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Was it produced legally?

Part 2: Implementing the legality requirement in the EU Deforestation Regulation

ClientEarth

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Part 2

Due diligence on legal compliance – general considerations and producer country case studies

This is Part 2 of a larger briefing published by ClientEarth in April 2025.[1]

This part provides commentary on common considerations for approaching due diligence on the legality requirement under the EU Deforestation Regulation ("EUDR") that apply across producing countries in and outside the EU. It then provides country-specific case studies examining the 'relevant local laws' that would likely fall within the scope of the legality requirement for products produced in Brazil, Côte d'Ivoire, Ghana and Indonesia. These case studies also include analysis of levels of law enforcement, implementation and compliance – as well as key illegality risks – in the cocoa, cattle, palm oil and soy sectors.

Part 1 provides an explanation of the legality requirement in the EUDR and principles for how it should be interpreted. It offers an analysis of the types of laws and activities that fall within the scope of the legality requirement, as well as how operators and competent authorities should approach implementing and enforcing the requirement respectively.[2]

1 Available on the ClientEarth website.
2 This analysis has been informed by an independent expert legal opinion from Sir Nicholas Forwood K.C., who served for 15 years as a Judge of the General Court of the Court of Justice of the European Union, including two terms as President of Chamber. This opinion is available on the ClientEarth website at https://www.clientearth.org/latest/documents/expert-legal-opinion-on-the-eudr-legality-requirement/.

Executive summary

The EU Deforestation Regulation ("**EUDR**") requires that the commodities and products to which it applies have been produced in accordance with local laws – known as the '**legality requirement**'. EU companies must conduct due diligence on their supply chains to ensure that their products satisfy the legality requirement.

Understanding the legality requirement:

- The scope of the legality requirement is not entirely clear and requires interpretation to clarify its meaning. Interpreted according to the EUDR's objects and purpose, the legality requirement should be seen as including all laws applicable in the country of production that affect the legal status of activities undertaken to produce the relevant commodities and products.
- **This includes pre-production and post-production activities** necessary for commodity production and the commercialisation and trade of the resulting products. It also includes the **direct and indirect effects** of those activities on the relevant "plot of land" or "establishment" **and the surrounding "area of production" – the area directly or indirectly affected by the production activities**.
- The local laws that are included in the legality requirement will vary from jurisdiction to jurisdiction. However, those laws **must either relate in some way to the topics listed in the EUDR as being relevant or must contribute to the Regulation's objectives or purpose**.

Contextualising the legality requirement for each producer country:

- Understanding which laws fall within the scope of the legality requirement is fundamental to a company's ability to comply with the EUDR's due diligence procedure. This is necessary for assessing any risks that relevant products do not satisfy the legality requirement. It will be impossible to complete the due diligence process without first identifying the relevant laws applicable in the area of production and understanding how they may affect the legal status of production activities.
- Each producer country will have different laws and legal institutions. While there may be similarities across legal systems and commodity sectors, due diligence investigations will need to consider local political, legal, cultural and sectoral dynamics. Understanding these local dynamics will help determine the level of diligence that is 'due' in a particular case. This briefing explores the key legal and sectoral considerations in Brazil, Côte d'Ivoire, Ghana and Indonesia for cattle, cocoa, palm oil and soy production.

Due diligence on legal compliance:

- There are likely to be challenges to gathering the necessary information and investigating the legal compliance of specific production activities in most countries, both inside and outside the EU. **Companies should therefore anticipate common challenges and design their due diligence systems to overcome them**. Adapting due diligence procedures to overcome any practical challenges to investigating legal compliance as well as customising investigations to address contextual and supply chain-specific risk factors is necessary to complete the due diligence process.
- In addition to official sources of information, it will usually be necessary to consult with local legal experts and non-governmental stakeholders to identify the relevant local laws and to understand the 'reality on the ground' regarding their implementation and enforcement. **This should be regarded as standard practice for companies completing due diligence under the EUDR**.
- Due diligence on specific supply chains should be tailored to investigate whether general risks of legal non-compliance apply to specific production activities. **Understanding the dynamics of commodity production in the relevant jurisdiction will be necessary to verify information that gives an appearance of legal compliance**. Official documentation and third-party certificates should not simply be taken at face value – information must be verified and supported by evidence.

Recommendations

Several key recommendations for approaching due diligence when assessing commodity production activities against the EUDR legality requirement can be drawn from the research and analysis in this briefing.

- Invest in a comprehensive, independent and authoritative analysis of the applicable laws in the country of origin and how they apply to commodity production activities.
- Catalogue contextual information regarding levels of legal implementation, compliance and law enforcement, as well as trends in non-compliance and the reasons behind them.
- Consult local experts on both points above.
- Investigate the current and *historical* circumstances of commodity production activities, including advice from non-government local stakeholders.
- Do not rely on official records or third-party certification alone – consult a range of local stakeholders, especially where contextual information indicates general risks of legal non-compliance within the sector or raises concerns about the reliability of official data and records.
- Speak to locals: consult local community and civil society stakeholders (such as labour unions, workers' associations, community organisations and NGOs) to verify the reality 'on the ground', including whether any sectoral risks apply to the specific supply chain and whether local rights holders are being unlawfully impacted.
- Competent authorities should require companies to demonstrate that they have consulted appropriate experts and a variety of local stakeholders as described above to identify the full spectrum of applicable laws and their implementation – in general and in specific production areas.
- Competent authorities should require companies to convince them, by explaining the company's assessment of non-compliance risks, that the information they gathered is reliable and adequately conclusive that there is no reason to be concerned that their relevant products were not produced in compliance with all applicable legal requirements.

Background

Adopted on 31 May 2023, the EUDR aims to promote the use of deforestation-free products to reduce the EU's impact on the world's forests, thereby reducing the EU's contribution to global climate change and biodiversity loss.

The commodities and products covered by the law are: cattle, cocoa, coffee, oil palm, soy, rubber and wood – and specific products listed in Annex I of the EUDR that "contain, have been fed with or have been made using" these commodities – defined as "**relevant commodities**" and "**relevant products**" respectively.

It establishes two fundamental requirements that relevant commodities and relevant products must satisfy to be imported into, traded in, or exported from the EU:

- They must be "**deforestation-free**"; and
- They must have been **produced legally**.

To ensure these requirements are respected, the EUDR requires EU companies who import, trade and export relevant products to complete a mandatory "due diligence" process on their supply chains.

At the core of this process are requirements to:

- **Identify** the area where the product originated
- **Check** the land was not deforested after 2020; and
- **Ensure** the production of the product was conducted legally**.**

This "due diligence" process – and the information EU companies rely on to complete it – will be the primary mechanism for demonstrating, checking and verifying compliance with the law's requirements.

These new rules are a significant evolution of an existing EU law which prohibits trade in illegal timber – the EU Timber Regulation ("**EUTR**") – which requires timber importers to trace supply chains to the point of origin and check the legal compliance of the timber harvesting activities.

In this regard, the EUDR's supply chain traceability and legal compliance requirements are not new. However, they have been extended to agricultural commodities and products derived from them.

1. Common legality risks across producing countries

While this part focuses on examples of "relevant laws" for commodity production in four key producer countries, many of the considerations are also relevant to other countries.

It provides:

- a summary of common legality risks and challenges to completing adequate due diligence on legal compliance;
- a description of the legal framework and key laws relevant to the production of relevant products in Brazil, Côte d'Ivoire, Ghana and Indonesia; and
- an overview of challenges in each country relevant to investigating and assessing risks of legal non-compliance.

The broader literature on sustainability and legal risks in the agriculture and forestry sectors indicates there are common issues to be aware of, regardless of the producing country – and similar challenges for completing the supply chain due diligence under the EUDR.

Palm oil mill in Sumatra, Indonesia

1.1 Gaps in land governance, Indigenous land rights and land conflicts

Rights to access and to use land are fundamental to agricultural and forestry production, for both the operation of individual farms and for land-use planning.

Land use and access rights are also fundamental to the identity, wellbeing and survival of Indigenous Peoples and local communities in rural areas and forest landscapes.[3]

However, the rules governing land ownership, use and access are often complex. They may be:

a) Regulated by laws aimed at different objectives or sectors;

b) Adopted and implemented by different levels of government or different government agencies;

c) Inconsistent in their content or administration; or

d) Derived from legal institutions that treat land differently. For example, tenurial systems which typically treat land as an asset that can be owned versus customary legal systems in which the relationship to land is more nuanced. Official land registries may therefore be incomplete, outdated, or simply ignore the existence of local communities' land rights.

Conversely, procedural requirements for the formal recognition of land rights and their practical implications – for example the need for official government documents, payment of registration fees, travel to land registry offices in regional capitals – may prejudice or prevent marginalised groups from receiving formal recognition of their land rights. Registration procedures may be unclear, unknown, too expensive or simply unnecessary in the normal life of local landholders. These dynamics often indicate high potential for irregularities in land administration and higher risks of conflicting land rights claims in the context of commercial land-based activities.[4]

The absence, inadequacy or non-application of laws and procedures for the recognition of customary land tenure and forest resource rights of local communities and Indigenous Peoples presents a similar challenge. In many countries with Indigenous Peoples, while the constitution may recognise their existence and territorial rights, there may be an absence of laws to implement that recognition through accessible procedures to recognise, protect and assert those rights.

The inconsistency between formal land administration and land-use rights observed and practiced at the local level, particularly in rural and remote areas, creates significant potential for land conflicts between commercial and community land users.[5]

1.2 Weak law enforcement, impunity for non-compliance and corruption

In many countries, including in the European Union, regulatory agencies responsible for the implementation and enforcement of environmental and sectoral laws lack the budgets and resources required to properly perform their functions.

3 International Land Coalition (2025), 'Advancing Indigenous Peoples' Land Rights Recognition through Evidence-based Advocacy'. Available at: https://www.landcoalition.org/en/the-solutions/indigenous-peoples/advancing-indigenous-peoples-land-rights-recognition-through-evidence-based-advocacy/.

4 For example, in a 2014 study by the World Bank and UNCTAD analysing 39 large-scale agri-business investments, land tenure was identified as the most common cause of grievances for affected communities, particularly due to disputes over land over which communities had informal land use rights and to a lack of transparency, especially on conditions and process for land acquisition: WB and UNCTAD (2014), 'The Practice of Responsible Investment in Larger-Scale Agricultural Investments – Implications for Corporate Performance and Impacts on Local Communities', World Bank Report Number 86175-GLB. Available at https://documents1.worldbank.org/curated/en/135321468158370655/pdf/861750RAI0P1253560Box385174B00PUBLIC0.pdf.

5 See, for example, this case study looking at the Cerrado region in Brazil: Global Witness (2021), 'Seeds of conflict: How global commodity traders contribute to human rights abuses in Brazil's soy sector'. Available at: https://www.globalwitness.org/en/campaigns/environmental-activists/global-commodity-traders-are-fuelling-land-conflicts-in-brazils-cerrado/.

For example, this was the conclusion of the ten-year "fitness check" on the implementation of the EU Timber Regulation. It reported that across the EU, Member States had chronically under-resourced their competent authorities.[6]

This is a common trend in the agriculture and forestry sectors worldwide: responsible authorities typically lack the resources to adequately monitor compliance, investigate non-compliance and enforce the law. A common consequence is the development of industry practices to circumvent legal obligations and strategies to evade detection – also observed in relation to the EU Timber Regulation.[7]

In some areas, both in and outside Europe, corruption and bribery may be common or even seen by industry participants as a normal or even necessary part of doing business.

This can range from:

- influencing official decision-makers and regulatory agency staff in the performance of their functions;
- actively co-opting senior decision-making officials though inappropriate gifts, donations or bribes; to
- influencing local community groups or labour associations by compromising or intimidating their members.

In all cases, corruption undermines the capacity of public institutions, law enforcement agencies and decision-makers to perform their official functions in the public interest. The prevalence of corruption tends to be correlated with inadequate law enforcement capacities, low levels of transparency, and systemic disregard for legal requirements. These issues are particularly relevant in land access, concession allocation and business licensing processes, especially in rural and remote areas.

> In extreme cases, corruption can exacerbate environmental crime and human rights violations, impunity for illegal activities, encourage criminal behaviour, and enable the further weakening of law enforcement agencies.[8]

1.3 Informal agricultural activities

The agriculture sector can be relatively informal, particularly where smallholders play an important role in production activities. This means agricultural activity is carried out by self-employed individuals on a small scale that is not subject to (much) government regulation or taxation.

There are fewer official requirements for 'informal' commodity production and therefore fewer formal documentation requirements.

6 European Commission (2021), 'Commission Staff Working Document, Fitness Check on Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market (the EU Timber Regulation) and on Regulation (EC) No 2173/2005 of 20 December 2005 on the establishment of a FLEGT licensing scheme for imports of timber into the European Community (FLEGT Regulation)', SWD(2021) 328 final, at pp. 21 to 23 and 39. Available at: https://environment.ec.europa.eu/system/files/2021-11/SWD_2021_328_1_EN_bilan_qualite_part1_v2.pdf.

7 See for example, EIA (2020), 'The Croatian Connection Exposed – Importing illicit Myanmar teak through Europe's back door'. Available at: https://eia-international.org/wp-content/uploads/The-Croatian-Connection-Exposed-FINAL.pdf.

8 See for example: Transparency International (2025), 'CPI 2024 for the Americas: Corruption fuels environmental crime and impunity across the region'. Available at: https://www.transparency.org/en/news/cpi-2024-americas-corruption-fuels-environmental-crime-impunity-across-region; Transparency International (2025), 'CPI 2024 for Eastern Europe & Central Asia: Vicious cycle of weak democracy and flourishing corruption'. Available at: https://www.transparency.org/en/news/cpi-2024-eastern-europe-central-asia--vicious-cycle-weak-democracy-flourishing-corruption.

In sub-Saharan Africa, for example, it is estimated that the informal rural sector generates up to

90%

of employment opportunities in some countries.

38%

of GDP in others.[9]

The informal rural economy is considered essential to the livelihoods of rural populations, and is largely linked to the natural resource base on which local populations depend for their livelihoods, including agricultural production and the extraction of natural resources such as timber, minerals and non-timber forest products.[10]

Although sometimes equated with illegality and therefore subject to pressure to formalise, informal agricultural activities are often rooted in customary norms of land and resource governance, traditionally practised by local communities, and are often more sustainable than industrial models of agriculture.[11]

> Importantly, the informal nature of the agriculture or forestry sector in a producer country doesn't, in itself, create a significant risk of illegality in the context of the EUDR. This is primarily because there are relatively few laws applicable to informal production activities compared to commercial activities.

There are therefore fewer legal requirements for smallholders to comply with.

For example, it is unlikely there will be official documents confirming the absence of applicable laws, and there may be little evidence available to assess the legal compliance of informal land use rights, as land use arrangements between landowners and farmers are often oral and without accompanying documentation.

However, the absence of documentation is not a sign of illegality *per se* – for example, informal arrangements and verbal agreements may nevertheless be legal – and legally binding – according to statutory or customary laws.

However, the lack of applicable rules and associated absence of formal documentation can create challenges for operators when completing their due diligence. This is because of the EUDR's emphasis on obtaining "adequately conclusive and verifiable information" that the relevant commodities have been produced *in compliance with* applicable laws.

In these situations, information from a variety of sources, including non-government sources, should be given more significance in the risk assessment process. These might include customary authorities, farmer-based organisations and cooperatives and local NGOs, as well as contextual information regarding the general level of legal compliance across the area of production.

9 Xiaoxue Weng. 2015. The rural informal economy: Understanding drivers and livelihood impacts in agriculture, timber and mining. IIED Working Paper. IIED, London.
10 Ibid
11 Ibid

1.4 Ambiguous laws, legal gaps and contradictory information

National and sub-national laws in the EU and in third countries may be incomplete, incoherent or contradictory, and legislative and judicial systems may be slow to address legal gaps and inconsistencies or to adjudicate on cases of non-compliance.

> As such, there may be instances where there is no definitive description of the applicable legal requirements or any available evidence of compliance or non-compliance with them.

In such cases, gathering corroborating information from a wide range of sources will be necessary until, when taken together and assessed as a whole, it provides an "adequately conclusive" picture of the facts.

This is the reality in many producing countries supplying the EU. It is therefore important that companies treat any credible indication of non-compliance with applicable legal requirements as likely non-compliance until compliance can be demonstrated by "adequately conclusive and verifiable information" (as required under Article 9(1)(h)).

In some cases, it may be appropriate to prioritise credible and corroborated information from non-government sources over contradictory information from government sources, including in cases where there are potentially inconsistent provisions under national and/or sub-national law, or where there is no definitive legal decision confirming legal compliance.

Moreover, where information suggests that legal provisions are not being implemented or enforced at the local level, operators should nevertheless check that the requirements in question are complied with, rather than assuming compliance is optional or that the requirements are somehow inapplicable.

This approach is consistent with internationally agreed principles of responsible business conduct and human rights due diligence. They clarify that a state's failure to enforce domestic laws or implement its international human rights obligations does not constitute grounds for a company to violate or fail to respect human rights across its business activities and supply chains.[12]

12 See OECD Guidelines for Multinational Enterprises on Responsible Business Conduct. p. 25. §42. *"A State's failure either to enforce relevant domestic laws, or to implement international human rights obligations or the fact that it may act contrary to such laws or international obligations does not diminish the expectation that enterprises respect human rights".* See also Special Rapporteur on the Rights of Indigenous Peoples, James Anaya. Report to GA, June 2010 (A/HRC/15/37). §45: *"As observed by the Special Representative of the Secretary-General, due diligence is not limited to respect for the domestic regulations of States in which companies operate, which are inadequate in many cases, but should be governed by the international standards that are binding on those States and on the international community as a whole".* See also UN Global compact: The Business reference guide to the UNDRIP. page 7: *"It is important to note that a business' responsibility to respect human rights is a global standard of expected conduct wherever it operates. Such obligation 'exists independently of State's abilities and/or willingness to fulfil their own human rights obligations.. [a]nd it exists over and above compliance with national laws and regulations protecting human rights'. As a result, each business has responsibilities, under national law and in accordance with the international human rights legal framework, which it must observe in relation to any person, whether they are indigenous or not."* See also UN Committee on Economic, Social and Cultural Rights, General comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, p.2. §5: "*under international standards, business entities are expected to respect Covenant rights regardless of whether domestic laws exist or are fully enforced in practice."*

1.5 The lack of centralised and digitised legal databases

Due diligence on compliance with legal requirements involves two fundamental stages:

- identifying the relevant national and sub-national legal requirements; and
- identifying and reviewing reliable information indicative of compliance (or non-compliance) with those legal requirements.

Accessing accurate, up-to-date and complete information for both steps can be challenging because:

- There is rarely a single, comprehensive database of all national and sub-national laws. In many jurisdictions, national laws made by different institutions – for example, statutes adopted by a national parliament and regulations adopted by executive government officials. Sub-national governments typically maintain their own legal databases and may have their own procedures and platforms for publishing and updating legislation. In common law jurisdictions – where law is also made by the courts – third party legal databases summarising and explaining judicial decisions may also need to be consulted.
- National and subnational laws may not be digitised, which means physical access to hard-copy legal libraries or registries may be needed.
- There may be customary systems of law, whether formally recognised by the state or not, in which laws are not formalised in written instruments – or even documented and explained for external audiences.

Aerial view of a log storage yard from authorized logging in an area of the Brazilian Amazon rainforest

These challenges are not insurmountable, however, but may require the consultation of a variety of sources, including those present at the local level.

Once the applicable legal requirements are known, identifying and accessing reliable information to assess the risks of non-compliance with those requirements can also be challenging.

For example:

- public databases of official documentation typically mirror the legal structure under which the documentation requirements exist, meaning that there may be multiple registries that must be consulted in relation to separate legal requirements at the national and sub-national level;
- public databases may not be digitised, may require in-person attendance to view or copy records, may not be accessible online, may require approval to access, or may charge fees for obtaining copies or extracts of records;
- legal requirements may not require or provide formal documentation, with the result that no official records demonstrating legal compliance exist;
- where official records do exist, they tend to provide evidence that a particular legal requirement has been met rather than indicating comprehensive compliance with all applicable legal requirements; and
- official documentation may provide an incomplete picture, indicating compliance with one legal requirement whilst being silent on compliance with requirements equally relevant to the legality of the production activities. It can also be vulnerable to falsification or fraud.

In situations where inadequate official documentation is available, information from a variety of sources including non-government sources such as local media and civil society organisations – and contextual information regarding the general level of legal compliance in the area of production or the relevant sector – may be more significant in the risk assessment process.

Where adequate official documentation is not available to assess compliance with legal requirements, or where there is no third-party information indicative of compliance or non-compliance, **the absence of information should not be misinterpreted as an absence of risk**.

2. Four priority EUDR supply chains

Research has shown that of all the products imported into the EU, soy, palm oil, beef and cocoa are responsible for the most tropical deforestation.[13]

Cocoa imports are reported to represent a growing share of the EU's deforestation footprint, displacing soy and palm oil as the commodity with the largest share of deforestation in some Member States.[14]

Brazil, Côte d'Ivoire, Ghana, and Indonesia are the EU's largest suppliers of soy, cattle, cocoa, and palm oil products. They have complex and distinct legal frameworks but similar patterns of deforestation, agricultural production, and legal compliance challenges regardless of the dominant commodity sector.

For competent authorities to perform their functions under the EUDR, it will be essential they have a sound understanding of the legal requirements, risks of illegality and challenges to investigating and verifying legal compliance in these countries.

Industrial soy harvesting

13 Based on data from 2005-2017: WWF (2021) "Stepping up? The continuing impact of EU consumption on nature worldwide", available at https://wwfeu.awsassets.panda.org/downloads/new_stepping_up___the_continuing_impact_of_eu_consumption_on_nature_worldwide_fullreport.pdf. See also the European Commission's Impact Assessment for the EUDR, which similarly identified palm oil, soy and cocoa as the top-three agricultural products comprising the EU's deforestation footprint: European Commission (2021) "Commission Staff Working Document Impact Assessment SWD(2021) 326 Final", available at https://circabc.europa.eu/ui/group/34861680-e799-4d7c-bbad-da83c45da458/library/de1e09c6-8221-4f59-82b3-a5d6bb1e1f02/details.

14 Titley, M. (2024) 'EU27 countries in the spotlight for deforestation exposure', Trase. Available at: https://doi.org/10.48650/5XRC-VG04.

Case study

3. Brazil: legal framework and key legality risks

Disclaimer: The research on which this case study is based was commissioned by ClientEarth and undertaken by De Jongh Martins Advogados with the support of Imaflora. The research focused on relevant national laws and examined relevant subnational laws in two states: Mato Grosso and Para, where soy and cattle production are prevalent. Conclusions regarding sub-national legal frameworks are drawn from research regarding these sub-national jurisdictions and should not be taken as an extensive or conclusive assessment of relevant sub-national laws or legal requirements across Brazil.

A group of cattle in confinement in Brazil

3.1 Summary of the Brazilian legal framework

- Brazil follows a civil law tradition and has a federal legal framework organised at three levels: federal, state, and municipal.
- Its legal framework is complex and extensive, particularly in terms of the interaction between federal, state and municipal-level law-making.

