0939_2004.pdf)
- Act 1819 of 2016. "Por medio de la cual se adopta una reforma tributaria estructural, se fortalecen los mecanismos para la lucha contra la evasión y la elusión fiscal, y se dictan otras disposiciones". ("Adopting a structural reform of the tax system and strengthening the mechanisms to fight tax evasion, amongst other provisions") Published on: 29 December 2016.

#### 1.7.2. Legal authority

- Directorate for National Taxes and Customs (Dirección de Impuestos y Aduanas Nacionales, DIAN)

#### 1.7.3. Legally required documents or records

- Tax returns and amendments thereof.

#### 1.7.4. Sources of information

##### *Non-Government sources*

- elpais.com.co (2015). *Tax evasion in Colombia exceeds \$ 6 billion a year* [online] News Article by Alfredo García Sierra. Available at: <http://www.elpais.com.co/elpais/economia/noticias/evasion-impuestos-colombia-supera-6-billones-ano> [Accessed 24 September 2016].
- El Tiempo (2016). *The big business of Panama is the evasion in the country*. Investigative unit. [online] News Article. Available at: <http://www.eltiempo.com/mundo/latinoamerica/entrevista-con-exdirector-de-la-dian-sobre-evasion-de-impuestos-en-colombia/16559588> [Accessed 24 September 2016].
- El País journal, 2012. *Find out which taxes are most evaded by Colombians*. Viewed on 10 November 2016. Available at:

<http://www.elpais.com.co/elpais/economia/noticias/conozca-cuales-son-impuestos-son-evadidos-por-colombianos>

- FEDEMADERAS.org (2016). *Reforestation in Colombia in the 21st century*. [online] Financing in the forestry sector. Available at: <http://fedemaderas.org.co/wp-content/uploads/2012/06/Contenido-y-autores-Reforestaci%C3%B3n-en-Colombia-en-el-Siglo-XXI.pdf> [Accessed 10 November 2016].

### *Interviews with experts*

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### **1.7.5. Risk determination**

#### *Overview of Legal Requirements*

#### **FOR FOREST PLANTATIONS**

Tax Statute. Decree N° 624 of 1989 (Estatuto Tributario. Decreto N° 624 de 1989).

Decree N° 624 of 1989 contains the Tax Statute (Estatuto Tributario) on the taxes managed by the Directorate-General for National Taxes (Dirección General de Impuestos Nacionales) and it includes three sections on income-tax exemption for forest plantations, which read as follows:

- Section 157. Deductions for investment on new plantations, irrigation, wells and silos. Individuals or legal entities who make direct investments on new reforestation plantations, coconut trees, oil palms, rubber trees, olive trees, cocoa trees, fruit trees, irrigation or land drainage works, deep wells and silos aimed at the treatment and primary benefit of agricultural products will be entitled to a yearly tax deduction equal to the value of their investments during the taxable year. This tax deduction will also apply to individuals and legal entities investing in companies specialised in the aforementioned activities, as recognised by the Ministry of Agriculture. The aforementioned deduction shall not exceed ten percent (10%) of the investor's net income. For the purposes of this deduction, the investor shall keep proof of the investment and of the specialised company's status in the area, when applicable. The Ministry of Agriculture shall issue yearly resolutions listing the eligible companies.
- Section 173. Deductions for reforestation plantations. Regarding reforestation plantations, the deductible amount shall be established in accordance with the presumptions and conditions set out in Section 83.
- Section 83. Identification of the sales cost for reforestation plantations. In reforestation plantations, it is assumed that harvesting costs and deductions account for eighty percent



(80%) of the sales value in any taxable period. This assumption shall only apply given the following conditions

- The taxpayer did not apply for deductions for reforestation-related expenses or investment, including interest on loans granted for that purpose, during the current taxable year or in previous years.
- The reforestation plan has been approved by the Ministry of Agriculture and corresponding certificates have been kept.
- Paragraph. Any taxpayer who applied for deductions for reforestation-related expenses or investment in previous years shall be eligible for the eighty percent (80%) assumption described in this section, in which case the total amount of accepted reforestation-related deductions shall be considered as gross recovered income to be postponed during the harvesting period, but for no longer than five (5) years.

Similarly, *Act N° 788 of 2002, section 18 (Ley N° 788 de 2002, artículo 18)*, lists other kinds of tax-exempt income and adds the following to the Tax Statute, section 207-2 (Estatuto Tributario, artículo 207-2):

- Section 18. Other tax-exempt income. The following is added to the Tax Statute (Estatuto Tributario):
- Section 207-2. Other tax-exempt income. Any income originating in the following activities shall be tax exempt, subject the requirements and controls established by regulations: (...) Harvesting of new forest plantations, including guadua plantations, depending on the rating issued by the competent Regional Autonomous Corporation or entity. Under the same conditions, taxpayers who invest in sawmills directly linked to the harvesting activities described in this paragraph after the effective date of this Law shall be entitled to a tax exemption. Taxpayers who, on the effective date of this Law, own tinder-yielding tree plantations that have been duly registered with the competent authority shall also be entitled to the tax exemption described in this section. Tax exemption is subject to the technical renovation of the plantations.
- Section 253. Amended by Law N° 223 of 1995 (Ley N° 223 de 1995). Amended to read as follows: For Reforestation. Income taxpayers who have to file tax returns in Colombia and who start new reforestation-species plantations in reforestation areas shall be entitled to discount from their income tax up to 20% of their investment, as long as the investment has been certified by a Regional Autonomous Corporation of the competent Environmental Authority. The discounted amount shall not exceed 20% of the basic income tax rate for that taxable year.
- Paragraph. Regulated by National Decree N° 900 of 1997 (Decreto Nacional N° 900 de 1997). The Forest Incentive Certificate (Certificado de Incentivo Forestal, CIF) was created by means of Act N° 139 of 1994 (Ley N° 139 de 1994). The CIF can also be used to compensate the direct and indirect costs of maintaining ownership over natural forest ecosystems that have been subject to no or limited intervention. The aim of the above is to acknowledge the environmental and social benefits of such ecosystems. (...)

Decree N° 2755 of 2005, section 2 (Decreto N° 2755 de 2005, artículo 2), outlines the requirements to be eligible for tax exemption for harvesting new forest plantations.

*Description of Risk*



- There is a lack of tax-paying culture in Colombia. According to 2015 data, tax evasion amounts to over \$6 trillion. Most tax is paid by just a handful of companies and individuals. One of the challenges facing the Directorate for National Taxes and Customs (Dirección de Impuestos y Aduanas Nacionales, DIAN) is to increase the number of taxpayers in order to achieve a better distribution of the tax burden (Nancy Jara, taxpayer ombudswoman in an interview with El País, 2015).
- According to a news piece in El País (2012), 4.6 million taxpayers pay income tax. 1.1 million out of those, both individuals and legal entities, file tax returns. The rest pay tax through pay-as-you-earn mechanisms. Tax evasion behaviour includes the failure to file tax returns, making arithmetical errors, omitting deposits and including non-existent costs, discounts, deductions or deductible taxes. According to DIAN estimates, the Treasury lost \$82 trillion between 2005 and 2009. Nowadays, income tax evasion amounts to 25%-28%, equivalent to 2.3% of Colombia's GDP.
- During interviews with stakeholders it proved challenging to obtain statistical data to conduct a valid assessment of the risk of non-compliance with income taxes and other legal requirements in Colombia's forestry sector.
- The amendment to the Colombian Tax Statute in Act 819 of 2016 (Ley 819 de 2016) stipulates in its Section 99 (artículo 99) that harvesting in new forest plantations shall be free of tax until fiscal year 2036.

### *Risk Conclusion*

This indicator has been evaluated as low risk for wood in the rough from natural forests or forest plantations. Identified laws are upheld. Cases where law/regulations are violated are efficiently followed up via preventive actions taken by the authorities and/or by the relevant entities.

This indicator has been evaluated as specified risk for processed wood from natural forests. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

### **1.7.6. Risk designation and specification**

Low risk for wood in the rough from natural forests or forest plantations

Specified risk for processed wood

### **1.7.7. Control measures and verifiers**

- Check the Organisation's Unified Tax Register (Registro Único Tributario, RUT) to verify which taxes it is subject to depending on its business activity.
- Check that tax has been paid to the DIAN in accordance with the RUT.
- Consultation with financial authority to verify that all required income and profit taxes have been paid.

## TIMBER HARVESTING ACTIVITIES

### 1.8. Timber harvesting regulations

*Any legal requirements for harvesting techniques and technology including selective cutting, shelter wood regenerations, clear felling, transport of timber from felling site and seasonal limitations etc. Typically, this includes regulations on the size of felling areas, minimum age and/or diameter for felling activities and elements that shall be preserved during felling etc. Establishment of skidding or hauling trails, road construction, drainage systems and bridges etc. shall also be considered as well as planning and monitoring of harvesting activities. Any legally binding codes for harvesting practices shall be considered.*

#### 1.8.1. Applicable laws and regulations

##### GENERAL LEGISLATION

- Decree N° 1541 of 1978, regulating Volume II, Part III of Decree-Law N° 2811 of 1974, "On non-maritime waters", and partially regulating Act N° 23 of 1973. Title IV - Chapter III: Occupation. Section 104. (Decreto N° 1541 de 1978: por el cual se reglamenta la Parte III del Libro II del Decreto-Ley N° 2811 de 1974: "De las aguas no marítimas" y parcialmente la Ley N° 23 de 1973. Título IV -Capítulo III: Ocupación. Artículo 104.) Published on: 28 July 1978. Available at: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=1250>
- Agreement N° 003 of 1994: Suspending the issue of permanent and one-time forest harvesting permits in the Tolima Department. (Acuerdo N° 003 De 1994: Por el cual se suspende la expedición de permisos de aprovechamientos forestales persistentes y únicos dentro del departamento del Tolima.) Published on: 11 April 2014. Available at: [http://ovirtual.cortolima.gov.co/ovirtual/detacrd.php?id\\_proc=2014afg2](http://ovirtual.cortolima.gov.co/ovirtual/detacrd.php?id_proc=2014afg2)
- Decree N° 1791 of 1996: Establishing the Forest Harvesting Regime. Section 13. (Decreto N° 1791 de 1996: por el cual se establece el Régimen de Aprovechamiento Forestal.) Published on: 4 October 1996. Sections 11, 25 and 26. Available at: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=1296>
- Decree N° 1498 of 2008: Regulating Act N° 99 of 1993, section 5, paragraph 3, and Law N° 139 of 1994, section 2. Sections 7 and 8. (Decreto N° 1498 de 2008: por el cual se reglamenta el parágrafo 3° del artículo 5° de la Ley N° 99 de 1993 y el artículo 2° de la Ley N° 139 de 1994. Artículos 7 y 8.) Published on: 7 May 2008. Available at: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=30098>

#### 1.8.2. Legal authority

- Competent Regional Autonomous Corporation

#### 1.8.3. Legally required documents or records

If a riverbed is occupied (for infrastructure)

- Authorisation for riverbed occupation granted by means of an Administrative Act from the competent Environmental Authority.

In cases of forest intervention (for infrastructure)

- Unified forest harvesting plan.
- Administrative Act by the competent Environmental Authority authorising the harvesting.

#### 1.8.4. Sources of Information

##### *Non-Government sources*

- Ricardo Linares Prieto (2001). *Qualification of forest management plans as tools for the sustainable harvesting of natural forests in Colombia* [online] (Cualificación de los planes de manejo forestal como instrumentos para el aprovechamiento sostenible de los bosques naturales en Colombia). Revista Colombia Forestal, 2001-12-00 V: 7. Available at: <http://revistas.udistrital.edu.co/ojs/index.php/colfor/article/view/3208/4697> [accessed 26 September 2016].
- FAO (2002). *Current status of the information on forestry management*. [online] Available at: <ftp://ftp.fao.org/docrep/fao/006/AD392S/AD392S00.pdf> [Accessed 23 September 2016].
- García Romero H. (2011) *Deforestation in Colombia, Challenges and outlooks* [online] (Deforestación en Colombia, Retos y Perspectivas). Fedesarrollo. Available at: [http://www.fedesarrollo.org.co/wp-content/uploads/2011/08/KAS-SOPLA\\_Deforestaci%C3%B3n-en-Colombia-retos-y-perspectivas.pdf](http://www.fedesarrollo.org.co/wp-content/uploads/2011/08/KAS-SOPLA_Deforestaci%C3%B3n-en-Colombia-retos-y-perspectivas.pdf) [Accessed 25 August 2016].

##### *Interviews with experts*

Conversations with various experts were carried out in October 2016. They helped the authors of this report to better understand the applicable legislation, as well as the risks connected to each legislation category. Within this subsectio, representatives of the following bodies were interviewed: Ministry of the Environment and Sustainable Development (Ministerio de Ambiente y Desarrollo Sostenible, MADS), FAO Representation in Colombia, World Wildlife Fund (WWF), Risaralda Regional Autonomous Corporation (Corporación Autónoma Regional de Risaralda, CARDER), Cundinamarca Regional Autonomous Corporation (Corporación Autónoma Regional de Cundinamarca, CAR), Antioquia Forestry Department (Cadena Forestal de Antioquia).

#### 1.8.5. Risk determination

##### *Overview of Legal Requirements*

###### GENERAL LEGISLATION

Specific silvicultural systems are not regulated in Colombian law. This is a technical issue, and each case is resolved by officials of the authority in charge of forest harvesting or a silvicultural system, in accordance with the biological and physical characteristics of the area and the harvested site.

As regards natural forests, the Forest Harvesting Regime includes references to conditions for harvesting, which are the following:

- Section 11. Owners of permanent natural forest harvesting sites in public or private land shall guarantee the preservation of specimens of every diameter class in the forest being harvested in order to contribute to resource sustainability.
- Section 25. Forest management and forest harvesting plans for areas measuring twenty (20) hectares or more shall include a chapter on environmental considerations. Said chapter shall include detailed information on required and planned action to prevent, mitigate, control, compensate and correct any impact or harmful effect of forest harvesting.
- Section 26. The chapter on the environmental consideration of each plan shall not be necessary in wild flora exploitation in areas measuring less than twenty (20) hectares. However, within the resolutions granting harvesting rights, the Corporations shall establish the user's obligations to prevent, mitigate, compensate and correct any harmful environmental effect caused by their actions.

As regards forest plantations, Decree N° 1498 of 2008 (Decreto N° 1498 de 2008) states the following condition regarding forest harvesting: no permits or other additional requirements shall be necessary to build forest paths or roads unless this activity requires the exploitation, or use of, or affects, renewable natural resources, in which case a permit shall be requested and obtained from the competent authority (sections 7 and 8).

If the intervention affects a watercourse, a permanent or temporary occupation permit shall be necessary, as stated in Decree N° 1541 of 1978 (Decreto N° 1541 de 1978). If the occupation requires harvesting the natural cover, refer to Decree N° 1791 of 1996, section 17 (Decreto N° 1791 de 1996, artículo 17) for the one-time harvesting of a natural forest; the application must include within the harvesting plan a statistical inventory whose sampling error is smaller than 15% and a 95% probability (section 18).

### *Description of Risk*

#### Natural forest

- Usually, forest management plans (PMFs) are legally required documents rather than technical instruments applicable to the sustainable harvesting and management of the forest. According to a study by Colombia Forestal (2001), PMFs are considered mere administrative formalities necessary to start harvesting and, indirectly, to obtain the relevant laissez-passer (transportation) documents, which can also be used to transport existing forest products. Sometimes, PMFs have technical and scientific deficiencies in areas such as inventory design, silvicultural methods or practices, cycle determination and tree felling options. The above is reflected in the differences between what is done on site and what was set out in the plan.
- The study from García Romero (2011) also points out deficiencies in the State's supervision and monitoring of permits, as well as the effective implementation of the PMF. This could mean that what was planned and set out in the document is not being put into practice; that is, that the commitments and restrictions included in the resolution on harvesting are not upheld in practice. To date, there are 33 Regional Autonomous Corporations. However, there is a big heterogeneity on the capacities and management within the Corporations that affect on the control and management system at the territorial level. These differences between Corporations reflect and enhance inequities in the territory. Also, the officials have reduced budgets and sometimes confronts groups of

power that alter the relationship between State and users and they determine their own rules of the game, hindering the work of the officials.

- The Colombia Forestal (2001) study also found a lack of familiarity with the technical document on site. This highlights the differences between the planned action and what is done in practice, which can harm environmental values by, for example, not respecting minimum diameter cutting standards, not taking care to prevent any impact on natural water sources and generally not fulfilling established technical commitments. This question was also confirmed with experts during the interviews done.
- An analysis by FAO reveals the State's direct presence and effective action in harvesting areas is inadequate. The State's monitoring, assessment and control have been limited or deficient, which means that the implementation of technical action on site cannot be monitored. This situation is blamed on institutional weakness, an insufficient budget, lack of qualified staff, a number of indolent officials, and people's inclination to avoid controls.
- Bureaucracy is also excessive; sometimes it makes interaction with users difficult because the administration is perceived as problematic, which excuses and facilitates attitudes not compliant with regulations.

#### Forest plantations

- In interviews with the Colombian Agricultural Institute (Instituto Colombiano Agropecuario - ICA) it was pointed out that management plans are only requested when the plantation has obtained a Forest Incentive Certificate (Certificado de Incentivo Forestal, CIF), and that the ICA does not verify its fulfilment; therefore, on-site activities are not monitored in accordance with the plan.
- On the other hand, small, medium or large plantations which have not obtained a CIF are not obliged to draw up a forest management plan or to monitor their forest harvesting activities. Large companies always have management plans and monitor their plantations to keep track of outputs; however, as no on-site monitoring is being conducted by another government body, there is a risk that the plan is not being complied with.

One of the most enlightening references for the study of the scale of illegal felling of natural forests is the survey commissioned by IDEAM and conducted by ECOFOREST in 2009 (IDEAM, 2009), where authorised volumes of timber felling — as registered by the Regional Autonomous Corporation (CAR) in charge— are compared against volumes of wood consumption, based on estimates obtained from interviews and the set-up of extensive systems. The study concluded that the percentage of unregistered timber was between 33% and 55%, depending on the model being used. Illegal felling concentrates mainly in natural forest areas, with a higher occurrence rate in the Pacific region (Chocó- Darién) and the Amazon.

#### *Risk Conclusion*

This indicator has been evaluated as specified risk. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

#### **1.8.6. Risk designation and specification**

Specified risk

### 1.8.7. Control measures and verifiers

- Harvesting shall be conducted within the authorised boundaries of the FMU.
- Harvesting shall not take place in areas where harvesting is legally prohibited.
- Tree species or selected trees found within the FMU for which felling is prohibited shall be listed in operational plans.
- If the company has a forest management plan, conduct a field visit to check that it is being implemented and monitored.
- Conduct a field visit to check that the harvesting site matches the site stated on the plantation registry.
- If the Administrative Act on the harvesting of natural forest and protective producer forest plantations states any restrictions, conduct a field visit to check they are being respected.
- Check with the owner whether any riverbed occupation or natural forest harvesting permits were requested; if so, check for any resolutions and conduct a field visit.

## 1.9. Protected sites and species

*International, national, and sub national treaties, laws, and regulations related to protected areas allowable forest uses and activities, and/or, rare, threatened, or endangered species, including their habitats and potential habitats. Risk relates to illegal harvesting within protected sites, as well as illegal harvest of protected species. Note that protected areas may include protected cultural sites, including sites with historical monuments.*

### 1.9.1. Applicable laws and regulations

#### PROTECTED AREAS

- Act Nº 2 of 1959: Regulating the national forest economy and the preservation of renewable natural resources. Section 1. Forest Reserve. (Ley Nº 2 de 1959: por la cual se dictan normas sobre economía forestal de la nación y conservación de recursos naturales renovables. Artículo 1: Reserva Forestal.) Published on: 16 December 1959. Available at: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=9021>
- Decree Nº 622 of 1977: Partially regulating chapter V, title II, part XIII, volume I of Decree-Law Nº 2811 of 1974 on the system of national natural parks; Act Nº 23 of 1973 and Act Nº 2a of 1959. General regulations applicable to all exceptional value areas. Section 18. (Decreto Nº 622 de 1977: reglamentando parcialmente el capítulo V, título II, parte XIII, libro II del Decreto-Ley Nº 2811 de 1974 sobre el sistema de parques nacionales; la Ley Nº 23 de 1973 y la Ley Nº 2a de 1959. Reglamentos generales aplicables al conjunto de áreas con valores excepcionales. Artículo 18.) Published on: 16 March 1977. Available at: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=8265>
- 1991 Colombian Constitution, Title II, Chapter 3: On collective and environmental rights. Section 79. (Constitución Política de Colombia de 1991, Título II, Capítulo 3: De los Derechos Colectivos y del Ambiente. Artículo 79.) Available at: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=4125>



- Act N° 357 of 1997: adopting the "Convention on Wetlands of International Importance, Especially as the Habitat of Waterfowl", signed in Ramsar on 2 February 1971. Section 2.
- (Ley N° 357 de 1997: por medio de la cual se aprueba la "Convención Relativa a los Humedales de Importancia Internacional Especialmente como Hábitat de Aves Acuáticas", suscrita en Ramsar el dos (2) de febrero de 1971. Artículo 2.) Published on: 21 January 1997. Available at: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=344>
- Act N° 356 of 1997: Adopting the "Protocol on areas and wildlife subject to special protection in the Convention for the Protection and Development of the Marine Environment in the Wider Caribbean Region", signed in Kingston on 18 January 1990, and the "Appendixes to the Protocol on areas and wildlife subject to special protection in the Convention for the Protection and Development of the Marine Environment in the Wider Caribbean Region", adopted in Kingston on 11 June 1991. Section 4. Establishment of protected areas. (Ley N° 356 de 1997: Por medio de la cual se aprueban el "Protocolo relativo a las áreas y flora y fauna silvestres especialmente protegidas del Convenio para la Protección y el Desarrollo del Medio Marino de la Región del Gran Caribe", hecho en Kingston el 18 de Enero de 1990 y los "Anexos al protocolo relativo a las áreas y flora y fauna silvestres especialmente protegidas del Convenio para la Protección y el Desarrollo del Medio Marino de la Región del Gran Caribe", adoptados en Kingston el 11 de Junio de 1991. Artículo 4. Establecimiento de áreas protegidas.) Published on: 21 January 1997. Available at: [http://www.minambiente.gov.co/images/normativa/leyes/1997/ley\\_0356\\_1997.pdf](http://www.minambiente.gov.co/images/normativa/leyes/1997/ley_0356_1997.pdf)
- Decree N° 2372 of 2010: Regulating Decree-Law N° 2811 of 1974, Act N° 99 de 1993, Act N° 165 of 1994 and Decree-Law N° 216 of 2003. Section 10-18. National System of Protected Areas. (Decreto N° 2372 de 2010: Por el cual se reglamenta el Decreto-Ley N° 2811 de 1974, la Ley N° 99 de 1993, la Ley N° 165 de 1994 y el Decreto-Ley N° 216 de 2003. Artículo 10-18. Sistema Nacional de Áreas Protegidas.) Published on: 01 July 2010. Available at: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=39961>

#### PROTECTED OR ENDANGERED SPECIES

- Act N° 17 of 1981: Adopting the "Convention on International Trade in Endangered Species of Wild Fauna and Flora", signed in Washington, D.C. on 3 March 1973. Section 6. Permits and certificates. (Ley N° 17 de 1981: Por la cual se aprueba la "Convención Sobre el Comercio Internacional de Especies Amenazadas de Fauna y Flora Silvestres", suscrita en Washington, D.C. el 3 de marzo de 1973. Artículo 6: Permisos y certificados.) Available at: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=45530>
- Act N° 5 of 1976: Adopting the "Agreement for the Preservation of Wild Flora and Fauna in the Amazon territories of the Republic of Colombia and the Federative Republic of Brazil," signed in Bogotá on 20 June 1973. Section 3. (Ley N° 5 de 1976: Por la cual se aprueba el Acuerdo Para La Conservación De La Flora Y De La Fauna De Los Territorios Amazónicos De La República De Colombia y de La República Federativa Del Brasil, Firmado En Bogotá El 20 De Junio De 1973. Artículo 3.) Published on: 23 January 1976. Available at: [http://www.icbf.gov.co/cargues/avance/docs/ley\\_0005\\_1976.htm](http://www.icbf.gov.co/cargues/avance/docs/ley_0005_1976.htm)
- Act N° 29 of 1980: Amazon cooperation agreement between the Republics of Colombia and Ecuador, signed in Quito on 2 March 1979. Section 2. (Ley N° 29 de 1980: Acuerdo



de cooperación amazónica entre las Repúblicas de Colombia y Ecuador, firmado en Quito el 2 de marzo de 1979. Artículo 2.) Published on: 6 November 1980. Available at:

[http://www.icbf.gov.co/cargues/avance/docs/ley\\_0029\\_1980.htm](http://www.icbf.gov.co/cargues/avance/docs/ley_0029_1980.htm)

- Act N° 165 of 1994: Adopting the "Convention on Biological Diversity", signed in Rio de Janeiro on 5 June 1992. Sections 8 and 9: In-situ and ex-situ conservation. (Ley N° 165 de 1994: Por medio de la cual se aprueba el "Convenio sobre la Diversidad Biológica", hecho en Río de Janeiro el 5 de junio de 1992. Artículos 8 y 9. Conservación in situ y conservación ex situ.) Published on: 9 November 1994. Available at: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=37807>
- Resolution N° 192 of 2014: By means of which the list of endangered wildlife species in Colombia's biological diversity on the national territory is established, and other regulations are issued. (Resolución N° 192 de 2014: Por la cual se establece el listado de las especies silvestres amenazadas de la diversidad biológica colombiana que se encuentran en el territorio nacional, y se dictan otras disposiciones.) Published on: 10 February 2014. Available at: [http://www.icbf.gov.co/cargues/avance/docs/resolucion\\_minambienteds\\_0192\\_2014.htm](http://www.icbf.gov.co/cargues/avance/docs/resolucion_minambienteds_0192_2014.htm)

#### 1.9.2. Legal authority

- Colombian Agricultural Institute (Instituto Colombiano Agropecuario, ICA)
- Ministry of the Environment and Sustainable Development (Ministerio de Ambiente y Desarrollo Sostenible, MADS).
- Competent Regional Autonomous Corporation (Corporación Autónoma Regional).
- Special Administration Unit for National Natural Parks (Unidad Administración Especial de Parques Nacionales Naturales).

