

# **Responsibility and sustainability of the palm oil industry**

**Are the Principles and Criteria of the RSPO feasible in Colombia?**

**Two Researches February 2010**

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## **PALM OIL IN COLOMBIA: SHIFTING POWER PLAY? AN EXPLORATION OF THE PALM OIL ISSUE IN COLOMBIA ON THE BASIS OF A POWER ANALYSIS, WITH SPECIAL EMPHASIS ON THE ROUNDTABLE FOR SUSTAINABLE PALM OIL PROCESS**

*Sandra Seeboldt*

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## REPORT ON THE NATIONAL INTERPRETATION OF RSPO PRINCIPLES AND CRITERIA IN COLOMBIA

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- **INTRODUCTION**



## INTRODUCTION

In Colombia, as in all palm oil producing countries, oil palm cultivation is associated with problems in the areas of the environment, land and territorial issues and labour rights. These problems are aggravated in Colombia as a consequence of the internal armed conflict and the high level of violence in the country. Nonetheless, there is a great deal of interest in the sustainable production of palm oil in accordance with the criteria of the Roundtable on Sustainable Palm Oil (RSPO). A process is underway in the country to obtain RSPO certifying, led by the National Federation of Oil Palm Growers (FEDEPALMA).

At the international level, the International Confederation Oxfam is a member of the RSPO Executive Board, represented by the Dutch affiliate Oxfam Novib. Oxfam Novib produced two researches. The first one is conducted by Sandra Seeboldt of Oxfam Novib, to gain more insight in the feasibility of an RSPO initiative in Colombia. The second by Yamile Salinas Abdala, consultant Indepaz, was commissioned by Oxfam Novib, but conducted by Indepaz and focused on the analysis of the process of National Interpretation in Colombia.

In this publication the two researches are presented together with the reaction of FEDEPALMA to them.

### The palm oil industry in Colombia

The palm oil industry in Colombia receives more attention every day. As a result of policy tools and standards many measures are passed and incentives and benefits are granted to promote large-scale oil palm expansion to produce both palm oil and biofuels. These political tools and standards are designed and applied in spaces kept closed by political and economic elites with direct interests in the agro industry.

Parallel, there are several concerns about the palm oil sector. Some of them are recorded in the document written by Oxfam Novib and are shared by local bodies, such as FEDEPALMA

The first concern refers to the link between the armed conflict in the country and the palm oil sector. Apart from the emblematic case of the Afro-Colombian Communities of Jiguamiandó y Curvaradó en el Urubá Chocano, there are cases of palm oil companies planting oil palms in regions where communities had been forced to leave their lands because of

the conflict, or where armed groups have confiscated land. This situation is aggravated by insecurity in land ownership, drugs trafficking and money laundering.

Other concerns are the following:

- a. Projects in the territories of ethnic groups, without prior consultation, as in Guapi, Cauca.
- b. Precarious labour conditions. Lack of compliance of some of the Associated Workers Cooperatives (CTA) with current rules. And inadequate conditions for the smallholders organized in Strategic Production Alliances (APE)
- c. Large-scale expansion including in regions with a high conservation value, like the wetlands of the river Magdalena y el Choco Biogeográfico, and without foreseeing the requirements for infrastructure, investigation and technology transfer, which could turn out negative for the productivity and competition of the palm oil agro-industry
- d. Threats to and effects on security and sovereignty

The situations described challenge the palm oil industry in a context of globalisation. In this context the UN principles on businesses and human rights become more urgent, as do multi-stakeholder initiatives promoting corporate social responsibility, such as the Round Table for Sustainable Palm Oil –RSPO.

## The Roundtable on Sustainable Palm Oil- RSPO

The RSPO is a platform representing different stakeholders in the palm oil industry chain: growers, processors, distributors, sellers, manufacturers of consumer products, banks, investors and NGOs defending the environment, nature and social development. The RSPO is a unique platform designed to foster pragmatic cooperation, with a view to increasing the sustainable production and use of palm oil, through the development, implementation and verification of international standards. At the international level, RSPO Principles and Criteria for Sustainable Palm Oil Production have been agreed that set minimum parameters for sustainable production. Thus, each country wishing to obtain RSPO certification has to draw up a National Interpretation based on participation and consultation with stakeholders involved in palm oil production. Once the RSPO approves this interpretation, companies in the country in question can apply for certification after inspection by RSPO-approved certifying bodies.

## The process of National Interpretation in Colombia

Territorial Development, the World Wildlife Fund (WWF) and the Von Humboldt Institute, have started different processes to formulate a paper on the National Interpretation of the international Principles and Criteria of the RSPO. This National Interpretation is the basis for the certification of palm oil producers. To comply with the Principles and Criteria the companies need to have sustainability standards significantly higher among

their priorities than uncertified companies. Grupo Daabon has also been undergoing its own process of interpretation in order to obtain certification.

## Report of Oxfam Novib

### 'Palm oil in Colombia; shifting power play?'

To contribute to the debate about sustainability and responsibility of the palm oil industry and its promoters, the first part of the publication presents a document, written by Oxfam Novib, that analyses the different spheres of power in which policies on agro-industry and biofuels are defined. It also describes the limited space for participation for social organisations with skills on environmental, ethnic and labour issues. Thirdly it questions on the one hand whether the RSPO is feasible in a country in conflict, and on the other hand what difficulties and risks an initiative like this would face in Colombia

## Report of Indepaz:

### 'analysis of the National Interpretation Process of the Principles and Criteria of the RSPO in Colombia'

This report presents the results of an analysis Indepaz, commissioned by Oxfam Novib. It is an analysis of the National Interpretation Process of the Principles and Criteria of the RSPO as conducted by FEDEPALMA and contains recommendations to include other standards and international tools in the National Principals and Criteria that would work well in the Colombian context.

## Response of FEDEPALMA

It is important to clarify that FEDEPALMA took up various issues mentioned in the reports, as stated in its communication to Oxfam Novib (included in this publication). The progress on these issues is presented at the palm oil congress organised by FEDEPALMA in Villavincencio this year.

## *Recommendations:*

Finally, the two texts, published in English and in Spanish, suggest creating networks of Watchdog organisations that enable an intensive national and international monitoring of the palm oil industry in Colombia, if possible but not necessarily, related the RSPO's consultation process and the next phases of certification, in which different stakeholders should be represented.

## LIST OF ABBREVIATIONS

ASOCARS	Colombian Association of Regional Environmental and Sustainable Development Corporations
CARs	Corporaciones Autónomas Regionales (Regional Autonomous Corporations)
CENIPALMA	Corporación Centro de Investigación en Palma de Aceite (Palm Oil Research Centre Corporation)
CONPES	Consejo Nacional de Política Económica y Social (National Economic and Social Policy Council)
CODHES	Consultoría para los Derechos Humanos y el Desplazamiento (Displacement and Human Rights Consultancy)
C.P.	Constitución Política (Political Constitution of Colombia)
CTAs	Cooperativas de Trabajo Asociado (Associated Work Cooperatives)
ELN	Ejército de Liberación Nacional (National Liberation Army)
ENS	National Trade Union School
FARC	Fuerzas Armadas Revolucionarias de Colombia (Revolutionary Armed Forces of Colombia)
FEDEPALMA	Federación Nacional de Cultivadores de Palma de Aceite (National Federation of Oil Palm Growers)
IavH	Instituto Alexander von Humboldt (Humboldt Institute)
IDEAM	Instituto de Hidrología, Metereología y Estudios Ambientales (Institute of Hydrology, Meteorology and Environmental Studies)
IFC	International Finance Corporation
IGAC	Instituto Geográfico Agustín Codazzi (Agustín Codazzi Geographical Institute)
IICA	Inter-American Institute for Cooperation on Agriculture
MADR	Ministerio de Agricultura y Desarrollo Rural (Ministry of Agriculture and Rural Development)
MAVDT	Ministerio de Ambiente, Vivienda y Desarrollo Territorial (Ministry of Environment, Housing and Territorial Development)
MCIT	Ministerio de Comercio, Industria y Turismo (Ministry of Commerce, Industry and Tourism)
MIJ	Ministerio del Interior y de Justicia (Ministry of the Interior and Justice)
MIMAS	Ministerio de Minas y Energía (Ministry of Mines and Energy)
NI	National Interpretation
OECD	Organisation for Economic Cooperation and Development
NGOs	Non-governmental Organisations
P&C	Principles and Criteria
PDPMM	Programa de Desarrollo y Paz del Magdalena Medio (Middle Magdalena Peace and Development Program)
RSPO	Roundtable on Sustainable Palm Oil
UNHCR	Office of the United Nations High Commissioner for Refugees
USAID	United States Agency for International Development
WWF	World Wide Fund for Nature



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THE BASIS OF A POWER ANALYSIS, WITH SPECIAL EMPHASIS  
ON THE ROUNDTABLE FOR SUSTAINABLE PALM OIL PROCESS**

*Sandra Seeboldt*



# 1. INTRODUCTION

## 1.1. Background

In Colombia, as in all palm oil producing countries, oil palm cultivation is associated with problems in the areas of the environment, land and territorial issues and labour rights. These problems are aggravated in Colombia as a consequence of the internal armed conflict and the high level of violence in the country. Nonetheless, there is a great deal of interest in the sustainable production of palm oil in accordance with the criteria of the Roundtable on Sustainable Palm Oil (RSPO). A process is underway in the country to obtain RSPO certifying, led by the National Federation of Oil Palm Growers (FEDEPALMA). In Colombia, just like other civil society organizations, the affiliates of the International Confederation Oxfam, have many doubts as to whether an initiative such as that of the RSPO is feasible in the country. At the international level, Oxfam, represented by Oxfam Novib is a member of the RSPO Executive Board, and needs to have well-documental opinions in regard to feasibility of RSPO certification in Colombia.