26
states with,

5,570
municipalities

The **Constitution of the Federative Republic of Brazil of 1988**, known as the "Citizen Constitution", is the foundational legal instrument. It sets out fundamental principles and guidelines of governance aimed at, amongst other things, ensuring the protection and preservation of the environment and the recognition, protection and demarcation of Indigenous lands.

Of particular importance is Article 225, which enshrines the right to a healthy and ecologically-balanced environment as a common good for all people that is essential to maintaining a healthy quality of life. It is a duty of both the government and society to defend and preserve the environment for present and future generations.

Of similar importance is Article 186 which establishes the social function of rural property, thereby linking agricultural and livestock activities to environmental preservation and the public interest.

In environmental matters, federal legislation sets general principles and guidelines, while states and municipalities can complement and expand on national laws according to regional specifics, provided that sub-national laws are not inconsistent with national rules – for example requiring an equivalent or higher level of environmental protection than federal standards.

The most relevant law for soy and cattle production is the **Forest Code** (*Law No. 12.651 of 2012*), which regulates the sustainable use of land and defines requirements for the preservation of legal reserve areas and permanent preservation areas (known as '**APP**').

Also relevant are the **National Environmental Policy** (*Law No. 6.938 of 1981*) and the **Environmental Crimes Law** (*Law No. 9.605 of 1998*), discussed below.

3.2 Key laws relevant to cattle and soy production in Brazil

3.2.1 Land use rights

The Brazilian land tenure system is based on *Law No. 601 of 1850*, known as the "**Land Law**," which vested the State with ownership of all lands that had not already been legitimately granted to individuals during the colonial regime. Since 1988 the 1850 Land Law has been interpreted consistently with the 1988 Citizen Constitution.

It establishes a formal tenure system under which grants from the State are the primary basis of land rights and property ownership in Brazil: every land title must have its origin demonstrated by a legally valid grant from the State. The registration of property interests is carried out by real estate registries, which are responsible for maintaining the historical record of land transfers.

In accordance with this tenure system, additional regulations for the allocation of federal public lands have been adopted, such as:

- *Law No. 6.383 of 1976*, which establishes procedures for the classification of public lands;
- *Decree-Law No. 2.398 of 1987* and *Law No. 9.636 of 1998*, which regulate the disposal of public lands;
- *Law No. 11.952 of 2009*, which simplifies the land regularisation process for small and medium properties in the Legal Amazon;[15]
- *Law No. 13.465 of 2017*, which defines parameters for land regularisation;
- *Decree No. 10.592 of 2020*, which regulates the application of land regularisation procedures, especially for the Legal Amazon and for the regularisation of occupied federal lands; and
- *Law No. 9.985 of 2000* and *Decree No. 4.340 of* 2002 which establish the regulatory regime for conservation areas - also called conservation 'units'.

15 The 'legal Amazon' is a region covering over half of the Brazilian territory, including nine states: Rondônia, Acre, Amazonas, Roraima, Pará, Amapá, Tocantins, Mato Grosso and Maranhão, and 772 municipalities. It covers the entire Amazon biome (in Brazil) and parts of the Cerrado and Pantanal. It is the home of around 25 million people – 12% of Brazil's population, including 77% of its indigenous population. Plenamata; https://plenamata.eco/en/verbete/amazonia-legal.

Land used for agricultural production must have a valid land title, be registered in relevant federal land registries, such as the Land Management System (**SIGEF**) and the Rural Environmental Registry (**CAR**) and be free of fines or encumbrances. The National Institute of Colonization and Agrarian Reform (**INCRA**) and the Brazilian Institute of Environment and Renewable Natural Resources (**IBAMA**) are the main federal agencies responsible for the governance of rural property titles, while state agricultural and environmental secretariats also complement this role at state level.

The SIGEF was established under *Law No. 11.952 of 2009* and is governed by INCRA pursuant to the INCRA *Normative Instruction No. 77 of 2013*. Management of the CAR, created under Article 29 of the Forest Code, is the responsibility of the Ministry of the Environment, in conjunction with states and municipalities.

> Accordingly, due diligence efforts should ensure the accuracy and authenticity of land title records, as inconsistencies or outdated data can lead to significant legal and operational risks.

Fragmented databases and disparities between federal and state systems, such as overlapping or inconsistent records, can make obtaining reliable information about land ownership challenging. This lack of transparency favours the process known as land grabbing,[34] where land is fraudulently appropriated through false documents – a common practice in rural and forest areas, further complicating the verification process.[35]

Protected area in a municipality in the Brazilian state of Mato Grosso, where 82% of agricultural production is for soybeans, corn and cotton, often in rotation

16 Regarding the issue of land grabbing, refer to the material produced by the Amazon Research Institute (IPAM), available at: https://ipam.org.br/wp-content/uploads/2024/03/Amazoniar-Cartilha-Por-uma-Amazonia-livre-de-grilagem-VF-2024-03-05.pdf.

17 Land grabbing can be regarded as a criminal offence under Article 13 of *Law No. 4.947 of 1966*, which prohibits using fraud to obtain public land. Additionally, other criminal offences may be relevant, such as forgery (Articles 297, 298, and 304 of the Penal Code), squatting (Article 161 of the Penal Code), and organised crime (*Law No. 12.850 of 2013*).

Sub-national laws

Regarding state lands, each state has the freedom to create its own regulatory framework for land regularisation. This briefing looks at relevant laws in the states of Pará and Mato Grosso in particular, given the prevalence of soy and cattle farming in these areas.

In Pará, *Law No. 8.878 of 2019* governs rural and non-rural occupations on state public lands and the Land Registration and Regularization System (**Sicarf**) is used by the Pará Land Institute (**Iterpa**) to register state public lands.

In Mato Grosso, *Law No. 3.922 of 1977* establishes the Mato Grosso State Land Code and the INTERGEO, the Geographic Information System of the Mato Grosso Land Institute (**Intermat**), is used to manage spatial data used in the state's cartographic and land policies.

3.2.2 Indigenous Peoples' rights

The main legal basis for the territorial rights of Indigenous Peoples is found in **Articles 231 and 232 of the Federal Constitution**. Article 231 recognises the rights of Indigenous Peoples over the lands they have traditionally occupied, as well as their social organisation, customs, languages, beliefs, and traditions, guarantees the permanent possession of those lands, and prohibits removal of Indigenous Peoples from their lands except in exceptional circumstances.

It is the responsibility of the government to demarcate these territories and ensure the protection of and respect for all the property and natural resources within them. Article 231 clarifies that Indigenous Peoples have rights to the exclusive use of the natural resources in their territories and that those lands and resources may only be occupied, taken or exploited where there is an overriding public interest provided in a supplementary law adopted by the national congress. The administrative procedure to be followed for the demarcation of Indigenous lands is described in *Decree No. 1.775 of 1996*. It provides that non-Indigenous occupants residing in the area under demarcation must be given priority for resettlement (Article 4).

The **Statute of the Indigenous Peoples** (*Law No. 6.001 of 1973*), although pre-dating the 1988 Constitution, has been incorporated into the contemporary constitutional framework and remains applicable where it does not conflict with constitutional provisions. Article 24 of the statute establishes that the rights of Indigenous Peoples include the ownership, use, and enjoyment of natural resources, as well as the economic exploitation of those resources.

> The requirement that non-Indigenous occupants be removed from Indigenous lands reinforces the exclusive rights of Indigenous Peoples to use and occupy their traditional lands.

3.2.3 Human rights and free prior and informed consent (FPIC)

Because agricultural and forestry activities typically take place in rural areas where Indigenous Peoples, traditional groups and local communities reside, and because the use, health and cleanliness of the surrounding environment is often essential to the health, wellbeing, livelihood and way of life of these groups, there are heightened risks that their human rights may be impacted by nearby production operations.

For example, commercial agricultural and forestry activities may impact the rights of such groups to access clean and safe drinking water, to food, to areas used to cultivate food or other important crops, and culturally significant spaces.

These potential human rights impacts should be considered in the due diligence process.

The main Brazilian laws that require respect for the rights of Indigenous Peoples and traditional communities, including their prior consultation on activities that may affect their interests, are **Article 231 of the Federal Constitution**, *Decree No. 5.051 of 2004* and *Decree No. 10.088 of 2009* which implement Brazil's ratification of International Labour Organization *Convention 169 on Indigenous and Tribal Peoples*.

Convention 169 was the first international instrument to recognise the rights of Indigenous and tribal peoples to be consulted in advance about any legislative or administrative measures that could affect their rights or territories. The Convention establishes, in Article 6, that consultation with Indigenous Peoples must be conducted through appropriate procedures, respecting their social organisation and representative institutions, ensuring their participation in decisions on an equal footing with other sectors of society, in good faith, and observing their cultural preferences.

Article 7 points out that priorities regarding economic, social, and cultural development should be defined by the Indigenous Peoples themselves, as well as how the lands they occupy will be used. In the same way as the Brazilian Constitution, Convention 169 also requires the rights of ownership and possession of lands traditionally occupied by Indigenous Peoples to be recognised by States, considering the collective aspects of their relationship with the land, as well as its cultural and spiritual value.

3.2.4 Environmental protection

Regarding the regulation of impacts on the environment, the main federal laws are the **Forest Code** (*Law No. 12.651 of 2012*), the **National Environmental Policy** (*Law No. 6.938 of 1981*), and the **Environmental Crimes Law** (*Law No. 9,605 of 1998*). These laws outline the main environmental protection obligations, parameters that must be evaluated by regulatory agencies and the sanctions that can be applied for non-compliance.

One such sanction is the placement of an administrative embargo on land, which is provided for in the Environmental Crimes Law (Article 72, VII). The purpose of an embargo is to prevent the land from suffering additional environmental damage and to allow the environment to regenerate. Exploiting an embargoed area and selling products derived from it are illegal practices that can be sanctioned. The embargo is applied by regulatory agencies, such as IBAMA and INCRA, through an administrative procedure under the *Decree No. 6.514 of 2008* (Article 108).

Environmental licences

Most importantly, a key requirement of the **Forest Code** is that landowners must obtain authorisation from the relevant environmental agency before clearing new areas. Otherwise, any deforestation without this authorisation is considered illegal under Brazilian law.

Authorisations for land clearing and any activity to use an environmental resource that may pollute the environment or cause environmental degradation, are required and issued under the **National Environmental Policy**. This law establishes the general requirements and guidelines for the licensing procedure, together with the National Environment Council *Resolution No. 237 of 1997*, which establishes procedures and criteria for granting environmental licences. Environmental licensing occurs in three phases, each corresponding to a specific licence: the preliminary, installation and operation licences.

Other specific licences may be required, for example authorisation for vegetation clearance, which are issued by IBAMA in federal areas, state environmental secretariats in state areas, and municipalities in local government areas.

However, there is no centralised database of environmental licences issued by different national or sub-national authorities. Consequently, any due diligence on whether agricultural or forestry activities have been adequately licensed will require consideration of environmental regulations at the federal, state, and municipal levels and additional checks to ensure corresponding licences are in place.

Native vegetation preservation

The Forest Code also mandates the preservation of a percentage of native vegetation on rural properties, known as the Legal Reserve. In certain circumstances, the Code provides a process for landowners in violation of this requirement to offset their non-compliance with areas of native vegetation on other properties.

Therefore, merely identifying the absence of native vegetation on a farm according to Legal Reserve requirements, for example through images or satellite data, does not necessarily imply illegality. However, once again, the lack of publicly available information on offset areas complicates verification of compliance with the legal requirements.

The practice of "green land grabbing" increases challenges to investigating compliance with the legal reserve requirements. Green land grabbing describes the illegal taking of land for the purpose of demonstrating the preservation of a percentage of native vegetation on rural properties as required by the Forest Code, including where native vegetation on one property is used to offset the conversion of native vegetation beyond the legal maximum on another property.[18] Therefore, where offset areas on other properties are used to comply with legal reserve requirements, the legality of the acquisition and ownership of that property should also be checked.

3.2.5 Labour rights and forced labour

Despite a longstanding body of federal labour laws and a national Labour Court enshrined in the Federal Constitution, Brazil still faces significant challenges related to precarious work and conditions analogous to slavery, particularly in the soy and cattle sectors.

For example, in 2021, the Brazilian Institute of Geography and Statistics (IBGE) revealed that:

40%

of employed Brazilians were engaged in informal work.[19]

The Ministry of Labor and Employment (**MTE**) is responsible for monitoring compliance with labour legislation and provides guidance on labour rights. The Labor Prosecutor's Office, in turn, works to eradicate child labour, slave labour, and address all forms of discrimination at work, among other areas.

The MTE defines work conducted in conditions analogous to slavery as "any employment that results in submission to forced tasks, exhausting working hours, restrictions on movement due to debts contracted with employers, or any type of restriction on the right to come and go. This reduces the worker to a state of servitude, denying them their fundamental rights".[20]

The rights of agricultural workers are recognised and guaranteed under *Law No. 5.889 of 1973*, **Consolidation of Labor Laws** (*Decree-Law No. 5.452 of 1943*) and the **Statute of the Child and Adolescent** (*Law No. 8.069 of 1990*), which specifically prohibit the exploitation of child labour, forced labour, and degrading labour, with severe penalties applicable for violations.

18 See for example Global Witness. Seeds of conflict. November 2021. Available at https://www.globalwitness.org/en/campaigns/environmental-activists/global-commodity-traders-are-fuelling-land-conflicts-in-brazils-cerrado/, describing cases of green grabbing in the context of industrial soy production in the state of Bahia (Brazil).
19 Pessini, Maria Helena. Informalidade: analisando a origem do trabalho precarizado. *Politize*, 28 dez. 2022. Available at: https://www.politize.com.br/trabalho-precarizado/.
20 Ministério do Trabalho e Emprego (14 June 2023) Ministério do Trabalho e Emprego lança campanha de combate ao trabalho análogo à escravidão. Available at https://www.gov.br/secom/pt-br/assuntos/noticias/2023/06/ministerio-do-trabalho-e-emprego-lanca-campanha-de-combate-ao-trabalho-analogo-a-escravidao.

Modern slavery is also criminalised under Article 149 of the **Penal Code** and, in addition to criminal penalties, perpetrators may have their land expropriated by the state (Article 243 of the *Federal Constitution*). In other words, the employer loses their right to the land on which people were working in conditions akin to slave labour, which is transferred to the State without compensation.

Regarding the eradication of slave labour, the main inspection body is the MTE, which has Regional Labor Superintendencies and a Mobile Special Inspection Group responsible for operations to rescue enslaved workers. Transparency in disclosing and assessing working conditions is especially important in regions with limited government access or oversight.

One mechanism to combat slave labour is the MTE's publication of a list of employers who have subjected workers to conditions analogous to slavery, known as the **Dirty List of Slave Labor**.[21] The list has existed since 2003, is updated every six months, and is regulated by *Interministerial Ordinance No. 18 of 2024*.

The inclusion of individuals or legal entities in the Register occurs after the completion of an administrative process which assesses infraction notices issued by the MTE during inspections at the location. Updates to the list remain published for a period of two years.

3.2.6 Food production and sanitary requirements

All operations involved in food production, including cattle raising and soy production, are subject to sanitary requirements and require approval from the National Health Surveillance Agency. As with environmental approvals, health secretariats at the state and municipal levels may administer additional requirements and licence schemes.

The granting of sanitary licences is dependent on a range of public health-related conditions, such as the use of authorised pesticides and their proper application in accordance with the **Pesticide Law** (*Law No. 14.785 of 2023*), the hygiene conditions of the farm, and the cultivation of any genetically modified soy being compliant with the **Biosafety Law** (*Law No. 11.105/2005*).

Tractor spraying pesticides on a soybean field in Brazil

21 Available at https://www.gov.br/trabalho-e-emprego/pt-br/assuntos/inspecao-do-trabalho/areas-de-atuacao/combate-ao-trabalho-escravo-e-analogo-ao-de-escravo.

3.3 Key considerations for assessing legal compliance risks

3.3.1 Challenges in identifying relevant national and sub-national laws

Given the absence of a central, organised, searchable legal database, any exploration of Brazilian laws and their applicability and enforcement must be approached incrementally, starting with the Federal Constitution and Federal laws, and working down to state and municipal levels. It is not possible to compile a complete picture of Brazilian national and sub-national laws on a given topic in a single step.

Likewise, the diversity of law enforcement, monitoring or reporting responsibilities across Brazil (as well as the diversity of legal requirements) makes it difficult to systematically monitor legal compliance, especially in regions with weaker government capacities and oversight.

In the cattle and soy sectors, national and sub-national legal requirements are primarily shaped by constitutional principles, which set a common national normative framework and influence the interpretation and enforcement of national and sub-national regulations.

In particular, Articles 186 and 225 of the Federal Constitution, which enshrine the principle of an ecologically-balanced environment and the social function of property, have allowed the development of complimentary legal principles at the national level.

These include the principle of prevention (derived from Article 225, §1, IV), the polluter pays principle (derived from Article 225, §3), joint and several liability for environmental damage (derived from Article 225, §3), and the prohibition of slave labour (derived from Article 186, III), amongst others.

There is no hierarchy among such principles, and their application depends on specific cases. However, every state and municipal law must be consistent with these principles, with the potential that the validity of any inconsistent laws can be questioned before the Constitutional Court.

> Adherence to federal, state, and municipal regulations should therefore not be seen as a mere checklist, but as part of an integrated legal system that seeks to balance environmental conservation with economic activity, as enshrined in the Federal Constitution.

Ensuring conformity with the Brazilian legal framework applicable to agricultural activities therefore demands a focus on:

- transparency, both in terms of potential environmental impacts and legal compliance;
- sustainability, including avoidance of unsustainable impacts and preserving a healthy environment for future generations; and
- the protection of public interests, such as the common good of a healthy environment and the social function of rural land.

3.3.2 Difficulties in law enforcement and monitoring in rural areas

In the livestock and soy sectors in Brazil, the difficulty in monitoring deforestation and illegal activities poses significant risks and allows for the prevalence of illegality in rural areas. Barriers to enforcement, especially in the agricultural frontier where much of the deforestation occurs, complicates compliance monitoring.

Although deforestation can be identified via satellite, budgetary and human resource limitations hinder the effective operation of agencies responsible for on-the-ground monitoring. The imposition of fines and property embargoes often does not stop deforestation due to the state's inability to ensure compliance with these measures.

For example, a 2024 analysis of more than 3,500 lawsuits filed by Brazil's Federal Public Prosecutor's Office between 2017 and 2020 found that only 5% of fines for illegal deforestation had been paid, representing 0.2% of the total amount due in compensation as at December 2023.[22]

The study indicates significant challenges to enforcing penalties for environmental crimes, with the authors of the report concluding that "getting criminals to pay for illegal deforestation in the Amazon…is one of the biggest challenges for environmental justice in Brazil."[23]

Inadequate traceability systems further increase the likelihood of illegal activities going undetected, particularly in long, complex supply chains involving multiple intermediaries.

3.3.3 Land grabbing and land conflicts

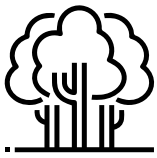
Land grabbing represents a prevalent legality risk in Brazil's agriculture sector. Regional inconsistencies in record-keeping and the fragmented nature of Brazil's national and sub-national land registries can enable and hide – rather than prevent and reveal – instances of illegal land acquisition. However, land ownership verification remains an essential task for avoiding risks of illegal land acquisition and land use in Brazil's agriculture sectors.

It is important to note that historical land grabbing, unless 'regularised' by subsequent legal intervention by the state, is likely to render any subsequent dealing in the land to be compromised by the original illegal acquisition, even where those subsequent dealings are supported by official transaction records and the claimed interests in the land appear in formal land registries.

For example, although it is fundamental to environmental compliance, registration of a property in the National Rural Environmental Registration System is widely used to fraudulently declare public lands as private property.

According to studies by the Amazon Research Institute, nearly 30% of unallocated public forests are covered by illegal Rural Environmental Registrations.[24] Because the Rural Environmental Registry (known as the "**CAR**") is self-declaratory, land grabbers can create fictitious rural properties in unallocated public forests in the system to simulate rights over third party or public land. This entry generates a provisional document that, while needing validation by a technical team from the federal or state government, is immediately used by fraudsters to negotiate the sale of these lands or obtain environmental licences for the area, taking advantage of the sluggish CAR validation process.[25]

30%



of unallocated public forests are covered by illegal Rural Environmental Registrations

22 Imazon (2025), 'Convictions for illegal deforestation grow, but only 5% result in compensation paid in the Amazon'. Available at: https://imazon.org.br/en/imprensa/convictions-for-illegal-deforestation-grow-but-only-5-result-in-compensation-paid-in-the-amazon/.

23 Quoted in Hanbury, S. (2025), "Only 5% of deforesters in Brazil's Amazon fully paid fines, report finds', Mongabay. Available at: https://news.mongabay.com/short-article/2025/03/only-5-of-deforesters-in-brazils-amazon-fully-paid-fines-report-finds/.

24 The relevant data is available on the IPAM website at https://ipam.org.br/como-atuamos/biomas/amazonia/.

25 A practical example is Fazenda Pai Herói, in Nova Bandeirantes (Mato Grosso), which changed its declared perimeter in the CAR twice between 2020 and 2023, excluding areas embargoed by IBAMA. It became a supplier of cattle for JBS in 2024, according to GTA data obtained by the newspaper Repórter Brasil. The report was published on 10 August 24 and is available at https://reporterbrasil.org.br/2024/10/jbs-bloqueia-fornecedor-mudou-area-declarada-fazenda/; several publicly available reports of civil society organisations describe the fraudulent taking of land in the agricultural sector, see for example Rede Social de Justiça e Direitos Humanos. Empresas transnacionais do agronegócio causam violência, grilagem de terras e destruição no Cerrado. 12 July 2023. Available at https://www.social.org.br/pub/revistas-portugues/347-relatorio-liga-empresas-transnacionais-a-grilagem-de-terras-no-sul-do-piaui; Mighty Earth. Saving the Cerrado. June 2023. Available at https://www.mightyearth.org/wp-content/uploads/BUNGE_Saving_the_Cerrado.pdf; Fian International. Brasilien: Pensionskassen machen Geschäfte mit Ackerland. December 2019. Available at https://www.fian.de/wp-content/uploads/2019/06/Layout_Matopiba_Studie_final_klein-1_compressed-1.pdf

This practice indicates why it is essential that information other than CAR documentation is obtained, verified and assessed to investigate the legality of land ownership and use rights in rural areas.

In addition, there has been little progress in Brazil in recognising and demarcating the land of Indigenous Peoples and traditional communities, despite the government's responsibility to demarcate and protect such lands (Article 231 of the Federal Constitution). The slow progress of Indigenous land registration increases the risk of land grabbing, land conflicts, violence.[26]

The complexity and tension inherent in Indigenous land rights recognition, demarcation and protection in Brazil is evident in the recent national legal and political disputes regarding the proposed application of the *Marco Temporal Doctrine* – a rule that would limit Indigenous land rights to areas that had been continuously physically occupied until the adoption of the Federal Constitution on 5 October 1988.