#### 1.9.3. Legally required documents or records

- Forest plantations and productive agroforestry systems: ICA registry
- Protective producer forest plantations: resolution by the Regional Autonomous Corporation
- Public natural forest or forest belonging to the National System of National Natural Parks (Sistema Nacional de Parques Nacionales Naturales): A resolution by the Regional Autonomous Corporation (Corporación Autónoma Regional) or a National Environmental Licence Authority (Autoridad Nacional de Licencias Ambientales, ANLA) Environmental Licence and Management Plan

#### 1.9.4. Sources of Information

##### *Non-Government sources*

- [rsis.ramsar.org](http://rsis.ramsar.org) (N.Y.) *RAMSAR sites in Colombia*. [online] Available at: [https://rsis.ramsar.org/ris-search/?f\[0\]=regionCountry\\_en\\_ss%3AColombia](https://rsis.ramsar.org/ris-search/?f[0]=regionCountry_en_ss%3AColombia) [Accessed 12 September 2016].

- El Espectador (2016) *Los siete puntos de mayor deforestación en Colombia*. [online] Available at: <http://www.elespectador.com/noticias/medio-ambiente/los-siete-puntos-de-mayor-deforestacion-colombia-articulo-628404> [accessed 21 April 2016]
- El Colombiano (2015). *Áreas protegidas golpeadas por la deforestación*. [online] News Article by María Victoria Correa. <http://www.elcolombiano.com/colombia/areas-protegidas-golpeadas-por-la-deforestacion-CY3265040> [Accessed 24 September 2016].
- Foro Nacional Ambiental (2007). *Sistema de áreas naturales protegidas de Colombia. Elementos para la evaluación de la política pública de conservación*. [online]. Available at: <http://library.fes.de/pdf-files/bueros/kolumbien/06468.pdf> [Accessed 24 September 2016].

### *Interviews with experts*

Conversations with various experts were carried out in October 2016. They helped the authors of this report to better understand the applicable legislation, as well as the risks connected to each legislation category. Within this subsection, representatives of the following bodies were interviewed: Ministry of the Environment and Sustainable Development (Ministerio de Ambiente y Desarrollo Sostenible, MADS), FAO Representation in Colombia, Antioquia Indigenous Peoples Organization (Organización de Indígenas de Antioquia, OIA), Cundinamarca Regional Autonomous Corporation (Corporación Autónoma Regional de Cundinamarca, CAR), National Environmental Licence Authority (Autoridad Nacional de Licencias Ambientales, ANLA), Social and Environmental Management Foundation (Fundación Gestión Social y Ambiental) and private sector companies.

### **1.9.5. Risk determination**

#### *Overview of Legal Requirements*

#### **PROTECTED AREAS**

In Colombia, there are laws and institutions in charge of defining, upholding and monitoring the categories established for the National Protected Areas System (Sistema Nacional de Áreas Protegidas, SINAP), which, according to Decree N° 2372 of 2010, section 10 (Decreto N° 2372 de 2010, artículo 10), are as follows:

- a) Areas within the System of National Natural Parks (Sistema Nacional de Parques Nacionales Naturales).
- b) Protective Forest Reserves (Reservas Forestales Protectoras).
- c) Regional Natural Parks (Parques Naturales Regionales).
- d) Integrated Management Districts (Distritos de Manejo Integrado).
- e) Soil Conservation Districts (Distritos de Conservación de Suelos).
- f) Recreation Areas (Áreas de Recreación).
- g) Civil Society's Natural Reserves (Reservas Naturales de la Sociedad Civil).

Regulation N° 622 of 1977, section 18 (Norma N° 622 de 1977, artículo 18) outlines the zoning of the System of National Natural Parks, stating their use and environmental value and defining the zone type according to the type of protected area in question. Generally

speaking, there are areas where human intervention is banned, natural recovery areas, high activity areas and buffer zones.

Forest reserve zones were established by virtue of Act N° 2 of 1959 for the development of the forest economy and the protection of soils, waters and wildlife (section 1) (Ley N° 2 de 1959 para el desarrollo de la economía forestal y protección de suelos, aguas y vida silvestre (artículo 1)):

- a) Pacific Forest Reserve Zone (Zona de Reserva Forestal del Pacífico)
- b) Central Forest Reserve Zone (Zona de Reserva Forestal Central)
- c) Magdalena River Forest Reserve Zone (Zona de Reserva Forestal del Río Magdalena)
- d) Sierra Nevada de Santa Marta Forest Reserve Zone (Zona de Reserva Forestal de la Sierra Nevada de Santa Marta)
- e) Serranía de los Motilones Forest Reserve Zone (Zona de Reserva Forestal de la Serranía de los Motilones)
- f) Cocuy Forest Reserve Zone (Zona de Reserva Forestal del Cocuy)
- g) Amazon Forest Reserve Zone (Zona de Reserva Forestal de la Amazonía)

Colombia adopted the RAMSAR Convention by means of Act N° 357 of 1997 (Ley N° 357 de 1997), which came into force in October 1998. Up to date, 708,683 hectares in the country have been classified as Wetlands of International Importance in the country:

- a) Magdalena River Estuary Delta System, Santa Marta Great Swamp (Sistema Delta Estuarino del Río Magdalena, Ciénaga Grande de Santa Marta)
- b) Baudó River Delta (Delta del Río Baudó)
- c) Lake Otún Wetland Complex (Complejo de Humedales Laguna del Otún)
- d) Chingaza Lakes System (Sistema Lacustre de Chingaza)
- e) La Cocha Lake (Laguna de la Cocha)
- f) Wetland Complex at the Source of Inírida River (Complejo de Humedales de la Estrella Fluvial Inírida)

#### PROTECTED OR ENDANGERED SPECIES

The following agreements for the protection of endangered species have been adopted by Colombia:

- Agreement for the Preservation of Wild Flora and Fauna in the Amazon territories of the Republic of Colombia and the Federative Republic of Brazil, adopted by means of Act N° 5 of 1976 (Ley N° 5 de 1976). Section 3 includes the promotion of unified guidelines on forest conservation and total or partial bans on hunting for science or sports purposes.
- Amazon cooperation agreement between the Republics of Colombia and Ecuador, adopted by means of Act N° 29 of 1980 (Ley N° 29 de 1980). Section 2 includes the creation of a mixed committee. One of the aims of this committee is to improve the use of agricultural, fish, forest, mining and industrial resources.
- Convention on Biological Diversity. Adopted by means of Act N° 165 of 1994 (Ley N° 165 de 1994), which establishes guidelines for in-situ conservation by creating a system of

protected areas, promoting the protection of ecosystems and natural habitats, among other measures (section 8). As regards ex-situ conservation, it includes taking measures for the preservation of biological diversity components and research of plants, animals and microorganisms.

Lastly, in 2014, the Ministry of the Environment made available for consultation the list of endangered wildlife species in Colombia's biological diversity on the national territory, which includes fauna and flora species that are threatened in the country.

#### *Description of Risk*

- In Colombia there are 61 protected areas affected by deforestation, amounting to 7,718 hectares. Deforestation in these areas has been caused mainly by illegal mining, tree felling, expansion of pastures for cattle and wildfires. Other causes are the expansion of the agricultural border and illegal plantations, which affect 5,400 hectares. The cattle population in protected areas could be as high as 60,000 (National Natural Parks, as quoted in *El Colombiano*).
- The challenges that post-conflict Colombia will face have not been fully assessed yet. With armed actors gone, development could be strengthened in a number of areas (Fernando Trujillo, quoted in *El Colombiano*).
- In order to register a plantation, a government authority must state that the plantation has not been established nor will be established in a protected area. As regards plantations in protective-producing areas, the Administrative Act of registration sets out the conditions to guarantee that forest harvesting will have a minimal impact on the area.

#### *Risk Conclusion*

This indicator has been evaluated as specified risk. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

#### **1.9.6. Risk designation and specification**

Specified risk

#### **1.9.7. Control measures and verifiers**

- All legally protected areas (including species habitats) shall be included in the management plan or related documentation if required by the legislation.
- Legal established procedures for surveying, managing and protecting endangered or threatened species within the management unit shall be followed.
- Nature protection regulations such as protected areas, set-aside areas, protected species and hunting
- Check with the administration and on maps whether there are any legally declared protected areas in, or adjacent to, the forestry project under assessment.
- Conduct a field visit to check whether there are area indicator species potentially subject to conservation for their environmental value, supporting any decision with Resolution N° 192 of 2014 of the Ministry of the Environment (Resolución N° 192 de 2014 del Ministerio de Ambiente.)

- Conduct a field visit to check environmental restrictions are being complied with when the plantation or natural forest is subject to usage and harvesting restrictions (as outlined in the Environmental Authority's Administrative Act.)
- When necessary, consult stakeholders on protected areas, reservations, protected species and hunting.

## 1.10. Environmental requirements

*National and sub-national laws and regulations related to the identification and/or protection of environmental values including but not limited to those relating to or affected by harvesting, acceptable level for soil damage, establishment of buffer zones (e.g. along water courses, open areas, breeding sites), maintenance of retention trees on felling site, seasonal limitation of harvesting time, environmental requirements for forest machineries, use of pesticides and other chemicals, biodiversity conservation, air quality, protection and restoration of water quality, operation of recreational equipment, development of non-forestry infrastructure, mineral exploration and extraction, etc... Risk relates to systematic and/or large-scale non-compliance with legally required environmental protection measures that are evident to an extent that threatens the forest resources or other environmental values.*

### 1.10.1. Applicable laws and regulations

#### SANCTIONS REGIME

- Act Nº 491 of 1999: establishing an Environmental Insurance and amending the Criminal Code regarding environmental crime. Section 3. (Ley Nº 491 de 1999: por la cual se establece el Seguro Ecológico, se modifica el Código Penal en lo relativo a los delitos ambientales. Artículo 3.) Published on: 13 January 1999. Available at: [http://www.secretariassenado.gov.co/senado/basedoc/ley\\_0491\\_1999.html](http://www.secretariassenado.gov.co/senado/basedoc/ley_0491_1999.html)
- Resolution Nº 941 of 2009, establishing the Information Subsystem on the Usage of Renewable Natural Resources (SIUR) and adopting the Unified Environmental Register (RUA). Section 7: On operation. (Resolución Nº 941 de 2009: Crea el Subsistema de Información sobre Uso de Recursos Naturales Renovables (SIUR) y adopta el Registro Único Ambiental (RUA). Artículo 7: De la operación.) Published on: 26 May 2009. Available at: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=36360>
- Act Nº 1333 of 2009: By means of which the environmental sanctions procedure is established, and other regulations are issued. Sections 1, 5 and Title IV: Sanctions procedure. (Ley Nº 1333 de 2009: Por la cual se establece el procedimiento sancionatorio ambiental y se dictan otras disposiciones. Artículos 1, 5 y Título IV: Procedimiento Sancionatorio.) Published on: 25 September 2009. Available at: [http://www.secretariassenado.gov.co/senado/basedoc/ley\\_1333\\_2009.html](http://www.secretariassenado.gov.co/senado/basedoc/ley_1333_2009.html)
- Resolution Nº 415 of 01 March 2010: Regulating the Unified Register of Environmental Offenders (RUIA) and other decisions are taken. Sections 3 to 6. (Resolución Nº 415 del 1 de marzo de 2010: por la cual se reglamenta el Registro Único de Infractores Ambientales (RUIA) y se toman otras determinaciones. Artículos del 3 al 6.) Published on: 1 March 2010. Available at: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=39100>

#### USE OF AND IMPACT ON NATURAL RESOURCES

- Decree Nº 1541 of 1978 and Decree Nº 2811 of 1974. Use of surface water and groundwater. Sections 28 and 30, 36, 54. (Decreto Nº 1541 de 1978 y Decreto Nº 2811

de 1974. Aprovechamiento de aguas superficiales y subterráneas. Artículo 28 y 30, 36, 54.) Published on: 28 July 1978. Available at:

<http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=1250>

- Decree N° 1449 of 1977: Regulations on the conservation and protection of water, forests, terrestrial and aquatic fauna. Section 3. (Decreto N° 1449 de 1977: Disposiciones sobre conservación y protección de aguas, bosques, fauna terrestre y acuática. Artículo 3.) Published on: 27 June 1977. Available at:  
[http://www.minambiente.gov.co/images/normativa/app/decretos/35-dec\\_1449\\_1977.pdf](http://www.minambiente.gov.co/images/normativa/app/decretos/35-dec_1449_1977.pdf)
- Decree N° 1498 of 2008. Sections 4 and 8. (Decreto N° 1498 de 2008. Artículos 4 y 8.) Published on: 2 May 2008. Available at:  
<http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=30098>

#### PESTICIDE USE

- Act N° 9 of 1979: Establishing health measures. Title III: Occupational health - Section 144. (Ley N° 9 de 1979: Por la cual se dictan medidas sanitarias. Título III: Salud ocupacional - Artículo 144.) Published on: 24 January 1979. Available at:  
<http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=1177>
- Decree N° 1843 of 1991: Partially regulating Titles III, V, VI, VII and XI of Act N° 9 of 1979, on the use and management of pesticides. Chapter IX: On use - Sections 83 to 87. Chapter XII: On pesticide waste - Sections 152 to 156. (Decreto N° 1843 de 1991 por el cual se reglamentan parcialmente los títulos III, V, VI, VII y XI de la Ley N° 09 de 1979, sobre uso y manejo de plaguicidas. Capítulo IX De la Aplicación - Artículos del 83 al 87. Capítulo XII De los desechos y los residuos de plaguicidas - Artículos 152 al 156.) Published on: 22 July 1991. Available at:  
[https://www.invima.gov.co/images/stories/normatividad/decreto\\_1843\\_1991.pdf](https://www.invima.gov.co/images/stories/normatividad/decreto_1843_1991.pdf)

#### EMISSIONS INTO THE ATMOSPHERE

- Act N° 769 of 2002: By means of which the National Land Transport Code (Código Nacional de Tránsito Terrestre) is issued, and other regulations are established. Chapter IX: Environmental protection. Sections 46 and 103. (Ley N° 769 de 2002: por la cual se expide el Código Nacional de Tránsito Terrestre y se dictan otras disposiciones. Capítulo IX: Protección ambiental. Artículos 46 y 103.) Published on: 6 August 2002. Available at:  
<http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=5557>
- Resolution N° 910 of 2008: Regulating the acceptable levels of pollutants emission for land mobile sources of pollution, regulating Decree N° 948 of 1995, section 91, and issuing other regulations. Chapter IV. Monitoring and control of mobile sources. Sections 17 and 22. (Resolución N° 910 de 2008: por la cual se reglamentan los niveles permisibles de emisión de contaminantes que deberán cumplir las fuentes móviles terrestres, se reglamenta el artículo 91 del Decreto N° 948 de 1995 y se adoptan otras disposiciones. Capítulo IV: Vigilancia y control de las fuentes móviles. Artículos 17 y 22.) Published on: 5 June 2008. Available at:  
<http://www.ideam.gov.co/documents/51310/63322/RESOLUCION+910+DE+2008+FUENTES+MOVILES.pdf/ae4ea6bb-c877-43e2-b360-c07a003df1b3>

#### 1.10.2. Legal authority



#### Sanctions regime

- Registration in the Unified Environmental Register (Registro Único Ambiental, RUA)
- Monitoring of offenders registered in the Unified Register of Environmental Offenders (Registro Único de Infractores Ambientales, RUIA)

#### Use of natural resources

- Resolution on one-time forest harvesting
- Resolution on construction on water sources
- Resolution on the use of water from water sources

#### Pesticide use

- List of chemicals used
- Register with the authorities (RESPEL) if production exceeds 10 kg/month
- Waste disposal certificate
- Solid waste management plan (Plan de gestión de residuos sólidos, PGIRS)

#### Air emissions

- Vehicle inspection

#### 1.10.3. Legally required documents or records

- Reports of regional offices of environmental protection agency and State Forest Service

#### 1.10.4. Sources of information

##### *Government sources*

- Colombian Institute of Technical Standards and Certification (ICONTEC) (2009). *Colombian Technical Guide GTC 24 of 2009*. [online] Waste classification. Available at: <http://www.bogotaturismo.gov.co/sites/intranet.bogotaturismo.gov.co/files/GTC%2024%20DE%202009.pdf> [Accessed 31 August 2016].
- Colombian Institute of Technical Standards and Certification (ICONTEC) (2007). *GTC 53-8: Guide for minimizing the environmental impacts of packaging and packaging waste*. [online] Available at: <https://docs.google.com/file/d/0B7IuWY0-NcvzQWxuLU9sRG9CWIE/edit> [Accessed 31 August 2016].
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- Ministerio de Ambiente y Desarrollo Sostenible (2011). *Consultation of infractions or environmental sanctions*. [online] Available at: [http://vital.anla.gov.co/SILPA\\_UT\\_PRE/RUIA/ConsultarSancion.aspx?Ubic=ext](http://vital.anla.gov.co/SILPA_UT_PRE/RUIA/ConsultarSancion.aspx?Ubic=ext)
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#### *Interviews with experts*

Conversations with various experts were carried out in October 2016. They helped the authors of this report to better understand the applicable legislation, as well as the risks connected to each legislation category. Within this subsection, representatives of the following bodies were interviewed: Ministry of the Environment and Sustainable Development (Ministerio de Ambiente y Desarrollo Sostenible, MADS), FAO Representation in Colombia, Antioquia Indigenous Peoples Organization (Organización de Indígenas de Antioquia, OIA), Cundinamarca Regional Autonomous Corporation (Corporación Autónoma Regional de Cundinamarca, CAR), National Environmental Licence Authority (Autoridad Nacional de Licencias Ambientales, ANLA), Antioquia Forestry Department (Cadena Forestal de Antioquia), Social and Environmental Management Foundation (Fundación Gestión Social y Ambiental) and private sector companies.

#### **1.10.5. Risk determination**

##### *Overview of Legal Requirements*

##### **SANCTIONS REGIME**

The environmental sanctions regime was established by means of Decree N° 1333 of 2009 (Decreto N° 1333 de 2009), according to which the State, through the Ministry of the Environment, has the power to punish environmental crimes (Section 1). Sanctions can only

be imposed by the competent authority in charge of granting the environmental licence, permit, concession and other authorisations and instruments regarding environmental management and control, subject to exhaustion of the sanction proceedings.

According to section 5, environmental infringements shall be defined as any action or omission breaching the rules contained in the National Code on Renewable Natural Resources and the Environment (Código de Recursos Naturales Renovables), Decree-Law N° 2811 of 1974 (Decreto-ley N° 2811 de 1974), Act N° 99 of 1993 (Ley n° 99 de 1993), Act N° 165 of 1994 (Ley N° 165 de 1994), any additional environmental regulations in force replacing or amending the aforementioned instruments, as well as administrative acts by the competent environmental authority.

The Ministry of the Environment, by virtue of Resolution N° 0941 of 2009 (Resolución N° 0941 de 2009), sets up the Unified Environmental Register (Registro Único Ambiental). Individuals and legal entities who use and exploit natural resources must register therein. This information will be disclosed by the Environmental Authorities through the Information Subsystem on the Use of Renewable Natural Resources (Subsistema de Información Sobre Uso de Recursos Naturales Renovables, SIUR).

As regards monitoring environmental infringements, there is a Unified Register of Environmental Offenders (Registro Único de Infractores Ambientales, RUIA). The Resolution regulates the RUIA through the application of all duly executed administrative acts by means of which the environmental authorities have imposed any of the following sanctions:

- Fines.
- Temporary or final closure of facilities or buildings, or temporary or final discontinuation of services.
- Revocation or expiration of the environmental licence, authorisation, concession, permit or register.
- Demolition of the works. The offender shall bear the costs.
- Definitive confiscation of exotic wild specimens and species.
- Restitution of wild fauna and flora specimens.
- Community service on the environmental authority's conditions whenever this sanction has been imposed in lieu of a fine.

Any environmental authority which imposes any of the environmental administrative sanctions described in the previous section shall register and/or update the data on environmental offenders registered in the Unified Register of Environmental Offenders (Registro Único de Infractores Ambientales, RUIA) in the last five (5) days of the month.

The data contained in the register are public by virtue of section 6. They are managed by the Ministry of the Environment, with technical support provided by the Corporation. The duration of the sanctions ranges between 6 months (when a regulation has been breached but the environment has not been affected) to 2 years, depending on the impact caused and its remedy. The above is in line with section 9 of the Resolution.

#### USE OF AND IMPACT ON NATURAL RESOURCES

The use and exploitation of water resources is regulated by Decree N° 1541 of 1978 (Decreto N° 1541 de 1978). It states that the use permit can be obtained by means of an act, a

concession, a permit or an association, which can be requested for irrigation and silviculture, timber floating, agriculture and fisheries, among other activities (section 36). Section 54 outlines the terms and conditions of the concession, which include: amount of water to be consumed, destination of the water, information on the collection and diversion system, name of the source.

As regards protection and conservation of forests, property owners are under the obligation to: maintain the forest cover in the protected forest areas in the property, which, according to Decree N° 1449 of 1977, section 3 (Decreto N° 1449 de 1977, artículo 3), are as follows:

- Water sources within 100 metres or more from the edge of the property.
- A band, at least 30 metres wide, parallel to the high-tide marks along each side of permanent and temporary rivers and streams, and around lakes and water reservoirs;
- Land with gradients higher than 100% (45).

Decree N° 1498 of 2008 (Decreto N° 1498 de 2008) also states the following: whenever the establishment of commercial agroforestry systems or forest plantations requires the exploitation or use of renewable natural resources, or affects them, an authorisation or permit shall be requested and obtained from the competent environmental authorities. In any case, in Colombia it is not allowed to clear natural forest in order to set up commercial agroforestry systems or forest plantations, or agricultural plantations (section 8).

#### PESTICIDE USE

Act N° 9 of 1979 on health measures (Ley N° 9 de 1979 sobre las medidas sanitarias) states that the waste originating in facilities producing, researching, packing or handling pesticides, as well as the waste from pesticide use, shall not be dumped directly into water courses or reservoirs, the soil or the air. Waste shall be treated and handled in order to prevent any health risks. The following sections of Decree N° 1842 of 1991 (Decreto N° 1842 de 1991) elaborate on the above:

- Section 83. The pesticide application equipment used shall be in perfect working order so as not to pose risks to the operator's health and to prevent any leaks which could harm the community or the environment.
- Section 84. The equipment shall be subject to maintenance or preservation in accordance with specifications which the producers, dealers or representatives are obliged to supply under their own responsibility.
- Section 85. The equipment used to apply pesticides shall be washed in areas intended for this use, avoiding any risks for the operators as well as the pollution of water sources or courses.

A buffer zone shall be designated around water bodies and courses, main roads, human and animal population centres or any other area under special protection. Said band shall be 10 metres wide for ground pesticide application and 100 metres wide for aerial application (Section 86).

On the other hand, the Decree also regulates waste disposal, and bans the reuse of empty pesticide containers. Any other treatment of pesticide containers shall be subject to authorisation from the Health Directorate Branch Office (Dirección Seccional de Salud) in accordance with instructions from the Health Ministry (Section 153).

Other waste, e.g. pesticide excess or remains, products for equipment washing or cleaning and contaminated utensils, accessories and garments shall be treated prior to their disposal taking into account their characteristics. To this end, these methods can be followed: Reuse, chemical treatment, burial, incineration or any other method approved by the Health Directorate Branch Offices (Section 154).

Waste treatment facilities must be authorised by the competent Health Directorate Branch Office before initiating any pesticide-related activity (Section 156).

#### AIR EMISSIONS

On air emissions, the National Land Transport Code (Código Nacional de Tránsito Terrestre), section 103, states that it is the Government's duty to regulate acceptable levels of pollutant emissions from mobile land sources using any kind of fuel. To this end, Resolution N° 910 of 2008 (Resolución N° 910 de 2008) warns sanction proceedings will be initiated for any diesel vehicles scoring 4 or above on the Ringelmann scale in three consecutive full accelerations (section 18). Section 22 contains the maximum acceptable emissions table.

In order to monitor and control vehicles in the country, the National Land Transport Code (Código Nacional de Tránsito Terrestre) requests the following: Any motor vehicle that has been registered and authorised for circulation in the national territory (including movable machinery) shall be registered by the competent authority in the National Motor Vehicle Register (Registro Nacional Automotor) managed by the Transport Ministry (Ministerio de Transporte). Trailers and semi-trailers shall also be registered. All registered and authorised motor vehicles shall present a valid vehicle inspection certificate fulfilling the requirements set out in the Code.

#### *Description of Risk*

- According to Caracol Radio (2010), Colombia's environmental law is quite strong, but few companies know and follow it. Thanks to legal instruments such as Decree N° 1299 of 2008 (Decreto N° 1299 de 2008), which requests the creation of an Environmental Management Department, and the environmental sanctions regime (Act N° 1333 of 2009 - Ley N° 1333 de 2009), today Colombia has the means to sanction actions that harm the environment, natural resources or human health (Minambiente).
- As a tropical country, Colombia has diverse climate conditions and a high biological diversity. This includes the microorganisms affecting agricultural crops and forest plantations. There is a wide range of available pesticides on offer. However, there is a lack of skills and technical assistance, and excessive use of pesticides. This has an impact on human health, as well as soils, water and biodiversity. In forest plantations, pesticide use cost and efficiency are controlled to prevent excessive use (CEIBA, CORNARE and DAMA-ANTIOQUIA, 2005).
- Colombian legislation is ambiguous. It is unclear on the areas around water sources that should be protected. A national regulation specifies an area of "up to 30 metres from the water course" but each Regional Autonomous Corporation (Corporación Autónoma Regional) can decide on the exact figure, which makes on-site monitoring difficult. On the other hand, the above does not take into account technical or geographical characteristics, which can compromise the economic viability of forest organisations. The State, acting through municipal agencies, must purchase any property containing draining basins in order to guarantee their protection.