This report is an external version prepared for the RSPO, based on an internal Oxfam Novib report drawn up in February to April 2009 and also on an AidEnvironment internal report from 2008 commissioned by Oxfam. Different methodologies, the most important of which was the power cube, were used for the research.

Oxfam Novib decided to conduct the researches because of our concern about the about the feasibility of a Multi Stakeholder Initiative like the RSPO in a conflict prone environment like Colombia. In Colombia parts of the palm oil sector are involved in human rights violations and especially land and labour rights are very important issues on the global Oxfam agenda, also in the global RSPO context.

The problems associated with palm oil were adequately described in the AidEnvironment study commissioned by Oxfam in 2008, as mentioned above. On the basis of the recommendations of this study, the following four sub-themes were identified with regard to the palm oil sector in Colombia:

- a. The RSPO process
- b. Forms of organization, whether as small producers, in terms of labour rights, etc

- c. Human rights issues, associated with land and territory rights
- d. International, national and local policies.

For the internal Oxfam Novib report, interviews were held in Bogota with representatives of relevant civil society organizations, FEDEPALMA, trade unions, government bodies, the Human Rights Ombudsman (Defensoría del Pueblo) and donors.<sup>1</sup> One of Colombia's four palm oil producing regions was also visited, namely, the central region, and specifically, the Middle Magdalena area: the towns of Bucaramanga and Sabana de Torres (Santander department), San Martín and San Alberto (Cesar department). Visits were made to the INDUPALMA company and plantation and to a women's Associated Work Cooperative (Cooperativa de Trabajo Asociado, CTA). In addition, small producers about to participate in one of INDUPALMA's production schemes were interviewed. Also interviewed were representatives of communities participating in the Middle Magdalena Peace and Development Programme (EU Peace Laboratory), NGOs and trade unions.<sup>2</sup>

## 1.2. The power cube

The power cube is a tool for analysing the different forms and characteristics of power. Although power is often taken as a one-dimensional concept, there are many possible forms and dimensions of power; furthermore, different spaces and levels can be defined for each issue for which power relationships are being analysed. This methodology makes it possible to analyse the different powers and relationships between actors operating in a specific sector or involved in a specific issue.<sup>3</sup>

## 2. THE PALM OIL SECTOR: SITUATION AND PROBLEMS

### 2.1. The Colombian palm oil sector

It is estimated that the oil palm tree was introduced in Colombia in 1932, although extensive cultivation and production, in the Magdalena department, dates from 1945.<sup>4</sup> In 2007 Colombia was the world's fifth producer of palm oil (with 2% of total world production), while Indonesia and Malaysia (representing 44% and 42% of world production, respectively) were the two main producers. Colombia is Latin America's largest palm oil producing country, accounting for 38% of the production of this region. Cultivation has expanded in recent decades and is expected to expand even further in future. Between 2003 and 2007 the planted area went from 206,000 hectares to 316,000 hectares. By 2007, 830,000 tonnes of palm oil was being produced from 200,000 hectares of pro-

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**1** See annex II for a list of all institutions interviewed.

**2** See annex II for a list of all institutions interviewed.

**3** For a clear explanation of the power cube, please see the article by John Goventa, available on Internet: [http://www.test.forumsyd.org/upload/tmp/kapacitet/amnen\\_metoder/demokrati/PowerAnalysis\\_John\\_Gaventa.pdf](http://www.test.forumsyd.org/upload/tmp/kapacitet/amnen_metoder/demokrati/PowerAnalysis_John_Gaventa.pdf).

**4** Mingorance, F., Minelli, F. Du Le, H. (2004), p. 49.

ductive land.<sup>5</sup> In its Vision 2020 project drawn up in 2004, FEDEPALMA estimated that 750,000 hectares of land would be planted with oil palm in 2020. The Colombian government estimate is that 3 million hectares of land will be planted with oil palm trees by 2017.<sup>6</sup> However, the AidEnvironment study commissioned by Oxfam indicates that these estimates are unrealistic and that—according to different scenarios—the more than 300,000 hectares currently cultivated will increase, by 2012, to between a minimum of 450,000 and a maximum of 565,000 hectares. Most palm oil produced in Colombia is for domestic use; however, in recent years its production for domestic and export biodiesel is being promoted. Only 33% of production is exported at present, mainly to countries in the European Union (EU). Expansion of palm oil production in Colombia also responds to demand for by-products in the Chinese and Indian markets.<sup>7</sup>

According to FEDEPALMA, Colombia has four oil palm regions with 55 production units grouped around oil extraction plants, as follows:<sup>8</sup>

- Northern Colombia: Magdalena, North Cesar, Atlántico, La Guajira and Antioquia (Urabá) departments.
- Central Colombia: Santander, North Santander, southern Cesar and Bolívar departments and also Middle Magdalena (the area visited for the purposes of this research).
- Eastern Colombia: Meta, Cundinamarca, Casanare and Caquetá departments.
- Western Colombia: Nariño, Cauca and Chocó departments.

The Colombian Ministry of Agriculture and Rural Development estimates that 88,000 people were employed in the palm oil sector in 2007. It is not possible to identify exactly which oil palm companies operate in each zone<sup>9</sup>. Not all oil palm companies are associated to FEDEPALMA, which has some 600 members, ranging in size from very large to very small companies<sup>10</sup>. AidEnvironment attempted, without success, to obtain information on the precise number of FEDEPALMA members from FEDEPALMA itself and from the Chambers of Commerce and the National Confederation of Chambers of Commerce (see also section 2.4).

FEDEPALMA has expressed its concern regarding uncontrolled oil palm expansion, given the environmental consequences and drug trafficker infiltration<sup>11</sup> (see section 2.3). In its Vision 2020 document, it recommended a review of a study by CORPOICA (agricultural

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**5** FEDEPALMA, (2008), p46.

