

# Timber Legality Risk Assessment Ecuador

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The mark of  
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## B. Overview of legality risks

**Timber Risk Score:** 8 / 100 in 2017

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

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

The Timber Risk Score for Ecuador is 8 out of 100. The key legality risks identified in this report concern timber harvesting activities related to legal rights to harvest, taxes and fees, timber harvesting activities, and third parties' rights, and trade and transport.

For **Legal rights to harvest**, there is a risk that:

- land registration has not been done properly, which results in legal insecurity regarding tenure and management rights
- inventories of trees are inflated, such as via the inflation of DBH and height measurements (1.3)
- harvesting takes place out of bounds (1.3, 1.4)
- fictitious harvesting plans are approved to obtain harvest permits (1.4)
- purchase of timber takes place next to the properties authorised for formal logging. The neighbouring timber is un-authorised for harvesting, but will be 'legalised' via the approved harvesting licence and transport permits (1.4)
- timber is informally obtained at the side of the road or river (1.4)
- harvesting takes place without a permit (1.4)
- the requirements for issuing forest harvesting permits are violated (1.4)
- harvesting and management regulations are not complied with (1.4).

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

- taxes are not paid in the forest sector in Ecuador. This related to harvesting fees, VAT and income tax (1.5, 1.6, 1.7)

For **Timber harvesting activities**, there is a risk that:

- harvesting activities are continued after permit has expired (1.8).
- forest harvesting programs are poorly prepared (1.8, 1.10);
- non-factual information is included in harvesting program plans (1.8, 1.10);
- data on timber is erroneous or poorly recorded, specifically incorrect scientific or common names (1.8, 1.10);
- implementation reports are submitted late (1.8, 1.10).
- forest harvesting implementation and control regulations is neither sufficient nor consistent (1.8, 1.10).
- illegal harvesting takes place in protected areas (1.9)

- environmental regulations are not complied with (1.10)
- employment regulations are not complied with (1.11)
- formal contracts are lacking; resulting in a lack of social security coverage or extra benefits as required by labour laws (1.11, 1.12).
- labor regulations are not complied with (1.12)
- informal employment takes place – this involves unstable or precarious work situations (including illegal or informal practices) such as not meeting minimum requirements for hours
- workers receive less than minimum wage

For **Third parties' rights**, there is a risk that:

- prior consultations with affected communities are lacking (1.14, 1.15),

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

- classification of harvested volumes and species are incorrect (1.16).
- there are legal issues with transport of forest products (1.17)
- transport takes place without no transport permits and/or using invoices as supporting documentation (1.17)
- transportation permits are used illegally, e.g.: (1.17)
  - transportation permits are used several times for the same products
  - transport permits are purchased
  - approval of fictitious harvesting plans in order to obtain transport permits (1.17)
- wood is illegally transported by hiding and mixing certain species with other species (1.17)
- police and staff of forest surveillance authorities at control points are bribed (1.17)
- offshore trading and/or transfer pricing takes place (1.18)
- timber is transported by land to neighbouring countries of Peru and Colombia, which have not met forest-harvesting requirements or trade and export requirements (1.19)
- timber is smuggled out of Ecuador by land (1.19)

### Timber source types and risks

There are two main timber source types found in Ecuador. 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 these source types and found that risk differs slightly between natural and plantation forest.

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**Natural forest**

Natural forest which can be private forests owned by an organisation or individual or state forests that are the property of the government and the state. Note that are natural forests whose ownership is not known or clear. Harvesting can be done under Sustainable Management Plan, Simplified Management Plan, and Legal Conversion Program. For each are issued a Harvesting License.

**Plantation forest**

Private plantation with permanent production of exotic and native species. There is only one model for legalizing forest harvesting, called "Harvesting Program for trees of commercial forest plantations".



This table summarises the findings of the timber legality risk assessment by source type.

Legal Category	Sub-Category	Source Types	
		Natural Forest	Plantation Forest
Legal rights to harvest	1.1 Land tenure and management rights	Specified	Specified
	1.2 Concession licenses	N/A	N/A
	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	N/A	Low
	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	N/A	N/A
	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	Specified	Specified
	1.19 Custom regulations	Specified	Specified
	1.20 CITES	Low	Low
	1.21 Legislation requiring due diligence/due care procedures	N/A	N/A

## C. Overview of the forest sector in Ecuador

### *Forest Classification Types*

According to the FAO report *Global Forest Resources Assessment, 2015* (Country Report Ecuador), compiled based on official information provided by the Ecuadorian government, the following forest classifications have been registered in Ecuador:

- Andean Dry Forest
- Pluvi-estational Dry Forest
- Andean Montane Evergreen Forest
- Andean Piedmont Evergreen Forest
- Andean Ceja Evergreen Forest
- Amazon Lowlands Evergreen Forest
- Choco Lowlands Evergreen Forest
- Mangroves
- Moretales

The 2012 Ministry of the Environment (MAE) report *Historical Map of Deforestation in Mainland Ecuador* determined, for an information coverage rate of 96%, that the vegetation cover in 2008 was 15,310,965 ha., 12,261,997 ha of which are native forests, 1,460,502 ha. are moorlands and 1'320,716 ha are shrub-lands, while grasslands cover 267,750 ha. Other sources provide lower figures of natural forest cover.

The Galapagos islands aside, Ecuador can be divided broadly into 3 geographical regions, according including the Pacific coastline of the country (Costa); the Andean mountain range (Sierra) covering the Andean mountain range and the east (Amazon) region.

According to the afore-mentioned 2012 MAE report and ITTO Technical Series No 38 (2011), the sub-region with most forest cover is the Amazon Plain with 89% cover, which also comprises 62% of the Ecuadorian forest estate. The Coastal region has 28% forest cover and comprises 17% of the forest estate. Forest cover for the Andean mount range, varies: Eastern Andean Slope 76%, the Southern Andes 62%, the Western Andean Slope 54%, the Inter-Andean Valleys 49%. In all, the Sierra region comprises about 21% of the forest estate.

### *Ownership of the forest resource*

According to the FAO report *Global Forest Resources Assessment, 2015* (Country Report Ecuador), three types of classifications for tenure have been established:

- Public Property Areas, which include State Natural Areas, State Forests, and State Protection Forests.
- Private Property Areas, including: Private Protection Forests, forest properties under individual or collective partnership.
- Unknown Property Areas are forested areas under private tenure, belonging to unidentified companies or others.

As per the 2010 study by Morales, et al. *Land tenure security and incentives for forest conservation*, the authors conclude that at least eight million hectares of forested land need to be legalized in Ecuador.

According to Añazco, et al 2010 (Sector Forestal Ecuatoriano: propuestas para una gestión forestal sostenible". No. 8. ECOBONA-INTERCOOPERATION) large owners of forests are the State of Ecuador and indigenous peoples and nationalities. In this context, indigenous peoples and Afro-Ecuadorians are the largest owners of native forests in the country; it is estimated that they have about seven and a half million hectares of forest. Private owners and processors or industrial wood have a relatively small area.

State forests are exclusively natural forests, are intended for production, conservation and protection purposes and come under different names according to their identification and management, such as:

- National System of Protected Areas (SNAP): 4,754,725 hectares of native forests.
- State Protection Forests: 2,336,558 hectares.
- State Forest Heritage: 2,055,608 hectares.

With respect to forests within SNAP, legally these cannot be subject to commercial logging, although some subsistence logging is possible for indigenous communities.

Privately owned forests may be native forest or from plantations, and engaged in the production and conservation.

#### *Requirements for legal sources of timber*

Requirements for authorizing timber harvesting vary according to the resource type, as follows:

##### *a) For native forest:*

- Integrated Management Plan and Sustainable Forest Management Program, when the extraction is carried out by mechanic skidding;
- Simplified Forest Management Plan, when the extraction is limited to one plot, with no mechanized skidding involved; and,
- Integrated Management Plan and Harvest Program, corresponding to legal conversion for subsistence use and authorization for change of natural forested land to other uses.

##### *b) For forest plantations, a Harvesting Program is required, recording the species present and geographic data of the plantation site to be harvested.*

Each of these programs must be submitted to the relevant forestry authority in order to obtain a Harvesting License, which is a legal document authorizing the harvest and other processes -- such as transportation and marketing -- of products from natural forests and from commercial forest plantations.

Research data presented in 2010 by the Ministry of the Environment of Ecuador, *Harvesting of Forest Resources during 2007 – 2009* includes a summary, classified by forest type, of the most important species for timber trade, as well as other important data regarding the forestry sector:

- **Plantation species:** The main species harvested from forest plantations in 2010 were: *Eucalyptus* spp. (30.78%), *Pinus* spp (23.39%), *Ochroma lagopus* (21.65%), *Tectona grandis*, *Schizolobium parahybum*, *Gmelina arborea*, *Cordia alliodora* and *Terminalia*

spp. At the regional level: 59 species were harvested from plantations in the Sierra region, mainly: *Eucalyptus* spp, *Pinus* spp, *Ochroma lagopus*, *Schizolobium parahybum*, and *Terminalia* spp. In the Ecuadorian coastal region, the harvest of 46 species was registered, including: *Ochroma lagopus*, *Tectona grandis*, *Schizolobium parahybum*, *Gmelina arborea*, *Eucalyptus* spp. and *Cordia alliodora*.

- **Natural forest species:** About 120 timber species are commonly used in the domestic market, although for natural forests 80% of the harvested volume comes from about 25 species (ITTO Technical Series No 38, 2011). Among the main species harvested from natural forests we find: *Brosimun utile* (13.63%), *Brosimun* sp.(lechero) (9.21%), *Cedrelinga cataeniformes* (7.42%), *Ottoba* spp., *Virola* spp., *Trattinickaglaziovvi* spp., *Erismauncinatum* spp., and *Humiriastrum procerum*. At the regional level: the harvest of 228 species were registered in the Ecuadorian Amazon, including *Cedrelinga cataeniformes*., *Ottoba* spp., *Erismauncinatum* sp., *Virola* spp, *Sterculia* spp., *Vochysia* spp., *Ocotea* spp., *Trattinickaglaziovvi* spp. and *Ceiba pentandra*.

According to the official figures from the MAE 2010 report *Harvesting of Forest Resources in Ecuador, infringements and confiscations*, between January 2007 and December 2009 the Ministry of the Environment of Ecuador authorized the harvesting of 7.92 million m<sup>3</sup> of standing timber (2,205,500 m<sup>3</sup> in 2007; 2,776,200 m<sup>3</sup> in 2008; and 2,935,700 m<sup>3</sup> in 2009), through the approval of 17,514 harvesting programs covering an approximate surface of 249,100 hectares. In percentage terms, the increase in the number of harvesting programs was 25.87% from 2007 to 2008, whereas for the 2008 – 2009 period it only increased 5.74%. The area intervened has grown from 81,403 hectares in 2007 to 82,144 ha in 2008, and 85,553 ha in 2009. The same happened with the number of harvesting programs approved, which went respectively from 5,431 to 5,841 and 6,320 for each year.

#### *Regulation of timber harvesting*

The main legislation regulating the management, harvesting and commercialization of forest products from natural forests, as well as from plantations, is as follows:

For natural forests:

1. Regulation for Sustainable Management of Tropical Forests (Ministerial Agreement N°125). This regulation covers the tropical forests of the Amazon and North of Esmeraldas, as well as all other areas featuring the same type of forests. The regulation establishes that sustainable forest management is required, with the type of management programs to be implemented depending on the circumstances, scale, type of mechanization, and harvesting and post-harvesting methods. The regulation includes technical details for drafting management plans, and a list of species for which harvest is dependent upon certain conditions being met. For such species, only a limited number of trees can be harvested per hectare. The regulation also establishes the minimum harvest DBH (Diameter at Breast Height) authorized per species.
2. Codification Forest and Natural Area and Wildlife Protection Law, Registro Oficial No. 418.
3. Regulation for Authorizing Timber Harvesting and Logging (Ministerial Agreement N°139). The objective of this regulation is to establish administrative procedures for authorizing the sustainable harvest of forest timber resources from natural Tropical, Andean- and Dry-forests; of cultivated forests: forest plantations, planted trees,

natural regeneration trees in crops; pioneer formations; trees in agroforestry systems; and forest products other than timber. The following are subject to these requirements: civil servants and public officers responsible for forest control and management, as well as those expressly appointed by the Ministry of the Environment to provide forest administration and monitoring within the framework of the National System for Forest Control; as well as the beneficiaries, forest owners, executors, delegates, intermediaries, traders, transporters, and final recipients of the harvested forest products.

4. Regulation for the Forest Superintendent System (Ministerial Agreement N° 038). This regulation establishes the roles that the Ministry of the Environment delegates upon Forest Engineers for implementing Technical Assistance and Verification activities for forest management plans and programs. Such activities include their co-responsibility in the implementation of the corresponding forest activities upon submitting the approval documentation to the relevant authority.
5. Standing Timber Harvesting Right (Ministerial Agreement N° 041). Establishes the fee for the extraction of standing trees from natural forests. The value established is 3 USD/cubic meter.
6. Regulation for Sustainable Management of Andean Forests. (Ministerial Agreement # 128). This regulation regulates the management and harvesting of Andean Forests, as follows:
  - a) Conservation and protection of wildlife (flora and fauna), water resources, and associated renewable natural resources;
  - b) Satisfaction of domestic, as well as individual and communitarian needs;
  - c) Sustainable harvesting of resources implemented by natural or legal persons based on authorizations granted by the appropriate forestry authority; and
  - d) Other uses determined by forestry authorities.
7. Regulation for Sustainable Forest Management in Dry Forests (Ministerial Agreement N°244)  
Regulates management and harvesting in Dry Forests.

For plantations:

1. Areas of responsibility for Sustainable Forest Plantations (Executive Decree N° 931). Establishes that the areas for regulating, promoting, fostering, commercializing and harvesting forest plantations, as well as their sustainable management for commercial purposes, established by the Forestry and Natural Area and Wildlife Conservation Law, are to be transferred to the Ministry of Agriculture, Livestock, Aquaculture and Fisheries, MAGAP.
2. Transfer of responsibilities to MAGAP for commercial forest plantations' regulation and management (Executive Decree N° 286). This legal tool transfers to the Ministry of Agriculture, Livestock, and Fisheries (MAGAP) the responsibilities established in the Forestry and Natural Area and Wildlife Conservation Law for the regulation of forest plantations and their sustainable management for commercial purposes, which until the present had been implemented by the Ministry of the Environment.
3. Updates to the regulations for zoning of lands for afforestation and reforestation (Inter ministerial Agreement N° 258). This regulation establishes the requirements or criteria

for when the preparation of an Environmental Impact Assessment is required, especially with respect to the basal area criteria; for example, if a natural forest area that is to be converted to plantation has a basal area of 40 m<sup>2</sup> of native forest, no plantation can be established. The regulation controls the thresholds, in ha, for which a plantation registry plan with an environmental impact assessment is required.

4. Instructions controlling the preparation, approval and implementation of logging programs, forest harvesting licenses and transportation permits for commercial forest plantations (Ministerial Agreement N° 327). Regulates and establishes the administrative mechanisms to issue harvesting licenses, transportation permits, technical criteria for the protection of water sources, and the legal requirements for harvesting commercial plantations.

*Authorities responsible for monitoring timber harvesting*

- The Ministry of the Environment (MAE), in its role as National Forestry Authority, will issue Timber Harvesting Licenses for Natural Forests based on any of the following approved documents:
  - a) Integrated Management Plan and Sustainable Forest Management Program, for any surface size;
  - b) Simplified Forest Management Plan, for any forest surface size, optional when:
    - it consists of only one property and,
    - forest harvesting will use non-mechanical skidding.
  - c) Integrated Management Plan and Harvesting Program for Legal Conversion when requested for subsistence use: an authorization to change the land use of native forest areas to other uses.
- The Ministry of Agriculture, Livestock, and Fisheries (MAGAP) requires a Plantation Logging Plan in order to allow the harvesting of planted trees. The Harvesting License is the document legalizing harvesting in commercial plantations.

Additional sources:

- FAO. 2011. State of The World's Forests 2011. <http://www.fao.org/docrep/013/i2000e/i2000e00.htm>
- FAO. 2015. Global Forest Resource Assessment. <http://www.fao.org/forest-resources-assessment/en/>
- Seneca Creek Associates and Wood Resources International, 2004. "Illegal" Logging and Global Wood Markets: The Competitive Impacts on the US Wood Products Industry. Prepared for American Forest & Paper Association. [https://www.illegal-logging.info/sites/files/chlogging/uploads/1\\_AF\\_and\\_PA\\_summary.pdf](https://www.illegal-logging.info/sites/files/chlogging/uploads/1_AF_and_PA_summary.pdf)
- World Bank, 2006. Strengthening Forest Law Enforcement and Governance: Assessing a Systematic Constraint to Sustainable Development. Washington, DC: World Bank. <http://documents.worldbank.org/curated/en/330441468161667685/pdf/366380REVIS-ED010Forest0Law01PUBLIC1.pdf>

## 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

- (1) Constitution of the Republic of Ecuador (Registro Oficial No. 449. Fecha publicación: 10/Octubre/2008 Codificación Ley de Gestión Ambiental Registro Oficial No. 418 suplemento. Fecha publicación: 10/Septiembre/2009). Available at: <http://www.administracionpublica.gob.ec/wp-content/uploads/downloads/2014/10/Constitución-de-la-República-del-Ecuador.pdf>

###### Current Legislation for Natural Forests

- (2) Agricultural Development Law, developed through Law 54, published in the R.O. No. 461 Supplement in June 14, 1994. Available at: [http://www.iadb.org/Research/legislación indígena/leyn/docs/ECU-Codificacion-LeyDesarrolloAgrario.doc](http://www.iadb.org/Research/legislación%20indígena/leyn/docs/ECU-Codificacion-LeyDesarrolloAgrario.doc).
- (3) Codification Forest and Natural Area and Wildlife Protection Law (Registro Oficial No. 418. Fecha publicación: 10/Septiembre/2004). Available at: <http://ecuadorforestal.org/wp-content/uploads/2010/05/Codificación-Ley-Forestal-y-de-Conservación-de-Areas-Naturales-y-Vida-Silvestre.pdf>

###### Current Legislation for forest plantations

- (4) Areas of responsibility for Sustainable Forest Plantations (Executive Decree N° 931) Registro Oficial No. 292. Fecha publicación: 11/Marzo/2008. Available at: <http://ecuadorforestal.org/wp-content/uploads/2010/05/COMPETENCIA-EN-MATERIA-DE-PLANTACIONES-FORESTALES- SUSTENTABLES.pdf>
- (5) Updates to the Regulation for the implementation of Tax on Rural Land: (Executive Decree N° 442). Fecha de suscripción: 26/Junio/2010. Available at: <http://ecuadorforestal.org/wp-content/uploads/2010/05/decreto442.pdf>
- (6) Transfer of responsibilities to MAGAP about the regulation and management of commercial forest plantations (Executive Decree N° 286). Fecha suscripción: 03/Abril/2014. Available at: <http://ecuadorforestal.org/wp-content/uploads/2010/05/Traspaso-de-competencias->



[al-MAGAP-sobre-las-regulación-y-manejo-de-plantaciones-forestales-comerciales.pdf](#)

- (7) Instructive controlling the preparation, approval, and implementation of clear cut programs, forest harvesting licenses and transport guidelines of forest plantations (Ministerial Agreement N° 327)  
ANEXO 1 Programa de corta para árboles de plantaciones forestales comerciales  
Fecha suscripción: 01/Agosto/2014. Available at: <http://ecuadorforestal.org/wp-content/uploads/2010/05/Instructivo-que-regula-la-elabouración-aprobación-y-ejecución-de-los-programas-de-cortalicencias-de-aprovechamiento-forestal-y-guias-de-circulación-de-plantaciones-forestales-comerciales.pdf>

#### **1.1.2. Legal authority**

- Ministry of Environment of Ecuador (MAE) covers all laws regarding natural forests - items 2-3.
- Ministry of Agriculture, Livestock and Fisheries (MAGAP) have responsibilities regarding forest plantations - items 4-7.

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

- For the case of Communities: Delegation of the General Council of the Community who grants the use of the area to be harvested, according to what is established in the regulation for the Harvesting of Natural Forests.
- For Natural or Legal entity: Certificate of the Property Registry, according to what is established in the Standard for the Harvesting of Natural Forests.
- For the case of forest plantations: the legal documentation required is the Title of Property, properly registered in the Registry of Property.

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

##### *Government Sources*

- Ley de desarrollo Agrario. (1994). *H. Congreso Nacional La Comision De Legislacion de Legislacion Y Codificacion*. Doc. Available at: <http://www.iadb.org/Research/legislacionindigena/leyn/docs/ECU-Codificacion-LeyDesarrolloAgrario.doc> [Accessed 2 December 2015]
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##### *Non-government Sources*

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- Blaser, J., Sarre, A., Poore, D. & Johnson, S. (2011). *Status of Tropical Forest Management 2011*. ITTO Technical Series No 38. International Tropical Timber Organisation, Yokohama, Japan.

#### *Interviews with experts*

Conversations with different experts – held during the week of November 16th through 20th, 2015 – helped the authors of this report to better understand the relevant legislation and any risks associated with each legislation category.

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

##### *Overview of Legal Requirements*

1. Constitution of the Republic of Ecuador: The Constitution of the Republic of Ecuador establishes the principles and guidelines for environmental policy; determines the obligations, responsibilities, and levels of involvement of the public and private sectors in environmental management; and sets the allowable limits, controls and sanctions related to the latter. In addition, the Constitution:
  - establishes, on one hand, that it is the responsibility of the State to promote the people's equal access to land and other natural resources (art. 334) through redistribution policies aimed at the peasant sector (art. 281 number 4), specifically at productive women, promoting the eradication of discrimination and inequality in relation to the access to natural resources (art. 334).
  - Prohibits Latifundia, land 'grabbing' and concentration of land and other resources such as water and its sources (art. 282).
  - Prohibits foreign individuals or companies acquiring lands or concessions (arts. 405 and 407); Furthermore, the Constitution – as part of collective rights – acknowledges the right to protect the unalienable entitlement of communitarian lands, exempt from seizure and indivisible (number 4, art. 57), to maintain (without adjudication cost) ancestral lands and territory tenure (numeral 5, art. 57) and to be displaced from them (number 11, art. 57). This same article acknowledges the right of communities, indigenous peoples and nationalities to maintain ancestral possession of their territory, with all types of extraction

activities being prohibited in such territories (art. 57). Where non-renewable resources exist on their lands, the communities, people, and Indigenous nationalities have the right to participate in the use, usufruct, administration, and conservation of such resources (number 6); and of prior, free and informed consultation, receiving benefits and indemnification in situations where the exploration, exploitation, and commercialisation plans and programs on their lands cause social, cultural and environmental damage.

- Prohibits extraction activity of non-renewable resources in protected areas and areas declared as intangible, with an exception being a case of national interest (arts. 405 and 407).