- As regards waste, there is a general problem with its management and disposal in Colombia. According to MINAMBIENTE, 91% of Colombian municipalities do not sort their waste (bio-medical, household and industrial waste) and simply dump it in open-air landfills or bury it without fulfilling technical requirements, which causes soil pollution. No study has been carried out to determine the total area that has been polluted by solid waste. The impact of solid waste has not been researched either, because the impact varies depending on the location of the landfill.
- Collection, transfer and transport of solid waste is deficient or non-existent in the country, with the exception of a number of urban centres. Colombian cities and municipalities face similar problems when it comes to service coverage, especially in peripheral areas, where bad road infrastructure hinders access (Suarez, 2000).
- At best, 32% of waste produced in Colombia is appropriately disposed of in mechanically or manually operated landfills. 15% of waste is dumped into water bodies. 53% is dumped in open-air landfills, 15% of which are technically operated to some degree (Suarez, 2000).
- Stakeholders say that, in Colombia, administration is reactive, i.e. It only carries out checks and discovers infringements after receiving complaints from the community. This is true for both natural forests and forest plantations.
- As regards the use of chemicals for pest and disease control, there is no supervision from the State regarding the amount of product used or the ecosystem where it is applied. The Colombian Agricultural Institute (Instituto Colombiano Agropecuario, ICA) only provides registers of authorised herbicides and pesticides, whose instructions include how and where to use them. The ICA supports pest and disease control when a property owner finds and reports a source of infection.
- The study from García Romero (2011) also points out deficiencies in the State's supervision and monitoring of permits, as well as the effective implementation of the PMF. This could mean that what was planned and set out in the document is not being put into practice; that is, that the commitments and restrictions included in the resolution on harvesting are not upheld in practice. To date, there are 33 Regional Autonomous Corporations. However, there is a big heterogeneity on the capacities and management within the Corporations that affect on the control and management system at the territorial level. These differences between Corporations reflect and enhance inequities in the territory. Also, the officials have reduced budgets and sometimes confronts groups of power that alter the relationship between State and users and they determine their own rules of the game, hindering the work of the officials.

### *Risk Conclusion*

This indicator has been evaluated as specified risk. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

#### **1.10.6. Risk designation and specification**

Specified risk

#### **1.10.7. Control measures and verifiers**

- Administrative document checks to identify the Organisation's permits (water concession, one-time forest harvesting, discharge permit, quarrying permit, riverbed occupation permit).
- Administrative and on site checks of environmental restrictions and protected areas around water sources. Check the Administrative Act by the competent Environmental Authority for natural forests and protective producer forest plantations.
- Check whether the Organisation is listed in the Unified Register of Environmental Offenders (Registro Único de Infractores Ambientales, RUIA). If so, request documents proving the status of the sanction and consult the Environmental Authority. For queries, see the following link  
[http://vital.anla.gov.co/SILPA\\_UT\\_PRE/RUIA/ConsultarSancion.aspx?Ubic=ext](http://vital.anla.gov.co/SILPA_UT_PRE/RUIA/ConsultarSancion.aspx?Ubic=ext)
- When necessary, consultation with stakeholders shall confirm compliance with applicable laws.

### 1.11. Health and safety

*Legally required personnel protection equipment for persons involved in harvesting activities, use of safe felling and transport practice, establishment of protection zones around harvesting sites, and safety requirements to machinery used. Legally required safety requirements in relation to chemical usage. The health and safety requirements that shall be considered relate to operations in the forest (not office work, or other activities less related to actual forest operations). Risk relates to situations/areas where health and safety regulations are consistently violated to such a degree that puts the health and safety of forest workers at significant risk throughout forest operations.*

#### 1.11.1. Applicable laws and regulations

##### GENERAL LEGISLATION

- Substantive Labour Code (Código Sustantivo Del Trabajo): Adopted by means of Decree-Law N° 2663 of 5 August 1950, "on the Substantive Labour Code", published in the Official Gazette N° 27,407 of 9 September 1950, by virtue of the State of Emergency ordered by Extraordinary Decree N° 3518 of 1949. Title IV, Chapter II: Maintenance of order. (Código Sustantivo Del Trabajo: Adoptado por el Decreto Ley 2663 del 5 de Agosto de 1950 "Sobre Código Sustantivo Del Trabajo", Publicado En El Diario Oficial No 27.407 Del 9 De Septiembre De 1950, En Virtud Del Estado De Sitio Promulgado Por El Decreto Extraordinario No 3518 De 1949. Título IV Capítulo II Mantenimiento del orden.) Published on: 5 August 1950. Available at:  
<http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=33104>
- Resolution N° 2400 of 1979: Dictating dispositions on housing, hygiene and safety in the workplace. Section 5, Chapter VI on workers' camps. (Resolución N° 2400 de 1979: Por la cual se establecen algunas disposiciones sobre vivienda, higiene y seguridad en los establecimientos de trabajo. Artículo 5, Capítulo VI de los campamentos de los trabajadores.) Published on: 22 May 1979. Available at:  
<http://copaso.upbbga.edu.co/legislacion/Res.2400-1979.pdf>
- Act N° 9 of 1979: dictating health measures. Title III: Occupational health. (Ley N° 9 de 1979: por el cual se dictan medidas sanitarias. Título III: Salud ocupacional.) Published



on: 24 January 1979. Available at:

<http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=1177>

- Act Nº 11 of 1984: Reforming some regulations in the Substantive and Procedural Labour Codes. Section 10: use of working footwear and clothes. (Ley Nº 11 de 1984: Por la cual se Reforman Algunas normas de los Códigos Sustantivo y Procesal del Trabajo. Artículo 10: usos del calzado y vestido de labor.) Published on: 24 February 1984. Available at: [http://www.icbf.gov.co/cargues/avance/docs/ley\\_0011\\_1984.htm](http://www.icbf.gov.co/cargues/avance/docs/ley_0011_1984.htm)
- Resolution Nº 2013 of 1986: Regulating the organisation and operation of Health, Hygiene and Industrial Safety Committees in the workplace. Section 1. Health, Hygiene and Industrial Safety Committee. (Resolución Nº 2013 de 1986: Por la cual se reglamenta la organización y funcionamiento de los Comités de Medicina, Higiene y Seguridad Industrial en los lugares de trabajo. Artículo 1: Comité de Medicina, Higiene y Seguridad Industrial.) Published on: 6 June 1986. Available at: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=5411>
- Resolution Nº 1016 of 1989: Regulating the organisation, operation and form of the Occupational Health Programmes to be carried out by owners or employers in the country. (Resolución Nº 1016 de 1989: Por la cual se reglamenta la organización, funcionamiento y forma de los Programas de Salud Ocupacional que deben desarrollar los patronos o empleadores en el país.) Published on: 31 March 1989. Section 1: Occupational Health Programme. (Artículo 1: Programa de Salud Ocupacional.) Available at: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=5412#1>
- Decree Nº 1295 of 1994: Deciding the organisation and administration of the General System on Occupational Hazards. Chapter II: Occupational hazards. (Decreto Nº 1295 de 1994: Por el cual se determina la organización y administración del Sistema General de Riesgos Profesionales. Capítulo II: Riesgos profesionales.) Published on: 22 June 1994. Available at: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=2629>
- Resolution Nº 1068 of 1996: Adopting the Technical Manual on the Application of Agricultural Inputs. (Resolución Nº 1068 de 1996. Por la cual se adopta el Manual Técnico en Materia de Aplicación de Insumos Agrícolas.) Published on: 24 April 1996. Available at: <http://www.ica.gov.co/getattachment/071de030-b44e-4358-9ade-7bf66fe26569/1996R1068.aspx>
- Decree Nº 1530 of 1996: Partially regulating Act Nº 100 of 1993 and Decree-Law Nº 1295 of 1994. Chapter II: Occupational accidents and disease. (Decreto Nº 1530 de 1996: Por el cual se reglamentan parcialmente la Ley Nº 100 de 1993 y el Decreto-ley Nº 1295 de 1994. Capítulo II: Accidente de trabajo y enfermedad profesional.) Published on: 26 August 1996. Available at: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=8804>
- Resolution Nº 1401 of 2007: Regulating the investigation of Occupational Accidents and Incidents. Chapter II: Investigation report. (Resolución Nº 1401 de 2007: Por la cual se reglamenta la investigación de Accidentes e Incidentes de Trabajo. Capítulo II: Informe de investigación.) Published on: 14 May 2007. Available at: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=53497>
- Resolution Nº 2346 of 2007: Regulating occupational medical assessment practices and the management and content of occupational medical records. Chapter II: Occupational



medical assessment. (Resolución N° 2346 de 2007: Regula la práctica de evaluaciones médicas ocupacionales y el manejo y contenido de las historias clínicas ocupacionales.)

Published on: 11 July 2007. Available at:

<http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=25815>

- Resolution N° 2646 of 2008: Issuing regulations and defining responsibilities for the identification, assessment, prevention, intervention and permanent monitoring of exposure to psychosocial occupational hazards and finding the origin of conditions caused by occupational stress. Section 14: Preventive and remedial measures on harassment in the workplace. (Resolución N° 2646 de 2008: Por la cual se establecen disposiciones y se definen responsabilidades para la identificación, evaluación, prevención, intervención y monitoreo permanente de la exposición a factores de riesgo psicosociales en el trabajo y para la determinación del origen de las patologías causadas por estrés ocupacional. Artículo 14: Medidas preventivas y correctivas de acoso laboral.) Published on: 17 July 2008. Available at: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=31607>
- Resolution N° 1956 of 2008: Adopting measures related to cigarette and tobacco consumption. Section 8: Strategy development by Occupational Hazards Administrators. (Resolución N° 1956 de 2008: Por la cual se adoptan medidas en relación con el consumo de cigarrillo o tabaco. Artículo 8: Desarrollo de estrategias por los Administradores de Riesgos Profesionales.) Published on: 30 May 2008. Available at: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=30565>
- Resolution N° 1918 of 2009: Amending sections 11 and 17 of Resolution N° 2346 of 2007 and issuing other regulations. Section 1, amending Section 11 of Resolution N° 2346 of 2007 on contracting occupational medical assessment and additional assessments and their cost. (Resolución N° 1918 de 2009: Modifica los artículos 11 y 17 de la Resolución N° 2346 de 2007 y se dictan otras disposiciones. Artículo 1 que modifica el Artículo 11 de la resolución 2346 de 2007 sobre contratación y costo de las evaluaciones médicas ocupacionales y valoraciones complementarias.) Published on: 5 June 2009. Available at: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=36469>
- Act N° 776 of 2012: Deciding the organisation, administration and benefits of the General System on Occupational Hazards. Section 1: Right to occupational accident or disease benefits. (Ley N° 776 de 2012: Por la cual se dictan normas sobre la organización, administración y prestaciones del Sistema General de Riesgos Profesionales. Artículo 1: Derecho a las prestaciones por accidente de trabajo o enfermedad profesional.) Published on: 17 December 2012. Available at: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=16752>
- Resolution N° 652 of 2012: Establishing the structure and operation of the Working Relations Committee in public bodies and private companies, and issuing other regulations. Chapter II: Structure and operation of Working Relations Committees. (Resolución N° 652 de 2012: Por la cual se establece la conformación y funcionamiento del Comité de Convivencia Laboral en entidades públicas y empresas privadas y se dictan otras disposiciones. Capítulo II: Conformación y funcionamiento de los Comités de Convivencia Laboral.) Published on: 30 April 2012. Available at: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=47374>
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- Resolution N° 1356 of 2012: Partially amending Resolution N° 652 of 2012. Section 2: amending Section 4 of Resolution N° 652 of 2012: Working Relations Committee. (Resolución N° 1356 de 2012: Por la cual se modifica parcialmente la Resolución N° 652 de 2012. Artículo 2 que modifica el Artículo 4 de la Resolución N° 652 de 2012. Comité de convivencia laboral.) Published on: 18 July 2012. Available at: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=48587>
- Act N° 1562 of 2012: Amending the occupational hazards system and issuing other regulations on occupational health. Section 30: Occupational accident and disease report. (Ley N° 1562 de 2012: Por la cual se modifica el sistema de riesgos laborales y se dictan otras disposiciones en materia de salud ocupacional. Artículo 30: Reporte de accidente de trabajo y enfermedad laboral.) Published on: 11 July 2012. Available at: <http://wsp.presidencia.gov.co/Normativa/Leyes/Documents/ley156211072012.pdf>
- Resolution N° 1409 of 2012: Establishing the safety protocol against falls from height at the workplace. Title II: Prevention and protection against falls from height. (Resolución N° 1409 de 2012: Por la cual se establece el reglamento de seguridad para protección contra caídas en trabajo en alturas. Título II: Programa de prevención y protección contra caídas de alturas.) Published on: 23 July 2012. Available at: [https://www.arlsura.com/files/res1409\\_2012.pdf](https://www.arlsura.com/files/res1409_2012.pdf)
- Decree N° 1443 of 2014: Issuing regulations for the implementation of the Management System for Safety and Health in the Workplace (SG-SST). Sections 1 and 12. (Decreto N° 1443 de 2014: Por el cual se dictan disposiciones para la implementación del Sistema de Gestión de la Seguridad y Salud en el Trabajo (SG-SST). Artículos 1 y 12.) Published on: 31 July 2014. Available at: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=58841>
- Decree N° 1477 of 2014: Issuing a list of occupational diseases. List of occupational diseases. Sections 1 and 4. (Decreto N° 1477 de 2014: Por el cual se expide la tabla de enfermedades laborales. Tabla de enfermedades laborales. Artículos 1 y 4.) Published on: 5 August 2014. Available at: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=58849#5>
- Decree N° 171 of 2016: Amending Volume 2, Part 2, Title 4, Chapter 6, Section 2.2.4.6.37, of Decree N° 1027 of 2015, Unified Decree Regulating Labour, on the transition for the implementation of the Management System for Safety and Health in the Workplace (SG-SST). Section 1. (Decreto N° 171 de 2016: Por medio del cual se modifica el artículo 2.2.4.6.37 del Capítulo 6 del Título 4 de la Parte 2 del Libro 2 del Decreto 1072 de 2015, Decreto Único Reglamentario del Sector Trabajo, sobre la transición para la implementación del Sistema de Gestión de la Seguridad y Salud en el Trabajo (SG-SST). Artículo 1.) Published on: 1 February 2016. Available at: <https://www.arlsura.com/index.php/decretos-leyes-resoluciones-circulares-y-jurisprudencia/51-decretos/2483-decreto-2071-de-2016>

#### INDIGENOUS AND TRIBAL PEOPLES

- Act N° 21 of 1991: Ratifying ILO Convention 169 on Indigenous and Tribal Peoples. (Ley N° 21 de 1991: Por la cual se ratifica el Convenio 169 de la OIT sobre pueblos

indígenas y tribales.) This act defines general policy, employment contracts and conditions, vocational training, craftsmanship and rural industry, social security and healthcare, education, media, contacts and cooperation across borders and administrations. Part V: Social security and healthcare. Sections 24 and 25. (Parte V: Seguridad social y salud. Artículos 24 y 25.) Published on: 6 December 1989. Available at: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=37032>

- Decree N° 1953 of 2014: Creating a special regime in order to start operating the Indigenous Territories as regards the administration of the Indigenous Peoples' own systems until Congress issues the act described in the Colombian Constitution, section 329. Title IV: Indigenous Peoples' Intercultural Healthcare System (SISPI). Chapters I, II and III. (Decreto N° 1953 de 2014: Por el cual se crea un régimen especial con el fin de poner en funcionamiento los Territorios Indígenas respecto de la administración de los sistemas propios de los pueblos indígenas hasta que el Congreso expida la ley de que trata el artículo 329 de la Constitución Política. Título IV: Sistema Indígena de Salud Propio Intercultural (SISPI). Capítulos I, II y III.) Published on: 7 October 2014. Available at: [http://www.icbf.gov.co/cargues/avance/docs/decreto\\_1953\\_2014.htm](http://www.icbf.gov.co/cargues/avance/docs/decreto_1953_2014.htm)

#### 1.11.2. Legal authority

- Labour Ministry (Ministerio del Trabajo).
- Health and Social Protection Ministry (Ministerio de Salud y la Protección Social).
- Occupational Hazards Insurance Company.

#### 1.11.3. Legally required documents or records

- Management System for Occupational Health and Safety (Sistema de Gestión de la Seguridad y Salud en el Trabajo) SG-SST
- Internal rules at the workplace (Reglamento interno de trabajo)
- Social Security Pay Sheet (Planilla de pago de seguridad social)
- Certificate of professional skills (Certificación de competencias laborales)

#### 1.11.4. Sources of information

##### *Government sources*

- Ministry of Labour (2016). *The Government extends the term to implement the Workplace Safety and Health System for one year*. [online] Available at: <http://www.mintrabajo.gov.co/febrero-2016/5791-gobierno-amplia-por-un-ano-plazo-para-implementar-el-sistema-de-seguridad-y-salud-en-el-trabajo.html> [Accessed 26 September 2016].

##### *Non-Government sources*

- ASFORES S.A.S (2010). *In Colombia, an employee has an accident every minute*. Available at: [http://asfores.com/novedad-mas\\_informacion-novedad-49.htm](http://asfores.com/novedad-mas_informacion-novedad-49.htm) [Accessed 26 September 2016].

##### *Interviews to experts*

Conversations with different experts carried out throughout October 2016 helped the authors of this report to understand better the applicable legislation and the risks associated with each category of the laws. Regarding this subcategory, representatives from different organizations were interviewed such as: Ministry of Labour.

#### **1.11.5. Risk determination**

##### *Overview of Legal Requirements*

###### GENERAL LEGISLATION

The new System looks for identifying the dangers, evaluating and assessing risks, establishing the corresponding controls by continuously improving the System in the companies and comply with the regulations about workplace risks. The aforementioned System was created by Decree 1443/2014, nowadays compiled by the sole Decree 1072/2015 formerly known as Occupational Health Program (Resolution 1016/1989 – Resolución 1016 de 1989).

In Decree 1443/2014, the mandatory directives to implement the Workplace Safety and Health Management System (MS-WSH, SG-SST in its Spanish acronym). These have to be applied by all public and private employers, recruiters of staff under a civil, commercial or administrative contract, solidarity economy organizations, cooperative sector organizations and temporary work agencies; moreover, the aforementioned directives must cover dependent employees, contractors, cooperative workers and workers on assignment (Article 1).

The MS-WSH must be adapted to the size and characteristics of the company. Likewise, it can be compatible with other management systems in the company and can also be integrated in them; besides, the company must have an annual plan in WSH in which goals, responsibilities, resources and action schedule should be identified in accordance with the minimum standards of the Quality Assurance Mandatory System, part of the Occupational Hazards General System. The parts of the System are listed on Article 12:

1. The policy and goals of the company regarding safety and health in the workplace (WSH), signed by the employer;
2. The assigned responsibilities for the implementation and continuous improvement of the Workplace Safety and Health Management System (MS-WSH);
3. The annual identification of dangers and the evaluation and assessment of risks;
4. The report of the health conditions together with the socio-demographic profile of the working population; this should follow the guidelines of the epidemiological monitoring programs in accordance with the existing risks in the organization;
5. The annual work plan in safety and health in the workplace (WSH) of the company, signed by the employer and the person on charge of the Workplace Safety and Health Management System (MS-WSH);
6. The annual training program in safety and health in the workplace (WSH) and its compliance, including induction and re-induction supports and trainings of dependent employees, contractors, cooperative workers and workers on assignment;
7. The WSH procedures and internal manuals;

8. The records of delivering personal protection equipment;
9. The records of delivering safety protocols, technical datasheet if applicable and other internal manuals of safety and health in the workplace;
10. The documents that support the call, voting and setting-up of the Workplace Safety and Health Joint Committee and their meeting acts or the delegations of the WSH lookout and the records of his/her actions;
11. The reports and investigations of incidents, accidents at work and occupational illnesses according to the applicable regulations;
12. The identification of threats together with the vulnerability evaluation and the corresponding prevention plans, preparation and response in case of emergency;
13. The epidemiological monitoring programs of the workers' health, including the results of the environmental measures and the health profiles generated the biological monitoring (the last only being applicable in accordance with hazard prioritization).

In case of having the services of a physician specializing in occupational medicine, all the aforementioned parts must be documented together with the individual results of biological monitoring, in compliance with the applicable regulations;

1. The record form of the inspections performed to facilities, machines or equipment;
2. The updated attachment of legal requirements which considers the regulations of the Occupational Hazards General System applicable to the company; and
3. The evidences of the preliminary paperwork to control the priority hazards.

This decree is applicable to all the organizations regardless the employees' number and it is currently undergoing a transition in the country. According to Decree 171/2016, the due date for the organizations (no matter their size) to implement 100% of the MS-WSH is January 31 2017: "All the public and private employers, recruiters of staff under a civil, commercial or administrative contract, solidarity economy organizations, cooperative sector organizations and temporary work agencies; moreover, the aforementioned directives must cover dependent employees, contractors, cooperative workers and workers on assignment will have to replace the Occupational Health Program with the Workplace Safety and Health Management System (MS-WSH) on January 31 2017 at the latest".

Concerning the endowment, the Labour Code, which was modified by Act 11 1984 (Ley 11 de 1984), points out that the contracting party is responsible for supplying the employees with working footwear and clothes; besides, they must be supplied three times a year (Article 8). In case temporary or permanent camps were needed, Chapter VI of Resolution 2400 lists the building specifications to ensure the working conditions of the employees.

The investigation of the accident causes, work accidents and occupational illnesses is carried out according to the established by the Decree 1530/1996, the Resolution 1401/2007 issued by the former Ministry of Social Protection (now Ministry of Labour) and the regulations that modify, add or replace them. The outcome of this investigation should allow the following actions among others:

1. To identify and document the shortcomings of the Workplace Safety and Health Management System (MS-WSH), which should be the support to implement the necessary pre-emptive and corrective actions and improvements;

2. To inform the employees directly related to the causes or controls about the outcome, so they will be able to take an active part in the development of the pre-emptive and corrective actions and improvements;
3. To inform the senior management about the absenteeism caused by incidents, work accidents and occupational illnesses; and
4. To make a contribution in the review process of the workplace safety and health management performed by the senior management, so that they may be also considered in the continuous improvement actions.

#### INDIGENOUS AND TRIBAL PEOPLES

Act 21/1991 states important directives about the health of indigenous and tribal peoples in Article 25:

1. Governments shall work to ensure that proper healthcare services are made available to interested peoples or that the means necessary to organize and render these services under their own responsibility and control are provided to them, so that they can enjoy the maximum level of physical and mental health.
2. Healthcare services shall be organized at a community level whenever possible. These services shall be planned and rendered in cooperation with the interested peoples and shall take into account their economical, geographical, social and cultural conditions as well as their pre-emptive methods, healing practices and traditional medicines.

This directive is stated in Decree 1953/2014 Title IV "Intercultural Indigenous' Self-care Health System" (IISHS, SISPI in its Spanish acronym), whereby a special set of rules is established in order to start running the Indigenous Territories regarding the administration of the indigenous peoples' own systems, who shall assume competences concerning health hazards management in accordance with the development level of the IISHS, whenever the conditions and requisites established by the Ministry of Labour and Social Protection and Healthcare Subcommittee are met (Article 83, no. 2).

According to Article 77, the parts of the indigenous healthcare system are:

1. Ancestral wisdom.
2. Organizational-political.
3. Training, creation and use of health knowledge.
4. Intercultural care and self-care of health.
5. Administration and management.

The health competences of the indigenous territories are the definition, adoption and execution of public healthcare actions and to assume competences on health hazard management. The competences of the service supply may be assumed directly by the indigenous territory, following the typical structures of the Indigenous Territories, according to the current regulations on MS-WSH and their own healthcare forms within the framework of IISHS.

#### *Description of Risk*

- In Colombia, the labour legislation doesn't differentiate between regulations for urban or rural workers. Rules are applicable to all of them, including laws in matters of prevention



and occupational hazards. Moreover, it doesn't make a distinction between hiring in indigenous or African-descendants communities' territories.

- Companies that don't comply with the implementation of the System as of January 31 2017 will be penalized with fines up to 1,000 current monthly minimum wages. In case of relapse or non-compliance with the correcting actions that should be adopted, operations may be suspended for a period of time up to 120 days or the final closure of the company. According to the remarks made by the consulted interested parties, the number of non-compliances is usually higher in small companies from rural areas and so the institutional staff may not be enough to carry out the necessary inspections about this issue in advance. Controls are normally done based on the complaints of workers or affected people.
- A raise in the workers' affiliation to the Occupational Hazards General System was detected throughout 2014: 7.6% compared with the previous year. Likewise, 8,897 occupational illnesses were reported, being the manufacturer industry the top of the list with 2,609 cases, followed by the real state sector (1,590) and the agriculture, cattle, hunting and forestry sector with 1,105 certified occupational illnesses (CCS, quoted in Asfores). The interested parties' remarks reflect a sense of scarce controls on legal health and safety requirements in the fields, being forestry the less controlled.

#### *Risk Conclusion*

This indicator has been evaluated as specified risk. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

#### **1.11.6. Risk designation and specification**

Specified risk

#### **1.11.7. Control measures and verifiers**

- Verify that the company has developed and implemented the Workplace Safety and Health System and the complementary plans.
- Verify the workers' payment form to confirm the status of the contributions to the social security system up to date.
- Check the workplace safety and health indicators of the organization.
- Carry out visual inspections of personal protection equipment, safety signals and working areas of the organization.
- Check the acts of the Workplace Coexistence Committee.
- If required, consult the Occupational Hazards Insurer about the status of the Workplace Safety and Health System Management.
- If required, to consult the Ministry of Labour about complaints or infractions.

#### **1.12. Legal employment**

*Legal requirements for employment of personnel involved in harvesting activities including requirement for contracts and working permits, requirements for obligatory insurances, requirements for competence certificates and other training requirements, and payment of social and income taxes*



*withhold by employer. Furthermore, the points cover observance of minimum working age and minimum age for personnel involved in hazardous work, legislation against forced and compulsory labour, and discrimination and freedom of association. Risk relates to situations/areas where systematic or large scale noncompliance with labour and/or employment laws. The objective is to identify where serious violations of the legal rights of workers take place, such as forced, underage or illegal labour.*

### **1.12.1. Applicable laws and regulations**

#### **GENERAL LEGISLATION**

- Decree-law 2663/1950 on substantive Labour Code. Title I, individual employment contract, Articles 23, 37 and 38. Title V, wages. Title VI, work day, Article 354 (Decreto Ley 2663 de 1950. Sobre Código Sustantivo Del Trabajo. Título I contrato individual de trabajo, artículos 23, 37 y 38. Título V Salarios; Título VI Jornada de trabajo. Artículo 354.) Published on: August 5 1950. Available at: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=33104>
- Resolution 734/2006, which establishes the procedure to adapt working sets of rules to the directives of Act 1010/2006, Article 1 (Ley 1010 de 2006. Artículo 1.) Published on: March 15 2006. Available at: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=19637>
- Act 1010/2006 (Ley 1010 de 2006), which states the adoption of measures to prevent, correct and penalize work harassment and other harassments in the workplace. Article 7. Published on: January 23 2006. Available at: [http://www.secretariassenado.gov.co/senado/basedoc/ley\\_1010\\_2006.html](http://www.secretariassenado.gov.co/senado/basedoc/ley_1010_2006.html)
- Act 1496/2011 (Ley 1496 de 2011), which guarantees equal wages and work payments between women and men and establishes means to eradicate any way of discrimination and other directives. Article 7. Published on: December 29 2011. Available at: <http://wsp.presidencia.gov.co/Normativa/Leyes/Documents/ley149629122011.pdf>
- Decree 1072/2015, by which it is issued the Sole Regulatory Decree on Labour Sector. Book 2 – Regulatory system of the labour sector. Published on: August 14 2015. Available at: <http://www.mintrabajo.gov.co/normatividad/decreto-unico-reglamentario-trabajo.html>

#### **FOR TRIBAL AND INDIGENOUS PEOPLES**

- Act 21/1991 (Ley 21 De 1991), which ratifies the ILO Agreement no. 169 on indigenous and tribal peoples. Part III – Hiring and working conditions. Published on: December 6 1989. Available at: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=37032>

### **1.12.2. Legal authority**

- Ministry of Labour
- Ministry of Social Protection

### **1.12.3. Legally required documents or records**

- Employment contract
- Affiliation to health, retirement pension and occupational hazards system.