**6** AidEnvironment 2008) p. 15.

**7** AidEnvironment, (2008) p. 12.

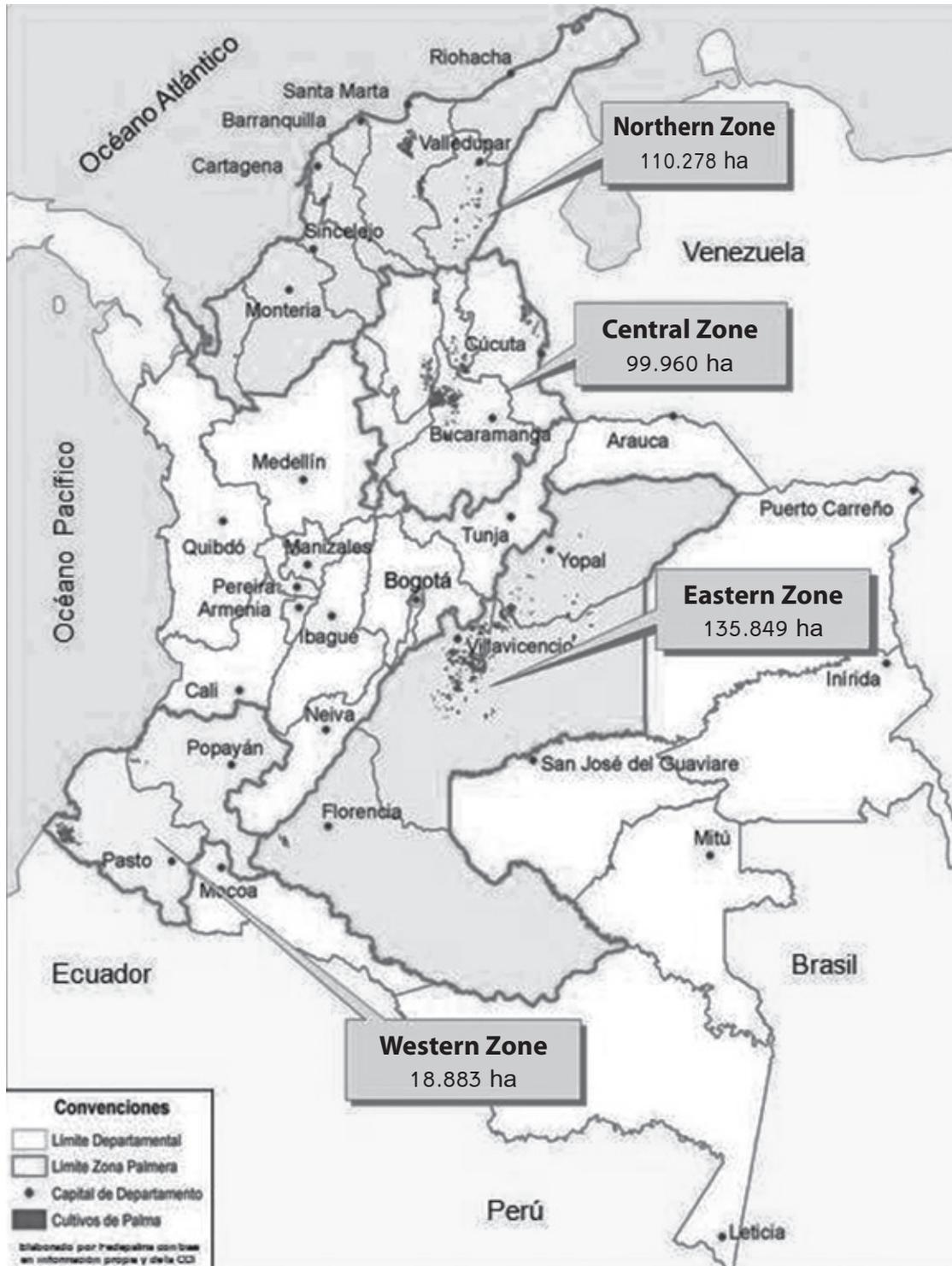
**8** FEDEPALMA. Words from the executive president of FEDEPALMA, Jens Mesa Dishington, at the inauguration of the First Latin American Meeting of the Round Table on Sustainable Palm Oil (RSPO). Cartagena, October 16, 2008.

**9** The Colombian consultancy contracted by Oxfam Novib as part of the study realised by AidEnvironment received a negative response from the Confederation of Chambers of Commerce to the request to buy the information database on oil palm cultivation companies in the country, despite the initial acceptance of the request and its indication of the value of cancellation. On the day of the request the Confederation decided that the information could only be provided by the individual Chamber of Commerce.

**10** Interview with spokesperson of FEDEPALMA, February 2009

**11** Interview with spokesperson of FEDEPALMA, February 2009

Map 1: Oil palm regions of Colombia



Sources: Fedepalma, [http://www.fedepalma.org/documen/2010/municipios\\_palmeros.pdf](http://www.fedepalma.org/documen/2010/municipios_palmeros.pdf)

research body) and CENIPALMA (palm oil research body) to identify areas suitable for oil palm cultivation in terms of soil and climate. This initiative was taken up by the National Economic and Social Policy Council (CONPES) in policy paper 3477 on palm oil, drawn up with the participation of the Agustín Codazzi Geographical Institute (IGAC), the Institute of Hydrology, Meteorology and Environmental Studies (IDEAM), the Ministry of Agriculture and Rural Development, FEDEPALMA and CENIPALMA, all of which conducted research to identify and characterize areas suitable for oil palm cultivation in terms of environmental, ethnic and social criteria<sup>12</sup>. It is expected at some point to have a map of suitable areas for further oil palm cultivation that takes account of these criteria.

## 2.2. International, national and local policies

Described below are the policies and justifications behind present and future expansion of oil palm tree cultivation in Colombia.

### *Rural policy incentives for biofuel production*

Several international, national and local policies are being simultaneously applied in the palm oil sector. What is noteworthy is that each of these policies is directly promoted by the very same sector with an interest in expanding oil palm cultivation. Rural policies aimed at promoting monoculture (coffee and cocoa, and also sugar cane and oil palm, among other products destined for biofuel production) are underpinned by successive National Development Plans drawn up by President Uribe's two administrations<sup>13</sup> and by the Rural Development Statute<sup>14</sup>. The National Development Plan 2006-2010 provides for direct and indirect investments aimed at promoting the vegetable-based fuel agroindustry: ethanol and biodiesel. There is little or no provision for investments and other types of state support for non-rural sectors or industries other than the extractive mining and hydrocarbon industries.

CONPES<sup>15</sup> has published two documents promoting the palm oil and biofuel production industries (CONPES 3477 and 3510, respectively)<sup>16</sup>. The government offers support, incentives, tax breaks and favourable fiscal treatment for oil palm cultivation destined for biodiesel production and extraction plants. It has also passed legislation for petrol to con-

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**12** In working out the mapping IGAC (geographic institute), IDEAM (Columbian Institute of Hydrology, Meteorology and Environmental Studies), MADR (Ministry of Agriculture), FEDEPALMA, Cenipalma and Corpoica (Corporación Colombiana de Investigación Agropecuaria or Columbian Corporation for Arable and Cattle Farming Research, national institute for research, certification and support of the national arable and cattle farming sector.

**13** Law 812 from 2003: PND 2002 – 2006 and Law 1151 from 2007.

**14** Law 1152 from 2007 was declared unconstitutional by the Constitutional Court, because it violated the right to consultation of ethnic groups.

**15** CONPES: National Council for Social and Economic Policy of the Republic of Colombia. Council that falls under the president of the republic and is made up of the ministries of Foreign Affairs, Finances, Agriculture, Development, Labour, Transport, Foreign Trade, Environment and Culture, the DNP director, the managers of the Bank of the Republic and the National Federation of Coffee Growers, as well as the directors of Black Communities' Affairs of the Home Ministry and the director for Women's Justice (see <http://www.dnp.gov.co/PortalWeb/tabid/55/Default.aspx>).

**16** CONPES 3477: Strategy for the competitive development of the Colombian palm oil sector, June 2006. And the document CONPES 3510: Policy lines for promoting the sustainable production of biofuels in Colombia, March 2008.

tain 10% of ethanol and for diesel to be mixed with 5% of biodiesel, and making provision for these percentages to be increased in the future<sup>17</sup>.

### *International demand for biofuel*

A stimulus for the Colombian government to invest in the biofuel industry is growing biofuel demand from the EU and the expectation of being able to export ethanol and biodiesel to European markets. Nevertheless, although the EU is promoting petrol and diesel mixtures with biofuels (5.75% by 2010 and 10% by 2020), the raw materials and biofuels must be certified. This is because of doubts as to the advantages of biofuels in terms of their negative impact on the environment and on food security that have led to public pressures and lobbying by social and environmental bodies, among them Oxfam Novib.

### *International cooperation programmes*

Another factor is the importance attached to the oil palm by international cooperation programmes and the resulting stimulus to expansion. The US-funded Plan Colombia anticipates the planting of 34,000 hectares of oil palm between 2008 and 2013. With its goal of “social and economic revitalization”, Plan Colombia is very much aimed at curbing illicit drug production and terrorism. Over 80% of its budget is earmarked for military cooperation. Since 2006, however, social and economic projects have acquired greater weight in the plan, particularly projects aimed at developing alternative crops to displace the cultivation of coca<sup>18</sup>. Another cooperation partner is the EU, which supports the EU-Colombian government Peace Laboratories programme. Some 5,000 hectares of oil palm have been planted in the framework of this programme in the Middle Magdalena region (Middle Magdalena Peace and Development Programme)<sup>19</sup>. The Dutch Embassy has also demonstrated its interest in biofuel and palm oil production and is considering a public-private partnership with a palm oil company representing an investment of up to 1.5 million euros<sup>20</sup>.

### *Lack of local and regional policies and requirements for sustainable oil palm expansion*

Of note is the multiplicity and variety of incentives for expanding the palm oil sector and the few barriers existing at the national and international levels. The situation is similar at the local and regional levels. Mayors have few means at their disposal to address the expansion of oil palm cultivation in their municipalities and no environmental permit is required from the Autonomous Regional Corporations (CARs, environmental bod-

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**17** Document CONPES 3510, (2008), p. 35.

