

Timber Legality Risk Assessment Peru

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COUNTRY RISK
ASSESSMENTS



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A. Introduction

This Timber Legality Risk Assessment for Peru provides an analysis of the risk of sourcing timber from areas of illegal harvesting and transport. NEPCon has been working on risk assessments for timber legality, in partnership with a number of organisations, since 2007.

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

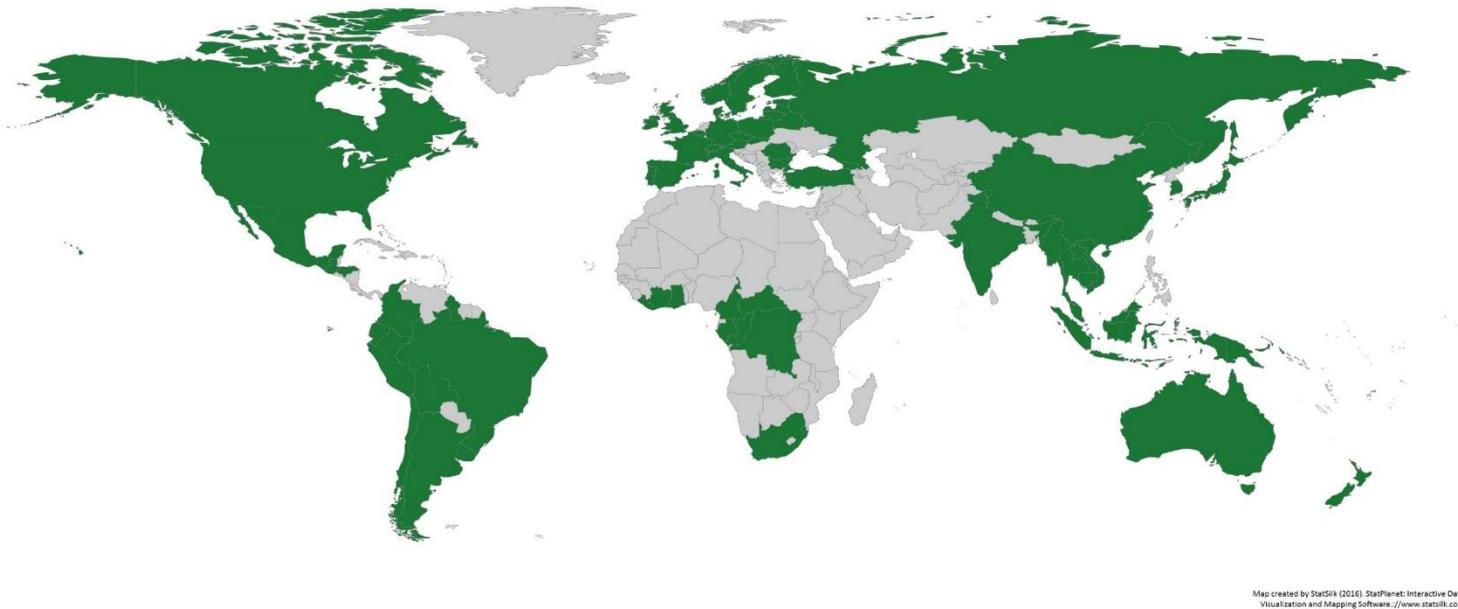


Figure 1. Countries for which NEPCon have developed a legality risk assessment for timber

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

B. Overview of legality risks

Timber Risk Score: 12 / 100 in 2017

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

- **Specified risk for 20 sub-categories.**
- **Low risk for 0 sub-categories.**
- **No legal requirements for 1 sub-category.**

The Timber Risk Score for Peru is 12 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, third parties' rights, and transport and trade.

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

- Concession licenses and indigenous community territories overlap where land tenure rights have been granted with Required Forest Management Plans (GFMP), Intermediate Forest Management Plans (IFMP), and Operation Plans obligations. This can be where the indigenous community territories existed prior to the granting of tenure or prior to the definition of continuous production forests (CPF). (1.1)
- Conflicts over land tenure occur in areas where indigenous communities are present (1.1)
- Harvesting occurs outside the concession area if concession licenses are granted in flood prone or unproductive areas (1.2)
- Concession licenses are granted without sufficient consideration of all social stakeholders (including indigenous communities), which can lead to land rights conflicts (1.2)
- Forest Management Plans are based on and/or include incorrect or false information (1.3)
- Permits to harvest are misused and locations outside the approved area are harvested (1.4). This practice is possible as operation plans and management statements are not verified in the field and therefore false information is difficult to detect.

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

- Concessionaires do not pay harvesting right fees, or pay fees late (1.5)
- Indigenous communities do not pay taxes, due to a lack of insight into tax management systems (1.6, 1.7)

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

- Concessionaires do not comply with harvesting regulations, e.g. that information in management plans does not reflect in terms of approved harvesting volumes, standing volume etc. (1.8)
- Concessionaires harvest products from unauthorised places, including protected sites (1.9, 1.10)
- Health & safety regulations are not followed and accidents are not reported (1.11)

- Employment regulations are violated, including occurrences of bonded labour, where employees are not paid a salary, but work to pay off a debt (1.12)

For **Third Parties' Rights**, there is a risk that:

- Customary rights are violated due to ancestral uses of land not being addressed by law (1.13)
- Customary rights of coastal communities are violated (1.13)
- Consultation processes for exercising the right to consultation and approval as a condition for applying for a permit to harvest forest resources are not conducted (1.14)
- There have been cases where community leaders have been bribed to get access to communities' resources (1.15)

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

- Species are incorrectly classified, which increases the risk of various species being traded under the same name, including CITES species (1.16, 1.20)
- Shipping waybills that do not indicate the true origin of the products are used, as field verification of management documents has not been conducted. (1.17)
- Offshore trading and transfer pricing occurs (1.18)
- Customs regulations are violated (1.19)
- CITES-listed species (mahogany and cedar) are transported with no evidence of origin and no listing in a harvesting plan (1.20)

Timber source types and risks

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

Permanent production forest concessions

Timber from natural forest in the public permanent forest, managed by private enterprises through concession contracts.

Concession contracts are for 40 years and are renewable. Concessions must have a strategic General Forest Management Plan that covers the concession area, with a duration of 20 years, but this is reformulated every 5 years; the Operational Plan is for short-term planning for forest harvesting with a duration of up to 3 years. These two plans are approved by the regional forest and wildlife authority and supervised by The Forest Resources and Wildlife Supervisory Agency (*Organismo Supervisor de Recursos Forestales y de Fauna Silvestre (OSINFOR)*). Any movement of timber requires a Waybill for Natural-State Forest Products (NSFSW) (*Guía de Transporte Forestal al Estado Natural—GTFEN*),

which is a document for the initial transportation of roundwood.

Local forests

Timber from natural forest that is managed by local governments

Authorisation of harvesting in local forests (Management statement) is required. Documents are prepared for authorisation by the regional forest and wildlife authority. The regional authority establishes the evaluation criteria according to the zone, including: the area's free availability (with no previous ownership); its adjacency to the applicant community; justification for the local forest; list of the benefited population, and; maps. OSINFOR supervises implementation.

Private forests

Timber from natural forests on private landholdings

Authorisation of harvesting in local forests (Management statement) is required. A visual inspection by the regional authority is required in order for harvesting authorisation to be granted. OSINFOR supervises implementation. All movements of timber require an NSFWS/GFTFEN document for the initial transportation of roundwood.

Indigenous community forests

Timber from natural forest managed by indigenous communities on their land.

Harvesting permits in indigenous communities require long-term planning with a general forest management plan, and short-term planning for harvesting under an operational plan. The regional authority grants the permit and OSINFOR supervises implementation.

Plantations

Timber from plantations of native and exotic species on both private and public land, including in agroforestry systems.

Privately owned and managed plantations do not require a management permit. State-owned plantations are managed by private organisations through forest plantation concession. Private agroforestry systems have a contract for transfer of rights for agroforest systems.

Plantation species are primarily *Eucalyptus* and *Pinus* in the mountains, and *Guazuma*, *Simarouba*, *Calycophyllum*, and *Tectona grandis* in the rainforest area.

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

Legal Category	Sub-Category	Natural forest			Plantations
		Concessions	Local forests and private forests	Indigenous community forests	
Legal rights to harvest	1.1 Land tenure and management rights	Specified	Specified	Specified	Low
	1.2 Concession licenses	Specified	Specified	Specified	N/A
	1.3 Management and harvesting planning	Specified	Specified	Specified	Specified
	1.4 Harvesting permits	Specified	Specified	Specified	N/A
Taxes and fees	1.5 Payment of royalties and harvesting fees		Low	Specified	Low
	1.6 Value added taxes and other sales taxes	Low	Low	Specified	Low
	1.7 Income and profit taxes	Low	Low	Specified	Low
Timber harvesting activities	1.8 Timber harvesting regulations	Specified	Specified	Specified	Specified
	1.9 Protected sites and species	Specified	Specified	Specified	Specified
	1.10 Environmental requirements	Specified	Specified	Specified	Specified
	1.11 Health and safety	Specified	Specified	Specified	Specified
	1.12 Legal employment	Specified	Specified	Specified	Specified
Third parties' rights	1.13 Customary rights	Specified	Specified	Specified	Specified
	1.14 Free prior and informed consent	Specified	Specified	Specified	Specified
	1.15 Indigenous/traditional peoples rights	Specified	Specified	Specified	Specified
Trade and transport	1.16 Classification of species, quantities, qualities	Specified	Specified	Specified	Specified

	1.17 Trade and transport	Specified	Specified	Specified	Specified
	1.18 Offshore trading and transfer pricing	Specified	Specified	Specified	Specified
	1.19 Custom regulations	Specified	Specified	Specified	Specified
	1.20 CITES	Specified	Specified	Specified	Specified
	1.21 Legislation requiring due diligence/due care procedures	N/A	N/A	N/A	N/A

C. Overview of the forest sector in Peru

Introduction

Peru is located in the south-western region of South America, covering an area of 128,521,561 ha, of which 57.3% is forested, distributed among: the coastal region, 4,107,118 ha (3.2%, referred to as dry forests), the mountain region, 211,625 ha (0.2%, called the Andean forests), and the jungle region, 69,314,485 ha (53.9%, known as the Amazon rainforests) (National Strategy on Forests and Climate Change, 2015) (*Estrategia Nacional sobre bosques y cambio climático, 2015*). 60% of the production from these natural forests (Forested Peru in Numbers 2013) (*Perú Forestal en Números 2013*) is from the following species: *Cedrelinga catenaeformis*, *Virola sp*, *Iryanthera sp*, *Coumarouna odorata*, *chorisia integrifolia*, *Calycophyllum spruceanum*, *Clarisia biflora*, *Guazuma crinita*, and *Cariniana domesticata*. Nationwide, reforested areas cover approximately 1,042,08 ha, with 85% of reforestation in the mountains being with *Eucalyptus sp* and *Pinus radiate* species. 617,628 ha are FSC certified, of which 1,004 ha are forest plantations of species that are natives of Amazonia (FSC Peru).

Types of Forest

Article 28 of the Forest and Wildlife Law (*Ley Forestal y de Fauna Silvestre*) No. 29763 establishes that forest planning units are land management tools that provide access to forest resources. These units are located in the Amazonian rainforest, and are as follows: permanent production forests (24.5 %); forests in reserve (29.5 %); protective forests (27.5 %); forests on lands of Rural and indigenous communities (17.7 %), and forests on private landholdings (0.8 %). Planted forests are considered, in Article 27, to be the product of reforestation for timber production. In the mountainous region, *Eucalyptus sp* and *Pinus radiate* are planted, and in the jungle region, native species such as *Guazuma crinita*, *Calycophyllum spruceanum*, *Swietenia macrophylla*, and *Simarouba amara*, and *Tectona grandis* are planted as exotic species (Forested Peru in Numbers 2013) (*Perú Forestal en Números 2013*).

Tenure

Peru has traditionally considered that all naturally forested areas are a part of the nation's forest and wildlife heritage, including forests planted on government lands, on lands with a greater capacity for use as forests, and on lands with a greater capacity for use as protected areas, with or without forests. This approach was formalised in Article 4 of the Forest and Wildlife Law (*Ley Forestal y de Fauna Silvestre*) No. 29763. That same article states that plantations on private and communal landholdings and their products, as forest resources, are not a part of the nation's forest and wildlife heritage. According to the global information published by FAO (2015), ownership of forests in Peru (as of 2010) was 82.5% public and 17.5% private, with no forested areas of unknown ownership. In 2015, the Ministry of the Environment (*Ministerio del Ambiente*) became the leader for formulation of the National Strategy on Forests and Climate Change. An analysis was undertaken of the forested area and tenure of forested lands (as of 2013), and it was found that 56,409,554 ha (81.4%) corresponded to public forests (in production, conservation, land reserves, and areas with no forest rights assigned), and 12,904,931 ha (18.6%) were private forests (on landholdings and Rural and indigenous communities).

Management permits

Forest management plans were established as forest management tools for natural forests and all modalities include an environmental impact assessment and mitigation component. In its Forest Management Regulations (*Reglamento de Gestión Forestal*), the Forest and Wildlife Law (*Ley Forestal y de Fauna Silvestre*) No. 29763 (Article 56) establishes that:

- A General Forest Management Plan – GFMP (*Plan General de Manejo Forestal – PGMF*) is required for long-range planning for the whole Forest Management Unit (FMU) (*Unidad de Manejo Forestal – UMF*), for the duration of the concession licence, which varies from 20 to 40 years.
- An Operational Plan – OP (*Plan Operativo – PO*) is required for short-term forest planning, based on the forest census, and generates maps and lists of species for forest management and inspections. Its duration is from one to three operational years. This is a requirement for logging authorisation.
- An Intermediate Forest Management Plan – IFMP (*Plan de Manejo Forestal Intermedio – PMFI*), is required for strategic and operational planning, as a single management document, when, in addition to non-timber products, timber products will also be harvested. The IFMP is formulated for the FMU and for the duration of the concession licence.
- A Management Statement – MS (*Declaración de Manejo – DEMA*) is required for simplified short- and medium-term planning for low harvesting intensities.

In the case of forest plantation concessions, the National Forest and Wildlife Service (*Servicio Nacional Forestal y de Fauna Silvestre – SERFOR*) establishes the technical measures for installation and harvesting that must be formulated for and included in a forest concession management plan.

Management and harvesting of agroforest systems do not require management plans, except when harvesting of natural forests is involved; in that case, a management statement (MS) must be submitted.

The establishment and management of forest plantations on private property, as well as harvesting, do not require establishment plans or management plans to be approved, and these activities are not subject to payment of a harvesting right fee.

Harvesting regulations

The Forest and Wildlife Law (*Ley Forestal y de Fauna Silvestre*) No. 29763 controls the harvesting of timber in areas that are part of the nation's heritage through three sets of regulations: Forest Management, Forest and Wildlife Management in Indigenous and Rural Communities, and Management of Forest Plantations and Agroforest Systems. The regulations were established in accordance with the rights acquired with concession licences; in that regard, timber harvesting must consider the following aspects:

- Payment of a harvesting right fee: in forest concessions, payment is based on area; in the case of local forests, communities, permits and authorisations, the payment is a function of the volume harvested and the value of the species. The Forest and Wildlife Law (*Ley Forestal y de Fauna Silvestre*) No. 29763, Article 49, applies to harvesting of wild forest ecosystems. In the case of reforestation concessions and transfer of use contracts for agroforest systems, SERFOR establishes the amount of the fee. Harvesting of plantations established on private lands does not require payment of a harvesting right fee.

- Minimum cutting diameters for each species, according to Departmental Resolution (*Resolución Jefatural*) No. 458-2002-INRENA.
- Species to be protected, according to Supreme Decree (*Decreto Supremo*) No.043-2006-AG

Authorities responsible for monitoring harvesting

The National Forest and Wildlife Service (*Servicio Nacional Forestal y de Fauna Silvestre – SERFOR*), the National Forest and Wildlife Authority (*Autoridad Nacional Forestal y de Fauna Silvestre*), and the CITES Management Authority (*Autoridad Administrativa CITES*) (Supreme Decree No. 030-2005-AG) establish the technical, regulatory and administrative conditions for management plans and guidelines for resource management. Regional governments and the Regional Forest and Wildlife Authority (*Autoridad Regional Forestal y de Fauna Silvestre – ARFFS*) are responsible for approving management plans.

The Forest Resources and Wildlife Supervisory Agency (*Organismo Supervisor de Recursos Forestales y de Fauna Silvestre – OSINFOR*) is responsible for supervising and auditing management plans in accordance with the Forest and Wildlife Law No. 29763, through the Forest Management Regulations (Article 10).

The Forest and Wildlife Management Unit (*Unidad de Gestión Forestal y de Fauna Silvestre – UGFFS*) is the regional territorial organisation for management, administration and control of forest resources and wildlife according to the Forest and Wildlife Law No 29763, through the Forest Management Regulations (Article 18).

Sources of legal timber in Peru

A description of the sources of legal timber is described below, including the general requirements and clarifications:

Concession licences: General Forest Management Plan, Intermediate Forest Management Plan, Operational Plan: Forest concessions must have a strategic General Forest Management Plan that covers the concession area, with a duration of 20 years, but this is reformulated every 5 years; the Operational Plan is for short-term planning for forest harvesting with a duration of up to 3 years. These two plans are approved by the regional forest and wildlife authority and supervised by OSINFOR. Harvesting permits in indigenous communities require long-term planning with a general forest management plan, and short-term planning for harvesting under an operational plan. The regional authority grants the permit and OSINFOR supervises implementation. Any movement of timber requires a Waybill for Natural-State Forest Products (NSFSW) (*Guía de Transporte Forestal al Estado Natural—GTFEN*), that is, a document for initial transportation of roundwood. In 2014, 190 species were logged in natural forests, of which eight species accounted for more than 50% of production: *Virola*, *Cedrelinga*, *Coumarouna*, *Chorisia*, *Clarisia*, *Calycophyllum*, *Guazuma*, and *Cariniana*.

Management statement (MS): In local forests, files are prepared for authorisation by the regional forest and wildlife authority. The regional authority establishes the evaluation criteria according to the zone, including: the area's free availability (with no previous ownership); its adjacency to the applicant community; justification for the local forest; list of the benefited population, and; maps. OSINFOR supervises implementation. In forests on private landholdings, a visual inspection by the regional authority is required in order for harvesting authorisation to be granted. OSINFOR supervises implementation. All movements of timber require a Waybill for Natural-State Forest Products (NSFSW), that is, the document for initial transportation of roundwood. The species are the same as for

any natural forest. In the case of harvesting on private landholdings, the species are authorised on the basis of a visual inspection.

Forest plantations: On privately owned land, approval of the installation and forest plantation management plan is not required, nor is payment of a harvesting rights fee. In the case of concessions for plantations on public lands, a forest plantation and management plan and a management statement are required. The regional forest and wildlife authority establishes and approves the guidelines for these plans. OSINFOR supervises implementation. Movements of timber are made with shipping bills from the owners. Plantation species are: *Eucalyptus*, and *Pinus* in the mountains; and in the rainforest: *Guazuma*, *Simarouba*, *Calycophyllum*, and *Tectona grandis*.

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 Laws:

- Political Constitution of Peru. (*Constitución Política del Perú*). 31 October 1993. Chapter II On the Environment and Natural Resources (*Del Ambiente y los Recursos Naturales*). Chapter III On Ownership (*De la Propiedad*). Chapter VI On the Agrarian Regime and Rural and Indigenous Communities (*Del Régimen Agrario y de las Comunidades Campesinas y Nativas*). Available at: <http://www4.congreso.gob.pe/ntley/Imagenes/Constitu/Cons1993.pdf>
- Civil Code. Legislative Decree No. 295. 25 July 1984. Book I Rights of Individuals (*Derecho de las Personas*). Section Four Rural and Indigenous Communities (*Comunidades Campesinas y Nativas*), Art. 134 to Art. 139. Available at: <http://www.minjus.gob.pe/wp-content/uploads/2015/01/Codigo-Civil-MINJUS-BCP.pdf>
- Organic Law for Sustainable Harvesting of Natural Resources (*Ley Orgánica para el Aprovechamiento Sostenible de los Recursos Naturales*). Available at: <http://www.oefa.gob.pe/wp-content/uploads/2012/07/Ley26821.pdf>

Rules for Natural Forests:

- Law No. 29763. Forest and Wildlife Law (*Ley Forestal y de Fauna Silvestre*). Available at: <http://www.serfor.gob.pe/wp-content/uploads/LEY-FORESTAL-Y-DE-FAUNA-SILVESTRE-N29763.pdf>
- Regulations for the Forest and Wildlife Law No. 29763 for Forest Management (*Reglamento Ley Forestal y de Fauna Silvestre N°29763 para la Gestión Forestal*). Available at: <http://www.serfor.gob.pe/wp-content/uploads/REGLAMENTO-PARA-LA-GESTION-FORESTAL.pdf>
- Regulations for the Forest and Wildlife Law No. 29763 for Forest Management in Indigenous and Rural Communities (*Reglamento Ley Forestal y de Fauna Silvestre Ley N°29763 para la Gestión Forestal y de Fauna Silvestre en Comunidades Nativas y Campesinas*). Available at: <http://www.serfor.gob.pe/wp->

[content/uploads/REGLAMENTO-PARA-LA-GESTION-FORESTAL-Y-DE-FAUNA-SILVESTRE-EN-COMUNIDADES-NATIVAS-Y-CAMPESINAS.pdf](#)

- Organic Law for Municipalities (*Ley Orgánica de Municipalidades*) Law No. 27972. 27 May 2003. Title V Specific Competencies and Functions of local governments (*Las Competencias y Funciones específicas de los gobiernos locales*). Chapter I General Specific Competencies and Functions (*Las Competencias y Funciones Específicas Generales*). Available at: <http://www.munlima.gob.pe/images/descargas/licencias-de-funcionamiento/legislacion/2-LEY-N27972-LEY-ORGANICA-DE-MUNICIPALIDADES.pdf>
- Organic Law for Regional Governments (*Ley Orgánica de Gobiernos Regionales*) Law No. 27867. 18 November 2002. Title IV Functions (*Funciones*). Chapter II Specific Functions (*Funciones Específicas*). Title VI. Regional Economic and Financial Regime (*Régimen Económico y Financiero Regional*). Available at: http://biblioteca.unmsm.edu.pe/redlieds/Recursos/archivos/goblocales/ley_27867_ley_org_gob_reg.pdf
- Law on Protected Natural Areas (*Ley de Áreas Naturales Protegidas*) Law No. 26834. 30 June 1997. Title III On Management Tools (*De los Instrumentos de Manejo*). Title IV On Sustainable Use of Protected Natural Areas (*De la Utilización Sostenible de las Áreas Naturales Protegidas*). Available at: http://www.peru.gob.pe/docs/PLANES/94/PLAN_94_LEY%20N%C2%B0%2026834_2008.pdf
- Law for the Protection of Indigenous or Tribal Peoples in a situation of isolation and in a situation of initial contact (*Ley para la Protección de Pueblos indígenas u originarios en situación de aislamiento y en situación de contacto inicial*) Law No. 28736. 16 May 2006. Available at: <http://faolex.fao.org/docs/pdf/per64175.pdf>
- Law on Indigenous Communities and Agrarian Development in the Rainforest and the Edges of the Rainforest (*Ley de Comunidades Nativas y de Desarrollo Agrario de la Selva y de Ceja de Selva*). Decree-Law No. 22175. 9 May 1978. Title II, Arts. 10-14. Available at: <http://www.iadb.org/Research/legislacionindigena/leyn/docs/PERU-Decreto-Ley-22175-78-ley-Comunidades-Nativas-.pdf>

Rules for Plantations and Agroforest Systems:

- Regulations for Forest and Wildlife Law No. 29763 for Management of Forest Plantations and Agroforest Systems (Reglamento Ley Forestal y de Fauna Silvestre Ley N°29763 para la Gestión de las Plantaciones Forestales y los Sistemas Agroforestales). Available at: <http://www.serfor.gob.pe/wp-content/uploads/REGLAMENTO-PARA-LA-GESTION-DE-LAS-PLANTACIONES-FORESTALES-Y-LOS-SISTEMAS-AGROFORESTALES.pdf>
- Ministry of Agriculture and Irrigation (Ministerio de Agricultura y Riego). 2014. DS No. 017-2014-MINAGRI. Art. 2 – Art. 4. Regime for Promotion of Forest Plantations on Privately-Owned Lands (Régimen de Promoción de las Plantaciones Forestales en Tierras de Propiedad Privada). Available at: <http://minagri.gob.pe/portal/download/pdf/marcolegal/normaslegales/decretosupremos/2014/ds17-2014-minagri.pdf>

1.1.2. Legal authority

- National Forest and Wildlife Service (*Servicio Nacional Forestal y de Fauna Silvestre*). Competencies in management of natural forests and forest plantations (*Competencias sobre gestión de bosques naturales y plantaciones forestales*).
- Ministry of Agriculture and Irrigation (*Ministerio de Agricultura y Riego*). Competency in land ownership and indigenous communities (*Competencia sobre titularidad de predios y Comunidades Nativas*).
- Regional Governments. Competencies of Regional Environmental Authorities in charge of concession licences (*Competencias de Autoridad Regional Ambiental encargada de los títulos habilitantes*).
- Municipal Government. Competency in local forest statements (*Competencia para la declaración de bosques locales*).