- Internal Labour Regulations
- Payrolls

#### 1.12.4. Sources of information

##### *Government sources*

- Ministry of Labour (2016). *Colombia and the ILO become allies to fight against the poverty and the irregularities in the fields*. [online] Available at: <http://www.mintrabajo.gov.co/junio-2015/4535-colombia-y-oit-sellan-alianza-para-luchar-contr-la-informalidad-y-la-pobreza-en-el-campo-.html> [Accessed 26 September 2016].
- Ministry of Labour (2016). *Analysis on labour problems in the rural sector*. [online] Available at: <http://www.mintrabajo.gov.co/agosto-2016/6291-se-analiza-problematica-laboral-en-el-sector-rural.html> [Accessed 26 September 2016].
- Departamento Administrativo Nacional de Estadística (DANE) (2016). *Technical bulletin. Main indicators of labour market*. [online] July 2013. Available at: [https://www.dane.gov.co/files/investigaciones/boletines/ech/ech/bol\\_empleo\\_jul\\_16.pdf](https://www.dane.gov.co/files/investigaciones/boletines/ech/ech/bol_empleo_jul_16.pdf) [Accessed 26 September 2016].

##### *Non-Government sources*

- Portafolio newspaper (2015). *The country has 5.93 millions of irregular workers*. [online] Available at: <http://www.portafolio.co/economia/finanzas/pais-93-millones-trabajadores-informales-22578> [Accessed 26 September 2016].
- El Tiempo newspaper (2015). *In rural areas, Colombia is full of irregularities*. [online] Available at: <http://www.eltiempo.com/economia/sectores/trabajo-informal-en-colombia/16445625> [Accessed 26 September 2016].
- Informe Mensual del Mercado Laboral (2014). *Monthly report of labour underemployment, 2014*. [online] Available at: [http://www.fedesarrollo.org.co/wp-content/uploads/2014/07/IML-Mayo-2014\\_Web.pdf](http://www.fedesarrollo.org.co/wp-content/uploads/2014/07/IML-Mayo-2014_Web.pdf) [Accessed 26 September 2016].

##### *Interviews to experts*

Conversations with different experts carried out throughout October 2016 helped the authors of this report to understand better the applicable legislation and the hazards associated with each category of the laws. Regarding this subcategory, representatives from different organizations were interviewed such as: Ministry of Labour.

#### 1.12.5. Risk determination

##### *Overview of Legal Requirements*

##### GENERAL LEGISLATION

Substantive Labour Code. Decree-law 2663/1950 (Decreto Ley 2663 de 1950)

The Substantive Labour Code is the framework document for hiring and labour regulation in Colombia and it is applicable to all the inhabitants in the whole territory of the Republic, regardless their nationality. It defines labour as all the free human activities (whether material or intellectual, permanent or temporary) that a person carries out consciously at the

service of others, regardless their purpose, whenever it is performed under an employment contract.

Article 23 states the essential elements of labour:

- a) the personal activity of the worker, that means, performed by himself;
- b) The continuous worker's subordination or dependency from the employer, which enables the employer to demand compliance with orders about the way, duration or quantity of work at any time and also to impose sets of rules. The aforementioned subordination shall be kept throughout the whole duration of the contract and shall not affect the honour, dignity and minimum rights of the worker in accordance with the binding treaties or international agreements on human rights applicable to the country; and
- c) A wage as a payment for the service.

According to Section 37, an employment contract may be verbal or written; to be valid, it does not require any specific format, unless otherwise explicitly stated. The minimum wage is set on an annual basis and it is considered as the one which every worker has the right to receive in order to fulfil his/her normal needs or the ones from his/her family in a material, moral and cultural sense. Act 1496/2011 (Ley 1496 de 2011) modifies Section 143 of the SLC, which aims at guaranteeing the equality of wages and any other way of work payment between women and men and establishes means to allow this equality to become real and effective:

Section 7, modifying Section 143 contained the requirements relating to same work, same wage.

1. The same wage shall correspond to the same performed job in terms of position, work day and efficiency conditions; the salary shall include all the elements listed on Section 127.
2. Differences in wage due to age, gender, sex, nationality, race, religion, political opinion or union activities cannot be established.
3. All the differences in salary or pay shall be presumed unjustified until the employer proves that there are objective factors causing the difference.

Concerning the minimum age for working, people under 14 years old cannot work in industrial or agricultural companies whenever the job keeps them away from school; people under 18 cannot work at night, except for jobs in non-industrial companies or domestic service, provided that the mentioned job is not dangerous for their health or morality. The duration of the work day is stated on Section 160:

1. The ordinary work is performed between 6:00 AM and 10:00 PM.
2. The night work is performed between 10:00 PM and 6:00 AM.

Resolution 734/2006 demands the addition of prevention measures to avoid work harassment in the labour set of rules, as well as the internal procedure to solve them in the event that any case arises. This is reasserted in Act 1010/2006 (ley 1010 de 2006), which acknowledges the labour in fair and dignifying conditions, the harmony among the ones sharing the same workplace and the good environment in the company. Section 7 of this Act states the behaviours considered as work harassment.

## FOR INDIGENOUS AND TRIBAL PEOPLES

In the case of ethnic communities, Act 21/1991 (Ley 21 De 1991) deals with the hiring and employment conditions in Part II, Section 20, the following stated in Section 2 states that Governments shall do their best to avoid any discrimination between workers from the interested peoples and the rest of the workers, especially when it comes to:

- a) Employment access, including qualified jobs and promotion measures;
- b) The same wage for the same job;
- c) Medical and social assistance, occupational safety, all the social security supplies and other work supplies, as well as the housing;
- d) The right to associate, to devote themselves to union actives for lawful purposes and to sign collective agreements with employers or employers' organizations.

### *Description of Risk*

- The main resource that can be used to verify legal employment is the employment contract, which is formed by three essential elements:
  - the personal activity of the worker, that means the work is performed by that individual person;
  - The continuous worker's subordination or dependency from the employer, which enables the employer to demand compliance with orders about the way, duration or quantity of work at any time and also to impose sets of rules. The aforementioned subordination shall be kept throughout the whole duration of the contract and shall not affect the honour, dignity and minimum rights of the worker in accordance; and
  - A wage as a payment for the service.
- Both in Colombia and Latin America, there is a problem with underemployment, defined as a category of the labour market where workers have an inappropriate occupation with regards to certain regulations or other possible occupations. The Colombian underemployment rate has been kept in rather high levels compared with other countries, with no substantial improvements. In the last decade, the rate of unsatisfied workers inside the whole working population has been kept around 45%, showing that half the occupied population of the country define their jobs as low-quality occupations (FEDESARROLLO, 2014).
- 88 out of every 100 occupied people in the agriculture sector are irregular workers, even though many of them apparently have an employer and receive a wage. The research of the Del Rosario University (quoted in El Tiempo newspaper, 2015) also reveals that the average work day of an irregular worker lasts 10,1 hours (60,6 hours a week), when Colombian legislation establishes the duration of a work day in 8 hours (48 hours a week).
- The research shows that 92 percent of the agriculture sector workers are not affiliated to any pension system as required by law, and 77 percent receive a salary lower than the current minimum wage.

- The study *The lack of decent employment in Colombia* reveals that 1,039,000 children work in Colombia, contravening international directives.
- According to the statistical bulletin of DANE (National Statistical Department of Colombia) 59,4% of the occupied population in populated and dispersed rural centres was working in the agriculture, cattle, hunting, forestry and fishing sector (May-July 2016).
- After consulting with the Ministry of Labour, Antioquia was shown as the department with the highest amount of working children. The government has made public the Integrated Information System for Identifying, Registering and Characterizing Child Labour and its Worst Forms (SIRIRI in its Spanish acronym), which allows to register poll data about household members (any person, especially minors) in the database in order to classify them according to the vulnerability in the matters of child labour; this will allow to focus their efforts more effectively so that this scourge is eradicated.
- These results include data about forestry context. After checking this system, it has been found that 12,726 child labour cases were reported within the scope of the agriculture, cattle, hunting, forestry and fishing sector (consulted on January 8 2016), the second highest amount after other activities.

#### *Risk Conclusion*

This indicator has been evaluated as specified risk. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

#### **1.12.6. Risk designation and specification**

Specified risk

#### **1.12.7. Control measures and verifiers**

- All workers are employed according to the regulation and required contracts are in place
- Persons involved in harvesting activities shall be covered by obligatory insurances.
- At least the legally established minimum salaries shall be paid for personnel involved in harvesting activities.
- Salaries shall be paid officially and declared by the employer according to requirements for personnel involved in harvesting activities.
- Minimum age shall be observed for all personnel involved in harvesting activities.
- Stakeholders shall confirm that forced or compulsory labour is not involved in harvesting activities.
- To verify that all the organisation's workers are occupied in compliance with Colombian legislation by means of the observation of administrative information.
- To verify the existence of payment receipts for the salaries and that these receipts comply with the Colombian regulations (current legal minimum wage).
- To check SIRITI website regarding the area in which the Organization is established.  
<http://apps.mintrabajo.gov.co/siriti/display.aspx>
- To check the acts of the Workplace Coexistence Committee.

- If required, to consult the Ministry of Labour about complaints or infractions.

## THIRD PARTIES' RIGHTS

### 1.13 Customary rights

*Legislation covering customary rights relevant to forest harvesting activities including requirements covering sharing of benefits and indigenous rights.*

#### 1.13.1. Applicable laws and regulations

##### GENERAL LEGISLATION

- Act 21/1991 (Ley 21 de 1991), in which the Agreement no. 169 about indigenous and tribal peoples in independent countries is approved; this Agreement was adopted by 76<sup>th</sup> ILO meeting (Geneva 1989, Article 8, Common law). Published on: March 4 1991. Available at: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=37032>
- General Environmental Act 99/1993 (Ley General Ambiental Ley 99 De 1993), by which the Ministry of Environment is created, the Public Sector on charge of the management and preservation on the environment and natural renewable resources is reorganized, the National Environmental System (SINA in its Spanish acronym) is organized and other directives are issued. Article 76. Published on: December 22 1993. Available at: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=297#118>
- Act 70/1193 (Ley 70 de 1993), by which the Provisional Article 55 of the Political Constitution is developed. Article 2. Traditional production activities. Published on: August 27 1993. Available at: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=7388>
- Decree 1397/1996, by which the National Committee of Indigenous Territories and the Permanent Committee for Consultation with indigenous peoples and organizations and other directives are issued. Article 12. Roles of the Committee for Consultation. Published on: August 8 1996. Available at: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=40298>
- Decree 1953/2014, by which a special set of rules is created in order to start running the Indigenous Territories regarding the administration of the indigenous peoples' own systems Article 2, 3, and 15. Published on: October 7 2014. Available at: [http://www.icbf.gov.co/cargues/avance/docs/decreto\\_1953\\_2014.htm](http://www.icbf.gov.co/cargues/avance/docs/decreto_1953_2014.htm)
- Decree 2333/2014, which establishes the means to effectively protect and preserve the legal security of the lands and territories traditionally occupied or possessed by indigenous communities. Published on: November 19 2014. Articles 2 and 5. Available at: <https://cnagrario.org/2014/11/20/decreto-2333-tierras-y-territorios-ocupados-o-poseidos-ancestralmente/>

#### 1.13.2. Legal authority

- Home Office (Ministerio del Interior)
- Ministry of Environment and Sustainable Development
- Community Council
- Indigenous Reserve



### 1.13.3. Legally required documents or records

- Certificate of the existence of ethnic communities issued by the Home Office.

### 1.13.4. Sources of information

#### *Non-Government sources*

- El Herald newspaper (2015). *3,423 indigenous Colombian people have suffered human rights violations in 2015 so far*. [online] Available at: <http://www.elheraldo.co/nacional/3423-indigenas-colombianos-victimas-de-violaciones-de-derechos-humanos-en-lo-corrido-de> [Accessed 25 September 2016].
- redcolombia.org (2008) *Human rights violations in Colombia*. [online] Network of Brotherhood and Solidarity with Colombia. Available at: <http://www.redcolombia.org/index.php/noticias-nuevas/271-violaciones-de-los-derechos-humanos-en-colombia.html> [Accessed 25 September 2016].
- KAS Papers (2009). *Indigenous peoples' status in Colombia*. [online] Available at: [http://www.kas.de/wf/doc/kas\\_17956-544-4-30.pdf](http://www.kas.de/wf/doc/kas_17956-544-4-30.pdf) [Accessed 25 September 2016].
- El Universal newspaper (2013). *Putumayo indigenous people reported the violation of their rights*. [online] Available at: <http://www.eluniversal.com.co/cartagena/nacional/indigenas-del-putumayo-denunciaron-violacion-de-sus-derechos-125461> [Accessed 25 September 2016].

#### *Interviews to experts*

Conversations with different experts carried out throughout October 2016 helped the authors of this report to understand better the applicable legislation and the risks associated with each category of the laws. Regarding this subcategory, representatives from different organizations were interviewed such as: Farmer Users National Association of Colombia (ANUC in its Spanish acronym), Indigenous People Organization of Antioquia.

### 1.13.5. Risk determination

#### *Overview of Legal Requirements*

##### GENERAL LEGISLATION

The General Environmental Act 99/1993 (Ley General Ambiental, Ley 99 de 1993) states in Article 76 what is established in Article 330 of the political constitution of Colombia related to the exploitation of natural resources without impairment of the cultural, social and economic integrity of the indigenous communities; decisions on this matter will be made after consulting with the representatives of these communities, being so acknowledged that they rule the collective territory and the associated natural resources.

In Act 21/1991 (Ley 21 de 1991), the UNO Agreement no. 169 is included in Article 8, stating the following:

1. Whenever the national legislation is applied to the interested peoples, their traditions and their common law shall be duly taken into account.
2. The aforementioned peoples shall have the right to preserve their own traditions and institutions, as long as they are compatible with both the fundamental rights defined by

the national legal system and the human rights internationally acknowledged. Whenever necessary, procedures shall be established in order to solve any possible conflict that may arise when applying this principle.

3. The application of paragraphs 1 and 2 of this Article shall not stop the members of these peoples from exercising the rights acknowledged for all the citizens of the country and from assuming the corresponding obligations.

Finally, Act 70/1993 (Ley 70 de 1993) makes reference to the traditional production activities such as: agricultural, mining, forestry, cattle, hunting, fishing and harvesting of natural products. These activities have been carried out by all the black communities in compliance with common law, so the preservation of life and the self-sustainable development can be guaranteed (Article 2, Section 7).

In Decree 2333/2014, the respect to the law of origin, the natural law, the higher law or the own rights of the indigenous peoples is considered as one of the principles that represent the foundations, life and ruling of indigenous peoples.

On the other hand, Decree 1397/1996 mentions the autonomous competences of the Indigenous Territories to manage their interests in the framework of their life plans:

1. To be ruled by their Own Authorities in accordance with the law of origin, the higher law or their own rights
2. To exercise the competences and rights established in this decree in compliance with the Political Constitution, the national and international legislation (part of the constitutionality bloc), the law of origin, the higher law or the own rights.

#### *Description of Risk*

- In Colombia, 88 indigenous peoples have been officially acknowledged with a population of 1,392,623 individuals, equivalent to a 3.4% of the total national population. However, the Indigenous People National Organization of Colombia (ONIC in its Spanish acronym) claims the existence of 102 indigenous peoples, 18 of which are at risk of disappearing (ONIC, 2009). 78.6% of the indigenous population lives in rural areas. 66% lives in five particular departments of Colombia in Atlantic and Pacific coasts. In Vaupes, Guainia and La Guajira, indigenous population is majority. (JGDH, 2009).
- An ONIC's report published in 2015 reveals that nearly 3,423 indigenous people from Colombia suffered violations of their human rights, including 28 murders in 60 incidents registered in the first seven months of the year. A total amount of 1,995 indigenous people suffered were forced to move and 1,081 were imprisoned, the facts with more victims according to the report "Violations of human rights and infractions of International Humanitarian Law (DIH in its Spanish acronym)", delivered to UNO in Bogota.
- According to ONIC, "more than 1,000 indigenous people were murdered for violent causes, being the most affected peoples Nasa, Wayuu, Kankuamo, Awa and Embera chami" between 2002 and 2009 (CCAJAR, 2009). Nearly 15% of these murdered people were women and children. Besides, it has been calculated that in that period "176 indigenous people were victims of forced disappearing, 187 were victims of sexual violence and torture and 633 were victims of arbitrary detentions".
- In several regions of the country, "the makers of the armed conflict have been linked with economic interests, this link being one of the main causes of forced moving", either to

advance illegal activities (sowing and processing of illegal plantations and drug traffic) or legal activities. Among the latest, the “exploitation of natural resources in an irregular way (such as indiscriminate forestry exploitation, sowing and exploitation of agribusiness monocultures, irregular mining exploitation and other similar activities) which is performed by economic makers of the private sector or illegal armed groups” is mentioned.

- In 2013, 14 Putumayo indigenous peoples reported that their people was being forced to move due to armed groups. In this department, there is a total amount of 59,985 traditional indigenous people, with settlements of Awa, Embera Chami and Nasa peoples; these have been affected by the combat fighting between guerrillas and the Army.
- Among the hazards identified by the interested parties, the difficulty of some communities to Access and understand the law due to their low Spanish proficiency and lack of legal terminology knowledge can be listed. Besides, proposal and projects disregarding the indigenous world view made them unbearable and not interesting for the natives. In addition, there have been waste problems and there is fear about the controlling of the land, which makes the forest community ruling more difficult. Finally, there can be rivalries and incidents in African-Colombian and indigenous border áreas, as they can move the Wood from one territory to another and so trespassing the limits.
- After consulting with OIA, they point out that 89% of the Wood extracted from natural woods in Antioquia is illegal and part of the Wood extracted by the communities for domestic use is also sold. Additionally, they acknowledge is a lack of control by the authorities in the fields.

#### *Risk Conclusion*

This indicator has been evaluated as specified risk. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

#### **1.13.6. Risk designation and specification**

Specified risk

#### **1.13.7. Control measures and verifiers**

- Stakeholder consultation shall confirm that customary rights are observed during harvesting activities.
- In cases where there is a presence of indigenous communities (both indigenous and African-descendant) within the exploitation area, the certification documents issued by the Home Office shall be checked.
- In case there is a presence of indigenous communities (both indigenous and African-descendant) in the borders of the exploitation area, it is necessary to check with the community representatives to identify any possible impairments to the communities’ rights.
- The certification of the community representative that approves the forestry exploitation in the collective territory shall be requested.
- The interested parties shall be consulted to identify possible impairments to the communities’ rights.

- If necessary, the Home Office shall be consulted about possible complaints or claims related to violations of the communities' rights by the forestry project subject to evaluation.
- If necessary, the Indigenous Organization of Colombia or the Black Community Process shall be consulted about possible complaints or claims related to violations of the communities' rights by the forestry project subject to evaluation.

## 1.14. Free prior and informed consent

*Legislation covering "free prior and informed consent" in connection with transfer of forest management rights and customary rights to the organisation in charge of the harvesting operation.*

### 1.14.1. Applicable laws and regulations

#### GENERAL LEGISLATION

- Political Constitution of Colombia, 1991. Article 79 and Article 330, paragraph "Exploitation of natural resources in indigenous territories". Available at: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=4125>
- Act 21/1991 (Ley 21 de 1991), by which the ILO Agreement no. 169 is ratified. Article 6 and Article 15. Published on: March 4 1991. Available at: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=37032>
- Decree 1320/1998, which determines the set of rules for the Prior Consultation to indigenous and black communities; this is related to the exploitation of natural resources within their territory. Chapter II. Prior Consultation in the matters of Environmental Licenses or Establishment of environmental management plans. Published on: July 13 1998. Available at: [http://www.icbf.gov.co/cargues/avance/docs/decreto\\_1320\\_1998.htm](http://www.icbf.gov.co/cargues/avance/docs/decreto_1320_1998.htm)
- Presidential directive 01/2010. Guarantee of the fundamental right of the national ethnic groups to make a Prior Consultation. Point 4. Development means of the Prior Consultation process. Published on: March 26 2010. Available at: [http://www.mininterior.gov.co/sites/default/files/directiva\\_presidencial\\_01\\_de\\_2010.pdf](http://www.mininterior.gov.co/sites/default/files/directiva_presidencial_01_de_2010.pdf)
- Act 1437/2011 (Ley 1437 de 2011). Administrative Procedure and Judiciary Code. Article 46. Published on: January 18 2011. Available at: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=41249>
- Decree-law 4633/2011 (Decreto Ley 4633 de 2011), by which means of assistance, attention, full reparation and return of territorial rights to the victims belonging to indigenous communities and peoples are set. Article 27: Fundamental right to make a Prior Consultation. Published on: December 9 2011. Available at: [http://www.secretariassenado.gov.co/senado/basedoc/decreto\\_4633\\_2011.html](http://www.secretariassenado.gov.co/senado/basedoc/decreto_4633_2011.html)
- Presidential directive 10/2013). Guidelines to perform the Prior Consultation. Published on: November 7 2013. Available at: <http://wsp.presidencia.gov.co/Normativa/Directivas/Documents/DIRECTIVA%20PRESIDENCIAL%20N%C2%B0%2010%20DEL%2007%20DE%20NOVIEMBRE%202013.pdf>

- Decree 2613/2013, by which the protocol of interinstitutional coordination for the Prior Consultation is adopted. Published on: November 20 2013. Available at: [http://www.minambiente.gov.co/images/normativa/decretos/2013/dec\\_2613\\_2013.pdf](http://www.minambiente.gov.co/images/normativa/decretos/2013/dec_2613_2013.pdf)

#### 1.14.2. Legal authority

- Ministry of Environment and Sustainable Development
- Home Office
- National Agency of Environmental Licenses (ANLA in its Spanish acronym)
- Regional Autonomous Corporation of the jurisdiction
- Community Council
- Indigenous Reserve

#### 1.14.3. Legally required documents or records

- Certificate of the existence of ethnic communities issued by the Home Office.
- Environmental management plan
- Supporting documents of the consultation process

#### 1.14.4. Sources of information

##### *Non-Government sources*

- Gloria Amparo Rodríguez (2011). *From Prior Consultation to Free Consent, Prior and Informed Consent of Indigenous Peoples in Colombia*. [online] Available at: [https://www.nmbu.no/sites/default/files/pdfattachments/consulta-previa-al-consentimiento-previo-colombia-gloriaar\\_0.pdf](https://www.nmbu.no/sites/default/files/pdfattachments/consulta-previa-al-consentimiento-previo-colombia-gloriaar_0.pdf) [Accessed 5 September 2016].
- United Nations (2010). *African-Colombian communities' right to a Previous, Free and Informed Consultation*. [online] Available at: <http://www.hchr.org.co/afrodescendientes/files/PDF%20ALTA%20PAG%20INTERNAS%20AFROS%20TERCERA%20ENTREGA.pdf> [Accessed 8 September 2016].
- United Nations (2010). *Indigenous peoples' right to previous, free and informed consultation*. [online] Available at: <http://www.hchr.org.co/publicaciones/libros/Consulta%20Previa%20Indigenas%20Baja.pdf> [Accessed 25 September 2016].
- El Tiempo newspaper (2015). *All that you need to know about Prior Consultation*. [online] Available at: <http://www.eltiempo.com/politica/justicia/consulta-previa-todo-lo-que-usted-debe-saber/16374136> [Accessed 25 September 2016].
- El Heraldo newspaper (2015). *3,423 indigenous Colombian people have suffered human rights violations in 2015 so far*. [online] Available at: <http://www.elheraldo.co/nacional/3423-indigenas-colombianos-victimas-de-violaciones-de-derechos-humanos-en-lo-corrido-de> [Accessed 25 September 2016].
- Natalia Orduz for Razón (2015). *Prior Consultation: obeyed but not complied with*. [online] Available at: <http://www.razonpublica.com/index.php/politica-y-gobierno-temas->

[27/3576-consulta-previa-se-obedece-pero-no-se-cumple.html](http://27/3576-consulta-previa-se-obedece-pero-no-se-cumple.html) [Accessed 25 September 2016].

- Ana Betancur, Ethnic Observatory (2014). *The Prior Consultation to indigenous peoples: from democratic participation to expropriation of territories*. [online] Available at: [http://observatorioetnicocecoin.org.co/cecoin/index.php?option=com\\_content&view=article&id=344:la-consulta-previa-a-los-pueblos-indigenas-de-la-participacion-democratica-a-la-expropiacion-de-territorios&catid=55:consulta-previa&Itemid=121](http://observatorioetnicocecoin.org.co/cecoin/index.php?option=com_content&view=article&id=344:la-consulta-previa-a-los-pueblos-indigenas-de-la-participacion-democratica-a-la-expropiacion-de-territorios&catid=55:consulta-previa&Itemid=121) [Accessed 25 September 2016].
- International Human Rights Office, Colombia Action (2013). *The land in Colombia: between waste and business. Presentation of the current situation of a problem to the conflict centre*. [online] Available at: <http://www.oidhaco.org/uploaded/content/article/666329106.pdf> [Accessed 20 September 2016].

### *Interviews to experts*

Conversations with different experts carried out throughout October 2016 helped the authors of this report to understand better the applicable legislation and the risks associated with each category of the laws. Regarding this subcategory, representatives from different organizations were interviewed such as: Indigenous Organization of Antioquia (OIA in its Spanish acronym), WORLD WILDLIFE FUND (WWF).

#### **1.14.5. Risk determination**

##### *Overview of Legal Requirements*

##### **GENERAL LEGISLATION**

Political Constitution of Colombia, 1991.

The political constitution of Colombia, the Magna Carta of the country, points out in Article 79 that "All the people have the right to enjoy a healthy environment. The laws will guarantee the community participation in the decisions that may affect them..." Then, Article 330 states that "the exploitation of natural resources without impairment of the cultural, social and economic integrity of the indigenous communities; decisions on this matter will be made after consulting with the representatives of these communities".