**18** AidEnvironment, (2008) p. 9.

**19** AidEnvironment (2008), p. 10.

**20** Tool to promote the formation of public-private associations for funding projects emphasising poverty reduction and sustainable development. The Netherlands donate 50% of the value of a project with a maximum donation of 1 million euro. The participation of Dutch enterprises is not a requirement. Sectors: agriculture, water and sanitation, energy, health, biodiversity (source: [http://colombia.nlembajada.org/cooperacion\\_al/sector\\_privado](http://colombia.nlembajada.org/cooperacion_al/sector_privado))

ies with jurisdiction over specific regions). A company—whether or not the owner of the land—wishing to plant oil palms, is only required to obtain from the local CAR, for example, permits to use surface and underground water, dispose of waste, fell trees, etc.<sup>21</sup> The role the CARs should play in terms of monitoring and protecting the environment has, in many cases, been interfered with by widespread corruption and/or infiltration by armed groups<sup>22</sup>. Even though the Ministry of the Environment, Housing and Territorial Development, some of the CARs and FEDEPALMA promote the use of the environmental guidelines document and the need for environmental permits<sup>23</sup>, a number of interviewees coincided in the opinion that the environmental authorities do not have the capacity or autonomy to properly and adequately monitor the social, economic and environmental impact of the oil palm plantations and extractor plants or to impose sanctions when necessary. Furthermore, companies who breach the regulations simply include fines as operational costs in their financial planning<sup>24</sup>.

### 2.3. Human rights: land and territory

#### *The armed conflict in Colombia*

The political and economic system in Colombia is characterized by violence, human rights violations and breaches of international humanitarian law. The internal armed conflict has been underway for decades. There are different kinds of legal and illegal armed groups, and of the illegal ones, the best known are guerrilla groups such as the National Liberation Army (ELN) and the Revolutionary Armed Forces of Colombia (FARC). The FARC, which historically defended the poor and the lands of the campesinos, is now involved in drug trafficking, kidnapping, forced recruitment of young people from rural villages and towns and the murder of business people. There are also a number of paramilitary groups that supposedly fight the guerrillas, but which, according to some academics, defend elite groups. Despite the process for large-scale demobilization of these groups, promoted by President Uribe's government, manifestations of violence associated with drug trafficking persist, sometimes with the complicity of the military forces, politicians and the business sector<sup>25</sup>. There is much talk of 'para-politics' (political collusion with paramilitary groups) and the 'para-economy' (underground economy)<sup>26</sup>. According to INDEPAZ, at least 100 important Colombian businesses and a number of multinationals are thought to have links with paramilitary groups<sup>27</sup>. Over 70 congress members, the majority of them mem-

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21 CARs are defined by law 99 from 1993.

22 Interviews with WWF Colombia, with advisor from Indepaz and Cabildo Verde's, February 2009.

23 FEDEPALMA, (2007), pp. 115-122

24 Interviews with WWF Colombia, with advisor from Indepaz for Oxfam Novib consultancy with Cabildo Verde's, Magdalena Medio Peace and Development Programmes, with Diocese of Barrancabermeja and Grupo Semillas.

25 Espitia, C. (2008), p.7.

26 Thanks to the confessions of demobilised combatants and paramilitary groups, the accusations from the communication media and organisations like Arcoiris and Indepaz, and the investigations of the Supreme Court, the phenomenon of the economic and political linkages with paramilitary groups were documented.

27 These situations are the object of international (in the case of the Chiquitía and Drummond banana business) and national investigations by the

bers of political parties close to the government, are undergoing criminal investigations and several are in prison<sup>28</sup>. Investigations are also underway into 15 governors and 31 mayors for their links to paramilitary groups.

Figures on murders and other crimes have improved since a democratic safety campaign was launched by Uribe after he was elected President in 2002, with strategies aimed directly at dismantling the FARC, along with large-scale demobilization of paramilitary groups. However, those living in rural regions still suffer violence from what the government calls 'criminal bands' (bacrim), viewed by academics and institutions as a prolongation of paramilitary action<sup>29</sup>. The numbers of displaced peoples have remained high, at around 3 million persons according to Acción Social (a government body) and over 4 million according to the Displacement and Human Rights Consultancy (CODHES)—making Colombia the second country after Sudan in terms of numbers of internally displaced persons. The Colombian Constitutional Court has claimed that forced exodus is not only a consequence of the conflict, but is also due to a myriad of interests associated with land, territory and natural resources<sup>30</sup>.

### *Oil palm cultivation and the armed conflict*

From the outset, oil palm cultivation has been associated with the armed conflict and with a history of violence and human rights violations. As has been mentioned earlier, Colombia places a great deal of emphasis on rural development, as land is seen as a fundamental element in the creation of wealth. According to the UNHCR<sup>31</sup>, violence in Colombia has historically been associated with agricultural activities such as the production of bananas in the 1920s, coffee in the 1950s, livestock in the 1980s and coca in the 1990s. Nowadays violence associated with land occupation is linked with the cultivation of sugar cane and oil palm for the production of biofuel. Examples are the Jiguamiandó and Curvaradó areas of Urabá Chocano, where oil palm companies backed by the government and USA cooperation funds expropriated the common lands of displaced Afro-Colombians to plant them with oil palm. In the struggle to defend their rights and recover their lands, some 110 persons are estimated to have been murdered or to have disappeared as a consequence of paramilitary action, often with the complicity of members of Fuerza Pública (a body comprising military and police forces)<sup>32</sup>.

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Supreme Court, fiscal authorities and the Public Prosecution.

**28** See: Indepaz. Numbers from the Report of the State Department, Marc 9, 2009. At: [www.indepaz.org.co/index.php?option=com\\_content&view=section&layout=blog&id=18&Itemid=99](http://www.indepaz.org.co/index.php?option=com_content&view=section&layout=blog&id=18&Itemid=99).

**29** Support Mission for the Peace Process in Colombia (MAPP/OEA). Twelfth Trimestral Report of the General Secretary of the Permanent Council, February 2009.

**30** Constitutional Court. Orders 005, 007 and 008 from 2009, following up on the ruling T-025 from 2004 that declares forced displacement as an institutional matter.

**31** Interview with ACNUR, February 2009

**32** The communities of Jiguamiandó and Curvaradó are the object of protection measures by the Interamerican Court of Human Rights.

### *Land ownership history records*

Although the Urubá and Chocó cases are the best known, there are many other cases of land being expropriated in questionable ways. The biggest obstacle is the lack of recorded information on land history and consequently of ownership of the lands planted or to be planted with oil palm. This situation is further aggravated by the informality of landholding in Colombia<sup>33</sup> and the many ways that land can be expropriated and expropriation legitimized<sup>34</sup>. Thus, whereas FEDEPALMA insists that land-related problems are exceptional, several NGOs state that they are innumerable. The information available is based on case studies, so there are no real figures on which to debate this point. Nonetheless, denounced in recent years is what is referred to as ‘agrarian counterreform’. According to AidEnvironment, the Attorney General (Procuraduría) is of the opinion that drug traffickers and armed groups have occupied 48% of the best lands abandoned by displaced people in several regions of Colombia, on some of which oil palm is now being planted<sup>35</sup>.

### *Oil palm, displacement and migration*

Displacement is associated with the expansion of oil palm cultivation in a number of ways. Firstly, **violence is used as a means to displace people and take over their lands**; for example, community leaders are murdered, leading the rest of the population to migrate, or land sales are forced at ridiculous prices. Several interviewees voiced the problem in the following terms:

*“I want to buy your land and business; either I talk with you now or I talk tomorrow with your widow.”*

This approach is exemplified by the statement by the demobilized paramilitary member, who claimed that the governor of Casanare, currently under investigation, allied himself with paramilitary groups “*in order to obtain large tracts of land in Casanare (over 40,000 hectares) and plant oil palm.*”<sup>36</sup>

Secondly, **oil palm companies acquire lands that people have been forced to abandon**, and which, according to the authorities, have been ‘recovered’ post-conflict by the Fuerza Pública. The companies’ goal is to obtain lands at below market prices for plantation purposes. The state has no programmes aimed at returning displaced families to their lands and restoring other possessions<sup>37</sup>, other than programmes to relocate some of these families, which are granted land and subsidies on condition that they participate with companies in what are known as Strategic Production Alliances (Alianzas Productivas Estratégicas, APEs).

<sup>33</sup> According to IGAC the property registration is not up-to-date and of the 12 million buildings registered in 2003 more than 3 million do not have property titles (public document registered at public registrar offices).

<sup>34</sup> The dispossession is linked to the forced transfer of populations. Among the methods used to achieve acquisition there are forced sales, sales below market rates, false documents and front-men, as well as expiry dates declared by public entities without considering the situation of displacement. In: Commission for Monitoring Public Policy and Assistance to Displaced Populations, VII Report presented to the Constitutional Court, October 2008.