2. Agricultural Development Law: According to Morales et al., upon derogation of the Agricultural Reform and Colonization Law, the Agricultural Development Law is issued, it is created through Law 54, published in the Supplement of R.O. N° 461 on 14 June 1994. This new law describes the responsibilities of the INDA, today the Sub-secretary of Lands and Agricultural Reform of the Ministry of Agriculture, Livestock, Aquaculture and Fisheries; with these being:
  - a) Issue Titles of Property to natural or legal individuals who, being in possession of rural lands and having the right to them, lack of title of property;
  - b) Assign lands that are their property;
  - c) Declare the expropriation of lands subject to the conditions established in Article 32 of the present Law;
  - d) Create and maintain a Registry of Agriculture Lands;
  - e) Finalise the integrated agricultural reform process; and,
  - f) All other requirements described in the current Law and its Regulation.
3. Codification of Forestry and Natural Area and Wildlife Conservation Law: The Ministry of Environment has the following objectives and roles:
  - a) Define and manage the forest and natural resources and wildlife owned by the State;
  - b) Ensure the conservation and rational use of existing forest and natural resources;
  - c) Promote and coordinate scientific research within its area of responsibility;
  - d) Foster and implement policies related to the conservation, promotion, protection, research, management, industrialisation and commercialisation of the forest resource, as well as natural and wildlife areas;
  - e) Prepare and implement plans, programs and projects for the development of the forestry sub-sector, in the areas of afforestation, research, exploitation, management and protection of natural forests and plantations, watersheds, natural areas and wildlife;
  - f) Manage, protect and foster the following renewable natural resources: protection and production forests, lands suitable for forests, wild flora and

<p>fauna, national parks and equivalent units and reserve areas for the above purposes;</p> <ul style="list-style-type: none"> <li>g) Promote coordinated actions with other entities for the regulation and management of watersheds, as well as the management of natural areas belong to the State, and forests located within public property;</li> <li>h) Study, research and provide technical assistance regarding the promotion, management and harvesting of forest resources, natural areas and wildlife;</li> <li>i) Promote the creation of business and entities focusing on afforestation, harvesting and, in general, the development of the forest resource and wildlife in which the Ministry can be a shareholder; and,</li> <li>j) Comply with and enforce the laws and regulations relevant to forest resources, natural areas and wildlife.</li> </ul> <p>4. Areas of responsibility for Sustainable Forest Plantations (Executive Decree N° 931): Establishes that the areas of responsibility for regulating, promoting, fostering, commercializing and harvesting forest plantations, as well as their sustainable management for commercial purposes, established by the Forestry and Natural Area and Wildlife Conservation Law, are to be transferred to the Ministry of Agriculture, Livestock, Aquaculture and Fisheries, MAGAP. MAGAP performs the above responsibilities through the implementation of forestry, reforestation, communitarian forestry and agroforestry activities with native and/or exotic species, according to what is established in the National Forestation and Reforestation Plan issued through the Ministerial Agreement No. 113 of 15 September 2006 and published in the Official Registry No. 371 of 5 October of the same year.</p> <p>5. Update to the Regulation for the Implementation of Tax on Rural Lands (Executive Decree N° 442): Establishes that the lands utilised for silviculture will not be subject to the payment of Tax on Rural Lands, as an important consideration to the establishment of forest plantations.</p> <p>6. Transfer of responsibilities, relevant to regulation and management of commercial forest plantations, to MAGAP (Executive Decree N° 286): Transfer to the Ministry of Agriculture, Livestock, Aquaculture and Fisheries, responsibility for the regulation of forest plantations and their sustainable management with the commercial purposes that are defined in the Forestry and Natural Area and Wildlife Conservation Law which is enforced by the Ministry of Environment.</p> <p>7. Instruction regulating the preparation, approval, and implementation of clear-cut programs, forest harvesting licences and transportation permits relating to commercial forest plantations (Ministerial Agreement N° 327). Establishes the administrative procedures for commercial forest plantations, including the authorisation of logging programs, issuing of corresponding forest harvesting licences and transportation permits.</p> <p>The legal requirement focuses on the verification of land use tenure (for forest operations in general) establishing that – in the case of activities of a member of a community which has communitarian rights and which implements plantation or</p>
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harvesting activities – this must have authorization of use issued by the Community Council. For the case of natural and legal individuals, these must present the legal document issued by the Register of the Property of the relevant zone. Downloaded from:

[http://www.fian.org/fileadmin/media/publications/FIAN\\_Ecuador\\_Analisis\\_Tierra\\_2014.pdf](http://www.fian.org/fileadmin/media/publications/FIAN_Ecuador_Analisis_Tierra_2014.pdf).

In the case of forest activities on private and communitarian properties, it is mandatory to have the title of property. The regulations also establish that, for operations in natural forests, an Act from the Community - if it is a community forest - or a Notarized Ownership Act with the signature of the neighbours can also be submitted.

### *Risk description*

Most of Ecuador's forests are owned by local communities and Indigenous groups (ancestral Indigenous or Afro-Ecuadorian). It was discussed in interviews with experts that, while the vast majority of communities do not have documents or title to their land, this does not necessarily impede their use rights and tenure – which are recognized by third parties (the state). Thus, in general, this issue may not always present a limiting factor to access to forest resources by communities; the limitations instead relating to perceived legal-technical and financial requirements of harvesting (the use of forest regents or, associated costs of harvesting, administrative procedures, etc...) and possibly forming part of the underlying roots of the problems of informality of harvesting on communal lands.

However, the study conducted by Ecolex, prepared by Morales et al., focuses on the analysis of structural problems that must be resolved in the context of the framework of the development of a new land policy, to facilitate access and equal participation in land and territory management. These problems include:

1. Properties without a title (for which legalisation of tenure arrangements is required, resulting in land which is adjudicated and demarcated);
2. Conflicts (in relation to problems of tenure) relating to properties with a title (for which a need for regularisation of tenure arrangements is required);
3. Lack of guarantees for the property;
4. Inappropriate land use; and,
5. Concentration of the land.

The same study establishes that the existing regulatory framework does not guarantee equitable land tenure and even less grants legal security, access to ownership or control.

Additionally, considering other studies relating to the status of land tenure, the authors consider that Ecuador still needs to legalise tenure arrangements relating to approximately 8 million hectares; and – for over 9 million hectares that have title – regularise the tenure arrangements.

Additionally, with regards to land tenure conflicts, it is relevant to mention that in 2010 the Constitutional Court of Ecuador (under ruling #031-10-SIS.CC of case 0048-09-IS and 0025-10-IS) established restitution of the Pambilar farm (3400 ha) to the State,

after it had been assigned in 1998 to the forest Company Endesa Botrosa. Currently, the property in question belongs to the State System of Protected Areas and was declared as a Wildlife Refuge. This case provides an example of situations where land has a property title but requires regularisation due to the presence of land tenure conflicts.

Downloaded from:

<http://doc.corteconstitucional.gob.ec:8080/alfresco/d/d/workspace/SpacesStore/c4fc3a84-9d6e-414e-adca-fd69eb010d2d/0048-09-IS-res.pdf?guest=true>.

Land-registration (catastro) in Ecuador is a work in progress, with perhaps only 30 or 40 (out of over 200) municipalities with up-to-date registries. Disputes in process over land ownership between municipalities and provinces, or among state institutions, imply that the jurisdictions of the registrars of property vary. In some private property cases, land acquisition has connotations of irregularity depending on the area or region. This may be more frequent in rural areas.

Robles (2012) mentions in an analysis of the effects of the intervention of loggers in the Northern Zone of Esmeraldas that, for the timber industry, the main difficulty associated with accessing the territory for harvesting has to do with the land tenure of the communitarian type. However, solutions always appear to be found to facilitate the expansion of forestry activity: *"The main land transfer mechanism has been co-opting of local community leaders for illegal and intermediate transfers. Via associations between commercial enterprises and community leaders, via the illegal sale of lands, and mostly, via the promotion and legitimisation of illegal activities inside the community, community leaders have been the key mechanism for the timber industry expansion, but also for the palm producers and mining industry"*.

According to the Corruption Perceptions Index of Transparency International (2015), Ecuador has a score of 32 out of 100, is in 107th place (out of 168 countries assessed); and regarding Worldwide Governance Indicators for the period 1996–2014, has been assessed with the following scores (on a scale of 1 to 100): i.) Voice and Accountability, 39.4; ii) Government Effectiveness: 34.6; iii) Regulatory Quality: 14.9; iv) Rule of Law: 13.5; v) Control of Corruption: 21.2.

### *Risk conclusion*

Based on the multiple issues and challenges arising in Ecuador in relation to land tenure and title, as well as challenges in relation to the need for authorization for use issued by the Community Council in the case of community lands, the risk in this category is classified as Specified.

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

Specified risk.

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

- Registry of the Property shall be made available in order to verify the land tenure status and use.
- Certificate of payment of property taxes shall be made available.

- In the case of communities, validation and/or consultation should be conducted to clarify proper delegation of use by the community.
- Field visits shall validate within the harvesting sites, the geographic location reported in the forest harvesting programs, in order to verify that harvesting was implemented within the limits of the property (including logging, transport, and storing yards).
- Consultation with stakeholders should be conducted, in order to verify if there are conflicting claims regarding the land use of a forest area. This shall include discussions with appropriate local authorities.
- Whenever delegation agreements or contracts for land or forest use exist, land tenure status shall be verified.
- The Registry of Property shall be consulted in order to confirm the status of the land tenure and to verify whether or not conflicts respect to land use and tenure exist.
- NOTE: The creation of a map, where applicable, of the traditional communities close to the forest areas may help to identify possible land use conflicts (according to the size and resources of the company).

## 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

Current Legislation for Natural Forests and Forest Plantations

- (1) Codification Forest and Natural Area and Wildlife Protection Law  
Registro Oficial No. 418. Fecha publicación: 10/Septiembre/2004. Available at:  
<http://www.administracionpublica.gob.ec/wp-content/uploads/downloads/2014/10/Constitución-de-la-República-del-Ecuador.pdf>
- (2) Unified Text of Secondary Legislation, Environment (TULSMA)  
Decreto Ejecutivo N° 3516  
Registro Oficial Edición Especial No. 2. Fecha publicación: 31/Marzo/2003  
Titulo Preliminar  
- Libro III: Régimen Forestal (Ultima Reforma Acuerdo Ministerial 003)  
- Libro IX: Derechos y Tasas de servicios  
The objective of the Tulsma books is to regulate and establish the processes for the forests and the State forests. Available at:  
[http://www.quitoambiente.gob.ec/index.php?option=com\\_k2&view=item&id=125%](http://www.quitoambiente.gob.ec/index.php?option=com_k2&view=item&id=125%26Itemid=125)

[3Atexto-unificado-de-legislaci%C3%B3n-ambiental-sekundaria-del-ministerio-de-ambiente-tulas&lang=es](#)

### 1.2.2. Legal authority

- Ministry of Environment (MAE)

### 1.2.3. Legally required documents or records

- N/A. Comply with the administrative process established in articles from 76 to 88 of Book III of TULSMA

### 1.2.4. Sources of information

#### *Government sources*

- A review was conducted of the website of MAE and official records: no evidence of the existence of forest concessions was found.
- In consultation with the National Forestry Department, there are no existing records of forest concessions contracts issued delegating the use of forest assets to third parties.

#### *Non-Government sources*

- Morales, M., Naughton-Treves, L., y Suárez, L. (Eds.). (2010). *Seguridad en la tenencia de la tierra e incentivos para la conservación de bosques*. [online]. ECOLEX. Quito-Ecuador.

#### *Interviews with experts*

Conversations with different experts – held during the week of November 16th through 20th, 2015 – helped the authors of this report to better understand the relevant legislation and any risks associated with each legislation category.

### 1.2.5. Risk determination

#### *Overview of Legal Requirements*

1. Codification of Forestry and Natural Area and Wildlife Protection Law. The Ministry of Environment has the following objectives and roles:
  - a) Define and manage the forest and natural resources and wildlife owned by the State;
  - b) Ensure the conservation and rational use of existing forest and natural resources;
  - c) Promote and coordinate scientific research within its area of responsibility;
  - d) Foster and implement policies related to the conservation, promotion, protection, research, management, industrialisation and commercialisation of the forest resource, as well as natural and wildlife areas;
  - e) Prepare and implement plans, programs and projects for the development of the forestry sub-sector, in the areas of afforestation, research, exploitation,



management and protection of natural forests and plantations, watersheds, natural areas and wildlife;

- f) Manage, protect and foster the following renewable natural resources: protection and production forests, lands suitable for forests, wild flora and fauna, national parks and equivalent units and reserve areas for the above purposes;
  - g) Promote coordinated actions with other entities for the regulation and management of watersheds, as well as the management of natural areas belong to the State, and forests located within public property;
  - h) Study, research and provide technical assistance regarding the promotion, management and harvesting i) Promote the creation of business and entities focusing on afforestation, harvesting and, in general, the development of the forest resource and wildlife in which the Ministry can be a shareholder; and,
  - i) Comply with and enforce the laws and regulations relevant to forest resources, natural areas and wildlife.
2. Unified Text of Secondary Legislation, Environment (TULSMA). TULSMA establishes the basic environmental policies of Ecuador. TULSMA establishes that the possibility exists of concessions on properties of State Forest Heritage; this is defined in the Chapter ON THE ALLOCATION OF STATE FOREST HERITAGE LAND, from BOOK III of TULSMA. Article 76 establishes that, with the previous delineation of the area by the Ministry of Environment, State Forest Heritage Lands can of forest resources, natural areas and wildlife; be assigned or consigned in favour of national industrial timber companies. The adjudication or allocation of concessions will be achieved in the following manner and order:

Collective, in favour of ancestral possessors; and,

Individual, in favour of (i) Natural individuals with a minimum of five years of pacific and continuous possession; (ii) Natural individuals with fewer than five years of pacific and continuous possession; and;

Legal individuals who demonstrate possession. The possession shall be properly and legally justified.

Art. 77: The adjudication to national, legally established, timber companies, will be achieved through public auction, with the concession to be issued according to the rules set by the Ministry of Environment.

The State Forest Heritage Lands that have ancestral peoples' settlements, cooperatives or other legally established agricultural organisations, are exempt from this type of adjudication.

The Ministry of Environment or the appropriate dependency will conduct the auction and a Public Notary will act as secretary, with no right to vote.

#### *Description of risk*

While provision exists within Ecuadorian law for the allocation of concessions, at the present time, there are no concessions allocated by the State. Furthermore, during the last 20 years, no forest sector concessions of any type has been issued or registered in



Ecuador and no system for the issuance of forest concessions exists or has been developed for production forests.

Instead, forest tenure is exercised by the State, private land owners, or the Indigenous peoples and the local communities.

According to Morales et al.: *"The biggest forest owners in Ecuador are the State and the peoples of indigenous nationalities. In this context, the indigenous peoples and Afro-Ecuadorians are the owners of native forests in the nation. Palacios and Revelo (2005) estimate that they possess about seven and a half million hectares of forest. Private owners and the timber processors or industrials have a considerably small extension by comparison."*

#### *Risk conclusion*

During the last 20 years, no forest sector concessions of any type have been issued or registered in Ecuador. No system for the issuance of forest concessions exists or has been developed for production forests. Based on this concrete situation, this category is defined as Not Applicable.

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

N/A

#### **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.*

### **1.4. 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**

#### Current legislation for natural forests

1. Procedures for Authorizing Timber Harvesting and Logging (Ministerial Agreement N°139)  
Registro Oficial No.164. Fecha publicación: 05/Abril/2010.  
TITULO II: DE LA LICECNIAD DE APROVECHAMIENTO FORESTAL  
CAPITULO I, APROBACION DE PLANES Y PROGRAMAS  
CAPITULO II, EMISION Y ENTREGA DE LA LICENCIA DE APROVECHAMIENTO  
CAPITULO III, DE LA LICENCIA DE APROVECHAMIENTO FORESTAL. Available at:  
<http://ecuadorforestal.org/wp-content/uploads/2010/05/PROCEDIMIENTOS-PARA-AUTORIZAR-EL-APROVECHAMIENTO-Y-CORTA-DE-MADERA.pdf>
2. Standing Timber Harvesting Right (Ministerial Agreement N° 041)  
Fecha publicación: 04/Junio/2004. Art. 1 y Art. 2. Available at:  
<http://ecuadorforestal.org/wp-content/uploads/2010/05/Derecho-de-Aprovechamiento-de-Madera-en-Pie.pdf>

#### Current legislation for forest plantations

1. Instructive controlling the preparation, approval, and implementation of logging programs, forest harvesting licenses and traffic circulation guidelines of forest plantations (Ministerial Agreement N° 327). ANEXO 1 Programa de corta para árboles de plantaciones forestales comerciales. Fecha suscripción: 01/Agosto/2014.  
CAPITULO III, DE LAS LICENCIAS DE APROVECHAMIENTO., todos los artículos.  
Available at: <http://ecuadorforestal.org/wp-content/uploads/2010/05/Instructivo-que-regula-la-elabouración-aprobación-y-ejecución-de-los-programas-de-cortalicencias-de-aprovechamiento-forestal-y-guias-de-circulación-de-plantaciones-forestales-comerciales.pdf>

#### 1.4.2. Legal authority

- Ministry of Environment (MAE) Controls all harvesting processes and license issuing for any natural forest in Ecuador and any natural formation.
- Ministry of Agriculture, Livestock, and Fisheries (MAGAP)  
Approves forest harvesting licenses, issues transport licenses and guides for forest plantations.

#### 1.4.3. Legally required documents or records

Both MAE and MAGAP, as per their duties, issue **Harvesting Licenses** for Forest Plantations, as well for Natural Forests.

#### 1.4.4. Sources of information

##### *Government sources*

- Ministry of the Environment (2015). *Ministra Lorena Tapia explicó resultados del Estado de Excepción forestal en Esmeraldas y las medidas para su extensión* (Minister Lorena Tapia explains results of the Forest Exception State in Esmeraldas and measures for its extensión). [online]. Ministerio del Ambiente (MAE). Available at: <http://www.ambiente.gob.ec/ministra-lorena-tapia-explico-resultados-del->

[estado-de-excepcion-forestal-en-esmeraldas-y-las-medidas-para-su-extension/](#)  
[Accessed 5 January 2017]

- Ministry of Interior (2015). *89.53 metros cúbicos de madera ilegal ha sido retenida por la Policía Nacional, en Manabí* (89.53 cubic meters of illegal wood has been retained by the National Police, in Manabí). [online]. Ministerio del Interior. Available at: <http://www.ministeriointerior.gob.ec/89-53-metros-cubicos-de-madera-ilegal-ha-sido-retenida-por-la-policia-nacional-en-manabi/> [Accessed 5 January 2017]

#### *Non-Government sources*

- Mejía, E. & P. Pacheco (2013). *Aprovechamiento forestal y mercados de la madera en la Amazonía Ecuatoriana* (Forest utilization and timber markets in the Ecuadorian Amazon). Occasional Paper 97. Bogor, Indonesia: CIFOR. Available at: <http://www.cifor.org/library/4290/aprovechamiento-forestal-y-mercados-de-la-madera-en-la-amazonia-ecuatoriana/> [Accessed 5 January 2017]
- Pacheco, P, E. Mejia and A. Muzo. (n.d.). *Presentation on Smallholders and domestic timber markets in Ecuador: Research findings and policy options*. [online]. CIFOR. Available at: [http://www.cifor.org/fileadmin/subsites/proformal/PDF/PROFORMAL\\_Smallholders\\_Lima\\_Dec2013.pdf](http://www.cifor.org/fileadmin/subsites/proformal/PDF/PROFORMAL_Smallholders_Lima_Dec2013.pdf) on 01/05/2016 [Accessed 5 January 2017]
- Mejía, E. & P. Pacheco and A. Carrasco (2014). *CIFOR Info Brief 84 (2014): Policy options for improved forest use by smallholders in the Ecuadorian Amazon*. [online].

#### *Interviews with experts*

Conversations with different experts – held during the week of November 16th through 20th, 2015 – helped the authors of this report to better understand the relevant legislation and any risks associated with each legislation category.

### **1.4.5. Risk determination**

#### *Overview of Legal Requirements*

In the harvesting of forest plantations and natural forests, compliance with the relevant legal and technical obligations is required, as well as obtaining a forest harvesting licence.

#### *Current Legislation for Natural Forests*

1. Procedures for Authorising Timber Harvesting and Logging (Ministerial Agreement N° 139):

- Chapters I, II, III of the TITLE II establish the procedures for requesting a Forest Harvest Licence for forest products; here are described the technical documents corresponding to the different management plans established in the Regulation for Tropical Forests; likewise, the legal land tenure documents that support land management and ownership as pre-requisites for issuing the licence.
- The validity of the harvesting licence, requirements of legal use, and violations are described. The responsibilities of the parties, including MAE and the beneficiary of the harvesting licence, are established.

## 2. Standing Timber Harvesting Right (Ministerial Agreement N° 041):

Establishes the fee for the extraction of standing trees from natural forests (i.e. stumpage fee), the value being 3 USD per cubic metre.

### Current Legislation for Forest Plantations

## 3. Instruction regulating the preparation, approval, and implementation of plantation logging programs, forest plantation harvesting licences and transportation permits (Ministerial Agreement N° 327):

The plantation harvesting licence is the document that accredits the harvest through a logging program; the instruction describes the information to be included in the Licence and its validity of one year starting from its issue. The reasons for the suspension of a harvesting licence and the procedure for its approval are described.

### *Description of risk*

The actions taken by the Ecuadorian government to fight illegal harvesting, demonstrate concern with respect to non-compliance with forest legislation; for example, the situation in the North of the nation where in 2013 a 90 day harvesting prohibition had to be established. During this time, no harvesting licences were issued nor renewed. Various monitoring and enforcement measures were also implemented. In an article quoted on the MAE web page published 27 November 2013. Minister Lorena Tapia explained the results of the Forest State of Emergency in Esmeraldas and the measures taken for its extension:

*"[After] the first 60 days of the State of Emergency in Esmeraldas, the National Government decided to extend the action for 30 more days in order to strengthen controls and to reduce illegal logging, taking care of the natural patrimony of this province and all the nation, the Ministers of Environment, Lorena Tapia, and of Defense, María Fernanda Espinosa, informed today'. The decision was made after assessing the results of the application of the measure requested by the Highest Environmental Authority of Ecuador. "Among the information that stands out in the report is that 100% of the harvesting programs approved by the Ministry of Environment up to 2013 were verified. Additionally, 1,200 m<sup>3</sup> of illegal timber were confiscated as a result of the strategically located fixed and mobile control points", indicated Minister Tapia. "The stages of the State of Emergency were fixed and mobile control activities, verifications of on-site harvesting activities linked with native forests, raids of illegal timber log yards, monitoring of final destinations for wood products, and environmental audits of the companies to whom MAE issued licenses".*

According to the public report of the Ministry of Interior (2015): *"The Unit of Environment Protection (UPMA) has seized, in Manabí, 89.53 m<sup>3</sup> of timber, between January and August 2015. Sergeant Jhonny Cedeño, responsible person for UPMA in Manabí, said that the activities being implemented are coordinated with the Ministry of Environment. '[We] go to the places where logging is being executed or to the timber deposits, we verify the species and if the legality of the logging is not justified, the product is detained. Also we conducted verification operations on the roads, where we requested the transporters to provide transport permits in order to determine the origin of the timber', he added.*

*Retention process: Retained wood is marked with spray in order to avoid tampering and is left in the custody of authorities. When it is transported in vehicles, it is moved to the Judicial Police yards. If it has been located in a property, it is sent to the nearest Community Police Unit (CPU) or any office of the Ministry of Environment. Retention timber cases are submitted to the relevant authority who will determine if the owners must be fined for not presenting the supporting documentation. In other occasions, the wood may be passed, via auction or donation, to an institution that needs this product. Portoviejo, Pacoche, Cascol, Machalilla and San Plácido are the locations with more timber retention and where verifications of this type have been conducted. The trees with the highest logging demand are Teak, Fernán Sánchez and Mata Palo."*

Reviewing other forest reports: in the study of 'Forest Harvesting and Markets for Timber in the Ecuadorian Amazon', it is mentioned by Mejia and Pacheco (2013) that "*in the [Amazon Region] areas under study, the evasion of the [forest control] system occurs mostly to avoid losses in the timber already formally or informally harvested*". According to the results from interviews within their study, the principal evasion strategies utilised by actors within the forest sector, in order of importance according to the interviewees, were as follows:

- 1) purchase of transport permits;
- 2) sale of timber in the capital cities of the provinces (where final consumption occurs);
- 3) laundering through the use of approved logging programs and licences;
- 4) bribery of police and staff of forest surveillance authorities at control points;
- 5) transportation using invoices as supporting documentation; and
- 6) approval of fictitious harvesting plans in order to obtain harvest permits (which permit the issue of transport permits).

It will be noted that some of these forms of evasion are utilised during harvesting and others during transportation. They are not mutually exclusive, such that more than one may occur at the same time.

According to Mejia and Pacheco (2013) "*...timber laundering refers to the timber 'legalization' process through a network of actors with enough capability for adapting to demand for wood products and who have the flexibility necessary to conduct such [legalization] operations, mainly because they work with low timber volumes. There are two laundering methods:*

- "*The first, 'more formal', occurs within legal harvesting - inside the approved harvesting plans or programs - at the moment when intermediaries purchase timber next to the properties authorised for formal logging*".

The neighbouring timber is naturally un-authorised for harvesting, but will be 'legalised' via the approved harvesting licence and transport permits.