A proposed law to implement the doctrine was found unconstitutional by the Supreme Court on 22 September 2023.[27] A week later, however, the Senate voted to adopt the proposed law. After several presidential challenges, a modified law (*Law 14.701 of 2023*, known as the **Time Frame Law**) was adopted in December 2023[28] in a move heavily criticised by Indigenous and civil society groups,[29] including by the UN Special Rapporteur on the Rights of Indigenous Peoples.[30]

> The Time Frame Law allows a broader scope of developments on Indigenous lands, including agricultural projects, in violation of international human rights standards that recognise Indigenous Peoples' rights to their lands without temporal limitation.

Several challenges to the constitutionality of the Time Frame Law are currently pending before the Supreme Court. Although the Court identified inconsistencies between the law and its prior judgement, in April 2024 it controversially suspended proceedings and ordered a mediation of Indigenous Peoples' and agribusiness interests before a special commission.[31] The Time Frame Law formally remains in force while those mediations are underway and until its validity is decided – a situation that has further heightened tensions and violence between Indigenous communities and agribusiness interests.[32]

3.3.4 Illegal deforestation

Illegal deforestation is widespread in important forest biomes, like the Amazon and Cerrado – the world's most biodiverse tropical savanna. A recent study of forest clearing between August 2023 and July 2024 by Brazilian NGO Center of Life Institute (ICV) found that 91% of forest clearing in the Amazon lacked legal authorisation.[33] In the Cerrado, the figure for illegal clearing was 51%.

26 Wenzel, F. (2025), 'Probe details the playbook of one of Amazon's top land grabbers', *Mongabay* (20 Jan 2025). Available at: https://news.mongabay.com/2025/01/probe-details-the-playbook-of-one-of-amazons-top-land-grabbers/. Indigenist Missionary Council (Conselho Indigenista Missionário, CIMI) (2024), 'Violence against Indigenous Peoples in Brazil'. Available at: https://cimi.org.br/2024/07/violence-against-indigenous-peoples-report-2023/.

27 See for example: Phillips, T. (2023), 'Brazil supreme court rules in favor of Indigenous land rights in historic win', *The Guardian*. Available online: https://www.theguardian.com/world/2023/sep/21/brazil-supreme-court-indigenous-land-rights-win; Amazon Watch (2023). 'Brazil's Supreme Court Rejects the Marco Temporal, but the Fight for Indigenous Land Rights Continues', Amazon Watch. Available at: https://amazonwatch.org/news/2023/0922-brazils-supreme-court-rejects-the-marco-temporal-but-the-fight-for-indigenous-land-rights-continues.

28 Malleret, C. (2023), 'Controversial Brazil law curbing Indigenous rights comes into force', *The Guardian*. Available at: https://www.theguardian.com/world/2023/dec/28/brazil-law-indigenous-land-rights-claim-time-marker.

29 See for example, APIB (2023), 'Legislated Genocide: Congress Overturns Vetoes, Approves the Marco Temporal Law, and Other Crimes Against Indigenous Peoples', APIB. Available at: https://apiboficial.org/2023/12/15/legislated-genocide-congress-overturns-vetoes-approves-the-marco-temporal-law-and-other-crimes-against-indigenous-peoples/?lang=en.

30 Tzay, F. C. (2024), Brazil must protect Indigenous Peoples' lands, territories and resources, says Special Rapporteur', United Nations Office of the High Commissioner for Human Rights. Available at: https://www.ohchr.org/en/press-releases/2024/07/brazil-must-protect-indigenous-peoples-lands-territories-and-resources-says.

31 See e.g. Rosen, N. (2024), 'Marco Temporal: Current Status and Future Implications', Latin American Institute for Collective Justice. Available at: https://ilajuc.org/en/marco-temporal-current-status-and-future-implications/.

32 See for example: Batelier, C. (2024), "The extermination of native peoples is the death of our future,' warn entities, which demand urgency measures by the state', *Brasil de Fato*. Available at: https://www.brasildefato.com.br/2024/08/21/the-extermination-of-native-peoples-is-the-death-of-our-future-warn-entities-which-demand-urgency-measures-by-the-state/; Alfinato, C. and Vargas, P. (2024), 'Attacks on Indigenous Rights in Brazil by Agribusiness and Mining Are Fueling Amazon Fires and Climate Change', Amazon Watch. Available at: https://amazonwatch.org/news/2024/0919-attacks-on-indigenous-rights-in-brazil-by-agribusiness-and-mining-are-fueling-amazon-fires-and-climate-change.

33 ICV (2025), Legalidade do Desmatamento na Amazônia e Cerrado. Available at: https://www.icv.org.br/wp-content/uploads/2025/02/info-icv-legalidadedesm-a0.pdf. See also Hanbury, S. (2025), '91% of Brazilian Amazon deforestation last year was illegal, report finds', *Mongabay*. Available at: https://news.mongabay.com/short-article/2025/03/91-of-brazilian-amazon-deforestation-last-year-was-illegal-report-finds/.

Cattle and soy production are among the biggest drivers of deforestation and land conversion in Brazil, as well as across Latin America, placing them in the top drivers of deforestation globally.[34] Cattle ranching in particular is regarded as the leading driver of deforestation in the Amazon, with a 2024 study by Imazon indicating that more than 90% of the deforestation in the Amazon is for the opening of pastureland for cattle ranching.[35]

In the Cerrado, on the other hand, the overall expansion of agricultural land increased significantly (up 529% between 1985 and 2023), the majority of which (around 75%) is used to produce soybeans.[36]

Similarly, research published by Trase and the Instituto Centro de Vida, in collaboration with the Atlas Agropecuário (maintained by Imaflora), in September 2023 indicates compelling evidence that in 2020 approximately 16% of soybean production in the Amazon and Cerrado took place on farms that did not comply with the *Forest Code*.

Most of the soy from those areas was exported to China and the EU. The research also points to evidence of *potential* non-compliance with Forest Code requirements on an additional 58% of soy farms, but whose compliance status could not be verified with publicly available data.[37] Taken together, the research identifies actual or potential illegality affecting a total of 74% of soy production in the Amazon and the Cerrado.

90%

of deforestation in the Amazon 'for opening land' for cattle ranching

74%

of soy production with actual or potential illegality

51%

of land illegally cleared in the Cerrado region

Aerial view of a herd of cattle in Brazil

34 See for example WWF (2018). What are the biggest drivers of tropical deforestation?. Available at: https://www.worldwildlife.org/magazine/issues/summer-2018/articles/what-are-the-biggest-drivers-of-tropical-deforestation; World Resources Institute (2024). Deforestation linked to agriculture. Available at: https://research.wri.org/gfr/forest-extent-indicators/deforestation-agriculture?utm_medium=blog&utm_source=insights&utm_campaign=globalforestreview.

35 Imazon (3 October 2024). Mais de 90% do desmatamento da Amazônia é para abertura de pastagem. Available at: https://imazon.org.br/imprensa/mais-de-90-do-desmatamento-da-amazonia-e-para-abertura-de-pastagem/.

36 See IPAM. Em 39 anos, Cerrado perdeu área de vegetação nativa maior que o Goiás. 21 August 2024. Available at https://ipam.org.br/cerrado-perde-vegetacao-nativa-maior-que-goias/.

37 Trase (2023). Doubts over compliance with Brazil's Forest Code put soy trade to EU at risk. Available at: https://trase.earth/media/press-release/doubts-over-compliance-with-brazil-s-forest-code-put-soy-trade-to-eu-at-risk.

Similarly, the national Executive Committee for the 2023 Action Plan for the Prevention and Control of Deforestation and Fires in the Cerrado states that a significant share of deforestation on soy producing properties in the Cerrado occurred in violation of the legal requirement to maintain a certain percentage of native vegetation, indicating that a significant share of soy production takes place on properties with illegal deforestation.[38]

Regarding the state of **Mato Grosso** specifically, a recent analysis shows that implementation of the Forest Code by soy producers has been weak. It states that half of the deforestation associated with soy in Mato Grosso between 2009 and 2019 occurred illegally.[39] However, only 30% of soy farms that deforested illegally had embargoes, the process used by local authorities like IBAMA to recognise illegal deforestation.

> In addition, only 11% of registered soy farms in Mato Grosso have made it to the final stage of the registration process under the Forest Code, the point at which they are considered fully compliant

3.3.5 Labour rights violations

Regarding risks of labour rights violations, it is important to note that most cases of work analogous to slavery in Brazil have occurred in rural areas. Data from the Federal Government, provided by the Pastoral Land Commission, indicates that more than half of recorded cases between 1995 and 2020 occurred in activities related to livestock farming.[40]

> While cattle farming stands out as having the highest risk of slave labour, there has also been a high number of cases in relation to soy cultivation.[41]

The regions with the highest incidences of slave labour are the South East, followed by the Midwest, North East, and North, which also indicates a relatively higher risk of labour rights violations in those regions compared to others.[42]

Publicly available reports from civil society organisations indicate that rural workers consistently raise concerns regarding degrading working conditions on agribusiness farms, particularly in the context of applying chemicals and supply of adequate protective equipment.[43]

3.3.6 Challenges in tracing agricultural supply chains

Supply chain traceability is not a legal requirement under national law.

While there are several sub-national and voluntary initiatives aimed at traceability and monitoring of soy and cattle supply chains, primarily to satisfy demands from export markets, a persistent challenge is the alignment of these initiatives to provide consistent standards and coverage of soy and cattle operations.

The fragmentation of available traceability information further increases the risk of illegal activities going unnoticed, especially in long and complex supply chains involving multiple intermediaries, such as those for soy and cattle.

38 Comissão Executiva do PPCDAm e do PPCerrado: Plano de ação para prevenção e controle do desmatamento e das queimadas no bioma Cerrado. 2023. Available at: https://www.gov.br/mma/pt-br/assuntos/combate-ao-desmatamento-queimadas-e-ordenamento-ambiental-territorial/controle-do-desmatamento-1/ppcerrado/ppcerrado_4fase.pdf p. 33.

39 Carvalho, R., Rausch, L., Gibbs, H.K., Bastos Lima, M.G., Bernasconi, P., Valdiones, A.P., Vasconcelos, A., & Silgueiro, V. (2024), 'Illegal deforestation in Mato Grosso: how loopholes in implementing Brazil's forest code endanger the soy sector', *Land* 13(11), 1828. Available at: https://www.mdpi.com/2073-445X/13/11/1828.

40 Ministério do Trabalho e Emprego (14 June 2023). Ministério do Trabalho e Emprego lança campanha de combate ao trabalho análogo à escravidão. Available at https://www.gov.br/secom/pt-br/assuntos/noticias/2023/06/ministerio-do-trabalho-e-emprego-lanca-campanha-de-combate-ao-trabalho-analogo-a-escravidao.

41 SMARTLAB. Observatório da Erradicação do Trabalho Escravo e do Tráfico de Pessoas. Smartlab. Available at: https://smartlabbr.org/trabalhoescravo; In its report from 2023, the Pastoral Land Commission stated that 62% of people rescued from working under conditions analogous to slave labour worked on monoculture farms (predominantly soy and sugar cane), see Centro de Documentação Dom Tomás Balduino – CPT. Conflitos no Campo Brasil 2022. Available at https://www.cptnacional.org.br/downlods?task=download.send&id=14302&catid=41&m=0.

42 Ministério do Trabalho e Emprego (10 January 2024). MTE resgata 3.190 trabalhadores de condições análogas à escravidão em 2023. Available at: https://www.gov.br/trabalho-e-emprego/pt-br/noticias-e-conteudo/2024/janeiro/mte-resgata-3-190-trabalhadores-de-condicoes-analogas-a-escravidao-em-2023

43 Friends of the Earth/Rede Social de Justiça e Direitos Humanos /ActionAid. Land Grabbing and Ecocide. September 2023. Available at https://foe.org/wp-content/uploads/2023/09/Land-Grabbing-and-Ecocide-Final-compressed.pdf; Friends of the Earth United States/Rede Social de Justiça e Direitos Humanos. Industrial Soy Expansion in Brazil: Financialization, Deforestation, and Dispossession in the Birthplace of Waters. April 2022. Available at: https://foe.org/wp-content/uploads/2022/04/IndustrialSoyExpansion.Brazil.FoE-final.pdf.

The implementation of traceability systems typically declines in relation to the number of indirect suppliers upstream of the first actor trading on the global market. Small producers and indirect suppliers, often those directly engaged in production activities, are less likely to be reliably identified and monitored under traceability schemes.

The following non-binding supply chain monitoring initiatives may support due diligence efforts to varying degrees, depending on the level of adherence by particular producers:

- **the Green Seal Brazil Program**,[44] which is a newly-established public certification scheme intended to support the identification of products that meet sustainability and traceability principles according to national and international standards, such as the EUDR. The relevant standards for certification will be set by the Brazilian Association of Technical Standards and subsequently granted by certifiers authorised by the National Institute of Metrology, Quality and Technology.
- **the Brazilian Individual Identification System for Cattle and Buffaloes** (**SISBOV**),[45] to which farmers can adhere voluntarily – primarily in cases where cattle certification is required by importing countries under official health programs. It is therefore more often used by cattle producers supplying export markets than those supplying the domestic market.
- **the Brazilian Agro-Traceability System** (**SIBRAAR**),[46] developed by the Brazilian Agricultural Research Corporation, a public company linked to the Ministry of Agriculture and Livestock. At the time of writing, this system is still being established and is not mandatory for producers of agricultural products.
- in the state of the Pará, there is also the Official Individual Cattle Traceability System,[47] developed by the Brazilian Association of Meat Exporting Industries (Abiec) and the State Secretariat for the Environment and Sustainability of Pará.

3.3.7 Considerations specific to the cattle sector

Land grabbing and the **lack of traceability** are prevalent issues that create systemic risk in the cattle sector, largely because of the way cattle are mixed when they're moved for grazing and fattening, making it easy to launder cattle raised unlawfully. Conversely, the inability to confirm legal origins of cattle means the presence of unlawful cattle producers in the supply chain can affect a significant portion of cattle production. The Brazilian government has recently announced plans to develop a national cattle traceability system by 2027.[48]

> A challenging dynamic is that while large producers typically have regular deeds and registrations of their properties – and meet the criteria defined by regulatory agencies – they acquire cattle from other producers who do not have proper land-use rights or use embargoed or deforested areas for raising cattle.

44 The Green Seal Brazil Program was established by *Decree No. 12.063 of 2024*, available at https://www.in.gov.br/web/dou/-/decreto-n-12.063-de-17-de-junho-de-2024-566218411
45 The SISBOV was established through MAPA Normative Instruction No. 51 of 2018, available at https://www.normasbrasil.com.br/norma/instrucao-normativa-51-2018_368158.html.
46 Embrapa presented the SIBRAAR through its Technical Communication No. 138 of 2023, available at https://ainfo.cnptia.embrapa.br/digital/bitstream/doc/1160154/1/Comunicado138.pdf.
47 The SRBIPA was established by *Decree No. 3.533 of 2023*, available at https://www.semas.pa.gov.br/legislacao/files/pdf/406042.pdf.
48 Sousa, D. and Coutoin, C. (2024), 'Brazil to Fight Deforestation With New Cattle-Tracking System', *BNN Bloomberg* (23 October 2024), available at: https://www.bnnbloomberg.ca/investing/commodities/2024/10/23/brazil-to-fight-deforestation-with-new-cattle-tracking-system/.

This renders the beginning of the supply chain illicit, even though the end appears to meet legal requirements.[49] This is the case for ranchers who alter the boundaries of their properties in the Rural Environmental Registry (the 'CAR'), excluding deforested or embargoed areas to continue supplying cattle to the national and international markets.[50]

In cattle production, the official document for the transportation of animals in Brazil is the Animal Transit Guide (Guia de Trânsito Animal or GTA), which contains essential information for tracking herds, such as origin, destination, purpose, species, and vaccination status. The GTA is issued by state animal defence agencies every time a cow is moved from one farm to another, upon request from the owners. To issue a GTA, the property must be properly registered and authorised by a veterinarian certified by the Ministry of Agriculture, Livestock and Supply (**MAPA**).[51] The veterinarian certifies that the property meets the necessary sanitary criteria for cattle production and that the traded animals are healthy.

Although often cited as a traceability tool, the GTA is not a document created for that purpose; it is a regulatory system to ensure animal health during transport.[52] There is therefore an ongoing debate whether GTA data should be considered public or private, as it is often used by public prosecutors and NGOs to trace cattle supply chains.

In contrast, the Brazilian Individual Identification System for Cattle and Buffaloes (known as **SISBOV**),[53] despite being the official identification system for cattle and buffalo in the country, is a voluntary scheme.

3.3.8 Considerations specific to the soy sector

The registration, certification of products, and establishment of norms regarding soy production are managed by MAPA, which verifies the compliance of property registration, environmental licensing, and adherence to sanitary regulations. The *MAPA Normative Instruction No. 11 of 2007* establishes the Technical Regulation for Soybeans, defining its official classification standards, and setting requirements for identity, quality, sampling, and labelling of production.

> In practice, however, the lack of integration between different federal and state registries and regulatory systems facilitates the unlawful granting of authorisations for embargoed areas – such as areas with records of illegal deforestation or burning – through manipulation of information contained in the CAR.

For example, through the registration of properties with overlapping areas, the fragmentation of properties and the alteration of declared boundaries to exclude embargoed areas.[54]

In addition, the soybean supply chain is relatively opaque and there are no official transparency or traceability requirements. Some traceability programmes, currently in the implementation phase, have limitations in that they cover only some states or regions.

Similarly, the voluntary systems developed by large companies fail to prevent contamination of the supply chain due to the limitations of existing infrastructure, particularly silos, which do not allow for proper identification of source farms.

49 A more in-depth description of this dynamic can be found in the report on the journalist website "O Eco," available at https://oeco.org.br/reportagens/o-drible-do-gado-a-parte-invisivel-da-cadeia-da-pecuaria/.

50 A practical example is Fazenda Pai Herói, in Nova Bandeirantes (MT), which changed its declared perimeter in the CAR twice between 2020 and 2023, excluding embargoes from IBAMA. It became a supplier of cattle for JBS in 2024, according to GTA data obtained by the newspaper Repórter Brasil. The report was published on 10/08/24 and is available at https://reporterbrasil.org.br/2024/10/jbs-bloqueia-fornecedor-mudou-area-declarada-fazenda/.

51 According to the eligibility requirements described on the Federal Government's page, available at https://www.gov.br/pt-br/servicos/habilitar-se-para-emissao-da-guia-de-transito-animal.

52 This is stated in Article 2 of *Law No. 12.097 of 2009*, which addresses the concept and application of traceability in the production chain of beef and buffalo meat.

53 The SISBOV was established through MAPA *Normative Instruction No. 51 of 2018*, available at https://www.normasbrasil.com.br/norma/instrucao-normativa-51-2018_368158.html.

54 This is what happened in northern Mato Grosso with Fazenda Formoso, which received a provisional rural operating permit (APF) from the State Department of the Environment (SEMA/MT) by using the CAR of another area, eliminating areas that were embargoed due to inspections conducted between 2013 and 2020 by state and federal agencies, according to data obtained by the newspaper Repórter Brasil. The report was published on 04/29/21 and is available at https://reporterbrasil.org.br/2021/04/secretaria-de-mt-admite-erro-e-cancela-autorizacao-para-atividade-rural-de-propriedade-que-acumula-infracoes-ambientais/.

Likewise, private certification schemes operated by third party certifiers such as the Round Table on Responsible Soy (**RTRS**) or by companies, such as Bunge's certification programme, seem to fall short of adequately tracing the Brazilian soy supply chain by relying on Mass Balance and Book and Claim methods that allow the mixing of compliant products with non-compliant products.[55]

> NGOs have documented weaknesses of voluntary third-party certification schemes in the soy sector, including a 2024 investigation that linked farms certified by the RTRS to cases of land grabbing in the Brazilian Cerrado.[56]

Another systemic risk for environmental and social impacts is the widespread use of pesticides in the Brazilian soy sector, which has grown progressively in recent years, increasing by more than 338% since 2000.[57] Brazil ranks among the top three pesticide consumers in the world and more than 60% of Brazil's total consumption of pesticides are sprayed on soy.[58]

25%

of the pesticides market in Brazil operates in breach of legal standards

338%

increase in the use of pesticides in the Brazilian soy sector since 2000

60%

of Brazil's total consumption of pesticides are sprayed on soy

Despite legal standards for the purchase and sale of pesticides, the Institute of Economic and Social Development of Borders estimates that 25% of the pesticides market in Brazil operates in breach of legal standards.[59]

The widespread use of pesticides has severe impacts on people and the environment, including in relation to contamination of drinking water.[60] Indigenous Peoples have been reported to be disproportionally affected by the use of pesticides in the context of agricultural production.[61]

In its 2024 report, the National Campaign in Defense of the Cerrado and the Pastoral Land Commission denounced the harm inflicted on Indigenous Peoples through the use of pesticides in soy production, claiming their widespread use – especially when sprayed from the air – violates local populations' rights to water and food.[62]

55 In February 2025 RTRS announced a new certification model which "includes an optional module to support compliance with the EU Deforestation Regulation" while noting that "compliance with RTRS certification requirements does not guarantee compliance with the EUDR": RTRS (2025), 'RTRS introduces Chain of Custody Standard version 3.0 with alignment to EU Deforestation Regulation', available at: https://responsiblesoy.org/rtrs-chain-of-custody-standard-3-0-aligned-with-eu-deforestation-regulation?lang=en. Prior research indicates that the greatest share of RTRS soybeans has been certified under Book and Claim chain-of-custody models: Schilling-Vacaflor, A. et al. (2021), 'Contextualizing certification and auditing: Soy certification and access of local communities to land and water in Brazil', World Development Volume 140. Available at: https://www.sciencedirect.com/science/article/pii/S0305750X20304083#b0080; Bunge's standard ranked relatively low in benchmarking of standards in the soy sector conducted by Profundo, finding that in-house standards such as Bunge's lack robust governance systems as they are managed by the same companies that manage and use the standard: Profundo (19 December 2023). Setting a New Bar for Deforestation- and Conversion-free Soy in Europe Independent benchmark of soy standards on essential sustainability requirements. Available at: https://hwkvufmtfxjkrhbrfqkj.supabase.co/storage/v1/object/public/PUB/2023_Benchmark_Deforestation_and_Conversion_Free_Soy_Europe.pdf.

56 EarthSight, (2024), Secret Ingredient. Available at https://www.earthsight.org.uk/secret-ingredient, p. 9.

57 Glyphosate sales, for example, grew by 27% between 2017 and 2021, see National Campaign in Defense of the Cerrado and the Pastoral Land Commission (CPT) (2024). Living in contaminated territories: A dossier on pesticides in the waters of the Cerrado. Available at: https://ispn.org.br/en/vivendo-em-territorios-contaminados-um-dossie-sobre-agrotoxicos-nas-aguas-do-cerrado/, p. 40 ff. 26 See also https://agenciadenoticias.ibge.gov.br/agencia-sala-de-imprensa/2013-agencia-de-noticias/releases/21905-censo-agro-2017-resultados-preliminares-mostram-queda-de-2-0-no-numero-de-estabelecimentos-e-alta-de-5-na-area-total.

58 National Campaign in Defense of the Cerrado and the Pastoral Land Commission (CPT) (2024). Living in contaminated territories: A dossier on pesticides in the waters of the Cerrado. Available at: https://ispn.org.br/en/vivendo-em-territorios-contaminados-um-dossie-sobre-agrotoxicos-nas-aguas-do-cerrado/, p. 8.