<sup>35</sup> AidEnvironment (2008), p.28.

<sup>36</sup> Revista Semana. Politics and the paramilitary in la Llaneroa. In: <http://www.semana.com/noticias-nacion/parapolitica-llaneroa/121995.aspx>.

<sup>37</sup> Constitutional Court, Ruling T-821 from 2007 and Order 008 from 2009.

In addition to displacement induced by violence, there is also **migration for economic reasons**, in which the palm oil industry also plays a part. The government promotes the cultivation of late-yielding crops to produce biofuel and fails to invest in **small producers except when they become involved in this kind of monoculture. Summing up, small producers are forced to forego their autonomy and participate in the APEs if they want to be granted land and subsidies.** The **delivery of land to displaced people** under these conditions has generated broad-ranging debate, especially in regard to the Carimagua estate (Meta department), belonging to the state. **Changes in the rural infrastructure** to focus mainly on oil palm cultivation also results in migration as smallholders are faced with the difficulty of continuing with their traditional crops and maintaining their autonomy.<sup>38</sup>

*“It might be that the road is now in the hands of the oil palm company. Or maybe the van that used to come to collect the berries no longer comes.”<sup>39</sup>*

### *Protecting commonly held lands*

The Constitution of 1991 recognized the collective territory rights of the indigenous and Afro-Caribbean communities, representing 13.9% and 10.5% of the population of Colombia, respectively. Law 70 of 1993, in fact, regulates the collective title to lands ancestrally occupied by the Afro-Caribbean community on the Pacific coast. The same legislation also recognizes the autonomy of the Afro-Caribbean community, their forms of government (through community councils) and their right to be consulted on projects to be implemented in their lands, which, moreover, may not be sold, granted to non-Afro-Caribbeans or subject to property claims. Despite this legislation, however, in some circumstances the government is promoting oil palm plantation without previously consulting the communities.<sup>40</sup> There are also situations in which, according to the Constitutional Court, *“economic actors have allied themselves with illegal armed actors to generate, within the indigenous communities, violence aimed at eliminating or displacing the indigenous people from their ancestral lands, thereby clearing the way for the implementation (...) of agricultural megaprojects [that is, biofuel production] and the exploitation of natural resources.”* This represents *“one of the main reasons for forced displacement.”*<sup>41</sup> The Constitutional Court also cited, as factors leading to *“the presence of armed actors threatening the population of African origins in order to make them abandon their lands”*, the planning and launch of agroindustrial projects facilitated by *“deficient legal and institutional protection of the collective lands of the Afro-Colombians.”*<sup>42</sup>

In Edict 005 of 2009, the Constitutional Court referred to the following cases of oil palm plantation in commonly held Afro-Colombian lands:

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**38** Interview with ACNUR, PPDMM, Diocese of Barrancabermeja and USO, February 2009.

**39** Interview with ACNUR, February 2009.

**40** This is the case with the cultivation of oil palm oil in the Community Council of Guapi Abajó, in the Municipality of Guapi, Cauca.

**41** Constitutional Court, Order 004 from 2009.

**42** Constitutional Court, Order 005 from 2009. According to organisations like CODHES, CNOA, AFRODES, ASOMUJER, TRABAJO PCN (Black Communities' Processes), CIMARRON and COOPDACION, legal standards facilitate *“the income from mega-projects like the cultivation of African oil palm. . . , creating as consequence displacement and other violations of the rights of these communities”*.

*“In Tumaco, for example, local human rights groups have reported on the presence, over a long period of time, of private security groups used to pressurize people to sell or leave their lands and so enable the expansion of the oil palm industry.” (...)* INCODER [a rural development institute] has recognized that ‘there are, at present, several oil palm companies working illegally on lands owned by the Afro-Colombians in Tumaco: (i) Palmeiras SA and Palmas Oleaginosas Salamanca have illegally cultivated between 800 and 1,500 hectares of land held in the name of the Alta Mira y Frontera Community Council; (ii) Palmas Oleaginosas Salamanca and Palmas de Tumaco have expanded, without permission, their oil palm plantations in commonly held lands belonging to the Bajo Mira y Frontera Community Council; (iii) Astorga is, without permission, cultivating the commonly held lands of the Río Rosario Community Council.’

*In Guapi, Cauca [department], there is another example of a clear breach of Law 70 of 1993, which prohibits non-members of the Afro-Colombian community from acquiring land to which these peoples hold title and establishes that the lands of ethnic groups are inalienable, imprescriptible and unseizable”.*

### *Asset laundering*

The expropriation of lands is linked to the laundering of assets obtained through drug trafficking and corruption<sup>43</sup>. However, there are few hard facts and figures in this regard. The Public Prosecutor’s Office (Fiscalía) has identified many fronts for illegal activities, such as properties in the name of third parties so as to hide the names of the true owners<sup>44</sup>. Two FEDEPALMA associate companies, Sociedad Grasas y Derivados SA and Sociedad de Comercialización Internacional y de Fabricación de Aceites y Margarinas del Magdalena SA, have 50% of their lands subject to confiscation processes<sup>45</sup>. An article in The Nation in June 2009 mentions the links between drug traffickers and paramilitary groups and USAID investments in palm oil within the framework of Plan Colombia<sup>46</sup>.

Interviewed FEDEPALMA employees expressed their concern regarding uncontrolled oil palm expansion. Although FEDEPALMA denies that asset laundering is a practice used by its associate companies, it has pointed to the risk of “illicit money affecting the sustainability of the sector.”<sup>47</sup> But not all oil palm companies are member of FEDEPALMA, for example, the 23 companies in Urabá Chocoano being investigated by the Public Prosecutor’s Office,<sup>48</sup> as referred to in the June 2009 article in The Nation. Based on the same concern, INDUPALMA interviewees have stated that one of the reasons for creating the

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**43** Salinas Abdala, Y., The Expansion of Oil Palm, 2009. At: [www.indepaz.org](http://www.indepaz.org).

**44** It is one of the reasons why few goods from demobilised combatants were acquired by the Victims’ Reparations Fund, set up the law on Demobilisation (Law 975 from 2005). Drugs trafficking crimes and the illegal enrichment are the source of such goods, and this links makes confiscation a moot point.

**45** National Drugs Trafficking Directorate. Societies managed by the National Drugs Trafficking Directorate from December 9, 2008.

**46** For the article see: [www.thenation.com/doc/20090615/ballve](http://www.thenation.com/doc/20090615/ballve)

**47** FEDEPALMA. Vision on biofuels of the oil palm union. Presentation of Jens Mesa Dishington, executive president, Villavicencio, January 23, 2008.

**48** El Espectador (The Spectator). The file on oil palm growers. January 2008. It is about businessmen linked with the corporations Urapalma, Palmas de Curvaradó, Palmas S.A., Palmas de Urabá and PALMURAS S.A. Members of Urapalma were denounced by demobilised para-military men.

APEs was to “avoid further impoverishment of small producers who might be forced to sell their lands to unknown individuals involved in dubious dealings.”<sup>49</sup>.

## 2.4. Labour rights

With a large number of trade unionists murdered in the last ten years, Colombia has a poor reputation in terms of complying with labour rights<sup>50</sup>. There is a lack of accurate information on the situation of workers in the palm oil sector and whatever information is available is contradictory. AidEnvironment unsuccessfully attempted to obtain information from FEDEPALMA, the Chambers of Commerce and the National Confederation of Chambers of Commerce on the precise number of FEDEPALMA members and the number of CTAs and their membership numbers, nor have the Ministry for Social Protection and the Economic Solidarity Superintendency, which are charged with supervision and control of the CTAs, collated data in this respect. Finally, no surveys have been conducted of the APEs in the palm oil sector. Consequently, the information available is purely indicative.<sup>51</sup>

According to the National Trade Union School (ENS), there are around 100,000 workers in the palm oil sector, a number greater than that provided by the Ministry of Agriculture (88,000). According to the trade union survey conducted by the National Trade Union School, the six trade unions in the sector have 1,778 members, all employed on indefinite contracts and protected by collective bargaining agreements. According to FEDEPALMA data, around 4,586 campesinos participate in the APEs as suppliers to large and medium palm oil companies<sup>52</sup>. It is also estimated that there are some 10,000 direct employees of palm oil companies with fixed-term or indefinite contracts who are not trade union members. Subtracting the sum of these figures representing employed workers from the total number of workers in the entire sector, there are around 83,600 persons employed in cultivation, most working through CTAs and service supply companies. In other words, around 83.6% of employment in the sector is outsourced.