1.1.3. Legally required documents or records

- In the case of natural forests, a concession contract is required between the State and the legal person where the right to harvest timber resources in the area is granted. The same procedure applies for forest concession contracts for purposes of harvesting timber, concession contracts for reforestation and transfer of rights contracts for agroforest systems.
- In the case of indigenous communities, a Forest Timber Resources Harvesting Permit is required as well as the Minutes of the Community General Assembly delegating the functions of implementation of the management plan.
- In the case of private landholdings, the property title is required.
- In the case of local forests, the declaration of the local forest by the corresponding municipal government is required.

1.1.4. Sources of information

Government Sources

- Ministry of the Environment (n.d.). *Conservación de bosques para la mitigación del cambio climático. Avance en números* (Conservation of forests to mitigate climate change. Progress in numbers). [online]. Ministerio del Ambiente. Available at: <http://www.minam.gob.pe/programa-bosques/avances-en-numeros/> [Accessed 29 December 2016]
- National Forest and Wildlife Service (2014). *Perú Forestal en Números 2013* (Forested Peru in Numbers in 2013). [online]. *Servicio Nacional Forestal y de Fauna Silvestre*, 223 pp. Available at: <http://www.serfor.gob.pe/wp-content/uploads/2016/03/peru.forestal.2013-.pdf> [Accessed 29 December 2016]
- National Forest and Wildlife Service (2015). *Perú Forestal en Números Año 2014* (Forested Peru in Numbers in 2014). [online]. *Servicio Nacional Forestal y de Fauna Silvestre*, 223 pp. Available at: http://www.serfor.gob.pe/portal/pdf/estadistica_forestal/anuarios/peru.forestal.2013-.pdf. [Accessed 29 December 2016]

- Ministry of Agriculture and Irrigation (13 August 2013). *Política Nacional Forestal y de Fauna Silvestre* (National Forest and Wildlife Policy). [online]. Ministerio de Agricultura y Riego, 64 pp. Approved with DS No. 009-2013-MINAGRI (13 August 2013). Available at: <http://www.serfor.gob.pe/wp-content/uploads/POLITICA-NACIONAL-FORESTAL-Y-DE-FAUNA-SILVESTRE.pdf> [Accessed 29 December 2016]
- Ministry of the Environment (2015). *Hacia una Estrategia Nacional sobre Bosques y Cambio Climático* (Towards a National Strategy on Forests and Climate Change). [online]. Ministerio del Ambiente, 112 pp. Available at: <http://www.bosques.gob.pe/estrategia-nacional> [Accessed 29 December 2016]
- Information on the SERFOR website on: Promotion of forest plantations. Available at: <http://www.serfor.gob.pe/bosques-productivos/servicios-forestales/plantaciones-forestales>
- Osinfor.gob.pe (2011). *Evaluación de áreas deforestadas y humedales en los departamentos de Loreto, Ucayali y Madre de Dios al año 2011* (Evaluation of deforested areas and wetlands in Loreto, Ucayali and Madre de Dios Departments as of the year 2011). [online]. OSINFOR, 74 pp. Available at: <http://docplayer.es/15642762-Osinfor-evaluacion-de-areas-deforestadas-y-humedales-en-los-departamentos-de-loreto-ucayali-y-madre-de-dios-al-ano-2011.html> [Accessed 29 December 2016]
- Atlas of Forest Timber Concessions (*Atlas de Concesiones Forestales maderables*). Available at: http://www.osinfor.gob.pe/portal/data/destacado/adjunto/atlas_osinfor.pdf

Non-Government Sources

- United Nations Organisation for Food and Agriculture (2015). *Evaluation of World Forest Resources 2015*. [online]. FAO, 253 pp. Available at: <http://www.fao.org/3/a-i4808s.pdf>. [Accessed 29 December 2016]
- FSC Perú. 2016. *Iniciativas Certificadas en el Perú* (Certified Initiatives in Peru). [online]. Forest Stewardship Council in Peru. Available at: <https://pe.fsc.org/es-pe/nuestro-impacto/datos-y-cifras> [Accessed 29 December 2016]
- Transparency International (2015). Corruption Perception Index for Peru, 2015. Available at: <https://www.transparency.org/country#PER> [Accessed 29 December 2016]

Interviews with experts

Conversations with various experts held between March and May 2016 helped the authors of this report to better understand the applicable legislation, the risks associated with its implementation in the field, including aspects related to tenure rights. Regarding this sub-category, representatives of various organisations and social groups were interviewed, including: forest managers, independent legal consultants, forest entrepreneurs, public officials from the National Forest and Wildlife Service, Ministry of the Environment, CITES Scientific Authority, and others.

1.1.5. Risk determination

Overview of Legal Requirements

For tenure with a General Forest Management Plan – GFMP (Plan General de Manejo Forestal – PGMF), OP (Plan Operativo – PO) and IFMP (Plan de Manejo Forestal Intermedio – PMFI):

Peru’s political constitution establishes that natural resources are the nation’s heritage and it is the State that determines how they will be harvested (Art. 66), granting economic harvesting to private parties (Art. 73). Communities’ are established as autonomous legal persons with freedom of economic and administrative disposal of their lands within the framework of the provisions of the law; tenure of their lands is imprescriptible unless they abandon them (Art. 88 and 89).

The civil code establishes that community lands are inalienable, imprescriptible, and not subject to seizure. (Art. 136) and that the General Assembly is their supreme organ. Communal directors must be elected periodically, by personal, equal, free, secret and obligatory vote (Art. 138).

The Forest and Wildlife Law (*Ley Forestal y de Fauna Silvestre*) Law No. 29763 establishes the National Forest and Wildlife Service (*Servicio Nacional Forestal y de Fauna Silvestre – SERFOR*) as the National Forest and Wildlife Authority (Art. 13) for planning, developing regulations and guidelines, and promoting sustainable use of forest resources, among others (Art. 14); and the Agency for Supervision of Forest Resources and Wildlife (*Organismo de Supervisión de los Recursos Forestales y de Fauna Silvestre – OSINFOR*) (Art. 18) for supervision. SERFOR establishes forest planning units (Art. 28) and these are the basis for granting concession licences, which are the instruments granted by the forest and wildlife authority to individuals or legal persons for access under management plans to sustainable harvesting of forest and wildlife products (Chapters II and III).

Through the Regulations for Forest Management (*Reglamento para la Gestión Forestal*), the Forest and Wildlife Law (*Ley Forestal y de Fauna Silvestre*) Law No. 29763 establishes the guidelines for land planning units (Art. 34), the procedures for obtaining a concession licence (Title VII), and also the characteristics for management plans in accordance with the concession licences (Title IX). The same regulations, in Title XIX, establish payment of a harvesting right fee for each concession licence.

Through its Regulations for Forest and Wildlife Management in Indigenous and Rural Communities (*Reglamento para la Gestión Forestal y de Fauna Silvestre en Comunidades Nativas y Campesinas*), the Forest and Wildlife Law (*Ley Forestal y de Fauna Silvestre*) Law No. 29763 defines the conditions for access to harvesting of forest resources (Title IV), the characteristics of forest management (Title VI), and payment of the harvesting right fee for timber resources (Title VIII).

In areas where indigenous peoples are assumed to exist, the Law for the Protection of Indigenous and Tribal Peoples in a situation of isolation and a situation of initial contact (*Ley para la Protección de Pueblos indígenas u originarios en situación de aislamiento y en situación de contacto inicial*) Law No. 28736, declared the intangible nature of indigenous reserves (Art. 5) where natural resources may not be harvested nor any settlements established.

For tenure with a Management Statement – MS (Declaración de Manejo – DEMA):

Through Executive Director Resolutions RDE (Resoluciones de Dirección Ejecutiva RDE) No. 163-2015-SERFOR-DE), SERFOR establishes Guidelines for Preparation of Management Statements in Transfer of Rights Contracts for Agroforest Systems (Lineamientos para Elaboración de Declaraciones de Manejo en Contratos de Cesión en uso para Sistemas Agroforestales). In order to establish local forests, the local governments must prepare a proposal in accordance with the Organic Law on Municipalities (Ley Orgánica de Municipalidades) Law No. 27972 (Chapter I), taking into account: areas that have no owner, that are adjacent to the applicant population, that is, the local population that is benefited. The regional forest and wildlife authority determines the relevancy of the local forest.

For forest plantations:

For management of plantations on public lands, the Forest and Wildlife Law (*Ley Forestal y de Fauna Silvestre*) Law No. 29763, through the Regulations for the Management of Forest Plantations and Agroforest Systems (*Reglamento para la Gestión de las Plantaciones Forestales y los Sistemas Agroforestales*), establishes the characteristics of the management plan for plantations (Title VI), and payments of harvesting right fees (Arts. 55 and 64).

In the case of private plantations, the Ministry of Agriculture and Irrigation (*Ministerio de Agricultura y Riego*), in Supreme Decree No. DS No. 017-2014-MINAGRI, has adopted a Regime for Promotion of Forest Plantations on Private Property (*Régimen de Promoción de las Plantaciones Forestales en Tierras de Propiedad Privada*), which establishes, in Article 3, that private plantations do not require approval by the forest authority and are not subject to payment of a harvesting right fee; it also indicates that transportation shall be made with shipping waybills (Art. 6).

Description of Risk

Transparency International indexes corruption levels in the public sector in 168 countries (2015). Peru is in 88th place with 36 points, with 100 points indicating least corruption and 0 indicating most corruption.

Risk of tenure conflicts in areas where indigenous communities are present. Regarding tenure rights granted with GFMP, IFMP, and Operational Plan (OP) obligations, undocumented comments have been received from indigenous specialists about overlaps between concession licences and territories of indigenous communities existing prior to the granting of tenure, and even prior to the creation of the concept of permanent production forests (CPF). Such overlaps can occur because of a lack of knowledge about the activities of the health and education sectors, which build medical clinics and schools at the request of organised populations. Some public officials stated that in the granting of concession licences, no consideration was given to information about management of other sectors in the zone proposed for CPF.

The process of granting concessions for forestation and reforestation, principally in Madre de Dios (246 out of a total of 294 concessions), has, since 2004, not identified problems of overlapping with other prior rights. To date, no concessions for plantations have been granted under the new forest legislation. In the case of forest plantations on private landholdings, also, no problems of overlapping or litigations have been identified (after consulting experts).

Risk Conclusion

For plantations:

This indicator has been evaluated as low risk. Identified laws are upheld. In cases where law/regulations are violated, the authorities and/or relevant entities follow these up efficiently by taking preventive actions.

For concession licences and access to resources with MS:

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

1.1.6. Risk designation and specification

- Low risk for plantations
- Specified risk for concession licences, and tenure with a Management System (MS).

1.1.7. Control measures and verifiers

- All concession licences must be in effect, with documentation that verifies the process followed to obtain them, as well as documents that show compliance with management and use of forest resources (management plans, maps of activities such as harvesting, roads, and others).
 - In the case of indigenous communities, there must be a property title granted by the Regional Directorate of Agriculture and a permit for forest harvesting issued by the regional forest and wildlife authority.
 - Private landholdings must have a title or certificate of ownership issued by the regional agricultural authority in coordination with the regional forest authority, and authorisation for harvesting of forest resources.
 - Local forests must have been the subject of a declaration as a local forest by the regional forest authority at the request of the local governments, and a permit for harvesting forest resources must have been granted.
- For the field inspection, there should be verification of the sites that have been harvested according to the management plan implemented, in order to ensure that they lie within the boundaries of the property.
- In the case of indigenous communities, during the field inspection the process of consultation for making the decision about harvesting the timber resource and land tenure must be verified.
- Documents that verify that the presence of populations and/or indigenous peoples that could be affected by forest management must have been analysed. These documents must include maps of the zone, its boundaries, and neighbouring areas, among others.

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

In the case of concession licences:

- The Regulations for the Forest and Wildlife Law (Reglamento de la Ley Forestal y de Fauna Silvestre) Law No. 29763 for Forest Management establish the conditions for granting forest concessions for timber purposes (Title XI), forest permits on private landholdings (Title XIII), transfer of rights contracts for residual or remnant forests (Title XVII), and management of local forests (Title XVIII). Available at: <http://www.serfor.gob.pe/wp-content/uploads/REGLAMENTO-PARA-LA-GESTION-FORESTAL.pdf>
- The Regulations for the Forest and Wildlife Law No. 29763 for Forest and Wildlife Management in Indigenous and Rural Communities (Gestión Forestal y de Fauna Silvestre en Comunidades Nativas y Campesinas), in Title VII, define the conditions for granting permits and the requirements for access to timber resources. Available at: <http://www.serfor.gob.pe/wp-content/uploads/REGLAMENTO-PARA-LA-GESTION-FORESTAL-Y-DE-FAUNA-SILVESTRE-EN-COMUNIDADES-NATIVAS-Y-CAMPESINAS.pdf>

In the case of concessions for plantations:

- The Regulations for the Forest and Wildlife Law (*Reglamento de la Ley Forestal y de Fauna Silvestre*) Law No. 29763 for Management of Forest Plantations and Agroforest Systems (*Gestión de las Plantaciones Forestales y los Sistemas Agroforestales*) establish the requirements for forest plantation concessions (Title VII), and access to transfer of rights contracts for agroforest systems (Title VIII). Available at: <http://www.serfor.gob.pe/wp-content/uploads/REGLAMENTO-PARA-LA-GESTION-DE-LAS-PLANTACIONES-FORESTALES-Y-LOS-SISTEMAS-AGROFORESTALES.pdf>

1.2.2. Legal authority

- Ministry of Agriculture and Irrigation (*Ministerio de Agricultura y Riego – MINAGRI*)
- National Forest and Wildlife Service (*Servicio Nacional Forestal y de Fauna Silvestre – SERFOR*)
- Regional Environmental Authority (*Autoridad Regional Ambiental – ARA*)

1.2.3. Legally required documents or records

- Concession contract for forest management and timber harvesting purposes in harvesting units in continuous production forests.
- Compliance with the General Forest Management Plan GFMP, Intermediate Forest Management Plan IFMP, Operational Plan OP, and Management Statement MS, in accordance with the corresponding concession licence.

- Record of payment of harvesting right fee.

1.2.4. Sources of information

Government sources

- App.serfor.gob.pe (n.d.). *Registro de concesiones maderables por concurso* (Register of timber concessions by competitive bidding). [online]. SERFOR. Available at: <http://app.serfor.gob.pe/concesiones/consulta.aspx> [Accessed 30 December 2016]
- App.serfor.gob.pe (n.d.). *Registro de concesiones maderables por adecuación de contratos* (Register of timber concessions by contract modification). [online]. SERFOR. Available at: <http://app.serfor.gob.pe/concesiones/consulta.aspx> [Accessed 30 December 2016]
- App.serfor.gob.pe (n.d.). *Registro de concesiones para forestación y reforestación* (Register of concessions for forestation and reforestation). [online]. SERFOR. Available at: <http://app.serfor.gob.pe/concesiones/consulta.aspx> [Accessed 30 December 2016]
- Osinfor.gob.pe (n.d.). *Sistema de Información Gerencial de OSINFOR – SIGO* (OSINFOR-SIGO Management Information System for verification of the status of a concession licence through the registry of forest shipping waybills). [online]. Available at: <http://www.osinfor.gob.pe/osinfor/sigo/>. Continue to click on Observatorio de OSINFOR and follow the guide and instructions to continue: <http://observatorio.osinfor.gob.pe:91/MasterPage/MPageSistema.aspx?sigo=1&lstManMenu=0> The information shows concession licences supervised by OSINFOR and classified as risk/no risk for legal trade in timber.

Non-Government sources

- Pérez, R. (2014). *Estructura de las redes de corrupción en el proceso de extracción y comercialización de madera extraída de concesiones forestales otorgadas en la provincia de Coronel Portillo, región Ucayali, entre los años 2008 y 2011* (Structure of corruption networks in the process of logging and trading timber harvested in forest concessions granted in Coronel Portillo Province, Ucayali Region, between 2008 and 2011). [online]. Published Thesis. Available at: http://tesis.pucp.edu.pe/repositorio/bitstream/handle/123456789/5633/PEREZ_VILLACORTA_ROSARIO_DEL_PILAR_ESTRUCTURA.pdf?sequence=1 [Accessed 30 December 2016]

Interviews with experts

Conversations with various experts between March and May 2016 helped the authors of this report to better understand the applicable legislation, and the risks associated with implementation in the field, including the aspects related to concession licences.

Regarding this sub-category, representatives of various organisations and social groups were interviewed, including: forest managers, independent legal and forest consultants, forest entrepreneurs, public officials from the National Forest and Wildlife Service, the Forest Resources and Wildlife Supervisory Agency (OSINFOR), the Ministry of the Environment, the CITES Scientific Authority, and others.

1.2.5. Risk determination

Overview of Legal Requirements

In accordance with the regulations for forest management, in response to a proposal from the regional forest and wildlife authority, SERFOR will proceed to grant forest concession licences for timber harvesting purposes according to the following requirements: approval of harvesting units (Art. 78), evaluation of forest resources (Art. 79), granting of concessions by competitive bidding (Art. 80), or through an abbreviated procedure (Art. 82).

The regulations for management in indigenous and Rural communities state that permits for harvesting forest resources are granted by the regional forest and wildlife authority (Art. 53); in cases in which harvesting within the established time periods is not possible, SERFOR, in coordination with the regional authority, may approve movement of timber product remainders (Art. 55), and re-entries for harvesting standing timber (Art. 56). In the event that harvesting is done by a third party, the latter becomes responsible for the obligations, and the regional forest authority must be informed about the contract (Art. 58).

Description of Risk

Risk of harvesting out of concession boundaries due to concession licenses are granted in flood prone or unproductive areas. The lack of adequate zoning of forests in continuous production has led to forest concessions being granted in areas where timber productivity is very low or non-existent. When the zoning done by the forest authority in defining the CPF is not adequate and the Harvesting Units (HU) are located in flood-prone or unproductive areas, companies have chosen to return such areas; others have submitted GFMPs and OPs that have been approved without prior inspection and therefore the concession right was granted for unproductive sites.

Risk that concession licenses are granted without sufficient consideration of all social stakeholders (including indigenous communities) In the interviews with experts, it was stated that in determining CPF in the regions, consideration was not given to all of the social stakeholders in the zone; for example, records were found of Ministry of Education schools and Ministry of Health clinics that showed that there were indigenous or mestizo populations present; nevertheless, some areas were designated as continuous production forests as if they were not forested. The zoning did not consider the status of the forest given the presence of those populations. The CPF zoning also failed to consider overlapping information with the Agrarian Directorates regarding the location of indigenous communities, which generated some overlapping between areas of current indigenous communities or those in the process of obtaining titles with the Harvesting Units defined prior to the concessions being granted.

Risk Conclusion

Only for concession licences: this indicator has been evaluated as specified risk. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

1.2.6. Risk designation and specification

- Specified risk for concession licences.
- N/A for plantations.

1.2.7. Control measures and verifiers

- Verify the duration of the concession through the following links: <http://app.serfor.gob.pe/concesiones/consulta.aspx> and <http://observatorio.osinfor.gob.pe:91/MasterPage/MPageSistema.aspx?sigo=1&lstManMenu=0>
- Procedures for verification of zoning of CPF versus location of urban-rural areas in the FMU shall be in place.
- The organisation shall know, and implement all the legal rights. They shall also be disseminated to the public.
- There shall be public commitment to forest management obligations.
- There shall be publicly available documents declaring a commitment to combat corruption.

1.3. Management and harvesting planning

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

1.3.1. Applicable laws and regulations

Rules for Natural Forests:

- Law No. 29763. Forest and Wildlife Law (*Ley Forestal y de Fauna Silvestre*). Available at: <http://www.serfor.gob.pe/wp-content/uploads/LEY-FORESTAL-Y-DE-FAUNA-SILVESTRE-N29763.pdf>
- Regulations for the Forest and Wildlife Law No. 29763 for Forest Management (*Reglamento Ley Forestal y de Fauna Silvestre N°29763 para la Gestión Forestal*). Available at: <http://www.serfor.gob.pe/wp-content/uploads/REGLAMENTO-PARA-LA-GESTION-FORESTAL.pdf>
- Regulations for the Forest and Wildlife Law No. 29763 for Forest Management in Indigenous and Rural Communities (*Reglamento Ley Forestal y de Fauna Silvestre Ley N°29763 para la Gestión Forestal y de Fauna Silvestre en Comunidades Nativas y Campesinas*). Available at: <http://www.serfor.gob.pe/wp-content/uploads/REGLAMENTO-PARA-LA-GESTION-FORESTAL-Y-DE-FAUNA-SILVESTRE-EN-COMUNIDADES-NATIVAS-Y-CAMPESINAS.pdf>
- Organic Law for Municipalities (*Ley Orgánica de Municipalidades*) Law No. 27972. 27 May 2003. Title V Specific Competencies and Functions of local governments (*Las Competencias y Funciones específicas de los gobiernos locales*). Chapter I General Specific Competencies and Functions (*Las Competencias y Funciones Específicas Generales*). Available at: <http://www.munlima.gob.pe/images/descargas/licencias->

[de-funcionamiento/legislacion/2-LEY-N27972-LEY-ORGANICA-DE-MUNICIPALIDADES.pdf](#)

- Organic Law for Regional Governments (*Ley Orgánica de Gobiernos Regionales*) Law No. 27867. 18 November 2002. Title IV Functions (*Funciones*). Chapter II Specific Functions (*Funciones Específicas*). Title VI. Regional Economic and Financial Regime (*Régimen Económico y Financiero Regional*). Available at: http://biblioteca.unmsm.edu.pe/redlieds/Recursos/archivos/goblocales/ley_27867_ley_org_gob_reg.pdf
- Law on Protected Natural Areas (*Ley de Áreas Naturales Protegidas*) Law No. 26834. 30 June 1997. Title III On Management Tools (*De los Instrumentos de Manejo*). Title IV On Sustainable Use of Protected Natural Areas (*De la Utilización Sostenible de las Áreas Naturales Protegidas*): http://www.peru.gob.pe/docs/PLANES/94/PLAN_94_LEY%20N%C2%B0%2026834_2008.pdf
- Law for the Protection of Indigenous or Tribal Peoples in a situation of isolation and in a situation of initial contact (*Ley para la Protección de Pueblos indígenas u originarios en situación de aislamiento y en situación de contacto inicial*) Law No. 28736. 16 May 2006. Available at: <http://faolex.fao.org/docs/pdf/per64175.pdf>
- Law on Indigenous Communities and Agrarian Development in the Rainforest and the Edges of the Rainforest (*Ley de Comunidades Nativas y de Desarrollo Agrario de la Selva y de Ceja de Selva*). Decree-Law No. 22175. 9 May 1978. Title II, Arts. 10-14. Available at: <http://www.iadb.org/Research/legislacionindigena/leyn/docs/PERU-Decreto-Ley-22175-78-ley-Comunidades-Nativas-.pdf>

Rules for Plantations and Agroforest Systems:

- Regulations for Forest and Wildlife Law No. 29763 for Management of Forest Plantations and Agroforest Systems (*Reglamento Ley Forestal y de Fauna Silvestre Ley N°29763 para la Gestión de las Plantaciones Forestales y los Sistemas Agroforestales*). Available at: <http://www.serfor.gob.pe/wp-content/uploads/REGLAMENTO-PARA-LA-GESTION-DE-LAS-PLANTACIONES-FORESTALES-Y-LOS-SISTEMAS-AGROFORESTALES.pdf>
- Ministry of Agriculture and Irrigation (*Ministerio de Agricultura y Riego*). 2014. DS No. 017-2014-MINAGRI. Art. 2 – Art. 4. Regime for Promotion of Forest Plantations on Privately-Owned Lands (*Régimen de Promoción de las Plantaciones Forestales en Tierras de Propiedad Privada*). Available at: <http://minagri.gob.pe/portal/download/pdf/marcolegal/normaslegales/decretossupremos/2014/ds17-2014-minagri.pdf>

In the case of concessions and indigenous communities:

- Guidelines for preparation of General Forest Management Plans and Operational Plans for Forest Concessions for Timber Purposes (*Lineamientos de elaboración de Plan General de Manejo Forestal y Plan Operativo para Concesiones Forestales con Fines Maderables*) RDE No. 046-2016-SERFOR-DE. Resolution of approval and the guidelines. Available at: <http://app.serfor.gob.pe/transparencia/Serfor/DE2016/RESOLUCI%C3%93N%20DE%20DIRECCI%C3%93N%20EJECUTIVA%20N%C2%BA%20046-2016-SERFOR->

[DE%20\(Aprobar%20los%20lineamientos%20de%20elaboracion%20de%20Plan%20General%20de%20Manejo%20Forestal%20y%20Plan%20Operativo%20para%20Concesiones%20Forestales%20con%20Fines%20Maderables\).pdf](#)

- Guidelines for preparation of intermediate forest management plans for harvesting non-timber products (*Lineamientos para la elaboración de planes de manejo forestal intermedio para el aprovechamiento de productos diferentes a la madera*). RDE No. 013-2016-SERFOR-DE. Resolution of approval and guidelines available at: [http://app.serfor.gob.pe/transparencia/Serfor/DE2016/RESOLUCI%C3%93N%20DE%20DIRECCI%C3%93N%20EJECUTIVA%20N%C2%BA%20086-2016-SERFOR-DE%20\(Aprobar%20los%20lineamientos%20para%20la%20elaboracion%20del%20plan%20de%20manejo%20forestal%20intermedio%20para%20permisos%20de%20aprovechamiento%20forestal%20en%20comunidades%20nativas%20y%20campesin\).pdf](http://app.serfor.gob.pe/transparencia/Serfor/DE2016/RESOLUCI%C3%93N%20DE%20DIRECCI%C3%93N%20EJECUTIVA%20N%C2%BA%20086-2016-SERFOR-DE%20(Aprobar%20los%20lineamientos%20para%20la%20elaboracion%20del%20plan%20de%20manejo%20forestal%20intermedio%20para%20permisos%20de%20aprovechamiento%20forestal%20en%20comunidades%20nativas%20y%20campesin).pdf)
- Administrative Procedures Law (*Ley de Procedimiento Administrativo*) Law No. 27444, Art. IV. Available at: <http://www.pcm.gob.pe/wp-content/uploads/2013/09/Ley-de-Procedimiento-Administrativo-de-PersonalLey27444.pdf>

In the case of Management Statements:

- Guidelines for the preparation of Management Statements in Transfer of Rights Contracts for Residual or Remnant Forests (*Lineamientos para la elaboración de Declaraciones de Manejo en Contratos en Cesión en Uso Bosques Residuales o Remanentes*). RDE No. 164-2015-SERFOR-DE. Resolution of approval and guidelines available at: <http://faolex.fao.org/docs/pdf/per152737anx.pdf>
- Guidelines for the preparation of Management States in Transfer of Rights Contracts for Agroforest Systems (*Lineamientos para la elaboración de Declaraciones de Manejo en Contratos de Cesión en uso para Sistemas Agroforestales*). RDE No. 163-2015-SERFOR-DE. Resolution of approval available at: <http://faolex.fao.org/docs/pdf/per152736.pdf>

In the case of forest plantations:

- Guidelines for registration of Forest Plantations in the Forest Plantations Registry (*Lineamientos para la Inscripción de las Plantaciones Forestales en el Registro de Plantaciones Forestales*). RDE No. 165-2015-SERFOR-DE. Resolution of approval and guidelines available at: [http://app.serfor.gob.pe/transparencia/Serfor/DE2015/RESOLUCI%C3%93N%20DE%20DIRECCI%C3%93N%20EJECUTIVA%20N%C2%BA%20165-2015-SERFOR-DE%20\(Lineamientos%20para%20la%20Inscripcion%20de%20las%20Plantaciones%20Forestales%20en%20el%20Registro%20de%20Plantaciones%20Forestales\).pdf](http://app.serfor.gob.pe/transparencia/Serfor/DE2015/RESOLUCI%C3%93N%20DE%20DIRECCI%C3%93N%20EJECUTIVA%20N%C2%BA%20165-2015-SERFOR-DE%20(Lineamientos%20para%20la%20Inscripcion%20de%20las%20Plantaciones%20Forestales%20en%20el%20Registro%20de%20Plantaciones%20Forestales).pdf)

1.3.2. Legal authority

- The National Forest and Wildlife Service (*Servicio Nacional Forestal y de Fauna Silvestre* – SERFOR), establishes the rules for the nation.
- The Regional Environmental Authority (*Autoridad Regional Ambiental* – ARA), evaluates and approves the management documents.

- Forest Resources and Wildlife Supervisory Agency (*Organismo de Supervisión de los Recursos Forestales y de Fauna Silvestre* – OSINFOR), supervises implementation of the management documents.

1.3.3. Legally required documents or records

- The General Forest Management Plan (GFMP), contains long-term planning for the whole Forest Management Unit for the full duration of the concession licence, which varies from 20 to 40 years.
- The Operational Plan (OP) is required for logging to be authorised; required as short-term planning, based on the forest census, maps and lists of species for forest management. It has a duration of up to 3 years.
- The Intermediate Forest Management Plan (IFMP) contains strategic and operational planning when, in addition to non-timber products, timber products are harvested. It is formulated for the FMU.
- The Management Statement (MS) is simplified short-term planning for low-intensity harvesting.
- The forest plantation installation and management plan (FPIMP) applies in the case of plantation concessions.

1.3.4. Sources of information

Government sources

- Forest and Wildlife Control Mechanisms: Report on Mapping Current Situation Processes (*Mecanismos de Control Forestal y de Fauna Silvestre: Informe del Mapeo de Procesos de la Situación Actual*). Available at: http://www.serfor.gob.pe/portal/pdf/snic/GTT_SNIC_MPSA.pdf
- Sub-Directorate Results of Supervisions of Forest and Wildlife Concessions (*Resultados de Subdirección de Supervisión de Concesiones Forestal y de Fauna Silvestre*) OSINFOR. Available at: <http://www.osinfor.gob.pe/osinfor/concesiones-forestales/supervision/>
- Results of Supervision of Forest and Wildlife Permits and Authorisations (*Resultados de Supervisión de Permisos y Autorizaciones Forestales y de Fauna Silvestre*) OSINFOR. Available at: <http://www.osinfor.gob.pe/osinfor/permisos-y-autorizaciones/supervision/>
- Results of supervisions and audits made by OSINFOR within the framework of the International Operation "Operation Amazon 2014" (*Resultados de las supervisiones y fiscalizaciones efectuadas por el OSINFOR en el marco del Operativo Internacional "Operación Amazonas 2014"*). Available at: <http://www.osinfor.gob.pe/osinfor/publicaciones/resultados-de-las-supervisiones-efectuadas-por-el-osinfor-en-el-marco-de-la-operacion-amazonas-2014/>
- Report No. 011-2014-OSINFOR/06.2 Situation of supervisions made of forest permits granted in indigenous community forests (*Situación de las supervisiones realizadas a permisos forestales otorgados en bosques de Comunidades Nativas*) (unpublished document).

- Supervision and Auditing by OSINFOR of forest permits granted to Indigenous Communities (*Supervisión y Fiscalización de OSINFOR en permisos forestales otorgados a Comunidades Nativas*). Available at: http://www.osinfor.gob.pe/osinfor/portal/data/destacado/adjunto/libro_supervision_fiscalizacion_ccnn.pdf
- Forest Concessions for timber purposes (*Concesiones Forestales con fines maderables*). Available at: <http://www.serfor.gob.pe/wp-content/uploads/Cuadro-Concesiones-Forestales-con-Fines-Maderable.pdf>
- National Registry of Forest and Wildlife Offenders (*Registro Nacional de Infractores Forestales y de Fauna Silvestre*). Available at: <http://www.serfor.gob.pe/wp-content/uploads/Registro-Nacional-de-Infractores-31-05-2016.pdf>

Non-Government sources

- Interinstitutional Cooperative Agreement between the Regional Organisation of the Inter-Ethnic Association for Development of the Peruvian Ucayali ORAU Rainforest and the Forest and Wildlife Resources Supervisory Agency – OSINFOR (*Convenio de Cooperación Interinstitucional entre la Organización Regional de la Asociación Inter-Etnica de Desarrollo de la Selva Peruana Ucayali ORAU y el Organismo de Supervisión de los Recursos Forestales y de Fauna Silvestre – OSINFOR*) (unpublished document).
- Buendía, B.; Sanchez, P.; Silva, M. 2011. Systematisation of the Experience of the Community Forest Inspection Office CFIO (*Sistematización de la Experiencia de la Veeduría Forestal Comunitaria – VFC*). ORAU-ECO REDD-EIA. 37 pp. (unpublished document).
- United Nations Office on Drugs and Crime. 2011. Wildlife and Forest Crime Analytic Toolkit. UNODC-CITES-INTERPOL-BANCO MUNDIAL-OMA. 237 pp. (unpublished document).

Interviews with experts

Conversations with various experts between March and May 2016 helped the authors of this report to better understand the applicable legislation, the risks associated with implementation in the field, and harvesting management and planning. Regarding this sub-category, representatives of various organisations and social groups were interviewed, including: forest managers, independent legal and forest consultants, forest entrepreneurs, public officials from the National Forest and Wildlife Service, the Ministry of the Environment, the CITES Scientific Authority, and others.

1.3.5. Risk determination

Overview of Legal Requirements

In the case of concession licences (concessions, indigenous communities):

- The Guidelines for preparation of a General Forest Management Plan (GFMP) (*Lineamientos de elaboración de Plan General de Manejo Forestal*) define in general terms the activities that are carried out in the whole management unit: the total volumes existing in the management unit that will be harvested in the long term,

based on an exploratory inventory, the type of infrastructure that should be planned, access roads, camp construction, and harvesting methods.

- The Guidelines for preparation of an Operational Plan (OP) (*Lineamientos de elaboración de Plan Operativo*) define harvestable volumes in the year covered, based on a commercial census of all the trees that would be harvested. It shows the layouts of roads and infrastructure needed to harvest the volume shown and the camps needed; also performance of the planned silviculture activities.

In the case of Management Statements:

- The Guidelines for preparation of a Management Statement (MS) (*Lineamientos para la elaboración de Declaraciones de Manejo*) establish that when harvesting levels are less than one cubic metre per year, planning is simplified; the census and silviculture practices must be included.

In the case of forest plantations:

- Registration of forest plantations is required, as will be prescribed in the guidelines for a Forest Plantation Installation and Management Plan (IFMP) in the case of concessions for plantations.

Description of Risk

Forest Management Plans are developed based on and/or include incorrect or false information.

The professionals from the National Forest and Wildlife Service (*Servicio Nacional Forestal y de Fauna Silvestre – SERFOR*) and Forest Resources and Wildlife Supervisory Agency (*Organismo de Supervisión de los Recursos Forestales y de Fauna Silvestre – OSINFOR*), and the managers indicated in their interviews that the authorities in charge of approving the management documents under the Administrative Procedures Law give approval according to the Principle of Presumed Truthfulness that is allowed by the law; that is, they consider that all the information included in the documents submitted is true. They do reserve the right to perform subsequent field verifications, but these seldom occur.

This could lead to a situation in which some concessionaires, heads of communities, or consultants (now managers) prepare documents with information that, at least in part, does not reflect the actual conditions at the site.

When supervisory visits are made, weaknesses are detected that could have been detected and corrected before approval of the GFMP, IFMP, OP, and MS, according to the results of supervision by OSINFOR (see Results of Supervision and Audits by OSINFOR in the framework of the International Operation “Operation Amazon 2014”).

Risk Conclusion

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

1.3.6. Risk designation and specification

Specified risk

1.3.7. Control measures and verifiers

- Forest management plans shall contain all legally required information and procedures. The plan shall include:
 - information on inventories and censuses,
 - maps of road infrastructure, camps, production areas, protection areas, forest management administrative units
 - information about forest product revenues and expenses,
 - the training programme, and
 - the social, environmental and economic risks.
 - It must also include the justification for the harvesting rate, the number of species to be harvested, harvesting volumes, and monitoring activities.
- Field verifications shall indicate that the contents of the harvesting plans are adhered to in the field.
- Stakeholder consultation shall indicate that the forest management plan has been approved according to legally prescribed process.

1.4. Harvesting permits

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

1.4.1. Applicable laws and regulations

For harvesting permits, in the case of Operational Plans for forest concessions and indigenous communities, the following rules apply:

- The Regulations for the Forest and Wildlife Law No. 29763 for Forest Management (*Reglamento de la Ley Forestal y de Fauna Silvestre Ley N°29763 para la Gestión Forestal*) establish forest concessions for timber purposes (Title XI). Available at: <http://www.serfor.gob.pe/wp-content/uploads/REGLAMENTO-PARA-LA-GESTION-FORESTAL.pdf>
- The Regulations for the Forest and Wildlife Law No. 29763 for Forest and Wildlife Management in Indigenous and Rural Communities (*Reglamento de la Ley Forestal y*

de Fauna Silvestre Ley N°29763 para la Gestión Forestal y de Fauna Silvestre en Comunidades Nativas y Campesinas), in Title VII, define permits for access to timber resources. Available at: <http://www.serfor.gob.pe/wp-content/uploads/REGLAMENTO-PARA-LA-GESTION-FORESTAL-Y-DE-FAUNA-SILVESTRE-EN-COMUNIDADES-NATIVAS-Y-CAMPESINAS.pdf>). In addition, the same regulations, in Appendix No. 1, establish the requirements for obtaining forest and wildlife harvesting permits and authorisations in forests on Rural and indigenous community lands.

- Guidelines for preparation of a General Forest Management Plan and Operational Plan for Forest Concessions for Timber Purposes (*Lineamientos de elaboración de Plan General de Manejo Forestal y Plan Operativo para Concesiones Forestales con Fines Maderables*). RDE No. 046-2016-SERFOR-DE. Resolution of approval and guidelines available at: [http://app.serfor.gob.pe/transparencia/Serfor/DE2016/RESOLUCI%C3%93N%20DE%20DIRECCI%C3%93N%20EJECUTIVA%20N%C2%BA%20046-2016-SERFOR-DE%20\(Aprobar%20los%20lineamientos%20de%20elaboracion%20de%20Plan%20General%20de%20Manejo%20Forestal%20y%20Plan%20Operativo%20para%20Concesiones%20Forestales%20con%20Fines%20Maderables\).pdf](http://app.serfor.gob.pe/transparencia/Serfor/DE2016/RESOLUCI%C3%93N%20DE%20DIRECCI%C3%93N%20EJECUTIVA%20N%C2%BA%20046-2016-SERFOR-DE%20(Aprobar%20los%20lineamientos%20de%20elaboracion%20de%20Plan%20General%20de%20Manejo%20Forestal%20y%20Plan%20Operativo%20para%20Concesiones%20Forestales%20con%20Fines%20Maderables).pdf)
- Guidelines for preparation of an intermediate forest management plan for harvesting non-timber products (*Lineamientos para la elaboración de planes de manejo forestal intermedio para el aprovechamiento de productos diferentes a la madera*). RDE No. 013-2016-SERFOR-DE. Resolution of approval and guidelines available at: [http://app.serfor.gob.pe/transparencia/Serfor/DE2016/RESOLUCI%C3%93N%20DE%20DIRECCI%C3%93N%20EJECUTIVA%20N%C2%BA%20013-2016-SERFOR-DE%20\(Aprobar%20los%20lineamientos%20para%20la%20elaboracion%20de%20planes%20de%20manejo%20forestal%20intermedio%20para%20el%20aprovechamiento%20de%20productos%20diferentes%20a%20la%20madera\).pdf](http://app.serfor.gob.pe/transparencia/Serfor/DE2016/RESOLUCI%C3%93N%20DE%20DIRECCI%C3%93N%20EJECUTIVA%20N%C2%BA%20013-2016-SERFOR-DE%20(Aprobar%20los%20lineamientos%20para%20la%20elaboracion%20de%20planes%20de%20manejo%20forestal%20intermedio%20para%20el%20aprovechamiento%20de%20productos%20diferentes%20a%20la%20madera).pdf)

In the case of Management Statements, the following rules apply:

- The Regulations for the Forest and Wildlife Law No. 29763 for Forest Management (*Reglamento de la Ley Forestal y de Fauna Silvestre Ley N°29763 para la Gestión Forestal*) establish forest permits on private landholdings (Title XIII), transfer of rights contracts for residual or remnant forests (Title XVII), and management of local forests (Title XVIII). Available at: <http://www.serfor.gob.pe/wp-content/uploads/REGLAMENTO-PARA-LA-GESTION-FORESTAL.pdf>
- Guidelines for preparation of Management Statements in transfer of rights contracts in residual or remnant forests (*Lineamientos para la elaboración de Declaraciones de Manejo en Contratos en Cesión en Uso Bosques Residuales o Remanentes*). RDE No. 164-2015-SERFOR-DE. Resolution of approval and guidelines available at: [http://app.serfor.gob.pe/transparencia/Serfor/DE2015/RESOLUCI%C3%93N%20DE%20DIRECCI%C3%93N%20EJECUTIVA%20N%C2%BA%20164-2015-SERFOR-DE%20\(Lineamientos%20Elaboracion%20de%20Declaraciones%20de%20Manejo%20en%20Contratos%20en%20Cesion%20en%20Uso%20Bosques%20Residuales%20o%20Remanentes\).pdf](http://app.serfor.gob.pe/transparencia/Serfor/DE2015/RESOLUCI%C3%93N%20DE%20DIRECCI%C3%93N%20EJECUTIVA%20N%C2%BA%20164-2015-SERFOR-DE%20(Lineamientos%20Elaboracion%20de%20Declaraciones%20de%20Manejo%20en%20Contratos%20en%20Cesion%20en%20Uso%20Bosques%20Residuales%20o%20Remanentes).pdf)

Harvesting permits are not applicable to forest plantations.

1.4.2. Legal authority

- The National Forest and Wildlife Service (*Servicio Nacional Forestal y de Fauna Silvestre* – SERFOR), establishes the procedures and rules.
- The Regional Environmental Authority (*Autoridad Regional Ambiental* – ARA), implements the rules and procedures in the regions.
- The Forest Resources and Wildlife Supervisory Agency (*Organismo de Supervisión de los Recursos Forestales y de Fauna Silvestre*—OSINFOR) supervises implementation of the rules and the approved management documents.

1.4.3. Legally required documents or records

- Harvesting permit
- Management plans are approved in an executive resolution by the regional forest authority and are required for forest harvesting activities to be authorised.
- The regional forest authority approves management Statements, authorising forest harvesting.

1.4.4. Sources of information

Government sources

- App.serfor.gob.pe (n.d.). *Registro de concesiones maderables por concurso* (Register of timber concessions by competitive bidding). [online]. SERFOR. Available at: <http://app.serfor.gob.pe/concesiones/consulta.aspx> [Accessed 30 December 2016]
- App.serfor.gob.pe (n.d.). *Registro de concesiones maderables por adecuación de contratos* (Register of timber concessions by contract modification). [online]. SERFOR. Available at: <http://app.serfor.gob.pe/concesiones/consulta.aspx> [Accessed 30 December 2016]
- App.serfor.gob.pe (n.d.). *Registro de concesiones para forestación y reforestación* (Register of concessions for forestation and reforestation). [online]. SERFOR. Available at: <http://app.serfor.gob.pe/concesiones/consulta.aspx> [Accessed 30 December 2016]
- Osinfor.gob.pe (n.d.). *Sistema de Información Gerencial de OSINFOR – SIGO* (OSINFOR-SIGO Management Information System for verification of the status of a concession licence through the registry of forest shipping waybills). [online]. Available at: <http://www.osinfor.gob.pe/osinfor/sigo/>. Continue to click on Observatorio *de OSINFOR* and follow the guide and instructions to continue: <http://observatorio.osinfor.gob.pe:91/MasterPage/MPageSistema.aspx?sigo=1&lstMainMenu=0> The information shows concession licences supervised by OSINFOR and classified as risk/no risk for legal trade in timber.
- National Register of Forest and Wildlife Offenders (*Registro Nacional de Infractores Forestales y de Fauna Silvestre*): Available at: <http://app.serfor.gob.pe/infractores/>
- Results of Supervision and Audits by OSINFOR in the framework of the International Operation “Operation Amazon 2014”) (*Resultados de las supervisiones y fiscalizaciones efectuadas por el OSINFOR en el marco del Operativo Internacional*

"Operación Amazonas 2014")- Available at: <http://www.osinfor.gob.pe/wp-content/uploads/2015/10/Operaci%C3%B3n-Amazonas-19-octubre.pdf>

Non-Government sources

- Pérez, R. (2014). *Estructura de las redes de corrupción en el proceso de extracción y comercialización de madera extraída de concesiones forestales otorgadas en la provincia de Coronel Portillo, región Ucayali, entre los años 2008 y 2011* (Structure of corruption networks in the process of logging and trading timber harvested in forest concessions granted in Coronel Portillo Province, Ucayali Region, between 2008 and 2011). [online]. Published Thesis. Available at: http://tesis.pucp.edu.pe/repositorio/bitstream/handle/123456789/5633/PEREZ_VILLACORTA_ROSARIO_DEL_PILAR_ESTRUCTURA.pdf?sequence=1 [Accessed 30 December 2016]

Interviews with experts

Conversations with various experts between March and May 2016 helped the authors of this report to better understand the applicable legislation, the risks associated with implementation in the field, including aspects related to granting forest resources harvesting permits. Regarding this sub-category, representatives of various organisations and social groups were interviewed, including: forest managers, independent legal and forest consultants, forest entrepreneurs, public officials from the National Forest and Wildlife Service, the Forest Resources and Wildlife Supervisory Agency (OSINFOR), the Ministry of the Environment, the CITES Scientific Authority, and others.

1.4.5. Risk determination

Overview of Legal Requirements

A harvesting permit can be obtained by any holder of a concession licence who has prepared his or her management plan according to the guidelines established for each case: operational plans, intermediate forest management plans, or management statement. The harvesting right fee is paid at the time when volumes are moved, in accordance with approval of the management plans. In the case of concessions, there is a payment by area that must be made according to the schedule established by the regional authority. The harvesting permit system is not applicable to forest plantations.

Description of Risk

Risk of mis-use and incorrect information on permits, which can be allowed because Operational Plans are approved without prior field inspection Operational plans may be approved without any prior verification; therefore, it is not possible to be sure that the products reported come from the site indicated in the management documents, maps and other documents (according to experts interviewed). The existence of local forests is not verified, nor is the existence of the trees shown on the maps. There are often problems of location and productivity of the harvesting units, and that the licence holders may decide to harvest the same volumes of timber but in different sectors of their management area (according to experts interviewed). When the harvesting units are too far away or their location requires very expensive additional infrastructure, such as

highways, bridges etc., or the trading volumes are lower than expected, there is a risk that licence holders may harvest the approved volumes in other, more productive zones.

Risk that management statements are not verified at the site, and are granted for a short period of time. In the case of landholdings, it was confirmed in the interviews that management statements are not verified at the site and are granted for a short period of time.

Due to these two characteristics, there is a high risk that harvesting may exceed the production capacity of the landholdings. In this regard, inspections have shown that there is more non-compliance on landholdings than in concessions or communities (Results of Supervision and Audits by OSINFOR in the framework of the International Operation "Operation Amazon 2014" (*Resultados de las supervisiones y fiscalizaciones efectuadas por el OSINFOR en el marco del Operativo Internacional "Operación Amazonas 2014"*)).

Risk Conclusion

Specified risk: In the case of concession licences and MS, this indicator has been evaluated as specified risk. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

N/A: Plantations.