- "*The second, perhaps more frequent, is the one involving timber informally obtained at the side of the road or river. Timber laundered using the second method is moved through a wide network of small deposits or mills established inside the communities or at the periphery of cities...*".

There is strong pressure on the natural-forest resource from informal and illegal operators, who resist regulation. According to Pacheco et al (presentation), informality is encouraged by obstacles in actors' ability to pay fees and taxes as well as in the elaboration of 'forest management programs'. Working informally also allows flexibility for species selection and volumes harvesting.

The timber industry in Ecuador is also characterized by a high number of small timber extractors and wood-processing units with low capital input and by poor working conditions (ITTO Technical Series No 38, 2011). Small-scale (low volume) harvesting is frequently associated with, according to Mejia and Pacheco (2013), the evasion by small (private or community) holders and subsequent intermediaries in the supply chain of the perceived prohibitive institutional barriers and transaction costs of legal harvesting. CIFOR info brief 84 (2014) describes how *"Informal markets are common in the Amazon region close to the urban centers where final consumption occurs. In most other cases, the timber is transported to more distant urban centers, often with legal transport permits, some of which are obtained through illegal means. These strategies guarantee the delivery of purchase orders for final buyers in the cities, which are sold with formal legal permits."*

Discussions with experts discussed how medium and large plantations probably comply with forestry legislation, however similar issues of non-compliance or informality probably still exist in relation to many smaller plantations. The existence in Ecuador of extraction from native forests - as direct theft - was also raised

#### *Risk conclusion*

The issuing of harvesting permits is directly linked to the approval of management and harvesting plans, influencing also transportation permits which are issued. The aforementioned non-compliances and informality leads to the conclusion that compliance with the requirements for the issue of forest harvesting permits are at risk of being violated. Risks also relate to situations where harvesting is carried out without required permission. Thus the risk is defined as Specified

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

Specified risk

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

- Valid harvesting licenses shall exist.
- Field visits shall verify that the geographic position data agrees with the reality and matches with the properties approved for harvesting.
- The harvesting limits must be clearly defined based on the inventories and must match with the products harvested, in the case of natural forests.
- Field inspection shall confirm that the information about the zone, species, volumes, and other information submitted in the licenses is correct and within the limits established in the authorization.
- It shall be verified that the Executor (official implementer of the plan or program) is properly registered before the authority, MAGAP or MAE.

- Forest operators shall have their registrations approved by the relevant authority (MAGAP).
- The operative status of the Forest Superintendent shall be validated before the relevant authority (MAE).

## 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

Current Legislation for Natural Forests:

1. Procedures for Authorizing Timber Harvesting and Logging (Ministerial Agreement N°139). Registro Oficial No.164. Fecha publicación: 05/Abril/2010. Art. 22.- Las licencias de aprovechamiento forestal contendrán la siguiente información:
  - a) Código y número de la licencia de aprovechamiento forestal;
  - b) Formación boscosa para la cual es emitida: bosque húmedo; bosque andino; bosque seco; formaciones pioneras; árboles relictos;
  - c) Tipo de licencia de aprovechamiento forestal;
  - d) Nombres y apellidos completos del poseionario o propietario del predio y/o bosque, delegado y/o ejecutor, según sea el caso;
  - e) Ubicación del predio y linderos;
  - f) Tipo y número de programa aprobado sobre el cual se sustenta la licencia;
  - g) Especies y volumen de madera en pie autorizado para el aprovechamiento;
  - h) Número de la papeleta de depósito y el valor depositado por concepto del pago del precio de madera en pie (cuando corresponda a madera de bosques naturales, formaciones pioneras y de árboles relictos);
  - i) Prohibiciones y compromisos que asume el beneficiario de la licencia;
  - j) Plazo de duración de la licencia (vigencia);
  - k) Lugar y fecha de emisión;
  - l) Copia de la factura del Regente Forestal por concepto de seguimiento al Programa de Aprovechamiento; y,
  - m) Firma del funcionario que emitió la licencia.

La Autoridad Ambiental competente emitirá las licencias de aprovechamiento forestal, exclusivamente a nombre del propietario o poseionario del predio, de acuerdo al modelo de licencia presentado en el Anexo 1 del presente acuerdo. Available at: <http://ecuadorforestal.org/wp-content/uploads/2010/05/PROCEDIMIENTOS-PARA-AUTORIZAR-EL-APROVECHAMIENTO-Y-CORTA-DE-MADERA.pdf>



2. Standing Timber Harvesting. Ministerial Agreement 041. 04. 06.2004  
Regula el valor de pago del pie de monte y establece el valor del mismo.  
<http://ecuadorforestal.org/wp-content/uploads/2010/05/Derecho-de-Aprovechamiento-de-Madera-en-Pie.pdf>

Current Legislation for Forest plantations:

There is no tax or fee applicable to forest plantations.

#### 1.5.2. Legal authority

- Ministry of Environment (MAE): the stumpage payment must be made (3 USD/cubic meter) prior to the approval of different types of management and harvesting plans, for the case of natural forests.
- In the case of plantations, no harvesting fee or tax exists.

#### 1.5.3. Legally required documents or records

- Receipt of payment in the Banco Nacional de Fomento of Ecuador according to the value of standing tree in the natural forest.

#### 1.5.4. Sources of information

##### *Government Sources*

- MAE. 2010. 2011. Aprovechamiento de Recursos Forestales en el Ecuador y procesos de infracciones y decomisos (periodo 2010).

##### *Non-Government Sources*

- Esfera Publica. (2012). 3 Ed. *Informe de transparencia y acceso a la información del sector forestal ecuatoriano*. [online]. Grupo Faro. Available at: <http://www.grupofaro.org/sites/default/files/archivos/publicaciones/2012/2012-05-29/ep-transparenciaforestal2012-3.pdf>

##### *Interviews with Experts*

Conversations with different experts – held during the week of November 16th through 20th, 2015 – helped the authors of this report to better understand the relevant legislation and any risks associated with each legislation category.

#### 1.5.5. Risk determination

##### *Overview of Legal Requirements*

1. Procedures for Authorising Timber Harvesting and Logging (Ministerial Agreement N° 139):

The regulation establishes in its Art. 22 that the forest harvesting licences will include the following information: Number of the deposit slip and the amount deposited as payment for standing timber rights (corresponding to timber from natural forests, pioneer formations and trees from relicts); which is a requirement established as the fee for the right to harvest of standing timber.

2. Standing Timber Harvesting Right (Ministerial Agreement N° 041):

Establishes the fee for the extraction of standing timber from natural forests. The stumpage fee established is 3 USD/cubic metre.

### *Description of risk*

A 2011 report by Esfera Pública indicates that: "... in Ecuador, 2,055,608 hectares of State forest exist that are under the ownership or tenure of settlers, communities, or timber companies (Añazco et al., 2010) that can be subject to a forest harvesting system for which the fiscal framework only exists expressed as a standing timber tax (tax paid per cubic metre of timber extracted) as well as the taxes related to the regular economic activities (for example IVA)".

According to the 2011 MAE report, from the figures reviewed "in 2010 approvals were registered for 3,704,338.70 m<sup>3</sup> of timber coming from forest plantations, native forests, agroforestry systems, and natural regeneration. With respect to the year 2007, the year in which the statistics were properly systematised, there was a 65.95% increase [relative to 2007] in approvals. Regarding the authorised volume registered in the 2009 period, the timber volume grew 26.18% on 2007 figures, equating to 768,615.15 m<sup>3</sup> of timber. This increase was experienced mostly in provinces such as: Esmeraldas, which registered an additional volume of 228,343.78 m<sup>3</sup> in 2009; Cotopaxi, with an additional volume of 174,407.41 m<sup>3</sup>; Manabí, with a significant growth of 81,839.24 m<sup>3</sup> and Los Ríos, which registered a growth of 80,734.52 m<sup>3</sup> of timber. The volume that increased at national level was focused on the harvesting of regeneration species such as laurel, balsa, and mambla; and from native forests such as pichango, guabo, mambla, caucho, higuierón and copal".

The total surface area authorised for harvesting during 2010 was 106,543.22 hectares; and was authorised through the approval of 5,108 harvesting programs (relict trees, pioneer formations, forest plantations, planted trees, natural regeneration, and legal conversion zones) and 1,121 forest harvesting permits, based on Sustainable Management Plans and Simplified Management Plans. In comparison with the previous year, the year 2009 registered a growth of 20,990.15 hectares. This growth was mainly located in the Province of Esmeraldas with 63.35% of the total growth in additional area harvested. Hectares authorised in 2010 were 30.88% higher compared to those registered for 2007. Upon analysing the behaviour of this variable during the 2007-2010 period, a greater growth can be observed for the 2009-2010 period: different from what was registered during the periods 2007-2008 and 2008-2009 where the dynamic of this variable is relatively low, with a growth of 0.91% and 4.15%, respectively.

In Ecuador it is not possible to obtain a harvesting licence without making the respective payment of the standing timber fee, which makes impossible the existence of forest licences or transport permits that legally support forest harvesting for which this fee has not been paid. Official statistics make evident the increase of the issuing processes of harvesting licences during the period assessed, which in turn makes evident that the approval of management plans or programs is the only legal way to obtain forest harvesting licences.

### *Risk Conclusion*

It is concluded that the risk of owning a harvesting licence issued by the authority MAE, without having met legal requirements with regard to the payment of the standing

timber fee, is LOW since there is no other way to obtain the license. In the case of plantations, this category is N/A.

#### 1.5.6. Risk designation and specification

Low risk: Natural Forests

N/A: Forest 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.

### 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

Current Legislation for Natural Forests:

1. Procedures for Authorizing Timber Harvesting and Logging (Ministerial Agreement N°139). Art. 57.- La movilización de madera aserrada semielaborada proveniente de los depósitos de madera, centros de expendio, acopios, procesamiento y comercios, podrá realizarse amparada en una factura, de acuerdo a las regulaciones establecidas por el Servicio de Rentas Internas. Los propietarios de los aserraderos, centros de expendio, acopio, procesamientos y comercios, deberán incluir en la factura el detalle de: número, tipo de piezas y especies. Available at: <http://ecuadorforestal.org/wp-content/uploads/2010/05/PROCEDIMIENTOS-PARA-AUTORIZAR-EL-APROVECHAMIENTO-Y-CORTA-DE-MADERA.pdf>

Current Legislation for Forest Plantations:

2. Instructive controlling the preparation, approval, and implementation of logging programs, forest. harvesting licenses and traffic circulation guidelines of forest plantations (Ministerial Agreement N° 327). ANNEX 1 Logging Program in Commercial Forest Plantations. Fecha suscripción: 01/Agosto/2014. Art. 25, Información de la Guía de circulación. Literal H: Nombre del receptor final, RUC, razón social y dirección, cuando aplique. Available at: <http://ecuadorforestal.org/wp-content/uploads/2010/05/Instructivo-que-regula-la-elaboración-aprobación-y-ejecución-de-los-programas-de-cortalicencias-de-aprovechamiento-forestal-y-guias-de-circulación-de-plantaciones-forestales-comerciales.pdf>

Tax Legislation applicable to every production activity (SRI):

1. Internal Tax Regime Law (Code. 2004-026). Available at: [http://www2.congreso.gob.pe/sicr/cendocbib/con4\\_uibd.nsf/4658562CA1EB2EB305257B51006C233E/\\$FILE/LEY\\_R%C3%89GIMEN\\_TRIBUTARIO\\_INTERNO\\_ECUADOR.pdf](http://www2.congreso.gob.pe/sicr/cendocbib/con4_uibd.nsf/4658562CA1EB2EB305257B51006C233E/$FILE/LEY_R%C3%89GIMEN_TRIBUTARIO_INTERNO_ECUADOR.pdf)
2. Regulations to the Taxpayer Registry Law, RUC, Executive Decree 2167 Registro Oficial Suplemento 427 de 29 - dic. -2006. Available at: <http://goo.gl/CEJfQK>

#### **1.6.2. Legal authority**

- Ministry of Environment (MAE)
- Ministry of Agriculture, Livestock, and Fisheries (MAGAP)
- Internal Revenue Service (SRI)

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

Current Legislation for Natural Forests:

- Transport of sawn timber with Payment Documentation.

Tax Legislation applicable to all production activity:

- Invoices issued for services or payment to third parties.
- Tax Returns: IVA, Income Tax (IR).

#### **1.6.4. Sources of information**

##### *Government Sources*

- Telégrafo.com (2015). El MAE y el SRI fomentan la actividad maderera legal (MAE and SRI promote legal logging activity). *El Telegrafo*. [online]. Available at: <http://www.telegrafo.com.ec/economia/item/el-mae-y-el-sri-fomentan-la-actividad-maderera-legal.html> [Accessed 5 January 2017]

##### *Non-Government Sources*

- Mejía, E. & P. Pacheco (2013). *Aprovechamiento forestal y mercados de la madera en la Amazonía Ecuatoriana*. [online]. Occasional Paper 97. Bogor, Indonesia: CIFOR. Available at: <http://www.cifor.org/library/4290/aprovechamiento-forestal-y-mercados-de-la-madera-en-la-amazonia-ecuatoriana/> [Accessed 7 January 2017]

##### *Interviews with Experts*

Conversations with different experts – held during the week of November 16th through 20th, 2015 – helped the authors of this report to better understand the relevant legislation and any risks associated with each legislation category.

#### **1.6.5. Risk determination**

##### *Overview of Legal Requirements*

1. Internal Tax Regime Law (Codification No. 2004-026):

Law for tax control that governs all production activities and the enforcement of the fiscal regime.

2. Regulations relating to the Taxpayer Registry Law (RUC):

Regulates and standardises the classification and scoring of natural and legal persons who implement production activities and their due registration as taxpayers. In addition to forest services, transactions include timber purchases, sale of forest products or standing timber (plantations and natural forest) – for which the main requirements include a Unique Registry of Taxpayers code (RUC), appropriate IVA return (value-added tax) and IR (income tax).

*Description of risk*

It is important to mention that – according to the tax regime – timber harvested and transported as logs does not attract VAT-. This differs from the case of sawn timber, which by virtue of having a level of processing that adds value, enters as a taxed product and must be accompanied by an invoice.

In this context, Ecuadorian authorities have identified significant challenges of non-payment within the forest sector, as evidenced by the actions outlined in the press release (dated 11 August 2015) indicating that MAE and SRI will foster legal timber activity, as follows:

*"The Environment Minister, Lorena Tapia, and the Director of Internal Revenue Service (SRI), Carlos Marx Carrasco, signed a diplomatic note in order to fight tributary evasion and avoidance related to timber harvesting programs through the implementation of tributary tools for the forest sector. Both institutions made commitments aimed toward the strengthening of their respective management in the subject indicated and to create coordination links in order to encourage legal movement of timber. All this is in the framework of sustainable development of forest resources of Ecuador and to formalise timber activity that generates taxes and improves labour conditions for all participants.*

*For that purpose, the Ministry of Environment (MAE) has committed to submit information gathered about tributary informality and non-compliance in the environmental sector, in the forest registry of land-owners subject to tax payment for rural lands, in tax credit generated from afforestation and reforestation programs. Additionally, they have committed to developing technological tools that allow automatic exchange of information through duplication of databases and to issue rulings or regulations.*

*For its part, SRI shall provide information in relation to the actions implemented in order to establish sanctions based on the data sent by MAE, implement staff training, design and implement tributary support and control programs for forest actors, exchange information relating to the Unique Registry of Taxpayers of the forest sector, incorporate environmental areas as normal areas in the process of tributary control and guide the implementation and outcomes in control processes. Through this diplomatic note they committed to work in favour of the generation of appropriate risk management, focused to discourage non-compliance with tributary and environmental requirements."*

Mejia and Pacheco (2013) mention in their study 'Forest Harvesting and Timber Markets in the Ecuadorian Amazon' that the forest regulations require that the executors of harvesting programs register their Unique Registry of Taxpayers code (RUC) or Simplified Tax Regime code (RISE) within the Ecuadorian Forest Administration IT Platform (Sistema de Forest Administration, SAF) ... This registry does not require registration of tax payments, a reason for which invoices are sometimes utilised to transport laundered timber. An update to the Ecuadorian Forest Administration IT Platform (SAF II) expects to reduce the use of invoices for the laundering of timber via the implementation of a more comprehensive registry at the final destination (end user of wood products). However, the authors estimated that *"about 15% of timber transported during 2011 did not have a declared destination, nor an SRI registry indicating the destination per element"*. *"Likewise, there are indications that the volume transported stated in SAF frequently does not match with the statement of the tax return to SRI"*, conclude the authors".

Interviews with experts complemented that small businesses, suppliers and marketers of wood, often do not adapt to the legal framework and provide invoices for the services they perform or for timber sales. Broadly there was consensus that tax evasion is high, fuelled by forest sector companies that accept timber without a proper invoice.

#### *Risk conclusion*

As evidenced, while the system includes control measures for legal compliance with taxes in Ecuador, gaps or deviations have been identified by both forestry and tributary authorities. In this context, this criterion is established as specified risk.

#### **1.6.6. Risk designation and specification**

Specified risk.

#### **1.6.7. Control measures and verifiers**

- Sales documentation presented shall comply with SRI requirements.
- Invoices issued for purchase/sale of invoices shall be valid.
- Volumes, species and qualities in the transport documents shall match with the ones in the Management Plans.
- Consultation with authorities shall confirm that the operation is up to date with the payment of Internal Revenue taxes.
- Consultation (via online publically-available databases, held by SRI, MAE, MAGAP) shall confirm the fiscal status of the entity: Validity of RUC, IVA and ICE Tax Return, Income tax payment.
- Payment invoices and receipts for standing timber purchased shall exist.
- The unique payment shall have been made in the forest registry.
- Certificates or payment receipts for fees requested by the authorities such as MAE, for the documentation crediting harvesting and management, shall be reviewed.

### **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**

Current Legislation for Natural Forests:

1. Procedures for Authorizing Timber Harvesting and Logging (Ministerial Agreement N°139). Art. 57.- La movilización de madera aserrada semielaborada proveniente de los depósitos de madera, centros de expendio, acopios, procesamiento y comercios, podrá realizarse amparada en una factura, de acuerdo a las regulaciones establecidas por el Servicio de Rentas Internas. Los propietarios de los aserraderos, centros de expendio, acopio, procesamientos y comercios, deberán incluir en la factura el detalle de: número, tipo de piezas y especies. Available at: <http://ecuadorforestal.org/wp-content/uploads/2010/05/PROCEDIMIENTOS-PARA-AUTORIZAR-EL-APROVECHAMIENTO-Y-CORTA-DE-MADERA.pdf>

Current Legislation for Forest Plantations:

2. Instructive controlling the preparation, approval, and implementation of logging programs, forest harvesting licenses and traffic circulation guidelines of forest plantations (Ministerial Agreement N° 327). ANNEX 1 Logging Program in Commercial Forest Plantations. Fecha suscripción: 01/Agosto/2014. Art. 25, Información de la Guía de circulación. Literal H: Nombre del receptor final , RUC, razón social y dirección, cuando aplique. Available at: <http://ecuadorforestal.org/wp-content/uploads/2010/05/Instructivo-que-regula-la-elaboración-aprobación-y-ejecución-de-los-programas-de-cortalicencias-de-aprovechamiento-forestal-y-guias-de-circulación-de-plantaciones-forestales-comerciales.pdf>

Tax Legislation Applicable to every production activity:

1. Internal Tax Regime Law (Code. 2004-026). Available at: [http://www2.congreso.gob.pe/sicr/cendocbib/con4\\_uibd.nsf/4658562CA1EB2EB305257B51006C233E/\\$FILE/LEY\\_R%C3%89GIMEN\\_TRIBUTARIO\\_INTERNO\\_ECUADOR.pdf](http://www2.congreso.gob.pe/sicr/cendocbib/con4_uibd.nsf/4658562CA1EB2EB305257B51006C233E/$FILE/LEY_R%C3%89GIMEN_TRIBUTARIO_INTERNO_ECUADOR.pdf)

2.Regulations to the Taxpayer Registry Law, RUC, Executive Decree 2167 Registro Oficial Suplemento 427 de 29-dic.-2006. Available at: <http://goo.gl/CEJfQK>

#### **1.7.2. Legal authority**

- Ministry of Environment (MAE)
- Ministry of Agriculture, Livestock, and Fisheries (MAGAP)
- Internal Revenue Service (SRI)

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

- Annual Income Tax Return (IR)

#### **1.7.4. Sources of information**



### *Government sources*

- Sri.gob.ec (2014). Informe de laboures (Labourers report). [online]. Available at: <http://www.sri.gob.ec/DocumentosAlfrescoPortlet/descargar/3e8d779f-7419-4833-b901-f119d7eff3dd/INFORME+ANUAL+DE+LABOURES+2014.+EXT-.+docx.pdf> [Accessed 5 January 2017]
- Telégrafo.com (2015). El MAE y el SRI fomentan la actividad maderera legal (MAE and SRI promote legal logging activity). *El Telegrafo*. [online]. Available at: <http://www.telegrafo.com.ec/economia/item/el-mae-y-el-sri-fomentan-la-actividad-maderera-legal.html> [Accessed 5 January 2017]

### *Non-Government sources*

- Mejía, E. & P. Pacheco (2013). *Aprovechamiento forestal y mercados de la madera en la Amazonía Ecuatoriana*. [online]. Occasional Paper 97. Bogor, Indonesia: CIFOR. Available at: <http://www.cifor.org/library/4290/aprovechamiento-forestal-y-mercados-de-la-madera-en-la-amazonia-ecuatoriana/> [Accessed 7 January 2017]

### *Interviews with experts*

Conversations with different experts – held during the week of November 16th through 20th, 2015 – helped the authors of this report to better understand the relevant legislation and any risks associated with each legislation category.

## **1.7.5. Risk determination**

### *Overview of Legal Requirements*

#### 1. Internal Tax Regime Law (Codification No. 2004-026):

Law for tax control that governs all production activities and the enforcement of the fiscal regime.

#### 2. Regulations relating to the Taxpayer Registry Law (RUC):

Regulates and standardises the classification and scoring of natural and legal persons who implement production activities and their due registration as taxpayers. In addition to forest services, transactions include timber purchases, sale of forest products or standing timber (plantations and natural forest) – for which the main requirements include a Unique Registry of Taxpayers code (RUC), appropriate IVA return (value-added tax) and IR (income tax).

### *Description of risk*

According to the 2014 SRI (Internal Revenue Service) report, from the total base registered in the National Collection System, 70.07% corresponds to obligations whose collection status is 'suspended' due to contested obligations, disputes or exceptions; whereas only 27.84% among other taxes has an 'active' status within the collection process. The total number with 'suspended' status (without interest) corresponds to 3,714 million dollars. The original value of debts with an 'active' status is a maximum of 982.92 million dollars. This information is related to the collection processes of VAT as well as income tax. According to the figures, fiscal evasion in 2010 was approximately 40%.



Ecuadorian authorities have identified significant challenges of non-payment within the forest sector, as evidenced by the actions outlined in the press release (dated 11 August 2015) indicating that MAE and SRI will foster legal timber activity, as follows:

*"The Environment Minister, Lorena Tapia, and the Director of Internal Revenue Service (SRI), Carlos Marx Carrasco, signed a diplomatic note in order to fight tributary evasion and avoidance related to timber harvesting programs through the implementation of tributary tools for the forest sector. Both institutions made commitments aimed toward the strengthening of their respective management in the subject indicated and to create coordination links in order to encourage legal movement of timber. All this is in the framework of sustainable development of forest resources of Ecuador and to formalise timber activity that generates taxes and improves labour conditions for all participants.*

*For that purpose, the Ministry of Environment (MAE) committed to submit information gathered about tributary informality and non-compliance in the environmental sector, in the forest registry of land-owners subject to tax payment for rural lands, in tax credit generated from afforestation and reforestation programs. Additionally, they committed to developing technological tools that allow automatic exchange of information through duplication of databases and to issue rulings or regulations.*

*For its part, SRI shall provide information in relation to the actions implemented in order to establish sanctions based on the data sent by MAE, implement staff training, design and implement tributary support and control programs for forest actors, exchange information relating to the Unique Registry of Taxpayers of the forest sector, incorporate environmental areas as normal areas in the process of tributary control and guide the implementation and outcomes in control processes. Through this diplomatic note they committed to work in favour of the generation of appropriate risk management, focused to discourage non-compliance with tributary and environmental requirements."*

Mejia and Pacheco (2013) mention in their study 'Forest Harvesting and Timber Markets in the Ecuadorian Amazon' that the forest regulations require that the executors of harvesting programs register their Unique Registry of Taxpayers code (RUC) or Simplified Tax Regime code (RISE) within the Ecuadorian Forest Administration IT Platform (Sistem of Forestry Administration, SAF). Most of the farmers and executors interviewed are included in the RISE, which accredits them as small producers or artisans. This registry does not require registration of tax payments, a reason for which invoices are sometimes utilised to transport laundered timber. An update to the Ecuadorian Forest Administration IT Platform (SAF II) expects to reduce the use of invoices for the laundering of timber via the implementation of a more comprehensive registry at the final destination (end user of wood products). However, the authors estimated that *"about 15% of timber transported during 2011 did not have a declared destination, nor an SRI registry indicating the destination per element"*. *"Likewise, there are indications that the volume transported stated in the SAF frequently does not match with the statement of the tax return to SRI", conclude the authors"*.