### *Trade union weakness and work cooperatives*

According to the National Trade Union School, at the end of the 1990s in Colombia, 80% of workers were trade union members<sup>53</sup>. There are some cases known, where trade unionist had links with guerrilla groups (primarily M19, FARC and ELN) and were involved in

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**49** Interview with Indupalma, February 2009

**50** This paragraph was written on the basis of interviews with representatives of USO, Diocese of Barrancabermeja, PPDMM, FEDEPALMA, Indupalma and the National Trade Union School.

**51** Interview with the advisor of Indepaz: FEDEPALMA's annual report only mentions the enterprises that have extraction and marketing plants. According to data from Confecamaras there are between 130-160 registered oil palm businesses with the Chambers of Commerce across the country. In September 2007, the Confederation of Co-operatives (Coofecop) estimated that more than 12 thousand CTAs were registered in the entire country. Nevertheless, only 1,629 have up-to-date financial information. In the oil palm sector it is calculated that 800 CTAs are operational, but it is not possible to verify how many of them are part of the co-operatives that comply with their legal obligations.

**52** OSPINA, Martha. *The Faces of the Oil Palm*, Bogota D.C., FEDEPALMA, 2007, p. 55.

**53** Interview with the National Trade Union School.

kidnappings and murders of business people. Towards the end of the 1990s, the number of murders of trade unionists increased. According to Amnesty International and the National Federation of Christian Trade Unions in the Netherlands (CNV), some 2,000 trade unionists were murdered between 1987 and 2007. Other sources give higher numbers<sup>54</sup>. Threats against trade unionists continue and also murders: 78 in 2007<sup>55</sup> and 49 in 2008<sup>56</sup>. The aggression against the trade union movement is one of the reasons why US Congressional Democrats have refused to approve the Free Trade Agreement with Colombia.

The radical weakening of the trade union movement has enabled the business and political elite in Colombia to benefit from International Monetary Fund and World Bank social adjustment programmes, for example, by amending labour legislation. In the 1990s, three reforms to labour legislation were implemented that made employment more flexible and undermined the rights of workers. At the same time, and with the approval of the business elite, the CTA system was created. Implementation of this system was accelerated by murders and threats against trade union leaders that inspired the workers with fear. Members of CTAs are considered to be self-employed rather than employed. They are organized around leaders who negotiate types of work, conditions and pay with large companies. The CTAs are responsible for making their own social security payments (for medical care and pensions). These cooperatives are responsible for purchasing tools and equipment out of their own budgets, take on bonuses and are liable for fines imposed by companies for non-compliance with their contracts, as well as other costs. Since the CTA members are not employees, they may not create trade unions or exercise the right to strike (by 2008, only 1.8% of palm oil sector workers were trade union members), nor do CTA members have an association that defends their rights and protects their interests as a group. This situation is very much questioned by those who believe the CTAs to be a means for maintaining the precariousness of employment and the inequality of conditions in relationships between workers and companies. The problem is further aggravated by poor worker education, limited access to information and a lack of legal advice. In many cases, CTA leaders collude with the companies and fail to defend the interests of the workers. A preliminary study prepared jointly by the Ministry for Social Protection and the Economic Solidarity Superintendency noted that *“under the associated work concept, a large number of cooperatives and pre-cooperatives have been created that assume activities more properly corresponding to temporary service companies or that operate as mutual medical aid associations”*. Thus, not only have legal forms been denatured and the cooperative concept distorted, there are also the issues of avoidance of payment of dues to the state and breaches of labour legislation, resulting in *“the generation of a perverse effect (replacement of wages, tax evasion, the conversion of employees into self-employed workers, etc).”*<sup>57</sup>

54 See: [www.cnvinternationaal.nl/artikel/artikel/28304/?tx\\_ttnews%5Byear%5D=2008&tx\\_ttnews%5Bmonth%5D=03&cHash=2fd1f093f0](http://www.cnvinternationaal.nl/artikel/artikel/28304/?tx_ttnews%5Byear%5D=2008&tx_ttnews%5Bmonth%5D=03&cHash=2fd1f093f0)

55 ITUC (2007), Report on Union Rights Violations: <http://survey07.ituc-csi.org/getcountry.php?IDCountry=COL&IDLang=ES>

56 See: [www.unhcr.org/refworld/pdfid/49afa3842.pdf](http://www.unhcr.org/refworld/pdfid/49afa3842.pdf)

57 Urrea, Fernando, Labour Co-operative Associations, New Labour Relations and their Incidence on Contract and Work forms, 2004.

### *The APE system*

According to FEDEPALMA, 30% of planted land belonging to small producers is included in APEs<sup>58</sup>. The APE system, which was adopted by the Ministry of Agriculture towards the end of the 1990s, plays an important role in USA cooperation, but also, although in a slightly different way, in EU cooperation. Small producers who wish to participate in an APE need to have at least 5-10 hectares of land. They sign contracts with operators and intermediaries (companies) which guarantee purchase of their output for periods of 20 years or more. Companies back the small producers in obtaining credit and rural capitalization incentives for planting oil palm and also provide technical assistance and seeds. In some cases, the companies provide social assistance and support with cooperative functions such as accounting, finances, staff issues, etc. Opinions on these alliances are very varied. Although a recent assessment by CONPES produced evidence in favour of the APEs, the National Trade Union School made an assessment of APEs in Puerto Wilches (Middle Magdalena department), producing evidence that producers did not earn enough to achieve the legal minimum monthly wage and were forced to become indebted to meet subsistence needs, with all the members of a family having to work, including children<sup>59</sup>. Finally, APEs tend to vary greatly. As one example, the Middle Magdalena Peace and Development Programme promotes conditions of equity, brings down costs and fosters a kind of smallholding known as the *finca campesina*, based on interspersing oil palms with crops that ensure food security for the families.

## **2.5. The environment**

Colombia, which is the second country in the world in terms of biodiversity, has very advanced environmental legislation. However, the merging of the Ministry of the Environment with the Ministry of Development has led, since 2002, to a dismantling of the environmental institutional framework—which includes the CARs—and a reduction in investment in this sector<sup>60</sup>. CONPES acknowledges the environmental impact of the palm oil industry in terms of water pollution, loss of biodiversity, ecosystem distortion and increased emissions due to deforestation, among other factors<sup>61</sup>. In Colombia oil palm plantations are not directly associated with the clearing of virgin rainforest as in Malaysia or Indonesia. However, oil palm plantation has affected primary forest in some areas, for example, the Pacific coastal Chocó Bio-Region, that is, Urabá, Guapi and Tumaco in the Chocó, Cauca and Nariño departments, respectively<sup>62</sup>. However, many oil palm expansion projects are proposed or planned for systems of special environmental relevance, such as the wetlands of the Middle Magdalena region and the Colombian Orinoco river basin—this despite the fact that FEDEPALMA, government authorities and the Dutch

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**58** FEDEPALMA indicates here that there are 109 associations and between 15 and 18 integrated members.

**59** AidEnvironment (2008), pp. 25-26

**60** AidEnvironment (2008), p. 32.

**61** CONPES 3510 (2008), p. 24

**62** National Trade Union School (2008), p. 38

Embassy have pointed out that vast areas currently used for extensive livestock production are suitable for oil palm plantation and would not affect the rain forest or ecosystems. In interviews carried out with environmental associations in the Middle Magdalena region, it was emphasized that environmental authorities were limited in their capacity to control and put a brake on business activities, leaving it to environmental organizations to try and protect the environment. As mentioned in section 2.1, the requirement to obtain permits and conform to environmental guidelines is inadequate in terms of ensuring suitable environmental management and sustainable use of natural resources, as not only can the permits be easily obtained, there are also minimal repercussions for non-compliance.

## 2.6. Food security

According to AidEnvironment, no qualitative data exist that enable an assessment of the connection between monoculture, specifically of oil palm, and food security<sup>63</sup>. In particular, the Humboldt Institute has warned that *“reorienting production from food to fuel and focusing on specialization may lead to a simplification of agrofood systems, generating a loss of agrobiodiversity and leading to cultural changes,”* commenting further that this situation is more worrying in areas of the country where implementation of monoculture systems has led to a dependency on food imported from other regions. It recommends planning processes that draw a distinction between strategic food-production areas and biofuel production areas, so as to *“avoid national or local food security conflicts.”*<sup>64</sup>

The situation is further aggravated by the fact that, as already indicated, Colombian rural policy is focused on late-yielding crops for export and for biofuel production, with few investments targeted at small producers and aimed at guaranteeing food security and the right to food<sup>65</sup>. At the local and regional levels, monoculture increases the price of the traditional produce that is no longer produced and that therefore has to be bought in from other regions<sup>66</sup>.

Oil palm cultivation also has repercussions on the family. Workers participating in CTAs and APEs are faced with greater costs in feeding their families because, in order to enhance the productivity of their lands, they abandon the production of other crops and so have to buy food in at high prices.