1.4.6. Risk designation and specification

- Specified risk for all concession licences and MS
- N/A for plantations.

1.4.7. Control measures and verifiers

- The following legal documents (invoices) for payment of the corresponding harvesting right fee must exist:
 - Single Administrative Procedures Statement – SAP (*Estado de Procedimientos Administrativos Únicos – PAU*).
- Management plans must contain all of the information required in the guidelines and must be implemented in the field. This must be verified by the field inspection.
- Procedures must be established for the protection of management units. In the field inspection these measures must be verified with neighbours, workers and authorities.
- Documents must be developed publicly stating a commitment against corruption.

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

In the case of concession licences:

- The Regulations for the Forest and Wildlife Law No. 29763 for Forest Management (*Reglamento de la Ley Forestal y de Fauna Silvestre Law No. 29763 para la Gestión Forestal*). Available at: <http://www.serfor.gob.pe/wp-content/uploads/REGLAMENTO-PARA-LA-GESTION-FORESTAL.pdf>, in Title XIX, establish payment of a harvesting right fee in favour of the State, and give the responsibilities of SERFOR and MINAM for setting the amounts in relation to the Tax Levy Unit – TLU
- Tax Levying Unit TLU (*Unidad Impositiva Tributaria—UIT*) for 2016 is S/. 3,950, in accordance with DS No. 397-2015-EF. Available at: <http://www.sunat.gob.pe/indicestosas/uit.html>.
- The Regulations for the Forest and Wildlife Law No. 29763 for Management in Indigenous and Rural communities (*Reglamento de la Ley Forestal y de Fauna Silvestre Ley N°29763 para la Gestión en Comunidades Nativas y Campesinas*). Available at: <http://www.serfor.gob.pe/wp-content/uploads/REGLAMENTO-PARA-LA-GESTION-FORESTAL-Y-DE-FAUNA-SILVESTRE-EN-COMUNIDADES-NATIVAS-Y-CAMPESINAS.pdf>, in Title VIII, establish payment of a harvesting right fee in favour of the State based on natural-state value by species.

In the case of MS:

- In the case of transfer of rights contracts, permits and authorisations, as well as local forests, the Regulations for the Forest and Wildlife Law No. 29763 for Forest Management (*Reglamento de la Ley Forestal y de Fauna Silvestre Ley N°29763 para la Gestión Forestal*) establish the amounts of the harvesting right fee. Available at: <http://www.serfor.gob.pe/wp-content/uploads/REGLAMENTO-PARA-LA-GESTION-FORESTAL.pdf>

In the case of forest plantations:

- The Regulations for the Forest and Wildlife Law No. 29763 for Management of Forest Plantations and Agroforest Systems (*Reglamento de la Ley Forestal y de Fauna Silvestre Ley N°29763 para la Gestión de las Plantaciones Forestales y los Sistemas Agroforestales*). Available at: <http://www.serfor.gob.pe/wp-content/uploads/REGLAMENTO-PARA-LA-GESTION-DE-LAS-PLANTACIONES-FORESTALES-Y-LOS-SISTEMAS-AGROFORESTALES.pdf>, in Title VII, establish payment of a harvesting right fee for forest plantation concessions.

1.5.2. Legal authority

- The National Forest and Wildlife Service (*Servicio Nacional Forestal y de Fauna Silvestre* – SERFOR), establishes the rules and updates valorisation of the resource.
- The Regional Environmental Authority (*Autoridad Regional Ambiental* – ARA), implements the rules and supervises compliance with fee payments.
- The Forest Resources and Wildlife Supervisory Agency (*Organismo de Supervisión de los Recursos Forestales y de Fauna Silvestre* – OSINFOR), supervises compliance with the management documents and implementation of forest management in the field.
- The Ministry of the Environment (*Ministerio del Ambiente* – MINAM), coordinates with SERFOR in establishing valorisation.
- The National Customs and Tax Administration Superintendency (*Superintendencia Nacional de Aduanas y Administración Tributaria* – SUNAT), establishes the Tax Levying Unit TLU (*Unidad Impositiva Tributaria*—UIT).

1.5.3. Legally required documents or records

- Invoices for fee payments. All payments are made at the National Bank (*Banco de la Nación*), which issues an invoice for the amount paid.
- Payment balance statement. The regional forest and wildlife authority also prepares an annual payment balance statement for every concession licence.

1.5.4. Sources of information

Government sources

- Directive for application of conservation of rainforests as a compensation mechanism for payment of fines imposed by the Forest Resource and Wildlife Supervisory Agency (Organismo de Supervisión de los Recursos Forestales y de Fauna Silvestre – OSINFOR), to Indigenous and Rural Communities. Directive No. 005-2016-OSINFOR-/05.2. Available at: <http://www.osinfor.gob.pe/wp-content/uploads/2016/06/RESOLUCION-SECRETARIAL-00005-2016-OSINFOR-01.2.pdf>
- Results of the Sub-Directorate of Supervision of Forest and Wildlife Concessions (Resultados de Subdirección de Supervisión de Concesiones Forestal y de Fauna Silvestre) OSINFOR. Available at: <http://observatorio.osinfor.gob.pe:96/Home/Reportes/2Results of Supervision of Forest and Wildlife Permits and Authorisations> (*Resultados de Supervisión de Permisos y Autorizaciones Forestales y de Fauna Silvestre*) OSINFOR. Available at: <http://www.osinfor.gob.pe/osinfor/permisos-y-autorizaciones/supervision/>
- Results of supervision and audits made by OSINFOR within the framework of the International Operation “Operation Amazon 2014” (*Resultados de las supervisiones y fiscalizaciones efectuadas por el OSINFOR en el marco del Operativo Internacional “Operación Amazonas 2014”*). Available at: <http://observatorio.osinfor.gob.pe:96/Home/Reportes/2>

- Report No. 011-2014-OSINFOR/06.2 Situation of supervision of forest permits granted in indigenous community forests (*Situación de las supervisiones realizadas a permisos forestales otorgados en bosques de Comunidades Nativas*) (unpublished document).
- Supervision and Auditing by OSINFOR of forest permits granted to Indigenous Communities (*Supervisión y Fiscalización de OSINFOR en permisos forestales otorgados a Comunidades Nativas*). Available at: http://www.osinfor.gob.pe/osinfor/portal/data/destacado/adjunto/libro_supervision_fiscalizacion_ccnn.pdf
- National Registry of Forest and Wildlife Offenders (*Registro Nacional de Infractores Forestales y de Fauna Silvestre*). Available at: <http://www.serfor.gob.pe/wp-content/uploads/Registro-Nacional-de-Infractores-31-05-2016.pdf>

Non-Government sources

- The Netherlands Development Cooperation Service. (2014). *Report on the Current Situation of Tax Issues for Indigenous Communities*. Pucallpa, Peru. 30 p. (unpublished document).
- Pérez, R. (2014). *Estructura de las redes de corrupción en el proceso de extracción y comercialización de madera extraída de concesiones forestales otorgadas en la provincia de Coronel Portillo, región Ucayali, entre los años 2008 y 2011* (Structure of corruption networks in the process of logging and trading timber harvested in forest concessions granted in Coronel Portillo Province, Ucayali Region, between 2008 and 2011). [online]. Published Thesis. Available at: http://tesis.pucp.edu.pe/repositorio/bitstream/handle/123456789/5633/PEREZ_VILLACORTA_ROSARIO_DEL_PILAR_ESTRUCTURA.pdf?sequence=1 [Accessed 30 December 2016]

Interviews with experts

Conversations with various experts between March and May 2016 helped the authors of this report to better understand the applicable legislation, the risks associated with implementation in the field, including aspects related to payment of harvesting right fees. Regarding this sub-category, representatives of various organisations and social groups were interviewed, including: forest managers, independent legal and forest consultants, forest entrepreneurs, public officials from the National Forest and Wildlife Service, the Forest Resources and Wildlife Supervisory Agency (OSINFOR), the Ministry of the Environment, the CITES Scientific Authority, and others.

1.5.5. Risk determination

Overview of Legal Requirements

For forest concessions and other transfer of rights contracts, an annual payment is due of 0.01% of the Tax Levying Unit TLU (*Unidad Impositiva Tributaria – UIT*) per hectare. The regional environmental authority establishes the payment dates; in addition, a payment must be made for the natural-state value of the species, depending on movements.

For communities, a payment of the natural-state value of the species is established, depending on the volume moved. Payment is made prior to movement.

In the case of permits, authorisations, local forests or others under an MS, payment is made of the natural-state value of the species, depending on the volume moved.

For plantation concessions, payment of an annual harvesting right fee is established per hectare, with no other payment for volume harvested. Plantations on private landholdings do not require payment of fees.

Description of Risk

The experts interviewed made comments about mechanisms prior to payment of fees under which indigenous communities and other concession licencees, with the exception of forest concessions, must pay the harvesting right fee prior to movement of logs, thus ensuring that payment is made.

In the case of forest concessions, for which payment is by area, high levels of late payments were found (Rodriguez, A. 2015, Analysis and a proposed strategic plan for developing competitiveness in the timber value chain in the Ucayali Region (*Análisis y propuesta de plan estratégico para el desarrollo de la competitividad en la cadena de valor de la madera en la región Ucayali*). GIZ Pro Ambiente – Regional Government of Ucayali (*Gobierno Regional de Ucayali*) 127 pp.). Some concessions still have outstanding debts.

The new rules establish very low payments for concessions in relation to the Tax Levying Units TLU (*Unidades Impositivas Tributarias – UIT*), to be paid on a fixed schedule, but also payment of a fee prior to movement of the volumes harvested. These differences in payment of harvesting right fees, according to Perez (Pérez 2014) had encouraged illegal logging in concessions by licence holders who, when complaints were filed of illegal logging in their concessions, could obtain a discount on the harvesting right fee and recover the harvested timber. Thus, there is a risk that illegal logging is done by the forest managers in order to get the benefits of paying less harvesting right fee.

In the interviews, it was commented that previously payment of the fee in concessions had varied from 70 cents to US\$2 per hectare, whereas under the current rules, payment would be approximately 12 cents per hectare per year for all concession licencees, in addition to payments for volumes moved. This lower cost would reduce the risk of non-payment of the harvesting right fee.

Risk Conclusion

In the case of plantations and access through an MS:

This indicator has been evaluated as low risk. Identified laws are upheld. In cases where law/regulations are violated, the authorities and/or relevant entities follow these up efficiently by taking preventive actions.

In the case of concessions and indigenous communities:

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

1.5.6. Risk designation and specification

- Low risk for plantations and access through an MS.
- Specified risk for concessions and indigenous communities.

1.5.7. Control measures and verifiers

- Legal documents (invoices) for payment of the corresponding harvesting right fee should exist.

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

- RDE No. 122-2015-SERFOR-DE, approves the format for the forest shipping waybill that must be adopted by all holders of concession licences, who are responsible for printing the waybills. Resolution of approval and guidelines available at: [http://app.serfor.gob.pe/transparencia/Serfor/DE2015/RESOLUCI%C3%93N%20DE%20DIRECCI%C3%93N%20EJECUTIVA%20N%C2%BA%20122-2015-SERFOR-DE%20\(Aprobar%20el%20formato%20de%20gu%C3%ADa%20de%20transporte%20forestal%20y%20el%20formato%20de%20gu%C3%ADa%20de%20transporte%20de%20fauna%20silvestre\).pdf](http://app.serfor.gob.pe/transparencia/Serfor/DE2015/RESOLUCI%C3%93N%20DE%20DIRECCI%C3%93N%20EJECUTIVA%20N%C2%BA%20122-2015-SERFOR-DE%20(Aprobar%20el%20formato%20de%20gu%C3%ADa%20de%20transporte%20forestal%20y%20el%20formato%20de%20gu%C3%ADa%20de%20transporte%20de%20fauna%20silvestre).pdf)
- General Sales Tax Law and Selective Tax on Consumption GST (*Ley del Impuesto General a las ventas e Impuesto Selectivo al consumo – IGV*). Supreme Decree No. 055-99-EF dated 16 April 1999. Available at: <http://www.sunat.gob.pe/legislacion/igv/ley/fdetalle.htm>
- Law extending the duration of tax benefits and exemptions. (*Ley que prórroga la vigencia de beneficios y exoneraciones tributarias*). Law No. 30404. Available at: <http://busquedas.elperuano.com.pe/normaslegales/ley-que-prorroga-la-vigencia-de-beneficios-y-exoneraciones-t-ley-n-30404-1328704-1/>
- Law Promoting Investment in Amazonia (*Ley de Promoción de la inversión de la Amazonía*). Law 27307. Available at: <http://www4.congreso.gob.pe/comisiones/1998/ambiente/l27037.htm>
- Law extending the term for tax benefit established in the third complementary provision of Law 27307, Law Promoting Investment in Amazonia (*Ley que prórroga el plazo para el beneficio tributario establecido en la tercera disposición complementaria de la Ley 27307, Ley de promoción de la inversión en la Amazonía*). Law 30400. Available at: <http://busquedas.elperuano.com.pe/normaslegales/ley-que-prorroga-el-plazo-para-el-beneficio-tributario-estab-ley-n-30400-1327567-2/>

1.6.2. Legal authority

- The National Forest and Wildlife Service (*Servicio Nacional Forestal y de Fauna Silvestre* – SERFOR) establishes the formats for shipping waybills for forest products on which the GST will be declared.
- The Regional Environmental Authority (*Autoridad Regional Ambiental* – ARA), implements the forest rules in the regions.
- The Forest Resource and Wildlife Supervisory Agency (*Organismo de Supervisión de los Recursos Forestales y de Fauna Silvestre*), supervises the use and accuracy of forest shipping waybills in movements of forest products.
- National Customs and Tax Administration Superintendency (*Superintendencia Nacional de Aduanas y Administración Tributaria* – SUNAT), rules, implementation, supervision and application of sanctions for tax issues.

1.6.3. Legally required documents or records

- Forest shipping waybills
- Invoices issued for volumes shown in the forest shipping waybills
- Invoices for payment of the harvesting right fee for the volumes moved
- Tax declarations

1.6.4. Sources of information

Government sources

- Results of supervision and audits made by OSINFOR within the framework of the International Operation “Operation Amazon 2014” (*Resultados de las supervisiones y fiscalizaciones efectuadas por el OSINFOR en el marco del Operativo Internacional “Operación Amazonas 2014”*). Available at: <http://www.osinfor.gob.pe/osinfor/publicaciones/resultados-de-las-supervisiones-efectuadas-por-el-osinfor-en-el-marco-de-la-operacion-amazonas-2014/>
- Report No. 011-2014-OSINFOR/06.2 Situation of supervision of forest permits granted in indigenous community forests (*Situación de las supervisiones realizadas a permisos forestales otorgados en bosques de Comunidades Nativas*) (unpublished document).
- Supervision and auditing by OSINFOR of forest permits granted to Indigenous Communities (*Supervisión y Fiscalización de OSINFOR en permisos forestales otorgados a Comunidades Nativas*). Available at: http://www.osinfor.gob.pe/osinfor/portal/data/destacado/adjunto/libro_supervision_fiscalizacion_ccnn.pdf
- Directive for application of conservation in rainforests as a compensation mechanism for payment of fines imposed by OSINFOR on indigenous and Rural communities (*Directiva para la aplicación de la conservación de bosques húmedos como mecanismo de compensación del pago de multas impuestas por el OSINFOR a comunidades nativas y campesinas*). Available at:

<http://www.osinfor.gob.pe/osinfor/wp-content/uploads/2016/04/RESOLUCION-PRESIDENCIAL-00027-2016-OSINFOR-01.12.pdf>

Non-Government sources

- Rodriguez, A. (2015). *Análisis y propuesta de plan estratégico para el desarrollo de la competitividad en la cadena de valor de la madera en la región Ucayali* (Analysis and a proposed strategic plan for developing competitiveness in the timber value chain in the Ucayali Region). GIZ Pro Ambiente – Regional Government of Ucayali (*Gobierno Regional de Ucayali*) 127 pp. (Unpublished document).

Interviews with experts

Conversations with various experts between March and May 2016 helped the authors of this report to better understand the applicable legislation, the risks associated with implementation in the field, including aspects related to payment of value added taxes or the general sales tax (GST). Regarding this sub-category, representatives of various organisations and social groups were interviewed, including: forest managers, independent legal and forest consultants, forest entrepreneurs, public officials from the National Forest and Wildlife Service, the Forest Resources and Wildlife Supervisory Agency (OSINFOR), the Ministry of the Environment, the CITES Scientific Authority, and others.

1.6.5. Risk determination

Overview of Legal Requirements

GST is applicable for the sale of forest products in Peru, the system is as follows:

- When invoices are issued, the prices shown include the sales taxes. Companies' accounting systems record all the invoices issued and the taxes on sales made.
- The forest law and its regulations establish that forest shipping waybills shall be prepared for all forest products; these waybills must be related to the operational books that are mandatory for implementation of management plans and for processing centres. Companies are required to issue invoices for moved products.
- The system of supervision and control of SERFOR and the regional authority routinely inspect forest shipping waybills (FSWs), and check payment of harvesting right fees and issuance of invoices for the volume moved by the holder of the concession licence. SUNAT's interventions verify issuance of invoices.
- In the case of forest plantations, products are moved with shipping tickets from plantations to processing sites or points of sale.

In Amazonia, companies are exempt from payment of the GST; however, they are still required to make tax declarations.

Description of risk

SUNAT's interventions verify issuance of invoices and, through interviews, a determination is made as to whether exhaustive control exists.

In Amazonia, companies are exempt from payment of the GST; however, they are still required to make tax declarations. Due to ignorance, the indigenous communities had

failed to make the mandatory sworn declaration, so they accumulate very large fines to the point that it has become necessary to reach an agreement with OSINFOR, through the indigenous people's associations, to undertake conversation activities in lieu of payment of debts (see OSINFOR agreement with indigenous and Rural communities).

A study by the Netherlands Service (2014) reflects that the communities face difficulties in complying with their tax obligations, incur debts due to tax omissions, and in addition are sanctioned as a result of OSINFOR's inspections for lacking technical assistance.

All other concession licences issue their invoices and comply automatically with the tax regulations, so the risk of non-compliance is low. In the case of plantations, invoices are issued at the time that trading takes place as a condition for movement of timber.

Risk Conclusion

In the case of indigenous and Rural communities:

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

For other concession licences and plantations:

This indicator has been evaluated as low risk. Identified laws are upheld. In cases where law/regulations are violated, the authorities and/or relevant entities follow these up efficiently by taking preventive actions.

1.6.6. Risk designation and specification

- Specified risk in the case of indigenous and Rural communities.
- Low risk for other concession licences and plantations.

1.6.7. Control measures and verifiers

- Legal documents (invoices) for payment of the corresponding harvesting right fee should exist. Sworn declarations should be made to SUNAT about compliance with monthly/annual declarations.
- Personnel payroll records should verify employees' working conditions. This should be checked with the labour authorities and with workers, as should payment of social benefits and times of service.

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

- Final amended text of the Income Tax Law (*Texto Único Ordenado de la Ley de Impuesto a la Renta*), Supreme Decree No. 179-2004-EF. In regard to entities subject to retention of income tax, see Chapter X Article 71. In regard to the documents that every company must submit annually, see Chapter XI, Arts. 79 to

89.t 79 al 89. Available at:

<http://www.sunat.gob.pe/legislacion/renta/ley/fdetalle.htm>

1.7.2. Legal authority

- The National Tax Administration Superintendency (*Superintendencia Nacional de Administración Tributaria* – SUNAT) establishes tax policies, regulations, implementation, supervision and application of sanctions.

1.7.3. Legally required documents or records

- Annual Income Tax Declarations
- General balance statements
- Financial statements

1.7.4. Sources of information

Interviews with experts

Conversations with various experts between March and May 2016 helped the authors of this report to better understand the applicable legislation, the risks associated with implementation in the field, including aspects related to taxes on income and other benefits. Regarding this sub-category, representatives of various organisations and social groups were interviewed, including: forest managers, independent legal and forest consultants, forest entrepreneurs, public officials from the National Forest and Wildlife Service, the Forest Resources and Wildlife Supervisory Agency (OSINFOR), the Ministry of the Environment, the CITES Scientific Authority, and others.

1.7.5. Risk determination

Overview of Legal Requirements

All revenues generated are defined as income. Every company engaged in sales is subject to the same tax regulation, the Income Tax Law. Compliance with this regulation is expressed in the issuance of invoices required as part of the documentation for shipping products from forests, processed products and as part of documentation for export.

The Customs and Tax Administration Superintendency (*Superintendencia de Aduanas y Administración Tributaria* – SUNAT) has as its mission ensuring that all persons, both individuals and legal persons, comply with the tax regulations.

Issuance of the documents that verify payment of taxes, such as sales slips or invoices, is supervised on a permanent basis and in case of non-compliance, the companies are fined and then closed for varying periods, and may be subject to permanent closure.

Description of Risk

The tax regulations are quite strict and compliance with them is verified on an ongoing basis. In the case of indigenous communities, the risk is manifested in the fact that following tax procedures is not a community practice; these communities generally do not have technical skills in these fields and are ignorant about everything related to taxes. By not making the mandatory declaration, they become subject to fines that can

increase progressively. (Netherlands Development Cooperation Service, 2014. Report on the Current Situation on Tax Issues for the indigenous communities. Pucallpa, Peru (*Informe de la Situación Actual en Temas Tributarios para las comunidades nativas. Pucallpa, Perú*) 30 pp.).

All the other concession licences comply automatically with the tax regulations by issuing invoices, so the risk of non-compliance is low. In the case of plantations, invoices are issued at the time that trading takes place as a precondition for timber movement.

Risk Conclusion

In the case of indigenous communities:

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

For other concession licences and plantations:

This indicator has been evaluated as low risk. Identified laws are upheld. In cases where law/regulations are violated

1.7.6. Risk designation and specification

- Specified risk for indigenous communities.
- Low risk for other concession licences and plantations.

1.7.7. Control measures and verifiers

- Documents related to compliance with submission of sworn tax declarations and general balance sheets should exist.