Article 46 of the Administrative Procedure and Judiciary Code emphasizes the mandatory consultation: whenever the Constitution or the law orders to carry out a consultation prior to adopt an administrative decision, this consultation shall be made within the terms described in the corresponding regulations, under penalty of nullity of the adopted decision.

ILO Convention no. 169. Act 21/1991 (Ley 21 de 1991)

The ILO Convention no. 169 is a legal instrument which is binding for Colombia, as it was ratified by the Act 21/1991 (Ley 21 de 1991) in search of promoting respect for the cultures, the ways of life, the traditions and the common law of indigenous and tribal peoples. This agreement refers to the Government's duty (among others) to make a consultation with the communities before carrying out any project that may affect them, being this the fundamental basis of the application of the legal instrument. Article 6 of the mentioned Act states the following:

1. Whenever the regulations of the present Agreement are applicable, governments shall: Consult with the interested peoples by means of the suitable procedures, particularly by the representative institutions, any time that legal or administrative measures which may directly affect them are expected;
  - a) Provide the means by which the interested peoples will be able to participate freely, at least in the same way other population's sector do and at the same level whenever decisions about elective institutions and administrative organizations (among others) are adopted;. These organizations are responsible for policies and programs that concern them;
  - b) Provide the means by which the institutions and initiatives of these peoples are fully developed and, whenever suitable, supply the necessary resources for this purpose.
2. The consultations carried out as a result of the application of this Agreement shall be performed in good faith and in a proper way, circumstances considered; the purpose of this is to reach an agreement or to get the consent about the proposed measures.

Section 15 refers again to the Prior Consultation:

1. The rights of the interested peoples to access the natural resources existing in their lands shall be particularly protected. These rights include the one to participate in the use, management and preservation of the mentioned natural resources
2. In case the ownership of the minerals or the subsoil resources belongs to the State or the State has rights to other existing resources of the lands, governments shall establish or maintain procedures in order to consult the interested peoples to determine if these peoples' interests may be impaired and to what extent before initiating or authorizing any prospecting or exploitation of the resources existing in their lands. Whenever possible, the interested peoples shall participate of the benefits arising from these activities and receive a fair compensation for any damage they may suffer as a result of the mentioned activities.

Regulations on Prior Consultation. Decree 1320/1998.

The Prior Consultation shall be made whenever the project, work or activity to be developed in indigenous reservations or in lands assigned as collective properties for black communities. When the project, work or activity is to be undertaken in untitled zones inhabited on a regular and permanent basis by indigenous or black communities likely to be affected by the project, the Ministry of the Interior shall be responsible for certifying the presence of such communities (Article 3).

Article 10 mentions the content of the environmental studies compared to the socio-economic and cultural level, this content shall include at least the following:

1. In the environmental determination of alternative, indigenous and/or black communities' characteristics. This element will be taken into account by the environmental authorities in order to choose the suitable alternative to develop the environmental impact study.
2. In the environmental impact study or the environmental management plan:
  - a) Indigenous and/or black communities' characteristics



- b) Possible social, economic and cultural impacts that the analyzed indigenous and/or black communities will undergo as a consequence of the project, work or activity being carried out;
- c) Measure that will be taken to prevent, correct, mitigate, control or compensate the occasioned impacts.

Article 12. Consultation meeting. Within fifteen (15) days after the request date of the environmental license or the settlement of the Environmental Management Plan, the proper environmental authorities will confirm the participation or absence of participation of the communities interested in the elaboration of the environmental impact study, and will arrange the Prior Consultation meeting to be celebrated within the thirty days (30) after the issuance of the edict which orders to do so, in the settlement area if possible.

The decree-law 4633/2011 on means of assistance, attention, full reparation and return of territorial rights to the victims belonging to indigenous communities and peoples also refers to the Prior Consultation as a fundamental right. In the scope of the applicable decree, the fundamental right to the Prior Consultation (belonging to the Collective Compensation Comprehensive Plan and addressed in article 105) will be exercised in good faith in order to reach an agreement or to get the consent in the terms detailed in OLI Agreement no. 169 and in the Constitutional Court jurisprudence, which defines its scope.

Presidential Directive 01/2010 and 10/2013

The presidential directive 01/2010 sets the means to apply the Act 21/1991 (Ley 21 de 1991), stating the cases in which the right to a Prior Consultation has to be guaranteed. The Prior Consultation is applicable before starting any project that may affect the National Ethnic Groups, which shall be consulted according to chapter 2:

- Programs to prospect or exploit the resources existing in their lands.
- Decisions on land alienation or transfer of the rights on lands, in the event that national directives may interfere at some level with the collective entitlement, extension or sanitation of the lands.

Chapter 4 explains the Prior Consultation process in the following steps:

1. Pre-consultation
2. Process opening
3. Workshops to identify the impacts and define management measures.
4. Pre-agreements
5. Meeting to formalise the documents
6. Systematization of the compliance with agreements and follow-up
7. Closure of the Prior Consultation process

The Presidential Directive 10/2013 states that the Home Office, through the Prior Consultation Directorate, is responsible for the Prior Consultation processes carried out with ethnic communities and shall follow the directives of the "Guidelines to perform the Prior Consultation with ethnic communities" as an element of interinstitutional coordination.

*Description of Risk*

- According to the ethnic observatory, the consultation has become an effective way to disregard the practical side, far from guaranteeing the fundamental rights. On one side, the proper application has been systematically avoided, being the higher courts of justice the ones ordering the executive body of the State to apply the consultation.
- A report about the systematization of the Prior Consultation processes performed in 2009 and 2010 by the Home Office and the Ministry of the Environment (Oxfam, CNOA y ONIC, 2011) has been resumed by the ethnic observatory. In this report, good and bad practices to make a Prior Consultation are detailed. The first bad practice is the lack of acknowledgement and wrong certifications about the ethnic groups' existence, as it happened with the environmental license of the oil company Oxy (a certification of ethnic groups' non-existence was issued).
- Due to the lack of Prior Consultation about general measures that may affect the indigenous groups, some important legal statutes were declared unconstitutional, such as the General Forestry Act 10/21/1021 (ley general forestal 1021 de 2006), the Rural Development Statute 1152/2007 (Estatuto de Desarrollo Rural, Ley 1152 de 2007) and the Act 1382/2010 amending the Mining Code (ley que modifica el Código de Minas, ley 1382 de 2010).
- As a reference for the country, 121 previous, informed and free consultations have been performed from 1994 to 2009 within the mining scope, involving indigenous peoples in 83 of them; however, the Indigenous People National Organization of Colombia (ONIC in its Spanish acronym) points out that "more than 80% of our territories have been granted to economical projects without any Prior Consultation". In this sense, the United Nations High Commissioner for Human Rights (UNHCHR) stated in their last report that, "after a wide participative process" about the right to consultations, "the existence of no good practices was determined" (International Human Rights Office, Colombia Action, 2013). It shall be clarified that the wood reused from mining or infrastructure projects which were subject of Prior Consultation cannot be sold: it can only be donated or reused in the same project.
- The Prior Consultation in Colombia is not a practice in accordance with the protection of indigenous peoples' rights; that means, it hasn't been useful to guarantee their cultural integrity, their autonomy, their self-determination right or their territorial properties. Instead of this, the Prior Consultation has become an effective instrument to take advantage of the indigenous territories with big economic and business projects, taking important parts of their traditional territories away from these peoples and introducing major features of socio-cultural disarrangements (Betancur, 2014).
- After consulting with experts, it was determined that there is illegal forestry in natural woods and this is causing conflicts between indigenous populations and afro-descendant communities in border areas. On the other hand, it is complicated to exercise authority and control against armed groups that may be involved in illegal forestry. Finally, another difficulty acknowledged after consultation with experts pointed out the language differences, as there are some communities that don't speak Spanish; as Colombian regulations are written in this language, it is impossible for them to have access to this information and to understand what it is stated on them.
- This consultation also included two other topics. The first one refers to a way of extracting the natural wood being currently used: an indigenous person conducts all the forestry

exploitation request process as an intermediary between the natural person or the Company interested and the environmental authorities in order to avoid the Prior Consultation process. This action complies with the Colombian legislation as the indigenous people, as part of the collective territory, has the right to use the forest resources; however, it can be unpopular as it avoids the Prior Consultation.

- The second topic talks about the development of the previous, free and informed consent law. This process is not seen as successful because indigenous representatives weren't included in the project; therefore, they do not consider this law one of theirs.

### *Risk Conclusion*

This indicator has been evaluated as specified risk. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

### **1.14.6. Risk designation and specification**

Specified risk

### **1.14.7. Control measures and verifiers**

- In case of forestry exploitation in collective territories, the person to whom the exploitation rights have been granted has to be verified in the Administrative Act of approval, as well as the means being used in the exploitation (in accordance to what is stated by the Administrative Act).
- The certification of the community representative that approves the forestry exploitation in the collective territory shall be requested.
- The interested parties shall be consulted to identify possible impairments to the communities' rights.
- In case of complaints or claims related to violations of the communities' rights by the forestry project subject to evaluation, it is necessary to check with the community representatives to clarify the measures being taken to avoid the conflict.
- If necessary, the Indigenous Organization of Colombia or the Black Community Process shall be consulted about possible complaints or claims related to violations of the communities' rights by the forestry project subject to evaluation.
- In case the forestry exploitation has undergone a Prior Consultation, it is necessary to check it with the Homme Office in order to verify the supporting documents related to the Prior Consultation as well as the agreements made by the responsible person and their compliance.

## **1.15. Indigenous/traditional peoples' rights**

*Legislation that regulates the rights of indigenous/traditional people as far as it's related to forestry activities. Possible aspects to consider are land tenure, right to use certain forest related resources or practice traditional activities, which may involve forest lands.*

### **1.15.1. Applicable laws and regulations**

GENERAL LEGISLATION

- Political Constitution of Colombia, 1991. Articles 7, 8, 9, 286, 330, 63 and Provisional Article 55. Published on: 1991. Available at:  
<http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=4125>
- Act 21/1991 (Ley 21 de 1991) "by which the ILO Agreement no. 169 is ratified". Published on: March 4 1991. Available at:  
<http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=37032>
- Act 99/1993 (Ley 99 de 1993), by which the Ministry of Environment is created, the Public Sector on charge of the management and preservation on the environment and natural renewable resources is reorganized, the National Environmental System (SINA in its Spanish acronym) is organized and other directives are issued. Article 76. Published on: December 22 1993. Available at:  
<http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=297>
- Decree 1397/1996, by which the National Committee of Indigenous Territories and the Permanent Committee for Consultation with indigenous peoples and organizations and other directives are issued. Article 7. Published on: August 8 1996. Available at:  
<http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=40298>
- Decree 1791/1996, by which the Forestry Exploitation Rules are established. Article 44. Published on: October 4 1996. Available at:  
[http://www.minambiente.gov.co/images/BosquesBiodiversidadyServiciosEcosistemicos/pdf/Normativa/Decretos/dec\\_1791\\_041096.pdf](http://www.minambiente.gov.co/images/BosquesBiodiversidadyServiciosEcosistemicos/pdf/Normativa/Decretos/dec_1791_041096.pdf)

#### ABOUT INDIGENOUS PEOPLES

- Act 160/1994 (Ley 160 de 1994), by which the Agricultural Restructure and Rural Development National System is created, a subsidy for land acquisition is established, The Colombian Institute of Agricultural Restructure is reorganized and other directives are issued. Chapter XIV – Indigenous Reservations. Published on: August 5 1994. Available at: [http://www.icbf.gov.co/cargues/avance/docs/ley\\_0160\\_1994.htm](http://www.icbf.gov.co/cargues/avance/docs/ley_0160_1994.htm)
- Decree 1953/2014, by which a special set of rules is created in order to start running the Indigenous Territories regarding the administration of the indigenous peoples' own systems Article 2, 3, and 15. Published on: October 7 2014. Available at: [http://www.icbf.gov.co/cargues/avance/docs/decreto\\_1953\\_2014.htm](http://www.icbf.gov.co/cargues/avance/docs/decreto_1953_2014.htm)

#### ABOUT BLACK COMMUNITIES

- Act 70/1993 (Ley 70 de 1993), by which Provisional Article 55 of the Political Constitution is expounded. Chapter IV. Land use and natural resources and environmental protection. Published on: August 27 1993. Available at:  
<http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=7388>
- Decree 1745/1995, by which the rules of Chapter III of the Act 70/1993 (Ley 70 de 1993) are set. This Act includes the procedure of collective ownership right acknowledgement for black communities. Other directives regarding indigenous peoples are issued. Chapter VI: Preliminary Report Procedure. Published on: October 12 1995. Available at:  
<http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=7389>

#### 1.15.2. Legal authority

- Home Office

- Community Council
- Indigenous reserve

#### 1.15.3. Legally required documents or records

- Certificate of the existence of ethnic communities issued by the Home Office.

#### 1.15.4. Sources of information

##### *Government sources*

- DANE (N.Y.). *Application for consultation for ethnic groups*. Available at: <http://sige.dane.gov.co:81/gruposEtnicos/index.phtml> [Accessed 8 September 2016]

##### *Non-Government sources*

- Human Rights Everywhere (HREV) (2011). *Indigenous Peoples' Human Rights: Legal Framework in Colombia (2008)*. [online] Available at: <http://hrev.org/wp-content/uploads/2011/02/tp2marcolegal.pdf>
- UPME (N.Y.). *The ethnic-environmental profile of indigenous communities from coal deposits areas and the strategy to develop coal projects in these areas*. [online] Available at: [http://www.upme.gov.co/guia\\_ambiental/carbon/areas/minorias/contenid/minoria3.htm](http://www.upme.gov.co/guia_ambiental/carbon/areas/minorias/contenid/minoria3.htm) [Accessed 8 September 2016]
- CIDH (1996). *Indigenous people's rights in Colombia*. [online] Inter-American Human Rights Committee. Chapter XI. Available at: <http://www.cidh.org/countryrep/colombia93sp/cap.11.htm> [Accessed 8 September 2016]
- Gloria Amparo Rodriguez (N.Y.). *Brief comment on the ethnic communities' rights and the legislation about them in Colombia*. [online] Available at: [http://www.urosario.edu.co/urosario\\_files/3a/3a3ccef9-bcde-4c21-bfcf-35cae97d5c48.pdf](http://www.urosario.edu.co/urosario_files/3a/3a3ccef9-bcde-4c21-bfcf-35cae97d5c48.pdf) [Accessed 8 September 2016]
- United Nations (2010). *African-Colombian communities' right to a Previous, Free and Informed Consultation*. [online] Available at: <http://www.hchr.org.co/afrodescendientes/files/PDF%20ALTA%20PAG%20INTERNAS%20AFROS%20TERCERA%20ENTREGA.pdf> [Accessed 8 September 2016]

##### *Interviews to experts*

Conversations with different experts carried out throughout October 2016 helped the authors of this report to understand better the applicable legislation and the risks associated with each category of the laws. Regarding this subcategory, representatives from different organizations were interviewed such as: Indigenous Organization of Antioquia (OIA in its Spanish acronym), WORLD WILDLIFE FUND (WWF), National Agency of Environmental Licenses (ANLA in its Spanish acronym).

#### 1.15.5. Risk determination

##### *Overview of Legal Requirements*

##### GENERAL LEGISLATION

#### Political Constitution of Colombia, 1991.

The political constitution of Colombia, the Magna Carta of the country, is the greatest legal instrument. Remarks about traditional and indigenous peoples are made in the following articles:

- Article 7. The State acknowledges and protects the ethnic and cultural diversity of the Colombian nation.
- Article 8. It is the duty of the State and the people to protect the cultural and natural wealth of the Nation.
- Article 9. Foreign affairs of the State are based on the national sovereignty, the respect for the self-determination right of the peoples and the acknowledgement of the international law principles accepted by Colombia (...)

Regarding the acknowledgement of the territory ownership, it is mentioned in the following articles:

- Article 63, regulated by the ACT 1675/2013 (Ley 1675 de 2013). Public goods, natural parks, collective lands of ethnic groups, reservation territories, archaeological heritage of the Nation and other goods determined by law are inalienable, imprescriptible and unseizable.
- Article 286. Departments, districts, townships and indigenous territories are considered entities (...)
- Provisional Article 55. Within the two years after the enforcement of the applicable Constitution, the Congress will issue a law that acknowledges the collective ownership right of the black communities occupying barren lands in rural river lands in the Pacific Catchment Area over the areas determined in the same law.

Representatives from the involved communities will be taking part in the special committee dealing with the ideas mentioned in the previous paragraph. The acknowledged ownership will only be alienable in the terms established by law. This law will set means to protect the cultural identity and the rights of these communities and to promote their social and economic development.

- Paragraph 1. What is stated in this article may be applicable to other areas of the country with similar conditions by means of the same procedure and after being subject of study and getting a favourable report from the special committee hereby foreseen.
- Paragraph 2. If the Act mentioned by this article hadn't been issued after the expiry date set in this Article, the Government will issue it within the next six months by a statutory rule.

Concerning the governability of the territory, the Article 330 states the following: In accordance with the Constitution and laws, indigenous territories will be ruled by regulated councils following the customs and traditions of these communities and will have the following roles:

1. To safeguard the application of the regulations on land uses and settlements in their territories.

2. To design policies, plans and programs for the economic and social development in their territorial, in compliance with the National Development Plan.
3. To promote public investments in their territories and safeguard their proper execution.
4. To register and distribute their resources.
5. To safeguard the preservation of natural resources.
6. To coordinate programs and project promoted by different communities in their territory.
7. To cooperate to maintain public order inside their territory according to the instructions and regulations issued by the National Government.
8. To act on behalf of the territories in the presence of the Government and other entities in which they are integrated; and
9. Those stated by the Constitution and the law.

Paragraph. The exploitation of natural resources will be carried out without impairment of the cultural, social and economic integrity of the indigenous communities; decisions on this matter will be made after consulting with the representatives of the corresponding communities.

Indigenous and Tribal Peoples Convention. Act 21/1991 (Ley 21 de 1991).

The Indigenous and Tribal Peoples Agreement adopted in Colombia is applicable in this country to the indigenous, back, African-Colombian, raizal and palanquero communities. In Article 6, the right to consultation and free participation on the decisions affecting their territories is mentioned.

Concerning the lands, Section 1 of Article 14 establishes that "the interested peoples' ownership right over the traditionally occupied territories shall be acknowledged. Besides, measures shall be adopted to safeguard the interested peoples' right to make use of the lands not exclusively occupied by them but traditionally used for their customs and subsistence activities. Regarding this, particular attention shall be driven to the situation of nomadic peoples and farmers.

Other associated regulations

Act 99/1993 (Ley 99 de 1993) states in Article 76 that "the exploitation of natural resources shall be carried out without impairment of the cultural, social and economic integrity of the indigenous and black communities in accordance with Act 70/1193 (Ley 70 de 1993) and Article 330 of the National Constitution; decisions on this matter will be made after consulting with the representatives of these communities". This is also supported by the Forestry Exploitation Rules (Decree 1791/1996); Article 44 states: The forestry exploitations intended to be performed by indigenous communities in reservation or protected areas or by the black communities described on Act 70/1993 (Ley 70 de 1993) will be regulated by the special directives concerning the management and use of renewable natural resources made by these communities. The aspects not particularly addressed in the specific regulations will be subject to comply with what is established in this Decree.

The above mentioned is also ratified when it comes to the granting of environmental licenses. Decree 1397/1996 Article 7 establishes that "no environmental license can be granted without economic, social and cultural studies about indigenous communities or peoples; they



will take part in the elaboration of the mentioned studies. Studies will be carried out with the participation of the communities, their authorities and their organizations.

Licenses will be denied by a resolution stating grounds whenever it is deduced from the studies, from the environmental authorities' consideration or from the follow-up involving the affected communities, their authorities and their organizations that and impairment of the economic, social or cultural integrity is being or may be caused.

#### ABOUT INDIGENOUS PEOPLES

Concerning indigenous peoples' rights, two regulations refer to the rights over the communities' territory and to the management and use of the natural resources of the same. Chapter XIV of the Act 160/1994 (Ley 160 de 1994) makes an allusion to the study of the indigenous communities' territorial needs, with the purpose of supplying them with the necessary land that guarantee a proper settlement and development. Extension, reorganization or sanitation programs for the indigenous reservations will be aimed at facilitating that the communities comply with the social and ecological role of the property according to their customs and traditions and also easing the preservation of the ethnic group and the improvement of the inhabitants' quality of life.

Likewise, Article 85 Paragraph 6 establishes that "the territories traditionally used by nomadic and seminomadic peoples and farmers for hunting, harvesting or sowing will be only used as indigenous reservations in case they are located in forestry protection areas, while this law is applicable; however, occupation and exploitation shall also be subject to the stipulations set by the Ministry of Environment and the applicable regulations about renewable natural resources".

On the other hand, Decree 1953/2014 acknowledges that "Indigenous Territories are special political-administrative organizations allowed to exercise their competences and public roles as stated in this Decree by means of their own authorities" (Article 2). These authorities may be indigenous councils or other collective structures for ruling (Article 11).

#### ABOUT BLACK COMMUNITIES

Decree 1745/1995 regulates Chapter III of the Act 70/1993 (Ley 70 de 1993), which deals with the acknowledgement of black communities and their right to have collective territories assigned. This Act establishes the creation of a black Community Council as a legal entity on charge of the internal management, in compliance with legal and constitutional ruling (Article 1).

The use of natural resources is explained on Chapter VI, including the basic elements of a preliminary report in which it should be verified (Article 35):

1. If the project related to the granting of an environmental license, an authorization or an exploitation contract for natural and genetic resources is located in areas susceptible to be declared a Black Community Territory, so the preference order right stated by the law can be exercised.
2. If the project is located in the areas mentioned on Act 70/1993 Article 6 (artículo 6º de la Ley 70 de 1993).
3. If the project is about preserved or banned species according to the applicable law.
4. Other necessary aspects considered by the Technical Committee.

### *Description of risk*

- As per African-Colombian communities, Colombia is one of the countries that acknowledge more rights to traditional communities, but it is also the place in which they are more often violated or ignored (Rodriguez). The Colombian legal framework established the ethnic and cultural diversity protection, the population's economic and social development, the organizational reinforcement, the collective entitlement of the traditionally occupied territories and the participation in the agreements and decisions of the State (Del Rosario University).
- Concerning African-Colombian communities, there is an improvement in the right acknowledgment achieved thanks to the hard fight of their members throughout time. The acknowledgement of this community as an ethnic group shall be remarked, as it opens the door for: Regulations favouring them; the collective ownership right; the creation of their own authorities by means of the community councils; the creation of a special district for the House of Representatives; the adding of black communities' representatives in the National Planning Council; etcetera.
- About the principles and rights to be taken into account, "we cannot ignore that the claims of indigenous and black peoples have to go beyond the acknowledgement and respect of their legal rights: they also have to deal with economic and political aspects. Particularly, the ethnic problem shall be regarded as a social, economic and political problem (...). The answer to the indigenous and black people's problem has to be a social one and the makers of this answer shall be the same indigenous and black people, so they will be allowed to decide their own historical direction" (Mariategui, Jose Carlos. Seven Essays on Peruvian Reality. Peru. Amauta, 1990).
- The same indigenous people argue: "the application of our rights, as the ones of other inhabitants, doesn't become real only by being guaranteed in the text and the spirit of the Constitution of 1991. It is far from being or becoming a reality, proven that huge hydro-electrical projects, mining exploitations and infrastructure works for the development of the country come before us" (ONIC, Indigenous Territories and Constitution).
- In this sense, it is necessary to remark that the regulations of the rights are playing a symbolic role; there is still so much to do to make ingenious peoples' rights effective, which is becoming more affected by problems of all sorts each passing day.
- After consulting with experts, it was determined that there is illegal forestry in natural woods and this is causing conflicts between indigenous populations and afro-descendant communities in border areas. On the other hand, it is complicated to exercise authority and control against armed groups that may be involved in illegal forestry. Finally, another difficulty acknowledged after consultation with experts pointed out the language differences, as there are some communities that don't speak Spanish; as Colombian regulations are written in this language, it is impossible for them to have access to this information and to understand what it is stated on them.

### *Risk conclusion*

This indicator has been evaluated as specified risk. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

### **1.15.6. Risk designation and specification**

Specified risk

**1.15.7. Control measures and verifiers**

- Where there is a presence of indigenous communities (both indigenous and African-descendant) within the exploitation area, the certification documents issued by the Home Office shall be checked.
- Where there is a presence of indigenous communities (both indigenous and African-descendant) in the borders of the exploitation area, it is necessary to check with the community representatives to identify any possible impairments to the communities' rights.
- The certification of the community representative that approves the forestry exploitation in the collective territory shall be requested.
- The interested parties shall be consulted to identify possible impairments to the communities' rights.
- If necessary, the Home Office shall be consulted about possible complaints or claims related to violations of the communities' rights by the forestry project subject to evaluation.
- If necessary, the Indigenous Organization of Colombia or the Black Community Process shall be consulted about possible complaints or claims related to violations of the communities' rights by the forestry project subject to evaluation.

## TRADE AND TRANSPORT

### 1.16. Classification of species, quantities, qualities

*Legislation regulating how harvested material is classified in terms of species, volumes and qualities in connection with trade and transport. Incorrect classification of harvested material is a well-known method to reduce/avoid payment of legality prescribed taxes and fees. Risk relates to material traded under illegal false statements of species, quantities or qualities. This could cover cases where this type of false classification is done to avoid payment of royalties or taxes or where trade bans on product types or species are implemented locally, nationally or internationally. This is mainly an issue in countries with high levels of corruption (CPI<50).*

#### 1.16.1. Applicable laws and regulations

##### WILD FLORA FOREST PRODUCTS

- Decree 1791/1996, by which the forestry exploitation system is established. Chapter III. Permanent forestry exploitation. Published on: October 4 1996. Available at: [http://www.minambiente.gov.co/images/BosquesBiodiversidadServiciosEcosistemicos/pdf/Ordenaci%C3%B3n-y-Manejo-de-Bosques/dec\\_1791\\_041096.pdf](http://www.minambiente.gov.co/images/BosquesBiodiversidadServiciosEcosistemicos/pdf/Ordenaci%C3%B3n-y-Manejo-de-Bosques/dec_1791_041096.pdf)
- Resolution no. 438/2001 (National Sole Safe-conduct, SUN in its Spanish acronym). "Establishment of the National Sole Safe-conduct for the transport of wood". Article 3. Published on: May 23 2001. Available at: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=45556>

##### TREE CROPS FOREST PRODUCTS

- Decree 1498/2008, which regulates Act 99/1993, Article 5, Paragraph 3 (parágrafo 3° del artículo 5° de la Ley 99 de 1993) and Act 139/1994, Article 2 (el artículo 2° de la Ley 139 de 1994). Article 5. Published on: May 7 2008. Available at: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=30098>

#### 1.16.2. Legal authority

- Colombian Agricultural Institute (ICA in its Spanish acronym)
- Regional Autonomous Corporation of the Jurisdiction

#### 1.16.3. Legally required documents or records

##### Wild flora products

- Resolution of the Corporation or Granting License
- Transport safe-conduct

##### Tree crops products

- Producing crops and agro-forestry system: Crops registration in ICA and transport remission.
- Protecting-producing crops and natural forest: Resolution of the Corporation and transport safe-conduct.