59 Instituto de Desenvolvimento Econômico e Social de Fronteiras (2022). The Illegal Market for Agricultural Pesticides in Brazil. Available at: https://croplife.org/wp-content/uploads/2022/06/The-Illegal-Market-for-Agricultura-Pesticides-in-Brazil.pdf, p. 49.

60 A study published in 2022 analysed drinking water in 127 municipalities in the state of Paraná, the second biggest grain producer in Brazil, and found extensive contamination of drinking water, where pesticide residues in certain municipalities surpassed the Brazilian maximum limit for such residues, see Panis, Carolina et al (2022). Widespread pesticide contamination of drinking water and impact on cancer risk in Brazil. Environment International Volume 165. Available at: https://www.sciencedirect.com/science/article/pii/S0160412022002483; Similarly, a NGO report from 2024 points out that in the state of Maranhão, atrazine levels were detected in the water of the Cocalinho community at more than twice the maximum permitted value according to Brazilian standards, see National Campaign in Defense of the Cerrado and the Pastoral Land Commission (CPT) (2024). Living in contaminated territories: A dossier on pesticides in the waters of the Cerrado. Available at: https://ispn.org.br/en/vivendo-em-territorios-contaminados-um-dossie-sobre-agrotoxicos-nas-aguas-do-cerrado/.

61 Larissa Bombardi (2021). Geography of Asymmetry: the vicious cycle of pesticides and colonialism in the commercial relationship between Mercosur and the European Union. Available at: https://ocaa.org.br/en/publicacao/geography-of-asymmetrythe-vicious-cycle-of-pesticides-and-colonialism-in-the-commercial-relationship-between-mercosur-and-the-european-union/#:~:text=The%20study%20exposes%20data%20related%20to%20the%20consumption,possible%20intensification%20resulting%20from%20the%20EU-Mercosur%20Trade%20Agreement, p. 26.

62 National Campaign in Defense of the Cerrado and the Pastoral Land Commission (CPT) (2024). Living in contaminated territories: A dossier on pesticides in the waters of the Cerrado, p.26. Available at: https://ispn.org.br/en/vivendo-em-territorios-contaminados-um-dossie-sobre-agrotoxicos-nas-aguas-do-cerrado/.

After a visit to Brazil, the UN Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and waste reported that:

> There are far too many occurrences of failure by agribusiness to respect legally required buffer zones so as to prevent the spraying of schools, houses and community centres with pesticides … Despite national restrictions on pesticide spraying within 500 metres of inhabited places".[63]

The Rapporteur also refers to allegations by Indigenous Peoples, communities of Brazilians of African descent and other communities that "powerful agribusinesses intentionally spray pesticides on them as 'chemical weapons' to drive them from their land".[64]

Related risks include the unlawful disposal of pesticides and pesticide packaging,[65] and the failure to provide plantation workers with adequate personal protective equipment (PPE).[66]

3.4 Conclusion

Brazil has a comprehensive federal legal framework regulating agricultural and forestry activities. It includes state obligations to protect the environment, and the rights of Indigenous Peoples are enshrined at the highest level – in the national constitution. However, despite these constitutional safeguards, negative environmental and social impacts are systemic, especially in Indigenous territories and areas where agricultural production is expanding rapidly. Many of these impacts are unlawful under national or sub-national laws.

The federal legal structure can pose challenges to identifying relevant sub-national laws, which play a key role in regulating the agriculture sector and implementing national environmental standards.

> Weak law enforcement, particularly in remote areas, is a systemic weakness and, in some places, is associated with perceptions of impunity and disregard for the rights of Indigenous Peoples and local communities. The prevalence of landgrabbing and associated violence in the cattle and soy sectors is emblematic of this dynamic.

Accordingly, EU companies sourcing relevant products from Brazil should significantly enhance their approach to due diligence by investigating the relevant legal requirements, gathering information about their compliance, and verifying that information with a variety of local government and non-government stakeholders.

Indeed, the large volume of publicly-available information indicating relatively high risks of illegality across the Brazilian cattle and soy sectors suggests EU operators should obtain a relatively high level of reliable evidence from credible and independent sources to corroborate assertions of legal compliance.

63 Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes on his visit to Brazil (2020). UN Doc. A/HRC/45/12/Add2, at para. 24. Available at: https://documents.un.org/doc/undoc/gen/g21/216/10/pdf/g2121610.pdf.

64 Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes on his visit to Brazil (2020). UN Doc. A/HRC/45/12/Add2, at para. 25. Available at: https://documents.un.org/doc/undoc/gen/g21/216/10/pdf/g2121610.pdf; In a case concerning an Indigenous community in Mato Grosso do Sul, the Federal Court of Mato Grosso do Sul sentenced a farmer and an agricultural pilot and a company for aerial spraying on a corn field, see Reporter Brasil (2020). Em decisão inédita, indígenas vítimas de 'chuva de agrotóxico' recebem R$ 150 mil de indenização - Repórter Brasil. Available at: https://reporterbrasil.org.br/2020/01/em-decisao-inedita-indigenas-vitimas-de-chuva-de-agrotoxico-recebem-r-150-mil-de-indenizacao/.

65 In the past, Brazilian environmental agencies have imposed fines and other penalties due to the irregular disposal of pesticides. Following an analysis from Ambiente & Sociedade,12% of IBAMA's notifications in the context of pesticides inspections relate their disposal, see Oliveira Rocha, Rizza Regina/Peleaz Alvarez, Victor Manoel (2023). Environmental Inspection Of Pesticides In Brazil. Available at: https://www.scielo.br/j/asoc/a/rwvKSTVbQkCzr3PcB3vttJR/?format=pdf&lang=en.

66 National Campaign in Defense of the Cerrado and the Pastoral Land Commission (CPT) (2024). Living in contaminated territories: A dossier on pesticides in the waters of the Cerrado. Available at: https://ispn.org.br/en/vivendo-em-territorios-contaminados-um-dossie-sobre-agrotoxicos-nas-aguas-do-cerrado/, p. 31.

Case study

4. Côte d'Ivoire: legal framework and key legality risks

Disclaimer: The research on which this case study is based was jointly undertaken by ClientEarth and Dr. Raphaël Kra, Director of the Cabinet International de Droits Environnementaux et Humains and long-standing in-country associate of ClientEarth in Côte d'Ivoire. The research focused on relevant national laws for the production of cocoa and has been informed by consultations with Ivorian civil society organisations actors involved in the cocoa sector and the governance of natural resources (for more details, see: A legal pathway to sustainable cocoa in Ghana and Côte d'Ivoire).

4.1 Summary of the Ivorian legal framework

Côte d'Ivoire follows a civil law tradition. Its legal framework consists – in hierarchical order –

- the Constitution,
- ratified international treaties or agreements,[67]
- laws and regulations, and
- legal norms adopted by the Executive in the form of decrees, orders and circulars or instructions.

Laws need to comply with all superior laws or norms above them in the hierarchy, otherwise they may be deemed unconstitutional.

The Constitution is at the top of the legal system. All other norms are inferior to it and must comply with it. It establishes the rules governing the acquisition and exercise of legislative power, the organisation and operation of the various State institutions, and the protection of human rights and the environment.

It prohibits degrading and humiliating forced labour (Art. 5) and child labour (Art. 16). It also regulates access to rural land ownership (Art. 12) and lays down rules for the protection of the environment (Arts. 27 and 40).

Importantly, Article 27 of the Ivorian Constitution recognises the right to a healthy environment for all people.

> The Forest Code,[68] the Rural Land Tenure Act,[69] the Environment Code[70] and the Act on National Parks and Nature Reserves[71] are the main pieces of Ivorian legislation relevant for cocoa production.

These laws define the rules governing the use of rural land, provide a framework for the sustainable management of forest resources, national parks and nature reserves, and establish the fundamental principles designed to protect the environment against all forms of degradation. They are complemented by numerous implementing decrees which detail the specific rules applicable. Together, these rules define the areas where cocoa can be produced and under what conditions, who can buy and sell it, at what price and in what circumstances.

67 There are three ways international agreements can apply domestically: treaties negotiated and ratified by the President without parliamentary oversight over ratification, treaties negotiated by ministers that are not subject to ratification and treaties negotiated and ratified by the President pursuant to an authorisation law adopted by the Parliament (which are subject to review by the Constitutional Court). In the case of human rights treaties, the question of ratification depends on whether or not the treaty modifies domestic law. If it does, it must be ratified by means of a parliamentary authorisation law subject to review by the Constitutional Court. If not, there is no need for such a ratification law.
68 Act no. 2019-675 of 23 July 2019.
69 Act no. 98-750 of 23 December 1998.
70 Act no. 2023-900 of 23 November 2023.
71 Act no. 2002-102 of 11 February 2002.

4.2 Key laws relevant to cocoa production in Côte d'Ivoire

4.2.1 Land tenure

Cocoa production is authorised on all rural land[72] except in sacred forests.[73] Cocoa production is not permitted in classified forests, national parks or nature reserves[74] as they do not form part of the rural land estate. The same applies to botanical gardens, which, because of their conservation and scientific research function, are exempt from all agricultural production and logging activities.

Cocoa can however be produced in areas within classified forests formally designated as "enclaves" and agroforests – areas previously designated as classified forest and reclassified to allow limited agricultural activities, provided certain conditions are met (see section 4.3.7 below).

When cocoa is produced in a forested area – such as forested rural land or an agroforest – this should be authorised in a **forest management plan**. The Forest Code requires that any project involving development in a forest – including one belonging to a private individual or a legal entity – is subject to prior approval and monitoring by the forestry administration through the adoption of a forest management plan.

The procedural formalities for the latter depend on the size of the forest. Consequently, **any activity contrary to a forest management plan is prohibited**.

4.2.2 Land-use rights

The Ivorian Civil Code defines property rights and sets out the conditions necessary for the validity of any type of contract. The current legal framework for rural land tenure in Côte d'Ivoire is set out in the Rural Land Tenure Act[75] and its implementing texts.

The main provisions of this law relate to the definition and content of rural land, the ownership rights on such land, its development and management. When producing cocoa, farmers need to have property rights over the land they are farming or have the written or oral consent of landowners to farm their land.

In the agriculture sector, several contractual arrangements are possible: a concession, a long lease, a simple land lease contract, a sharecropping contract, a planting-sharing contract with sharing of the plantation, a planting-sharing contract with sharing of the land, a contract for pledging a plot in production against a loan, or a contract for accession as a free beneficiary.

Workers preparing fresh cocoa fruit before fermentation in a chocolate factory

72 Article 2 of the Rural Land Tenure Act (Act no. 98-750 of 23 December 1998) defines rural land as (i) land outside the public domain, i.e. land belonging to the State or to local authorities and intended for public use (roads, harbours, etc.), (ii) land outside urban perimeters, i.e. the outskirts of towns, (iii) land outside duly constituted as "areas for deferred development" ("zones d'aménagement différé"), i.e. land reserved by the State for future works, (iv) land outside classified forests and protected areas (parks and reserves), (v) lands outside duly constituted tourist zones. Rural land is permanently composed of (i) state-owned land (ii) land owned by local authorities and private individuals and (iii) land without owners. On a transitional basis, it comprises (i) customary land and (ii) land granted by the State to public authorities and private individuals.

73 Article 1 of the Forest Code defines a sacred forest as any forest reserved for cultural or religious expression.

74 Act no. 2002-102 of 11 February 2002, on the creation, management and financing of national parks and nature reserves

75 Act no. 98-750 of 23 December 1998.

4.2.3 Pesticides

The use of pesticides is regulated by Decree no. 89-02 of 4 January 1989 on the approval, manufacture, sale and use of pesticides. This decree requires pesticides to be formally approved before they can be produced or imported into Côte d'Ivoire.

Similarly, the profession of pesticide retailer and sprayer is subject to government regulation and approval. Waste associated with pesticide use, for example packaging and residues, must be rendered unfit for other uses and disposed of with "due care" – although what constitutes due care is not defined.

A number of banned products are listed in Order no.159/MINAGRI of 21 June 2004, prohibiting the use in agriculture of active substances used in the manufacture of phytopharmaceutical products.

4.2.4 Impact assessment

Decree no. 2024-595 of 26 June 2024 on rules and procedures for environmental and social assessments requires that certain agricultural projects or hydro-agricultural developments must be the subject of an in-depth[76] or simplified[77] environmental and social impact study, depending on the nature of the project's potential impacts and the size of the area concerned.

These limitations are such that small cocoa producers would not be required to carry out an environmental impact assessment unless their activities took place in an ecologically sensitive area.

4.2.5 Farmer registration

According to Decree no. 2022-392 of 8 June 2022, **every farmer is obliged to register in a dedicated cocoa farmer register**. Registration enables the farmer to receive a professional card, officially recognising their status and the associated rights.

4.2.6 Labour

Cocoa production involves the use of labour for a variety of tasks.

> As the majority of cocoa farms in Côte d'Ivoire are family-run, the workforce is generally of family origin, working informally, and labour laws do not apply.

However, some large farms require external labour. If a relationship of subordination exists between the farm and a worker, then this creates an employer-employee relationship which is subject to applicable **labour law**.

Act no. 2015-532 of 20 July 2015 on the Labor Code and its implementing decrees set out detailed working conditions for employees, including working hours in agricultural establishments, rest periods, salary conditions and health and safety requirements.

4.2.7 Trade, customs and tax

The sale of cocoa is also regulated. Ordinance no. 2011-481 of 28 December 2011 lays down **rules for the sale of cocoa**, including standards for quality, weights and packaging measures, quality control and phytosanitary treatments. The regulation lays down the conditions governing the profession of buyer and exporter of cocoa products, as well as the packaging of cocoa for export.

76 Projects that imply the land clearing of more than 50 ha, the use of chemical products or aeral spraying on an area of more than 500 ha, the irrigation and drainage of an area of more than 50 ha, an agro-pastoral dam with reservoir area of more than 1 ha, or any rural land consolidation project. Projects located in or near risk zones or ecologically sensitive areas. Projects involving the physical or economic displacement of people.

77 For pesticide use or aerial spraying over an area of between 20 and 500 ha.

Côte d'Ivoire has a management and regulatory body for the cocoa (and coffee) sector: the **Conseil Café-Cacao** or **CCC**.[78]

The CCC is responsible for regulating all activities in the sector, including:

- controlling the quality of cocoa beans;
- approving operators allowed to purchase cocoa beans;
- forecasting harvests and monitoring physical stocks;
- setting purchase prices for producers and ensuring these prices are applied; and
- organising and controlling domestic and foreign trade.

At the beginning of each season, the CCC sets the minimum farm gate price per kilogramme of cocoa to be paid to farmers. This results from Ordinance no. 2011-481 of 28 December 2011 which sets out the rules for the trade of coffee and cocoa and the regulation of the coffee and cocoa industries.

Act no. 64-291 of 1st of August 1964 and Decree no. 2012-1008 of 17 October 2012 set the terms and conditions for the trade of coffee and cocoa. The Customs Code describes the legal requirements for the transport and export of cocoa. The General Tax Code provides legal guidance on property and corporate taxes.

4.2.8 Corruption

Corruption, fraud and conflict of interest are covered by Order no. 2013-660 of 20 September 2013 on the prevention of and fight against corruption and related offences.

4.2.9 Sustainability standards

Côte d'Ivoire supported the drafting of the **ARS-1000 standard for sustainable cocoa** in the framework of the African Organization for Standardization (ARSO), adopted on 15 June 2021.

On 8 June 2022, the Ivoirian Government published a decree approving the ARS-1000 standard, making it **mandatory for the entire Ivorian cocoa sector** and setting out a 24-month timetable for its entry into force. This period covers a one-year pilot phase, which was launched in January 2024, and a national roll-out in 2025.

The ARS-1000 could possibly play a role in supporting EUDR due diligence and harmonising approaches. Indeed, the information collected and verified under ARS-1000 in terms of product traceability, environmental and social sustainability and legality could provide operators with relevant information for the risk assessment required by the EUDR.

However, the ARS-1000 certification is not sufficient to ensure full compliance with the EUDR and was not adopted for this purpose.

A paper published by the German Initiative on Sustainable Cocoa (GISCO) in February 2023 on *The African Standard for Sustainable Cocoa* found that the ARS-1000 only references compliance with national legislation in the context of farming in protected areas and labour rights and does not require a compliance check of other laws within the scope of the EUDR legality requirement.

78 Created by Ordinance no. 2011-481 of 28 December 2011.

4.2.10 Relevant public agencies

There are a number of other public entities in addition to the CCC that are relevant for the cocoa sector:

- The **Ministry of Agriculture, Rural Development and Food Production** (MEMINADERPV) is responsible for implementing and monitoring the Government's policy on agriculture and rural development, including leading the process of securing rural land, improving agricultural production and selling production through the CCC.
- The **Ministry of the Environment, Sustainable Development and Ecological Transition** (MINEDDTE) implements and monitors the Government's policy on environmental protection, in particular the management of parks and nature reserves, the development of environmental services and the fight against pollution - particularly from pollutants such as pesticides.
- The **Ministry of Water and Forests** (MINEF) is responsible for the sustainable management of water and forest resources.
- The **Forest Management Company** (SODEFOR) deals with the management of state-owned classified forests entrusted to it by the forestry administration under general or specific agreements.
- The **Ivorian Office of Parks and Reserves** (OIPR) is responsible for the management of land, fauna, flora and their biotopes in parks and reserves.

Fleuve Bandama, Côte d'Ivoire

4.3 Key considerations for assessing legal compliance risks

4.3.1 Challenges in identifying relevant national laws and conflicting institutional competencies

In Côte d'Ivoire, national laws set the legal framework and general principles for the regulation of the cocoa sector. These are then implemented through the adoption of implementing decrees. The decrees define the details of a procedure or specific rules applicable to a particular situation.

This means the **legal framework for cocoa production is scattered across numerous legal texts**. Moreover, some of these implementing texts are contradictory, unclear or incomplete.

> Given the absence of a centralised legal database, a comprehensive analysis of the legal framework for cocoa requires careful examination and consultation with local legal experts.

Likewise, the number of public agencies involved in the cocoa sector brings another level of complexity as their responsibilities are not clearly defined and sometimes conflicting, which prevents them from interacting effectively.

This lack of clarity is a source of conflicts of competence, for example in the management of cocoa production from agroforests or the management of forests in the rural domain. There is also a lack of synergy between institutional bodies as they are not coordinated in the fight against deforestation and the promotion of sustainable cocoa production. It is difficult to keep track of legal texts and political developments across this myriad of institutions.

4.3.2 Informality of the agriculture sector

The Ivorian cocoa sector is **smallholder-based**. According to the CCC's estimates, nearly one million smallholder farmers grow cocoa, producing 90% of the country's cocoa on farms smaller than four hectares.

90%

of the country's cocoa grown by one million smallholder farmers

Given the multitude of small producers at the source of the supply chain, data collection and due diligence require greater efforts compared to sectors dominated by large-scale production.

The Ivorian cocoa production phase – and first sales of cocoa to a cooperative or authorised purchasing operator – is **mostly informal**, as production is family-run on a small-scale and organised unofficially.

Small-scale producers plant, harvest and prepare the cocoa in their fields. When the cocoa has fermented and dried, they sell it. Between the farm gate and the cooperatives or authorised purchasing operators, there are often intermediaries, known as 'pisteurs', who buy and sell cocoa informally.[79]

> Given the informal nature of the first part of the supply chain, it is unlikely that farmers will have explicit proof of compliance with environmental standards and labour law.

Once cocoa reaches a cooperative or an authorised purchasing operator, it enters a more formal route with required documentation and data collection.[80]

Some farmers hire workers periodically, others have permanent workers on their plantations. These workers rarely have written employment contracts, instead making verbal agreements with farmers on an *ad hoc* basis.

79 Bockel, L.; Ouedraogo, S.A.; Auguste, K.A.; Gopal, P. 2021. Analyse prospective de la filière cacao en Côte d'Ivoire 2020-2030 – Vers une politique commune de marché de cacao en Afrique de l'Ouest. Accra, FAO. https://doi.org/10.4060/cb6508fr

80 Nitidae and EFI, Traceability and transparency of cocoa supply chains in Côte d'Ivoire and Ghana, 2021

The absence of documentation does not necessarily imply non-compliance with Ivorian law, but it makes it challenging to assess compliance

4.3.3 Traceability

Existing traceability systems in Côte d'Ivoire allow cocoa beans to be **tracked from the first buyer** and cover subsequent sales between cooperatives and traders.

These systems focus on the quality and weight of cocoa beans through the various stages of transport, cleaning and drying that take place between purchase from the local trader or cooperative and export.[81]

A decree was adopted in September 2023 to set up a **new national cocoa (and coffee) traceability system**. According to the CCC, the latter will include a computerised system for recording commercial transactions and a system for labelling bags of coffee and cocoa.

This will identify the producer and the area of origin of the products – and trace their journey from the production area to the end customer. The aim is to:

- determine the origin of coffee and cocoa products at each level of the supply chain;
- ensure compliance with the guaranteed minimum purchase price at the farm gate;
- secure financial transactions in the coffee and cocoa sectors; and
- preserve product quality by promoting compliance with minimum sustainability standards.

However, this system is not yet operational.

Several voluntary certification schemes are available to cocoa farmers – such as Fairtrade, UTZ and organic – which use various systems of traceability – such as mass balance, segregation and identity preservation – though participation in these schemes comes at a cost.

The main cocoa trading companies have also developed software to track their supply chains. However, these systems rarely include traceability as far back as farmers' plots and often cover only a share of the supply chain.

81 Currently, the system is composed of a registration module for cocoa bags and phytosanitary treatments (SICOPS – Système d'Information et de Contrôle des Opérations de Distribution des Produits Phytosanitaires et de la Sacherie) and a monitoring module for national trading of cocoa and coffee (SYDORE – Système de Gestion des Données Régionales). For more info, see Nitidae and EFI, Traceability and transparency of cocoa supply chains in Côte d'Ivoire and Ghana, 2021.

4.3.4 Absence of centralised databases

There is a **lack of publicly available information** on the zoning of protected areas in which agricultural activities are prohibited. In Côte d'Ivoire, there is no legal land-use map indicating zoning categories.

Therefore, the exact delimitation of protected areas could pose practical difficulties, as the boundaries are not demarcated on the ground. Spatial information about these areas is not publicly available, and the accuracy of any information that is available may be limited.

Until this information is formalised and accessible, it constitutes a source of legal uncertainty for cocoa harvested close to protected areas.

Cocoa farmers also have limited information about where cocoa farming is permissible, with the result that many cocoa farms overlap with protected areas

4.3.5 Absence of formalised interests in land

In order to farm a plot of land, a producer should have the right to carry out agricultural activities on the land: either because they have ownership rights to the land or have the owner's authorisation, for example in the form of a lease.

> However, interests in land acquired for agricultural purposes are not normally registered or formalised.

Côte d'Ivoire has a **formal centralised land tenure system** for urban and rural land. According to Article 12 of the 2016 Constitution, only Ivorians and national and local authorities can own rural land.

The Ivorian state-centric approach to land management is not adjusted to customary practices, which has led to a discrepancy between laws on paper and what happens in reality.[82]

The tenure reform of 1998 allows continuous and peaceful customary rights to give rise to a formal property right capable of supporting a land certificate. This can be individual or collective to respect community customary rights. However, this property right is temporary.