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

In the case of concessions and indigenous communities:

- Guidelines for preparation of a General Forest Management Plan and Operational Plan for Forest Concessions for Timber Purposes (Lineamientos de elaboración de Plan General de Manejo Forestal y Plan Operativo para Concesiones Forestales con Fines Maderables). RDE No. 046-2016-SERFOR-DE. Resolution of approval and guidelines available at:
[http://app.serfor.gob.pe/transparencia/Serfor/DE2016/RESOLUCI%C3%93N%20DE%20DIRECCI%C3%93N%20EJECUTIVA%20N%C2%BA%20046-2016-SERFOR-DE%20\(Aprobar%20los%20lineamientos%20de%20elaboracion%20de%20Plan%20General%20de%20Manejo%20Forestal%20y%20Plan%20Operativo%20para%20Concesiones%20Forestales%20con%20Fines%20Maderables\).pdf](http://app.serfor.gob.pe/transparencia/Serfor/DE2016/RESOLUCI%C3%93N%20DE%20DIRECCI%C3%93N%20EJECUTIVA%20N%C2%BA%20046-2016-SERFOR-DE%20(Aprobar%20los%20lineamientos%20de%20elaboracion%20de%20Plan%20General%20de%20Manejo%20Forestal%20y%20Plan%20Operativo%20para%20Concesiones%20Forestales%20con%20Fines%20Maderables).pdf)
- Guidelines for preparation of an intermediate forest management plan for harvesting non-timber products (Lineamientos para la elaboración de planes de manejo forestal intermedio para el aprovechamiento de productos diferentes a la madera). RDE No. 013-2016-SERFOR-DE. Resolution of approval and guidelines available at:
[http://app.serfor.gob.pe/transparencia/Serfor/DE2016/RESOLUCI%C3%93N%20DE%20DIRECCI%C3%93N%20EJECUTIVA%20N%C2%BA%20013-2016-SERFOR-DE%20\(Aprobar%20los%20lineamientos%20para%20la%20elaboracion%20de%20planes%20de%20manejo%20forestal%20intermedio%20para%20el%20aprovechamiento%20de%20productos%20diferentes%20a%20la%20madera\).pdf](http://app.serfor.gob.pe/transparencia/Serfor/DE2016/RESOLUCI%C3%93N%20DE%20DIRECCI%C3%93N%20EJECUTIVA%20N%C2%BA%20013-2016-SERFOR-DE%20(Aprobar%20los%20lineamientos%20para%20la%20elaboracion%20de%20planes%20de%20manejo%20forestal%20intermedio%20para%20el%20aprovechamiento%20de%20productos%20diferentes%20a%20la%20madera).pdf)
- Guide to Floral and Plant Inventory (Guía de Inventario de la Flora y Vegetación). This document is referred to in the guidelines for mapping and characterising types of forests available at: <http://www.minam.gob.pe/patrimonio-natural/wp-content/uploads/sites/6/2013/10/GU%C3%83-A-DE-FLORA-Y-VEGETACI%C3%83%E2%80%9CN.compressed.pdf>

In the case of Management Statements:

- Guidelines for preparation of Management Statements for Contracts for Transfer of Rights in Residual or Remnant Forests (Lineamientos para la elaboración de Declaraciones de Manejo en Contratos en Cesión en Uso Bosques Residuales o Remanentes). RDE No. 164-2015-SERFOR-DE. Resolution of approval and the guidelines available at:
<http://app.serfor.gob.pe/transparencia/Serfor/DE2015/RESOLUCI%C3%93N%20DE%20DIRECCI%C3%93N%20EJECUTIVA%20N%C2%BA%20164-2015-SERFOR->

[DE%20\(Lineamientos%20Elaboracion%20de%20Declaraciones%20de%20Manejo%20en%20Contratos%20en%20Cesion%20en%20Uso%20Bosques%20Residuales%20o%20Remanentes\).pdf](#)

- Guidelines for preparation of Management Statements for Transfer of Rights Contracts for Agroforest Systems (Lineamientos para la elaboración de Declaraciones de Manejo en Contratos de Cesión en uso para Sistemas Agroforestales). RDE No. 163-2015-SERFOR-DE. Resolution of approval and the guidelines: [http://app.serfor.gob.pe/transparencia/Serfor/DE2015/RESOLUCI%C3%93N%20DE%20DIRECCI%C3%93N%20EJECUTIVA%20N%C2%BA%20163-2015-SERFOR-DE%20\(Lineamientos%20Elaboracion%20de%20Declaraciones%20de%20Manejo%20en%20Contratos%20de%20Cesion%20en%20uso%20para%20Sistemas%20Agroforestales\).pdf](http://app.serfor.gob.pe/transparencia/Serfor/DE2015/RESOLUCI%C3%93N%20DE%20DIRECCI%C3%93N%20EJECUTIVA%20N%C2%BA%20163-2015-SERFOR-DE%20(Lineamientos%20Elaboracion%20de%20Declaraciones%20de%20Manejo%20en%20Contratos%20de%20Cesion%20en%20uso%20para%20Sistemas%20Agroforestales).pdf)

In the case of forest plantations:

- Guidelines for Recording Forest Plantations in the Forest Plantation Registry (Lineamientos para la Inscripción de las Plantaciones Forestales en el Registro de Plantaciones Forestales). RDE No. 165-2015-SERFOR-DE. Resolution of approval and the guidelines available at: [http://app.serfor.gob.pe/transparencia/Serfor/DE2015/RESOLUCI%C3%93N%20DE%20DIRECCI%C3%93N%20EJECUTIVA%20N%C2%BA%20165-2015-SERFOR-DE%20\(Lineamientos%20para%20la%20Inscripcion%20de%20las%20Plantaciones%20Forestales%20en%20el%20Registro%20de%20Plantaciones%20Forestales\).pdf](http://app.serfor.gob.pe/transparencia/Serfor/DE2015/RESOLUCI%C3%93N%20DE%20DIRECCI%C3%93N%20EJECUTIVA%20N%C2%BA%20165-2015-SERFOR-DE%20(Lineamientos%20para%20la%20Inscripcion%20de%20las%20Plantaciones%20Forestales%20en%20el%20Registro%20de%20Plantaciones%20Forestales).pdf)

1.8.2. Legal authority

- The National Forest and Wildlife Service (*Servicio Nacional Forestal y de Fauna Silvestre* – SERFOR) establishes harvesting rules and guidelines.
- The Regional Environmental Authority (*Autoridad Regional Ambiental* – ARA) implements the forest rules in the regions.
- The Forest Resource and Wildlife Supervisory Agency (*Organismo de Supervisión de los Recursos Forestales y de Fauna Silvestre* – OSINFOR) supervises implementation of the management documents in forests.

1.8.3. Legally required documents or records

- Operational Plans (concessions, indigenous communities)
- Management Statements

1.8.4. Sources of Information

Government sources

- Results of supervision and audits made by OSINFOR within the framework of the International Operation "Operation Amazon 2014" (*Resultados de las supervisiones y fiscalizaciones efectuadas por el OSINFOR en el marco del Operativo Internacional "Operación Amazonas 2014"*): <http://www.osinfor.gob.pe/osinfor/publicaciones/resultados-de-las-supervisiones-efectuadas-por-el-osinfor-en-el-marco-de-la-operacion-amazonas-2014/>

- Report No. 011-2014-OSINFOR/06.2 Situation of supervision of forest permits granted in indigenous community forests (*Situación de las supervisiones realizadas a permisos forestales otorgados en bosques de Comunidades Nativas*) (unpublished document).
- Supervision and auditing by OSINFOR of forest permits granted to Indigenous Communities (*Supervisión y Fiscalización de OSINFOR en permisos forestales otorgados a Comunidades Nativas*):
http://www.osinfor.gob.pe/osinfor/portal/data/destacado/adjunto/libro_supervision_fiscalizacion_ccnn.pdf
- Results of the Sub-Directorate of Supervision of Forest and Wildlife Concessions (*Resultados de Subdirección de Supervisión de Concesiones Forestal y de Fauna Silvestre*) OSINFOR: <http://www.osinfor.gob.pe/osinfor/concesiones-forestales/supervision/INT-024-PE-Cat1,4&5-EN-7Oct16-FINAL.docx>
- OSINFOR's Manual for Supervision of Concessions for Timber Purposes (*Manual de Supervisión de Concesiones con Fines Maderables del OSINFOR*) establishes supervision of implementation of the management plan:
<http://www.osinfor.gob.pe/osinfor/portal/data/articulo/Manual-de-Supervisin-de-Concesiones-Forestales-con-Fines-Maderables.pdf>

Non-Government sources

- Pérez, R. (2014). *Estructura de las redes de corrupción en el proceso de extracción y comercialización de madera extraída de concesiones forestales otorgadas en la provincia de Coronel Portillo, región Ucayali, entre los años 2008 y 2011* (Structure of corruption networks in the process of logging and trading timber harvested in forest concessions granted in Coronel Portillo Province, Ucayali Region, between 2008 and 2011). [online]. Published Thesis. Available at:
http://tesis.pucp.edu.pe/repositorio/bitstream/handle/123456789/5633/PEREZ_VILLACORTA_ROSARIO_DEL_PILAR_ESTRUCTURA.pdf?sequence=1 [Accessed 30 December 2016]
- Mejía, E, W. Cano, W. De Jong, P. Pacheco, S. Tapia & J. Morocho. (2015). *Actores, aprovechamiento de madera y mercados en la Amazonía peruana* (Stakeholders, timber harvesting and market in Peruvian Amazonia). [online]. CIFOR. Available at:
http://www.cifor.org/publications/pdf_files/OccPapers/OP-145.pdf [Accessed 30 December 2016]

Interviews with experts

Conversations with various experts between March and May 2016 helped the authors of this report to better understand the applicable legislation and the risks associated with implementation in the field, including aspects related to forest harvesting. Regarding this sub-category, representatives of various organisations and social groups were interviewed, including: forest managers, independent legal and forest consultants, forest entrepreneurs, public officials from the National Forest and Wildlife Service, the Forest Resources and Wildlife Supervisory Agency (OSINFOR), the Ministry of the Environment, the CITES Scientific Authority, and others.

1.8.5. Risk determination

Overview of Legal Requirements

The legislation does not establish legal requirements for harvesting techniques or technologies; instead, SERFOR establishes guidelines for forest management planning. The guidelines consider that an analysis should be made of the land's potential and of harvesting methods, and suggests choosing the method that causes the least impact on the forest.

The guidelines establish all the conditions that must be evaluated in making decisions about the forest harvesting method: the management system, assurance of the forest's capacity to regenerate (maintenance of seed trees, minimum cutting diameter and determination of the harvesting rate), species of flora and fauna to be protected, definition of protective measures and definition and maintenance of the road network.

OSINFOR'S Supervision Manual (*Manual de Supervisiones de OSINFOR*), includes, among the evaluation indicators, supervision of the census of harvestable trees and seed trees, harvesting and movement of logs, the road and gathering infrastructure, silviculture activities, infrastructure and equipment.

Description of Risk

The results of OSINFOR's supervisions and audits in the year 2014 showed that the holders of concession licences and permits and authorisations were found to have resource management irregularities, and for that reason administrative procedures were initiated against 93.75% of the areas inspected, which also included suspension of rights to tenure and to engaging in management during the administrative process.

Of these inspections, 37% ended in termination of forest harvest rights, that is, the prohibition of further operation of the concession. These results indicate, for example, that the guidelines were taken into account in preparing the management plans and obtaining authorisation for harvesting, but that the management plans' authorised activities were exceeded, to the point of harvesting areas that were not authorised or volumes that were not authorised.

OSINFOR indicates, in its publication, that inaccurate information was detected in the verified management documents, concerning approved volumes, volumes moved, and volumes existing in the supervised areas. Other characteristics of forest management are not detailed in the document (Amazonas Operation Report 2014 (*Informe Operación Amazonas 2014*)).

Mejía et al. (2015) also states that, in interviews with concessionaires and forest producers, it was commented that the forest professionals face difficulties in verifying the information in the GFMPs or OPs, so forest consultants submit information that is not always truthful and, through informal payments or bribes, succeed in having these documents approved anyway.

Perez (2014) states that the information contained in the OPs can be falsified through collusion between the concessionaire and the officials in charge of the inspection prior to approval of the management documents.

Implementation of management techniques is not a primary activity for holders of concession licences, since implementation in the field is not verified, and management

techniques are considered to be approvable if all the requirements in the management document are met.

According to statements by the consultants, the approval processes have always been exhaustive in terms of compliance with the requirements. However, field verifications focus almost exclusively to the presence of mahogany and cedar in the PCA. OSINFOR's supervision has found flaws in implementation of the management plans. According to OSINFOR, in all categories of concession licences it was found that trees were shown that were not actually present; therefore, the poor quality of implementation of management plans is a risk factor. Some public officials also commented that OSINFOR's supervision does not include implementation of silviculture treatments, for which sanctions could be increased (see Results of Supervision and Audits by OSINFOR in the framework of the International Operation "Operation Amazon 2014").

Risk Conclusion

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

1.8.6. Risk designation and specification

Specified risk

1.8.7. Control measures and verifiers

- Management plans should contain all the information required in the guidelines and are implemented in the field. A field inspection should be made prior to approval of the GFMP and OP.
- The operational status of the concession should be verified according to OSINFOR's SIGO database.

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

- Forest and Wildlife Law (*Ley Forestal y de Fauna Silvestre*). Law 29763. First Section, Title V on Zoning and Forest Land Use Planning (*Zonificación y Ordenamiento Forestal*). Available at: <http://www.serfor.gob.pe/wp-content/uploads/LEY-FORESTAL-Y-DE-FAUNA-SILVESTRE-N29763.pdf>
- Law No. 26834 Law on Protected Natural Areas (*Ley de Áreas Naturales Protegidas*). Available at: <http://biblioteca.unmsm.edu.pe/redlieds/Recursos/archivos/Legislacion/Peru/ley26834.pdf>

- Guidelines for preparation of a General Forest Management Plan (*Lineamientos de elaboración de Plan General de Manejo Forestal*) (Section 6.4.1 Areas to be protected according to specific criteria and Operational Plan for Forest Concessions for Timber Purposes (*Áreas a proteger según criterios específicos y Plan Operativo para Concesiones Forestales con Fines Maderables*)). RDE No. 046-2016-SERFOR-DE. Resolution of approval and the guidelines available at: [http://app.serfor.gob.pe/transparencia/Serfor/DE2016/RESOLUCI%C3%93N%20DE%20DIRECCI%C3%93N%20EJECUTIVA%20N%C2%BA%20046-2016-SERFOR-DE%20\(Aprobar%20los%20lineamientos%20de%20elaboracion%20de%20Plan%20General%20de%20Manejo%20Forestal%20y%20Plan%20Operativo%20para%20Concesiones%20Forestales%20con%20Fines%20Maderables\).pdf](http://app.serfor.gob.pe/transparencia/Serfor/DE2016/RESOLUCI%C3%93N%20DE%20DIRECCI%C3%93N%20EJECUTIVA%20N%C2%BA%20046-2016-SERFOR-DE%20(Aprobar%20los%20lineamientos%20de%20elaboracion%20de%20Plan%20General%20de%20Manejo%20Forestal%20y%20Plan%20Operativo%20para%20Concesiones%20Forestales%20con%20Fines%20Maderables).pdf)
- Supreme Decree 01-2008-MINAM on Implementation of the CITES Convention in Peru (*Implementación del Convenio CITES en el Perú*). Available at: http://www.minam.gob.pe/wp-content/uploads/2013/09/ds_001-2008-minam.pdf
- Executive Resolution (INT-024-PE-Cat1,4&5-EN-7Oct16-FINAL.docx *Resolución Jefatura*) 331-2006-INRENA Visual inspections mahogany (*Inspecciones oculares caoba*). Available at: [http://www.serfor.gob.pe/pdf/normatividad/2006/resojefa/RJ%20%20331-2006-INRENA%20\(Inspecciones%20oculares%20caoba\).pdf](http://www.serfor.gob.pe/pdf/normatividad/2006/resojefa/RJ%20%20331-2006-INRENA%20(Inspecciones%20oculares%20caoba).pdf)
- Executive Resolution 195-2007-INRENA Mahogany yields (*Rendimiento de caoba*). Available at: [http://www.serfor.gob.pe/portal/pdf/normatividad/2007/resojefa/RJ%20N%C2%BA%20%20195-2007-INRENA\(Rendimiento%20de%20madera\).pdf](http://www.serfor.gob.pe/portal/pdf/normatividad/2007/resojefa/RJ%20N%C2%BA%20%20195-2007-INRENA(Rendimiento%20de%20madera).pdf)
- Executive Resolution 166-2008-INRENA Visual inspections cedar (*Inspecciones oculares cedro*). Available at: [http://www.serfor.gob.pe/portal/pdf/normatividad/2008/resojefa/R.%20J.%20N%C2%BA%20%20166-2008\(ESTABLECE%20QUE%20A%20PARTIR%20DE%20LA%20ZAFRA%202009-2010%20ES%20OBLIGACIONES%20LAS%20INSPECCIONES%20OC\).pdf](http://www.serfor.gob.pe/portal/pdf/normatividad/2008/resojefa/R.%20J.%20N%C2%BA%20%20166-2008(ESTABLECE%20QUE%20A%20PARTIR%20DE%20LA%20ZAFRA%202009-2010%20ES%20OBLIGACIONES%20LAS%20INSPECCIONES%20OC).pdf)
- Executive Resolution 075-2008-INRENA Mahogany and cedar yields (*Rendimiento caoba y cedro*). Available at: <http://www.serfor.gob.pe/portal/pdf/normatividad/2008/resojefa/Derog%20RJ%20C%20aoba%20Cedro%20-%20Conf%20Grupo%20Trabajo%20Rend.pdf>

1.9.2. Legal authority

- The Ministry of Agriculture and Irrigation (*Ministerio de Agricultura y Riego – MINAGRI*) is competent to approve and implement the International Conventions.
- The National Forest and Wildlife Service (*Servicio Nacional Forestal y de Fauna – SERFOR*) is competent concerning forest resources and concession licences for access to forest resources.
- The Forest Resource and Wildlife Supervisory Agency (*Organismo de Supervisión de los Recursos Forestales y de Fauna Silvestre*) is competent to supervise resource harvesting and implementation of procedures for management of forest resources.

- The Regional Environmental Authority (*Autoridad Regional Ambiental* – ARA).
- The National Service for Protected Natural Areas (*Servicio Nacional de Áreas Naturales Protegidas* – SERNANP) is competent to give opinions in the case of forest harvesting activities in buffer zones for protected natural areas.

1.9.3. Legally required documents or records

- Forest management plans
- Management Statement

1.9.4. Sources of Information

Government sources

- List of natural areas protected by the State in Peru (*Listado de áreas naturales protegidas por el Estado en Perú*): http://www.sernanp.gob.pe/documents/10181/165150/Lista_Pagina_Web_OFICIAL_2016-04-06.pdf/17bf72d0-0c9e-4531-9faf-7741d6bd6058
- List of the nation’s threatened species to be considered for public management (*Listado de especies amenazadas a nivel nacional, para considerar en la gestión pública*): [http://www.osinfor.gob.pe/portal/data/articulo/D.S.-N-043-2006-AG -- Aprueban-Categorizacion-de-Especies-Amenazadas-de-Flora-Silvestre.pdf](http://www.osinfor.gob.pe/portal/data/articulo/D.S.-N-043-2006-AG--Aprueban-Categorizacion-de-Especies-Amenazadas-de-Flora-Silvestre.pdf)
- CITES Export permits, Mahogany: <http://app.serfor.gob.pe/Default.aspx?p1=CAOBA>
- CITES Export permits, Cedar: <http://app.serfor.gob.pe/Default.aspx?p1=CEDRO>
- OSINFOR, 2014. Results of supervision and audits by OSINFOR within the framework of the International Operation “Operation Amazon 2014” (Resultados de las supervisiones y fiscalizaciones efectuadas por el OSINFOR en el marco del Operativo Internacional “Operación Amazonas 2014”): <http://www.osinfor.gob.pe/osinfor/publicaciones/resultados-de-las-supervisiones-efectuadas-por-el-osinfor-en-el-marco-de-la-operacion-amazonas-2014/>

Non-Government sources

- IUCN Red List of Threatened Species List 2014. Summary for South America: http://cmsdata.iucn.org/downloads/lroja_sudamerica_2014.pdf
- The Convention on International Trade in Endangered Species of Wild Fauna and Flora also includes a list of species with restrictions on trade: <https://cites.org/sites/default/files/esp/app/2013/S-Appendices-2013-06-12.pdf>
- Mejía, E, W. Cano, W. De Jong, P. Pacheco, S. Tapia & J. Morocho. (2015). *Actores, aprovechamiento de madera y mercados en la Amazonía peruana* (Stakeholders, timber harvesting and market in Peruvian Amazonia). [online]. CIFOR. Available at: http://www.cifor.org/publications/pdf_files/OccPapers/OP-145.pdf [Accessed 30 December 2016]
- Transparency International (2015). Corruption Perception Index for Peru, 2015. Available at: <https://www.transparency.org/country#PER> [Accessed 29 December 2016]

Interviews with experts

Conversations with various experts between March and May 2016 helped the authors of this report to better understand the applicable legislation and the risks associated with implementation in the field, including aspects related to protected areas and protected species. Regarding this sub-category, representatives of various organisations and social groups were interviewed, including: forest managers, independent legal and forest consultants, forest entrepreneurs, public officials from the National Forest and Wildlife Service, the Forest Resources and Wildlife Supervisory Agency (OSINFOR), the Ministry of the Environment, the CITES Scientific Authority, and others.

1.9.5. Risk determination

Overview of Legal Requirements

In protected spaces or protected areas, control and oversight activities are coordinated between SERFOR and SERNANP. Concession licences located in buffer areas for Protected Natural Areas require approval by the head of the Protected Natural Areas (*Áreas Naturales Protegidas* – ANP) for management documents to be approved.

In management units, the Guidelines for preparation of a General Forest Management Plan establish the conditions that must be evaluated for land use planning in forests and give a definition of areas to be protected in accordance with the species listed in the rules.

For protected species, the legislation establishes that visual inspections are mandatory prior to approval of harvesting of species such as cedar or mahogany; only trees that have been verified are authorised, with the yield established according to the rules.

Description of Risk

Although the legislation establishes clear procedures, publications by Mejía (2015) and Perez (2014) describe processes for harvesting timber in unauthorised places using a system of forged waybills and waybill washing with the participation of public officials.

Transparency International indexes corruption levels in the public sector in 168 countries (2015). Peru is in 88th place with 36 points, with 100 points indicating least corruption and 0 indicating most corruption.

During interviews, conservation specialists commented that some Protected Natural Areas (*Áreas Naturales Protegidas* – ANP) may very well be protected through monitoring and surveillance equipment, and by personnel in permanent control posts, but that there are areas over which little control is exerted, with no budgetary support and no personnel, where it would be easy for loggers to enter and leave with products, and to use waybills for other areas along the road.

Furthermore, the results of OSINFOR's supervision and audits in 2014 (OSINFOR, 2014) showed that holders of concession licences were harvesting products from unauthorised places that, in some instances, were also protected areas.

In the case of protected species, visual inspections are mandatory for management documents to be approved; therefore, harvesting is only authorised for trees that are located on the land, with application of the yield percentage. Between 2008 and 2016, CITES permits have been reduced to 8.67% of their 2008 levels in the case of mahogany

and 2.54% in the case of cedar
(<http://app.serfor.gob.pe/CitesList.aspx?id=2015&p1=CAOBA&p2=Y>;
<http://app.serfor.gob.pe/CitesList.aspx?id=2015&p1=CEDRO&p2=Y>).

However, the report of OSINFOR's oversight for the year 2014 shows that cedar (*Cedrela odorata*), as a species, is affected by harvesting of trees outside supervised concession licences, and to volumes being moved without evidence of their point of origin.

Risk Conclusion

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

1.9.6. Risk designation and specification

- Specified risk for protected species and protected spaces/areas.
- Low risk for other areas.

1.9.7. Control measures and verifiers

- Management plans should contain all the information required in the guidelines, and should be implemented in the field. This is verified in the field inspection.
- Preventive measures should be identified and implemented against unauthorised or illegal activities in the management area. These should be verified in the field inspection.
- The management plan, by using the best information available, should identify rare, threatened species and their habitats, taking into account the national list, CITES, and IUCN. Impacts on them should be identified and actions established for mitigation. Implementation of these actions should be evaluated in the field inspection.
- SERFOR should verify export permits granted for mahogany and cedar.
- OSINFOR's SIGO system should verify the status of the concession licences supervised by OSINFOR.

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

- General Law on the Environment (*Ley General del Ambiente*), Arts. 89 and 93 on Management Measures and a Systemic Approach (*Medidas de Gestión y Enfoque Sistémico*). Law 28611. Available at: <http://www.minam.gob.pe/wp-content/uploads/2013/06/ley-general-del-ambiente.pdf>
- Law on the National System for Environmental Impact Assessment (*Ley del Sistema Nacional de Evaluación de Impacto Ambiental*). Law 27446. Available at: <http://www.minam.gob.pe/wp-content/uploads/2013/10/Ley-y-reglamento-del-SEIA1.pdf>
- Guidelines for preparation of a General Forest Management Plan and Operational Plan for Forest Concessions for Timber Purposes (*Lineamientos de elaboración de Plan General de Manejo Forestal y Plan Operativo para Concesiones con Fines Maderables*). RDE No. 046-2016-SERFOR-DE. Resolution of approval and guidelines available at: [http://app.serfor.gob.pe/transparencia/Serfor/DE2016/RESOLUCI%C3%93N%20DE%20DIRECCI%C3%93N%20EJECUTIVA%20N%C2%BA%20046-2016-SERFOR-DE%20\(Aprobar%20los%20lineamientos%20de%20elaboracion%20de%20Plan%20General%20de%20Manejo%20Forestal%20y%20Plan%20Operativo%20para%20Concesiones%20Forestales%20con%20Fines%20Maderables\).pdf](http://app.serfor.gob.pe/transparencia/Serfor/DE2016/RESOLUCI%C3%93N%20DE%20DIRECCI%C3%93N%20EJECUTIVA%20N%C2%BA%20046-2016-SERFOR-DE%20(Aprobar%20los%20lineamientos%20de%20elaboracion%20de%20Plan%20General%20de%20Manejo%20Forestal%20y%20Plan%20Operativo%20para%20Concesiones%20Forestales%20con%20Fines%20Maderables).pdf)
- OSINFOR's Manual for Supervision of Concessions for Timber Purposes (*Manual de Supervisión de Concesiones con Fines Maderables del OSINFOR*). Available at: <http://www.osinfor.gob.pe/osinfor/portal/data/articulo/Manual-de-Supervisin-de-Concesiones-Forestales-con-Fines-Maderables.pdf>

1.10.2. Legal authority

- The National Forest and Wildlife Service (*Servicio Nacional Forestal y de Fauna Silvestre* – SERFOR) has competency to approve management plans.
- The Forest Resource and Wildlife Supervisory Agency (*Organismo de Supervisión de los Recursos Forestales y de Fauna Silvestre* – OSINFOR) has competency in supervision of implementation of management plans.
- The Ministry of the Environment (*Ministerio del Ambiente* – MINAM) has competency in environmental regulations.
- The Regional Environmental Authority (*Autoridad Regional Ambiental* – ARA), has competency in the implementation of actions to verify compliance with the regulations.