Interviews with experts complemented the above that there exists a high risk of tax evasion in Ecuador.

*Risk conclusion*

As evidenced, while the system includes control measures for legal compliance with taxes in Ecuador, gaps or deviations have been identified by both forestry and tributary authorities. In this context, this criterion is established as SPECIFIED RISK.

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

Specified risk.

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

- Sales documentation presented shall comply with SRI requirements.
- Invoices issued for purchase/sale of invoices shall be valid.
- Consultation with authorities shall confirm that the operation is up to date with the payment of Internal Revenue taxes.
- Consultation (via online publically-available databases, held by SRI, MAE, MAGAP) shall confirm the fiscal status of the entity: Validity of RUC, IVA and ICE Tax Return, Income tax payment.
- Volumes, species, and qualities in the transportation and sales documentation for forest products shall match and be supported with the corresponding invoices (taxes).
- Certificates or payment receipts for fees requested by the authorities such as MAE, for the documentation crediting harvesting and management, shall be reviewed.

## 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

Current Legislation for Natural Forests:

1. Regulation for the Sustainable Management of Tropical forests (Ministerial Agreement N°125)  
Registro Oficial No.272 (Edición Especial). Fecha publicación: 23/Febrero/2015.  
Available at:  
<http://ecuadorforestal.org/wp-content/uploads/2010/05/Normas-para-el-Manejo-Forestal-Sostenible-de-los-Bosques-Húmedos.pdf>
2. Procedures for Authorizing Timber Harvesting and Logging (Ministerial Agreement N°139)  
Registro Oficial No.164. Fecha publicación: 05/Abril/2010. Available at:  
<http://ecuadorforestal.org/wp-content/uploads/2010/05/PROCEDIMIENTOS-PARA-AUTORIZAR-EL-APROVECHAMIENTO-Y-CORTA-DE-MADERA.pdf>
3. Regulation for the Forest Superintendent System (Ministerial Agreement N° 038)  
Registro Oficial No.390. Fecha publicación: 02/Agosto/2004. Available at:  
[http://issuu.com/ecuadorforestal593/docs/normativa\\_038](http://issuu.com/ecuadorforestal593/docs/normativa_038)
4. Standing Timber Harvesting Right (Ministerial Agreement N° 041)  
Fecha publicación: 04/Junio/2004. Available at:  
<http://ecuadorforestal.org/wp-content/uploads/2010/05/Derecho-de-Aprovechamiento-de-Madera-en-Pie.pdf>
5. Ministerial Agreement 001- Provisions on machinery and heavyweight equipment use in mining, forestry, and similar activities. Registro Oficial No.417  
Fecha publicación: 15/Enero/2015  
Detalle: Establece el registro y catastro de todo tipo de maquinaria y equipo pesado, sus partes y accesorios, que puedan ser utilizados en actividades de minería, aprovechamiento y movilización de productos forestales o afines. Available at:  
[http://www.mineria.gob.ec/wp-content/uploads/downloads/2015/10/Maquinaria\\_Actividades\\_Minera\\_Forestales.pdf](http://www.mineria.gob.ec/wp-content/uploads/downloads/2015/10/Maquinaria_Actividades_Minera_Forestales.pdf)

Current Legislation for Forest Plantations:

1. Instructive controlling the preparation, approval, and implementation of logging programs, forest harvesting licenses and transport guidelines of forest plantations (Ministerial Agreement N° 327)  
ANNEX 1 Logging Program in Commercial Forest Plantations

Fecha suscripción: 01/Agosto/2014. Available at: <http://ecuadorforestal.org/wp-content/uploads/2010/05/Instructivo-que-regula-la-elabouración-aprobación-y-ejecución-de-los-programas-de-cortalicencias-de-aprovechamiento-forestal-y-guias-de-circulación-de-plantaciones-forestales-comerciales.pdf>

### 1.8.2. Legal authority

- Ministry of Environment (MAE) Controls all technical and administrative processes of natural forests in Ecuador and any natural formation.
- Ministry of Agriculture, Livestock, and Fisheries (MAGAP)  
Controls all technical and administrative processes for the implementation, management and harvesting of forest plantations.

### 1.8.3. Legally required documents or records

For Natural Forests:

- Management and Harvesting Plans registered and approved with Harvest Licenses issued.

For Plantations:

- Harvesting Plans Approved
- Harvesting Licenses issued.

### 1.8.4. Sources of Information

#### *Government sources*

- MAE. 2010. 2011. Aprovechamiento de Recursos Forestales en el Ecuador y procesos de infracciones y decomisos (periodo 2010).
- Ministry of Environment (2015). *Subsecretaría de Patrimonio Natural (2015). Estadísticas Forestales 2011-2014*. Ministerio del Ambiente del Ecuador, Quito: Patricio Coronel.

#### *Non-Government sources*

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- World Bank (2015). *Worldwide Governance Indicators para Ecuador*. [online]. Available at: <http://info.worldbank.org/governance/wgi/index.aspx#countryReports> [Accessed 29 december 2015]
- WWF-Germany, (2008). *Illegal wood for the European market - An analysis of the EU import and export of illegal wood and related products*. [online]. WWF-Germany, Frankfurt am Main 09.05.2008, 45 pp. Available at: <http://www.illegal-logging.info/sites/files/chlogging/uploads/WWFEuropeanmarketwood1.pdf> [Accessed 5 January 2017]

#### *Interviews with experts*

Conversations with different experts – held during the week of November 16th through 20th, 2015 – helped the authors of this report to better understand the relevant legislation and any risks associated with each legislation category.

#### **1.8.5. Risk determination**

##### *Overview of Legal Requirements*

The Ministry of Environment regulates the approval process and licencing system for natural forests, with this authority being established in the Regulation for Tropical Forests (MA 125) which describes the technical aspects of the management for each type of forest harvesting plan or program in natural forests. On the other hand, there are regulations for the establishment of plantations which define, for example, limits with respect to slopes, protection of water resources, protection zones in water sources; with these regulations established in: Regulation for the Zoning of Lands for Afforestation and Reforestation (Inter Ministerial Agreement N° 002) and its respective update supplemented with the Norm 327 of MAGAP, including regulations for water protection.

Current Legislation for Natural Forests:

1. Regulation for Sustainable Forest Management of Tropical Forests (Ministerial Agreement N° 125):

Regulate the forest management of tropical forests utilising the principles, criteria, and indicators established to promote sustainable forest management. The regulation establishes the preparation of the silvicultural information for harvesting, description of the harvesting methods, protection measures for water sources, maximum slope level, maps and description, tree selection process and directed felling techniques, minimum cut diameters (DBH), as well as other harvest and management aspects and prescriptions. Different rules are established for each type of management plan.

2. Procedures for Authorising Timber Harvesting and Logging (Ministerial Agreement N° 139):

The objective of this regulation is to establish administrative procedures for authorizing the sustainable harvest of forest timber resources from natural Tropical, Andean- and Dry-forests; of cultivated forests: forest plantations, planted trees, natural regeneration trees in crops; pioneer formations; trees in agroforestry systems; and forest products other than timber. The following are subject to these requirements: civil servants and public officers responsible for forest control and management, as well as those expressly appointed by the Ministry of the Environment to provide forest administration and monitoring within the framework of the National System for Forest Control; as well as the beneficiaries, forest owners, executors, delegates, intermediaries, traders, transporters, and final recipients of the harvested forest products.

3. Regulation for the Forest Superintendent System (Ministerial Agreement N° 038):

This regulation establishes the roles that the Ministry of the Environment delegates upon Forest Engineers for implementing Technical Assistance and Verification activities for forest management plans and programs. Such activities include their co-

responsibility in the implementation of the corresponding forest activities upon submitting the approval documentation to the relevant authority.

#### 4. Standing Timber Harvesting Right (Ministerial Agreement N° 041):

Establishes the fee for the extraction of trees from natural forests, the established stumpage fee being 3 USD per cubic metre.

#### Current Legislation for Forest Plantations:

1. Instruction regulating the preparation, approval, and implementation of plantation logging programs, forest plantation harvesting licences and transportation permits (Ministerial Agreement N° 327), ANNEX 1 Logging Program in Commercial Forest Plantations:

Establishes the administrative procedures for commercial forest plantations, including the authorisation of logging programs, issuing of appropriate forest harvesting licences and transportation permits. Articles 20, 21 and 22 refer to harvesting conditions in protection zones of water sources as well as in places with steep slopes. Additionally, the regulation stipulates the preparation of an inventory as a requirement for harvesting.

#### *Description of risk*

There is little official information on the management and control of forest harvesting, and its application in both natural forests and plantations, this limits the ability to have sufficient supporting information to define with certainty and clarity risks.

However, the Ministry of Environment has conducted statistical analysis of forest resources, for example: MAE's 2011 Report on Forest Resources Harvesting in Ecuador, Violations and Confiscation Processes (for 2010), which describes the control processes applying to forest regents (superintendents). The verification was conducted in adherence to the Regulation of the Forest Superintendence System (No. 038) which establishes sanctions to be served on superintendents in the following cases:

- Poorly prepared forest harvesting programs;
- Non-factual information including in harvesting program plans;
- Erroneous or poorly recorded tree data, specifically incorrect scientific or common names;
- Misuse of transport permits, this includes, inter alia: changes (e.g. to species' names), adulteration of information.
- Non-submission or late submission of implementation reports.

The report indicates that from 2004 to 2010 a total of 55 superintendents were sanctioned, with a total of 71 sanctions served. Fourteen superintendents were sanctioned during both first and second revocations; these correspond to 25% of the total number of superintendents at the time of the study. From the total of sanctions applied in the first revocation period, superintendents mainly received a temporary suspension of their functions during 180 days, followed by definitive suspensions (14 sanctions were issued to those superintendents who made serious infringements). In

the second revocation period, 16 sanctions were issued, in which for 50% of these cases the superintendent faced definitive suspension.

This information allows us to identify considerable deviations in the compliance with forest management and harvesting laws by the superintendents and, above all, deviations in the monitoring of forest management executors.

In addition, an updated report from MAE, 'Forest Statistics 2011-2014', mentions that the Ministry has an on-site Forest Audit System, and this report indicated that, between 2011 and 2014, 4725 forest management programs were audited, 3475 of which complied with the forest regulations, representing 74% of all the programs verified, whereas the remaining 26% (1250 programs) did not comply with forest regulations.

The same Ministry's study concluded that the main non-compliances found in the programs are due to poor preparation of the program (forest superintendent responsibility), poor execution of the program (owner/executor responsibility), poorly approval process of programs (civil servant responsibility) and poor or incorrect use of transportation permits.

According to the Corruption Perceptions Index of Transparency International (2015), Ecuador has a score of 32 out of 100, is in 107th place (out of 168 countries assessed); and regarding Worldwide Governance Indicators for the period 1996–2014, has been assessed with the following scores (on a scale of 1 to 100): i) Voice and Accountability, 39.4; ii) Government Effectiveness: 34.6; iii) Regulatory Quality: 14.9; iv) Rule of Law: 13.5; v) Control of Corruption: 21.2.

The 2008 WWF study "*Illegal wood for the European market - An analysis of the EU imports and exports of illegal wood and related products*" indicated that 70% of forest production in Ecuador is illegal.

#### *Risk conclusion*

While the information about forest superintendents' non-compliances does not specify what the deviation of responsibilities concerning forest management and harvesting and monitoring were, it points to a situation in which the level of implementation of forest harvesting and control regulations is neither sufficient nor consistent. Thus, the information reviewed allows to conclude that this category involves specified risk.

#### **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.
- Harvesting restrictions shall be observed in the field.
- Tree species or selected trees found within the FMU for which felling is prohibited shall be marked in the field



- Field inspections to harvesting sites shall verify that:
  - Harvesting is conducted within the limits authorized by the MAE and MAGAP.
  - Harvesting is not implemented in areas where is legally prohibited.
  - Species of trees or trees selected found in forest areas and plantations comply with technical requirements (size limitations etc...)
  - Harvesting restrictions are implemented in the field.
  - Forest managers have their own audit internal system to conduct such inspections themselves.
  - Harvested volumes compare against the approved volumes.
  - Previously raised control measures and corrections established by the forest verifiers are complied with.
- In case the harvesting has finished, the harvesting licenses shall be formally closed, for plantations as for natural forest.
- The legal status of the harvest permit and the authorization of the forest superintendent shall be verified, in the case of harvesting in natural forests.
- Consultations with authorities shall be conducted in order to verify sanctions or non-conformances have been issued in relations to harvesting.

## 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

Current Legislation for Natural Forests:

1. Unified Text of Secondary Legislation, Environment (TULSMA) Executive Decree N° 3516. Special Edition Official Registry No. 2. Fecha publicación: 31/Marzo/2003. Detalle: Establece políticas básicas ambientales del Ecuador. Titulo Preliminar.
  - Libro III: Régimen Forestal (Ultima Reforma Acuerdo Ministerial 003)
  - Libro IV: Biodiversidad

Available at: <http://ecuadorforestal.org/legislacion-forestal/>

2. Regulation for the Sustainable Management of Tropical Forests (Ministerial Agreement N°125)  
 Registro Oficial No.272 (Edición Especial). Fecha publicación: 23/Febrero/2015  
 Detalle: Regula el Manejo Forestal de los bosque húmedos, utilizando los principios, criterios e indicadores establecidos para fomentar el manejo

forestal sostenible. Available at: <http://ecuadorforestal.org/wp-content/uploads/2010/05/Normas-para-el-Manejo-Forestal-Sostenible-de-los-Bosques-Humedos.pdf>

Current Legislation for Forest Plantations:

1. Instructive controlling the preparation, approval, and implementation of logging programs, forest harvesting licenses and transport guidelines of forest plantations (Ministerial Agreement N° 327).

ANNEX 1 Logging Program in Commercial Forest Plantations. Fecha suscripción: 01/Agosto/2014. Detalle: Establece los procedimientos administrativos para la autorización de los programas de corta, emisión de las correspondientes licencias de aprovechamiento forestal y guías de movilización, provenientes de plantaciones forestales comerciales. Available at: <http://ecuadorforestal.org/wp-content/uploads/2010/05/Instructivo-que-regula-la-elaboración-aprobación-y-ejecución-de-los-programas-de-cortalicencias-de-aprovechamiento-forestal-y-guias-de-circulación-de-plantaciones-forestales-comerciales.pdf>

#### 1.9.2. Legal authority

- Ministry of Environment (MAE) Controls all technical and administrative processes of natural forests in Ecuador and any natural formation.
- Ministry of Agriculture, Livestock, and Fisheries (MAGAP) Controls all technical and administrative processes for the implementation, management and harvesting of forest plantations.

#### 1.9.3. Legally required documents or records

For Natural Forests:

- Management and Harvesting Plans registered and approved.

For Plantations:

- Harvesting Plans Approved

#### 1.9.4. Sources of Information

*Government sources*

- Ministry of the Environment (2007). *Políticas y Plan Estratégico del Sistema Nacional de Áreas Protegidas del Ecuador 2007-2016* (Policies and Strategic Plan of the National System of Protected Areas of Ecuador 2007-2016). [online]. Ministerio del Ambiente del Ecuador, 156 pp. Available at: <http://suia.ambiente.gob.ec/documents/10179/369324/12.-PLAN+ESTRATEGICO+DEL+SNAP.pdf/d4365484-8156-4e2e-8377-27767f3975f1> [Accessed 6 January 2017]

- Ministry of the Environment (n.d.). *Sistema Nacional de Áreas Protegidas* (National System of Protected Areas). [online]. Ministerio del Ambiente del Ecuador. Available at: Accessed on 29/12/2015 de <http://www.ambiente.gob.ec/sistema-nacional-de-areas-protegidas/> [Accessed 29 December 2015]

#### *Non-Government sources*

- Herrera M. D. & R. Elao, (2007). *Análisis de Amenazas a la Biodiversidad en el Estuario de Cojimies* (Analysis of Threats to Biodiversity in the Cojimies Estuary). [online]. EcoCostas Centro de Recursos Costeros, Universidad de Rhode Island, Narragansett, 38 pp. Available at: [http://pdf.usaid.gov/pdf\\_docs/Pnadk661.pdf](http://pdf.usaid.gov/pdf_docs/Pnadk661.pdf) [Accessed 6 January 2017]
- Ivanova, M. (2011). *Yasuní Y Redwoods Tala ilegal en bosques protegidos* (Yasuní Y Redwoods - Illegal logging in protected forests). [online]. *Ediciones Abya Yala* Quito Ecuador, 167 pp. Available at: <http://www.flacsoandes.edu.ec/libros/digital/52148.pdf> [Accessed 6 January 2017]
- El Universo (2011). Multa de \$ 375.000 a secoyas por talar bosque por palma (Fine of \$ 375,000 to redwoods for clearing forest for palm). *El Universo*. [online]. Available at: <http://www.eluniverso.com/2011/07/31/1/1447/multa-375000-secoyas-talar-bosque-palma.html> [Accessed 11 January 2016]

#### *Interviews with experts*

Conversations with different experts – held during the week of November 16th through 20th, 2015 – helped the authors of this report to better understand the relevant legislation and any risks associated with each legislation category.

### **1.9.5. Risk determination**

#### *Overview of Legal Requirements*

According to the article *National System of Protected Areas*, Ecuador has 19,1 million hectares designated as Protected Areas (AP). That is, approximately 19% of the national territory, corresponding to the 49 regions that the Ministry of Environment (MAE), through its Sub-secretary for Natural Heritage, monitors and preserves in order to guarantee the conservation of biodiversity and well-being of all living organisms. Since the approval of the 2008 Political Constitution, MAE exercises control, regulates and allocates the economic resources required. The National System of Protected Areas (SNAP) includes National Parks, Biological and Ecological Reserves, Geo-botanic Areas, Fauna Production Reserves, Marine Protected Areas, Wildlife Refuges and Recreational Areas throughout Ecuador.

The current forestry law and TULSMA are the basis of the legal framework for protected areas, although the SNAP 2007-2016 strategy mentions other disseminated legal tools involving wide mandates that are too general and even contradictory. For example, whereas the Law for the Conservation of Forests, Natural Areas and Wildlife foresees

the immutability of protected areas (article 68), the Constitution indicates the possibility of sustainable use of such areas with the involvement of local population and the private sector (article 248)."

In 2008, the Ministry of the Environment implemented a policy of incentives for the conservation of forests and other natural vegetation, the Partner Forest Program (*Programa Socio Bosque*, PSB). This initiative is included in the new model of Forest Regulation of the nation, aiming to reduce deforestation rates and contribute to mitigate climate change by reducing emissions of greenhouse gases and, at the same time, reconciling forest conservation with development. The program has signed approximately 2500 agreements with peasant communities, indigenous peoples and nationalities, covering over 1,400,000 hectares.

The harvesting regulations for natural forests and plantations establish the prohibition of approving forest management plans in protected areas, in Heritage Forests, and in Forest Partner Program (PSB) areas. There are specific procedures designed to prevent harvesting in those sites.

Natural Forests:

1. Unified Text of Secondary Legislation, Environmental (TULSMA) Executive Decree N° 3516. Special Edition Official Registry No. 2

Establishes basic environmental policies in Ecuador, and Books III and IV regulate protected area aspects in the country.

2. Regulation for Sustainable Forest Management of Tropical forests (Ministerial Agreement N°125)

Regulates the Forest Management of tropical forests using the principles, criteria, and indicators established to promote sustainable forest management, and prohibiting the authorisation of management and harvesting plans inside national protected areas.

Plantations:

1. Instructions controlling the preparation, approval, and implementation of logging programs, forest harvesting licenses and transportation permits for forest plantations (Ministerial Agreement N° 327) - ANNEX 1 Logging Program in Commercial Forest Plantations, Instructive guidelines controlling the preparation, approval, and implementation of logging programs, forest harvesting licenses and transportation permits for forest plantations (Ministerial Agreement N° 327) ANNEX 1 Logging Program in Commercial Forest Plantations.

In its authorisation process, this regulation establishes the requirement of proving that areas under the Forest Partner Programme (PSB) or SNAP are not being harvested.

### *Description of risk*

There is no publically available official information in relation to issues such as illegal harvesting in protected areas. This makes almost impossible the task of defining risks of non-compliance as low, with any certainty or clarity.

The following paragraphs describe two cases of illegal logging threats and problems inside protected areas. It must be noted that the information is from the 2000s; however, they provide important subject matter for analysis:

- According to Herrera M. D., Elao R, in the Mache Chindul Reserve, one of the current threats identified by the inhabitants of the zone is illegal forest harvesting inside the Reserve. Timber demand from companies, either via direct presence in the reserve or through intermediaries or traders, causes uncontrolled and illegal exploitation of the Reserve's forests. Moreover, low agricultural and livestock productivity in the area creates an incentive for the population to convert the land to pasture or commercial crops; this in turn leads to the fragmentation of the Reserve's natural landscape.
- Ivanova M, mentions the case of Yasuni National Park, where *"illegal harvesting of forests in the Ecuadorian Amazon region - and especially in the National Park Yasuní - is a large scale conflict"*; Milagros Aguirre (2007: 232) points out that, *"for several years, some indigenous communities have been living insecurely within their own land, enduring lack of attention from the government, the impact of the oil-extracting activity on the natural resources and the health of the inhabitants, and the indiscriminate harvesting by illegal operators"*. The study specifies that *"the nearest forest control points for the National Park Yasuni are in Kupi (in the Kichwa center of the Tiputini River) and in Coca. In order to avoid the illegal extraction of timber from the park, controls in the harvesting sites are conducted to verify the veracity of the data in the transportation permits and to confirm the authenticity of the harvesting program and timber origin. If the extraction is verified to be illegal, the timber is confiscated. Monitoring is conducted with the support of the armed forces and the police, thanks to treaties between the Ministry of the Environment and those institutions"*.

The information presented above constitutes the only existing record found concerning illegal activities in the National System of Protected Areas (SNAP). No recent information concerning such problems is registered in the system of protected areas.

In the article, '\$375,000 fine to Secoyas for forest logging for palm [oil]' it is mentioned that:

*"In their native forest, the indigenous Secoyas of the San Pablo community, located in the village of Shushufindi, observed how mestizo settler neighbours and a palm oil company removed the forest and planted huge extensions of African Palm trees. This happened over several years and the area sown extended to more than fifty thousand hectares. Witnesses observed that the plantations produced revenues and made profit, and thus the Secoyas logged part of the native forest in their ancestral territories and planted 173 hectares of the same crop, but they were caught and the Ministry of the Environment charged them a \$ 375,000 fine for logging their native forest. Now, the 20 families involved do not know how to pay the fine or the credit they received for planting. The fine was defined after an investigation by the Ministry of the Environment, which concluded that the Secoyas of San Pablo had violated article 78 of the forestry*

*Law, and related laws regulating the legal procedures to be followed when a forest is to be logged for harvesting. The indigenous families logged the forest without the required licenses. 'A forest infraction was committed, which the accused could not defend...'; pointed out the provincial director of the Ministry of the Environment for Sucumbíos, Francisco Cruz. The authority set the fine the Secoyas have to pay at \$2130 per hectare for the restoration of the forest affected. The 137 hectares logged are located in different properties. 20 indigenous families account for the planting of the palm trees, the main product of the area".*

Interviews with experts confirmed the lack of publicly available official information in relation to issues such as illegal harvesting in protected areas, as well as citing the size of public estate and limited resources available to adequately police and control all protected areas.