#### 1.16.4. Sources of information

##### *Government sources*

- IDEAM (2011). *Forestry bulletin* [online] Institute of Hydrology, Meteorology and Environmental Studies of Colombia (in its Spanish acronym). Available at: <http://www.ideam.gov.co/web/ecosistemas/boletines-informacion-forestal> [Accessed 25 on September 2016].
- minambiente.gov.co (2016). *The Ministry of Environment announces a huge confiscation of illegal wood in the south of Bolivar*. [online] Available at: <http://www.minambiente.gov.co/index.php/noticias/2449-ministro-de-ambiente-anuncia-gigantesco-decomiso-de-madera-ilegal-en-sur-de-bolivar> [Accessed 25 on September 2016].

##### *Non-Government sources*

- RCN Radio (2016). *A raise of 400% in illegal wood confiscations has been noticed in 2016 so far*. [online] Available at: <http://www.rcnradio.com/medioambiente/aumento-en-un-400-el-decomiso-de-madera-ilegal-en-lo-corrido-de-2016/> [Accessed 25 on September 2016].
- El Tiempo (2016). *This is how illegal wood traffic confiscated in Bogota works*. [online] Available at: <http://www.eltiempo.com/bogota/trafico-ilegal-de-madera-en-colombia/16705253> [Accessed 25 on September 2016].
- El Tiempo (2015). *The country loses 48,000 forest hectares a year*. [online] News Article by Cristian Avil Available at: <http://www.eltiempo.com/colombia/otras-ciudades/tala-de-arboles-ilegal-en-colombia/15589478> [Accessed 25 on September 2016].

##### *Interviews to experts*

Conversations with different experts carried out throughout October 2016 helped the authors of this report to understand better the applicable legislation and the risks associated with each category of the laws. Regarding this subcategory, representatives from different organizations were interviewed such as: Colombian Agricultural Institute (ICA in its Spanish acronym), Regional Autonomous Corporation of Risaralda (CARDER in its Spanish acronym).

#### 1.16.5. Risk determination

##### *Overview of Legal Requirements*

##### WILD FLORA FOREST PRODUCTS

The Colombian regulations don't make any specific allusions to the species, quality and quantity classification regarding the forest commerce. In the case of wild flora products located in public and private territories, the interested party has to submit a request to the Corporation, including the species, number, quantity and estimated weight of the products intended to be used and the purpose of the exploitation (Decree 1791/1996, Article 23).

With this information, the corresponding exploitation authorization can be issued; the number will be gradually deducted from the one stated in the authorization by means of the transport safe-conducts. In compliance with Resolution 438/2001, these authorizations

include: Scientific name, Common name, Description, Identification, Amount (in numbers and letters), Measurement unit, Size of the products being transported.

#### TREE CROPS FOREST PRODUCTS

In the case of forest products from tree crops, Decree 1498/2008 Article 6 states that the forest product transport shall be made with a transport remission, which is a document established by the Ministry of Agriculture that shall be submitted and subscribed by the owner of the registration of agroforest or tree crops with commercial purposes or by the person designated by the owner. The transport remission includes the species identification (scientific and common names) and the number and description of the products, among others.

#### *Description of Risk*

- The Ministry of Environment announced that 62,000 cubic meters of wild wood from the department of Choco have been confiscated in 2016 so far. This amount represents an increase of 400% compared with the one from 2015. The value of the confiscated wood is thought to be 2,350 million of Colombian pesos. The reasons for the confiscation are the lack of supporting documents (transport safe-conduct) and the differences in species and number detected in the visual inspection, among others.
- An illegal wood shipment was confiscated in Bolivar in September 2016, valued at 220 millions of Colombian pesos. This caused an environmental damage equivalent to 10 hectares. The traffickers were transporting the wood in rafts along Magdalena river with two Corpomojana safe-conducts covering only 80 cubic meters (that is, they were moving an amount of wood nearly 3 times higher than the one authorized).
- Police statistics show that illegally transported wood confiscations for an amount of 273,000 cubic meters were conducted between 2012 and 2014. The species threatened by the traffickers are valuable woods such as black cedars, Colombian palm, basswood and carob, which are endangered species.
- There is a problem of laundering: the transport of woods with a different origin, species or number from the ones registered in the authorization. This exposes a weakness and a vulnerability in the system. Illegal transports are registered more often in remote areas of the country, which less presence of the state authorities.
- The main reason for confiscation is the lack of safe-conduct or remission document, with more or less 6.661,55 m3 of confiscated wood, followed by differences in the species mentioned in the National Sole Safe-conduct (SUN in its Spanish acronym) or in the Remission Document for the Transport of Forest Products from Agro-forest or Tree Crops Systems (FRMPF in its Spanish acronym), with nearly 704.85 m3 of confiscated wood.
- Due to the lack of training to identify the species subject to confiscation and information gaps in the records sent by the Regional Autonomous Corporations to be included in the national statistics, it is very difficult to identify vulnerable routes and species. Among the most confiscated wooden species in Colombia, there is a remarkable group of mixed species (nearly 1,442.62 m3): cedar (*Cedrela odorata* L., 336.04 m3), sajo (*Camposperma panamensis* Standl., 213.12 m3), a group of undetermined species (212.27 m3) and Guadua bamboo (*Guadua angustifolia* Kunth, 144.78 m3).

- Some remarks made by the consulted parties state difficulties in this aspect caused by different factors: the forestry surveillance and control staff and the road patrols have a lack of training and information regarding Environmental Authority; this makes more difficult to check the species and volume of the specimens with the legal document related to the shipment. In addition, there are different criteria to measure the load, so the document states an estimated value, the roadside measurement a different one and the final measure at the destination made by the buyer of the raw materials another one.
- Moving forward with the remarks, the parties acknowledge corruption problems in the institutions on charge of issuing the SUN safe-conduct, in road patrols and within the transporters, resulting in differences with the document such as carrying a higher volume, different species or different origin of the materials. These differences aren't detected in roadside controls. It is important to mention that the country has made a great improvement in decreasing these aspects by means of the forestry ruling project (led by CARDER and supported with European Union funds); this project has created control protocols, training processes and measurement formulas, although the problem still exists.
- In order to control these difficulties, the ICA has developed some ways to avoid the counterfeiting of their documents (QR codes, dry seals, holograms). The ICA and the Environmental Authority have established the handling of the documents directly to the legal representative or the commissioner, the collection of cancelled or unused documents and the collection of used documents every 6 or 12 months, on order to triangulate and control the transport.
- Regarding manufacturing companies, the need to control Wood entries by the Forestry Operations Book has been established; this book has to be registered by the Environmental Authority. Additionally, companies have to be registered in the Sole National Manufacturing Register (RUA in its Spanish acronym) and to send an annual report of the quantity of Wood delivered, processed and wasted; therefore, companies are forced to an internal monitoring and to control the raw material entries more carefully.

### *Risk Conclusion*

This indicator has been evaluated as specified risk. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

#### **1.16.6. Risk designation and specification**

Specified risk

#### **1.16.7. Control measures and verifiers**

- Products shall be correctly classified (species, quantities, qualities etc.) on sales documents, custom declarations and other legally required documents
- Evidence shall be provided upon request (photographs of labelling)
- Physical control where it should be verified that the present material equals what has been invoices and marked
- To perform a systematic control of the Single National Laissez-Passer (SUN in its Spanish acronym) or the transport remissions of the ICA (if applicable) concerning the project



being evaluated, together with supporting documents such as the invoice; this will allow to identify species, origin, volumes and destinations,

- To verify the monitoring and control instruments about official documents (e.g.: remission and invoice) and their submission that the forestry Project has, so that the shipment of the volumes and species required by the customer are guaranteed.
- To verify the monitoring and control instruments of the manufacturing centre related to the receipt of Wood and the verification of its origin, volume and legal status.
- Supporting instruments that the organization may be able to use: formulas to measure the cubic meters of the Wood (<http://www.bosquesflegt.gov.co/?q=download/file/fid/557>) and "Species suitable for Wood exploitation", with 100 forest wooden registered species, which may help to identify the Wood in surveillance and controlling processes. . (<http://www.bosquesflegt.gov.co/sites/default/files/publicaciones/Especiesmaderables.pdf>)

## 1.17. Trade and transport

*All required trading permits shall exist as well as legally required transport document which accompany transport of wood from forest operation. Risk relates to the issuing of documents permitting the removal of timber from the harvesting site (e.g., legally required removal passes, waybills, timber tags, etc.). In countries with high levels of corruption, these documents are often falsified or obtained by using bribery. In cases of illegal logging, transport documents from sites other than the actual harvesting site are often provided as a fake proof of legality with the harvested material.*

### 1.17.1. Applicable laws and regulations

#### ON WILD FLORA TRANSPORT

- Decree 1791/1996, by which the forestry exploitation system is established. Chapter XII. Transport of wild flora and forest products. Published on: October 4 1996. Available at: [http://www.minambiente.gov.co/images/BosquesBiodiversidadServiciosEcosistemicos/pdf/Ordenaci%C3%B3n-y-Manejo-de-Bosques/dec\\_1791\\_041096.pdf](http://www.minambiente.gov.co/images/BosquesBiodiversidadServiciosEcosistemicos/pdf/Ordenaci%C3%B3n-y-Manejo-de-Bosques/dec_1791_041096.pdf)
- Resolution no. 438/2001 (National Sole Safe-conduct, SUN in its Spanish acronym). "Establishment of the National Sole Safe-conduct for the transport of wood". Articles 3 and 5. Published on: May 23 2001. Available at: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=45556>

#### ON THE TRANSPORT OF TREE CROPS PRODUCTS

- Resolution 401/2011(MADR), by which the new remission document is approved and other directives about the registration are issued. Article 1: Adoption of the document. Published on: December 29 2011. Available at: <https://vuf.minagricultura.gov.co/Documents/2.%20Normatividad%20registro%20y%20Movilizaci%C3%B3n%20ICA/4.%20Resoluci%C3%B3n%20401%20de%202011.pdf>
- Decree 1498/2008, Article 6: Transport of wood or forest products from agroforest or tree crops systems. Published on: May 7 2008. Available at: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=30098>

#### ON INLAND TRANSPORT

- Decree 948/1995, related to the prevention and control of the pollution and the protection of the air quality. Article 60: Restrictions for heavy traffic. Published on: June 5 1995. Available at: [http://www.minambiente.gov.co/images/normativa/app/decretos/54-dec\\_0948\\_1995.pdf](http://www.minambiente.gov.co/images/normativa/app/decretos/54-dec_0948_1995.pdf)
- Act 769/2002 (Ley 769 De 2002), by which the Ground Transport National Code is approved and other directives are issued. Published on: August 6 2002. Available at: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=5557>
- Resolution no. 4100/2004, by which the weight and size limits for ground transport cargo vehicles are set, applying in the national road network. Published on: December 28 2004. Available at: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=15600>
- Decree 2376/2012, which establishes a restriction about forest product transport in the Antioquia department. Published on: September 21 2012. Available at: [http://www.amalfi-antioquia.gov.co/apc-aa-files/32653235373966623661626563613462/decreto\\_numero\\_2376\\_de\\_2012-1.pdf](http://www.amalfi-antioquia.gov.co/apc-aa-files/32653235373966623661626563613462/decreto_numero_2376_de_2012-1.pdf)
- Decree 3457/2012, which modifies Decree 2376/2012. Restrictions for native species transport in Antioquia department. Published on: December 21 2012. Available at: <http://fedemaderas.org.co/2013/01/decreto-3457-restricciones-a-la-movilizacion-en-antioquia/>
- Department Decree 20/2013, which establishes restrictions for forest product transport in the department (Caldas). Published on: February 20 2013. Available at: [http://www.corpocaldas.gov.co/prensa.aspx?Noti\\_ID=402](http://www.corpocaldas.gov.co/prensa.aspx?Noti_ID=402)
- Decree 0206/2014, which partially modifies Department Decree 0206/2013, Article 1. Article 2: Restrictions for forest product transport concerning primary transformation in Cundinamarca jurisdiction. Published on: August 15 2014. Available at: [http://cundinet.cundinamarca.gov.co:8080/Aplicaciones/Gobernacion/CentroDocumental/documental.nsf/f375a708cedbc70105257c17001d5485/6f32825f00f67fc405257d5c004dd137/\\$FILE/15143%20Agosto%2026%20de%202014.pdf](http://cundinet.cundinamarca.gov.co:8080/Aplicaciones/Gobernacion/CentroDocumental/documental.nsf/f375a708cedbc70105257c17001d5485/6f32825f00f67fc405257d5c004dd137/$FILE/15143%20Agosto%2026%20de%202014.pdf)

#### **1.17.2. Legal authority**

- Ministry of Agriculture
- Colombian Agricultural Institute (ICA in its Spanish acronym)
- Regional Autonomous Corporation of the Jurisdiction
- National Police

#### **1.17.3. Legally required documents or records**

For forest products (primary transformation) from producing plantations:

- Copy of the plantation registration
- Original document of transport remission

For forest products (primary transformation) from plantations with producing-protective plants and natural woods:

- Copy of the Corporation's Resolution

- Original transport safe-conduct

Inland transport:

- Technical-mechanical inspection about CO2 emissions

#### 1.17.4. Sources of information

##### *Government sources*

- IDEAM (2011). *Forestry bulletin* [online] Institute of Hydrology, Meteorology and Environmental Studies of Colombia (in its Spanish acronym). Available at: <http://www.ideam.gov.co/web/ecosistemas/boletines-informacion-forestal> [Accessed 25 on September 2016].

##### *Non-Government sources*

- RCN Radio (2016). *A raise of 400% in illegal wood confiscations has been noticed in 2016 so far.* [online] Available at: <http://www.rcnradio.com/medioambiente/aumento-en-un-400-el-decomiso-de-madera-ilegal-en-lo-corrido-de-2016/> [Accessed 25 on September 2016].
- El Tiempo (2016). *This is how illegal wood traffic confiscated in Bogota works.* [online] Available at: <http://www.eltiempo.com/bogota/trafico-ilegal-de-madera-en-colombia/16705253> [Accessed 25 on September 2016].
- Vanguardia (2013). *Three vehicles have been arrested for illegal wood transport.* [online] Available at: <http://www.vanguardia.com/santander/bucaramanga/195520-detenidos-tres-vehiculos-por-transporte-ilegal-de-madera>
- El Universal (2015). *Illegally transported wood confiscated in Bolivar.* [online] Available at: <http://www.eluniversal.com.co/sucesos/se-decomiso-madera-que-era-transportada-ilegalmente-en-bolivar-208893> [Accessed 25 on September 2016].

##### *Interviews to experts*

Conversations with different experts carried out throughout October 2016 helped the authors of this report to understand better the applicable legislation and the risks associated with each category of the laws. Regarding this subcategory, representatives from different organizations were interviewed such as: FEDEMADERAS, Colombian Agricultural Institute (ICA in its Spanish acronym), World Wildlife Fund (WWF).

#### 1.17.5. Risk determination

##### *Overview of Legal Requirements*

##### ON THE TRANSPORT OF WILD FLORA PRODUCTS

Decree 1791 devotes the whole Chapter XII to describe the transport of forest products and wild flora products, pointing out that all the primary forest products that enter or is transported through the national territory shall have the corresponding safe-conduct covering the transport all the way from the exploitation place to the transformation, industrialization or commercialization place.

The safe-conduct for natural woods, wild flora, tree crops, life fence trees, windbreaker barriers, shade trees or plantations associated to agricultural crops shall contain, in compliance with Article 75:

- a) Safe-conduct category (transport, renewal or re-transport).
- b) Name of the environmental authority which grants it.
- c) Name of the exploitation title holder.
- d) Expedition and expiry date.
- e) Origin and final destination of the products.
- f) Number and date of the Resolution granting the exploitation.
- g) Exploitation category.
- h) Species (scientific and common name), volume in cubic meters (m<sup>3</sup>), quantity (units) and weight in kilograms or tonnes (Kgs o Tons) of the forest and/or wild flora products covered by the safe-conduct.
- i) Transport means and identification of the same.
- j) Signatures of the public servant granting the safe-conduct and the title holder.

Each safe-conduct will be used to transport once the product amount granted on the same.

In case the safe-conduct is not used, it can be renewed with a new one after cancellation of previous original one; the same procedure shall be followed in case there is any change in the original destination. The document shall be issued by the Autonomous Corporation of the jurisdiction in which the exploitation is located; in addition, it shall be carried by the transporter to be exhibited whenever required by the authorities.

The document is non-negotiable and non-transferrable; in case this happens, it may lead to fines and administrative penalties for the person responsible for the document.

Resolution no. 438/2001 establishes the use of one sole transport safe-conduct for flora products, considering that the diversity in the transport, re-transport and renewal documents issued by the different regional environmental authorities has made very difficult to control and monitor them. Article 5 of this Resolution details the content of the safe-conduct:

1. Safe-conduct category
2. Safe-conduct validity
3. Safe-conduct title holder
4. Resource category
5. Information about the exploitation or legal extraction of the specimens
6. Forestry exploitation category (flora resource)
7. Legal origin of the specimens
8. Transport route
9. Transport means
10. Transporter

11. Scientific name
12. Common name
13. Description
14. Identification
15. Quantity (in numbers and letters)
16. Measurement unit
17. Size
18. Remarks
19. Granter of the safe-conduct
20. Name, position and signature of the authorized public servant
21. Name, signature and ID of the applicant.

#### ON THE TRANSPORT OF TREE CROPS PRODUCTS

In the case of wood from tree crops and agroforest crops, Decree 1791 Article 76 states the following: Whenever tree crops, life fence trees, windbreaker barriers, shade trees or tree crops associated to agricultural crops are intended to be commercially exploited, the title holder of the plantation registration or his/her legal representative will be able to apply in writing to the corresponding Corporation for the necessary amount of safe-conducts in order to transport the products.

This is ratified in Decree 1498/2008 Article 6, in which the parts of the transport registration are listed. In order to transport wood without bark or primary transformation forest products from agroforest systems or tree crops for commercial purposes, transporters will only have to carry with themselves a copy of the registration and the original transport remission document.

The transport remission will consist on a document designed by the Ministry of Agriculture and Rural Development. It must be issued and subscribed by the title holder of the agroforest systems or tree crops for commercial purposes registration, or by the person designated by him/her. The transport remission being addressed in this Article will contain at least the following information:

1. Expedition date and place.
2. Serial number of the transport remission.
3. Tree crops or agroforest system category.
4. Title holder of the registration.
5. Registration number of the crops or agroforest system.
6. Species identification (scientific and common name).
7. Volume and description of the products.
8. Origin, route and destination.
9. Transport means and identification of the vehicle and the transporter.

10. Name and signature of the registration title holder or the person designated by him/her.

11. Stamp identifying the ownership of the tree crops or the agroforest system for commercial purposes.

Paragraph 1: the transport remission will be used to transport the primary products from the agroforest systems or the tree crops for commercial purposes only once, and it will be valid throughout the whole national territory. A transport remission lacking any requirement before mentioned will be not valid.

Paragraph 2: The Ministry of Agriculture and Rural Development or the designated entity will be performing the required monitoring and controlling actions in order to comply with what is stated in this document, notwithstanding the evaluation, monitoring and controlling roles assigned to other public entities.

Resolution no. 401/2011 establishes the transport remission document for primary transformation products coming from tree crops and/or agroforest systems for registered commercial purposes and mentions the entity responsible for issuing the remission documents designated by the Ministry of Agriculture.

#### ON INLAND TRANSPORT

Weight limits: provided in resolution 4100 of 2004 (resolución 4100 of 2004) for the purposes of regulating the classification of goods vehicles for inland transportation, alongside requirements related with dimensions, maximum gross weight in the vehicles and maximum allowable mass (weight) by axle. For their normal operation on the roads of the entire national territory. Sections 7-10 of this rule (artículos 7-10), list the approved weights and dimensions for the country.

As regards prohibitions, the country has the following in place for transportation in heavy load vehicles.

Decree N° 948 of 1995 (Decreto 948 De 1995): Section 60 (Artículo 60): Heavy load restrictions. The transit of heavy load vehicles such as trucks, tippers and tractors shall be forbidden in the public roads of all A sectors, in accordance with the local or district rules that are passed for this purpose.

Decree N° 2376 of 2012 (Decreto 2376 de 2012). Lying down the limitations to the transport of forest products in the Antioquia department. Amended by virtue of Decree 2457 of 2012 (Decreto 2457 of 2012). Article first: transporting native species of wood shall be forbidden within the Antioquia department, from Monday to Friday, between 6:00pm and 6:00am and 24 hours per day on the weekends and holidays.

Departmental Decree 20 of 2013 (Decreto departamental 20 de 2013), stipulating the limitation to the transport of forest products in the Caldas department, by virtue of which it is prohibited to transport wood and/or forest species from natural forests, forest plantations and agro-forestry systems, from Monday to Sunday, including holidays, between 6:00 p.m. and 6:00 a.m.

Decree N° 0206 of 2014 (Decreto 0206 of 2014). Partially amending Section first of Departmental Decree 0206 of September 9 2013. Section first: The transport of forest products of primary transformation (such as logs, panels, benches, boards and other sheets and hogged wood) and other wild flora products (non-wood products obtained directly from wild species of flora such as rubber, resins, latex, lacquers, fruits, barks, strains, seeds and

flowers amongst others), Guadua bamboo, bamboo and wild palms, shall be prohibited in the Cundinamarca department from Monday to Friday, from 7:00 p. m. to 5:00 a. m. and 24 hours a day on Saturdays, Sundays and holidays.

#### *Risk description*

- The Ministry of the Environment (Ministerio de Ambiente) announced that so far in 2016, 62 thousand m<sup>3</sup> of wild wood had been seized, all coming from the Chocó department and considered to be illegal. This figure represents a 400% increase in comparison with 2015. The wood discovered was estimated at 2350 million *pesos*.
- Between 2011 and 2015, the environmental authorities in Bogotá seized 333.26 m<sup>3</sup> of wood from illegal trafficking (District Secretariat for the Environment - Secretaría Distrital de Ambiente –SDA-, cited by El Tiempo, 2016). That amount is approximately equivalent to 32 trucks filled with this natural resource. By August 2016, 35.46 m<sup>3</sup> of wood had been seized in the city. According to the environmental police, most illegal wood comes from Chocó and the South of the country.
- In 2011, the total volume seized in the country was 12.180.41 m<sup>3</sup>; at the regional level, the Pacific zone, with a 24.53% figure, is where the biggest volume was seized. Codechocó (17.36%) has the greatest volume of seized wood, followed by Corpourabá (16.03%) and CAS (9.65%), while, at the city level, Quibdó (Chocó) is in first place with the biggest volume of seized wood. According to information reported, the Pacific region has the biggest volume of seized wood, with 2,987.73 m<sup>3</sup>. The city of Quibdó (Chocó) is the place with the highest rate of seized wood for this region (IDEAM, 2011).
- In accordance with current applicable legislation, namely Act 1333 of 2009 (ley 1333 de 2009) which establishes penalties for environmental offences, there are two types of seizure: Precautionary and final. Around 37.29% of seizures in Colombia are precautionary seizures, while 13.53% of them are final. The main reason for this on the national level is the following: not having a laissez-passer or a transfer form (salvoconducto o formato de remisión) with around 6,661.55 m<sup>3</sup> in seized volume, followed by having species other than those listed in the National Single Laissez-Passer (Salvoconducto Único Nacional [SUN]) or transfer form for transportation of Forest Products from Agro-forestry systems or forest plantations (Formato de Remisión para la Movilización de Productos Forestales Provenientes de Sistemas Agroforestales o Cultivos Forestales [FRMPF]), with around 704.85 m<sup>3</sup> (IDEAM,2011).
- Expert consultation revealed the importance for this sub-criterion of the efforts made within the framework of the Intersectorial Covenant for Legal Timber in Colombia (Pacto Intersectorial por la Madera Legal en Colombia), such as the creation of two digital applications for forestry control and monitoring to support the regional environmental authorities and supporting institutions such as law enforcement institutions: “cubimadera” reduces technical differences when it comes to gauge wood and “especies maderables” features 100 forest species of registered wood, which allows for a better identification of wood in control and inspection procedures. A protocol has been created as well for the follow-up and monitoring of the transportation of wood products and non-wood products from forests.