1.10.3. Legally required documents or records

- Forest management plans (which include environmental impact assessments, mitigation measures and follow-up activities)
- Management Statement

1.10.4. Sources of information

Government sources

- OSINFOR, 2014. Results of supervision and audits made by OSINFOR within the framework of the International Operation "Operation Amazon 2014" (*Resultados de las supervisiones y fiscalizaciones efectuadas por el OSINFOR en el marco del Operativo Internacional "Operación Amazonas 2014"*): <http://www.osinfor.gob.pe/osinfor/publicaciones/resultados-de-las-supervisiones-efectuadas-por-el-osinfor-en-el-marco-de-la-operacion-amazonas-2014/>
- Report No. 011-2014-OSINFOR/06.2 Status of supervision of forest permits granted in indigenous community forests (*Situación de las supervisiones realizadas a permisos forestales otorgados en bosques de Comunidades Nativas*) (unpublished document).
- Supervision and auditing by OSINFOR of forest permits granted to indigenous communities (*Supervisión y Fiscalización de OSINFOR en permisos forestales otorgados a Comunidades Nativas*): http://www.osinfor.gob.pe/osinfor/portal/data/destacado/adjunto/libro_supervision_fiscalizacion_ccnn.pdf

Interviews with experts

Conversations with various experts between March and May 2016 helped the authors of this report to better understand the applicable legislation and the risks associated with implementation in the field, including aspects related to environmental requirements. Regarding this sub-category, representatives of various organisations and social groups were interviewed, including: forest managers, independent legal and forest consultants, forest entrepreneurs, public officials from the National Forest and Wildlife Service, the Forest Resources and Wildlife Supervisory Agency (OSINFOR), the Ministry of the Environment, the CITES Scientific Authority, and others.

1.10.5. Risk determination

Overview of Legal Requirements

The Guidelines for preparation of a General Forest Management Plan and Operational Plan for Forest Concessions for Timber Purposes ('the guidelines') establish the aspects of environmental impact that must be analysed and described, and the mitigation, prevention and monitoring measures that should be implemented. The activities in the management plans must consider soil protection (minimising and mitigating the impact), establishing protection zones along water courses and avoiding negative impacts upon them, establishing measures to ensure the forest's regenerative capacity, and conservation of biodiversity. All the aspects of management of natural resources, as well as the ecosystemic approach, have been considered in the guidelines.

In the case of MSs, the guidelines require that these be low-impact operations, so only one cubic metre of timber per hectare per year may be harvested. The guidelines require identification of negative environmental impacts, and prevention and mitigation measures for any impacts caused.

Description of Risk

Field supervision reports (OSINFOR, 2014) reveal that, although the regulations are followed in detail, and are described in formulating the management plans, usually there is no prior verification and therefore it is not known whether mechanisms exist for

planning that will permit mitigation of impacts on the soil, water and vegetation. The results of OSINFOR's supervision and audits of various concession licences have determined, over the years, that there is a failure to comply with the stipulations in the approved managements plans; however, it is not possible to determine to what levels the initial conditions of the forest have been affected, because there is no baseline for making this evaluation (see OSINFOR, 2014). In interviews, it was the opinion of the specialists that forest harvesting is not being evaluated with the requirements of the National Environmental Impact Assessment System, but rather it is only supervised by OSINFOR; the Ministry of the Environment does not exercise its authority.

Risk Conclusion

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

1.10.6. Risk designation and specification

Specified risk

1.10.7. Control measures and verifiers

- Preventive measures should be identified and implemented against unauthorised or illegal activities in the management area. This should be verified in the field inspection.
- Reports on environmental monitoring should include: description of environmental impacts from the management activities, description of social impacts, and identification and description of changes in the environmental conditions.
- OSINFOR's SIGO system should verify the status of the concession licences supervised by OSINFOR.

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

- Law on Occupational Safety and Health (*Ley de Seguridad y Salud en el Trabajo*) Law 29783. 19 August 2011. Available at: http://www.mimp.gob.pe/files/programas_nacionales/pncvfs/ccst/ley-de-seguridad-y-salud-en-el-trabajo.pdf. Amended 8 July 2014. Amendment available at: <http://www.leyes.congreso.gob.pe/Documentos/Leyes/30222.pdf>

- Supreme Decree No. 005-2012-TR. Regulations for Law 29783 on Occupational Safety and Health (*Reglamento de la Ley 29783 Ley de Seguridad y Salud en el Trabajo*). Available at: http://www.mintra.gob.pe/archivos/file/SNIL/normas/2012-04-25_005-2012-TR_2254.pdf

- Ministerial Resolution No. 148-2007-TR. Regulations on the Composition and Functioning of the Committee for Occupational Safety and Health (*Reglamento de Constitución y Funcionamiento del Comité de Seguridad y Salud en el Trabajo*). Available at: http://www.mintra.gob.pe/archivos/file/normasLegales/RM_148_2007_TR.pdf

1.11.2. Legal authority

- The Ministry of Labour (*Ministerio de Trabajo*) and its Regional Directorates are competent to oversee compliance with the labour regulations.
- The National Superintendency of Labour Oversight (*Superintendencia Nacional de Fiscalización Laboral* – SUNAFIL), through its regional offices, is competent to oversee compliance with the labour regulations, especially regarding occupational health and safety.
- The Ministry of Health (*Ministerio de Salud*) and its Regional Directorates are competent to oversee health and hygiene conditions at work.

1.11.3. Legally required documents or records

- System for Management of Occupational Safety and Health
- Committee for Occupational Safety and Health
- Regulations for the Committee for Occupational Safety and Health
- Identification of hazards and risk assessment
- Documentation and Control of Records of Accidents and Occupational Diseases

1.11.4. Sources of information

Government sources

- Ministry of Labour and Employment Promotion (2014). *Anuario 2014 Estadístico Sectorial del Ministerio de Trabajo y promoción del Empleo – Perú* (Annual Report 2014 Sectorial Statistics by the Ministry of Labour and Employment Promotion – Peru). [online]. Available at: http://www.mintra.gob.pe/archivos/file/estadisticas/anuario/ANUARIO_ESTADISTICO_2014.pdf [Accessed 31 December 2016]

Non-Government sources

- International Labour Organisation (2015). *Los trabajadores agrarios y la seguridad social en salud en el Perú* (Agrarian Workers and Social Security in Health in Peru). [online]. ILO. Available at: http://www.ilo.org/wcmsp5/groups/public/-americas/-ro-lima/-sro-lima/documents/publication/wcms_391026.pdf [Accessed 31 December 2016]

Interviews with experts

Conversations with various experts between March and May 2016 helped the authors of this report to better understand the applicable legislation and the risks associated with implementation in the field, including aspects related to occupational safety and health. Regarding this sub-category, representatives of various organisations and social groups were interviewed, including: forest managers, independent legal and forest consultants, forest entrepreneurs, public officials from the National Forest and Wildlife Service, the Forest Resources and Wildlife Supervisory Agency (OSINFOR), the Ministry of the Environment, the CITES Scientific Authority, and others.

1.11.5. Risk determination

Overview of Legal Requirements

The labour regulations for occupational safety and health state that it is mandatory for companies to develop a system for management of occupational safety and health. Further, having a Committee and supervisor is mandatory when there are 20 workers or more (Law 29783 Art. 29 and Art. 30).

The Committee must prepare a set of regulations and keep a book of minutes for its meetings, as well as records of occupational accidents and incidents that are registered with the Ministry of Labour, which makes unannounced inspections to verify implementation. Compliance failures result in fines.

The requirements for occupational health stipulated in the General Health Law are supervised by the Ministry of Health and ESSALUD. In cases of accidents due to failure to comply with the regulations, health supervisors may initiate administrative processes without the need for a complaint from the worker. An accident that is the result of failure to comply with the regulations will result in fines.

Description of Risk

The Ministry of Labour makes a number of inspections of companies throughout the country. In the Yearly Report for 2014, it was found that in spite of the fact that forest activity is very hazardous, the category to which it belongs (Agriculture, Livestock Production, Fishing and Silviculture) only has accounted for 1.06% of notices of accidents nationally, and notices of hazardous incidents were only 0.69%. This activity is not considered. In other indices (see reference to the annual statistical report 2014). The experts interviewed indicated that the remoteness of operations may result in accidents not being reported, or they may be identified as being due to other causes. Likewise, the ILO report (2015) on agrarian workers and social security states that silviculture activities and timber logging are not considered to be economic activities in the agrarian sector. These documents are evidence of the scarcity of analyses on health and safety for workers in harvesting operations.

In interviews, it was stated that inspections by the Ministry of Labour through the National Superintendency of Labour Oversight are made frequently but seldom in field operations. Therefore, no evidence can be established of compliance with the regulations for occupational safety and health.

Some entrepreneurs have mentioned that SUNAFIL, after inspecting industrial facilities and interviewing the personnel, requests documentary evidence of compliance with the labour regulations, electronic spread sheets, and confirmation of payment of labour taxes, among others.

Risk Conclusion

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

1.11.6. Risk designation and specification

Specified risk

1.11.7. Control measures and verifiers

- Health and safety procedures should be developed and implemented in operations; records of accidents and incidents should be established. Field verification that workers are aware of health and safety procedures and use personal protection equipment.
- Preventive health plans should be developed and implemented with trained personnel.
- Industrial safety regulations should be developed and implemented.
- Inspection documentation should be maintained by SUNAFIL, including: current list of workers, and a record of the list of workers for the last three months (record of entries by workers and confirmation that they are shown in the record).
- The election process of the Occupational Safety and Health Committee or Supervisor should be documented as follows: notice of election, minutes of the election process, minutes of installation and constitution, and minutes of monthly meetings confirming performance of functions.

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

- Law on Labour Productivity and Competiveness (*Ley de productividad y competitividad laboral*). Final Amended Text of Decree-Law (*Texto Único Ordenado del Decreto Ley*) No. 728 (27 March 1997). Available at: http://www.mintra.gob.pe/archivos/file/normasLegales/DS_003_1997_TR.pdf

- Final Amended Text of the Law on the Working Day (*Texto Único Ordenado de la ley de Jornada de Trabajo*). DS 008-2002-TR (4 July 2002). Available at: <http://www.mintra.gob.pe/contenidos/archivos/prodlab/TUO%20del%20D.Leg.%20854%20-%20D.S%20007-02-TR-04-07-02.pdf>

- Supreme Decree No. 005-2016-TR. Minimum Living Wage for workers covered by the labour regime for private enterprise (*Remuneración Mínima Vital de los trabajadores sujetos al régimen laboral de la actividad privada*). Available at: <http://busquedas.elperuano.com.pe/download/url/decreto-supremo-que-incrementa-la-remuneracion-minima-vital-decreto-supremo-n-005-2016-tr-1361982-1>

In the case of forest plantations, the following are considered:

- Regulations for Law 27360, Law that approves the regulations for promotion of the agrarian sector (11 September 2002). Available at: http://www.mintra.gob.pe/archivos/file/SNIL/normas/2002-09-11_049-2002-AG_874.pdf. Law's effective term was extended to 31 December 2021. Available at: <http://faolex.fao.org/docs/pdf/per65733.pdf>

1.12.2. Legal authority

- Ministry of Labour (*Ministerio de Trabajo*)

1.12.3. Legally required documents or records

- Labour contracts subject to modality
- Electronic spread sheets

1.12.4. Sources of information

Government sources

- Electronic spread sheets (cf. 1.12.3), available at: <http://orientacion.sunat.gob.pe/index.php/empresas-menu/planilla-electronica/informacion-general-planilla-electronica> [Accessed 31 December 2016]

Non-Government sources

- International Labour Organisation. (2014). *Trabajo Forzoso - Manual para los inspectores del trabajo de Perú* (Forced Labour - Manual for labour inspectors in Peru). [online]. ILO. Available at: <http://www.ilo.org/public/libdoc/ilo/2014/488938.pdf> [Accessed 31 December 2016]
- Pérez, R. (2014). *Estructura de las redes de corrupción en el proceso de extracción y comercialización de madera extraída de concesiones forestales otorgadas en la provincia de Coronel Portillo, región Ucayali, entre los años 2008 y 2011* (Structure of corruption networks in the process of logging and trading timber harvested in forest concessions granted in Coronel Portillo Province, Ucayali Region, between 2008 and 2011). [online]. Published Thesis. Available at: http://tesis.pucp.edu.pe/repositorio/bitstream/handle/123456789/5633/PEREZ_VILLACORTA_ROSARIO_DEL_PILAR_ESTRUCTURA.pdf?sequence=1 [Accessed 30 December 2016]

Interviews with experts

Conversations with various experts between March and May 2016 helped the authors of this report to better understand the applicable legislation and the risks associated with implementation in the field, including aspects related to legal employment. Regarding this sub-category, representatives of various organisations and social groups were interviewed, including: forest managers, independent legal and forest consultants, forest entrepreneurs, public officials from the National Forest and Wildlife Service, the Forest Resources and Wildlife Supervisory Agency (OSINFOR), the Ministry of the Environment, the CITES Scientific Authority, and others.

1.12.5. Risk determination

Overview of Legal Requirements

The labour legislation establishes various contract modalities for hiring personnel, depending on the activities to be performed, but also according to the time to be dedicated to the activity. Companies have the possibility of choosing the contract modality.

SUNAT has developed an electronic spread sheet to facilitate company operations. It automatically determines what taxes are to be paid and the net compensation to be received by the worker.

Description of Risk

Contract modalities are recorded automatically. With payments being made using the electronic spread sheets, an alert to SUNAT is also generated when they are not made. In addition, when workers are first recorded, it will be automatically detected if they are minors or undocumented.

Because of this, there is a low risk of violation of workers' rights, forced labour or child labour when employees are recorded on formal spread sheets. However, Perez (2014) mentions that the illegal logging networks consider concessions to be a type of forced labour between the lumberman and the worker where the links between employer and employee do not provide any benefits but rather an indebtedness in the middle or long term. These links normally cannot be detected, as the workers do not state them openly.

In interviews, it was noted that in industries and on the plantations, labour problems usually have not been observed because the workers know about their rights and demand a contract modality that includes formal payrolls. There are also fewer problems in these settings because it is easier for SUNAFIL to conduct supervision in places closer to the cities.

Risk Conclusion

In the case of concession licences, this indicator has been evaluated as specified risk. Identified laws are not upheld consistently by all entities and/or are often ignored, and/or are not enforced by relevant authorities.

In the case of plantations, this indicator has been evaluated as low risk. Identified laws are upheld. In cases where law/regulations are violated, the authorities and/or relevant entities follow these up efficiently by taking preventive actions.

1.12.6. Risk designation and specification

- Specified risk for all concession licences.
- Low risk for plantations.

1.12.7. Control measures and verifiers

- Labour agreements should be the result of negotiations between workers and employers.
- Employment practices and conditions should be in accordance with Fundamental Labour Principles and Rights.
- Compensation and fringe benefits should comply with national laws and the agreement with the worker. They should be paid punctually. Wages should be higher than the legal minimum wage. This should be verified in the field inspection.

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

- Peru's Political Constitution (*Constitución Política del Peru*). 31 October 1993. Chapter VIII On the Judicial Power (*Del Poder Judicial*). Art. 139 On the Jurisdictional Function (*De la función jurisdiccional*) and Art. 149 On Rural and Indigenous Communities (*De las Comunidades Campesinas y Nativas*). Available at: <http://www4.congreso.gob.pe/ntley/Imagenes/Constitu/Cons1993.pdf>
- Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries. Approved by Legislative Resolution No. 26253 (5 December 1993); ratified on 17 January 1994 and entered into effect on 2 February 1995. Available at: <http://www4.congreso.gob.pe/dgp/CIAE/carpeta-informativa/Derecho cons puebl indige/compi norma legal nacio/RL N-26253.pdf>
- Law on the right to prior consultation of indigenous and tribal peoples, recognised in International Labour Organisation (ILO) Convention 169 (*Ley del derecho a la consulta previa a los pueblos indígenas u originarios, reconocido en el Convenio 169 de la Organización Internacional del Trabajo (OIT)*) Law 29785. 6 September 2011. Available at: <http://consultaprevia.cultura.gob.pe/wp-content/uploads/2014/11/Ley-N--29785-Ley-del-derecho-a-la-consulta-previa-a-los-pueblos-ind--genas-originarios-reconocido-en-el-Convenio-169-de-la-Organizacion-Internacional-del-Trabajo-OIT.pdf>
- Civil code. Legislative Decree No. 295. 25 July 1984. Book I Individual Rights (Derecho de las Personas). Section Four Rural and Indigenous Communities (*Comunidades Campesinas y Nativas*) Art. 134 to Art. 139. Available at: <http://www.minjus.gob.pe/wp-content/uploads/2015/01/Codigo-Civil-MINJUS-BCP.pdf>

1.13.2. Legal authority

- The National Service for Natural Areas Protected by the State (*Servicio Nacional de Áreas Naturales Protegidas por el Estado – SERNANP*); competency was not explicit when the Protected Natural Areas were established.
- The National Forest and Wildlife Service (*Servicio Nacional Forestal y de Fauna Silvestre – SERFOR*); competency was not explicit when concession titles for harvesting were granted.
- The Ministry of Culture (*Ministerio de Cultura*) is competent with regard to Indigenous Peoples in Isolation or Initial Contact.

1.13.3. Legally required documents or records

N/A

1.13.4. Sources of information

Non-Government sources

- International Labour Organisation. ILO Convention 169. Available at: http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@normes/documents/publication/wcms_100910.pdf
- Buendía, B., P. Sánchez, & M. Silva. (2011). *Sistematización de la Experiencia de la Veeduría Forestal Comunitaria, VFC* (Systematisation of the Experience of the Community Forest Inspection Office). ORAU-ECO REDD-EIA. 37 pp. (unpublished document).

Interviews with experts

Conversations with various experts in March and May 2016 helped the authors of this report to better understand the applicable legislation and the risks associated with implementation in the field, including aspects related to customary rights. Regarding this sub-category, representatives of various organisations and social groups were interviewed, including: forest managers, independent legal and forest consultants, forest entrepreneurs, public officials from the National Forest and Wildlife Service, the Forest Resources and Wildlife Supervisory Agency (OSINFOR), the Ministry of the Environment, the CITES Scientific Authority, and others.

1.13.5. Risk determination

Overview of Legal Requirements

Peru's Political Constitution establishes that customary rights may be used as a basis for the application of legal principles (Art. 139). For indigenous and Rural communities, their authorities may perform decision-making functions in their territory in the exercise of their customary rights (Art. 149).

Convention 169 indicates that the State must make decisions for indigenous peoples that consider their customary rights (Art. 8).

Description of Risk

For harvesting activities, the main requirement is the authorization certificate, from which management plans and other planning tools are developed. Native communities exercise their right to freely access the forest resources within their territory; however, additional territory requirements for ancestral use have not yet been included in the requirements or recognised by the government. On the other hand, in interviews with experts, coastal communities (also applicable for coastal and other communities) that have customary rights over forest resources, were identified. As these communities do not have legal right to the land the logging conducted by the communities will therefore be illegal.

Risk Conclusion

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

1.13.6. Risk designation and specification

Specified risk

1.13.7. Control measures and verifiers

- It shall be verified that disputes have been identified and recorded, and a process developed for their resolution.
- Indigenous peoples affected by management activities should be identified, documented and mapped. In the case of indigenous peoples in isolation or initial contact, procedures should be developed to respect them.
- Indigenous peoples should have access to timber products and should be able to delegate to third parties, giving their free prior and informed consent. Easement rights should be respected. This should be verified in the field inspection.
- Places of special cultural significance should be identified, recognised and recorded.
- In the case of local communities, those that are affected by management activities should be identified, documented and mapped.
- Local communities should be involved in management activities, without violating their rights.

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

- Law concerning right to prior consultation of indigenous and tribal peoples, recognised in International Labour Organisation (ILO) Convention 169 (*Ley del derecho a la consulta previa a los pueblos indígenas u originarios, reconocido en el Convenio 169 de la Organización Internacional del Trabajo (OIT)*) Law 29785. 6 September 2011. Available at: <http://consultaprevia.cultura.gob.pe/wp-content/uploads/2014/11/Ley-N-29785-Ley-del-derecho-a-la-consulta-previa-a-los-pueblos-indigenas-originarios-reconocido-en-el-Convenio-169-de-la-Organizacion-Internacional-del-Trabajo-OIT.pdf>
- Supreme Decree No. 001-2012-MC dated 3 April 2012. Available at: http://www.trabajo.gob.pe/archivos/file/SNIL/normas/2012-04-03_001-2012-MC_2221.pdf
- Civil Code. Legislative Decree No. 295. 25 July 1984. Book I Rights of Individuals. (*Derecho de las Personas*). Section Four Rural and Indigenous Communities (*Comunidades Campesinas y Nativas*) Art. 134 to Art. 139. Available at: <http://www.minjus.gob.pe/wp-content/uploads/2015/01/Codigo-Civil-MINJUS-BCP.pdf>

- Law No. 29763. Forest and Wildlife Law (*Ley Forestal y de Fauna Silvestre*). Preliminary Title. Article II-3. Available at: <http://www.serfor.gob.pe/wp-content/uploads/LEY-FORESTAL-Y-DE-FAUNAPreliminary UNA-SILVESTRE-N29763.pdf>
- Regulations for Forest and Wildlife Law No. 29763 for Forest and Wildlife Management in Indigenous and Rural Communities (*Reglamento de la Ley Forestal y de Fauna Silvestre Ley No. 29763 para la Gestión Forestal y de Fauna Silvestre en Comunidades Nativas y Campesinas*). Appendix No. 1 Requirements for permits or authorisations for forest and wildlife harvesting in forests on lands of Rural indigenous communities (*Requisitos para permisos o autorizaciones de aprovechamiento forestal y de fauna en bosques en tierras de comunidades campesinas y nativas*). Available at: <http://www.serfor.gob.pe/wp-content/uploads/REGLAMENTO-PARA-LA-GESTION-FORESTAL-Y-DE-FAUNA-SILVESTRE-EN-COMUNIDADES-NATIVAS-Y-CAMPESINAS.pdf>
- Procedure for the right of Indigenous Peoples to petition for inclusion in a process of prior consultation or for its realisation, in the Ministry of Culture (*Procedimiento del derecho de petición de los Pueblos Indígenas para la inclusión en un proceso de consulta previa o para la realización del mismo, en el Ministerio de Cultura*), approved by Vice-Ministerial Resolution No. 010-2013-VMI-MC, published on 12 December 2013. Available at: <http://es.slideshare.net/oreluis/procedimiento-del-derecho-de-peticin-de-los-pueblos-indgenas-para-la-inclusin-en-un-proceso-de-consulta-previa-o-para-la-realizacin-del-mismo-en-el-ministerio-de-cultura-peru>
- Ministerial Resolution No. 202-2012-MC, which approves the Directive regulating the official database of indigenous and tribal peoples that identifies who are indigenous peoples in Peru, that is, to whom ILO Convention 169 should be applied. Available at: <http://transparencia.cultura.gob.pe/sites/default/files/transparencia/2012/06/resoluciones-ministeriales/1359.pdf>
- Law for protection of indigenous or tribal peoples in a situation of isolation or in a situation of initial contact (*Ley para la protección de pueblos indígenas u originarios en situación de aislamiento y en situación de contacto inicial*), approved by Law No. 28736. Available at: <http://www.acnur.org/t3/fileadmin/Documentos/BDL/2008/6757.pdf?view=1>
- General Environmental Law (*Ley General del Ambiente*) (Law No. 28611 of 2005) reference in Article 72 to consultation of indigenous peoples about harvesting of natural resources. Available at: <http://cdam.minam.gob.pe/novedades/leygeneralambiente2.pdf>

1.14.2. Legal authority

- National Forest and Wildlife Law (*Servicio Nacional Forestal y de Fauna Silvestre – SERFOR*). Competency in approval of management plans and harvesting permits on indigenous community lands

1.14.3. Legally required documents or records

These documents show that there has been a process of consultation and that they were prepared with the approval or participation of the people:

- Harvesting permits
- Management plans

1.14.4. Sources of information

Government sources

- Ministry of Culture (2013). *Guía Metodológica de la Ley de Consulta Previa* (Methodological Guide for the Law on Prior Consultation). [online]. Available at: <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/90577/108172/F-1993885983/PER90577.pdf> [Accessed 31 December 2016]

Non-Government sources

- Due Process of Law Foundation [dplf] (2015). *Derecho a la consulta y al consentimiento previo, libre e informado en América Latina* (Right to consultation and free prior informed consent in Latin America). Due Process of Law Foundation (dplf) and OXFAM. Available at: http://www.dplf.org/sites/default/files/informe_consulta_previa_2015_web-2.pdf [Accessed 31 December 2016]
- Transparency International (2015). Corruption Perception Index for Peru, 2015. Available at: <https://www.transparency.org/country#PER> [Accessed 29 December 2016]
- Servindi.org (n.d.). *Comunicación intercultural para un mundo más humano y diverso* (Notification on the SERVINDI website: Intercultural communication for a more humane and diverse world). [online]. SERVINDI. Available at: <http://www.servindi.org/actualidad/2477> [Accessed 31 December 2016]
- Lamula.pe (2015). *La necesidad de acción concertada: el derecho al consentimiento previo, libre e informado* (The need for concerted action: the right to free prior informed consent). [online]. *Lamula*. Available at: <https://lamula.pe/2015/03/23/la-necesidad-de-accion-concertada-el-derecho-al-consentimiento-previo-libre-e-informado/yriart/> [Accessed 31 December 2016]

Interviews with experts

Conversations with various experts between March and May 2016 helped the authors of this report to better understand the applicable legislation and the risks associated with implementation in the field, including aspects related to free prior informed consent. Regarding this sub-category, representatives of various organisations and social groups were interviewed, including: forest managers, independent legal and forest consultants, forest entrepreneurs, public officials from the National Forest and Wildlife Service, the Forest Resources and Wildlife Supervisory Agency (OSINFOR), the Ministry of the Environment, the CITES Scientific Authority, and others.