The law requires conversion of these certificates to individual land titles within 10 years, after which unregistered land reverts to the state.

However, implementation of the Rural Land Tenure Act has encountered enormous difficulties, to the point where it is estimated by the Ivorian public rural land agency – the "Agence Foncière Rurale" or "AFOR" – that **only about 3% of rural land is registered** according to these procedures, mainly because they are complex and very costly.

Villages must also be demarcated and land management committees have been set up for this purpose. These committees make decisions on requests for individual or collective land certificates, which must be converted into individual land titles within 10 years. In theory, these certificates can be issued to foreigners, whereas titles can only be issued to Ivorians.

Foreigners must convert their certificates into leases of up to 99 years. While some have advocated for the certificates to be the final document, the issue of restricting land to Ivorian nationals is one explanation for the two-stage process.

82 DeJong, T. (2021). *Tree and land tenure nexus in Côte d'Ivoire.* Washington, DC: USAID Integrated Land and Resource Governance Task Order under the Strengthening Tenure and Resource Rights II (STARR II) IDIQ.

Where a cocoa farmer has no land ownership rights, they should at least have an agreement with the owner – whether it be the state, a community or an individual. Any individual or legal entity, Ivorian or foreign, may lease rural land for cocoa production purposes, provided they hold, at least, a land certificate. The land certificate is therefore a guarantee of access to rural land, as it identifies the owner who is authorised to enter into the lease contract. In theory, land without a land certificate can be leased but a legal framework to allow this has not yet been adopted.

There is no obligation in Ivorian law for the parties to a lease agreement to agree it in writing or to register their contract. In practice, rural land leases are not usually registered or formalised. The AFOR has introduced model contracts designed to allow holders of rural land use rights to secure their acquired rights. However, farmers rarely make use of them due to a lack of information or bias against government authorities.

In contrast, contracts for concessions granted by the state on land it owns are generally documented.

> The absence of documentary evidence of land-use rights to the area of production does not make the use of the area illegal. However, it contributes to the informal nature of the sector and leads to legal uncertainty.

Indeed, without a valid legal title to use the land – whether a property title or a lease – farmers are themselves at the risk of being evicted.

4.3.6 Lack of clarity on forest conversion

The existing legal framework for forest conversion is incomplete and inadequately implemented.

Where implementing procedural rules exist, they are often not followed or enforced, or they are unclear. For example, any clearing of forests not already provided for in a forest management plan is subject to prior authorisation from the forestry administration (decree no. 2020-423 of 29 April 2020).

This authorisation is subject to the maintenance of at least 30% of the forest area concerned. This means any application to clear a forest, even a privately-owned forest, can only be authorised to exploit 70% of the area. The aim of this measure is to restore forest cover.

However, the decree has several limitations. It does not specify the contents for an application for forest clearance, nor does it specify the circumstances in which an environmental assessment is required. Without these details, relevant authorities are unable to make informed or consistent decisions.

> In addition, the question of whether it is possible to clear land for agricultural purposes in ecologically sensitive areas remains unanswered

Ecologically sensitive areas include forests located in: mountain areas, coastal areas, areas essential for the protection of banks, slopes and catchment areas, in particular gallery forests, in forests providing particular ecosystem services or playing specific protective functions (Article 48 Forest Code).

Under the terms of this provision, the management and use of this category of forest are determined by decree. In fact, the decree setting out the terms and conditions for the management and use of ecologically sensitive areas – which lists the activities that have the effect of disrupting the natural cycles of their ecosystems – omits deforestation and land clearance. The list is not exhaustive, but the omission of deforestation and land clearing suggests these activities can be carried out in ecologically sensitive areas, particularly for agricultural purposes, as is the case in practice.

4.3.7 Cocoa produced in protected "classified" forests

According to the CCC, it is estimated that 30% of cocoa comes from protected "classified" forests – where agricultural activities are not permitted.

A classified forest is part of the private forest estate of the State or of a local municipality that is protected under the Ivorian Forest Code. The classification of a forest requires the adoption of a regulatory act which defines its area and purpose. Despite these areas requiring formal identification, there is no publicly available map of their exact location.

In principle, cocoa production is not allowed in classified forests (Article 46 and 101 of the Forest Code). However, given the limited information about the boundaries of these areas, encroachment of cocoa farms into classified forests is widespread.

A census carried out by the CCC in 2020 estimated that there were almost 120,000 farmers living in the 234 classified forests in Côte d'Ivoire, representing 12% of Ivorian farmers.[83]

12%

Ivorian farmers living in classified forests in Côte d'Ivoire*

234

classified forests in Cote d'Ivoire, where cocoa farming is prohibited*

30%

of Ivorian cocoa comes from classified forests*

*A census carried out by the CCC in 2020

83 See: En Côte d'Ivoire, le secteur du cacao face au casse-tête des exigences environnementales de l'UE.

Agroforest scheme

The Ivorian government introduced an agroforestry scheme in 2018[84] to:

- restore severely degraded classified forests;
- avoid the outright expulsion of communities from classified forests and the resulting social problems; and
- provide a legal basis for some of the agricultural production in classified forests.

In practical terms, this involves converting all or part of severely degraded classified forests[85] into agroforests, in particular for cocoa production. The idea is for cocoa trees to grow amongst other species of trees to create a virtuous eco-system for all the species present.

> To create an agroforest, a "reclassification" procedure needs to be carried out to revoke the classified forest status of the area.[86]

This includes a technical, social and environmental feasibility study.

Once the agroforest is formally created, it needs to be subject of a concession agreement and must have a management plan. The management plan should be drawn up by the concessionaire and approved by the Forest Administration, with a view to the sustainable management of the forest.

Decree no. 2021-437 of 8 September 2021 specifies that these agroforests may not be used to create industrial cocoa plantations. Farming in these areas needs to comply with the specific criteria and rules of the management plan. Failure to do so can result in penalties, including fines and imprisonment (Article 88 Forest Code). Without these concession contracts and management plans, an agroforest cannot be legally constituted, and the cocoa derived from it cannot be considered legal.

To date only three agroforests have been created in Côte d'Ivoire.[87] This is out of approximately 85 classified forests eligible for the agroforest scheme.

Any cocoa coming from so-called agroforests – except the three areas covered by agroforest concessions – would currently be considered illegal.

3

agroforests created out of a possible 85 that are eligible in Côte d'ivoire*

It should be noted that in an attempt to expedite the creation of agroforests and legalise cocoa production coming from classified forests, the Ivorian government passed a decree in September 2024[88] that purports to cancel the prevailing decrees that established the 'reclassification' procedure to create agroforests[89] and create a list of agroforest areas instead. However, it is our view that this approach is inconsistent with the Forest Code, a legal norm which is superior to a decree. This interpretation would mean these recent changes are invalid.

84 Policy for the Preservation, Rehabilitation and Extension of Forests of the Ministry of Water and Forests (MINEF) of 2018.
85 Forests with a degradation rate of more than 75% of the dense rainforest zone evergreen and semi-deciduous forest (Article 2 of Decree no. 2021-437 of 8 September 2021).
86 This procedure is detailed in Decree no. 2019-979 of 27 November 2019 and Decree no. 2021-437 of 8 September 2021
87 In Scio, Haut-dodo and Rapide Gras.
88 Decree No. 24-800 of 5 September 2024.
89 Decree no. 2019-979 of 27 November 2019 and Decree no. 2021-437 of 08 September 2021.

Enclaves and farms within classified forests

Areas can be formally carved-out of classified forests as designated "enclaves" where farming is allowed.

The term "enclave" is not defined in Ivorian law, but by reading articles referring to it we understand it to be an area locked within a classified forest, with no access to a public road, where agriculture is allowed. The concept was created to recognise the existence of villages in forest areas before they were designated as classified forests and avoid their subsequent displacement.

Legally, an enclave may be created when the surrounding classified forest is designated – or subsequently through a separate decree or legal order. If pockets of farmland within a classified forest are not duly constituted, they will be illegal enclaves and any agricultural production coming from them will also be considered illegal.

The legal text establishing an enclave must detail its boundary (surface area, geographical coordinates and polygons).

> However, we understand from consultations with local civil society actors and cooperatives that, in practice, local people are often unaware of their boundaries and encroach on classified forest areas.

Therefore, there is a risk that cocoa purportedly produced in enclaves may in fact have been produced in classified forests outside the boundaries of the enclave and therefore produced illegally. Penalties for exceeding enclave boundaries may include seizure of agricultural produce, destruction of crops and criminal prosecution.

4.3.8 Use of unregistered pesticides

The use of pesticides is regulated by Decree no. 89-02 of 4 January 1989. This decree requires authorisation to be obtained for pesticides themselves, as well as for pesticide retailers and sprayers.

Any pesticide imported or manufactured in Côte d'Ivoire must first be approved by the Ministry of Agriculture on the recommendation of the Pesticides Committee or be granted provisional authorisation for sale. Prior authorisation for pesticide manufacturing and/or packaging establishments is also required. It is the responsibility of the pesticide retailer to check the products they buy are approved or have prior authorisation for sale.

The profession of sprayer is also subject to prior approval. After any pesticide application, empty packaging must be rendered unfit for use and pesticide residues must be destroyed with due care.

Authorised officials from ministries with representatives on the Pesticides Committee are entitled to carry out checks on the premises and worksites of pesticide manufacturers, retailers and sprayers.

Any infringement of the law is subject to the immediate seizure of the products in question, without prejudice to other administrative sanctions and civil or criminal proceedings provided for by the regulations in force.

Order no. 159 / MINAGRI of 21 June 2004, prohibiting the use in agriculture of active substances used in the manufacture of phytopharmaceutical products, lists a number of prohibited products.

However, we understand from consultations with local civil society actors and cooperatives that, **in practice, the use of unregistered pesticides is widespread in the Ivorian cocoa sector**.

This is due to easy access to cheap, illegal substances, farmers' lack of awareness of the legal requirements and weak enforcement of the relevant regulations.[90] Similarly, it seems pesticide sprayers rarely have the compulsory prior approval.

4.3.9 Child labour

A 2020 report by the National Opinion Research Center of the University of Chicago estimates the number of children working in cocoa production in Côte d'Ivoire at 790,000.[91]

The government has made efforts to enforce labour regulations, but challenges remain – mainly due to the cycle of poverty created by cocoa farmers' low earnings and difficulties in employing workers.

The Ivorian Constitution enshrines a ban on child labour (Article 16) and Act No. 2010-272 of 30 September 2010 provides further rules for the prevention and repression of child exploitation, including child trafficking and hazardous child labour.

It defines a child as every human being below the age of 18 years (Article 3). Article 4 lists the 'worst forms of labour' that are prohibited for children, including work which, by its nature or the conditions in which it is carried out, is likely to harm the health, safety or morals of the child.

Article 5 provides that children may not be engaged in dangerous work, which, because of the conditions in which it is carried out, is likely to:

- endanger their lives;
- deprive them of their childhood, their potential and their dignity;
- harm their health and physical and mental development; or
- deprive them of their schooling, the opportunity to go to school, prevent them from attending school regularly or from being able to benefit from the education they receive.

790,000

children working in cocoa production in Côte d'Ivoire

Order no. 2017-017 MEPS/CAB of 2 June 2017 also lists dangerous work that is prohibited for children, including land-clearing, harvesting with a machete or sickle, shelling with a sharp object, handling agrochemicals and driving motorised equipment.

However, Order no. 2017-017 specifies that children between the ages of 16 and 18 may carry out the work listed above provided their health, safety and morals are fully guaranteed and that they have received specific instruction or vocational training for the activity.

Children aged between 13 and 16 may carry out 'light' work (Order no. 2017-016 MEPS/CAB of 2 June 2017). "Light work" is defined as work which, by its nature and the conditions in which it is carried out is not likely to be:

- harmful to the child's health or physical, mental, moral or social development; or
- harmful to the child's school attendance, participation in vocational guidance or training programmes or ability to benefit from the education received.

90 Voice Network, Cocoa Barometer 2022.
91 NORC Final Report: Assessing Progress in Reducing Child Labor in Cocoa Production in Cocoa Growing Areas of Côte d'Ivoire and Ghana. NORC at the University of Chicago, Oct. 2020, p. 10. Available at https://www.norc.org/content/dam/norc-org/pdfs/NORC%202020%20Cocoa%20Report_English.pdf.

Children may also take part in so-called "socialising activities", defined as any unlisted task carried out by a child aged between 13 and 16 under the supervision of the legal representative for the purposes of education and social integration. The activity should not be likely to harm the child's health or physical, mental, moral or social development, their school attendance, vocational training or wellbeing.

Because the cocoa sector is mostly informal and dominated by small family-run farms, it is not unusual to see children on cocoa plantations.

> One of the challenges is that, in practice, it might not be easy to distinguish between situations that constitute prohibited work and hose that are closer to vocational training or socialising activities appropriate for children living on family-run farms.

Given that estimates of child labour in the Ivorian cocoa sector remain high, operators will need to monitor their supply chains closely and verify the circumstances of any children working on farms.

4.4 Conclusion

While the trade and export of cocoa products are well regulated in Côte d'Ivoire and legal requirements are effectively enforced by the Conseil Café-Cacao, the regulation of cocoa *production* is relatively light. Plus, the legal framework, while comprehensive, contains gaps and inconsistencies in addressing the social and environmental issues of the cocoa sector. These can pose challenges to investigating and evidencing legal compliance.

> Gaps in both the legal provisions and their implementation contribute to a level of legal uncertainty which can be challenging to clarify at the farm level.

Likewise, the informal nature of cocoa production in Côte d'Ivoire and the common lack of formal records or official documentation can complicate the process of documenting legal compliance. This is related to cocoa farmers' very low incomes, high levels of poverty and their marginalisation from decision-making processes.

However, the relatively strong legal and institutional framework for the trade in cocoa – and the importance of the cocoa trade for the national economy – have allowed the Ivorian government to make several industry governance reforms. These reforms, such as the development of the national traceability system and the implementation of the ARS1000 standard, help address deforestation and support efforts to comply with EUDR requirements.

Case study

5. Ghana: legal framework and key legality risks

Disclaimer: The research on which this case study is based was jointly undertaken by ClientEarth and TaylorCrabbe, a Ghanaian legal non-profit organisation and long-standing partner of ClientEarth in Ghana. The research focused on relevant national laws for the production of cocoa and has been informed by experience working with local legal working groups that include and support cocoa farmer associations (for more details, see: A legal pathway to sustainable cocoa in Ghana and Côte d'Ivoire).

5.1 Summary of the Ghanaian legal framework

Ghana has a **pluralist legal system**, consisting of overlapping statutory, common and customary laws. These sources are recognised in Chapter 4 of the Ghanaian Constitution of 1992, which sits at the top of the national legal framework.

The main kinds of law in Ghana are legislation and common law, comprised of jurisprudence and customary law:

- **The Constitution of the Republic of Ghana 1992**: the Constitution declares itself as the supreme law of the land and, as a result, all laws which are inconsistent with its provisions are void to the extent of the inconsistency, including customary laws. The Constitution provides a broad framework for government and makes provisions for the regulation and use of natural resources.
- **Acts of Parliament**: legislation provides much of the detail for the national legal framework for natural resource management.

A farmer removing cocoa beans from their pods

- **Legislative Instruments**: regulations complement the Acts of Parliament and operationalise them.
- **Jurisprudence**: the Supreme Court has jurisdiction over constitutional issues and it is the final court of appeal. The Court of Appeal deals with appeals relating to the High Court, which has jurisdiction over all civil and criminal cases except treason. The Supreme Court, Court of Appeal and the High Court are referred to the Superior Courts of Judicature. All but the most serious civil and criminal cases, and cases under family law, are heard in circuit courts. These courts also deal with appeals arising from district courts within their region.
- **Customary law**: formally recognised in the Constitution as a valid source of law to the extent that it is not inconsistent with the Constitution or other statutory laws (Article 1(2) and 11 of the Constitution). It includes rules of law and custom that are observed by and are applicable to specific communities. Customary law is generally unwritten[92] and is most relevant to personal, domestic, land ownership and contractual relationships, for example inheritance and marriage.

> Accordingly, customary laws are not universally applicable across Ghana, only to members of the community in which the relevant customary law is observed.

The main legislation regulating the cocoa sector in Ghana are the Ghana Cocoa Board Act 1984, the Land Act 2020, the Land and Spatial Planning Act 2016, the Plants and Fertilizer Act 2010, the Labour Act 2003 and the Children's Act 1998. These laws establish:

- a management and regulatory body for cocoa;
- the rules governing the land tenure, spatial planning, plant protection and fertiliser control; and
- provide a framework for the sustainable management of forest resources.

Given Ghana's pluralist legal system, assessing the legality of Ghanaian cocoa will require a review of statutory law and specific local customary laws.

92 Since 2006, the National House of Chiefs in partnership with the Ghana Law Reform Commission initiated a project for the Codification of Customary Law. The project is still in progress. Nyarko, M. (2023). Researching Ghanaian Law. Globalex, NYU Law. Retrieved from https://www.nyulawglobal.org/globalex/ghana1.html

5.2 Key laws relevant to cocoa production in Ghana

5.2.1 Land access

Cocoa production can only be done in authorised areas that have been zoned for agriculture pursuant to the *Land and Spatial Planning Act 2016 and the Zoning and Land Use Regulations, 2019*. These laws guide how land is designated for different uses, including for agriculture purposes.

Ghana's legal framework differentiates between forest reserves and off-reserve areas. Forest reserves are officially designated forest estates established by the government under Ghana's primary forestry laws, including the *Forest Act of 1927 and the Forest Protection Act of 1974*.

Forest reserves are protected areas established for specific purposes, such as conserving forests and water sources and ensuring a sustainable supply of forest products.

> Therefore, in principle, agriculture is not allowed in forest reserves as it is not a permitted forest reserve purpose – except where cocoa farms already existed before the forest reserve was established, known as "admitted farms".

Forest reserves can be "degazetted", meaning they lose their "forest reserve" status. However, the law is unclear on the grounds and procedure, and instead the Forest Commission tends to grant access to these areas for agricultural or mining purposes on a case-by-case basis, notwithstanding their "forest reserve" status.

Off-reserve areas are not subject to the same legal protections and forested land can be cleared for agricultural use. However, the felling of trees suitable for timber harvesting requires a permit from the Forestry Commission under the *Timber Resources Management Act of 1998*.

5.2.2 Vegetation clearance

There are no legal restrictions on cutting trees that are not suitable for timber harvesting in off-reserve areas. This has contributed to widespread forest conversion, particularly for cocoa farming.

In fact, the legal framework creates incentives for farmers to destroy timber-producing trees at an early stage without considering other options. One such option might be agroforestry farming, where farmers plant cocoa trees amongst other trees that provide shade, water retention and other indirect benefits.

Instead, as farmers derive no direct benefits from existing trees[93] – and could have their cocoa farms damaged by future government-authorised timber harvesting – many opt to clear the land, further driving deforestation and habitat loss.

5.2.3 Land tenure

The *Land Act 2020* regulates land acquisition, leasing, transfer, and all other issues relating to land in Ghana. It revises, harmonises, and consolidates all laws for sustainable land administration and management as well as effective and efficient land-tenure governance.

However, **customary law continues to govern land rights in Ghana**. The rights to use the "plot of land" for cocoa production may therefore be dependent on customary law. Farmers will need to hold customary ownership rights to the land they are farming or have received written or oral permission from landowners to farm their land.

93 Presently, ownership of all "naturally occurring" trees, including on land privately held under customary title, is vested in the state and the benefits of harvesting naturally occurring trees are shared between loggers, traditional authorities, and the government – but landowners are excluded.

5.2.4 Environmental impact assessment

The *Environmental Assessment Regulations, 1999*, require all development activities likely to have a negative impact on the environment to undergo an environmental impact assessment and obtain an environmental permit.

This requirement applies to agricultural activities involving the clearing of land larger than 40 hectares or located in an environmentally sensitive area.[94] This means small cocoa producers are not required to carry out an environmental impact assessment or obtain an environmental permit, unless their farm overlaps an environmentally sensitive area, such as national parks, watershed reserves, wildlife reserves and sanctuaries, and sacred groves.

There is also the *Control and Prevention of Bush Fire Act 1990* which requires prior approval from the Ministry of Agriculture's Director of Agricultural Extension Services to use fire to clear land for farming purposes.

5.2.5 Pesticides and fertilisers

Use of pesticides and fertilisers is regulated by the *Environmental Protection Agency Act 1994*, the *Pesticide Control and Management Act 1996* and the *Plant and Fertiliser Act 2010*.

Pesticides and fertilisers used for cocoa farming need to be pre-approved and registered with the Environmental Protection Agency (**EPA**) and Ministry of Agriculture respectively.

They are usually registered for three years, subject to renewal, though provisional registration for shorter periods – between six to 12 months – can be given where an applicant needs to submit more information.

Certain products can be completely banned. Registered pesticides and fertilisers are publicly notified.

The import, export, manufacture, distribution, advertisement and sale of pesticides also requires prior authorisation from the EPA. The storage of pesticide products requires a pesticide licence.

5.2.6 Labour rights and child labour

Ghana has an elaborate legislative and institutional framework for the protection of labour and human rights, including comprehensive laws and policies to combat the exploitation of children as workers.[95] The regulations governing worker health and safety[96] predominantly focus on industrial facilities and operations. There are no sector-specific rules for agricultural production; the requirements are generic.

Labour rights, employers, trade unions and industrial relations are regulated by the *Labour Act 2003*. It prohibits the employment of people aged 18 to 21 in "hazardous work", which includes felling trees, carrying loads over 25kg, and using dangerous pesticides and fertilisers.[97]

> The Labour Act also criminalises forced labour, which is work or service that is exacted from a person under threat of a penalty and for which that person has not voluntarily offered to work. This definition is also used to assess child labour in the cocoa sector.

94 For a definition see Schedule 5 of the *Environmental Assessment Regulation 1999*. Note that Forest Reserves are not classified as environmental sensitive areas in Schedule 5. While national parks, watershed reserves, wildlife reserves and sanctuaries have been created by legislative instruments (requiring the approval of parliament), Forest Reserves are created by executive instruments, i.e. a declaration by the executive

95 For a comprehensive review, see Taylor Crabbe, Forest trends and Fern, Child labour laws and policies in Ghana, with specific emphasis on the cocoa sector, March 2020.

96 Namely the Labour Act, 2003, Labour Regulations 2007 and the Factories, Offices, and Shops Act 1970

97 Defined in section 7(1) of the Labour Regulations 2007 as work involving (a) manual lifting of loads the weight of which exceeds twenty-five kilograms, (b) work on scaffold and other structures at a height exceeding two and a half metres, (c) the use of substances and materials that emit (i) radiation, or (ii) poisonous gases or fumes, (d) the use of dangerous chemicals, (e) excessive noise, (f) the felling of timber; (g) night work exceeding eight continuous hours, or (h) other situations considered by the Chief Labour Officer as hazardous

The *Children's Act 1998* sets out the rights of the child, including in relation to labour and apprenticeships.[98] It defines a child as a person below the age of 18 years and stipulates that in any matter relating to a child, the best interest of the child must be paramount.