An example can be observed in the expansion of oil palm cultivation in the Middle Magdalena region, and particularly in the municipality of Puerto Wilches (the country’s most important oil palm growing area), where oil palm has replaced practically all other crops and agricultural activities. According to interviewees, the price of foods such as fruit, cassava, rice and fish has tripled in the last five years. This is the reason why, as already mentioned, the EU-funded Middle Magdalena Peace and Development Laboratory promotes

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<sup>63</sup> AidEnvironment (2008), p.30

<sup>64</sup> Von Humboldt Institute, Environmental Sustainability of Colombia’s biofuel policies, plans and programmes, 2008.

<sup>65</sup> CONPES sent of document 113 of March 2008, through which it approved the Nutrition and Food Security Policy. Nevertheless, the necessary resources are not identified.

<sup>66</sup> Interview with OGB representative, February 2009.

the *finca campesina* model. Recently, INDUPALMA has begun calling for members of the CTAs and APEs to earmark land for the cultivation of food crops<sup>67</sup>.

Large-scale oil palm expansion has also produced conflicts with local governments and even between business people. For example, vast areas of the Ariare region (Meta department) are the subject of dispute between oil palm and cereal companies.<sup>68</sup>

## 2.7. The international and Colombian RSPO process

### *International*

The RSPO was launched, in 2003, as a platform representing different stakeholders in the palm oil industry chain: growers, processors, distributors, sellers, manufacturers of consumer products, banks, investors and also of NGOs defending the environment, nature and social development. The RSPO is a unique platform designed to foster pragmatic cooperation, with a view to increasing the sustainable production and use of palm oil, through the development, implementation and verification of international standards.<sup>69</sup> To date the RSPO has largely focused its activities in Malaysia and Indonesia, the world's two largest producers of palm oil. By 2009, the RSPO had some 350 members. At the international level, RSPO Principles and Criteria for Sustainable Palm Oil Production have been agreed that set minimum parameters for sustainable production. Thus, each country wishing to obtain RSPO certification has to draw up a National Interpretation based on participation and consultation with stakeholders involved in palm oil production. Once the RSPO approves this interpretation, companies in the country in question can apply for certification after inspection by RSPO-approved certifying bodies.

### *Colombia*

The DAABON Group (C.I. Tequendama), FEDEPALMA and the World Wide Fund for Nature (WWF) are members of the RSPO. The National Interpretation process was launched on 3 June 2008 with the creation of a coordinating committee composed of FEDEPALMA, the Colombian WWF and the Humboldt Institute<sup>70</sup>, along with the Ministry of the Environment, Housing and Territorial Development. A consultant was commissioned and a roundtable of experts representing the production, environmental and social sectors was called together. In November 2008, on the occasion of the First Latin-American Meeting of the RSPO in Cartagena de Indias, the initial version of the National Interpretation was presented to the RSPO Secretariat.

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<sup>67</sup> These lines are based on interviews with representatives of Indipalma, USO, Diocese of Barrancabermeja, PPDMM, Grupo Semillia, Oxfam Great Britain, Cabilde Verde, and the conversation with 50 representatives from a community in Sabana de Torres, February 2009.

<sup>68</sup> Intervention of Arturo Infante, at the workshop held by the National Environment Forum in March 2009.

<sup>69</sup> [www.rspo.org](http://www.rspo.org)

<sup>70</sup> In this process one could count on technical support in the framework of the convention of co-operation between FEDEPALMA, Cenipalma, IvAH and WWF in Colombia.

Oxfam Novib has developed an opinion on the RSPO process at the national and local levels on the basis of information received from its natural interlocutor—Colombian civil society. As far as Oxfam Novib is concerned, the range of opinions of civil society is highly relevant to the RSPO process in Colombia. Civil society organizations in Colombia have expressed their reservations with regard to the National Interpretation process. In particular they have pointed out that, rather than an opportunity to avoid and control the social, ethnic, economic and environmental impacts of the palm oil industry, it is viewed as an opportunity to clean up the industry’s reputation without this necessarily implying substantial change in its practices. Fears are further heightened by announcements of large-scale expansion in the production of agrodiesel. Furthermore, several organizations consider that the consultative process has not been sufficiently participative in that key actors in ethnic (indigenous and Afro-Colombian) and labour rights organizations have not been consulted.

### **3. POWER PLAY IN THE COLOMBIAN PALM OIL SECTOR**

#### **3.1. Key actors<sup>71</sup>**

As mentioned, the rural sector in Colombia plays a key role in the country’s development model. Its importance is reflected in the power wielded by institutions with responsibilities in this area. As far as the palm oil industry is concerned, the most influential state bodies are the Ministry of Agriculture and Rural Development and Acción Social. Acción Social has a presidential programme that coordinates international cooperation and attention to displaced populations and special groups such as demobilized individuals and is also responsible for the presidential programme referring to illicit crops<sup>72</sup>. The Ministry of Agriculture and Rural Development and Acción Social participated actively in the design of plans for the rural sector (the Rural Development Statute, CONPES documents and legislation to stimulate biofuel production). Others playing an important role are the National Planning Department, the Technical Secretariat of CONPES and the Ministry of Mines and Energy. Also playing a part, especially in defining biofuel policies, is the Ministry of Transport and, to a lesser extent, the Ministry of Commerce, Industry and Tourism.

In the private sector, FEDEPALMA wields a great deal of influence in defining policies that affect the palm oil sector. In regard to biofuel, FEDEBIOCOMBUSTIBLES is the association of oil palm and sugar cane companies with ethanol and biodiesel extraction plants. The international bodies of most relevance include the United States Agency for International Development (USAID), mostly through its operators, especially MIDAS (More Investment More Development), an agency which backs palm oil as an “engine of social and economic development” and which stimulates alternatives to illegal crops (coca) by funding production alliances. Another important actor is the Inter-American Ethanol

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**71** This mapping of actors is based on the list of actors from the AidEnvironment study (2008), pp 107-110, and was adapted lightly on the basis of interviews conducted in Bogota.

**72** Strategies of forest guards’ families and productive projects.

Commission/International Biofuels Commission, which promotes a common market for palm oil in the Americas with the support of the Inter-American Development Bank (IADB)—whose president is the Colombian ex-Minister for Economic Development.

The institutions governing the enforcement of labour rights (Ministry for Social Protection), ethnic group rights (Ministry of the Interior and Justice) and environmental rights (Ministry of the Environment, Housing and Territorial Development) are smaller, with more limited budgets, and with far less power to influence biofuel, sugar cane and palm oil policies. As mentioned earlier, the environmental sector is governed by Ministry of the Environment, Housing and Territorial Development, the CARs and research bodies (including the Humboldt Institute). The former Ministry of the Environment, since being reduced to a vice-ministry, has experienced cutbacks in budget and staff and has lost influence<sup>73</sup>. It can be deduced from the above analysis that state actors involved in palm oil sector problems (be it the environment, labour or land and territorial rights) have limited impact on the definition of policies.

### 3.2. National power play

Using power cube terminology, it can be observed that the definition of biofuel and palm oil policies in particular are made in a closed space at the national level, with only the key actors as described above admitted. The palm oil elite, represented by FEDEPALMA, FEDEBIOCOMBUSTIBLES and their members (companies and individuals), has direct access to the different ministries and state bodies involved in the issue. In addition there is the revolving door phenomenon, with people coming from the private sector to take up public office and then returning to the private sector. An example is Carlos Murgas Guerrero, known as the ‘palm oil czar’, a seed importer and the owner of the company Hacienda Las Flores SA. A founder and honorary member of FEDEPALMA<sup>74</sup>, he was Minister of Agriculture in 1998-1999, when he developed the oil palm cultivation rural capitalization incentive scheme and the APE system for smallholders as a channel for international cooperation funds, mainly from the USA. It was precisely in this period that dialogue was established with oil palm growers in Indonesia and Malaysia. At this point in time, the Colombian Ambassador to Malaysia so happened to be Arturo Infante Villarreal, who, until the end of 2008, was the National Coordinator for Sustainable Biofuel Development in Colombia. When in office he was one of the elaborators of the CONPES document referring to this sector. Another example of the close ties between palm oil businesses and government is the fact that the ex-Minister of Communication is the wife of

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**73** Interview with MAVDT official, February 2009, and policy paper. Round table of experts: Fifteen Years of the National Environment System (SINA), evaluation and perspectives, which captures the interventions of the workshop organisation by the National Environment Forum. At: [www.foronacionalambiental.org.co/libreria/php/decide.php?patron=01](http://www.foronacionalambiental.org.co/libreria/php/decide.php?patron=01).