#### *Risk Conclusion*



This indicator has been evaluated as specified risk. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

#### **1.17.6. Risk designation and specification**

Specified risk

#### **1.17.7. Control measures and verifiers**

- Requirements related to transport means (e.g. trucks) shall always be followed
- Species and product types shall be traded legally.
- Required trade permits shall exist and be documented.
- All required transport documents shall exist and be documented.
- Volume, species and qualities shall be classified according to legal requirements.
- Documents related to transportation, trade or export shall be clearly linked to the specific material in question
- Review systematically the Single National Laissez-Passer form (Salvoconducto Único Nacional to transport biodiversity specimens.
- Verify the forestry project's monitoring and control instruments for filling-in forms, for instance the transport permit and invoice (remisión y factura) to guarantee the
- Volumes and species in the customer order shall correlate with actual deliveries.
- Verify the monitoring and control instruments at the centre where the wood shall be received and for verifying its origin, volumen and legality.
- Supporting tools that may be being used by the entity: "cubimaderas"  
<http://www.bosquesflegt.gov.co/?q=download/file/fid/557> and "especies maderables",  
 100 forestry species of registered wood, which allows for the identification of wood in  
 inspection and surveillance procedures.  
 (<http://www.bosquesflegt.gov.co/sites/default/files/publicaciones/Especiesmaderables.pdf>  
 )

### **1.18. Offshore trading and transfer pricing**

*Legislation regulating offshore trading. Offshore trading with related companies placed in tax havens combined with artificial transfer prices is a well-known way to avoid payment of legally prescribed taxes and fees to the country of harvest and considered as an important generator of funds that can be used for payment of bribery and black money to the forest operation and personnel involved in the harvesting operation. Many countries have established legislation covering transfer pricing and offshore trading. It should be noted that only transfer pricing and offshore trading as far as it is legally prohibited in the country, can be included here. Risk relates to situations when products are sold out of the country for prices that are significantly lower than market value and then sold to the next link in the supply chain for market prices, which is often a clear indicator of tax laundry. Commonly, the products are not physically transferred to the trading company.*

#### **1.18.1. Applicable laws and regulations**

GENERAL LEGISLATION

- Decree N° 624 of 1989 (Decreto 624 De 1989): Issuing the Tax Statute on the Taxes Managed by the Directorate-General for National Taxes. Chapter XI added by virtue of Section 28 of Act 788 of 2002 (Capítulo XI adicionado por el artículo 28 de la ley 788 de 2002). Sections 260-1 to 260-5 of the Tax Statute on related parties and trade relations (Artículo 260-1 al 260-5 del Estatuto Tributario por vinculación económica o partes relacionadas). Published on: 30 March 1989. Available at: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=6533>
- Act N° 788 of 2002: Which established tax and criminal regulations of national and territorial scope, amongst other provisions (Por La Cual Se Expiden Normas En Materia Tributaria y Penal del Orden Nacional y Territorial; y se dictan otras Disposiciones). Section 28 (Artículo 28) Adding Chapter XI on transfer pricing to the Tax Statute. Published on: 27 December 2002. Available at: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=7260>
- Decree N° 1791 of 2007 (Decreto 1791 of 2007). By virtue of which Section 579-2 of the Tax Statute is regulated (Por medio del cual se reglamenta el artículo 579-2 del Estatuto Tributario). Section 1 (Artículo 1) Paperless submission of statements. Published on: 23 May 2007. Available at: <http://www.dian.gov.co/dian/13Normatividad.nsf/e9f4a60f9d1ed93a05256f8800650b07/280f6c01519cc596052572e6007d32d5?OpenDocument>
- Decree N° 3030 of 2013 (Decreto 3030 of 2013). Which regulates sections 260-1, 260-2, 260-3, 260-4, 260-5, paragraphs 2 and 3 of section 260-7, sections 260-9, 260-10, 260-11 and 319-2 of the Tax Statute. Sections 2 to 4 on transfer pricing. Published on: 27 December 2013. Available at: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=56249#0>

#### **1.18.2. Legal authority**

- Directorate for National Taxes and Customs (Dirección de Impuestos y Aduanas Nacionales, DIAN)

#### **1.18.3. Legally required documents or records**

- Informative statement on transfer pricing (annual) (declaración informativa de precios de transferencia)
- Supporting documents
- Early pricing agreement (Acuerdo anticipado de precios), when required by the taxpayer

#### **1.18.4. Sources of information**

##### *Government sources*

- DIAN (N.Y.). *Transfer pricing. Official obligations*. [online] Directorate for National Taxes and Customs' leaflet (Dirección de Impuestos y Aduanas Nacionales, DIAN) Available at: [http://www.dian.gov.co/descargas/capacitacion/2015/precios\\_transferencia/documentos/Folleto\\_precios\\_transferencia.pdf](http://www.dian.gov.co/descargas/capacitacion/2015/precios_transferencia/documentos/Folleto_precios_transferencia.pdf) [Accessed 25 September 2016]
- DIAN (N.Y.). *Transfer pricing. Transfer pricing services guidelines*. [online] Directorate for National Taxes and Customs' leaflet (Dirección de Impuestos y Aduanas Nacionales,

DIAN) Available at: <http://www.dian.gov.co/contenidos/servicios/pttransferencia.html>  
[Accessed 25 September 2016]

#### *Non-Government sources*

- Juan David Barbosa (2006). *Transfer pricing in Colombia (El régimen de precios de transferencia en Colombia). An analysis of their development, the arm's length principle and the economic relation (Un análisis de su desarrollo, del principio de plena competencia y de la vinculación económica)*. [online] Universidad Javeriana. Available at: <http://revistas.javeriana.edu.co/index.php/vnijuri/article/viewFile/14657/11825>  
[Accessed 25 September 2016]
- Accounter (2009). *Transfer pricing related penalties*. [online] Available at: <http://www.accounter.co/boletines/35-boletines/278-sanciones-relacionadas-con-precios-de-transferencia.html> [Accessed 25 September 2016]
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- EY (2013). *Transfer pricing global reference guide – Colombia*. [online] Available at: <http://www.ey.com/gl/en/services/tax/international-tax/transfer-pricing-and-tax-effective-supply-chain-management/2013-transfer-pricing-global-reference-guide---colombia> [Accessed 6 February 2017].
- EY (2014). *Global Tax Alert (News from Transfer Pricing and Americas Tax Center) - Colombia modifies transfer pricing regulations*. [online] Available at: <http://www.ey.com/gl/en/services/tax/international-tax/alert--colombia-modifies-transfer-pricing-regulations> [Accessed 6 February 2017].
- KPMG (2014). *International Transfer Pricing 2013/14 – Colombia*. [online] Available at: <http://www.pwc.com/gx/en/international-transfer-pricing/assets/colombia.pdf> [Accessed 6 February 2017].

#### *Interviews with experts*

Conversations with various experts, carried out in October 2016, helped the authors of this report to better understand the applicable legislation and the risks associated with each category of legislation. Within this subsection, representatives of the following bodies were interviewed: FEDEMADERAS, Ministry of the Environment and Sustainable Development (Ministerio de Ambiente y Desarrollo Sostenible), FAO.

#### **1.18.5. Risk determination**

##### *Overview of Legal Requirements*

The matter of transfer pricing was added to the Tax Statute (Decree 624 of 1989, Decreto 624 de 1989) with Act 788 of 2002 in its Section 28 and then regulated by Decree 3030 of 2013 (Ley 788 de 2002 en su artículo 28, decreto 3030 de 2013). Thus, Section 260-1 in the Tax Statute (artículo 260-1 del estatuto tributario) provides for transfer pricing as follows:

"Section 260-1 (Artículo 260-1). Operations with related economic parties and other related parties (Operaciones con vinculados económicos y partes relacionadas). Income taxpayers

who hold operations with related economic parties and other related parties shall declare, for the purposes of income taxes and other complementary taxes, their ordinary and extraordinary income and their expenses and deductions, considering for these operations prices and utility margins that may have been used for similar operations with or between independent parties.

Tax administration, in the exercise of its monitoring and verification powers, shall be entitled to determine ordinary and extraordinary income and costs and deductions of operations conducted by income taxpayers and taxpayers of other complementary taxes with related economic parties and other related parties, by determining pricing and utility margins in similar operations with or between independent parties in Colombia or overseas...

Section 260-4 (artículo 260-4) mentions the requirement of having supporting documents available (that taxpayers shall prepare and keep for five years after the date when the documents are issued) on each type of operation conducted with related economic parties or related parties to prove that their ordinary and extraordinary income and their expenses and deductions meet the comparability criteria therein defined for pricing and utility margins used by independent parties in comparable operations. This section was elaborated on in the Regulating Decree where the following is stated:

4<sup>th</sup> Section (Artículo 4º). Content of supporting documents. The supporting documents mentioned in Section 260-5 of the Tax Statute shall include studies, documents and other evidence with which income taxpayers and taxpayers of other complementary taxes can prove that their income, costs, deductions, assets and liabilities during the corresponding fiscal year, in operations conducted with related parties overseas or related parties located in Free Trade zones, or with people, corporations, entities or companies located, residing or domiciled in tax havens, were determined applying for those operations the arm's length principle, meaning that principle by virtue of which operations between related parties meet the criteria applied in comparable operations with or between independent parties.

Supporting documents are evidence that the taxpayers provide to inform the tax office that the operations conducted with their related parties overseas, related parties in Free Trade zones and people, corporations, entities or companies located, residing or domiciled in tax havens were agreed on in compliance with the the arm's length principle.

The supporting documents shall include the contents mentioned in Chapter II of Regulating Decree 3030 of 2013 (capítulo II del Decreto Reglamentario 3030 de 2013.)

1. Executive analysis.
2. Functional analysis.
3. Market analysis.
4. Economic analysis.

Section 260-8 (artículo 260-8) makes it mandatory to file an informative tax statement:

*"Income taxpayers and taxpayers of other complementary taxes, who are required to comply with the rules for transfer pricing, shall file every year an informative tax statement about their operations with related economic parties or related parties."*

The rules included in Book V of this Statute shall be applicable, whenever relevant, in this statement. Additionally, they shall duly file all information that the national government may require by virtue of any regulation.

Paragraph. "As for subordinated or controlled companies or groups of companies, in accordance with those cases provided for in Sections 260 and 261 of the Tax Statute, the Controlling Entity or parent company shall file a statement and include all related operation for the corresponding fiscal period."

The contents of the informative statement are detailed in Section 10 of the regulating decree (artículo 10 del decreto reglamentario), as follows:

- a) Duly completed form that is required for these purposes by the Directorate for National Taxes and Customs (Dirección de Impuestos y Aduanas Nacionales);
- b) All information necessary to identify the taxpayer;
- c) All information necessary to identify the related parties overseas, related parties in Free Trade zones, or people, corporations, entities or companies located, residing or domiciled in tax havens (as relevant), with whom operations were conducted;
- d) All information necessary to identify the type of operations conducted by the taxpayer during the corresponding fiscal year with related parties overseas, related parties in Free Trade zones, or people, corporations, entities or companies located, residing or domiciled in tax havens (as relevant);
- e) Information on the methodology applied and other elements involved in determining pricing and utility margins;
- f) Information on Cost Sharing Agreements and business restructuring;
- g) Payment of fines, when applicable;
- h) Signature of whomever is legally required to file the statement.

1<sup>st</sup> paragraph. The informative statement of transfer pricing shall be signed by:

- a) The taxpayer or his legal representative as mentioned in Section 572 of the Tax Statute (artículo 572 del Estatuto Tributario);
- b) Representatives by power of attorney or special representatives who are not lawyers as mentioned in Section 572-1 of the Tax Statute (artículo 572-1 del Estatuto Tributario). In such case, a power of attorney formalised in public affidavit shall be required.

2<sup>nd</sup> Paragraph. In accordance with Section 576 (artículo 576) of the Tax Statute, the informative statement on transfer pricing of taxpayers living overseas shall be filed by:

- a) Foreign companies' branches;
- b) Permanent establishments of non-residents or foreign legal persons or entities, as relevant in each case.

Those eventually required to file the informative statement of transfer pricing shall be held responsible for any potential related punishments, if they fail to do so.

Transfer pricing could be defined as those prices charged by companies for goods or services supplied to related parties overseas, related parties located in Free Trade zones or people, corporations, entities or companies located, residing or domiciled in tax havens. They must

be complied with by taxpayers who conduct transactions with overseas operators and/or operators located in Free Trade zones or people, corporations, entities or companies located, residing or domiciled in tax havens.

#### *Description of Risk*

- In consultation with experts, it was concluded that legal instruments and governmental institutions guarantee compliance with transfer pricing and that those who wish to conduct trade transactions overseas must comply with the applicable regulations. If this was not the case, the interested person would not be granted the corresponding permits.
- According to EY (2013), Since 2004, the tax authorities have improved their audit processes, focusing on the hydrocarbon and mining industries.

#### *Risk Conclusion*

This indicator has been evaluated as low risk. Identified laws are upheld. Cases where law/regulations are violated are efficiently followed up via preventive actions taken by the authorities and/or by the relevant entities.

#### **1.18.6. Risk designation and specification**

Low risk

#### **1.18.7. Control measures and verifiers**

N/A

### **1.19. Custom regulations**

*Custom legislation covering areas such as export/import licenses, product classification (codes, quantities, qualities and species).*

#### **1.19.1. Applicable laws and regulations**

##### **GENERAL LEGISLATION**

- Act 7 of 1991 (Ley 7 de 1991): Colombian Overseas Trade Framework Law (Ley Marco del Comercio Exterior Colombiano). Chapter III-Section 17 Ministry of Overseas Trade, in its capacity as entity responsible for overseas trade (Capítulo III-Artículo 17 Ministerio de Comercio Exterior). Published on: 16 January 1991. Available at: [https://www.cancilleria.gov.co/sites/default/files/Normograma/docs/ley\\_0007\\_1991.htm](https://www.cancilleria.gov.co/sites/default/files/Normograma/docs/ley_0007_1991.htm)
- Resolution 4240 of June 2 2000 (Resolución 4240 de junio 2 de 2000) by virtue of which decree 2685 of 1999 (Decreto 2685 de 1999) is regulated. Colombian customs law. Section 2 (Artículo 2). Registration in the computer system for customs (Registro en el sistema informático aduanero). Heading V (Título V). Taxes on imports (Régimen de importación) and Heading VII Taxes on Exports (Título VII Régimen de Exportación). Date of publication: 02 June 2000. Available at: [http://www.icbf.gov.co/cargues/avance/docs/resolucion\\_dian\\_rd424000.htm](http://www.icbf.gov.co/cargues/avance/docs/resolucion_dian_rd424000.htm)
- Decree 1232 of 2001 (Decreto 1232 de 2001). Under which Decree 2685 of 28 December 1999 (Decreto 2685 del 28 de diciembre de 1999) is partially amended and other additional provisions come into force. Section 4 (Artículo 4) documents to submit to

custom authorities. Date of publication: 20 June 2001. Available at:

[http://www.icbf.gov.co/cargues/avance/docs/decreto\\_1232\\_2001.htm](http://www.icbf.gov.co/cargues/avance/docs/decreto_1232_2001.htm)

- Decree 390 of 2016 (Decreto 390 de 2016): Under which customs regulations are laid out. Section 215 (Artículo 215). Documents to support the customs statement. Date of publication: 07 March 2016. Available at: [http://www.mintic.gov.co/portal/604/articles-14747\\_documento.pdf](http://www.mintic.gov.co/portal/604/articles-14747_documento.pdf)
- Resolution 70 of 2014 by the Ministry of Industry, Trade and Tourism (Resolución 70 de 2014 del Ministerio de Industria, Comercio y Turismo). Antidumping duties (derechos antidumping). Date of publication: 10 April 2014. Available at: <http://fedemaderas.org.co/wp-content/uploads/2012/04/VER18.pdf>

### **1.19.2. Legal authority**

- Directorate for National Taxes and Customs (Dirección de Impuestos y Aduanas Nacionales)
- Ministry of Industry and Trade (Ministerio de Industria y Comercio)
- Colombian Agricultural Institute (Instituto Colombiano Agropecuario, ICA). (phytosanitary approval [visto bueno de control fitosanitario])
- Ministry of the Environment and Sustainable Development (Ministerio de Ambiente y Desarrollo Sostenible, MADS) (CITES approval)

### **1.19.3. Legally required documents or records**

By virtue of Decree 390 of 2016 on imports (Decreto 390 de 2016 para importación)

- Imports register or licence (Registro o Licencia de Importación)
- Commercial invoice (Factura comercial)
- Andean Custom Value Declaration (Declaración Andina del Valor)
- Transport document (bill of landing, airway bill or transport bill) (conocimiento de embarque, guía aérea o carta de porte)
- Certificate of Origin when required (Certificado de origen)
- Health certificate (Certificado de sanidad)
- Packing list (Listado de empaque)
- Power of attorney (when the declaration is filed through a Customs Brokerage Agent) Mandato cuando la declaración se presente a través de un SIA
- Approval by competent entities (Visto bueno de entidades con jurisdicción)

In accordance with Decree 390 of 2016 (Decreto 390 de 2016) on exports

- Commercial invoice (Factura comercial)
- International Transport Document
- Customs Transit Declaration (Declaración de Transito Aduanero)



- Power of attorney (if the declaration is being made by a Customs Brokerage Agent or a proxy) (Mandato cuando actúe como declarante una Sociedad de Intermediación Aduanera –SIA- o un apoderado)
- Goods Transport Form (Formulario de Movimiento de Mercancías)

#### 1.19.4. Sources of information

##### *Government sources*

- DIAN (N.Y). *Export and import procedure*. [online] Available at: <http://www.dian.gov.co/DIAN/12SobreD.nsf/pages/comex> [Accessed 31 August 2016].
- DIAN (2012). *Custom procedures for imports and exports*. [online] Directorate for National Taxes and Customs (DIAN). Available at: <http://es.slideshare.net/DanielCueroCastro/dian-procesos-aduaneros-importacion-y-exportacion> [Accessed 31 August 2016].

##### *Non-government sources*

- WWF (2015). *Causes of wood-related illegalities in Colombia (Causas de la ilegalidad de la madera en Colombia). A study on the trade flows of wood and the actors and impacts of illegal felling (estudio sobre los flujos del comercio de la madera, los actores y los impactos de la tala ilegal)*. [online] Available at: [http://d2ouvy59p0dg6k.cloudfront.net/downloads/ilegalidadmadera\\_m3\\_b18\\_c5\\_web.pdf](http://d2ouvy59p0dg6k.cloudfront.net/downloads/ilegalidadmadera_m3_b18_c5_web.pdf) [Accessed 24 September 2016].
- Germán Nuñez (2014). *Wood, a challenged industry (Madera un sector contra las tablas)*. [online] Confidencial newspaper, Colombia. Available at: <http://confidencialcolombia.com/es/1/304/11406/Madera-un-sector-contra-las-tablas-madera-sector-muebles-productos-exportaci%C3%B3n-cierre-mercado-venezolano-dumping-Fedemadera-Alejandra-Ospitia.htm> [Accessed 24 September 2016].
- ideam.gov.co (2016). Colombia-Overseas trade of timber-yielding forest products (Colombia-Comercio exterior de productos forestales maderables [PFM]). 2011-2015 period. [online] Ministry of the Environment and Sustainable Development (Ministerio de Ambiente y Desarrollo Sostenible) and ONF Andina Available at: <http://documentacion.ideam.gov.co/cgi-bin/koha/opac-detail.pl?biblionumber=37986> [Accessed 11 November 2016].

##### *Consultation with experts*

Conversations with various experts, carried out during October 2016, helped the authors of this report to better understand the applicable legislation and the risks associated with each category of legislation. Within this subsection, representatives of the following bodies were interviewed: FEDEMADERAS and PROCOLOMBIA.

#### 1.19.5. Risk determination

##### *Overview of Legal Requirements*

##### GENERAL LEGISLATION

The Ministry of Overseas Trade (Ministerio de Comercio Exterior) is the institution responsible for overseas trade policy direction, coordination, application and overseeing, in accordance with the development plans and schemes established by Act 7 of 1991.

The most recent legislation on customs is decree 390 of 2016 (decreto 390 de 2016) on the establishment of customs regulations, applicable in the national customs territory and regulation on the legal relationship between customs and those who participate in the entering, keeping, transportation and exit of goods.

According to DIAN, these are some of the tariff item numbers in overseas trade in Colombia.

Tariff item-Product description:

44-Wood and its manufactured products, wood charcoal

4407-Sawn wood, planed or unplaned, with a width of more than 6mm

4410-Strand boards (panels), oriented strand board (OSB) and other similar boards such as waferboards

4411-Wood fiberboards, such as middle density boards MDF

4412-Plywood boards and laminated timber boards

47-Wood pulp in the mechanical pulp and chemical pulp subdivisions

Source: DIAN – Harmonised system of goods naming and certification (Sistema armonizado de designación y certificación de mercancías [SADCM]). Common Tariff Nomenclature of the Andean Group (Nomenclatura arancelaria del grupo andino [NANDINA]), DIAN, Decree 4927 of 2011 (decreto 4927 de 2011). Quoted by MADS and ONF Andina, 2016

On exports

In Colombia, the Ministry of Trade, Industry and Tourism (Ministerio de Comercio, Industria y Turismo) is the authority competent for issuing Certificates of Origin of national products to be exported which are wanted to benefit from preferential tariffs at the importer country, as long as Colombia and the country of destination are signatory to trade agreements on the matter and as long as the product complies with the origin requirements established in said agreement.

The process of exporting goods starts with the filing and approval of a shipping authorisation through the customs office computer system. Then, the steps detailed below must be followed, to turn this shipping application into an exports declaration. Finally, the goods are shipped.

- Filing the shipping application through the customs office computer system.
- Submitting the supporting documents for the shipping authorisation application: approvals (check the Ministry of Trade, Industry and Tourism's website) or authorisations when appropriate, power of attorney if the declaration is being made by a Customs Brokerage Agent or a proxy and documents that make the export official (vistos buenos [consultar página web del Ministerio de Comercio, Industria y Turismo] o autorizaciones cuando a ello hubiere lugar, mandato cuando se actúe a través de una sociedad de intermediación aduanera o apoderado, y los documentos que acrediten la operación de exportación).

- Validation and approval of the shipping authorisation
- Entry of goods into the customs main area or the shipper's hold, for preparation before being loaded for export, and for selection or random distribution of the freight or for its physical or documents inspection.
- Customs authorities conduct the inspection of the documents or the physical inspection of the freight.
- Origin of the shipping (load) of the goods on the respective transportation means, prior authorisation by the customs authorities (Procedencia del embarque (cargue) de la mercancía en el medio de transporte respectivo, previa autorización de la autoridad aduanera).
- Shipping certification and provision of number and date of the shipping confirmation (fecha del manifiesto de carga).
- Once followed these steps, the shipping authorisation, with the given number of shipping confirmation, becomes a final exports declaration (declaración de exportación definitiva).

Section 397 (artículo 397) lies down the documents to support the customs declaration:

1. International transport document
2. Commercial trade or document accrediting the commercial transaction for the event where the goods were not sold
3. Health and Phytosanitary Certificates issued by the National Institute for the Control of Medicines and Food (Certificados de inspección sanitarios y fitosanitarios expedidos por el Instituto Nacional de Vigilancia de Medicamentos y Alimentos –INIVIMA) or the Colombian Agricultural Institute (Instituto Colombiano Agropecuario –ICA-) and other documents required by special regulations, in accordance with currently applicable legislation.
4. Order (if the declaration is being made by a Customs Brokerage Agent) (Mandato, cuando la declaración la presente una agencia de aduanas)

Paragraph. The certificates of health and phytosanitary inspection issued by the Colombian Agricultural Institute (Instituto Colombiano Agropecuario, ICA) and National Institute for the Control of Medicines and Food (Instituto Nacional de Vigilancia de Medicamentos y Alimentos –INIVIMA) and other inspection certificates or documents issued by other control bodies required as supporting documents, shall be obtained during inspection procedures or, in any case, before authorisation in those cases where inspection procedures are not deemed necessary, and shall be kept for the period established in Section 147 of this decree.

Decree 1791 of 1996 (Decreto 1791 de 1996) in its Section 82 (artículo 82) establishes CITES-related matters on export, import or re-export of species or specimens which require so:

- Section 82 (Artículo 82). Import or introduction in the country of wild flora or forest specimens or products shall be governed by legal documents issued by the country of origin and requires that such specimens or products have not been subject to prohibition or ban. In order to achieve this, the certification or permits established under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) if applicable for the species in question.

Paragraph. The Ministry of the Environment (Ministro del Medio Ambiente) is responsible for issuing CITES certifications or permits for the export, import and re-export of species or specimens which require so.

### *Description of Risk*

- One of the most enlightening references for the study of the scale of illegal felling of natural forests is the survey commissioned by IDEAM and conducted by ECOFOREST in 2009 (IDEAM, 2009), where authorised volumes of timber felling — as registered by the Regional Autonomous Corporation (CAR) in charge— are compared against volumes of wood consumption, based on estimates obtained from interviews and the set-up of extensive systems. The study concluded that the percentage of unregistered timber was between 33% and 55%, depending on the model being used. Illegal felling concentrates mainly in natural forest areas, with a higher occurrence rate in the Pacific region (Chocó-Darién) and the Amazon.
- Another trend that has been confirmed is the fact that illegal timber is commercialised exclusively in the national market. Its absence in overseas trade is largely due to the national legal framework, by virtue of which only wood products that have undergone second grade transformations can be exported (if they come from a natural forest). The informal sector is not sufficiently organised and structured nowadays to supply such great amount of timber products. However, at least two illegal cases have been reported, where big private companies who also supply overseas were involved (WWF, 2015).
- According to data from the International Tropical Timber Organization (ITTO), most timber production in Colombia is sold at the national level. More specifically, home consumption amounts to 99% of timber production for the whole period since records on the matter started being kept. In other words, the exported volumes of wood are trifling, in comparison with those produced.
- According to MADS-ONF Andina (2016), since 2008 Colombia has shifted from its previous role as an exporter of forestry products to its new role as an importer. Between 2011 and 2015, the trade balance deficit rose by 45.5% for products within tariff item number 44 (sawn wood and its manufactured products), going from 132USD to 192USD million.
- Colombia is a net importer of timber products (except for 2009, when total exports exceeded the imported volume by 3.000 m<sup>3</sup>). Imported products are essentially sawn wood and non-tropical plywood.
- The latest consumption survey by the Ministry of Agriculture and Rural Development (Ministerio de Agricultura y Desarrollo Rural) proves that the country uses 4,000 m<sup>3</sup> of wood per year for industrial purposes. According to this study, 84.1 % of this volume comes from natural forests, 12.4 % comes from forest plantations and the remaining 3.5 comes from imports.
- During consultation with experts, it was confirmed that there are control and legal mechanisms in place to guarantee that imports and exports conducted and registered with the public institutions comply with all the legal requirements. However, it was also highlighted that there is an informal market through which wood enters and leaves the country (particularly in the Amazonian and Panama's borders) which is practically impossible to quantify and which caters at national consumption.

### *Risk Conclusion*

This indicator has been evaluated as specified risk. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

#### **1.19.6. Risk designation and specification**

Specified risk

#### **1.19.7. Control measures and verifiers**

- Products shall be correctly classified (type, custom code, species, quantities, qualities, etc.).
- All required import and exports permits shall be in place.
- Review the timber purchase documents (in the case of manufactures and agents) and ICA registry, in order to verify the timber's supplier and origin. In the case of imported wood, besides the invoice, the transport document and packing list shall be verified (documento de transporte y lista de empaque) if the species is listed in CITES, and certificate of origin (certificado de origen).
- For timber exports, verify the international transport document, commercial invoice and health and phytosanitary inspection certificates issued by the National Institute for the Control of Medicines and Food (Certificados de inspección sanitarios y fitosanitarios expedidos por el Instituto Nacional de Vigilancia de Medicamentos y Alimentos –INIVIMA) or the Colombian Agricultural Institute (Instituto Colombiano Agropecuario –ICA-) and any other documents required in accordance with any special regulations.