### *Risk Conclusion*

The above cases, and interviews with experts, demonstrate that there is insufficient information about natural forests to ensure a low risk conclusion, and the plantations' case has recent validity. Furthermore, it is evident that there are cases where, in the past, there have been deviations from legal requirements. For precautionary reasons, this category is determined as SPECIFIED RISK.

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

Specified risk.

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

- Ensure that all legally protected areas are not affected, that there is no harvesting in protection areas such as SNAP (National System of Protected Areas), PSB (Partner Forest Program) and state-owned areas, if applicable.
- Legal procedures established for the identification of protected sites, and protected or conditioned (flora) species, shall be followed according to the current requirements.
- Legal harvesting documents and technical reports shall confirm compliance with current protection requirements.
- Field inspections shall verify provincial land-use planning requirements are obeyed.
- Verify with geo-reference information that the forest operations are not conducted in conservation or protection (state, provincial or private) areas.
- In the forest management units or forest plantations, measures shall be implemented to avoid affecting areas classified for protection, such as water bodies, water sources, habitats of endangered species, etc. This applies to protection requirements for both natural forests as well as for forest plantations.

- Legally established procedures shall be followed for managing and protecting endangered or threatened species within the forest management units.

## 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

Current Legislation for Natural Forests:

1. Regulation for the Sustainable Management of Tropical forests (Ministerial Agreement N°125)  
Registro Oficial No.272 (Edición Especial). Fecha publicación: 23/Febrero/2015.  
Available at:  
<http://ecuadorforestal.org/wp-content/uploads/2010/05/Normas-para-el-Manejo-Forestal-Sostenible-de-los-Bosques-Húmedos.pdf>

Current Legislation for Forest Plantations:

Preparation, approval, and implementation of logging programs, forest harvesting licenses for forest plantations (Ministerial Agreement N° 327) - ANNEX 1 Logging Program in Annex 1. Fecha suscripción: 01/Agosto/2014. Available at: <http://ecuadorforestal.org/wp-content/uploads/2014/08/Programa-estructivo-que-regula-la-elaboración-aprobación-y-ejecución-de-los-programas-de-forestación-y-guías-de-circulación-de-plantaciones-forestales-comerciales.pdf>

### 1.10.2. Legal authority

- Ministry of Environment (MAE) Controls all technical and administrative processes of natural forests in Ecuador and any natural formation.
- Ministry of Agriculture, Livestock, and Fisheries (MAGAP)  
Controls all technical and administrative processes for the implementation, management and harvesting of forest plantations.

### 1.10.3. Legally required documents or records

For Natural Forests:

- Management and Harvesting Plans registered and approved.

For Plantations:

- Harvesting Plans Approved



#### 1.10.4. Sources of information

##### *Government sources*

- Ministry of the Environment (2011). *Aprovechamiento de Recursos Forestales en el Ecuador y - Procesos de infracciones y decomisos (periodo 2010)* (Use of Forest Resources in Ecuador - Processes of infractions and seizures (period 2010)). [online]. Ministerio del Ambiente del Ecuador, 28 pp. Available at: [http://www.itto.int/files/user/pdf/PROJECT\\_REPORTS/PD%20406\\_06\\_%20Forest%20Harvesting%20in%20Ecuador%202010%20offenses%20and%20forfeiture.pdf](http://www.itto.int/files/user/pdf/PROJECT_REPORTS/PD%20406_06_%20Forest%20Harvesting%20in%20Ecuador%202010%20offenses%20and%20forfeiture.pdf) [Accessed 6 January 2017]

##### *Non-Government sources*

- Mejía, E. & P. Pacheco, (2013). *Aprovechamiento forestal y mercados de la madera en la Amazonía Ecuatoriana*. [online]. Bogor: Center for International Forestry Research (CIFOR). Available at: <http://www.cifor.org/library/4290/aprovechamiento-forestal-y-mercados-de-la-madera-en-la-amazonia-ecuatoriana/> [Accessed 29 December 2015]

##### *Interviews with experts*

Conversations with different experts – held during the week of November 16th through 20th, 2015 – helped the authors of this report to better understand the relevant legislation and any risks associated with each legislation category.

#### 1.10.5. Risk determination

##### *Overview of Legal Requirements*

Harvesting regulations for natural forest as well as for plantations establish protective restrictions for slopes and water sources, and other conditions in relation to harvesting of a list natural forest species.

##### Natural Forests

1. Regulation for Sustainable Forest Management of Tropical Forests (Ministerial Agreement N°125):

Regulates the Forest Management of tropical forests based on the principles, criteria, and indicators established to promote sustainable forest management, with respect to the environmental requirements of Article 7 of the regulation, establishing protection requirements for water sources, as well as requirements for securing the abundance and maintenance of the species to be harvested, and the implementation of conservation measures along the roads, as described in Art 14. Art 16 considers low impact harvesting practices and protection of slopes greater than 45 degrees. Finally, there is a list of species for which harvesting is conditioned due to their scarcity within native forest ecosystems.

##### Forest plantations

1. Instructions controlling the preparation, approval, and implementation of logging programs, forest harvesting licenses and transportation permits for forest plantations (Ministerial Agreement N° 327):

Establishes the administrative procedures for the authorisation of logging programs, issuing of the appropriate forest harvesting licenses, and transportation permits for timber coming from commercial forest plantations; these instructions detail, in article 21, the protection of water sources and slopes as the most important environmental measures.

### *Description of risk*

There is little available official information on forest management and its implementation in both natural forests and plantations. This limits the supporting information available to define risks with certainty and clarity.

However, there is a report published by the forestry authority within the framework of a joint project with the International Tropical Timber Organisation (ITTO). This 2011 report '*Forest Resource Harvesting in Ecuador (period 2010), Infringement and Confiscation Processes*', describes the control processes conducted on forest superintendents, taking into account that Regulation for the Forest Superintendent System (Ministerial Agreement N° 038) establishes sanctions against superintendents in the following situations:

- Poorly prepared Forest Harvesting Programs
- Non-factual information in the plans of the harvesting program
- Erroneous or poorly recorded tree data, either scientific or common name
- Misuse of transportation permits, this includes: changes, adulteration of information, change of species, among others.
- Non submission of implementation reports or submitting them late.

The report indicates that from 2004 to 2010, a total of 55 superintendents were sanctioned, with a total of 71 sanctions served. 14 superintendents were sanctioned during both first and second revocations; these correspond to 25% of the total number of superintendents at the time of the study. From the total of sanctions applied in the first revocation period, superintendents mainly received a temporary suspension of their functions during 180 days, followed by definitive suspensions (14 sanctions were issued to those superintendents who made serious infringements). In the second revocation period, 16 sanctions were issued, in which for 50% of these cases the superintendent faced definitive suspension.

Likewise, the work of Mejia E. and Pacheco P. presents an analysis prepared by Guido Fernández and Walter García, '*Change in land use after the implementation of a PAFSI*', in which they indicate that:

*"in the case of the Central-North Amazon and South of Ecuador, the only legal tool enforced in individual properties is the denominated Simplified Forest Harvesting Program (Programa de Aprovechamiento Forestal Simplificado, PAFSI). A PAFSI establishes parameters to regulate the seasonality and frequency of the forest species to be harvested; the program involves the planning of selective harvesting of timber with commercial value within a period of one year. At the end of the PAFSI, the harvested area must be set aside for the following 5 years, which leads to questioning whether or not small farmers are really setting the area aside, whether they continue to harvest the remaining trees and whether they have changed the land use of the forest.*

*In order to clarify this question with the help of the 2010 and 2011 SAF data base provided by the Technical Office of the Ministry of the Environment (Napo Region), a sample was selected from a total of 153 PAFSI completed during these past years, which were classified in three categories according to the harvested volume: small (0 to 50 m<sup>3</sup>), medium (51 to 200 m<sup>3</sup>) and large (greater than 200 m<sup>3</sup>). The total sample was randomly determined in 20 programs visited, and a verification process of the forest regulations was conducted.*

*The results demonstrate that the change in land use was complete for two properties, which went from forest to pasture and agriculture. The remaining properties admitted making changes to the land after the PAFSI harvesting, but only in forests which were not included in the inventory of legally harvestable trees. These results suggest that the PAFSI is successful as a protection mechanism of forest coverage; however, the results are not conclusive, due to the fact that 100% of the visited properties changed some part of their native forest to other uses. Additionally, the information extracted from 243 home surveys conducted in 21 communities of the Provinces of Orellana and Napo (chapter 6) suggests that, after implementing a PAFSI, there has been a change in land use to perennial and annual crops".*

With this information, it can be concluded that compliance with environmental regulations is not maintained after the harvesting licenses have expired, and processes such as changes in the uses of land in forested areas have become evident.

According to the Corruption Perceptions Index of Transparency International (2015), Ecuador has a score of 32 out of 100, is in 107th place (out of 168 countries assessed); and regarding Worldwide Governance Indicators for the period 1996–2014, has been assessed with the following scores (on a scale of 1 to 100): i.) Voice and Accountability, 39.4; ii) Government Effectiveness: 34.6; iii) Regulatory Quality: 14.9; iv) Rule of Law: 13.5; v) Control of Corruption: 21.2.

#### *Risk conclusion*

Even with the established controls, there is always the possibility of deviations occurring in management and harvesting plans, as the information regarding the work of the forest superintendents indicates. Even though there is scarce objective evidence in reports and studies, it is necessary to take precautionary measures, which is why this category is established as specified risk.

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

Specified risk

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

- Environmental and/or Social Impact Assessments shall be in place and approved by the legally competent authority if legally required.
- Requirements for environmental monitoring shall be observed.
- Environmental restrictions shall be followed in the field, such as requirements related to soil damage, buffer zones, retention trees, seasonal restrictions etc.

- Normative requirement established by the relevant authorities, MAE and MAGAP, for forest operations shall be met. Forest harvesting operations shall not be located inside protection or conservation areas.
- Environmental restrictions shall be met in the field, as well as the requirements related with soil damage, buffer zones, riparian zones, restrictions of conditioned species, prohibitions, if applicable.
- Operative maps shall be established that identify and define the environmentally relevant sites.
- Forest Superintendent reports about the management of the forest operation shall be evaluated.
- The legal status of the forest properties shall be requested from the relevant competent authorities (MAE), based on verifications conducted by them.
- In the field, GPS shall be taken for validating and verifying what was approved by the authority with regards to the harvesting site and nearby protected areas.
- Capacity building measures and update-trainings shall be implemented for staff/workers involved with environmental regulations and protection of forest areas (buffer zones, protection areas, etc.).

### 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

*Current Applicable Laws and Standards for work health and safety*

1. Constitution of the Republic of Ecuador. Capítulo 4: De los derechos económicos, sociales y culturales. SECCION SEGUNDA: Del Trabajo.

- Art. 35 N. 11: Empleador responsable de las obligaciones laborales
- Art. 36. Derechos laborales de las mujeres. SECCION CUARTA: De la salud
- Art. 42. Garantiza el derecho a ambientes laborales saludables. SECCIÓN QUINTA: De los grupos vulnerables
- Art. 50. Protección especial en el trabajo y contra la explotación económica en condiciones laborales peligrosas
- Art. 53. Prevención de la discapacidad, salud, educación, capacitación. SECCIÓN SEXTA: De la Seguridad Social
- Art. 57 sobre el seguro general obligatorio
- Art. 61 sobre los seguros complementarios

Available at: <http://www.politicaeconomica.gob.ec/wp-content/uploads/downloads/2012/09/Constitucion-articulos-pertinentes.pdf>

2. Organic Law of Labour Justice and Acknowledgement of Household Work Official Registry 483, April 2015. Detalle: Cambios y reformas al código del trabajo.

Available at:

<http://ppless.asambleanacional.gob.ec/alfresco/d/d/workspace/SpacesStore/3ef3eeb1-3829-473f-99b0-9ab890aed42d/Texto%20Aprobado%20en%20el%20Pleno%20de%20la%20Asamblea%20-%20Enviado%20a%20Presidencia.pdf>

3. Social Security Law. Ley 55, Registro Oficial Suplemento 465 de 30-nov-2001

Latest modification: 10-feb-2014. Available at:

<https://www.iess.gob.ec/documents/10162/2220562/Ley+de+Seguridad+Social?version=1.0>

4. Regulation of Workers Health and safety and Improvement of Work Environment; Executive Decree 2393 of November 17, 1986. 13 de noviembre de 1986, publicado en el Registro Oficial No 249. Available at: <http://www.utm.edu.ec/unidadriesgos/documentos/decreto2393.pdf>

#### 1.11.2. Legal authority

- Ministry of Labour of Ecuador has responsibilities regarding work aspects and work risks
- Ecuadorian Social Security Institute has responsibilities regarding social security and work related risks.

#### 1.11.3. Legally required documents or records

- Internal procedures for Health & Safety in companies.
- Registered Emergency Action Plans.

#### 1.11.4. Sources of information

##### *Government sources*

- Iess.gob.ec (n.d.). *Website*. [online]. Ecuadorian social security institute. Available at: <http://www.iess.gob.ec/>
- Trabejo.gob.ec (n.d.). *Website*. [online]. Ministry of Labor. Available at: <http://www.trabajo.gob.ec/>

##### *Non-Government sources*

- Mejía, E. & P. Pacheco, (2013). *Aprovechamiento forestal y mercados de la madera en la Amazonía Ecuatoriana*. [online]. Bogor: Center for International Forestry Research (CIFOR). Available at: <http://www.cifor.org/library/4290/aprovechamiento-forestal-y-mercados-de-la-madera-en-la-amazonia-ecuatoriana/> [Accessed 29 December 2015]
- OIT (2007). *Perfil diagnóstico en seguridad y salud en el trabajo de los países de la subregión andina Bolivia, Ecuador, Colombia, Perú y la República Bolivariana de*

*Venezuela* (Diagnostic profile on occupational safety and health in the countries of the Andean subregion Bolivia, Ecuador, Colombia, Peru and the Bolivarian Republic of Venezuela). [online]. OIT (Organización Internacional del Trabajo). Available at: [http://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---safework/documents/policy/wcms\\_212074.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---safework/documents/policy/wcms_212074.pdf) [Accessed 6 January 2017]

- Lahora.com.ec (2010). 4560 accidentes de trabajo se registran en primer semestre (4560 work accidents are recorded in the first half year). *Diario La Hora Nacional*. [online]. Available at: [http://www.lahora.com.ec/index.php/noticias/show/1101050179/-1/4560\\_accidentes\\_de\\_trabajo\\_se\\_registran\\_en\\_primer\\_semestre.html#.VVAqmo10zIU](http://www.lahora.com.ec/index.php/noticias/show/1101050179/-1/4560_accidentes_de_trabajo_se_registran_en_primer_semestre.html#.VVAqmo10zIU) [Accessed 6 January 2017]
- Elmercurio.com.ec (2013). Siniestralidad laboral es alta en el Ecuador (Occupational accidents are high in Ecuador). *Diario el Mercurio*. Available at: <http://www.elmercurio.com.ec/378569-siniestralidad-laboural-es-alta-en-el-ecuador/#.VVAqQ410zIU> [Accessed 6 January 2017]

### *Interviews with experts*

Conversations with different experts – held during the week of November 16th through 20th, 2015 – helped the authors of this report to better understand the relevant legislation and any risks associated with each legislation category.

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

##### *Overview of Legal Requirements*

According to the International Labour Organisation (ILO) study for Ecuador, the main public institutions with responsibilities in worker health and safety issues are the Ministry of Labour and Employment (MTE) (today Ministry of Labour), the Ecuadorian Institute of Social Security, and the Ministry of Health. Besides, there is an Inter-Institutional Committee for Labour Health and safety, with tripartite participation, which is particularly relevant for the development of initiatives. The Ministry developed an Agreement for Institutional Policy on Health and safety, as well as the Health and safety Management System.

Depending on their characteristics, companies must have an Emergency Plan for their facilities, as well as a general set of rules for health and safety.

##### **1. Constitution of the Republic of Ecuador:**

This establishes the basic level of responsibilities of the State concerning compliance with international treaties on labour and social security, as well as its obligations within the framework of hiring and work issues.

##### **2. Organic Law of Labour Justice and Acknowledgement of Household Work:**

The Law of Labour Justice establishes general aspects concerning labour risks, as well as employers' and employees' management responsibilities.

##### **3. Social Security Law:**

This law establishes regulations concerning safety insurance and labour risks; in this regard, mandatory general insurance protects all affiliated parties against contingencies

that might affect their work capabilities and prevent them from earning income in their daily activity, in cases of:

- a. Illness;
- b. Maternity;
- c. Work risks;
- d. Old-age, death, disability, which includes impairment; and,
- e. Severance.

4. Regulation of Workers Health and safety and Improvement of Work Environment; Executive Decree 2393 of November 17, 1986.

The dispositions of this regulation apply to all work activity and all workplaces, with the purpose of achieving the prevention, decrease or elimination of work risks and the improvement of the work environment. The regulation establishes all the technical prescriptions that address hygiene, health and safety at work.

### *Description of risk*

At the moment, there are no publically-available official figures or statistical data concerning Health and Safety at work for forest operations.

However, a review of other formal sectors is offered with the purpose of illustrating or putting in evidence the situation relating to the subject under review:

- A study conducted by the International Labour Organisation (ILO) in the Andean Region: *Diagnosis of work health and safety in the countries of the Andean sub-region Bolivia, Ecuador, Colombia, Peru, and Venezuela*, ILO 2007, defines, based on the available statistical information, that the economic activities with the greatest accident rates in Ecuador are: Building and construction, manufacture, social services and trade.
- According to the ILO report, in Ecuador a total of 1,184,485 people have insurance; 2120 accidents have been registered, corresponding to an accident rate of 0.18.
- A report in the newspaper *Hora de Quito* from 18-11-2010; news item titled "4560 work accidents are registered in the first half of the year" mentions that during the first six months of 2010, the Risk Insurance of the Ecuadorian Institute of Social Security (IESS) registered 4560 work-related accidents, the greatest number of which were registered in Guayas (1672); construction workers were the most affected with 220 cases.
- In another article published by *Mercurio* in May 2015, Juan Vélez Andrade, director of the Institution (IESS-SGRT) is quoted as saying that in the IESS records, 80,000 work-related accidents occur annually in Ecuador, together with 60,000 professional diseases such as deafness, loss of sight, smell, damages to the muscular-skeletal system and psycho-social risk factors. Vélez quotes the last ILO report, which determined that the accidents are produced due to lack of prevention and protection policies from the companies, generating not only worker losses, but economic impacts as well.



Mejia E y Pacheco P. mention that: *"although the control systems for illegal timber trade have been improved, there are other non-compliances, such as non-compliance with employment regulations"*. Interviews conducted among chainsaw and sawmill operators, carriers and assistants indicated the complete absence of formal contracts; resulting in a lack of social security coverage or extra benefits as required by labour laws. Usually, the wages they receive depend on the number of pieces they saw.

*"20% of interviewees had Peasant Insurance (Seguro Campesino) offered by the State of Ecuador to farmers and 80% depend on Public Services for health care"*. Most of the interviewees said that their wages were greater than minimum wage and that this compensates for the benefits they do not receive, such as employment security and social security.

Interviews with experts provided complementary information that non-compliance challenges exist, both within native forests and plantations. This was particularly the case for smaller actors within the forest sector, such as smallholders or the smaller intermediaries.

According to the Corruption Perceptions Index of Transparency International (2015), Ecuador has a score of 32 out of 100, is in 107th place (out of 168 countries assessed); and regarding Worldwide Governance Indicators for the period 1996–2014, has been assessed with the following scores (on a scale of 1 to 100): i.) Voice and Accountability, 39.4; ii) Government Effectiveness: 34.6; iii) Regulatory Quality: 14.9; iv) Rule of Law: 13.5; v) Control of Corruption: 21.2.

#### *Risk conclusion*

It is evident that a valid system exists and is in the process of being implemented, due to sensitivity towards worker safety and new requirements. Continuous vigilance of compliance processes and indicators must be maintained. For this reason, and based on the information reviewed, this criterion is established as specified risk.

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

Specified risk

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

- All staff and workers involved with harvesting activities must follow the occupational health and safety requirements - and required safety equipment shall be worn - according to the Ecuadorian regulations.
- Up to date Health and Safety requirements shall be consulted with the office of work-related risks and the Ministry of labour.
- Interviews with staff/workers and contractors must check that the protection equipment required by law is provided.
- Official audit reports about occupational health and safety shall be made available, according to what is established by national requirements.
- Reports of the implementation of the actions required by the authorities shall exist, if required.

- Everyone involved with forest operations shall have coverage via the social security system and for work-related risk, according to the law.
- Staff training processes shall be verified, in aspects of work-related health and safety.
- Field inspections shall verify compliance with regulations regarding work-related health and safety.

## 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 for employment in Ecuador

1. Organic Law of Labour Justice and Acknowledgement of Household Work. Registro Oficial 483, Abril 2015. Detalle: Cambios y reformas al código del trabajo. Available at: <http://ppless.asambleanacional.gob.ec/alfresco/d/d/workspace/SpacesStore/3ef3eeb1-3829-473f-99b0-9ab890aed42d/Texto%20Aprobado%20en%20el%20Pleno%20de%20la%20Asamblea%20-%20Enviado%20a%20Presidencia.pdf>

2. Social Security Law. Ley 55, Registro Oficial Suplemento 465 de 30-nov-2001  
Última modificación: 10-feb-2014. Art 2. Available at: <https://www.iesg.gob.ec/documents/10162/2220562/Ley+de+Seguridad+Social?version=1.0>

3. Organic Code for Criminal Procedure  
Registro Oficial Nº 180 -- Lunes 10 de febrero de 2014. Art 243. Available at: [http://www.justicia.gob.ec/wp-content/uploads/2014/05/c%C3%B3digo\\_org%C3%A1nico\\_integral\\_penal\\_-\\_coip\\_ed.\\_sdn-mjdhc.pdf](http://www.justicia.gob.ec/wp-content/uploads/2014/05/c%C3%B3digo_org%C3%A1nico_integral_penal_-_coip_ed._sdn-mjdhc.pdf)

### 1.12.2. Legal authority

- Ministry of Labour of Ecuador
- Ecuadorian Social Security Institute

### 1.12.3. Legally required documents or records

- Record of labour contracts and employment/work contracts.
- Workers affiliation to the IEES

#### 1.12.4. Sources of information

##### *Government sources*

- INEC. (2015). *Reporte de Economía Laboural - Marzo 2015* (Labor Economics Report - March 2015). [online]. INEZC (Instituto Nacional de Estadística y Censos), 32 pp. Available at: [http://www.ecuadorencifras.gob.ec/documentos/web-inec/EMPLEO/2015/Marzo-2015/Informe\\_Ejecutivo\\_Mar15.pdf](http://www.ecuadorencifras.gob.ec/documentos/web-inec/EMPLEO/2015/Marzo-2015/Informe_Ejecutivo_Mar15.pdf) [Accessed 6 January 2017]

##### *Non-Government sources*

- GFA. (2012). *Resumen Publico de auditoria, Bosque Tropicales S.A - FSC FM/COC Certificación* (Public summary of audit, *Bosque Tropicales S.A - FSC FM/COC Certificación*). [online]. GFA – Consulting Group, 24 pp. Available at: <http://fsc.force.com/servlet/servlet.FileDownload?file=00P4000000CfeIPEAR> [Accessed 6 January 2017]
- Revistalideres.ec (n.d.). La informalidad laboral, una condición arraigada en Ecuador (Informal labor, a condition rooted in Ecuador). *Revista Lideres*. [online]. Available at: [www.revistalideres.ec/lideres/informalidad-laboral-condicion-ecuador.html](http://www.revistalideres.ec/lideres/informalidad-laboral-condicion-ecuador.html) on 24-05-2016 [Accessed 8 January 2017]
- Mejía, E. & P. Pacheco, (2013). *Aprovechamiento forestal y mercados de la madera en la Amazonía Ecuatoriana*. [online]. Bogor: Center for International Forestry Research (CIFOR). Available at: <http://www.cifor.org/library/4290/aprovechamiento-forestal-y-mercados-de-la-madera-en-la-amazonia-ecuatoriana/> [Accessed 29 December 2015]

##### *Interviews with experts*

Conversations with different experts – held during the week of November 16th through 20th, 2015 – helped the authors of this report to better understand the relevant legislation and any risks associated with each legislation category.