The Act prohibits engaging children in "exploitative labour", defined as work that deprives a child of their health, education or development. The Act further prohibits the engagement of children in work between the hours of 8pm and 6am.

A 13-year-old child may be engaged in "light work" – work which is not likely to be harmful to the health or development of the child and does not affect their attendance at school or their capacity to benefit from schoolwork.

A child of 15 years may be fully employed in regular work.[99] The work must not, however, pose a danger to the health, safety, or morals of the child.

5.2.7 Corruption

Corruption, fraud and official conflict of interest are covered by the *Criminal Offences Act 1960*.

Corruption levels in Ghana are low compared to other African countries, although it is not uncommon for low-level government employees to ask for small bribes in return for facilitating licence and permit applications.

The *Criminal Offences Act* criminalises active and passive bribery, extortion, wilful exploitation of public office, use of public office for private gain and bribery of foreign public officials. Ghana has a relatively strong anti-corruption legal framework but, like many countries, faces challenges of enforcement and transparency.[100]

5.3 Key institutions relevant to cocoa production in Ghana

The **Ghana Cocoa Board or COCOBOD** is the primary government body responsible for regulating and overseeing the trade in cocoa (and coffee and shea nuts), pursuant to the *Ghana Cocoa Board Act 1984*.

COCOBOD's objectives are to:

- encourage the cultivation of cocoa, coffee, and shea;
- regulate their marketing and export;
- purchase, import, undertake as well as encourage the manufacture, distribution and marketing of inputs used in the production of these crops; and
- promote and encourage scientific research to improve the quality and yield of cocoa, coffee, shea, including programmes aimed at controlling pests and diseases.

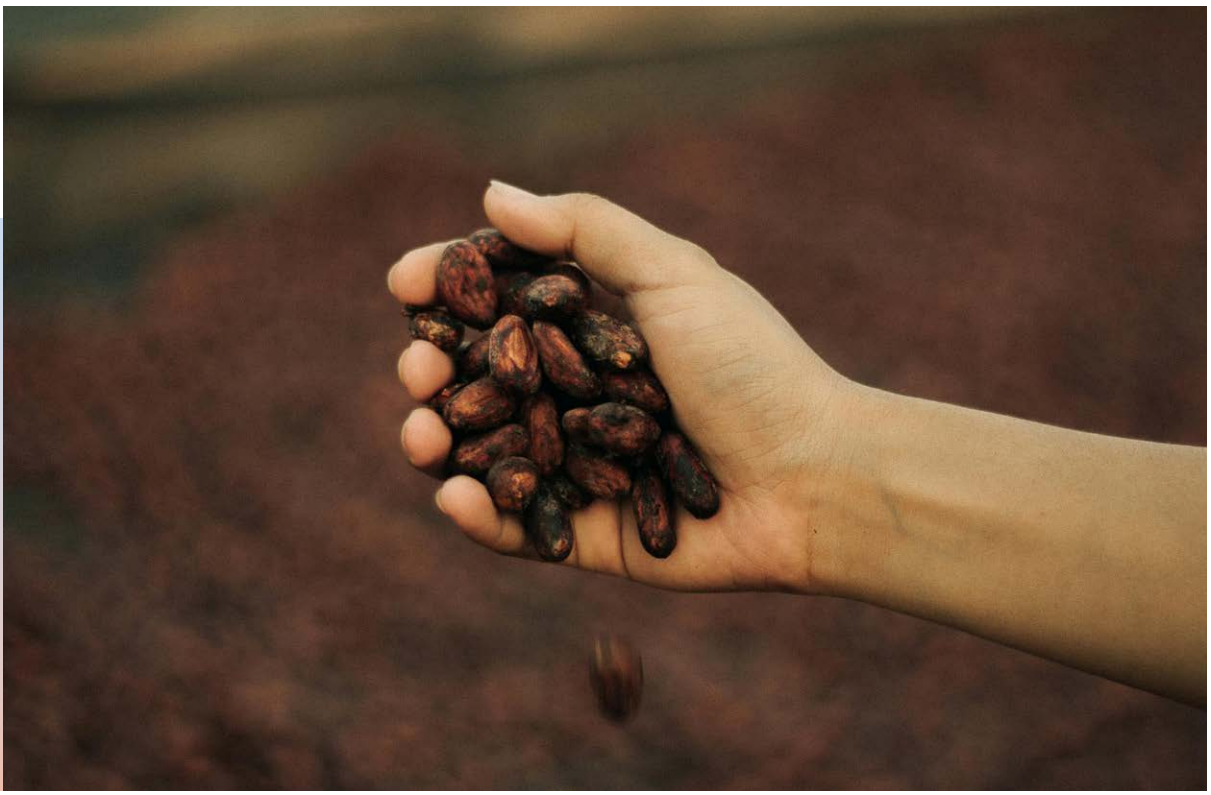
Importantly, cocoa can only be bought from cocoa producers by a person or organisation authorised by COCOBOD, called Licensed Buying Companies (**LBCs**). LBCs are required to sell all the cocoa they buy to COCOBOD for export.

All other persons are prohibited from marketing and exporting cocoa unless certified to do so by COCOBOD. The *Cocoa Industry (Regulation) Act 1968* and *Customs Act 2015* further describe the legal requirements for the transport and export of cocoa.

98 Note that Ghana ratified the ILO Convention 138 on Minimum Age, the ILO Convention 182 on the Worst Forms of Child Labour and the African Charter on the Rights and Welfare of the Child.
99 See sections 88 – 90 of the Children's Act 1998.
100 For more information, see GAN Integrity (2020), 'Ghana Risk Report, available at: https://www.ganintegrity.com/country-profiles/ghana/.

A number of other public entities are relevant for the cocoa sector:

- the **Ministry of Food and Agriculture** is the lead agency for developing and executing policies and strategies for the agriculture sector. It also formally exercises supervision or regulatory oversight over COCOBOD.
- the **Ministry of Lands and Natural Resources (MLNR)** is the leading state institution for making and implementing government policy on lands, forestry, and mineral resources.
- the **Forestry Commission** is one of the natural resources commissions under the supervision of the MLNR. The Forestry Commission is responsible for the regulation, conservation and management of forest and wildlife resources and the coordination of policies related to them.
- the **Environmental Protection Authority (EPA)** has the primary duty of regulating the environment and ensuring the implementation of government policies on the environment. Particularly for cocoa, the EPA may ensure that the guidelines for the application of fertilisers and agrochemicals are in line with best practices to prevent water contamination and protect the environment. The EPA is also responsible for regulating the import, manufacturing, distribution, advertisement and sale of pesticides and the licensing of pesticide dealers in Ghana.
- the **Land Use and Spatial Planning Authority (LUSPA)** provides for the sustainable development of land and settlements through a decentralised planning system, the judicious use of land, and an enabling environment for District Assemblies to contribute to spatial planning and human settlement management. LUSPA is required to control the physical development of sensitive areas such as forest reserves, nature reserves, and wildlife sanctuaries – and ensure the use of natural resources for agriculture, mining, industry, and other related activities do not adversely impact on human settlements.



Ghana also supported the drafting of the ARS-1000 standard for sustainable cocoa in the framework of the African Organization for Standardization. It was adopted on 15 June 2021. The Ghanaian Government plans to make ARS-1000 mandatory for the cocoa sector but had not yet done so at the time of publication.

Our reservations about the role of ARS-1000 in supporting operators' due diligence under the EUDR for cocoa produced in Côte d'Ivoire apply equally in Ghana.

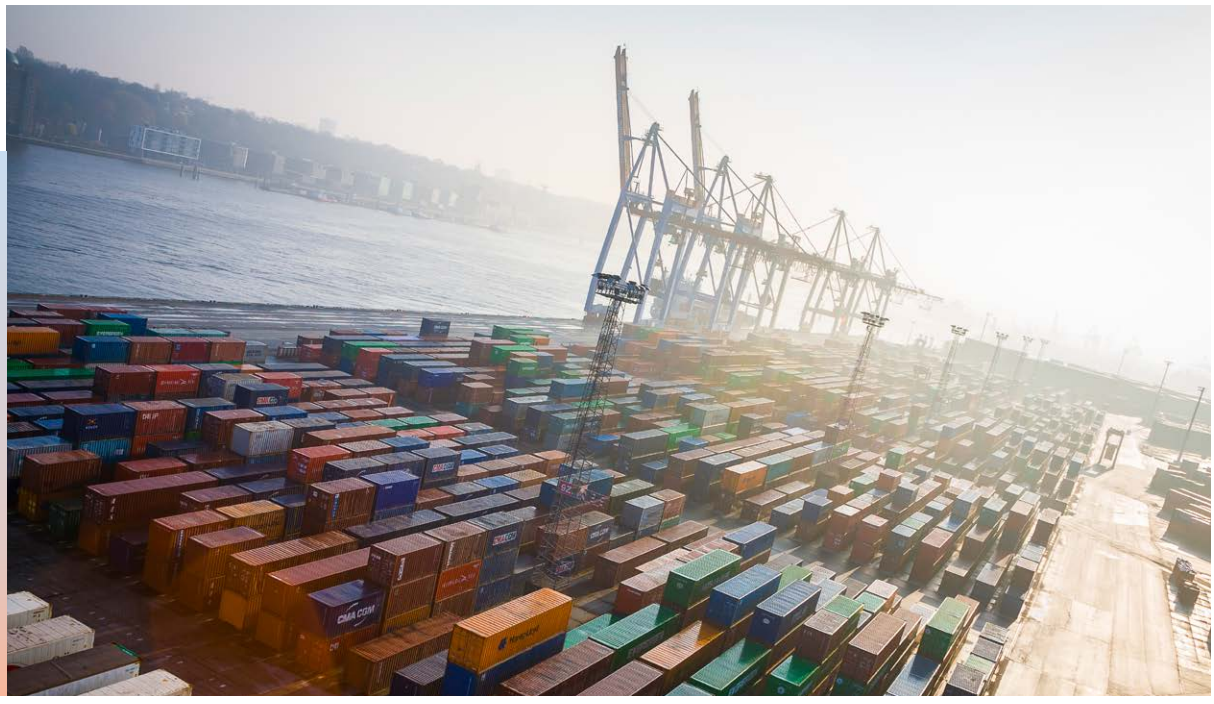
5.4 Key considerations for assessing legal compliance risk

5.4.1 Access to relevant information

There is no comprehensive database for Ghanaian legislation and case law.

However, centralised registries exist for some of the different types of law:

- **Statutory laws**: the Parliament of Ghana has an online legislation database[101] which, at the time of writing, is not comprehensive but is being updated. Another source of information for national legislation and regulations on agriculture and natural resources management is the FAOLEX Database.[102]
- **Customary law** is primarily oral and unwritten. Some customary rules have been documented in literature or court judgements but there is no comprehensive database. Identifying and understanding relevant customary laws therefore requires consultation with local experts.
- **Case law** can be accessed at court registries. Some cases are available online on private databases.[103]
- **Tenure information** on formal land titles and deeds can be found at the Ghanaian Lands Commission's Register. A process to record customary grants of land rights has begun, with Customary Land Secretariats being set up in local communities across the country.
- **Agricultural zoning and land-use planning** are primarily managed at the local level by the Metropolitan, Municipal, and District Assemblies. These local government bodies have physical Planning Units responsible for creating and enforcing zoning regulations.
- Information on **tax and customs** compliance can be found with the Ghana Revenue Authority.[104]



101 https://ir.parliament.gh/handle/123456789/282.
102 https://www.fao.org/faolex/en/.
103 Two popular databases are the Ghana Legal Information Institute (https://ghalii.org/) and DennisLaw (https://www.dennislawgh.com/dl-search).
104 https://gra.gov.gh/

5.4.2 Informality of the agricultural sector

Ghanaian cocoa is almost entirely produced by smallholders. According to COCOBOD, cocoa is mainly produced in family-run, medium-sized plantations of two to three hectares. There are about 800,000 cocoa farmers in Ghana, comprising approximately 60% of agricultural workers.[105]

As with Côte d'Ivoire, the number of small producers and family-farmers in cocoa production means supply chain due diligence requires more effort compared to sectors dominated by large-scale producers.

Given the family-run nature of most cocoa farms, **Ghanaian cocoa production is mostly informal**.

Similar to the Ivorian cocoa sector, it is unlikely that all farmers will have formal documentation proving compliance with formal land tenure and land-use regulations, environmental standards and labour law.

> However, the absence of documentation does not necessarily imply non-compliance with Ghanaian law.

As noted above, there are fewer legal requirements for small-scale and informal cocoa production, hence cocoa smallholders will have less – and need less – formal documentation for their cocoa farms.

5.4.3 Traceability

Although there are relatively well-enforced quality assurance systems for cocoa beans, there is no national-level monitoring system to check the sustainability and legality of cocoa production.

The current systems focus on product quality, not origin, and only apply to Licensed Buying Companies – not the farm where the cocoa was produced.

Existing cocoa bean quality assurance systems are also predominantly paper-based, which can pose challenges if records are lost, destroyed or manipulated. There is also no proper assurance mechanism for buyers to check the accuracy of information about the farm of origin. As such, it is currently difficult to trace cocoa to the farm of origin and check whether it was produced legally.[106]

A complicating factor is that farmers typically mix and sell their produce collectively. It is therefore possible for cocoa beans grown legally to be mixed with cocoa beans grown illegally. The fact that cocoa grown illegally can be easily mixed and sold with legal cocoa creates economic incentives for illegal cocoa farming.

As in Côte d'Ivoire, there are several cocoa certification schemes – such as UTZ, Rainforest Alliance and Fairtrade – which attempt to guarantee sustainability along specific supply chain. However, these schemes are voluntary and tend to focus on individual or limited supply chains and traceability back to the first point of purchase – usually the farmer cooperative or LBC – by which point the cocoa has already been mixed.

Traceability data going back to the original farm is often unavailable or unreliable.[107]

105 Amankwaah, B. et al. (2021), *Cocobod's Unrealised Potential: Promoting Human Rights, Welfare, and the Environment in Ghana's Cocoa-Growing Communities*, Northwestern Pritzker School of Law Center for International Human Rights, University of Ghana School of Law, Corporate Accountability Lab & SEND Ghana, at p.13. Available at: https://static1.squarespace.com/static/5810dda3e3df28ce37b58357/t/60cb58bba936fc53960e4aff/1623939288558/COCOBOD%27s+Unrealised+Potential+-+Northwestern+Law%2C+Ghana+School+of+Law%2C+CAL+%26+SEND+%28June+2021%29.pdf

106 Nitidae and EFI, (2021), Traceability and transparency of cocoa supply chains in Côte d'Ivoire and Ghana. Available at: https://euredd.efi.int/wp-content/uploads/2023/08/Traceability-and-transparency-of-cocoa-supply-chains-in-Cote-dIvoire-and-Ghana.pdf

107 Stoop, P. et al. (2021), Technical Brief on Cocoa Traceability, IDH, GISCO, C-lever.org. Available at: https://www.idhsustainabletrade.com/uploaded/2021/04/Cocoa-Traceability-Study_Highres.pdf.

To address these issues, COCOBOD is in the process of developing a cocoa management system (CMS) – an integrated digital cocoa farmer database and traceability system – called the Ghana Cocoa Traceability System.[108] It aims to provide fully-digitised physical and financial traceability from the farm to the point of export.[109]

If the CMS is successfully implemented, it will be possible to detect illegal sourcing based on the location of a farm. For example, if a farmer located next to an area at risk of deforestation is selling significantly more than his forecasted yield throughout a season, the system will identify a risk that the cocoa may be produced illegally.

To date, data collection and implementation trials have focused on cocoa production in the districts of Essam, Adabokrom and Asamankese.

5.4.4 Incomplete zoning and absence of centralised databases

Land-use planning in Ghana is generally concentrated in urban areas with a focus on settlement planning – for example residential, industrial and commercial – at the cost of land-use planning for agriculture and agroforestry in rural areas.

> Cocoa should be cultivated in an area "zoned" for agriculture. However, despite an obligation on district assemblies to produce a zoning scheme, this has not been done throughout Ghana – with many gaps in rural areas.[110]

Cocoa harvested in an area that has not been designated for agriculture under a zoning scheme is technically considered illegal.

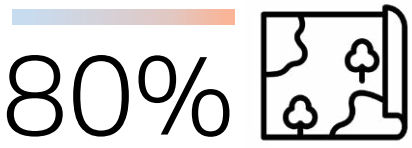
Similarly, cocoa farming is prohibited in designated protected areas. However, there is a **lack of publicly available information on the location of protected areas**. Many cocoa farms overlap with protected areas because of the lack of information available to farmers about where cocoa farming is and is not permissible.

Identifying the boundaries of protected areas could pose practical difficulties, as they are not demarcated on the ground and information about protected areas is not publicly available. Until this information is made available, the legal status of cocoa harvested close to protected areas may be unclear.

The COCOBOD CMS is intended to link cocoa supply chain data to forest cover and protected area information, making it possible to assess the risk that cocoa was produced in prohibited areas.

5.4.5 Absence of formal interests in land

Eighty per cent of Ghana's land is under community ownership,[111] mostly in rural areas. The most extensive system of customary ownership is the "allodial title" (a form of complete ownership without reservation), which is managed by traditional authorities called "stools" and "skins". The allodial title is the highest form of interest that can be owned in land.[112] The allodial owner is entitled to use the land in question without interference and to sell or transfer the land at will.[113]



of Ghana's land is under community ownership

The allodial title is classified as a freehold; it exists potentially forever and is not limited by time.[114]

108 Cocobod on course to achieve goals of Ghana Cocoa Traceability System (GCTS), 30 June 2023, https://cocobod.gh/news/cocobod-on-course-to-achieve-goals-of-ghana-cocoa-traceability-system-gcts
109 EFI (2024), Cocoa Insight - March 2024, Preparedness check of Ghana for the EU Deforestation Regulation, p.2. Available at: https://efi.int/sites/default/files/files/flegtredd/Sustainable-cocoa-programme/Cocoa%20insights/EUDR%20Preparedness%20check%20of%20Ghana.pdf.
110 Inter-Réseaux (2018), Land governance and agricultural development in Africa: Balancing the interests of states, farmers, and investors. Inter-Réseaux Development, No. 78, pp. 14. Available at https://www.inter-reseaux.org/wp-content/uploads/pages_de_interreseaux-gds-no78_gb-p14.pdf.
111 Rights and Resources Initiative (2023), 'Who Owns the World's Land?'. Available at: https://rightsandresources.org/publication/who-owns-the-worlds-land-2nd-ed/.
112 Land Act 2020 sections 1 and 2.
113 Note that although allodial title is usually held by a group of people, the Land Act specifies that it can also be held by an individual and allodial title ownership is not restricted to a group of people.
114 *Golightly v Ashirifi* (1961) 1 GLR 28.

Ghanaian law recognises a "usufructuary title" held by families and individuals over stool land and family lands. This title allows them to lease or otherwise contract for the use of the land. Under this arrangement, many cocoa farmers enter into oral sharecropping agreements, known as customary tenancies, which effectively serve as the landowner's consent for farming on the land.

> Interests in land acquired for agricultural purposes are generally not registered or formalised. Under Ghanaian law, there is no obligation to register a customary tenancy to make it valid.

Although it is possible to register a customary tenancy – and it can be recorded in writing if the parties wish – the law does not require formal written documentation to create or validate it.

An oral agreement made in accordance with customary law is legally valid. This is particularly significant for the many Ghanaian farmers who acquire rights to use land for cocoa farming through customary tenancy.

By contrast, leases longer than three years must be in writing and signed by both parties in order to be enforceable.[115]

Therefore, **the absence of documentation or registration of an interest in the land used for commodity production does not necessarily make the use of the land illegal**. However, it contributes to the informal nature of the sector and may lead to legal uncertainty. Indeed, without a written agreement to use the land, whether a property title or a lease, farmers themselves are at the risk of being evicted.

5.4.6 Cocoa produced in forest reserves

The area of cocoa production in Ghana is expanding and constitutes a major driver of deforestation. Ghana lost 1.9 million hectares of forests between 1990 and 2020,[116] with a recent surge in 2022.[117]

Cocoa production commonly encroaches on forest reserves.[118] Similar to Ivorian "enclaves", growing cocoa in forest reserves is allowed for farms with existing legal status, known as "admitted farms".

115 Sections 34 and 35 of the *Land Act 2020*.
116 FAO (2020), Global Forest Resources Assessment 2020: Main report. Rome, Italy, FAO. Available at: https://doi.org/10.4060/ca9825en
117 World Resources Institute (2023), 'The Latest Analysis on Global Forests & Tree Cover Loss', Global Forest Review. Available at: https://research.wri.org/gfr/latest-analysis-deforestation-trends.
118 Brobbey, L., Agyei, F. & Osei-Tutu, P. (2020), 'Drivers of cocoa encroachment into protected forests: Case of three forest reserves in Ghana', International Forestry Review, 22: pp. 425–437. Available at: https://doi.org/10.1505/146554820831255533

The creation of forest reserves in Ghana involves a structured procedure overseen by a "Reserve Settlement Commissioner". The procedure is initiated by the President, who decides to designate lands as forest reserves.[119]

Once this decision is taken, a notice is published indicating the land's location, the reasons for reservation, and the appointment of a Reserve Settlement Commissioner.[120] Following this notice, individuals or traditional authorities have at least six months to submit claims regarding rights affecting the land.

The Reserve Settlement Commissioner conducts an enquiry to determine the existence, nature, and extent of the rights that are claimed. The Reserve Commissioner's report is legally binding and details the area to be reserved, any continuing rights, and rules for any admitted farms.[121] These typically include the non-expansion of the farms without the prior written approval of the Forestry Commission.

> The legality of cocoa production within a forest reserve therefore requires examination. If the farm pre-dates the reserve and the cocoa is produced within the area approved by the Reserve Commissioner or an expanded area approved by the Forestry Commission, it will be legal.

However, if the farm has expanded beyond the original area, then the cocoa produced on that land will be illegal.

Admitted farms' boundaries should be listed in the forest management plans of each forest reserve. Information and maps of "admitted farms" can be found at the local Forestry Commission office.

However, as noted above, the exact boundaries of admitted farms are missing in some regions or are not publicly available.

According to the Forestry Commission, most owners of "admitted farms" have extended their farms beyond their original boundaries by between 70% and 400%.[122] Some of these farms have even grown into communities within the forest reserves.

As encroachment into forest reserve areas by both "admitted farmers" and informal farmers is common, there is a significant risk that cocoa sourced from within forest reserve areas has been produced illegally.