1.14.5. Risk determination

Overview of Legal Requirements

ILO Convention 169 has been in effect in Peru since February 1995. A favourable political context, added to the work of various indigenous organisations and civil society carried

out over several years, led to approval in 2011 of the Law on the right to prior consultation of indigenous or tribal peoples, recognised in Convention 169 of the International Labour Organisation, Law No. 29785, published on 7 September 2011. The Law on Prior Consultation, together with its Regulations approved by Supreme Decree No. 001-2012-MC dated 3 April 2012, are now the two most important regulations concerning this right in Peru. Likewise, they place the country among the few nations in the region that have achieved adoption of a comprehensive law.

This law contains 20 articles and four final and complementary provisions, in which the general rules are established for exercising this right. The law describes the contents and purpose of the right to consultation, the stakeholders, which groups are considered to be indigenous peoples, and the government entities responsible for its application. The law also establishes the principles and stages of the consultation process.

Both regulations are in effect and in full process of application by the competent government entities. In addition, they have been followed by more specific instruments that attempt to put in practice some substantial aspects of the law, such as:

- The procedure for the right of indigenous peoples to petition for their inclusion in a process of prior consultation or for its realisation, in the Ministry of Culture, approved by Vice-Ministerial Resolution No. 010-2013-VMI-MC, published 12 December 2013,
- Ministerial Resolution No. 202-2012-MC, which approved the Directive regulating the official database of indigenous and tribal peoples, which identifies who are indigenous peoples in Peru, that is, to whom ILO Convention 169 should be applied, and
- The Methodological Guide for the Law on Prior Consultation.

In addition, there are other relevant legal instruments, such as the Regulations for the Law on Protected Natural Areas (*Ley de Áreas Naturales Protegidas*), approved by Supreme Decree No. 038-2001- AG, which, in its Article 43, regulates consultation of indigenous peoples for the creation of protected natural areas, as well as rules adopted years ago related to citizen participation and consultation and the preparation of environmental impact studies. There is also the law for protection of indigenous or tribal peoples in a situation of isolation and in a situation of initial contact (*Ley para la protección de pueblos indígenas u originarios en situación de aislamiento y en situación de contacto inicial*), approved by Law No. 28736; and the General Environmental Law (*Ley General del Ambiente*) (Law No. 28611 of 2005), which made reference in its Article 72 to consultation of indigenous peoples about harvesting of natural resources.

The procedures for obtaining harvesting rights require showing, through Communal Assembly Minutes, the decision to harvest resources for commercial purposes, whether by the indigenous community itself, or by delegated third parties. The Assembly Minutes are evidence that the community was previously informed in making the decision to harvest its resources.

Article II-3 of the Forest Law 29763 states that the law “respects the right of indigenous peoples to free prior informed consultation for the purpose of reaching an agreement or obtaining consent for the measure proposed, in accordance with Convention 169 of the International Labour Organisation (ILO) and the United Nations Declaration on the Rights

of Indigenous Peoples, and other current rules, the jurisprudence of the Inter-American Human Rights System and binding decisions by the Constitutional Court on this issue.”

Description of Risk

Adoption of the Law on Prior Consultation undoubtedly represents one of the principal achievements of the indigenous movement and substantially advances the establishment of clear rules for the implementation of the right to prior consultation. Although this is recognised as a positive step in guaranteeing their rights, indigenous organisations and civil society have questioned certain fundamental aspects of the law – the product of a process of review and reflexion that followed its approval (OXFAM 2015).

After the Law on Prior Consultation was enacted, the Peruvian government formed a commission charged with preparing its regulations, which followed the guidelines and stages established in the law itself, without showing clarity with regard to its scope and the challenges that it would involve. That Commission included representatives from various Ministries and from national indigenous organisations. A series of regional meetings were held for the purpose of consulting the indigenous peoples about the Regulations. Although this was an important effort, this process was questioned by some indigenous organisations, who indicated that they were not in equal conditions, and also that they did not have equal representation with the government representatives. These criticisms led to a decision by various organisations to withdraw from the process, so in the stage of dialogue with the Multisectorial Commission only two national indigenous organisations were present.

The text that was finally approved was the subject of a series of criticisms by indigenous organisations and civil society. The principal aspects questioned were: the need to consider as a source of rights not only ILO Convention 169, but also the DNUPI; that the descendants of peoples existing before colonisation should be considered indigenous peoples and that this not be limited to “direct” descendants and should preserve “all” the cultural elements; that all situations in which consent is required should be incorporated, and not just consultation according to international standards; that application of all acts prior to its publication should not be excluded, considering that ILO Convention 169 has been in effect in Peru since 1995, among others.

Transparency International indexes corruption levels in the public sector in 168 countries (2015). Peru is in 88th place with 36 points, with 100 points indicating least corruption and 0 indicating most corruption.

The risk of corruption, as well as lack of transparency creates doubts about the implementation of the consultation processes for exercising the right to consultation and approval as a condition for applying for a permit to harvest forest resources.

Risk Conclusion

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

1.14.6. Risk designation and specification

Specified risk

1.14.7. Control measures and verifiers

- Management plans should contain all the information required in the guidelines and are implemented in the field. This should be verified in the field inspection.
- Where applicable, stakeholders shall have given their prior and informed consent.
- Interviews with all stakeholders shall verify that there has been agreement between the management and all applicable stakeholders.
- Indigenous peoples should have access to timber products and may delegate to third parties, giving their free prior informed consent. Easement rights should be respected. This should be verified in the field inspection.
- Places of special cultural significance should be identified, recognised and recorded.
- In the case of local communities, those that are affected by management activities should be identified, documented and mapped.
- Local communities should be involved in management activities, without violating their rights.

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

- Law on the right to prior consultation of indigenous or tribal peoples, recognised in International Labour Organisation (ILO) Convention 169 (Ley del derecho a la consulta previa a los pueblos indígenas u originarios, reconocido en el Convenio 169 de la Organización Internacional del Trabajo (OIT)) Law 29785. 6 September 2011. Available at: <http://consultaprevia.cultura.gob.pe/wp-content/uploads/2014/11/Ley-N%20%E2%80%9320-29785-Ley-del-derecho-a-la-consulta-previa-a-los-pueblos-ind%20%E2%80%9320genas-originarios-reconocido-en-el-Convenio-169-de-la-Organizacion-Internacional-del-Trabajo-OIT.pdf>
- Civil Code. Legislative Decree No. 295. 25 July 1984. Book I Rights of Individuals (Derecho de las Personas). Section Four Rural and Indigenous Communities (Comunidades Campesinas y Nativas) Art. 134 to Art. 139. Available at: <http://www.minjus.gob.pe/wp-content/uploads/2015/01/Codigo-Civil-MINJUS-BCP.pdf>
- Law No. 29763. Forest and Wildlife Law (Ley Forestal y de Fauna Silvestre). Preliminary Title. Article II-3, Article II-5. Available at: <http://www.serfor.gob.pe/wp-content/uploads/LEY-FORESTAL-Y-DE-FAUNA-SILVESTRE-N29763.pdf>
- Regulations for the Forest and Wildlife Law (Reglamento de la Ley Forestal y de Fauna Silvestre)
- Law No. 29763 for Forest and Wildlife Management in Indigenous and Rural Communities (Ley para Gestión Forestal y de Fauna Silvestre en Comunidades Nativas y Campesinas). Appendix No. 1 Requirements for forest and wildlife

harvesting permits or authorisations in forests on lands of Rural and indigenous communities (Requisitos para permisos o autorizaciones de aprovechamiento forestal y de fauna en bosques en tierras de comunidades campesinas y nativas). Available at: <http://www.actualidadambiental.pe/wp-content/uploads/2013/12/Ley-Forestal-y-de-Fauna-Silvestre-29763.pdf>

- Legislative Resolution No. 26253, which approves ILO Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries. Available at: http://www4.congreso.gob.pe/dgp/CIAE/carpeta-informativa/Derecho_cons_puebl_indige/compi_norma_legal_nacio/RL_N-26253.pdf
- Supreme Decree No. 001-2012-MC, Regulations for Law 29785. Available at: <http://consultaprevia.cultura.gob.pe/wp-content/uploads/2014/11/Reglamento-de-la-Ley-N%20%E2%80%9320-29785-Decreto-Supremo-N%20%E2%80%9320-001-2012-MC.pdf>
- Ministerial Resolution No. 202-2012-MC, Directive that regulates the function of the Official Database of Indigenous and Tribal Peoples. Available at: <http://transparencia.cultura.gob.pe/sites/default/files/transparencia/2012/06/resoluciones-ministeriales/1359.pdf>
- Vice-Ministerial Resolution No. 004-2014-VMI-MC that approves Directive No. 001-2014-VMI-MC regarding the "Guidelines that establish tools for gathering social information and set the criteria for their application in the framework of identification of indigenous or tribal peoples". Available at: <http://transparencia.cultura.gob.pe/sites/default/files/transparencia/2014/02/resoluciones-del-vice-ministerio-de-interculturalidad/rvmi004-aprobarladirectiva001-2014.pdf>
- Law 28736, Law for protection of Indigenous or Tribal Peoples in a Situation of Isolation or in a Situation of Initial Contact (Ley para la protección de Pueblos Indígenas u Originarios en Situación de Aislamiento y en Situación de Contacto Inicial). Available at: [http://www4.congreso.gob.pe/comisiones/2010/CEM_Problematica_indigena/documentos/leyes%20de%20comunidades/\(6\)ley_protecciondepueblosindigenas28736.pdf](http://www4.congreso.gob.pe/comisiones/2010/CEM_Problematica_indigena/documentos/leyes%20de%20comunidades/(6)ley_protecciondepueblosindigenas28736.pdf)
- Law No. 29735, Law that regulates the use, preservation, development, recovery, promotion and dissemination of the indigenous languages of Peru (Ley que regula el uso, preservación, desarrollo, recuperación, fomento y difusión de las lenguas originarias del Peru). Available at: http://www.minedu.gob.pe/files/358_201109201112.pdf
- Ministerial Resolution No. 321-2014-MC, that approves the updated list of indigenous peoples located in Peruvian Amazonia. Available at: http://transparencia.cultura.gob.pe/sites/default/files/rm_321-.pdf
- Ministerial Resolution No. 066-2015-MC, that approves the updated list contained in the Official Database of Indigenous or Tribal Peoples, incorporating the information contained in RM No. 321-2014-MC, the list of populated centres within the boundaries of tribal communities belonging to the indigenous peoples of Peruvian Amazonia. Available at: http://transparencia.cultura.gob.pe/sites/default/files/transparencia/2015/02/resoluciones-ministeriales/rm066-2015-mc_1.pdf

- Ministerial Resolution No. 204-2015-MC, that approves the updated list contained in the Official Database of Indigenous or Tribal Peoples, incorporating the information contained in RM No. 321-2014-MC and No. 066-2015-MC, the list of populated centres in indigenous communities in Peruvian Amazonia. Available at: <http://transparencia.cultura.gob.pe/sites/default/files/transparencia/2015/06/resoluciones-ministeriales/rm-n-204-2015-mc.pdf>
- Ministerial Resolution No. 208-2016-MC, that approves the list of 51 indigenous peoples of Amazonia and the geographic references known as “Indigenous Peoples of Amazonía”, as updated content to be incorporated into the information contained in the Official Database of Indigenous or Tribal Peoples. Available at: <http://transparencia.cultura.gob.pe/sites/default/files/transparencia/2016/05/resoluciones-ministeriales/rm208-aprobarlalistade51pueblosindigenasdeamazoniaylasreferenciasgeograficasdenominadas.pdf>

1.15.2. Legal authority

- The National Forest and Wildlife Service (*Servicio Nacional Forestal y de Fauna Silvestre* – SERFOR) has competency to approve management plans and harvesting permits for indigenous community lands, in cases in which conducting forest activities is required.
- The Regional Environmental Authority (*Autoridad Regional Ambiental* – ARA) has competency to implement national regulations.
- The Forest Resource and Wildlife Supervisory Agency (*Organismo de Supervisión de los recursos forestales y de fauna silvestre*—OSINFOR) has competency in the supervision of the implementation of regulations.
- The Ministry of Culture (*Ministerio de Cultura*) has competency in cases of indigenous peoples in isolation and initial contact.

1.15.3. Legally required documents or records

These documents show that the rights of the indigenous and traditional peoples have been respected:

- Harvesting permits (including communal minutes of approval)
- Management plans

1.15.4. Sources of information

Government sources

- Ministry of Culture of Peru (n.d.). *Database of Indigenous or Tribal Peoples*. [online]. Available at: <http://bdpi.cultura.gob.pe/marco-legal> [Accessed 31 December 2016]

Non-Government sources

- International Labour Organisation. ILO Convention 169. Available at: http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@normes/documents/publication/wcms_100910.pdf

- Buendía, B., P. Sánchez, & M. Silva. (2011). *Sistematización de la Experiencia de la Veeduría Forestal Comunitaria, VFC* (Systematisation of the Experience of the Community Forest Inspection Office). ORAU-ECO REDD-EIA. 37 pp. (unpublished document).
- Pérez, R. (2014). *Estructura de las redes de corrupción en el proceso de extracción y comercialización de madera extraída de concesiones forestales otorgadas en la provincia de Coronel Portillo, región Ucayali, entre los años 2008 y 2011* (Structure of corruption networks in the process of logging and trading timber harvested in forest concessions granted in Coronel Portillo Province, Ucayali Region, between 2008 and 2011). [online]. Published Thesis. Available at: http://tesis.pucp.edu.pe/repositorio/bitstream/handle/123456789/5633/PEREZ_VILLACORTA_ROSARIO_DEL_PILAR_ESTRUCTURA.pdf?sequence=1 [Accessed 30 December 2016]
- Transparency International (2015). Corruption Perception Index for Peru, 2015. Available at: <https://www.transparency.org/country#PER> [Accessed 29 December 2016]

Interviews with experts

Conversations with various experts between March and May 2016 helped the authors of this report to better understand the applicable legislation, the risks associated with implementation in the field, including aspects related to rights of indigenous and traditional peoples. Regarding this sub-category, representatives of various organisations and social groups were interviewed, including: forest managers, independent legal consultants, and forest entrepreneurs, public officials from the National Forest and Wildlife Service, the Ministry of the Environment, the CITES Scientific Authority, and others.

1.15.5. Risk determination

Overview of Legal Requirements

The procedures given in the regulations (Law No. 29763) for indigenous communities (Appendix 1) establish obligations for the authorities of indigenous peoples that want to make use of their resources, in order to ensure that their rights are reaffirmed in assembly minutes reflecting their interest in forest harvesting activities in their territory.

Description of Risk

Mejía (2015) and Perez (2014) explain the types of corruption that may occur in order to have illegal access to communities' resources, obtaining benefits that do not reach the community through leaders who receive bribes and who apply for harvesting permits without obtaining the formal approval of the communal assembly, with the participation of public officials, in some cases. Transparency International refers to high levels of corruption perceived in the national public sector.

For harvesting activities, the main requirement is the authorization certificate, from which management plans and other planning tools are developed. Native communities exercise their right to freely access the forest resources within their territory; however, additional territory requirements for ancestral use have not yet been included in the requirements or recognised by the government. On the other hand, in interviews with

experts, coastal communities (also applicable for coastal and other communities) that have customary rights over forest resources, were identified. As these communities do not have legal right to the land the logging conducted by the communities will therefore be illegal.

Risk Conclusion

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

1.15.6. Risk designation and specification

Specified risk

1.15.7. Control measures and verifiers

- Indigenous peoples shall have access to timber products and have the ability to delegate to third parties, giving their free prior informed consent.
- Easement rights shall be respected, and can be verified in field inspections.
- Communal minutes should show approval of the harvesting of forest resources.
- Places of special cultural significance should be identified, recognised and recorded.

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

- List of threatened species (*Listado de especies amenazadas*). Available at: [http://www.osinfor.gob.pe/portal/data/articulo/D.S.-N-043-2006-AG --Aprueban-Categorizacion-de-Especies-Amenazadas-de-Flora-Silvestre.pdf](http://www.osinfor.gob.pe/portal/data/articulo/D.S.-N-043-2006-AG--Aprueban-Categorizacion-de-Especies-Amenazadas-de-Flora-Silvestre.pdf)
- Executive Resolution No. 458-2002-INRENA. Minimum cutting diameters (*Diámetros mínimos de corta*). Available at: <http://www.legislacionforestal.org/wp-content/uploads/2012/07/rj-458-2002-INRENA.pdf>
- Ministerial Resolution No. 0107-2000-AG. (2 March 2000). Natural-State Categories and Value (*Categorías y Valor al estado natural*). Available at: <http://legislacionforestal.org/archivos/varios/2012/07/R.M.-N%C2%BA-107-2000-AG-Categ.-de-esp.-maderab.-2.pdf>
- Final Amended Text of the Income Law (*Texto Único Ordenado de la Ley de Impuesto a la Renta*) Supreme Decree No. 179-2004-EF. Concerning entities subject to income tax withholding, see Chapter X, Article 71. Concerning the documents that must be submitted annually by all companies, see Chapter XI, Arts. 79 to 89. Available at: <http://www.sunat.gob.pe/legislacion/renta/ley/fdetalle.htm>
- Forest Shipping Waybill (*Guía de transporte Forestal*). Executive Directorate Resolution No. 122-2015-SERFOR-DE, dated 6 October 2015. Available at: <http://www.serfor.gob.pe/wp-content/uploads/CUADERNILLO-GUIA-DE-TRANSPORTE-FORESTAL-Y-DE-FAUNA-SILVESTRE.pdf>

1.16.2. Legal authority

- The National Forest and Wildlife Service (*Servicio Nacional Forestal y de Fauna Silvestre* – SERFOR) has competency in approval of management plans, inspections of issuance of forest shipping waybills, and establishment of payment of harvesting rights fees.
- The Forest Resource and Wildlife Supervisory Agency (*Organismo de Supervisión de los Recursos Forestales y de Fauna Silvestre*) has competency in supervision of implementation of management plans and payments of harvesting rights fees.
- The National Tax Administration Superintendency (*Superintendencia Nacional de Administración Tributaria* – SUNAT) has competency concerning payment of taxes.

1.16.3. Legally required documents or records

- Management plans
- Management statements
- Forest Operations Book
- Forest shipping waybills
- Invoices issued for the volumes shown in the forest shipping waybills
- Invoices for payment of harvesting right fee for the volumes shipped.

1.16.4. Sources of information

Government sources

- Sub-Directorate's Results of Supervision of Forest Concessions and Wildlife (*Resultados de Subdirección de Supervisión de Concesiones Forestal y de Fauna Silvestre*) OSINFOR: <http://www.osinfor.gob.pe/osinfor/concesiones-forestales/supervision/>
- Results of Supervision of Forest and Wildlife Permits and Authorisations (*Resultados de Supervisión de Permisos y Autorizaciones Forestales y de Fauna Silvestre*) OSINFOR: <http://www.osinfor.gob.pe/osinfor/permisos-y-autorizaciones/supervision/>
- Results of Supervision and Audits by OSINFOR within the framework of the International Operation "Operación Amazonas 2014" (*Resultados de las supervisiones y fiscalizaciones efectuadas por el OSINFOR en el marco del Operativo Internacional "Operación Amazonas 2014"*):
<http://www.osinfor.gob.pe/osinfor/publicaciones/resultados-de-las-supervisiones-efectuadas-por-el-osinfor-en-el-marco-de-la-operacion-amazonas-2014/>

Non-Government sources

- Pérez, R. (2014). *Estructura de las redes de corrupción en el proceso de extracción y comercialización de madera extraída de concesiones forestales otorgadas en la provincia de Coronel Portillo, región Ucayali, entre los años 2008 y 2011* (Structure of corruption networks in the process of logging and trading timber harvested in forest concessions granted in Coronel Portillo Province, Ucayali Region, between 2008 and 2011). [online]. Published Thesis. Available at: http://tesis.pucp.edu.pe/repositorio/bitstream/handle/123456789/5633/PEREZ_VILLACORTA_ROSARIO_DEL_PILAR_ESTRUCTURA.pdf?sequence=1 [Accessed 30 December 2016]
- Rodríguez, A. (2015). *Análisis y propuesta de plan estratégico para el desarrollo de la competitividad en la cadena de valor de la madera en la región Ucayali* (Analysis and proposed strategic plan for developing competitiveness in the timber value chain in the Ucayali Region). GIZ Pro Ambiente – Regional Government of Ucayali. 127 pp.
- Transparency International (2015). Corruption Perception Index for Peru, 2015. Available at: <https://www.transparency.org/country#PER> [Accessed 29 December 2016]

Interviews with experts

Conversations with various experts between March and May 2016 helped the authors of this report to better understand the applicable legislation, the risks associated with implementation in the field, including aspects related to classification of species, quantities, and qualities. Regarding this sub-category, representatives of various organisations and social groups were interviewed, including: forest managers, independent legal and forest consultants, forest entrepreneurs, public officials from the National Forest and Wildlife Service, the Ministry of the Environment, the CITES Scientific Authority, and others.

1.16.5. Risk determination

Overview of Legal Requirements

With the new rules for movement of logs, payment of the harvesting right fee is required in accordance with a categorisation of species. Previously, Ministerial Resolution No. 0107-2000-AG had been used.

OSINFOR conducts supervision of concession licences, verifying the volumes of timber coming from harvesting areas, the species, and payment of harvesting rights fees.

Forest shipping waybills contain information about the area of origin (forest), owner, shippers, consignee, common name, scientific name, and list of logs. This document is required for shipping, trading and exporting timber.

Description of Risk

The experts interviewed mentioned that there are problems in identifying species of standing trees and logs. Identification of species in the forest is usually not done scientifically (by collection of botanical samples), but rather the traditional names linked to the common names are recorded; it is possible to have more than one taxonomic species with the same common name. This would affect payment of the harvesting right fee if species with different values are confused.