#### 1.12.5. Risk determination

##### *Overview of Legal Requirements*

The Ministry of Labour of Ecuador requires the preparation and signing of a work contract in accordance with labour regulations and conditions.

##### 1. Organic Law of Labour Justice and Acknowledgement of Household Work:

This Law covers all workers in the public and private sector, establishing the different contract forms and processes within the employment framework.

##### 2. Social Security Law:

The Labour and Social Security laws are linked. The Social Security Law mentions that “it is compulsory that workers request the protection” of the General Obligatory Insurance. This applies to anyone earning an income by performing a task or providing

a physical or intellectual service, whether or not they have a work relationship; in particular:

- a. Dependent workers;
- b. Independent workers;
- c. Freelance professionals;
- d. Managers or directors of their own business;
- e. Owners of one-man companies;
- f. Minor independent workers; and,
- g. Other parties requiring Obligatory General Insurance according to laws and special decrees

### 3. Organic Integrated Criminal Code:

The Integrated Criminal Code (COIP) establishes three to seven days in prison for employers not affiliating workers to the Ecuadorian Institute of Social Security (IESS). Art. 244, seventh section, establishes that having no affiliation 30 days after the first working day will be considered an infringement and will be sanctioned with prison.

#### *Description of risk*

There is no official documentation or information relating specifically to compliance by the forestry sector in matters relating to legal employment.

A sample of public summaries between 2012 and 2015 from 4 forest enterprises certified under the Forest Stewardship Council (FSC) system have been reviewed and show evidence of one non-compliance with labour regulations. According to the public summary of the 2012 audit of Bosques Tropicales S.A., the people cooking for the 106-workers camp did not have a contract for this activity. A contract was signed on October 11, 2011 by Mercedes María Bravo Mera (wife of one of the workers); however, it could not be proved that the person who actually worked in the camp had a contract providing health and safety coverage.

Mejia, E. and Pacheco P., in their study *Harvesting in the Ecuadorian Amazon* 2013, mention that during interviews conducted with sawmill operators, movers and assistants, none of the interviewees confirmed to have a formal contract; therefore, they did not have social security coverage or benefits resulting from their activities, as required by labour legislation. Most of the workers interviewed had less than six years of formal education, and for that reason perceived difficulty to aspire to paid employment with benefits (such as via employment with the oil industry).

As an indicator of the forest sector, the following data provides general information about the employment situation in Ecuador:

According to INEC national employment figures for March 2015, only 43.7% of the Economically Active Population has 'appropriate' (formal) employment; a reduction of 1.8 percent with respect to 45.5% in March 2014. 'Inappropriate' national employment was 52.1% in March 2015, compared to 49.4% during the same period in 2014, an increase of 2.65 percent. Inappropriate national employment – which can be interpreted broadly as informal employment - involves unstable or precarious work situations

(including illegal or informal practices) such as not meeting minimum requirements for hours or income; workers earning less than minimum wage; and/or working less than 40 hours a week (independently of their desire/availability to work additional hours). Finally, the increase in the national unemployment rate was 3.8% in March 2015, compared to 4.9% for the same period in 2014.

According to the article 'La informalidad laboral, una condición arraigada en Ecuador' (2015), 2.7 million people work under informal conditions in Ecuador. Citing National Institute of Statistics and Census (INEC) statistics, the report states that of the total of employed persons in the country (7,098,584), 39.31% work in conditions of informality. These are people who *"work for or represent a company that has no Unique Register of Taxpayers (RUC) or is not taxed under the Ecuadorian Simplified Tax Regime (RISE)"*.

According to ILO, in 2013, the highest rates of informality were observed among the self-employed. These are followed by domestic and micro-enterprises with fewer than 10 workers. According to the Executive Director of the Chamber of Industries, Production and Employment, *"companies that are linked to the informal sector mainly are focused on activities such as liquor, clothing and textiles, agriculture, handicrafts or technological products and smuggling over land borders... For the representative of this association, informality is a major threat to companies that comply with the law, because they do not pay taxes, do not train their workers. In addition, it is not known if they are employing minors or skilled labour that should demand a higher salary. They not even know if they pay at least the basic salary or meet the 40 hours that are established in the regulations of Ecuador"*.

Interviews with experts provided complementary professional opinions that non-compliance challenges with regards to labour regulations exist, both within native forests and plantations. This was particularly the case for smaller actors within the forest sector, such as smallholders or the smaller intermediaries, and where workers are contracted basically to support harvesting and production (sawmilling in the forest).

#### *Risk conclusion*

The current information does not allow easily for the reaching of informed conclusions. However, to date, the employment system has been updated, which implies changes in the process for hiring and contracting employees. Part-time contracts have been eliminated, which has been questioned by the private sector. A precautionary approach dictates this criterion be determined as specified risk.

#### **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.
- Persons involved in harvesting activities shall hold required certificates of competence for the function they carry out.

- 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.
- Minimum age shall be observed for all personnel involved in hazardous work.
- Stakeholders shall confirm that forced or compulsory labour is not involved in harvesting activities.
- All workers shall be hired according to the law and the necessary contacts shall exist (to be provided upon request), as required by law.
- Inspections (field or otherwise) shall verify that:
  - People involved with harvesting and supply chain activities have the insurance coverage and benefits required.
  - Workers involved in harvesting activities receive at least the legally established minimum wage.
  - Wages are officially paid and declared by the employer according to the requirements for staff involved in harvesting activities.
  - The minimum age is respected for all staff involved in harvesting activities.
  - Workers receive all benefits required by the law according to the type of activity.

## 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

1. Constitution of the Republic of Ecuador

Registro Oficial No. 449. Fecha publicación: 10/Octubre/2008 Codificación Ley de Gestión Ambiental. Registro Oficial No. 418 suplemento. Fecha publicación: 10/Septiembre/2009. Available at: <http://www.administracionpublica.gob.ec/wp-content/uploads/downloads/2014/10/Constitución-de-la-República-del-Ecuador.pdf>

NOTE: Ecuador is a signatory country of the ILO Convention 169 (Indigenous and Tribal Peoples Convention, 1989) ratified by Ecuador in May 15, 1998.

#### 1.13.2. Legal authority

- Ecuadorian Legal System

#### 1.13.3. Legally required documents or records

N/A

#### 1.13.4. Sources of information

*Government sources*

- Constitución de la República del Ecuador (Constitution of the Republic of Ecuador). 2008. Available at: <http://www.administracionpublica.gob.ec/wp-content/uploads/downloads/2014/10/Constitución-de-la-República-del-Ecuador.pdf>

*Non-Government sources*

- ECOLEX (n.d.). *Website*. [online]. Corporación de Gestión y Derecho Ambiental ECOLEX (ECOLEX Management and Environmental Law Corporation). Available at: <http://www.ecolex-ec.org/> [Accessed 6 January 2017]

*Interviews with experts*

Conversations with different experts – held during the week of November 16th through 20th, 2015 – helped the authors of this report to better understand the relevant legislation and any risks associated with each legislation category.

#### 1.13.5. Risk determination

*Overview of Legal Requirements*

Constitution of the Republic 2008. Article 57 of the Constitution of the Republic establishes that; “the following collective rights are acknowledged and will be



*guaranteed to the communities, indigenous peoples and nationalities, in compliance with the Constitution and other pacts, treaties, declarations and international instruments for human rights:*

*Free, prior and informed consultation within a reasonable period, about plans and programs for exploration, exploitation and commercialisation of non-renewable resources located in their land that can affect them environmental or culturally; participation in the benefits generated by such projects; and compensation for social, cultural and environmental damages. Consultation conducted by the relevant authorities will be mandatory and timely. If the consent of the community consulted is not obtained, the process will proceed according to the Constitution and the Law."*

#### *Description of risk*

Information relating to legal requirements, rules or regulations concerning customary rights was researched for the purposes of this study. No official information on this subject matter was found.

Inquiries to experts of ECOLEX further confirmed that in Ecuador there are no laws – or no laws are implemented within the legislative framework – concerning customary rights related to harvesting activities, including the requirements that cover profit allocation and indigenous rights. This is the situation despite the fact that some communities do have customary use rights.

In the case of forest harvesting involving properties belonging to groups or indigenous nationalities, companies registering purchasing agreements with indigenous communities for products coming from natural forests face no additional or specific requirements; this is simply considered a private act between the parties.

#### *Risk conclusion*

Although Ecuador is a signatory of the binding ILO convention 169 (which requires that due regard be paid to customary laws), and despite the requirements of the Constitution of Ecuador to uphold these, there appear to be no laws or regulations directly covering, monitoring or enforcing customary rights relevant to forest harvesting activities including requirements covering sharing of benefits and indigenous rights, a situation which perhaps exposes a gap in the legal structure. As a result, this category is established as N/A.

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

N/A

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

N/A

### **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:

1. Constitution of the Republic of Ecuador

Registro Oficial No. 449. Fecha publicación: 10/Octubre/2008 Codificación Ley de Gestión Ambiental

Registro Oficial No. 418 suplemento. Fecha publicación: 10/Septiembre/2009

Detalle: En el caso del Ecuador, la Constitución ha consagrado la consulta previa de dos formas: Art. 57, 398. Available at:

<http://www.administracionpublica.gob.ec/wp-content/uploads/downloads/2014/10/Constitución-de-la-República-del-Ecuador.pdf>

NOTE: Ecuador is a signatory country of the ILO Convention 169 (Indigenous and Tribal Peoples Convention 1989) ratified by Ecuador in May 15, 1998.

#### **1.14.2. Legal authority**

- Ecuadorian Legal System

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

- Legal reports

#### **1.14.4. Sources of information**

##### *Government sources*

- Constitución de la República del Ecuador (Constitution of the Republic of Ecuador). 2008. Available at: <http://www.administracionpublica.gob.ec/wp-content/uploads/downloads/2014/10/Constitución-de-la-República-del-Ecuador.pdf>
- Ministry of Justice (n.d.). *Ecuador cumple con sentencia dispuesta por Corte IDH en caso Sarayaku* (Ecuador complies with judgment provided by Inter-American Court in Sarayaku case). [online]. Ministerio de Justicia. Available at: <http://www.justicia.gob.ec/ecuador-cumple-con-sentencia-dispuesta-por-corte-idh-en-caso-sarayaku/> [Accessed 6 January 2017]

##### *Non-Government sources*

- ECOLEX (n.d.). *Website*. [online]. Corporación de Gestión y Derecho Ambiental ECOLEX (ECOLEX Management and Environmental Law Corporation). Available at: <http://www.ecolex-ec.org/> [Accessed 6 January 2017]

##### *Interviews with experts*

Conversations with different experts – held during the week of November 16th through 20th, 2015 – helped the authors of this report to better understand the relevant legislation and any risks associated with each legislation category.

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

##### *Overview of Legal Requirements*

2008 Constitution of the Republic:

Article 57 establishes that *"the following collective rights are acknowledged and will be guaranteed to the communities, indigenous peoples and nationalities, in compliance with the Constitution and other pacts, treaties, declarations and international instruments for human rights:*

*7. Free, prior and informed consultation within a reasonable period, about plans and programs for exploration, exploitation and commercialisation of non-renewable resources located in their land that can affect them environmental or culturally; participation in the benefits generated by such projects; and compensation for social, cultural and environmental damages. Consultation conducted by the relevant authorities will be mandatory and timely. If the consent of the community consulted is not obtained, the process will proceed according to the Constitution and the Law."*

Article 398 establishes that *"any decision or state authorisation which may affect the environment shall be consulted with the community, which will be fully informed in a timely fashion. The consultant will be the State. The Law will regulate prior consultation, citizen involvement, timeframes, compliance, subjects consulted, and evaluation and objection to the activity under consultation.*

*The State will assess the opinion of the community according to the criteria established by law and to international human rights instruments.*

*If the consultation process reveals opposition from the majority of the respective community, the decision to implement or not implement the project will be adopted by resolution taken by the superior administrative entity in accordance with the law".*

#### *Description of risk*

ECOLEX experts consulted indicated that in Ecuador - although *consultation* rights are established at the constitutional level, there are no laws – or no laws are implemented within the legislative framework – which consider prior consultation, relevant to harvesting activities.

However, as an indicator of the application of the such consultation rights, the official website of the Ministry of Justice features an article called 'Ecuador complies with sentence ordered by the IACHR Court in the Sarayaku case', which mentions the following case:

*"Ledy Zúñiga Rocha, Minister of Justice, Human Rights and Religious Affairs and, Diego García, Attorney General of the State, will submit to the relevant authorities of the Inter-American Court on Human Rights (IACHR) a report of compliance with the Sarakayu case ruling. This report is dated Wednesday May 14<sup>th</sup>, 2014 at 08:30 (09:30 Ecuadorian time), signed in the premises of the international organism, located in San José, Costa Rica.*

*The State of Ecuador, through its Ministry of Justice, Human rights and Religious Affairs, complies with the dispositions issued by the IACHR in order to protect the fundamental rights of the Kichwa people...*

*Between 2012 and 2013, the State of Ecuador complied with the economic compensation ordered by the IACHR for material and immaterial damage, restitution to fund victims' assistance, costs and expenses, and in November 14, 2013 the State offered public apologies to the Sarayaku people.*

*By fulfilling these actions, the State of Ecuador ratifies its commitment to protect the full force of human rights, as well as respect the international treaties ratified for this purpose.*

*In her appointment, Minister Zúñiga explains the reasons why it is considered that the 2012 ruling of the IACHR has been misunderstood. The State of Ecuador rejects the decision of the Sarayaku people of receiving and offering protection within its territories to Cléver Jiménez, Fernando Villavicencio and Carlos Figueroa, for whom a legal adjudication order has been issued.*

*According to the Minister of Justice 'the ruling issued by the IACHR has nothing to do with the State's Authority to exercise control mechanisms for reasons of national security'.*

*Ruling by the Inter-American Court on Human Rights: On June 27, 2012 the Inter-American Court for Human Rights ruled in the case of the Kichwa de Sarayaku Indigenous People vs. Ecuador that the State of Ecuador was responsible for violation of the right to be consulted, to communitarian indigenous property, and to cultural identity, life and personal integrity".*

According to the Corruption Perceptions Index of Transparency International (2015), Ecuador has a score of 32 out of 100, is in 107th place (out of 168 countries assessed); and regarding Worldwide Governance Indicators for the period 1996–2014, has been assessed with the following scores (on a scale of 1 to 100): i.) Voice and Accountability, 39.4; ii) Government Effectiveness: 34.6; iii) Regulatory Quality: 14.9; iv) Rule of Law: 13.5; v) Control of Corruption: 21.2.

#### *Risk conclusion*

There are open processes in the ILO relating to Convention 169 and, as is evident, the State of Ecuador is complying with its responsibilities to respect to international treaties. However, as demonstrated, risks may exist with respect to prior consultations. Under these circumstances, this category is established as specified risk.

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

Specified risk

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

- Where this might apply, an agreement of previous and informed consent has been signed with stakeholders. Interviews with stakeholders verify that the agreement has been established between management and all pertinent stakeholders
- Communities, peoples or nationalities shall have been consulted regarding the state and process of information previously received.

#### **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:

1. Constitution of the Republic of Ecuador

Registro Oficial No. 449. Fecha publicación: 10/Octubre/2008 Codificación Ley de

Gestión Ambiental. Registro Oficial No. 418 suplemento. Fecha publicación:

10/Septiembre/2009. Detail: Art 57, Art 398. Available at:

[http://www.administracionpublica.gob.ec/wp-](http://www.administracionpublica.gob.ec/wp-content/uploads/downloads/2014/10/Constitución-de-la-República-del-Ecuador.pdf)

[content/uploads/downloads/2014/10/Constitución-de-la-República-del-Ecuador.pdf](http://www.administracionpublica.gob.ec/wp-content/uploads/downloads/2014/10/Constitución-de-la-República-del-Ecuador.pdf)

2. Organic Code of the Judicial Function

Registro Oficial Suplemento 544 de 09-mar.-2009. Latest modification: 22-may.-2015

Detail: Art. 343, 344, 345, 346. Available at:

[http://www.funcionjudicial.gob.ec/www/pdf/normativa/codigo\\_organico\\_fj.pdf](http://www.funcionjudicial.gob.ec/www/pdf/normativa/codigo_organico_fj.pdf)

NOTE: Ecuador is a signatory country of the ILO Convention 169 (Indigenous and Tribal Peoples Convention, 1989) ratified by Ecuador in May 15, 1998.

### 1.15.2. Legal authority

- Ecuadorian Legal System

### 1.15.3. Legally required documents or records

- Legal Reports, Sentences.

### 1.15.4. Sources of information

#### *Government sources*

- Ministry of Justice (n.d.). *Ecuador cumple con sentencia dispuesta por Corte IDH en caso Sarayaku* (Ecuador complies with judgment provided by Inter-American Court in Sarayaku case). [online]. Ministerio de Justicia. Available at: <http://www.justicia.gob.ec/ecuador-cumple-con-sentencia-dispuesta-por-corte-idh-en-caso-sarayaku/> [Accessed 6 January 2017]

#### *Non-Government sources*

- Comunidadchichicorumi.wordpress.com (n.d.). *Justicia Indígena* (Indigenous Justice). [online]. Comunidad de Chichico Rumi Available at: <https://comunidadchichicorumi.wordpress.com/justicia-indigena/> [Accessed 6 January 2017]

#### *Interviews with experts*

Conversations with different experts – held during the week of November 16<sup>th</sup> through 20<sup>th</sup>, 2015 – helped the authors of this report to better understand the relevant legislation and any risks associated with each legislation category.

### 1.15.5. Risk determination

#### *Overview of Legal Requirements*

Judicial legislation includes the Indigenous Justice processes, which are mandatory requirements. Additionally, Ecuador complies with the requirements of the Convention 169, through its judicial system.

#### 1. Constitution of the Republic of Ecuador:

Article 57 establishes that *"the following collective rights are acknowledged and will be guaranteed to communities, indigenous peoples and nationalities, in compliance with the Constitution and other pacts, treaties, declarations and international instruments for human rights:*

*7. Free, prior and informed consultation within a reasonable period, about plans and programs for exploration, exploitation and commercialisation of non-renewable resources located in their land that can affect them environmental or culturally; participation in the benefits generated by such projects; and compensation for social, cultural and environmental damages. Consultation conducted by the relevant authorities will be mandatory and timely. If the consent of the community consulted is not obtained, the process will proceed according to the Constitution and the Law."*

Article 398 establishes that *"any decision or state authorisation which may affect the environment shall be consulted with the community, which will be fully informed in a timely fashion. The consultant will be the State. The Law will regulate prior consultation, citizen involvement, timeframes, compliance, subjects consulted, and evaluation and objection to the activity under consultation.*

*The State will assess the opinion of the community according to the criteria established by law and to international human rights instruments.*

*If the consultation process reveals opposition from the majority of the respective community, the decision to implement or not implement the project will be adopted by resolution taken by the superior administrative entity in accordance with the law".*

#### 2. Organic Code of the Judicial Function:

Art. 343 establishes: *"ÁMBITO DE LA JURISDICCIÓN INDÍGENA. -Las autoridades de las comunidades, pueblos y nacionalidades indígenas ejercerán funciones jurisdiccionales, con base en sus tradiciones ancestrales y su derecho propio o consuetudinario, dentro de su ámbito territorial, con garantía de participación y decisión de las mujeres. Las autoridades aplicarán normas y procedimientos propios para la solución de sus conflictos internos, y que no sean contrarios a la Constitución y a los derechos humanos reconocidos en instrumentos internacionales. No se podrá alegar derecho propio o consuetudinario para justificar o dejar de sancionar la violación de derechos de las mujeres."*

Art. 344 establishes: *"PRINCIPIOS DE LA JUSTICIA INTERCULTURAL. -La actuación y decisiones de los jueces y juezas, fiscales, defensores y otros servidores judiciales, policías y demás funcionarias y funcionarios públicos, observarán en los procesos los siguientes principios: a) Diversidad. - Han de tener en cuenta el derecho propio, costumbres y prácticas ancestrales de las personas y pueblos indígenas, con el fin de garantizar el óptimo reconocimiento y realización plena de la diversidad cultural; b) Igualdad. - La autoridad tomará las medidas necesarias para garantizar la comprensión de las normas, procedimientos, y consecuencias jurídicas de lo decidido en el proceso en el que intervengan personas y colectividades indígenas. Por lo tanto, dispondrán,*

*entre otras medidas, la intervención procesal de traductores, peritos antropólogos y especialistas en derecho indígena. c) Non bis in idem.- Lo actuado por las autoridades de la justicia indígena no podrá ser juzgado ni revisado por los jueces y juezas de la Función Judicial ni por autoridad administrativa alguna, en ningún estado de las causas puestas a su conocimiento, sin perjuicio del control constitucional; d) Pro jurisdicción indígena.- En caso de duda entre la jurisdicción ordinaria y la jurisdicción indígena, se preferirá esta última, de tal manera que se asegure su mayor autonomía y la menor intervención posible; y, e) Interpretación intercultural.- En el caso de la comparecencia de personas o colectividades indígenas, al momento de su actuación y decisión judiciales, interpretarán interculturalmente los derechos controvertidos en el litigio. En consecuencia, se procurará tomar elementos culturales relacionados con las costumbres, prácticas ancestrales, normas, procedimientos del derecho propio de los pueblos, nacionalidades, comunas y comunidades indígenas, con el fin de aplicar los derechos establecidos en la Constitución y los instrumentos internacionales".*

Art. 345 establishes: "*DECLINACIÓN DE COMPETENCIA. Los jueces y juezas que conozcan de la existencia de un proceso sometido al conocimiento de las autoridades indígenas, declinarán su competencia, siempre que exista petición de la autoridad indígena en tal sentido. A tal efecto se abrirá un término probatorio de tres días en el que se demostrará sumariamente la pertinencia de tal invocación, bajo juramento de la autoridad indígena de ser tal. Aceptada la alegación la jueza o el juez ordenará el archivo de la causa y remitirá el proceso a la jurisdicción indígena*".

Art. 346 establishes: "*PROMOCIÓN DE LA JUSTICIA INTERCULTURAL - El Consejo de la Judicatura determinará los recursos humanos, económicos y de cualquier naturaleza que sean necesarios para establecer mecanismos eficientes de coordinación y cooperación entre la jurisdicción indígena y la jurisdicción ordinaria. Especialmente, capacitará a las servidoras y servidores de la Función Judicial que deban realizar actuaciones en el ámbito de su competencia en territorios donde existe predominio de personas indígenas, con la finalidad de que conozcan la cultura, el idioma y las costumbres, prácticas ancestrales, normas y procedimientos del derecho propio o consuetudinario de los pueblos indígenas.*

*El Consejo de la Judicatura no ejercerá ningún tipo de atribución, gobierno o administración respecto de la jurisdicción indígena*".

Relationship between Indigenous and Regular Jurisdiction:

The indigenous justice system is a set of dispositions, jurisdictional entities, and procedures that guarantee access of indigenous communities to state jurisdiction in matters of justice, as well as respect for their own uses, customs and traditions. The entire process is conducted orally, with the exception of a transaction act, drafted as a record of the meeting and to specify the responsibilities of the parties.

Nevertheless, indigenous justice does not exist as a result of a legal policy driven by technical or performance criteria. Rather, it stems from the recognition of a right owned by a collective entity: "*the indigenous people*". This right is the product of indigenous people or communities that have preserved their system of justice administration for many years according to their uses and customs.

Indigenous justice is a set of elements inherent to the existence and enforcement of norms of customary origin that seek to re-establish social order and peace. The



indigenous authority will be responsible for complying with and enforcing the communitarian norms, values, and principles; Fundamental Principles: Ama Killa, Ama Llulla, Ama Shwa (do not lie, do not steal, and do not be idle); Solidarity, Reciprocity, and Collectivity.