5.4.7 Use of unregistered pesticides

Pesticide use – including highly disputed and hazardous insecticides[123] – by Ghanaian cocoa farmers is said to be high.[124] Overuse and misuse of pesticides is widespread. Unscrupulous dealers often sell farmers unregistered, mislabelled or illegal products.[125] Systemic factors like weak law enforcement, farmer poverty, farmer illiteracy and a lack of training for farmers contribute to patterns of illegality in both the sale and use of pesticides.[126]

119 Section 2 *Forest Act 1927*.
120 Sections 3(1) *Forest Act 1927* 139
121 Sections 4-7 *Forest Act 1927*
122 Information shared with TaylorCrabbe initiative during interviews with Forestry Commission Officers
123 Voice Network (2022), 'Cocoa Barometer', at p. 47. Available at: https://voicenetwork.cc/wp-content/uploads/2022/12/Cocoabarometer2022_v1.2.pdf.
124 Denkyirah et al. (2016), 'Modeling Ghanaian cocoa farmers' decision to use pesticides and frequency of application: the case of Brong Ahafo Region', *SpringerPlus*. Available at: https://springerplus.springeropen.com/articles/10.1186/s40064-016-2779-z.
125 Pesticide Action Network (PAN) UK (2018), 'Pesticide Use in Ghana's Cocoa Sector', Rainforest Alliance, p.1. Available at: https://www.scribd.com/document/394348206/18-05-Key-Findings-Report-on-Pesticide-Use-in-Ghana.
126 Osei-Owusu, Yaw / Owusu-Achiaw, Raymond (2022), 'Pesticides in Ghana, Assessment on Gender Dynamic of Highly Hazardous Pesticides (HHPs) with Cocoa Production Landscape in Ghana', Conservation Alliance. Available at: https://conservealliance.org/wp-content/uploads/2021/06/Final-Gender-Dynamic-Report-for-INKOTA-1.pdf.

5.4.8 Child labour

A 2020 report by the National Opinion Research Center of the University of Chicago put the number of children working in cocoa production in Ghana at 770,000.[127]

770,000

children working in cocoa production in Ghana

The Ghanaian government has made efforts to enforce labour regulations, but challenges remain – largely due to the cycle of poverty caused by the low earnings of cocoa farmers and their inability to employ paid labour.[128]

Because cocoa is mostly produced by family-run farms, it is not unusual to see children on farms.

> This is not always unlawful and children living there can benefit from the exposure to longstanding cultural and farming traditions. However, children may also be victims of harmful forced labour practices.[129]

In practice, it is challenging to distinguish between situations that constitute prohibited work and those that are similar to vocational training or appropriate inclusion of children in family farming.

One source of information could be the Cocoa Sector Child Labour Monitoring System that COCOBOD is developing, which will be linked to the Ghana Cocoa Traceability System. It will provide information on the risk of non-compliance with national laws related to child labour.[130]

The Hazardous Child Labour Activity Framework, although it is for guidance only and not legally binding, can also be used as a reference for due diligence on child labour.

5.5 Conclusion

While the trade and export of cocoa products are well regulated in Ghana and legal requirements are effectively enforced by COCOBOD, the regulation of cocoa *production* is relatively light. The informal nature of cocoa farming, absence of local zoning schemes designating land for agricultural use and the customary nature of private land rights pose challenges for documenting legal compliance of cocoa production activities.

> The importance of local systems of (unwritten) customary law in land use will likely require additional consultation with local experts.

As in Côte d'Ivoire, the low incomes of cocoa farmers and entrenched patterns of poverty are systemic factors that contribute to the current challenges of supply chain traceability and sustainable cocoa production.

Conversely, there are several public institutions that play a role in supervising cocoa production, such as COCOBOD, the Ministry of Lands and Natural Resources, Forestry Commission and Ministry of Food and Agriculture. Although some of them have conflicting mandates – for example in terms of protecting forest areas and promoting cocoa production – they provide a reliable institutional framework for the development and reform of sectoral norms, standards and reporting systems. The development of a national Cocoa Management System represents a significant government effort to reform cocoa sector governance, address deforestation and support compliance with EUDR's requirements.

127 Sadhu, S. et al. (2020), 'NORC Final Report: Assessing Progress in Reducing Child Labor in Cocoa Production in Cocoa Growing Areas of Côte d'Ivoire and Ghana. NORC at the University of Chicago, p. 10. Available at: https://www.norc.org/content/dam/norc-org/pdfs/NORC%202020%20Cocoa%20Report_English.pdf.

128 Luckstead, J. et al. (2019), 'Estimating the Economic Incentives Necessary for Eliminating Child Labor in Ghanaian Cocoa Production', PLoS ONE, vol. 14, no. 6, p. 2. Available at: https://doi.org/10.1371/journal.pone.0217230; Payson Center for International Development (2015), 'Final Report: 2013/14 Survey Research on Child Labor in West African Cocoa Growing Areas', Tulane University School of Public Health, at p.73. Available at: https://www.dol.gov/sites/dolgov/files/ilab/research_file_attachment/tulane%20university%20-%20survey%20research%20cocoa%20sector%20-%2030%20july%202015.pdf.

129 Amankwaah, B. et al. (2021), *Cocobod's Unrealised Potential: Promoting Human Rights, Welfare, and the Environment in Ghana's Cocoa-Growing Communities*, Northwestern Pritzker School of Law Center for International Human Rights, University of Ghana School of Law, Corporate Accountability Lab & SEND Ghana, at p.13. Available at: https://static1.squarespace.com/static/5810dda3e3df28ce37b58357/t/60cb58bba936fc53960e4aff/1623939288558/COCOBOD%27s+Unrealised+Potential+-+Northwestern+Law%2C+Ghana+School+of+Law%2C+CAL+%26+SEND+%28June+2021%29.pdf

130 Cocobod, Stakeholders strengthen anti-child labour protocols in cocoa sector, 21 October 2024, https://cocobod.gh/news/cocobod-stakeholders-strengthen-anti-child-labour-protocols-in-cocoa-sector; EFI, Cocoa Insight - March 2024, Preparedness check of Ghana for the EU Deforestation Regulation, p. 8.

Case study

6. Indonesia: legal framework and key legality risks

Disclaimer: the research on which this section is based was commissioned by ClientEarth and undertaken by AidEnvironment, with the support of a local partner organisation and local experts in Indonesia. That research focused on relevant national laws and examined relevant subnational laws in two provinces; West Kalimantan and Riau, and local districts in those provinces; Sintang and Pelalawan respectively. Conclusions regarding sub-national legal frameworks are drawn from research regarding these sub-national jurisdictions and should not be taken as an extensive or conclusive assessment of relevant sub-national laws across Indonesia.

6.1 Summary of the Indonesian legal framework

6.1.1 Indonesia's formal legal framework

Indonesia has a civil law system based on the Roman-Dutch model.[131] It is structured hierarchically, with the 1945 Constitution of the Republic of Indonesia at the top, serving as the foundation for all laws.

Following major political changes at the end of the 20th century, the Constitution was amended to reflect far-reaching political reforms.

This included: decentralisation of the central government's legislative authority to provincial and regional governments; limitations on the power and term of office of the President; and the creation of additional state bodies such as the House of Regional Representatives (*Dewan Perwakilan Daerah*), Constitutional Court (*Mahkamah Konstitusi*), and Judicial Commission (*Komisi Yudisial*).

The decentralisation of legislative power to provincial and regional governments is particularly relevant in the context of land management and regulation of agricultural activities.

In terms of sources of relevant laws, Indonesia's legal hierarchy can be summarised as follows:

- **1945 Constitution of the Republic of Indonesia:** the foundational law of Indonesia's legal and political hierarchy, establishing and mandating the executive, legislative, and judicial branches of government, dictating state principles, the division of state powers, and establishing certain human rights guarantees.
- **Decrees of the People's Consultative Assembly** *(Majelis Permusyawaratan Rakyat or* **MPR**): formal decisions by the People's Consultative Assembly, which is a somewhat unique body that includes members of the two houses of the national parliament: the People's Representative Council (DPR), which is comparable to a lower house of parliament, and the Regional Representative Council (DPD), which is like an upper house of parliament or senate. The MPR can, amongst other things: amend the Constitution, inaugurate the president, and promote the Constitution and the principles for the governance of the state that it contains.
- **Laws and Government Regulations in Lieu of Law:** laws are jointly negotiated by the DPR and the President. In emergencies, the President can enact 'regulations in lieu of law' that must subsequently be ratified by the DPR. Once ratified, those Presidential regulations have the same level of legal authority as laws adopted by the DPR and President. However, both may be subject to review on constitutional grounds by the Constitutional Court.

131 For a helpful summary, see Reni, D.S. and Renaldi, J. (2019) The Indonesian Legal System and Legal research, GlobaLex, available at https://www.nyulawglobal.org/globalex/indonesia1.html.

- **Government Regulations:** issued by the President to implement laws adopted by the DPR and President without deviating from the substance of the relevant law.
- **Presidential Regulations (also known as Perpres):** issued by the President to carry out instructions included in higher laws, Government Regulations and to regulate technical aspects of internal government administration.
- **Regional Regulations:** issued by provincial and district/municipal governments to manage issues falling under their respective jurisdiction and competence.

The legislative hierarchy is reflected in an equivalent judicial hierarchy, which culminates at the Supreme Court and the Constitutional Court, both independent of each other.

The Supreme Court is the highest judicial institution and the final court of appeal in Indonesia with regard to criminal, civil, religious, military and state administrative courts. It has power of judicial review over the various kinds of regulations to determine their consistency with hierarchically higher laws.

The Constitutional Court has the power to determine the constitutionality of national laws and whether the President or Vice President has violated the law or Constitution.

6.1.2 Indonesia's Indigenous laws

Indonesia has a rich history and tradition of customary Indigenous law, often referred to as **Adat Law** (*hukum adat or adat recht*), that exists alongside its constitutional legal framework.

Adat Law is a body of local and traditional laws and dispute resolution systems which continue to be observed in many parts of Indonesia.

> Accordingly, there is no codified, formalised or written Adat Law for the whole Indonesian people; its sources are unwritten laws evolving from and maintained by the customs, cultures, beliefs and practices of the specific Indigenous communities that observe it.

Adat Law is particularly important in several relevant areas such as agrarian law, land rights and inheritance law.

Tana Toraja, Indonesia

6.2 Key laws relevant to palm oil production in Indonesia

In the context of palm oil production, there are four key legal instruments that should form the basis of any legality due diligence exercise, tailored as appropriate to the sub-national jurisdiction under investigation.

6.2.1 The Omnibus Law on Job Creation

The Omnibus Law on Job Creation (*Law No. 11 of 2020* on Job Creation, also known as the Job Creation Law and the Omnibus Law) – and subsequent legal instruments adopted to implement it – amended 78 existing laws related to primary industries developments. It aimed to simplify the regulation of Indonesia's primary industries, purportedly to increase productivity and attract foreign investment during the Covid-19 pandemic.

It lowered existing standards regarding labour rights and environmental protections, and simplified approval processes for land acquisitions and operating permits.

Following public backlash, the Omnibus Law was deemed conditionally unconstitutional by the Constitutional Court in 2020 (Decision No. 91/PUU-XVII/2020), which ordered the government to make a series of improvements within certain timeframes up until 25 November 2023.

In contradiction to the Court's order, the Government adopted *Government Regulation in Lieu of Law on Job Creation No. 2 of 2022* on 30 December 2022 that revoked and replaced the Omnibus Law and affirmed that all regulations adopted to implement it remained valid.

This Government Regulation was ratified by the DPR on 31 March 2023 through *Law No. 6 of 2023 on the Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation to Become Law*, which formally revoked the Omnibus Law, replacing it with largely similar provisions and incorporating *Government Regulation in Lieu of Law on Job Creation Number 2 of 2022* into law. However, this replacement law has also been subject to a successful Constitutional Court challenge in which its reduction of labour rights protections were held invalid.[132] The validity of the balance of the replacement law was not considered by the Court and a level of uncertainty remains about its validity given the inconsistency with the procedure ordered by the Court in 2020.

In relation to palm oil production, the Law No. 6 of 2023 includes a number of key requirements:

- **Plasma plantations:**[133] plantation operators must develop plasma plantations covering at least 20% of their concession areas.
- **Penalties:** stronger enforcement of penalties for palm oil companies operating in forest areas without proper permits.
- **Forest release permits:** companies operating in forest areas without the proper permits must apply for a forest release permit by 2 November 2023.
- **Planting requirements:** companies must start planting their concession areas within two years of receiving a 'Right to Cultivate' permit.

132 Teresia, A. (2024), 'Indonesian court orders changes to some labour rules', *Reuters*, available at: https://www.reuters.com/world/asia-pacific/indonesian-court-orders-changes-some-labour-rules-sought-by-unions-2024-10-31/; International Trade Union Confederation (2024), 'Indonesia: Trade unions achieve milestone victory as Constitutional Court restricts controversial Omnibus Law', available at: https://www.ituc-csi.org/indonesia-trade-unions-achieve-victory.

133 Plasma are small plots of land that oil palm companies should allocate to smallholder farmers. In the 1980s, when the Indonesian palm oil industry experienced rapid growth, the government set up the Plasma Transmigration Program (*Perkebunan Inti Rakyat* or *PIR-Trans*) to ensure local communities would benefit from the large plantations near them. This program required that oil palm companies would be granted access to subsidised funding upon providing plasma to local communities within their plantation areas. In 2007, this scheme became law (known as the "plasma obligation", originally defined in *Regulation of the Minister of Agriculture No. 26/Permentan/OT.140/2/2007*) which legally required oil palm companies holding plantation licenses to provide a fifth of their plantations as plasma to smallholder farmers.

Aerial photo of an oil palm plantation in Sukabumi, West Java, Indonesia

6.2.2 The Forestry Law

The Forestry Law (*Law No. 41 of 1999 on Forestry*) and *Government Regulation No. 23 of 2021 about Forestry Management* are the main laws regulating forest areas in Indonesia.

In general, the Forestry Law divides state land into two broad categories: forest zone and non-forest zone (*Area Penggunaan Lain* or **APL**). Forest zone is broken down further into several categories, while non-forest zone areas are available for public purposes such as settlements, agriculture and plantations.

> Palm oil plantations can only lawfully exist in the non-forest zone.

However, there are many cases where plantation concessions are granted in forest zone areas – although this irregularity can be remedied through the process of "forest release" in which the area of the plantation is excised from the forest zone. This "forest release" procedure is governed under *Government Regulation No. 23 of 2021 about Forestry Management*.

6.2.3 The Indonesia Sustainable Palm Oil (ISPO) Regulation

Indonesia has had a regulatory scheme for the certification of 'sustainable' palm oil since 2011. This scheme was formalised in 2020 in the form of the **Indonesia Sustainable Palm Oil (ISPO) Regulation** (*Presidential Regulation No. 44 of 2020 on the Certification System for Sustainable Palm Oil Plantation in Indonesia*),[134] enacted on 16 March 2020.

It was supplemented by Ministry of Agriculture Regulation (*Permentan*) No.38 of 2020,[135] which became effective on 24 November 2020 and prescribes the detailed requirements for ISPO certification, referred to as the 'ISPO criteria'.

Together, they establish overarching principles and technical criteria for the production of palm oil, certification procedures and administration of the ISPO scheme with the objective of ensuring the Indonesian palm oil industry is socially, economically and environmentally sustainable.

The 2020 ISPO Regulation became binding on palm oil businesses, including plantation companies, upon its enactment on 16 March 2020 (Article 27 ISPO Regulation). However, the detailed ISPO criteria did not become applicable until 25 November 2020.

This later date is often, mistakenly, taken as the effective date for palm oil businesses to start transitioning to the revised ISPO requirements.

134 Available at https://www.fao.org/faolex/results/details/en/c/LEX-FAOC195054/.
135 Available at https://peraturan.bpk.go.id/Details/201269/permentan-no-38-tahun-2020.

The ISPO requirements began applying to independent smallholders on 16 March 2025.

However, there are conflicting views that the requirements enter into force from 24 November 2025: five years after the ISPO criteria became applicable rather than five years after the enactment of the ISPO Regulation.

Palm oil businesses with ISPO certificates issued under the preceding 2011 scheme are required to transition their activities to comply with the 2020 ISPO criteria (Article 26(1) ISPO Regulation).

Uncertified oil palm businesses are required to undertake ISPO certification, which is initiated by the submission of an application for certification to an accredited ISPO certification institution (Articles 5 and 7 ISPO Regulation). Failure to do so can result in administrative sanctions (Article 6 ISPO Regulation).

In summary, the ISPO requirements concern:

- Compliance with all applicable laws and regulations, including in terms of land use and palm oil business approvals (e.g. location permits, plantation concessions, cultivation permits, business permits);
- Good plantation practices, such as plantation planning and appropriate technical application of cultivation, harvesting and processing techniques;
- Management of environmental impacts, natural resources and biodiversity in a way that minimises harm to the environment, conserves natural resources and protects biodiversity. This includes acquisition of and compliance with environmental permits, waste management obligations, fire and disaster control planning, greenhouse gas emissions reduction, and protection of natural forests and peatland areas;
- Workplace health and safety requirements and labour standards, including the prevention of child labour and employment discrimination;
- Social responsibility and community economic empowerment, including requirements around community engagement, Indigenous empowerment, and local business development;
- Transparency in palm fruit sourcing, fair and transparent pricing, transparent handling of grievances, anti-bribery commitments, and establishment of a supply chain traceability system;
- Sustainable business improvement, including guidance for appropriate monitoring systems for measuring social responsibility and community empowerment programmes.

6.2.4 District Action Plans on Sustainable Palm Oil

Many district governments in areas where palm oil production is prevalent have adopted district action plans for sustainable palm oil plantations, including the sub-national districts researched for this briefing – Sintang District in West Kalimantan and Pelalawan District in Riau.[136]

While these action plans do not impose direct legal obligations on oil palm companies, their successful implementation relies heavily on the cooperation of oil palm companies.

136 *Sintang Regent Regulation No. 87 of 2018 on the Regional Action Plan for Sustainable Palm Oil Plantations* which covers the period 2018 to 2023, proposed to be updated in 2024 – see Shahab, N. (2024) 'Context is key to securing sustainable palm oil, say Indonesia's regional reps', *Forests News*, 28 February 2025, available at: https://forestsnews.cifor.org/86373/context-is-key-to-securing-sustainable-palm-oil-say-indonesias-regional-reps; and Pelalawan Regent Decree No. 73 of 2020 on the District Action Plan for Sustainable Palm Oil which covered the period 2020 to 2024.

6.3 Key considerations for assessing legal compliance risks

This section outlines several systemic challenges to legal compliance for palm oil production in Indonesia and the associated risks of legal non-compliance.

6.3.1 Absence of ISPO certification

As noted above, ISPO certification under the 2020 ISPO scheme has been mandatory for plantation companies and palm oil businesses since 24 November 2020 (subject to transitional arrangements for businesses certified under the 2011 ISPO scheme). It will become mandatory for individual palm oil growers in 2025.[137]

> Failure to seek and obtain ISPO certification can lead to administrative sanctions, for example formal warnings, fines, and temporary suspensions of non-compliant business activities (Article 7 ISPO Regulation).

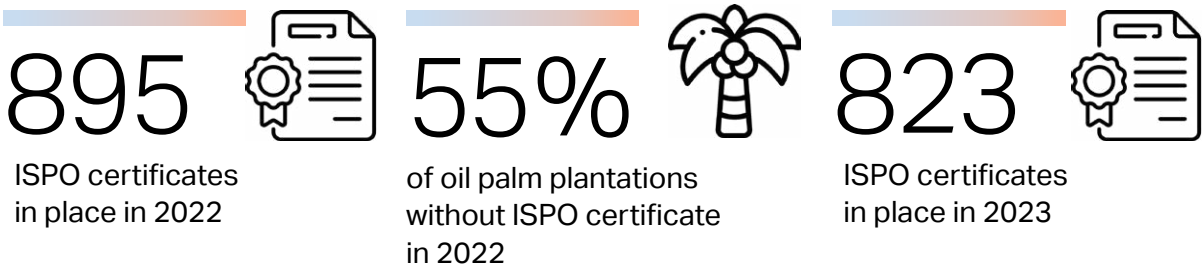
Accordingly, ISPO certification is a legal requirement for palm oil businesses and growers. Although all palm oil businesses are legally obliged to seek certification under the 2020 ISPO scheme, public information suggests that relatively few plantation companies have obtained certification under either the 2011 or 2020 schemes.

Aerial view of an oil palm plantation in West Kalimantan, Indonesia

137 There are conflicting views as to whether this obligation applies to individual oil palm growers five years after the enactment of the ISPO Regulation on 16 March 2025, or five years after enactment of the ISPO criteria on 24 November 2025. ClientEarth prefers the former view given Article 27 of the ISPO Regulation clearly states it will begin applying to 'oil palm planters' five years after the enactment of the ISPO Regulation. Conversely, 24 November 2020 is taken as the effective date of the 2020 ISPO scheme because that is the date the detailed ISPO criteria, established by an implementing Ministerial regulation, became effective. The obligation on palm oil businesses to hold or seek ISPO certification applied from the date of enactment of the ISPO Regulation: 16 March 2020.

For example:

- a news report from August 2022 indicated that 55% of productive palm oil plantations were not covered by an ISPO certificate;[138]
- another report from October 2022 stated that only 895 ISPO certificates had been issued at that time, encompassing 5.1 million hectares of oil palm plantation[139] representing only 45% of the purported 12.6 million hectares of productive oil palm plantation (land planted with mature oil palm plantations);[140]
- similarly, a 2023 report by Transparency International Indonesia concluded that only seven of the top 50 palm oil companies in Indonesia held ISPO or RSPO certification (Roundtable for Sustainable Palm Oil, the international equivalent of ISPO) that covers not only the parent companies, but also all their subsidiaries and operations;[141] and
- ISPO certificate data available from April 2023[142] indicates that the number of valid ISPO certificates had *actually fallen* to 823, possibly as a result of ISPO certificates issued under the 2011 scheme expiring without being renewed under the 2020 ISPO scheme. There is no public information describing these figures as a percentage of the number of palm oil *businesses* that need to obtain ISPO certification.



These figures may understate the extent of ISPO non-compliance.

For example, in 2019 the Indonesian Government estimated the total national palm oil plantation cover at 16.37 million hectares.[143]

In contrast, in 2021 the Indonesian NGO Sawit Watch estimated this figure to be much higher, at 22.3 million hectares.[144]

> While these figures include productive and non-productive plantation areas, the significant differences suggest there may be millions of hectares of oil palm plantations that are non-compliant with the ISPO requirements.

These reports, and others like them,[145] indicate that non-compliance with the ISPO certification requirements is systemic. The figures referenced above **indicate that roughly half Indonesia's productive palm oil plantations lack ISPO-certification and are therefore not compliant with legal requirements.**

138 See Pahlevi, R. (2022), 'Only a few Indonesian palm oil fields are ISPO certified, here are the details', databooks, 19 August 2022, available at https://databoks.katadata.co.id/agroindustri/statistik/d633eedd3dfe9e0/baru-sedikit-lahan-sawit-ri-yang-bersertifikat-ispo-ini-rinciannya.
139 See (2022) 'ISPO creates regulatory compliance and corruption prevention', *Sawit Indonesia*, 18 October 2022, available at: https://sawitindonesia.com/ispo-menciptakan-kepatuhan-regulasi-dan-pencegahan-korupsi/.
140 See Arief, A.M. (2022), '55% of oil palm plantations are not yet ISPO certified, mandatory requirements starting in 2025', *Katadata.co.id*, 24 August 2022, available at: https://katadata.co.id/berita/industri/6306001678958/55-kebun-sawit-belum-bersertifikat-ispo-jadi-syarat-wajib-mulai-2025.
141 Jong, H. N. (2023), 'With little will to fight it, corruption is major risk for Indonesian palm oil', *Mongabay*, 1 May 2023, available at: https://news.mongabay.com/2023/05/with-little-will-to-fight-it-corruption-is-major-risk-for-indonesian-palm-oil/.
142 Available at https://ditjenbun.pertanian.go.id/template/uploads/2023/05/Rekap-update-sertifikat-ISPO-per-April-2023.pdf.
143 See Ministry of Agriculture Decree No.833 of 2019 regarding the Quotation of Palm Oil Cover in Indonesia.
144 Sawit Watch (2021), Annual Report: The Dynamics and Challenges in Actualising Improving Palm Oil Governance in Indonesia, 2021', at p.3. Available at: https://sawitwatch.or.id/wp-content/uploads/2023/07/Catatan-Akhir-Tahun-PSW-2021_EnglishVer.pdf.
145 See for example (2022) Creating clarity: An analysis of the challenges and opportunities in the new Indonesian Sustainable Palm Oil (ISPO) certification scheme, Environmental Investigation Agency and Kaoem Telepak, available at: https://kaoemtelapak.org/wp-content/uploads/2023/06/20221222-ISPO-Creating-Clarity-Interactive-Version-EN-compressed.pdf.