### **1.20. CITES**

*CITES permits (the Convention on International Trade in Endangered Species of Wild Fauna and Flora, also known as the Washington Convention). Note that the indicator relates to legislation existing for the area under assessment (and not e.g., the area from which CITES species are imported).*

#### **1.20.1. Applicable laws and regulations**

- Act Nº 17 of 1981 (Ley 17 de 1981): Approving the "Convention on International Trade in Endangered Species of Wild Fauna and Flora", signed in Washington, D.C. on 3 March 1973. Sections 3, 4 and 5 (artículos 3, 4 and 5). Regulations for trade with specimens included under appendixes I, II and III respectively. Published on: 22 January 1981. Available at: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=45530>
- Act Nº 165 of 1994 (Ley 165 de 1994): UN Convention on Biological Diversity. Published on: 1994. Available at: <http://www.humboldt.org.co/images/documentos/pdf/Normativo/1994-ley165-1994.pdf>
- Decree 1791 of 1996 (Decreto 1791 de 1996). Chapter XII - Section 82 (Capítulo XII - Artículo 82) Certification or permits established by the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), if it is required for the species in question. Published on: 04 October 1996. Available at: [http://www.minambiente.gov.co/images/BosquesBiodiversidadyServiciosEcosistemicos/pdf/Ordenaci%C3%B3n-y-Manejo-de-Bosques/dec\\_1791\\_041096.pdf](http://www.minambiente.gov.co/images/BosquesBiodiversidadyServiciosEcosistemicos/pdf/Ordenaci%C3%B3n-y-Manejo-de-Bosques/dec_1791_041096.pdf)

- Decree 1401 of 1997 (Decreto 1401 de 1997). By virtue of which the Colombian Administrative Authority before the Convention on International Trade in Endangered Species of Wild Fauna and Flora -CITES- and the mandate thereof are established. Section 1 (Artículo 1). The Ministry of the Environment (Ministerio de Medio Ambiente) is the Colombian administrative authority before the Convention on International Trade in Endangered Species of Wild Fauna and Flora -CITES-). Published on: 27 May 1997. Available at: <https://encolombia.com/medio-ambiente/normas-a/hume-decreto140197/#sthash.G8ROGa6o.dpuf>
- Decree 1909 of 2000 (Decreto 1909 de 2000). "Por el cual se designan los puertos marítimos y fluviales, los aeropuertos y otros lugares para el comercio internacional de especímenes de fauna y flora silvestre" "Appointing maritime and river ports, airports and other locations for the international trade of wild specimens of fauna and flora". Published on: 26 September 2000. Available at: [http://www.minambiente.gov.co/images/BosquesBiodiversidadyServiciosEcosistemicos/pdf/Normativa/Decretos/dec\\_1909\\_260900.pdf](http://www.minambiente.gov.co/images/BosquesBiodiversidadyServiciosEcosistemicos/pdf/Normativa/Decretos/dec_1909_260900.pdf)
- Resolution 438 of 2001 by the Ministry of the Environment (Resolución 438 de 2001 del Ministerio de Medio Ambiente). Providing for the single national laissez-passer document for transporting species important for biological diversity (Por el cual se establece el salvoconducto único nacional para la movilización de especímenes de diversidad biológica). Published on: 23 May 2001. Available at: [http://www.minambiente.gov.co/images/BosquesBiodiversidadyServiciosEcosistemicos/pdf/permiso\\_sites/Res\\_438\\_2001\\_establece\\_SUN.pdf](http://www.minambiente.gov.co/images/BosquesBiodiversidadyServiciosEcosistemicos/pdf/permiso_sites/Res_438_2001_establece_SUN.pdf)
- Resolution No. 1263 of 2006 (Resolución 1263 de 2006): Setting up the procedure and fixed value for permits mentioned in CITES, amongst other provisions (Por la cual se establece el procedimiento y se fija el valor para expedir los permisos a que se refiere la Convención sobre el Comercio Internacional de Especies Amenazadas de Fauna y Flora Silvestres -CITES-, y se dictan otras disposiciones). Section 4 (Artículo 4). Procedure. Published on: 30 June 2006. Available at: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=45536>

#### 1.20.2. Legal authority

- CITES ADMINISTRATIVE AUTHORITY: Ministry of the Environment and Sustainable Development (Ministerio de Ambiente y Desarrollo Sostenible)
- CITES SCIENTIFIC AUTHORITY: Alexander von Humboldt Institute of Research on Biological Resources (Instituto de Investigación de Recursos Biológicos Alexander von Humboldt)
- ENVIRONMENTAL AUTHORITY Regional Autonomous Corporations (Corporaciones Autónomas Regionales) or, in big cities, District Secretariat for the Environment (Secretaría Distrital de Ambiente): Supporting control and follow-up operations
- HEALTH AUTHORITY Colombian Agricultural Institute (Instituto Colombiano Agropecuario, ICA): Verify health aspects of the specimens
- CUSTOMS AUTHORITY (DIAN): Verify customs issues to do with exports, imports and re-exports



- NATIONAL SECURITY CONTROL AUTHORITY (TAX AND CUSTOMS POLICE): Verify issues to do with national security and introduction and exit of products to or from the country.

### 1.20.3. Legally required documents or records

- Legal origin and obtaining of the species
- Valid certification by the competent environmental authority that proves that the user is registered within the registry of activities and transactions (libro de actividades y operaciones) in all cases where trade operations are to be conducted.
- Laissez-passer for transportation (if required) (Salvoconducto de movilización [si lo requiere]).
- Invoice and/or bill of sale (Factura de compra y/o carta de venta).
- Proof of payment for permit application (Comprobante de pago solicitud del permiso)
- Valid CITES permit

### 1.20.4. Sources of information

#### *Government sources*

- minambiente.gov.co (2015). *Procedure for obtaining CITES permit*. [online] Available at: [http://www.minambiente.gov.co/images/BosquesBiodiversidadyServiciosEcosistemicos/pdf/permiso\\_sites/CITES.pdf](http://www.minambiente.gov.co/images/BosquesBiodiversidadyServiciosEcosistemicos/pdf/permiso_sites/CITES.pdf)
- minambiente.gov.co (2012) *National Strategy for prevention and control on Illegal Trafficking in Wild Species (Estrategia Nacional para la prevención y control al Tráfico Ilegal de Especies Silvestres): Conclusion and adjusted Action Plan (Diagnóstico y Plan de Acción ajustado)* [online] Ministry of the Environment and Sustainable Development (Ministerio de Ambiente y Desarrollo Sostenible) 100 p. Available at: [http://www.minambiente.gov.co/images/BosquesBiodiversidadyServiciosEcosistemicos/pdf/Planes-para-la-conservacion-y-uso-de-la-biodiversidad/ESTRATEGIA\\_NACIONAL\\_PARA\\_LA\\_PREVENCION\\_Y\\_CONTROL\\_DEL\\_TR%C3%81FICO\\_ILEGAL\\_DE\\_ESPECIES\\_SILVESTRES.pdf](http://www.minambiente.gov.co/images/BosquesBiodiversidadyServiciosEcosistemicos/pdf/Planes-para-la-conservacion-y-uso-de-la-biodiversidad/ESTRATEGIA_NACIONAL_PARA_LA_PREVENCION_Y_CONTROL_DEL_TR%C3%81FICO_ILEGAL_DE_ESPECIES_SILVESTRES.pdf)

#### *Non-Government sources*

- El Espectador (1997). *Trade of threatened species*. [online] Available at: <http://www.eltiempo.com/archivo/documento/MAM-590628> [Accessed 24 September 2016]
- National Police of Colombia (2015). *Trafficking in wild species as a business of organised crime (El tráfico de especies silvestres como empresa del crimen organizado)*. [online] Available at: <https://www.policia.gov.co/file/6537/download?token=O1CZh3nX> [Accessed 24 September 2016]
- El Universal (2011). *The Ministry of the Environment asks not to contribute to illegal traffickin in wild species (Minambiente pide no contribuir con el tráfico ilegal de especies silvestres)*. [online] Available at: <http://www.eluniversal.com.co/cartagena/ambiente/minambiente-pide-no-contribuir-con-el-tr%C3%A1fico-ilegal-de-especies-silvestres-2982> [Accessed 24 September 2016]



### *Consultation with experts*

Conversations with various experts, carried out during October 2016, helped the authors of this report to better understand the applicable legislation and the risks associated with each category of legislation. Within this subsection, representatives of the following bodies were interviewed: Ministry of the Environment and Sustainable Development (Ministerio de Ambiente y Desarrollo Sostenible), FAO representation in Colombia, Fondo Mundial para la Naturaleza –WWF–.

#### **1.20.5. Risk determination**

##### *Overview of Legal Requirements*

Colombia approved the Convention on International Trade in Endangered Species of Wild Fauna and Flora on 3 March 1973 and it became enforceable on 1 July 1975. It was approved by Act 17 of 1981 (ley 17 de 1981), which in its Sections (Artículos) III, IV y V, established regulations for trade with specimens of species included in appendices I, II and III respectively. The most relevant contents hereto in said sections are:

1. The export of any specimen of a species featured in CITES in any of the three appendices, requires that an export permit be granted and submitted. This permit shall be granted once proven that the requirements established under the aforementioned sections are met.
2. In the case of imports, there are differences in wording depending on the appendix where the species are featured:
  - a) Imports of any specimen of a species included in Appendix I require that an import permit be granted and submitted, as well as an export permit or a re-export certificate.
  - b) Imports of any specimen of a species included in Appendix II require that an export permit or a re-export certificate be submitted.
  - c) Imports of any specimen of a species included in Appendix III require, except for those cases described under paragraph 4 herein, that a Certificate of Origin and an export permit (in the event of imports from any of the countries which have included said species under Appendix III) be submitted.

In Section 6 (artículo 6) on permits and certificates, the guidelines for issuing permits are mentioned, which are then elaborated on in Resolution 1263 of 2006 (Resolución 1263 de 2006), Sections 3 and 4 (artículos 3 y 4) and where the requirements for application and the procedure to obtain the import/export/re-export permit are laid down.

Section four (artículo cuarto): procedure- To obtain one of the import/export/re-export permits that this administrative document is about, the person shall be subject to the following procedure:

1. The user shall submit the duly completed, signed application form at the one-stop point of contact at the Ministry of the Environment, Housing and Territorial Development (Ventanilla Única del Ministerio de Ambiente, Vivienda y Desarrollo Territorial) addressed to the Directorate for Environmental Licences, Permits and Procedures (Dirección de

Licencias, Permisos y Trámites Ambientales), attaching the documents listed in the previous section.

2. Once the application is filed, the Directorate for Environmental Licences, Permits and Procedures (Dirección de Licencias, Permisos y Trámites Ambientales) shall proceed to verify the application is valid. In the event of an invalid application, the applicant shall be informed and given back the application alongside the attached documents so that he can complete it with the remaining documents or so that he can duly re-submit.
3. Once verified that the information is complete, the application shall be sent to the corresponding Directorate so that the technical concept is elaborated.
4. If the application for the permit is about species listed under Resolution 1660 of 04 November 2005 (Resolución 1660 de 04 de noviembre) issued by this Ministry, the technical concept shall also deal with the assessment of the administrative document by virtue of which the corresponding environmental authority determined the number of specimens to be utilised in the corresponding year, in order to ensure that the requirements listed in Section sixth and seventh in the aforementioned Resolution are met.
5. If the process of technical evaluation requires technical information to be provided, the Directorate for Environmental Licences, Permits and Procedures (Dirección de Licencias, Permisos y Trámites Ambientales) shall create and send the corresponding information request. The procedure shall recess after this information request is issued, until the user submits the requested information.
6. On the basis of the outcome of the technical assessment, the corresponding permit shall be issued and signed by the corresponding public officer.
7. The CITES permit's original document and a copy thereto shall be sent to the competent environmental authority with jurisdiction in the port of shipment or unload. Additionally, a copy of the permit shall be sent to the permit's holder.
8. Copies of the permit shall be sent to ICA, DAS and DIAN control authorities in the port or to the entities acting on their behalf.
9. The competent environmental authority at the port shall file the detachable part of the CITES permit, stating for the record on the detachable part of the form that the evaluation has been conducted. The duly completed permit shall be sent to the Directorate for Environmental Licences, Permits and Procedures (Dirección de Licencias, Permisos y Trámites Ambientales) at the Ministry of the Environment, Housing and Territorial Development (Ministerio de Ambiente, Vivienda y Desarrollo Territorial).
10. Whenever there are grounds for denying the CITES permit, the decision shall be made through a sufficiently grounded administrative process.

Paragraph- The request for additional information shall temporarily recess the term established for the assessment and issuing of the permit.

As for the responsible governmental institution, Decree 1401 of 1997 (Decreto 1401 de 1997) appoints in its Section 1 (Artículo 1) the Ministry of the Environment as the Colombian administrative authority that shall be responsible before the Convention on International Trade in Endangered Species of Wild Fauna and Flora-CITES-, and which is moreover left in

charge of issuing the permits, upon submission of the application at the one-stop point of contact (Ventanilla Única).

The permit shall be denied when the legal origin of the species is not proven and when the sizes of the specimens to be utilised do not duly correspond to the year of production. As an additional control measure, a list of issued CITES permits shall be sent to the administrative authorities of the member states of destination who are signatory to the Convention.

#### Penalties

Illegal trafficking in wild species is the illicit use, trade, transport and exploitation of wild species fauna and flora and the products or derivatives thereof. For this offence, Act 1333 of 2009 (Ley 1333 de 2009) stipulates penalties that range from warnings, seizure of goods, precautionary seizure of specimens, products and sub-products of wild flora and fauna, fines of up to 5,000 minimum monthly salaries according to current legislation, and proceedings involving custodial sentences for the carrier of the animals. In the event of illegal trafficking in wild threatened species, the Colombian Criminal Code in its Act 599 of 2000 (Ley 599 de 2000) lies down penalties that, depending on the impact of the offence, may involve custodial sentences.

#### *Description of Risk*

- In 2010, the Unit for National Nature Parks reported 18 open criminal procedures for environmental offences perpetrated within Protected Areas. All of the following were seized during the investigation: 62 bodies of sharpnose tiger shark (572 k), 118 units of shark fin, 5 hawksbill sea turtles, 1 nurse shark and 6 starfish, as well as orchid seedlings and other elements such as: trucks, chainsaws and 651 wooden benches.
- Out of the three main routes of illegal trade discovered by national police, the third one is that bound for the Asian continent (Malaysia, Indonesia, Japan, Taiwan, Singapore, Korea and Thailand) and Finland, in Europe, used primarily for trafficking in reptiles, amphibians, insects and wild species of flora. Three Bogotá-bound routes have been identified at the national level A Northern route (Córdoba and César), a Southern route (Amazonas Vaupés, Guaviare, Putumayo and Meta) and a Chocó and Antioquia route.
- For the period 2000-2004, the country reported a total of 1,612 seizures of wood amounting to 32,293.8m<sup>3</sup> of wood. For the period 2005 and 2009, the figures rose to 66,485.39m<sup>3</sup> of seized wood in 5,072 operations with 499 species involved. The most widely reported species are *Tabebuia rosea* and *Prioria copaifera*. However, the bigger group is that made up of unidentified species, which could suggest institutional weakness in terms of technical skill at the level of the authorities in charge of monitoring the process. More recent statistics do not appear to be available.
- As for trafficking in wild species of flora, the Group of Environmental Offences (Grupo de Delitos Contra el Medio Ambiente) at the DIJIN ( Directorate of Criminal Investigation and Interpol, formerly the Central Directorate of the Judicial Police and Intelligence or DIJIN in its Spanish acronym), in coordination with the Environmental Department (DAMA), is constantly carrying out inspection operations at the industrial wood warehouses, particularly at those in downtown Bogotá, to prevent the commercialisation of unique species and verify that transportation and storage are conducted according to legal requirements.

- After consulting with experts it was found out that the Ministry of the Environment and Sustainable Development (Ministerio de Ambiente y Desarrollo Sostenible) has not issued any CITES permit so far for the commercialisation of wood and has only received two applications of this type, both of which have been refused after evaluation. The country has sufficient legal instruments and governmental institutions to duly process CITES permits and to refuse/award a CITES permit.

### *Risk Conclusion*

This indicator has been evaluated as low risk for plantations. Identified laws are upheld. Cases where law/regulations are violated are efficiently followed up via preventive actions taken by the authorities and/or by the relevant entities.

This indicator has been evaluated as specified risk for natural forests. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities

### **1.20.6. Risk designation and specification**

Low risk for wood originated in forest plantations

Specified risk for wood originated in natural forests

### **1.20.7. Control measures and verifiers**

- All cross border-trade of CITES-listed species shall be documented and accompanied by required export, import and re-export certificates issued by competent authorities (CITES Management Authorities).
- Review the list of commercialised species to be exported and imported and compare with CITES list
- In the event of finding CITES species, check the valid certification with the environmental authority that proves that the user has been registered at the register of activities and operations (libro de actividades y operaciones), laissez-passer, invoice and valid CITES permit (salvoconducto, factura y permiso CITES vigente).
- If the commercialised wood has been awarded CITES certification, verify the aforementioned via CITES <https://trade.cites.org/>

## **1.21. Legislation requiring due diligence/due care procedures**

*Legislation covering due diligence/due care procedures, including e.g. due diligence/due care systems, declaration obligations, and /or the keeping of trade related documents, legislation establishing procedures to prevent trade in illegally harvested timber and products derived from such timber, etc.*

### **1.21.1. Applicable laws and regulations**

- Colombia does not have any duly applied legal framework in place. This indicator is not applicable.

### **1.21.2. Legal authority**

N/A

**1.21.3. Legally required documents or records**

N/A

**1.21.4. Sources of information**

N/A

**1.21.5. Risk determination**

N/A

**1.21.6. Risk designation and specification**

N/A

**1.21.7. Control measures and verifiers**

N/A

## Annex I. Timber source types

The table **Timber Source Types in Colombia** identifies the different types of sources of timber it is possible to find in the country of origin.

'Timber Source Type' is a term used to describe the different legal sources of timber in a country, in order to allow a more detailed specification of risk. The Timber Source Type is used to clarify:

- which forest types timber can be sourced from legally;
- what the legal requirements are for each source type, and
- if there are risks related to certain source types and not others.

Timber Source Type can be defined by several different characteristics. It may be based on the actual type of forest (e.g. plantation or natural), or other attributes of forests such as ownership, management regime or legal land classification. In this context Timber Source Types are defined and discerned using the following characteristics:

- Forest type** - refers to the type of forest such as plantation or natural tropical forest, or mixed temperate forest. Often the clearest differentiation is between natural forest and plantations.
- Spatial scale (Region/Area)** - relating to meaningful divisions of a nation. However, in some cases the assessment may be carried out at national level where that allows the risk assessment to establish risk at a meaningful level. E.g. a small country with uniform legislation and a uniform level of risk in all areas of the country, as national level assessment may be enough. In case there are significant differences in the legal framework or legality risks between different types of ownership (e.g. public forest, private forest, industrial forest), between different type of forest (e.g. natural forest and plantations) and/or between different geographical regions the conformance risk evaluation shall specify these differences when specifying the risk and apply the appropriate control measures.
- Legal land/forest classification** - refers to the legal classification of land. Focus is on land from where timber can be sourced, and this could entail a number of different legal categories such as e.g. permanent production forest, farm land, protected areas, etc.
- Ownership** - Ownership of land may differ in a country and could be state, private, communal etc. Ownership of land obviously have impacts on how land can be managed and controlled.
- Management regime** - Independently of the ownership of the land, the management of forest resources may differ between areas. Management may also be differentiated as private, state, communal or other relevant type.
- License type** - Licenses may be issued to different entities with a range of underlying requirements for the licensee. A license might be issued on a limited area, limited period of time and have other restrictions and obligations. Examples could be a concession license, harvest permit, community forestry permit etc.

## TIMBER SOURCE TYPES IN COLOMBIA

Forest type	Region / Area	Legal Land Classification	Ownership	Management regime	License / Permit Type	Description of source type
Natural forest	Natural forest in National Nature Parks (PNN)	National Nature Parks system within the National System of Protected Areas (SINAP), are areas declared for their natural attributes. Their management and running are in the hands of the Special Administrative Unit for the National Nature Parks of Colombia	Public	<p>PNNs are declared in State territory and private land, which means that one of the roles of the Unit is to gradually acquire privately owned areas within PNNs, as well as granting permits, concessions and other environmental permissions for the use and utilisation of renewable natural resources in SINAP areas.</p> <p>It does this by planning the use of the land, which can be of Primitive value, Intangible, Natural Recuperation, General Outdoor Recreation, High Density Usage, and Cultural-Historical. The Unit relies on Regional Environmental Authorities to allow forestry land-use with environmental restrictions.</p>	Ruling by the Regional Environmental Authority with authorisation for forestry land-use.	Legal timber from national natural parks with the authorisation of the Regional Environmental Authority / non- wood forestry products with the authorisation of the Regional Environmental Authority



Natural forest belonging to the State in Forest Reserves	<p>National forest reserves are formed by what is laid down in the 2nd Act of 1959 (Ley 2ª de 1959) and protective forest reserves and protective productive areas declared by the National Ministry of Economy, Inderena and the Ministry of the Environment.</p> <p>Forestry reserve areas are created through the issuing of the 2nd Act of 1959 and are focused on the development of the forestry economy and protection of land, water and wildlife. They are not protected areas, however within them there are areas of the National System of Protected Areas (SINAP) and shared lands.</p>	Public	The system of usage of these reserves can be considered protective-productive, where timber extraction from plantations or natural forest is permitted with the authorisation of the Regional Environmental Authority with environmental restrictions.	Ruling by the Regional Environmental Authority with authorisation for forestry land-use.	Legal timber from forest plantations with the authorisation of the Regional Environmental Authority / non-wood forestry products with the authorisation of the Regional Environmental Authority
Natural forest in Private Reserve	Natural forests registered voluntarily as Civil Society Nature Reserve, which the owner receives by their own will and registers with the National System of Protected Areas.	Private	Private reserves are private protected areas freely established by the property owners, dedicated to the conservation of samples of natural ecosystems. In these reserves, as well as conservation, there can also be sustainable production systems, ecotourism,	Ruling by the Regional Environmental Authority with authorisation for forestry land-use.	Non-wood forestry products with the authorisation of the Regional Environmental Authority.

			environmental education and permanent habitation, among other activities.		
Natural forest of Collective Ownership by black communities	Declared as Community Council under Act 70 of 1993 which developed transitory article 55 of the Political Constitution, on the recognition of the right to collective ownership of black communities who have occupied uncultivated land in the rural waterfront areas of the rivers of the Pacific basin.	Collective Title	<p>The formalities for forestry land-use are carried out with the Regional Environmental Authority of the administrative area, and, when necessary, this entity leans on the Ministry of the Environment and the National Agency for Environmental Licences (ANLA).</p> <p>The forest user must present a management plan specifying the activity and in the case of requiring prior consultation, they must also present the results of that in accordance with Decree 1320 of 1998.</p>	Ruling by the Regional Environmental Authority with authorisation for forestry land-use.	Legal timber from Community Councils where forestry land use has been allowed within collective land with the permission of the Regional Environmental Authority / non-wood forestry products with the permission of the Regional Environmental Authority
Natural forest on indigenous reserves	Declared to be Indigenous Community Councils under Act 21 of 1991 by means of which Agreement number 169 on indigenous and tribal peoples in independent countries was passed, adopted by the 76th meeting	Collective Title	The formalities for forestry land-use are carried out with the Regional Environmental Authority of the administrative area, and, when necessary, this entity leans on the Ministry of the Environment and the National	Ruling by the Regional Environmental Authority with authorisation for forestry land-use.	Legal timber from Indigenous Community Councils where the utilisation of land within the collectively owned territory has the authorisation of the Regional Environmental Authority / non-wood

	of the General Conference of the ILO in Geneva in 1989		Agency for Environmental Licences (ANLA). The forest user must present a management plan specifying the activity and in the case of requiring prior consultation, they must also present the results of that in accordance with Decree 1320 of 1998.		forestry products with the authorisation of the Regional Environmental Authority
Natural forest on private property	These are areas of forest in private property that have a Public Deed and Certification of freedom and tradition. They include natural and planted clumps, which after reaching maturity, behave in a similar way to natural forests.	Private	The paperwork for registering and use is carried out with the Regional Environmental Authority (CAR) in accordance with the area where the property is located. If the permit for forestry land-use obtained by the owner is domestic, it cannot have commercial motives.	Ruling by the Regional Environmental Authority with authorisation for forestry land-use.	Legal timber from private estates with natural forest outside protected areas.
Natural forest belonging to the State under other denominations	This is land considered as fallow where any person can request use of the forestry resource.	Public	The interested party must present to the Regional Environmental Authority of the administrative area, the documents required in order to carry out a single type of forestry land use	Ruling by the Regional Environmental Authority with authorisation for forestry land-use.	Legal timber from public areas under a different denomination to those established by the SINAP

Forestry Plantation	Plantations within protected areas	Plantations located in State territory or on private property that remained within the protected area when this was declared.	Private	The State representative or the property owner carries out the paperwork with the Regional Environmental Authority of the administrative area. They are granted a kind of forestry land use that can be single or permanent, according to the location of the plantation in the area that is the subject of study.	Registration of the plantation with the ICA if it is commercial Ruling by the Regional Environmental Authority if it is on productive-protective land	Legal timber from forestry plantations within protected areas.
	Commercial Plantation	Private property that has a Public Deed and Certification of freedom and tradition. This can be brought about by natural persons or organisations with legal representation	Private	The body charged with registration and overseeing is the Colombian Agriculture Institute (ICA) and normally they have a system of permanent use. The plantations have commercial ends.		Legal timber from forestry plantations outside protected areas that have a private ownership system. They can be classified as productive plantations (purely commercial aims) and productive-protective plantations (commercial and conservation aims)
	Agroforestry Systems	Carried out on private property or with a commercial objective	Private	The body charged with registration and overseeing is the Colombian Agriculture Institute (ICA), which normally have a system of permanent use.		Legal timber from agroforestry systems with ICA authorisation



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## About

### Supporting Legal Timber Trade

Supporting Legal Timber Trade is a joint project run by NEPCon with the aim of supporting timber-related companies in Europe with knowledge, tools and training in the requirements of the EU Timber Regulation. Knowing your timber's origin is not only good for the forests, but good for business. The joint project is funded by the LIFE programme of the European Union and UK aid from the UK government.



NEPCon (Nature Economy and People Connected) is an international, non-profit organisation that builds commitment and capacity for mainstreaming sustainability. Together with our partners, we foster solutions for safeguarding our natural resources and protecting our climate.

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