### *Description of risk*

Within the above context, an article featured in the official webpage of the Ministry of Justice states that: Ecuador complies with the sentence ordered by the IACHR in the Sarayaku case, and mentions the following with respect to the Sarayaku case:

*"Ledy Zúñiga Rocha, Minister of Justice, Human Rights and Religious Affairs and, Diego García, Attorney General for the State, will submit to the relevant authorities of the Inter-American Court on Human Rights (IACHR) the report of compliance with the ruling in the Sarakayu case. This is dated Wednesday May 14<sup>th</sup>, 2014 at 08:30 (09:30 Ecuadorian time), signed in the premises of the international organism located in San José, Costa Rica.*

*The State of Ecuador, through its Ministry of Justice, Human Rights and Religious Affairs complies with the dispositions issued by the IACHR to protect the fundamental rights of the Kichwa peoples.*

*Within this context, the summary of the sentence from the Official Registry was posted in a national circulation newspaper and in the webpages of several state entities, in compliance with the dispositions of the IACHR.*

*Furthermore, the official summary of the sentence was translated into the Amazonian languages shuar and kichwa, as requested by the Sarayaku peoples.*

*The State of Ecuador progressively regulates the right to prior consultation in normative instruments, as required by the Constitution and the laws that regulate the exploration and exploitation of natural resources.*

*Additionally, training modules on Collective Rights have been developed in coordination with the Office of the United Nations High Commissioner for Human Rights in Ecuador.*

*In this way, over 7000 public servants have been trained, including staff from the Armed Forces, National Police, Ombudsmen, and Judicial officers.*

*Between 2012 and 2013, the State of Ecuador complied with the economic compensation ordered by the IACHR, for material and immaterial damage, as well as restitution to fund assistance to victims, costs, and expenses; and on November 14, 2013 the State offered public apologies to the Sarayaku peoples.*

*By fulfilling these actions, the State of Ecuador ratifies its commitment to protect the full force of human rights, as well as respect the international treaties ratified for this purpose.*

*In her appointment, Minister Zúñiga explains the reasons why it is considered that the 2012 ruling of the IACHR has been misunderstood. The State of Ecuador rejects the decision of the Sarayaku people of receiving and offering protection within its territories to Cléver Jiménez, Fernando Villavicencio and Carlos Figueroa, for whom a legal adjudication order has been issued.*

*According to the Minister of Justice 'the ruling issued by the IACHR has nothing to do with the State's Authority to exercise control mechanisms for reasons of national security'.*

*Ruling by the Inter-American Court on Human Rights: On June 27, 2012 the Inter-American Court for Human Rights ruled in the case of the Kichwa de Sarayaku Indigenous People vs. Ecuador that the State of Ecuador was responsible for violation of the right to be consulted, to communitarian indigenous property, and to cultural identity, life and personal integrity".*

According to the Corruption Perceptions Index of Transparency International (2015), Ecuador has a score of 32 out of 100, is in 107th place (out of 168 countries assessed); and regarding Worldwide Governance Indicators for the period 1996–2014, has been assessed with the following scores (on a scale of 1 to 100): i.) Voice and Accountability, 39.4; ii) Government Effectiveness: 34.6; iii) Regulatory Quality: 14.9; iv) Rule of Law: 13.5; v) Control of Corruption: 21.2.

Interviews with experts raised the issue again that about 8 million ha of land in Ecuador are owned by ancestral (Indigenous) or Afro-Ecuadorian communities and groups (of which 90% is forest). In addition to the situation relating to land titles, there are many factors that influence illegal logging and increasing forest conversion, among the main ones:

- Overlap between protected areas and community forests, this occurs in various situations and is mainly due to the absence of a rural land registry (cadastral survey) to identify and register properties. Similarly, there is no policy or regulations that determine or regulate the activities that can be performed or not in the buffer zones of protected areas or national parks (indeed, there are even cases where there is some uncertainty regarding if buffer zone exist inside or outside the protected area).
- Roads; there are several roads built by different bodies, such as provincial councils and others that connect even with borders to other countries (Colombia, Ecuador) and some which pass through protected areas and/or buffer zones. In many cases, these roads facilitate deforestation and are used for illegal timber transport; a situation which makes more complex forest control by the state
- Oil exploitation, mining (generates deforestation by opening roads and the activity itself)
- Harvesting due to the needs of communities or decisions by communities to harvest directly or through agreements with third parties. Permissions by the community to members thereof - or to third parties - for harvest.

#### *Risk conclusion*

There are open processes in the ILO relating to Convention 169 and, as is evident, the State of Ecuador complies with its responsibilities to respect international treaties. However, risks exist with respect to the regulates the rights of indigenous/traditional people to prior consultation. Under these circumstances, this category is established as specified risk.

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

Specified risk

#### **1.15.7. Control measures and verifiers**

- Consultation with stakeholders shall confirm that right established for indigenous peoples are not being violated.
- Judicial reports of litigated processes shall exist.
- Members of the communities will be consulted about the consultation process conducted.

## 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

Current Legislation for products coming from Natural Forests and from Forest Plantations:

1. Procedures for Authorizing Timber Harvesting and Clear-Cut (Ministerial Agreement N°139)

Registro Oficial No.164. Fecha publicación: 05/Abril/2010. Available at: <http://ecuadorforestal.org/wp-content/uploads/2010/05/PROCEDIMIENTOS-PARA-AUTORIZAR-EL-APROVECHAMIENTO-Y-CORTA-DE-MADERA.pdf>

2. Instructions for Measuring Timber Volume

Detalle: Establece las técnicas de cubicación de madera transportada en vehículos. Available at:

<http://ecuadorforestal.org/wp-content/uploads/2010/05/Instructivo-Cubicación-de-Madera.pdf>

3. Instructive controlling the preparation, approval, and implementation of logging programs, forest harvesting licenses and transport guidelines of forest plantations (Ministerial Agreement N° 327). ANNEX 1 logging Program in Commercial Forest Plantations. Fecha suscripción: 01/Agosto/2014. Available at:

<http://ecuadorforestal.org/wp-content/uploads/2010/05/Instructivo-que-regula-la-elaboración-aprobación-y-ejecución-de-los-programas-de-cortalicencias-de-aprovechamiento-forestal-y-guías-de-circulación-de-plantaciones-forestales-comerciales.pdf>

4. Regulatoin for Verification and Final Destination Control (Ministerial Agreement (Acuerdo Ministerial N° 049) Annexes Final Destination. Registro Oficial No.239. Fecha publicación: 06/Mayo/2014. Available at: <http://ecuadorforestal.org/wp-content/uploads/2010/05/Norma-para-la-Verificación-y-Control-Destino-Final.pdf>

#### 1.16.2. Legal authority

- Ministry of Environment of Ecuador

#### 1.16.3. Legally required documents or records

For transport:

- Transportation Permits, SRI Invoices or references.

For Final Destination Verification and Control (Ministerial Agreement N° 049):

- Volume Inventory Report
- Record of wood products inputs
- Record of wood products outputs
- Traceability Record
- Transport Permits and Purchase/Sale Invoices

#### **1.16.4. Sources of information**

##### *Government sources*

- Ministry of Environment (2015). *Subsecretaría de Patrimonio Natural (2015). Estadísticas Forestales 2011-2014*. Ministerio del Ambiente del Ecuador, Quito: Patricio Coronel.

##### *Interviews with experts*

Conversations with different experts – held during the week of November 16th through 20th, 2015 – helped the authors of this report to better understand the relevant legislation and any risks associated with each legislation category.

#### **1.16.5. Risk determination**

##### *Overview of Legal Requirements*

##### **1. Procedures for Authorisation of Timber Harvesting and Logging (Ministerial Agreement N°139):**

The objective of this regulation is to establish administrative procedures for authorizing the sustainable harvest of forest timber resources from natural Tropical, Andean- and Dry-forests; of cultivated forests: forest plantations, planted trees, natural regeneration trees in crops; pioneer formations; trees in agroforestry systems; and forest products other than timber. The following are subject to these requirements: civil servants and public officers responsible for forest control and management, as well as those expressly appointed by the Ministry of the Environment to provide forest administration and monitoring within the framework of the National System for Forest Control; as well as the beneficiaries, forest owners, executors, delegates, intermediaries, traders, transporters, and final recipients of the harvested forest products.

##### **2. Instructions for Measuring Timber Volume:**

Instructions established to homogenize the process of measuring the volume of round and sawn wood, according to means of transportation.

##### **3. Instructions concerning the preparation, approval, and implementation of logging programs, forest harvesting licenses and transportation permits on forest plantations (Ministerial Agreement N° 327):**

##### **ANNEX 1 Logging Program in Commercial Forest Plantations**

Establishes the administrative procedures for the authorisation of logging programs, issuing of the appropriate forest harvesting licenses and transportation permits for

timber coming from commercial forest plantations. Articles 23 through 30 establish the regulations for transportation permits for timber coming from plantations.

#### 4. Regulation for Verification and Final Destination Control (Ministerial Agreement N° 049)

Administrative procedures for verification and control of the origin and final destination of forest products. Ministerial Agreement N° 049 establishes the administrative procedures for forest verification and control of origin and final destination of forest products, these procedures must be implemented by all entities - whether natural and legal persons - which are involved in the purchase, transformation, commercialisation or storing of forest products. Available at: <http://www.ambiente.gob.ec/tag/madera/>.

Article 11 of Rule 49 establishes that verifications will confirm: volume, specie and type of product registered in the transportation permits and invoice.

#### *Description of risk*

2011-2014 Forest Statistics of MAE show that during this period 4,494,521 m<sup>3</sup> of forest products were reviewed in *fixed* control points within the forest, 22,743 m<sup>3</sup> of which were retained. This amounts to 0.51% of the product reviewed. According to the official figures, confiscations as a function of the volume reviewed has decreased. In 2014, 1,649,802.22 m<sup>3</sup> were verified, 5,104.17 m<sup>3</sup> of which were retained. 277 retentions were due to violations against the current forestry legislation.

Figures from the 2015 MAE report concerning controls conducted by *mobile* units of the Wild Flora and Fauna Control establish that during the period 2011-2014, 154,166 m<sup>3</sup> of forest products were reviewed, 12,124 m<sup>3</sup> of which were retained. This represents 7.86% of the products reviewed. During this period, 2014 was the year that registered the *most* irregularities, identified in the transportation of forest products (4551 m<sup>3</sup> were retained). Additionally, the MAE report concludes that, comparing the volume retained with the volume reviewed during the period under analysis, the percentage of irregularities found has increased.

The Regulation for Verification and Final Destination Control (Ministerial Agreement N° 049) is a relatively new introduction to the legal framework. There was broad consensus among interviewed experts that compliance levels for this regulation are sufficiently low to raise concerns regarding the risk of non-compliance.

A 2015 report from the Sub-secretary for Natural Heritage of the Ministry of the Environment of Ecuador describes the results of the implementation of Regulation 049 for Forest Control in Final Destination and concludes that, from January to December 2014, a total of 1557 establishments were assessed at the national level, and a total volume of 45,708.96m<sup>3</sup> was verified, 3,686.70m<sup>3</sup> (8.07%) of which was retained through 514 confiscations.

#### *Risk conclusion*

Considering the above-mentioned conditions, this category is established as specified risk.

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

Specified risk

#### 1.16.7. Control measures and verifiers

- Products shall be properly classified (species, quantities, qualities, etc.) in sales documentation, customs declarations and other documents required by law.
- On-site verification of procedures relating to wood storage and traceability, should conform with documents/records relating to inputs (purchases and deliveries) and outputs (sales and delivery) of wood products.
- The status of the corresponding transportation permits and invoices shall be verified. This Control applies both centers of trade as much as to forest transportation.
- In the case of the different harvesting or management programs, the closing of harvesting must be verified; this relates to the proper closing of harvesting licenses, even though this is not regulated. This is fundamental as a risk mitigation measure to ensure that only the legally authorized volumes belong to each program type.
- Verification within the SAF (MAE) and SPF (MAGAP) systems of the status of the harvesting vs. transported material, shall validate the transportation process of forest products.

#### 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

Current Legislation for Products coming from Natural Forests and from Forest Plantations:

1. Procedures for Authorizing Timber Harvesting and Clear-Cut (Ministerial Agreement N°139)

Registro Oficial No.164. Fecha publicación: 05/Abril/2010. Available at: <http://ecuadorforestal.org/wp-content/uploads/2010/05/PROCEDIMIENTOS-PARA-AUTORIZAR-EL-APROVECHAMIENTO-Y-CORTA-DE-MADERA.pdf>

2. Instructions for Measuring Timber Volume. Detalle: Establece las técnicas de cubicación de madera transportada en vehículos. Available at: <http://ecuadorforestal.org/wp-content/uploads/2010/05/Instructivo-Cubicación-de-Madera.pdf>

3. Instructive controlling the preparation, approval, and implementation of logging programs, forest harvesting licenses and transport guidelines of forest plantations (Ministerial Agreement N° 327)

ANNEX 1 Logging Program in Commercial Forest Plantations. Fecha suscripción: 01/Agosto/2014. Available at: <http://ecuadorforestal.org/wp->



[content/uploads/2010/05/Instructivo-que-regula-la-elabouración-aprobación-y-ejecución-de-los-programas-de-cortalicencias-de-aprovechamiento-forestal-y-guias-de-circulación-de-plantaciones-forestales-comerciales.pdf](#)

4. Regulation for Verification and Final Destination Control (Ministerial Agreement (Acuerdo Ministerial N° 049). Annexes Final Destination. Registro Oficial No.239. Fecha publicación: 06/Mayo/2014. Available at: <http://ecuadorforestal.org/wp-content/uploads/2010/05/Norma-para-la-Verificación-y-Control-Destino-Final.pdf>

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

- Ministry of Environment of Ecuador (Ministerio del Ambiente)

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

- Transportation permits for natural forest or forest plantation products.

For Final Destination Verification and Control (Ministerial Agreement N° 049):

- Volume Inventory Report
- Record of wood products inputs
- Record of wood products outputs
- Traceability Record
- Transport Permits and Purchase/Sale Invoices

#### **1.17.4. Sources of information**

##### *Government sources*

- Ministry of Environment (2015). *Subsecretaría de Patrimonio Natural (2015). Estadísticas Forestales 2011-2014*. Ministerio del Ambiente del Ecuador, Quito: Patricio Coronel.

##### *Non-Government sources*

- Mejía, E. & P. Pacheco, (2013). *Aprovechamiento forestal y mercados de la madera en la Amazonía Ecuatoriana*. [online]. Bogor: Center for International Forestry Research (CIFOR). Available at: <http://www.cifor.org/library/4290/aprovechamiento-forestal-y-mercados-de-la-madera-en-la-amazonia-ecuatoriana/> [Accessed 29 December 2015]

##### *Interviews with experts*

Conversations with different experts – held during the week of November 16th through 20th, 2015 – helped the authors of this report to better understand the relevant legislation and any risks associated with each legislation category.

#### **1.17.5. Risk determination**

##### *Overview of Legal Requirements*

1. Procedures for Authorizing Timber Harvesting and Logging (Ministerial Agreement N°139):

The objective of this regulation is to establish administrative procedures for authorizing the sustainable harvest of forest timber resources from natural Tropical, Andean- and Dry-forests; of cultivated forests: forest plantations, planted trees, natural regeneration trees in crops; pioneer formations; trees in agroforestry systems; and forest products other than timber. The following are subject to these requirements: civil servants and public officers responsible for forest control and management, as well as those expressly appointed by the Ministry of the Environment to provide forest administration and monitoring within the framework of the National System for Forest Control; as well as the beneficiaries, forest owners, executors, delegates, intermediaries, traders, transporters, and final recipients of the harvested forest products.

## 2. Instructions for Measuring Timber Volume:

Instructions established to homogenize the process of measuring the volume of round and sawn wood, according to the means of transportation.

3. Instructions concerning the preparation, approval, and implementation of logging programs, forest harvesting licenses and transportation permits on forest plantations (Ministerial Agreement N° 327):

### ANNEX 1 Logging Program in Commercial Forest Plantations

Establishes the administrative procedures for the authorisation of logging programs, issuing of the appropriate forest harvesting licenses and transportation permits for timber coming from commercial forest plantations. Articles 23 through 30 establish the regulations for transportation permits for timber coming from plantations.

4. Regulation for Verification and Final Destination Control (Ministerial Agreement N° 049):

Administrative procedures for verification and control of the origin and final destination of forest products. Ministerial Agreement N° 049 establishes the administrative procedures for forest verification and control of origin and final destination of forest products, these procedures must be implemented by all entities - whether natural and legal persons - which are involved in the purchase, transformation, commercialisation or storing of forest products. Retrieved from <http://www.ambiente.gob.ec/tag/madera/>. Article 11 of Rule 49 establishes that verifications will confirm: volume, specie and type of product registered in the transportation permits and invoice.

### *Description of risk*

Based on figures from controls conducted by *mobile* units of the Wild Flora and Fauna Control Units, the 2015 MAE report establishes that during the period 2011-2014 154,166 m<sup>3</sup> of forest product were reviewed, 12,124 m<sup>3</sup> of which were retained. This represents 7.86% of the reviewed product. Within this period, 2014 was the year that registered the most irregularities identified in the transport of forest products (4551 m<sup>3</sup> were retained). Additionally, comparing the volume retained and the volume reviewed, the MAE report concludes that during the period under analysis, the percentage of irregularities found has increased.

There is wide consensus ((Mejia E and Pacheco P. 2013 as well as via interviews with experts) that among the main weaknesses (and underlying root causes) in relation to illegality in trade and transport of forest products, are the deficiencies in the control of

transportation, sometimes due to administrative and technical issues that reduce the effectiveness of the control processes. The following are examples of frequently occurring issues associated with transportation of forest products:

- Transportation permits used several times for the same products. (Mejia E and Pacheco P. 2013) mention *"there is still an important informal market of transport permits, the use of these permits for more than one circuit for which the permit was issued, and lenient supervision in some control points, which facilitates evasion."*
- Mixing species for transportation and covering one species with another, transporting one species with another.
- Purchase of transport permits;
- Bribery of police and staff of forest surveillance authorities at control points;
- Transportation with no transport permits and/or using invoices as supporting documentation
- Approval of fictitious harvesting plans in order to obtain transport permits.

The Regulation for Verification and Final Destination Control (Ministerial Agreement N° 049) is a relatively new introduction to the legal framework. There was broad consensus among interviewed experts that compliance levels for this regulation are sufficiently low to raise concerns regarding the risk of non-compliance.

A 2015 report from the Sub-secretary for Natural Heritage of the Ministry of the Environment of Ecuador describes the results of the implementation of Regulation 049 for Forest Control in Final Destination and concludes that, from January to December 2014, a total of 1557 establishments were assessed at the national level, and a total volume of 45,708.96m<sup>3</sup> was verified, 3686.70m<sup>3</sup> (8.07%) of which was retained through 514 confiscations.

#### *Risk conclusion*

Given the conditions mentioned, this category is established as specified risk.

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

Specified risk

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

- Reports requested according to Ministerial Agreement 049 shall be made available – and verifiable via on-site inspection if necessary.
- Information on the transportation permits shall be available for review, and shall support the information relating to inputs and outputs identified in records relevant to those required for Ministerial Agreement 049.
- All transport documentation shall exist and be documented. Volume, species and amounts shall be classified according to legal requirements. Their status shall be verified in SAF and SPF systems.
- Documentation related to transport, trade or exportation shall be clearly linked to the material described in the sales/commercial processes (invoices, contracts...).

## 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:

1. Organic Code for Production, Commerce and Investments. Ley # 0

Publicado: Registro Oficial Suplemento # 351. Fecha: 29-12-2010. Art. 3. Available at: <http://www.proecuador.gob.ec/wp-content/uploads/2014/02/1-Codigo-Organico-de-la-Produccion-Comercio-e-Inversiones-pag-37.pdf>

2. SRI; Reformatory Law for Tax Equity in Ecuador, November 28, 2007

R.O. Nº 242 de diciembre 29/2007. Art. 82. Available at: <http://www.sri.gob.ec/de/394>

### 1.18.2. Legal authority

- National Custom Service of Ecuador (SENAE)
- Ministry Coordinator Production, Employment and Competitiveness.
- Internal Revenue Service

### 1.18.3. Legally required documents or records

*Legal Obligations:*

1. SRI:

- a) Set the price for the operations with the parties involved, according to the Arm's Length Principle.
- b) Enter them in the corresponding field in the tax return form.
- c) If exceeds the limits established in the norm, 2 months after the timeline for compliance of the tax return submit: i. Annex of Operations with Involved Parties; ii. Report of Transfer Prices.

2. SENAE:

Valid Export Record.

### 1.18.4. Sources of information

*Government sources*

- SRI. (n.d.). *Qué obligaciones tengo si realizo operaciones con partes relacionadas* (What obligations do I have if I carry out transactions with related parties). [online]. SRI. Available at: <http://www.sri.gob.ec/web/guest/497> [Accessed 6 January 2017]
- SRI. (n.d.). *Qué son Paraísos Fiscales?* (What are tax havens?). [online]. SRI. Available at: <http://www.sri.gob.ec/web/guest/498> [Accessed 6 January 2017]

### *Interviews with experts*

Conversations with different experts – held during the week of November 16th through 20th, 2015 – helped the authors of this report to better understand the relevant legislation and any risks associated with each legislation category.

### **1.18.5. Risk determination**

#### *Overview of Legal Requirements*

#### 1. Organic Code for Production, Trade, and Investment. Law # 0

The current code has the objective of regulating the production process during the phases of production, distribution, exchange, trade, consumption, management of externalities and investments focussing on the principles of “Plan of Good Living” (“Plan del Buen Vivir”). This regulation also aims to generate and consolidate the regulations to increase, propel, and incentivize higher added value production, establish the conditions for increased productivity, and promote the transformation of the production matrix, so as to facilitate the implementation of productive development tools that generate quality employment and balanced, efficient and sustainable development while caring for the natural environment.

#### 2. Internal Revenue Service (SRI) - Regulation of Transfer Prices

SRI webpage describes at <http://www.sri.gob.ec/web/guest/497> the following legal obligations concerning transfer prices:

- 1) Setting the operational costs with related parties based on the arm’s length principle.
- 2) Declaring those costs in the corresponding boxes of the Income Tax Return form.
- 3) In case the limits established by the regulation are exceeded, within 2 months after the due date for the

Income Tax Return, submit:

- i. Annex of Operations with Related Parties;
- ii. Report of Transfer Prices.

#### NOTES:

- Obligation to Submit the *Annex of Operations with Related Parties*: Non-taxable subjects who have conducted operations within the same tax period with local parties and/or parties located abroad for a cumulative amount greater than three million United States Dollars (USD 3,000,000.00) must submit to SRI the Annex of Operations with Related Parties.
- Obligation to Submit the *Report of Transfer Prices*: Non-taxable subjects who conducted operations during the same tax period with related local parties and /or

parties located abroad for a cumulative amount greater than six million United States Dollars (USD 6,000,000.00) must submit, in addition to the Annex, a Comprehensive Report of Transfer Prices.

- Concerning International Transportation Companies: Article 31 of the Organic Law of Internal Revenue Regime states that international passengers, cargo, air express, couriers or parallel post mail transportation companies constituted under foreign laws and operating in the country through branch offices, permanent offices, agents, or representatives, do not have to present the Annex or the Report of Transfer Prices related to normal daily transportation operations. However, when the companies conduct operations or transactions with related parties abroad that do not correspond to their regular transportation operations, and in case these operations or transactions exceed the limits established by this article, they must present the Annex and Report of Transfer Prices, meeting the timelines and contents indicated for the current resolution.

#### Tax Havens

According to SRI, these are tax regimes where tax duty is less than 60% than the current regime in Ecuador for the same concept. The norm lists those heavens and some additional considerations. For more detail, please see the following resolutions: NAC-DGER2008-0182 and NAC-DGERCGC09-00704, posted in the official registry No. 285 on February 2008, and No. 58, dated October 2009. Available at: <http://www.sri.gob.ec/web/guest/498>

#### *Description of risk*

The State's current control system for commercial processes and international business and accountability before the SRI limits the risk of deviations away from compliance with regulations. However, little official – or non-official - information exists in relation to compliance with offshore trading and transfer pricing laws in Ecuador, limiting the ability to have sufficient supporting information to define with certainty and clarity any potential risks.

According to the Corruption Perceptions Index of Transparency International (2015), Ecuador has a score of 32 out of 100, is in 107th place (out of 168 countries assessed); and regarding Worldwide Governance Indicators for the period 1996–2014, has been assessed with the following scores (on a scale of 1 to 100): i) Voice and Accountability, 39.4; ii) Government Effectiveness: 34.6; iii) Regulatory Quality: 14.9; iv) Rule of Law: 13.5; v) Control of Corruption: 21.2.