6.3.2 Licensing and administrative irregularities

Indonesia does not have a reliable system to ensure the absence of corruption or irregularities in the various permit and licensing processes required for commercial oil palm production.

In 2019 the National Audit Board (*Badan Pemeriksa Keuangan* or BPK) announced that **approximately 81% of oil palm plantations were non-compliant with applicable regulatory requirements**.[146]

The Audit Board had investigated industry compliance with various licensing, certification and sustainable plantation management requirements and concluded that most large plantations faced various issues of non-compliance.

These included:

- the absence of necessary business permits (known as Hak Guna Usaha or HGU);
- failures to develop minimum 'plasma' areas (informal smallholder farms within their concession areas);
- overlaps with mining concessions;
- plantations developed outside permit boundaries; and
- the establishment of plantations within protected areas, such as protected forests, conservation forests and peatlands.

While the audit report has not been made public, the BPK Commissioner is quoted as stating the audit identified regulatory non-compliance implicating "millions of hectares across the country… [and] all the big players". Based on the 2019 findings, **the Audit Board Commissioner called for the national police and attorney general to support a systematic clean-up of the industry**.[147]

Irregularities in other administrative requirements such as business taxes and reporting are highly correlated with the prevalence of irregularities in business licenses and land permits.

For example, a 2023 Government audit of Indonesia's palm oil industry found that:

About 57% of productive oil palm concession holders don't pay taxes on their plantation operations.[148]

6.3.3 Land-grabbing, land conflicts and Indigenous land rights violations

Land conflict is a long-standing and systemic issue in the Indonesian palm oil sector,[149] with land-grabbing being a primary cause of conflict between local communities and plantation companies. Disputes typically relate to disagreements about land-use rights or compensation for land used by plantation companies over which a local community, whether Indigenous or not, asserts some form of claim.

Land grabbing is fundamentally linked to the limitations on formal recognition of Indigenous and non-Indigenous community land rights, including the granting of plantation approvals without acknowledging – whether deliberately or unintentionally – the existence of local community rights and interests. These situations are typically left for the communities and companies to resolve between themselves, with different perceptions and expectations tending to increase the potential for long-lasting conflict.[150]

146 Nugraha, I. and Jong, N. (2019), 'BPK audit finds many large oil palm plantations in trouble', *Mongabay*, 27 August 2019, available at: https://www.mongabay.co.id/2019/08/27/audit-bpk-temukan-banyak-perkebunan-sawit-besar-bermasalah/; Jong, H. N. (2019), '81% of Indonesia's oil palm plantations flouting regulations, audit finds', *Mongabay*, 25 August 2019, available at: https://news.mongabay.com/2019/08/81-of-indonesias-oil-palm-plantations-flouting-regulations-audit-finds/; Lingga, V. (2019) 'Auditors' findings weaken Indonesia's defense of palm oil industry', *Jakarta Post*, 28 August 2019, available at: https://www.thejakartapost.com/academia/2019/08/28/auditors-findings-weaken-indonesias-defense-of-palm-oil-industry.html.

147 Jong, H. N. (2019), '81% of Indonesia's oil palm plantations flouting regulations, audit finds', *Mongabay*, 25 August 2019, available at: https://news.mongabay.com/2019/08/81-of-indonesias-oil-palm-plantations-flouting-regulations-audit-finds/.

148 Jong, H. N. (2023), 'Millions in unpaid taxes amassed by Indonesian oil palm plantations', *Eco-Business*, 23 May 2023, available at: https://www.eco-business.com/news/millions-in-unpaid-taxes-amassed-by-indonesian-oil-palm-plantations/.

149 See for example Colchester, M., Anderson, P., and Chao, S. (2014), Assault on the Commons: Deforestation and the denial of forest peoples' rights in Indonesia, Forest Peoples Programme, Moreton-in-Marsh, United Kingdom. Available at: https://www.forestpeoples.org/sites/fpp/files/publication/2014/12/assault-commons.pdf.

150 See, for example, Suryadi (2022), 'Mendol Island forests and peatlands threatened by palm oil companies, residents are worried', *Mongabay*, 5 November 2022, available at: https://www.mongabay.co.id/2022/11/05/hutan-dan-gambut-pulau-mendol-terancam-perusahaan-sawit-warga-pun-resah/.

While some national laws officially recognise Indigenous Peoples' rights,[151] including the Indonesian Constitution and laws at the sub-national level,[152] the formal recognition of Indigenous rights over land is limited to certain access and use rights in forest areas, known as Customary Forest or *Hutan Adat*.

However, there is a significant difference between the area of land over which customary tenure rights are claimed and the area over which some form of customary tenure rights has been recognised.

For example, as of 31 December 2023:

Only 221,648 hectares of Customary Forest had been recognised over areas claimed by 123 Indigenous communities,[153] whereas the national Customary Territory Registration Agency (BRWA) has identified 1,684 customary territories, totalling an area of *30.2 million hectares*.[154]

The huge discrepancy between the area of identified customary territories and recognised customary land rights is indicative of the risk of land conflict where industrial activities are undertaken near local communities.

For example, AMAN, the national Indigenous Peoples representative organisation in Indonesia:

estimates that between 2017 and 2022, more than 8.5 million hectares of customary Indigenous territories had been stolen from Indigenous communities in more than 301 cases of land-grabbing.[155]

6.3.4 Environmental protections

As noted above, **the unlawful clearing of forest and development of oil palm plantations in forest areas is a systemic issue across the Indonesian palm oil industry.**

For example:

- **in May 2019** the National Corruption Eradication Commission (known as KPK) concluded there were more than one million hectares of unlawful oil palm plantation in forest areas in Riau province alone;[156]
- **in October 2019** a senior forestry management official at Indonesia's Coordinating Ministry for Economic Affairs reportedly announced that 3.1 million hectares of palm oil plantation – almost 20% of the official figure of 16.38 million hectares of oil palm plantations – were illegally located in forest areas without necessary permits; and
- **in October 2019** the Ministry of Environment and Forestry announced it had identified an area of approximately nine million hectares of palm oil plantation – 54% of the official figure of 16.38 million hectares of oil palm plantations – in State forest areas.[157]

20%

of official oil palm plantations, were illegally located in forest areas

9m

hectares of palm oil plantation in State forest areas

151 The third amendment to the Indonesian Constitution of 1945 recognises Indigenous Peoples' rights in Article 18b-2. In more recent legislation, there is implicit recognition of some Indigenous Peoples' rights, referred to as: *Masyarakat Adat* or *Masyarakat Hukum Adat*, including Act No. 5 of 1960 on Basic Agrarian Regulation, Act No. 39 of 1999 on Human Rights, and MPR Decree No. X/2001 on Agrarian Reform. The Constitutional Court also affirmed the constitutional rights of Indigenous Peoples to their land and territories, including their collective rights to customary forests, in May 2013. See Ndoen, M. (2023), 'The Indigenous World 2023: Indonesia', IWGIA, 29 March 2023, available at: https://www.iwgia.org/en/indonesia/5120-iw-2023-indonesia.html#_edn1.

152 As of October 2022, 161 regional (provincial level) and local (district level) regulations had been enacted for the recognition and protection of Indigenous Peoples as legal subjects and their rights, including to their territories. See AMAN (2023), '2022 Notes of the Alliance of Indigenous Peoples of the Archipelago (AMAN)', p. 16, available at: https://www.aman.or.id/publication-documentation/catatan-tahun-2022-aman:-melawan-penundukan

153 AMAN (2024), 'Catatan Tahun 2023 Aliansi Masyarakat Adat Nusantara (AMAN)', p.4, available at: https://www.aman.or.id/publication-documentation/239.

154 BRWA (2024), Statistics, https://brwa.or.id/stats.

155 See Ndoen, M. (2023), 'The Indigenous World 2023: Indonesia', IWGIA, 29 March 2023, available at: https://www.iwgia.org/en/indonesia/5120-iw-2023-indonesia.html#_edn1.

156 Tanjung, C. A. (2019) 'KPK asks Riau Provincial Government to order 1 million hectares of illegal palm oil plantations', *detiknews*, 2 May 2019, available at: https://news.detik.com/berita/d-4533368/kpk-minta-pemprov-riau-tertibkan-1-juta-hektare-kebun-sawit-ilegal.

157 Susanto, V. Y. (2019), 'The government says there are 16.38 million ha of land covered by oil palm plantations', *kontan.co.id*, 10 October 2019, available at: https://nasional.kontan.co.id/news/pemerintah-sebut-ada-1638-juta-ha-luas-lahan-tutupan-kebun-sawit?page=2.

6.3.5 Corruption

In 2016 the National Corruption Eradication Commission published a detailed report[158] on the prevalence of corruption in the palm oil sector, concluding that Indonesia did not have a credible or accountable system to prevent illegality and corruption in the palm oil industry.

> The KPK found corruption was rampant in the permitting process for plantations, with many companies able to clear forests and plant oil palms in forest areas that were forbidden for oil palm cultivation, nevertheless securing formal approvals and documentation.[159]

In 2023, the Indonesian chapter of Transparency International,[160] the world's leading transparency and anti-corruption watchdog, published an evaluation of the disclosure practices of the top 50 palm oil companies in Indonesia in relation to their anti-corruption programs, lobbying activities, company holdings, and key financial information.[161]

This report concluded that **those companies and the oil palm industry at large are highly prone to corruption** due to a combination of weak anti-corruption policies, a lack of transparency, revolving-door politics, and the number of people involved in the industry who are also involved in politics.[162]

Corruption is known to be a prevalent and systemic issue across the Indonesian palm oil industry, with numerous high-profile corruption, graft and tax avoidance cases making national headlines in recent years.[163] Indeed, in response to the Transparency International report, a director of one

Plantation worker watches as a truck unloads freshly harvested oil palm fruit bunches at a collection point

158 Komisi Pemberantasan Korupsi (2016) 'Kajian Sistem Pengelolaan Komoditas Kelapa Sawit', KPK, available at: https://www.mongabay.co.id/wp-content/uploads/2018/05/Kajian-KPK-soal-Tata-Kelola-Sawit-2016.pdf.

159 Jong, H. N. (2019), '81% of Indonesia's oil palm plantations flouting regulations, audit finds', *Mongabay*, 25 August 2019, available at: https://news.mongabay.com/2019/08/81-of-indonesias-oil-palm-plantations-flouting-regulations-audit-finds/.

160 https://ti.or.id/.

161 Transparency International Indonesia (2023), Corruption and corporate capture in Indonesia's top 50 palm oil companies, available at: https://ti.or.id/wp-content/uploads/2023/03/Laporan-TRAC-Sawit-.pdf.

162 Jong, H. N. (2023), 'Corruption stokes malpractice in Indonesia's palm oil industry', *Eco-Business*, 5 May 2023, available at https://www.eco-business.com/news/corruption-stokes-malpractice-in-indonesias-palm-oil-industry/; Jong, H. N. (2023), 'With little will to fight it, corruption is major risk for Indonesian palm oil', *Mongabay*, 1 May 2023, available at: https://news.mongabay.com/2023/05/with-little-will-to-fight-it-corruption-is-major-risk-for-indonesian-palm-oil/.

163 See for example: Jong, H. N. (2023), 'Palm oil giants face corruption charges as Indonesia probe widens', *Mongabay*, 20 June 2023, available at: https://news.mongabay.com/2023/06/palm-oil-giants-face-corruption-charges-as-indonesia-probe-widens/; Jong, H. N. (2023), 'Indonesia prosecutors decry 'lenient' sentences in palm oil corruption case', *Mongabay*, 9 January 2023, available at: https://news.mongabay.com/2023/01/jail-but-no-justice-for-perps-in-indonesian-palm-oil-corruption-case/; Llewellyn, A. (2023), 'Indonesia's palm oil tycoon Darmadi gets 15 years for corruption', *Al Jazeera*, 24 February 2023, available at: https://www.aljazeera.com/economy/2023/2/24/indonesias-palm-oil-tycoon-darmadi-gets-15-years-for-corruption; Jong, H. N., Nugraha, I. (2018), Palm oil executives arrested in bribery scandal in Indonesia', *Mongabay*, 30 October 2018, available at: https://news.mongabay.com/2018/10/palm-oil-executives-arrested-in-bribery-scandal-in-indonesia/; Perdani, Y. and Natahadibrata, N. (2014), 'Asian Agri set to lose assets', *Jakarta Post*, 10 January 2014, available at: https://www.thejakartapost.com/news/2014/01/10/asian-agri-set-lose-assets.html; Jong, H. N. (2022), 'Slick operator: Indonesian cooking oil probe may spread to biodiesel industry', *Mongabay*, 19 May 2022, available at: https://news.mongabay.com/2022/05/slick-operator-indonesian-cooking-oil-probe-may-spread-to-biodiesel-industry/; Jong, H. N. (2023) 'Millions in unpaid taxes amassed by Indonesian oil palm plantations', *Eco-Business*, 23 May 2023, available at: https://www.eco-business.com/news/millions-in-unpaid-taxes-amassed-by-indonesian-oil-palm-plantations/.

of the palm oil companies evaluated is quoted as acknowledging that the problem of corporate corruption plagues all industries in Indonesia. They claimed local officials see companies operating in their jurisdictions as prime targets for extortion, that corruption is the norm and if companies refuse to act corruptly they "will become an enemy of all stakeholders, from public officials to local communities".[164]

6.3.6 Child labour, forced labour, and abuse of plantation workers

Over the past decade there have been numerous reports of significant violations of the rights of plantation workers, ranging from child labour and forced labour to the sexual abuse of female plantation workers.

For example:

- NGOs have long reported on the dynamics of vulnerability, exploitation and dependency between rural communities and plantation companies – and the exploitative labour practices they use, such as: employing workers who are effectively permanent on a 'casual' basis; imposing unreasonable harvesting targets that require unpaid work from family members (usually workers' wives); forcing workers to pay for personal protective equipment; failing to provide adequate occupational safety or personal protective equipment (including for spraying dangerous pesticides); systematic informal work; and denial of mandatory employment benefits, health benefits and job security.[165]
- In 2016 Amnesty International published a report implicating Wilmar – the world's biggest palm oil processing and trading company – in cases of the "worst forms of child labour". This included conditions equivalent to forced labour, dangerous exposure to toxic chemicals, low wages and discrimination in its own operations and those of its suppliers.[166]
- in September 2020, the Associated Press published a damning report describing widespread abuses of labour rights and human rights, including cases of human trafficking, slavery, child labour, harassment and discrimination, which implicated some of the biggest players in the plantation industry.[167]
- In November 2020, the Associated Press published a report describing widespread gender and sexual violence, exploitation and rights violations in the Indonesian and Malaysian palm oil industries, including on plantations linked to the world's best-known cosmetic brands.[168] That report detailed accounts of rape, threats and intimidation, exploitation, "brutal treatment" and dangerously unsafe working conditions faced by female workers on palm oil plantations across Indonesia and Malaysia, including at some of the largest plantation companies in the industry.
- the International Labour Organisation has partnered with the Indonesian Ministry for Labour Relations to hold annual events on International Women's Day to highlight that female plantation workers continue to face discrimination in terms of wages, social protection guarantees, occupational safety and health protection, and are vulnerable to sexual harassment.[169]

164 Jong, H. N. (2023), 'With little will to fight it, corruption is major risk for Indonesian palm oil', *Mongabay*, 1 May 2023, available at: https://news.mongabay.com/2023/05/with-little-will-to-fight-it-corruption-is-major-risk-for-indonesian-palm-oil/.

165 See for example, Marti, S. (2008), 'Losing Ground: The human rights impacts of oil palm plantation expansion in Indonesia', Friends of the Earth, LifeMosaic and Sawit Watch, available at: https://www.foei.org/wp-content/uploads/2020/12/losingground.pdf; Zidane (2018), 'Indonesia: Exploitation of women and violation of their rights in oil palm plantations', World Rainforest Movement, 7 March 2018, available at: https://www.wrm.org.uy/bulletin-articles/indonesia-exploitation-of-women-and-violation-of-their-rights-in-oil-palm-plantations; Fair Labor Association (2018), Assessing Forced Labor Risks in the Palm Oil Sector in Indonesia and Malaysia, p. 2. Available from: https://www.theconsumergoodsforum.com/wp-content/uploads/2018/11/201811-CGF-FLA-Palm-Oil-Report-Malaysia-and-Indonesia_web.pdf; Nnoko-Mewanu, J. (2019), '"When We Lost the Forest, We Lost Everything" Oil Palm Plantations and Rights Violations in Indonesia', Human Rights Watch, 22 September 2022, available at: https://www.hrw.org/report/2019/09/23/when-we-lost-forest-we-lost-everything/oil-palm-plantations-and-rights-violations.

166 Amnesty International (2016), 'Palm Oil: Global brands profiting from child and forced labour', 30 November 2016, available at: https://www.amnesty.org/en/latest/news/2016/11/palm-oil-global-brands-profiting-from-child-and-forced-labour/.

167 Mason, M. and McDowell, R. (2020), 'Palm oil labor abuses linked to world's top brands, banks', *Associated Press*, 25 September 2020, available at: https://apnews.com/article/virus-outbreak-only-on-ap-indonesia-financial-markets-malaysia-7b634596270cc6aa7578a062a30423bb.

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6.4 Conclusion

Despite an abundance of laws regulating the palm oil industry, Indonesia's decentralised federal legal structure can sometimes mean that national laws are not implemented or enforced at sub-national levels, or that necessary sub-national laws to 'operationalise' national programmes are missing. The involvement of national, provincial and district governments in palm oil sector governance can add to this confusion, particularly where those agencies act independently of each other and without rules to address inconsistencies or contradictory decisions. Likewise, the lack of official recognition of Indigenous communities and their land and resource rights, despite the formal recognition of those rights in the national constitution, adds to tensions at the local level where plantation approvals have been granted without consulting local communities – or even being aware of their existence.

> This complex institutional framework has contributed to a high level of legal irregularities across the Indonesian palm oil industry, as well as the development of practices to circumvent applicable rules and avoid accountability.

Corruption has emerged as a systemic challenge in this context. To its credit, the Indonesian government has developed a detailed statutory framework to address the systemic social, environmental and regulatory issues plaguing the Indonesian palm oil industry – the ISPO certification framework – however compliance with this scheme, as well as its enforcement, is very weak.

Therefore, given the ongoing prevalence of legal non-compliance, corruption and social conflicts in Indonesia's palm oil sector, EU companies should make increased efforts to verify and corroborate assertions of legal compliance, even where official documentation or third-party certification has been supplied as evidence.

Closing summary

This briefing demonstrates that investigating the legal requirements applicable to commodity production activities can be a challenging process.

However, it also demonstrates that many of the most important laws regulating commodity production are often set at the national level and apply across the country. Identifying those requirements would not therefore need to be repeated for each EUDR supply chain. The same holds for state and district-level laws. Subject to nuances in applicable local customary law, the legal requirements applicable to commodity production will typically be the same across the relevant jurisdiction. Once those laws are identified and understood, subsequent due diligence need only check for any relevant changes.

Indeed, where EU companies intend to continue sourcing from a particular producer country or sub-national area, it would be worth investing in a comprehensive, independent and authoritative assessment of the applicable laws within the scope of the legality requirement, as this will form the basis of all subsequent due diligence efforts.

> Indeed, the purpose of due diligence under the EUDR is not to arrive at a conclusive decision on the legal compliance or non-compliance of specific production activities. Instead, it is to collect adequately conclusive information to reliably assess the *possibility* of non-compliance.

The case studies also demonstrate that identifying the applicable laws in specific jurisdictions is not impossible, despite the various challenges. The law is never unknowable: challenges in identifying legal requirements and investigating compliance can be overcome by applying adequate due diligence measures.

The EUDR is clear that, where evidence cannot be found to conclude that the possibility of non-compliance is negligible, the relevant products cannot be treated as EUDR-compliant. Because the EUDR does not limit the sources of information that can be consulted for this assessment, there is likely to be many local stakeholders who could be consulted if further information is needed.

Understanding the legal framework and legal context is essential to this assessment. The four case studies presented in this briefing – and the process of research and analysis required to prepare them – demonstrate that conducting due diligence on the EUDR's legality requirement can be a lengthy process and the input of local experts will most likely be necessary. This is especially the case in legal systems where sub-national governments play a role in setting and enforcing the laws applicable to commodity production.

The case studies also illustrate that there are likely to be risks of legal non-compliance of some form or another in most producing countries. Assessing whether those general risks apply to specific commodity production activities will require cross-examining the history and circumstances of those activities according to local stakeholders, alongside the documentation available, to demonstrate their legal compliance.

This clearly requires more than simply relying on assurances from suppliers or third-party certification schemes. It requires "due diligence". The diligence that is 'due' in each case must therefore match the level of risk of non-compliance and the level of investigation needed to discount those risks to a negligible level.

Consulting local legal experts and other local stakeholders, including any rights holders in the "area of production", should be seen as an important step in any due diligence process to confirm the 'reality on the ground' of the commodity production activities being investigated.

Some key recommendations arising from this analysis are therefore:

- Invest in a comprehensive, independent and authoritative analysis of the applicable laws in the country of origin and how they apply to commodity production activities.
- Catalogue contextual information regarding levels of legal implementation, compliance and law enforcement, as well as trends in non-compliance and the reasons behind them.
- Consult local experts on both points above.
- Investigate the current and *historical* circumstances of the commodity production activities, including according to local, non-government, stakeholders.
- Do not rely on official records or third-party certification alone – consult a range of local stakeholders, especially where contextual information indicates general risks of legal non-compliance within the sector or raises concerns about the reliability of official data and records.
- Speak to locals: consult local community and civil society stakeholders (such as labour unions, workers' associations, community organisations and NGOs) to verify the reality 'on the ground', including whether any sectoral risks apply to the specific supply chain and whether local rights holders are being unlawfully impacted.
- Competent authorities should require companies to demonstrate that they have consulted appropriate experts and a variety of local stakeholders as described above to identify the full spectrum of applicable laws and their implementation – in general and in specific production areas.
- Competent authorities should require companies to convince them, by explaining the company's assessment of non-compliance risks. that the information they gathered is reliable and adequately conclusive that there is no reason to be concerned that their relevant products were not produced in compliance with all applicable legal requirements.

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