Some experts commented that some species could even be confused with those listed in the CITES. In its report on *Operación Amazonas 2014*, OSINFOR recommended that there should be uniformity of scientific names for species. Similarly, the experts expressed the opinion that forest shipping waybills serve as documentary support of the volumes of timber shipped, but that it is not possible to ensure that the products come from the place indicated in the waybill because the administration has not carried out field verification prior to approving the management documents. To these concerns should be added the levels of corruption perceived in the public sector (as published by Transparency International), which increase the risk of various species being traded under the same name, including CITES species.

Risk Conclusion

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

1.16.6. Risk designation and specification

Specified risk.

1.16.7. Control measures and verifiers

- Shipping and sales documents should meet the requirements of national laws and international agreements. This should be verified on field inspections.
- Concession licences should be verified in the SIGO system supervised by OSINFOR.

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

- List of threatened species (*Listado de especies amenazadas*). Available at: [http://www.osinfor.gob.pe/portal/data/articulo/D.S.-N-043-2006-AG --Aprueban-Categorizacion-de-Especies-Amenazadas-de-Flora-Silvestre.pdf](http://www.osinfor.gob.pe/portal/data/articulo/D.S.-N-043-2006-AG--Aprueban-Categorizacion-de-Especies-Amenazadas-de-Flora-Silvestre.pdf)
- Executive Resolution No. 458-2002-INRENA. Minimum cutting diameters (*Diámetros mínimos de corta*). Available at: <http://www.legislacionforestal.org/wp-content/uploads/2012/07/rj-458-2002-INRENA.pdf>
- Ministerial Resolution No. 0107-2000-AG. (2 March 2000). Natural-State Categories and Value (*Categorías y Valor al estado natural*). Available at: <http://legislacionforestal.org/archivos/varios/2012/07/R.M.-N%C2%BA-107-2000-AG-Categ.-de-esp.-maderab.-2.pdf>
- Final Amended Text of the Income Law (*Texto Único Ordenado de la Ley de Impuesto a la Renta*) Supreme Decree No. 179-2004-EF. Concerning entities subject to income tax withholding, see Chapter X, Article 71. Concerning the documents that must be submitted annually by all companies, see Chapter XI, Arts. 79 to 89. Available at: <http://www.sunat.gob.pe/legislacion/renta/ley/fdetalle.htm>
- Forest Shipping Waybill (*Guía de transporte Forestal*). Executive Directorate Resolution No. 122-2015-SERFOR-DE, dated 6 October 2015. Available at: <http://www.serfor.gob.pe/wp-content/uploads/CUADERNILLO-GUIA-DE-TRANSPORTE-FORESTAL-Y-DE-FAUNA-SILVESTRE.pdf>

1.17.2. Legal authority

- The National Forest and Wildlife Service (*Servicio Nacional Forestal y de Fauna Silvestre* – SERFOR) has competency in the approval of management plans, and inspections of issuance of forest shipping waybills.
- The Forest Resource and Wildlife Supervisory Agency (*Organismo de Supervisión de los Recursos Forestales y de Fauna Silvestre*) has competencies in supervision of

implementation of management plans, payments of harvesting right fees and transportation of timber.

- The National Tax Administration Superintendency (*Superintendencia Nacional de Administración Tributaria* – SUNAT) Has competencies in implementation of tax and customs regulations for trading in timber.

1.17.3. Legally required documents or records

- Management plans
- Management statements
- Forest operations book
- Forest shipping waybills
- Invoices issued for the volumes shown in the forest shipping waybills
- Invoices for payment of the harvesting right fee for the volumes shipped.

1.17.4. Sources of information

Government sources

- Results of supervisions and audits made by OSINFOR within the framework of the International Operation “Operation Amazon 2014” (*Resultados de las supervisiones y fiscalizaciones efectuadas por el OSINFOR en el marco del Operativo Internacional “Operación Amazonas 2014”*). Available at: <http://www.osinfor.gob.pe/osinfor/publicaciones/resultados-de-las-supervisiones-efectuadas-por-el-osinfor-en-el-marco-de-la-operacion-amazonas-2014/> [Accessed 3 January 2017]

Non-Government sources

- Rodríguez, A. (2015). *Análisis y propuesta de plan estratégico para el desarrollo de la competitividad en la cadena de valor de la madera en la región Ucayali* (Analysis and a proposed strategic plan for developing competitiveness in the timber value chain in the Ucayali Region). GIZ Pro Ambiente – Regional Government of Ucayali (*Gobierno Regional de Ucayali*) 127 pp. (Unpublished document).
- Pérez, R. (2014). *Estructura de las redes de corrupción en el proceso de extracción y comercialización de madera extraída de concesiones forestales otorgadas en la provincia de Coronel Portillo, región Ucayali, entre los años 2008 y 2011* (Structure of corruption networks in the process of logging and trading timber harvested in forest concessions granted in Coronel Portillo Province, Ucayali Region, between 2008 and 2011). [online]. Published Thesis. Available at: http://tesis.pucp.edu.pe/repositorio/bitstream/handle/123456789/5633/PEREZ_VILLACORTA_ROSARIO_DEL_PILAR_ESTRUCTURA.pdf?sequence=1 [Accessed 30 December 2016]
- Mejía, E, W. Cano, W. De Jong, P. Pacheco, S. Tapia & J. Morocho. (2015). *Actores, aprovechamiento de madera y mercados en la Amazonía peruana* (Stakeholders, timber harvesting and market in Peruvian Amazonia). [online]. CIFOR. Available at:

http://www.cifor.org/publications/pdf_files/OccPapers/OP-145.pdf [Accessed 30 December 2016]

Interviews with experts

Conversations with various experts between March and May 2016 helped the authors of this report to better understand the applicable legislation, the risks associated with implementation in the field, including aspects related to trade and transport. Regarding this sub-category, representatives of various organisations and social groups were interviewed, including: forest managers, independent legal and forest consultants, forest entrepreneurs, public officials from the National Forest and Wildlife Service, the Forest Resources and Wildlife Supervisory Agency, the Ministry of the Environment, the CITES Scientific Authority, and others.

1.17.5. Risk determination

Overview of Legal Requirements

Presentation of the Forest Shipping Waybill and the invoice for payment of the harvesting right fee is mandatory for trade and transport. This is necessary for all concession licences. The information in the forest shipping waybills is reviewed by the regional forest and wildlife authority at regional forest control posts. Products from plantations are transported with remittance tickets.

Description of Risk

In the interviews, experts commented that although the shipping waybill forms identify the location of the concession licence, most decisions are made without prior field inspections, so the forests' potential has not been verified.

Reports published by OSINFOR indicate that it supervises concession licence management reports and the report of waybills issued at the end of the harvesting period. This information, compared with what has been found in the field, reflects that certain trees are sometimes not present as indicated in the management documents. On this basis, the experts interviewed considered there to be a high risk of transport and trade with shipping waybills that do not indicate the true origin of the products in question.

Risk Conclusion

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

1.17.6. Risk designation and specification

Specified risk

1.17.7. Control measures and verifiers

- Shipping and sales documents shall meet the national requirements, and those of international agreements. This can be verified during field inspections.

- The status of harvesting versus what is shipped should be verified in the field in order to validate the process of transporting forest products. This information must be consistent with what is recorded in the harvester's official forest harvesting and shipping reports.
- There should also be verification in the SIGO system of concession licences supervised by OSINFOR.

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

- Final Amended Text of the Income Tax Law (*Texto Único Ordenado de la Ley de Impuesto a la Renta*), Supreme decree No. 179-2004-EF. Available at: <http://www.sunat.gob.pe/legislacion/renta/ley/fdetalle.htm>
- General Customs Law (*Ley General de Aduanas*) and its regulations. Available at: <http://www.sunat.gob.pe/legislacion/procedim/normasadua/gja-03.htm>; <http://www.sunat.gob.pe/legislacion/procedim/normasadua/normasociada/gja-00.04.htm>
- Customs Tariffs (*Arancel de Aduanas*). Available at: <http://www.sunat.gob.pe/legislacion/procedim/normasadua/gja-04/ctrlCambios/anexos/DS.238-2011-EF.pdf>
- Superintendency Resolution (*Resolución de Superintendencia*) No. 175-2013/SUNAT. Available at: <http://www.sunat.gob.pe/legislacion/superin/2013/175-2013.pdf>

1.18.2. Legal authority

- Ministry of the Economy and Finance (*Ministerio de Economía y Finanzas*) has competency in establishing rules applicable to taxes on imports and exports.
- National Superintendency of Customs and Tax Administration (*Superintendencia Nacional de Aduanas y Administración Tributaria – SUNAT*) has competency in performing actions to verify compliance with the internal and external tax regulations.

1.18.3. Legally required documents or records

- Annual Income Tax Declarations

- General balance sheets
- Export/import documents: Certificate of Origin, Phytosanitary Certificate from SENASA, CITES certificate (in the case of mahogany and cedar), bill of lading (BL), packing list, invoice, and detailed order from the customer

1.18.4. Sources of information

Non-Government sources

- kpmg.com (2014). *Transfer Prices in Peru*. [online]. KPMG accounting firm. Available at: <https://www.kpmg.com/PE/es/IssuesAndInsights/sala-de-prensa/articulos-opinion/Documents/06-10-2014-PTenPeru.pdf> [Accessed 3 January 2017]

Interviews with experts

Conversations with various experts between March and May 2016 helped the authors of this report to better understand the applicable legislation, the risks associated with implementation in the field, including aspects related to offshore trading and transfer prices. Regarding this sub-category, representatives of various organisations and social groups were interviewed, including: forest managers, independent legal and forest consultants, forest entrepreneurs, public officials from the National Forest and Wildlife Service, the Forest Resources and Wildlife Supervisory Agency, the Ministry of the Environment, the CITES Scientific Authority, and others.

1.18.5. Risk determination

Overview of Legal Requirements

In addition to the yearly income declarations that must be submitted by all companies, they must also declare the types of tax withholding that have been applied during the management year. The General Customs Law applies to all offshore trading, and establishes the specific tariffs for each product. SUNAT performs inspections as a routine (or randomly) of any export/import file, which include verification that prices lie within similar ranges for products and destinations. In cases in which there is evidence that the prices are different (higher or lower) than those that are normally found in similar files, a detailed inspection is made of the exporting company.

Depending on the annual exportation amounts, companies may be obliged to make a transfer price study.

Description of Risk

The experts interviewed mentioned that some companies have been exporting more than a million US dollars worth of forest products per year, but that the facilities and suppliers have little in the way of infrastructure, even to the point of not reporting having a payroll for employees. For the experts, this is an indication that the volume of timber trade does not, on its own, indicate the profit made for the company nor for the supply chain. There is a risk that export documents include different prices than the “real price of the timber” received through physical persons, of different bank accounts. Also, different Peruvian enterprises are included on the “Panama papers”.

Risk Conclusion

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

1.18.6. Risk designation and specification

Specified risk

1.18.7. Control measures and verifiers

- Shipping and sales documents should meet the requirements of national laws and international agreements. This should be verified during field inspections.
- It should be verified that the company has complied with submission of an income declaration and tax withholding declaration (if that is the case).
- All export documents are in place, including: Certificate of Origin, Phytosanitary Certificate from SENASA, CITES Certificate (in the case of mahogany and cedar), BL (bill of lading), packing lists.

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 Customs Law (*Ley General de Aduanas*) and its regulations. Available at: <http://www.sunat.gob.pe/legislacion/procedim/normasadua/gja-03.htm>; <http://www.sunat.gob.pe/legislacion/procedim/normasadua/normasociada/gja-00.04.htm>
- Customs Tariffs (*Arancel de Aduanas*). Available at: <http://www.sunat.gob.pe/legislacion/procedim/normasadua/gja-04/ctrlCambios/anexos/DS.238-2011-EF.pdf>

1.19.2. Legal authority

- The National Superintendency of Customs and Tax Administration (*Superintendencia Nacional de Aduanas y Administración Tributaria* – SUNAT) has competencies in implementation of tax and customs regulations

1.19.3. Legally required documents or records

- Annual Income Tax Declarations
- General balance sheets
- Export/import documents: Certificate of Origin, Phytosanitary Certificate from SENASA, CITES Certificate (in the case of mahogany and cedar), bill of lading (BL), packing list, invoice, and detailed order from the customer. In the case of an importation, Customs Merchandise Declaration.

1.19.4. Sources of information

Government sources

- Results of Supervision and Audits by OSINFOR within the framework of the International Operation "Operación Amazonas 2014" (*Resultados de las supervisiones y fiscalizaciones efectuadas por el OSINFOR en el marco del Operativo Internacional "Operación Amazonas 2014"*). Available at: http://osinfor.gob.pe/portal/data/destacado/adjunto/contribucion_osinfor_operacion_amazonas_2014.pdf

Interviews with experts

Conversations with various experts between March and May 2016 helped the authors of this report to better understand the applicable legislation, the risks associated with implementation in the field, including aspects related to customs regulations. Regarding this sub-category, representatives of various organisations and social groups were interviewed, including: forest managers, independent legal and forest consultants, forest entrepreneurs, public officials from the National Forest and Wildlife Service, the Forest Resources and Wildlife Supervisory Agency, the Ministry of the Environment, the CITES Scientific Authority, and others.

1.19.5. Risk determination

Overview of Legal Requirements

Customs regulations offer facilities to individuals or legal persons who wish to export. The minimum requirement for Single Registration as an RUC Taxpayer is obtained by presentation of a National Identity Document (DNI, Spanish acronym). SUNAT, with other organisations, has created the Easy Export (*Exporta Fácil*) Initiative that provides support in initiating an export valued at an amount of no more than US\$5,000.

Description of Risk

The experts interviewed mentioned that some companies have been exporting more than a million US dollars worth of forest products per year but that the facilities and suppliers have little in the way of infrastructure, even to the point of not reporting having a payroll for employees. For the experts, this is an indication that the volume of timber trade does not, on its own, reflect any profit made for the company nor for the supply chain. The facilities that companies have for exporting do not always benefit the production chain.

Not all containers need to be inspected (Inspection is done based on sampling by the customs), but specially flooring/decking is not required to go through visual inspection. Therefore, the risk is that the exports is done through flooring/decking even if the material is sawnwood, so as to avoid inspection. Smuggling is a general risk also for shipmnets not declared as flooring/decking.

Furthermore there is a general risk that false data is included in custom doucments:

- Use old transport documents (from forest) to export newly harvested wood
- Reduce or include less value of the price of the commodity

False or no declaration of scientific name of the species

Risk Conclusion

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

1.19.6. Risk designation and specification

Specified risk

1.19.7. Control measures and verifiers

- Shipping and sales documents should meet the requirements of national law and international agreements. This should be verified during the field inspection.
- It should be verified that the company has complied with submission of an income declaration and tax withholding declaration (if such is the case).

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

- Supreme Decree 01-2008-MINAM. Implementation of the CITES Convention in Peru (*Implementación del Convenio CITES en Perú*). Available at: http://www.minam.gob.pe/wp-content/uploads/2013/09/ds_001-2008-minam.pdf
- Supreme Decree 01-2008-MINAM (16 July 2008). CITES Scientific Authority. Available at: http://www.minam.gob.pe/wp-content/uploads/2013/09/ds_001-2008-minam.pdf
- Procedures for export permits (*Procedimientos para los permisos de exportación*). Available at: http://www.minam.gob.pe/wp-content/uploads/2013/09/ds_001-2008-minam.pdf
- Directive for granting a CITES export permit for forest timber species for commercial purposes (*Directiva para el otorgamiento de permiso de exportación CITES para especies forestales maderables con fines comerciales*). Directive No. 27-2006-INRENA-IFFS. Available at: [http://www.serfor.gob.pe/portal/pdf/normatividad/2006/resojefa/Dir.%20N%C2%BA%202027-2006-INRENA-IFFS%20\(Otorg.%20Permisos%20Exportaci%C3%B3n%20%20CITES\).pdf](http://www.serfor.gob.pe/portal/pdf/normatividad/2006/resojefa/Dir.%20N%C2%BA%202027-2006-INRENA-IFFS%20(Otorg.%20Permisos%20Exportaci%C3%B3n%20%20CITES).pdf)

1.20.2. Legal authority

- The Ministry of the Environment (*Ministerio del Ambiente*) has competency in scientific assessment of the status of species.
- The Ministry of Agriculture (*Ministerio de Agricultura*) has competency in control mechanisms for trade in species included in the conservation appendices and establishment of conservation policies.

- The Regional Environmental Authority (*Autoridad Regional Ambiental*) has competencies in approval of management plans prior to CITES inspection, when appropriate.
- The Forest Resources and Wildlife Supervisory Agency (*Organismo de Supervisión de los Recursos Forestales y de Fauna Silvestre* – OSINFOR) has competencies in supervision of concession licences.
- The National Forest and Wildlife Service (*Servicio Nacional Forestal y de Fauna Silvestre* – SERFOR), National Forest and Wildlife Authority (*Autoridad Nacional Forestal y de Fauna Silvestre*), and CITES Administrative Authority (*Autoridad Administrativa CITES*) Supreme Decree No. 030-2005-AG establish the technical, regulatory and administrative conditions for management and plans and guidelines for managing the resources.

1.20.3. Legally required documents or records

- CITES permits

1.20.4. Sources of information

Government sources

- SERFOR (n.d.). *Permisos de Exportación CITES, Caoba* (CITES export permits Mahogany). [online]. Servicio Nacional Forestal y de Fauna Silvestre (SERFOR). Available at: <http://app.serfor.gob.pe/Default.aspx?p1=CAOBA> [Accessed 3 January 2017]
- SERFOR (n.d.). *Permisos de Exportación CITES, Cedro* (CITES export permits Cedar). [online]. Servicio Nacional Forestal y de Fauna Silvestre (SERFOR). Available at: <http://app.serfor.gob.pe/Default.aspx?p1=CEDRO>

Non-Government sources

- CITES (2013). *The Convention on International Trade in Endangered Species of Wild Fauna and Flora also includes a list of species with trading restrictions*. [online]. Available at: <https://cites.org/sites/default/files/esp/app/2013/S-Appendices-2013-06-12.pdf> [Accessed 3 January 2017]
- Pérez, R. (2014). *Estructura de las redes de corrupción en el proceso de extracción y comercialización de madera extraída de concesiones forestales otorgadas en la provincia de Coronel Portillo, región Ucayali, entre los años 2008 y 2011* (Structure of corruption networks in the process of logging and trading timber harvested in forest concessions granted in Coronel Portillo Province, Ucayali Region, between 2008 and 2011). [online]. Published Thesis. Available at: http://tesis.pucp.edu.pe/repositorio/bitstream/handle/123456789/5633/PEREZ_VILLACORTA_ROSARIO_DEL_PILAR_ESTRUCTURA.pdf?sequence=1 [Accessed 30 December 2016]
- Mejía, E, W. Cano, W. De Jong, P. Pacheco, S. Tapia & J. Morocho. (2015). *Actores, aprovechamiento de madera y mercados en la Amazonía peruana* (Stakeholders, timber harvesting and market in Peruvian Amazonia). [online]. CIFOR. Available at:

http://www.cifor.org/publications/pdf_files/OccPapers/OP-145.pdf [Accessed 30 December 2016]

- Transparency International (2015). Corruption Perception Index for Peru, 2015. Available at: <https://www.transparency.org/country#PER> [Accessed 29 December 2016]
- Results of supervisions and audits made by OSINFOR within the framework of the International Operation "Operation Amazon 2014" (*Resultados de las supervisiones y fiscalizaciones efectuadas por el OSINFOR en el marco del Operativo Internacional "Operación Amazonas 2014"*). Available at: <http://www.osinfor.gob.pe/osinfor/publicaciones/resultados-de-las-supervisiones-efectuadas-por-el-osinfor-en-el-marco-de-la-operacion-amazonas-2014/> [Accessed 3 January 2017]

1.20.5. Risk determination

Overview of Legal Requirements

The State recognises and adheres to implementation of the CITES Convention through its scientific and administrative authorities. All concession licences require field verification when approval is requested for harvesting any CITES-listed species.

Directives have been issued for granting export permits. The requirements are: Application, authorisation of the processing plant, original forest shipping waybills, invoice for payment of the harvesting right fee, invoice for the product, certificate of origin, packing list, and payment of an application fee.

Description of Risk

Prior inspection of management documents applying for harvesting a CITES-listed species ensures that the trees exist in the places indicated, as a condition for approval. OSINFOR supervises to ensure that the volumes shipped are consistent with the application and what is harvested in the field.

In the case of CITES-protected species, visual inspections are mandatory for management documents to be approved; therefore, harvesting is only authorised for trees that are located on the land, with application of the yield percentage. Between 2008 and 2016, CITES permits have been reduced to 8.67% of their 2008 levels in the case of mahogany and 2.54% in the case of cedar

(<http://app.serfor.gob.pe/CitesList.aspx?id=2015&p1=CAOBA&p2=Y>;
<http://app.serfor.gob.pe/CitesList.aspx?id=2015&p1=CEDRO&p2=Y>).

However, OSINFOR's report of supervision in 2014 shows that cedar (*Cedrela odorata*) is one of the species affected by harvesting of trees that do not exist in the supervised concession licences and volumes that are transported with no evidence of their origin.

According to Mejía, E, et al. (2014), in order to avoid payment of bribes, small loggers and producers prefer to move their cargo during the pre-dawn hours or at night. Extortion networks are well organised among the stakeholders, who are located in the principal ports and on the highways. The members of these networks are in constant communication by cellular phone. The most notorious cases reported by the local press are related to timber on the CITES list Appendix II: mahogany and cedar.

Thus, the risk is mainly related to smuggling of CITES species and not mis-use of CITES permits.

Risk Conclusion

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

1.20.6. Risk designation and specification

Specified 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).
- Shipping and sales documents should meet the requirements of national law and international agreements. This should be verified during the field inspection.

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 Peru 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:

- a. **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.
- b. **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.
- c. **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.
- d. **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.
- e. **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.
- f. **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 PERU						
Forest type	Region/Area	Legal Land Classification	Ownership	Management regime	License / Permit Type	Description of source type
Natural forest	Lowland forests, Highland forests. Mountains and Coast	Permanent production forest	Public/forest concession	Private	Forest concession contracts for purposes of timber production with a duration of 40 years, renewable.	Timber from publicly owned natural production forests,
		Local forests	Public	The local government in whose jurisdiction the local forest is established is responsible for its management.	Authorisation of harvesting in local forests. Evaluation criteria based on the area's free availability (with no previous ownership); its adjacency to the applicant community; justification for the local forest; list of the benefited population; and maps.	Timber from publicly owned, natural local forests, managed by the local government.
		Forest in reserve	Public		<u>NA</u>	No Source. Timber harvesting is prohibited, as well as any other type of product or service.

		Residual or remnant forests	Public	Local communities	Harvesting requires a management statement. The regional forest and wildlife authority grants access for timber harvesting for non-commercial, subsistence purposes, by transfer of rights to populations adjacent to the residual forest for up to 40 years;	No source of commercial timber Timber from publicly owned residual or remnant forests, where the timber harvesting has taken place for non-commercial subsistence purposes.
		Protective forests	Public		<u>NA</u> Concessions may be granted for harvesting and ecotourism and for harvesting non-timber resources.	No source of commercial timber. Timber harvesting is prohibited; non-timber services or products may be harvested.
		Production forests on indigenous community lands	Community	Indigenous communities	Harvesting permit in indigenous community forests.	Timber from community owned natural forests.
		Forests on private landholdings	Private	Private	<u>License/Permit type:</u> Authorisation of harvesting in forests on private landholdings.	Timber from privately owned natural forests.

Plantation forest	Lowland forests, Highland forests. Mountains and Coast	Planted forest	Private	Private	<u>No permit required</u>	Timber from privately owned plantations of native and exotic species.
			State	Private	Forest plantation concession contracts are established in areas of low quality natural forests where primary or secondary forests are less than 30% of the area. The concession has a duration of 50 years, renewable.	Timber from publicly owned plantations of native and exotic species. Managed by private
		Agroforest systems	Private	Private	Contract for transfer of rights for agroforest systems.	Timber from privately owned agroforest systems with native and exotic species.
			Public	A contract for transfer of rights is established with the regional forest and wildlife authority in a natural forest in reserve with residual or remnant, non-productive This category has not yet been granted.	contract for transfer of rights	Timber from publicly owned agroforest systems with native and exotic species.



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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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