#### *Risk conclusion*

Given the above-mentioned factors, as well as the scarcity of information to provide confidence in a low risk conclusion, this category is established as specified risk.

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

Specified risk

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

- If illegal in the country of the supplier or sub-supplier, the products shall not have been traded through countries known as “tax havens”.
- There shall be no illegal manipulation in relation to the transfer pricing.
- Any audit reports by SRI in relation to Transfer Pricing shall be made available.
- Consultation with relevant authorities (SRI) shall confirm the receipt and status of the Report of Transfer Prices.
- The legal status of the forest organisation or manager respect to trade regulations and SRI compliance shall be verified.
- Legal documents relating to origin issued by SENA and MAE in land and pluvial ports may be requested.

### 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:

1. Organic Code for Production, Commerce and Investments. Law # 0

Publicado: Registro Oficial Suplemento # 351. Fecha: 29-12-2010. Art. 3. Available at: <http://www.proecuador.gob.ec/wp-content/uploads/2014/02/1-Codigo-Organico-de-la-Produccion-Comercio-e-Inversiones-pag-37.pdf>

2. SRI; SRI; Reformatory Law for Tax Equity in Ecuador, November 28, 2007

R.O. Nº 242 de diciembre 29/2007. Reglamento de Aplicación a la Ley de Régimen Tributario Interno. Arts. 172, enumerado a continuación del 172, 178, 180. Resolución No. NAC-DGERCGC15-00000730 del 25 de septiembre de 2015. Available at: <http://www.sri.gob.ec/de/197>

3. Procedures for Authorizing Timber Harvesting and Logging (Ministerial Agreement Nº139). Registro Oficial No.164. Fecha publicación: 05/Abril/2010. TITULO IV - De las licencias de aprovechamiento forestal para especies forestales CITES. Available at:

<http://ecuadorforestal.org/wp-content/uploads/2010/05/PROCEDIMIENTOS-PARA-AUTORIZAR-EL-APROVECHAMIENTO-Y-CORTA-DE-MADERA.pdf>

4. Forest and Natural Area and Wildlife Protection Law

Registro Oficial No. 418. Fecha publicación: 10/Septiembre/2004. Available at: <http://ecuadorforestal.org/wp-content/uploads/2010/05/Codificación-Ley-Forestal-y-de-Conservación-de-Areas-Naturales-y-Vida-Silvestre.pdf>

#### 1.19.2. Legal authority

- National Custom Service of Ecuador (SENAE) enforces the norms established by COMEXI for the exportation and importation processes.
- Ministry Coordinator Production, Employment and Competitiveness Develops the regulatory frame for exportations and importations



### 1.19.3. Legally required documents or records

Exportation requirements:

- Single Administrative Document (DUA) in order to identify the product utilizing the codes of Combined Nomenclature (CN), such as: 4407229900.
- Pro-forma Invoice
- Commercial Invoice
- Packing list
- Origin Certificate
- Phytosanitary Certificate
- Bill of Lading (BL)
- Fumigation certificate (if necessary).

### 1.19.4. Sources of information

#### *Government sources*

- Proecuador.gob.ec (2014). *Perfil Sectorial de Forestal Para el Inversionista* (Forest Sectoral profile for the investor). [online]. Pro Ecuador, 19 pp. Available at: <http://www.proecuador.gob.ec/wp-content/uploads/2015/05/PERFIL-DE-FORESTAL-IED.pdf> [Accessed 6 January 2017]

#### *Non-Government sources*

- Muñoz, J.M.O, P. Mogrovejo, L.F. Jara, Á. Sánchez, B. Buendía, R. Dumet & N. Bohórquez. (2014). *Tendencias de la gobernanza forestales Colombia, Ecuador y Perú* (Trends in forest governance Colombia, Ecuador and Peru). [online]. Publicado por TRAFFIC Internacional, Cambridge (The Wildlife Trade Monitoring Network), 152 pp. Available at: [http://www.wwf.org.co/sala\\_redaccion/publicaciones/?uNewsID=229730](http://www.wwf.org.co/sala_redaccion/publicaciones/?uNewsID=229730) [Accessed 29 december 2016]
- Oliver, R. (2013). *Evaluation and scoping of EU timber importers and imports from South America*. [online]. A TRAFFIC report (The Wildlife Trade Monitoring Network), 78 pp. Available at: <https://portals.iucn.org/library/sites/library/files/documents/Traf-123.pdf> [Accessed 6 January 2017]
- Mejía, E. & P. Pacheco, (2013). *Aprovechamiento forestal y mercados de la madera en la Amazonía Ecuatoriana*. [online]. Bogor: Center for International Forestry Research (CIFOR). Available at: <http://www.cifor.org/library/4290/aprovechamiento-forestal-y-mercados-de-la-madera-en-la-amazonia-ecuatoriana/> [Accessed 29 December 2015]
- CITES Trade Database. Available at: <http://trade.cites.org/>

#### *Interviews with experts*

Conversations with different experts – held during the week of November 16th through 20th, 2015 – helped the authors of this report to better understand the relevant legislation and any risks associated with each legislation category.

#### **1.19.5. Risk determination**

##### *Overview of Legal Requirements*

##### **1. Organic Code for Production, Trade, and Investment. Law # 0:**

The current code has the objective of regulating the production process during the phases of production, distribution, exchange, trade, consumption, management of externalities and investments focussing on the principles of Good Living (Buen Vivir). This regulation also aims to generate and consolidate the regulations to increase, propel, and incentivize higher added value production, establish the conditions for increased productivity, and promote the transformation of the production matrix, so as to facilitate the implementation of productive development tools that generate quality employment and balanced, efficient and sustainable development while caring for the natural environment. This code regulates the processes of Customs Facilitation of the Organic Code for Production, Trade and Investment.

##### **2. SRI; Reformatory Law for Tax Equity in Ecuador, November 28, 2007:**

R.O. N° 242 December 29/2007

Natural individuals and businesses that pay the Value Added Tax (VAT) for local purchases or importing goods, raw materials, inputs, services, and capital assets used in the production and commercialisation of goods to be exported, have the right to get a refund for this tax, without interest, within a period of ninety (90) days.

##### **3. Procedures for Authorisation of Timber Harvesting and Logging (Ministerial Agreement N°139):**

Official Registry No.164. Publication Date: 05/April/2010

##### **TITLE IV HARVESTING LICENSES FOR CITES FOREST SPECIES.**

This section establishes the following procedures for the case of exports of species included in the CITES appendixes: According to current environmental regulations, in order to get approval for forest harvesting programs and licenses for international trade of such species, in addition to the requirements established in the current agreement, a certificate issued by the CITES' administrative authority must be obtained.

##### **4. Forest and Natural Area and Wildlife Protection Law:**

Art. 46. - The export of round wood is prohibited, other than that intended for scientific and experimental purposes in limited quantities and after prior-authorization from the Ministry of Environment according to the conditions it may determine).

Article 47 relates states that semi-finished forest products exports are allowed only when "domestic needs and the minimum levels of industrialization have been met."

##### *Description of risk*

According to the study by José Miguel Orozco Muñoz et al 2014, *Trends of the Forest Governance in Ecuador*, the total volume of exports of timber, wood charcoal and timber

products throughout 2010, 2011 and 2012 was 1,196,178.36 tons for a total FOB value of 663,255,070 USD. This indicates an annual average of 398,726 tons with an average annual FOB value of 221,085 USD. The information concerning timber exports is based on data extracted from the webpage of the Bank of Ecuador. Between 2010 and 2012, the exportation trends for forest products have been irregular with respect to volumes traded. In 2011, the amount of timber harvested decreased with respect to 2010, whereas in 2012, the volume increased 20.3% with respect to 2010, and 32.1% compared to 2011. In terms of the total value (FOB-dollar) the trend has been more or less constant.

There was an increase in the exports of timber in the form of chips (Tariff heading 44.01), which represented 17.8% of the total volume exported in 2012. This product comes from Eucalyptus plantations whose chipping is processed in the Port of Esmeraldas and exported to Japan. The most exported forest products to the EU belong to tariff heading 44.07: Wood sawn or chipped lengthwise, sliced or peeled, sanded or end-joined, of a thickness exceeding 6 mm, especially balsa plantation products. These represent almost 90% of the volume and FOB value. The main importers of forest products from Ecuador are: Germany, France, and Denmark (Central Bank of Ecuador, Foreign Trade Statistics).

According to official figures of Pro-Ecuador quoted in the document *Profile of the Forest Sector for Investors*, the main products exported in 2013 were 60% sawn coniferous timber, followed by 11% raw logs, and 11% (chip and fibre) board products. These 3 products represent 82% of the sector's exports; likewise, the document mentions that the Ecuadorian exports registered their highest figures in 2014, with a 17.89% increase from the previous year.

Movement of timber by land (road or waterway) with neighbouring countries:

Discussions with experts raised concerns regarding the land-movement of timber from Ecuador to the neighbouring countries of Peru and Colombia, that may or may not have met forest-harvesting requirements, but which does certainly not meet trade and export requirements.

A study by Mejia E. and Pacheco P. concerning forms of trade and evasion of custom controls presents an analysis prepared by Patricia Aguirre et al of '*Timber flows destined to the Parrish of Huaquillas*' which is, according to Salazar (2006), one of the border cities (with Peru) with the highest timber flow in Ecuador and a primary market-place for timber trade, obtained generally through smuggling.

- Huaquillas is one of the main markets for timber transported from the Provinces of Orellana, Sucumbíos and Pastaza (which comprise a large proportion of the Amazon region). 58% of the timber comes from natural forests (SAF 2011) and is sized in local sawmills for its later trade to Peru (Ministry of the Environment of Ecuador, 2011).
- Despite the official figures for the influx of timber marketed in Huaquillas, the final destination is not known, and neither are the dynamics of trade to Peru. In order to fill this information gap, interviews were conducted with 13 owners located in Huaquillas from a total of 18 businesses registered in the SAF system, who received timber in 2011. According to SAF and SRI, 14 of those businesses are classified as

warehouses, which received 59.9% of the timber in Huaquillas, and 4 are sawmills, which received 34.1% of the timber in Huaquillas.

- Interviews with warehouse and sawmill owners indicated that 53% of the timber stayed in Huaquillas and the remaining 47% went to Peru. According to additional interviews with local stakeholders, timber traded to Peru is transported in small trucks or even motor-tricycles in order to avoid controls. Alternatively, it is not unloaded in Huaquillas and goes directly into Peruvian territory during the early hours of the day, its final destination being Piura and sometimes Chiclayo.
- Warehouse and sawmill owners in Huaquillas indicate that the species in most demand in Peru are the semi-hard types of timber, among them: chuncho (*Cedrelinga cateniformis*), sangre de gallina (*Otoba* spp.) and arenillo (*Erismia uncinatum*).

Information presented by José Miguel Orozco Muñoz et al (2014) in the study *Trends of Forest Governance in Ecuador*, states, in reference to the cross-border trade to Colombia and Peru:

*"Sawn timber including laurel (Cordial alliodora), chanul (Humiristrum procerum), sangre de gallina (Otoba sp.) and coco (Virola sp.) leaves San Lorenzo and Borbón (Esmeraldas, Costa Region) for the border city of Tulcán in the Sierra Norte; from there, it goes across the border via Chical, Tufiño and Chiles into Colombia. It is known that most of this timber comes from illegal harvesting, but it gets legalized along the way through transportation permits from approved programs.*

- *[Sawn timber] of species such as higuerón (Ficus sp.), amarillo (Persea sp.), chanul (H. procerum), arrayán (Eugenia sp.) leave the subtropical forests of Lita, in the Province of Imbabura – subject to order. The product goes to the Province of Carchi and from there crosses [the afore-mentioned border points] or other illegal points. Usually, this timber comes from illegal sources.*
- *Most of the sawn timber from the Province of Sucumbíos (Amazon Region) leaves for Colombia through Lumbaqui, La Bonita, Huaca and Tulcán. Species such as sangre de gallina (Otoba sp.), coco (Virola sp.), laurel (C. alliodora) are transported through this route. This route was previously utilised to transport Cedar (Cedrela odorata) coming from the Yasuní National Park and Cuyabeno Reserve.*
- *The Southern border with Peru is the destination of sawn timber coming from the Province of Orellana (Amazon Region), specially pieces between 4 to 6 m...Until recently, cedar timber came out illegally from Orellana on the way to Colombia via Lago Agrio, Lumbaqui, La Bonita, Huaca, Tulcán. Currently, this route is less utilised".*

*"In general terms, timber whose final destinations are the border cities of Ecuador, enters Peru and Colombia via secondary roads and then through main roads such as the Amazon Highway, the Pan-American Highway North and South, and the main coastal roads. In some cases, waterways are also utilised, such as the Napo River where it enters Peru and the San Miguel where it turns towards Colombia.*

*When the timber, whose final destination are bordering countries, goes through forest and customs controls, certain documentation must be submitted such as: forest harvesting licenses, transportation permits, purchase invoices, exportation letters or*

*certificates issued by one of the Provincial Offices of MAE, or approval notes addressed to SENA. However, some traders indicate that most of the wood - especially sawn timber - goes across the border at illegal points. In this way, they avoid taxes and fees related to Ecuadorian timber exports in order to be sold in neighbouring countries. The border controls offered by MAE and SENA are not enough, especially at the illegal crossing points. This is due to the very small staff assigned to this task and the difficulties to control operations in the area. In general, 'mafias' are involved in this type of business, and they intimidate and bribe the control staff".*

This scenario was confirmed by forest authorities interviewed for this risk evaluation. The Director of National Forests mentioned in an interview that the problems of illegality in the timber trade at the border are an issue for which efforts are still being implemented, in order to reduce the frequency of illegal incidents.

In consultation with experts and with the National Direction of Forests, it was confirmed that the above-mentioned challenges in relation to customs control of Ecuador's borders are known and border controls are carried out in order to reduce the illegal trade. The existing information shows that a significant volume of wood products traded outside Ecuador do not go through customs and fail to comply with national export regulations.

#### Movement of timber products by sea

Violations of export laws may exist in the similar ways in relation to exports by sea, although there is some expert opinion (unfortunately, without any official data to support it) that the possibility of non-compliances are low due to greater Customs control and vigilance.

#### Round wood export ban

Consultation with experts highlighted the fact that the Forestry and Natural Area and Wildlife Conservation Law prohibits the export of round logs except under specific circumstances. (Art. 46) and that semi-finished forest products exports are allowed only when "*domestic needs and the minimum levels of industrialization have been met.*" (Art. 47). These prohibitions are correctly communicated in various trade and legality sites (Eg.

[http://declaration.forestlegality.org/files/fla/Export\\_bans\\_restrictions\\_2012\\_06.pdf](http://declaration.forestlegality.org/files/fla/Export_bans_restrictions_2012_06.pdf)) to the wider world.

Sources such as that of Oliver, R. (2013) which provides trade data for Ecuador showing round log export data for the period 2007 to 2012, are erroneous or do not communicate the fact that these logs will have been minimally processed (squared). Destination countries for such timber include India (by far the most significant export destination and mostly teak from plantations) but also Vietnam, China, Singapore, EU27, United States and "other".

#### *Risk conclusion*

While forest and customs controls systems are permanently controlled by the State, there is product leakage through land routes along the country's borders. Based on the above-mentioned conditions, this criterion is established as specified risk.

#### **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 export permits shall be in place.
- Required exportation documentation shall exist and be available on request.
- MAE reports on the exportation process or, when it corresponds MAGAP's, shall be requested.

#### 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

General Legislation:

1. Convention on International Trade in Endangered Species of Wild Fauna and Flora Ratificado el 27 de enero de 1975. Available at: <http://www.cites.org/esp>

2. Procedures for Authorizing Timber Harvesting and Logging (Ministerial Agreement N°139)

Registro Oficial No.164. Fecha publicación: 05/Abril/2010. TITULO IV, DE LAS LICENCIAS DE APROVECHAMIENTO FORESTAL PARA ESPECIES FORESTALES CITES.

Available at: <http://ecuadorforestal.org/wp-content/uploads/2010/05/PROCEDIMIENTOS-PARA-AUTORIZAR-EL-APROVECHAMIENTO-Y-CORTA-DE-MADERA.pdf>

##### 1.20.2. Legal authority

- Ministry of Environment of Ecuador

##### 1.20.3. Legally required documents or records

- CITES permits, if applicable

##### 1.20.4. Sources of information

*Government sources*

- Acuerdo Ministerial #002. Registro Oficial 517, 29.01.2009. Recuperado 11.01.2016, de [http://www.derecho-ambiental.org/Derecho/Legislacion/Ley\\_mineria.pdf](http://www.derecho-ambiental.org/Derecho/Legislacion/Ley_mineria.pdf).

*Non-Government sources*

CITES, (n.d.). Lista de especies CITES (List of CITES species). [online]. Available at: [http://checklist.cites.org/#/es/search/cites\\_region\\_ids%5B%5D=2&output\\_layout=alphabetical&level\\_of\\_listing=0&show\\_synonyms=1&show\\_author=1&show\\_english](http://checklist.cites.org/#/es/search/cites_region_ids%5B%5D=2&output_layout=alphabetical&level_of_listing=0&show_synonyms=1&show_author=1&show_english)

[=1&show\\_spanish=1&show\\_french=1&scientific\\_name=Swietenia+macrophylla&page=1&per\\_page=20](#) [Accessed 6 January 2017]

### *Interviews with experts*

Conversations with different experts – held during the week of November 16th through 20th, 2015 – helped the authors of this report to better understand the relevant legislation and any risks associated with each legislation category.

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

##### *Overview of Legal Requirements*

##### 1. Convention on International Trade in Endangered Species of Wild Fauna and Flora:

- In Ecuador, the harvesting of Mahogany (*Swietenia macrophylla*) is forbidden, as this species is included in Appendix II of CITES.
- In the case of Cedar (*Cedrela odorata*), due to an internal resolution of MAE (Ministerial Agreement #002. Official Registry 517, 29.01.2009 - retrieved from [http://www.derecho-ambiental.org/Derecho/Legislacion/Ley\\_mineria.pdf](http://www.derecho-ambiental.org/Derecho/Legislacion/Ley_mineria.pdf)), harvesting of the species is prohibited, even though the species is listed in Appendix III by Ecuador.

Available at:

[http://checklist.cites.org/#/es/search/cites\\_region\\_ids%5B%5D=2&output\\_layout=alphabetical&level\\_of\\_listing=0&show\\_synonyms=1&show\\_author=1&show\\_english=1&show\\_spanish=1&show\\_french=1&scientific\\_name=Cedrela+odorata&page=1&per\\_page=20](http://checklist.cites.org/#/es/search/cites_region_ids%5B%5D=2&output_layout=alphabetical&level_of_listing=0&show_synonyms=1&show_author=1&show_english=1&show_spanish=1&show_french=1&scientific_name=Cedrela+odorata&page=1&per_page=20)

##### 2. Procedures for the Authorization of Timber Harvesting and Logging (Ministerial Agreement N° 139):

Official Registry No. 164. Publication Date: 05/April/2010. TITLE IV: HARVESTING LICENCES FOR CITES FOREST SPECIES.

This section establishes the procedures for the case of exports of species included in the CITES appendices, as follows: For the approval of forest harvesting programs and licenses with the purpose of international trade, in addition to the requirements established in the current agreement, the certificate issued by the CITES administrative authority must be obtained, according to the current environmental regulation.

##### *Description of risk*

Regarding exports of CITES species, there is no possibility of obtaining permits or licenses. Thus, a CITES export permit cannot be obtained.

Analysis of the CITES Trade Database (<http://trade.cites.org/>) confirmed this, alongside interviews with experts confirmed the above-mentioned limitations to export CITES species from Ecuador.

##### *Risk conclusion*



Since there are currently only two commercial CITES tree species with high interest for international trade, export permits do not exist and legal timber transportation is not a possibility, except in some exceptional cases. Thus, this criterion is determined as low risk.

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

Low risk

#### **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).

### **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**

N/A

#### **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 Ecuador 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 issues 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 ECUADOR						
Forest type	Region/Area	Legal Land Classification	Ownership	Management regime	License / Permit Type	Description of source type
Natural forest	Amazon, Coast and Sierra	Forest Partner Programme - individual and collective properties	Private	The Forest Partner Programme delivers an economic incentive to peasant and indigenous communities who voluntarily commit themselves to the conservation and protection of native forests, moorland, or other native vegetation. The granting of such incentives is conditioned to forest protection and conservation, which means that the people receive the incentive once they have met the monitoring conditions determined in the agreement signed with the Ministry of the Environment. The duration of the agreement through which the land owners commit to the conservation of the area registered in the Forest Partner Program is 20 years. The properties receiving the incentives belong either to ethnic or indigenous groups, as well as individuals.	NA	Timber/NTFP Sourcing Prohibited – logging prohibited
			Communities and Indigenous groups (ancestral or Afro-Ecuadorian) Properties	Variable areas that can contain one or more forest, shrub or herbaceous cover type, either natural or cultivated. They are of high importance since they contribute goods and services and play protection roles concerning water supply for different uses, flood control, and continuity of ecological processes. They are also areas of importance for the development of the communities present	<u>License/Permit type:</u> Forest harvesting License	Natural Forests

		Privately-owned Protection Forests	Private	<p>within them, through the multi and sustainable use of natural resources. These areas also link terrestrial ecosystems or protected areas.</p> <p>In the protection forests there can be medium or high human presence. Protection forests are classified as private forests owned by an organisation or individual, state forests that are the property of the government and the state, and private forests where there is a conflict concerning tenure</p>	<p><u>License Requirements:</u></p> <p>Legislation established three types of legal plans: Sustainable Management Plan, Simplified Management Plan, and Legal Conversion Program. For each is issued a Harvesting License which basically consists of the approval of the logging and management area. All material produced and commercialized must have transport permits for forest products.</p>	
		State-owned Protection Forests	Public	<p>Variable areas that can contain one or more forest, shrub or herbaceous cover type, either natural or cultivated. They are of high importance since they contribute goods and services and play protection roles concerning water supply for different uses, flood control, and continuity of ecological processes. They are also areas of importance for the development of the communities present within them, through the multi and sustainable use of natural resources. These areas also link terrestrial ecosystems or protected areas.</p> <p>In the protection forests there can be medium or high human presence. Protection forests are classified as private forests owned by an organisation or individual, state forests that are the property of the government and the state, and private forests where there is a conflict concerning tenure</p>		
		Remainder of Forest	Communities or indigenous peoples and nationalities	<p>These are forests whose ownership is not known or clear. Among them there can be forests owned by companies, communities and individuals. It corresponds to the forested area left when subtracting the</p>		

			Private	identified public and private properties from the total forested area of the country.		
		Public Forest Estate	Private	<p>Constitutes the State's forest heritage: forested lands that are legally owned by the State, the natural forests contained in them, and the lands cultivated by the State for their wildlife. It also includes lands and forests that will be owned by (or reverted to) the State, under any ownership type, including those legally recovered by the state.</p> <p>Mangroves, even those located within private properties, are considered State property, and are excluded from commercialisation. They are not subject to ownership or any other type of appropriation and they can only be exploited via permissions granted according to the appropriate laws and regulations</p>	NA	Timber/NTFP Sourcing Prohibited – logging prohibited.
		Protected Areas (National System of Protected Areas, SNAP)	Public	The state sub-system referred to as the Patrimony of Natural Areas own by the State of Ecuador (PANE) is one of the four sub-systems of the National System of Protected Areas (SNAP) created to secure biodiversity conservation and maintenance of ecologic functions. Its management and regulation is implemented by the State, which assigns the economic resources necessary for the system's financial sustainability, and fosters the involvement of communities, peoples, and nationalities who are ancestral inhabitants of the protected areas under their administration and management.		

Plantation forest	Entire Ecuador	Private plantations with permanent production	Private	Forest Plantations	<u>License/Permit type:</u> Forest harvesting License	Plantations of exotic and native species
				Agro-forestry systems	<u>License Requirements:</u> For plantations there is only one model for legalizing forest harvesting, called: Harvesting Program for trees of commercial forest plantations. When the products are transported must have transportation permits for forest products which recognize the forest legality.	



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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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