**74** *El Espectador* (The Spectator). “The case of ex agriculture minister Carlos Murgas. The tsar of agriculture. One of the businessmen closest to president Uribe in the Atlantic Coast region, who organises and finances part of the president’s political campaign in this region, and is now receiving various state benefits through his palm cultivation business and union.” June 16, 2007.

the executive president of FEDEPALMA. Furthermore, many palm oil companies have made donations to Uribe's presidential campaigns<sup>75</sup>.

The Colombian elite is also the founder and owner of most of the communications media—although the press does offer some possibilities for hearing opinions other than those of the government. The social and ideological values and norms of those operating within the closed space are highly influential.

The Colombian elite has historically been associated with land ownership, which confers economic and political status. This is reflected, especially under the Uribe administration, in an ideology associated with rural areas that considers rural development to be the engine driving economic development and also enhancing personal and business wealth. This ideology acts as a barrier to the investigation of other options and the search for new opportunities in terms of other rural activities that respect the land rights of the campesinos and define their development model.

The ideologies of the oil palm growing sector within closed power spaces are contrasted with those of the NGOs and trade unions, frequently viewed as radicals, terrorists or friends of guerrilla groups. Civil society sectors view FEDEPALMA, certain companies and biofuel backers as sponsors or authors of human rights violations and so distrust their intentions. They also feel they are abused in the few spaces in which they are admitted, such as in the National Interpretation of the RSPO Principles and Criteria.

Nonetheless, there is also a form of power remaining to those outside the closed space, and that is the power to file a formal complaint. Colombia has a complex legal system within which the Constitutional Court has played a key role in terms of protecting human rights, mainly in cases referring to actions or omissions of the government or state. The Supreme Court of Justice has also acted in clarifying aspects of what is referred to as 'para-politics'. It is also possible to petition the suspension of projects and claim compensation for environmental damages before the administrative courts.

In conclusion, there are no spaces that permit dialogue between palm oil companies, policy makers and civil society. In the opinion of foreign observers, the two sides simply do not speak the same language<sup>76</sup> and there are no actors to help build bridges and build trust. The main reasons for the failed dialogue between civil society and the closed palm oil space is the existence of the internal armed conflict and the polarization of positions induced by government officials, who use ideological discourses to condemn all protests against democratic security policies. Underlying these discourses are preconceptions regarding the links between certain NGOs and trade unions and guerrilla groups responsible for crimes against the palm oil elite. Civil society organizations—especially trade unions—and communities of indigenous and Afro-Colombian peoples have been victims of serious human rights violations by paramilitary groups, frequently sponsored, funded or backed by the economic and political elite in complicity with the Fuerza Pública. Figure 1 depicts the national actors.

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**75** <http://lasillavacia.com/historia/192> presents an excellent genealogy of the relationships between the Uribe government and the oil palm elite.

**76** Interview with Midas. Interview with independent consultant, February 2009.

### 3.3. Local power play

Describing power at the local level compared to the national level is more complex, given that each of the areas where oil palm is cultivated has specific characteristics. Nonetheless, some issues are common to all of them. The closed space at the national level is reflected at the local level in that the economic and political elite (palm oil companies, politicians and local authorities) is the same. Furthermore, as indicated above in section 2.2, there are few opportunities for local entities to influence decisions on oil palm expansion.

The role of the CARs is limited to granting permits and licences. In theory, they include national, regional and local representatives, along with representatives of environmental, ethnic and social bodies. In practice, however, many CARs are rife with corruption and are infiltrated by illegal groups, whereas the rest simply lack the means to perform monitoring, supervision and control tasks.

This seems to be the order of the day in Colombia, despite the fact that it has a well developed legal system and broadly representative institutions, as is the case, for example, in the environmental sector. Nonetheless, regulations are not complied with and the bodies which could deploy platforms enabling the voices and opinions of the different groups to be heard are barely functional. The situation is further aggravated by the fact that several of these institutions have been co-opted by legal and illegal groups and interests, and when leaders of the people attempt to defend the interests of sectors other than the economic and political elite, they are murdered, displaced or simply disappear.

A similar scenario is depicted with regard to ethnic groups (indigenous and Afro-Colombian peoples), who, theoretically, have access to a range of spaces in which they are consulted in regard to definition of policies and projects that could affect their lands. Free Prior and informed consent offers the indigenous and Afro-Colombian peoples the possibility to oppose the plantation of oil palm in their lands. In practice, however, many government bodies are unaware of this obligation of prior consultation or comply with it incorrectly. Additionally, ethnic organizations are weak<sup>77</sup> as a result of marginalization, poverty and exclusion, and this weakness is further aggravated by the armed conflict and the militarization of their lands by legal and illegal military groups<sup>78</sup>.

## 4. CONCLUSIONS: THE RSPO WITHIN THE PALM OIL POWER SCENARIO

### 4.1. The situation of the palm oil sector in brief

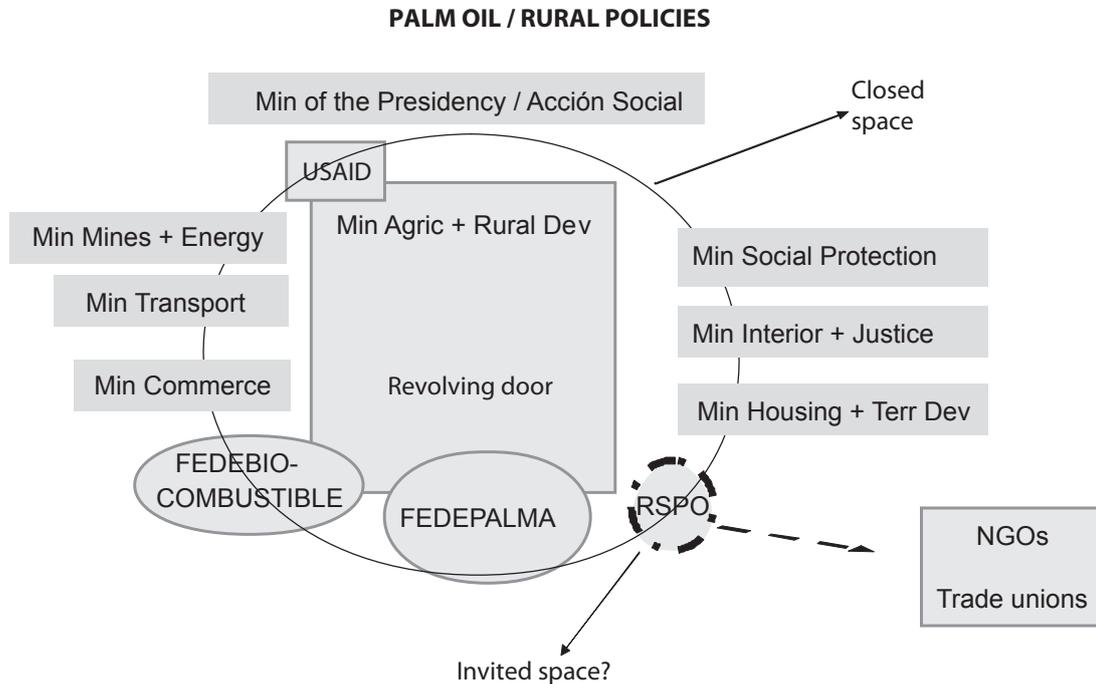
This analysis has revealed the many problems associated with palm oil, with the core problem being the links between the armed conflict in Colombia and the palm oil sector.

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<sup>77</sup> According to Internón Oxfam, Oxfam Great Britain and Oxfam Solidarity, Afro-Colombians have weak organisational structures, whilst different indigenous groups were able to organise themselves better.

<sup>78</sup> National General Attorney. Victims Firsts. Criteria for integral reparations for ethnic groups. Phase 2, 2008.

Figure 1: National actors and power spaces



Leaving to one side the excesses of Jiguamiandó and Curvaradó in the Urubá Chocano region, there are many cases of palm oil companies entering areas where communities have been forced to abandon their lands because of the armed conflict and of armed groups expropriating lands for the plantation of oil palm. A key problem is the lack of recorded data on the history of lands in Colombia, meaning there is no solid basis for any discussion on the severity of the problem.

Another problem is the violation of labour rights through the CTA system, making workers largely dependent on the palm oil companies, depriving them of the right to organize and leaving them in a situation in which they barely earn enough to support their families. Small producers, moreover, are organized in APEs, a production model that is backed by USAID, with the indications being that most of these small producers enter into a relationship of dependency with the palm oil companies, becoming indebted for 15 years or more. In many cases, the entire family, including children, is obliged to work, and even so, further indebtedment is needed to ensure subsistence. In some cases, nonetheless, small producers participating in APEs have been able to substantially improve their income and living conditions.

Although no precise data are as yet available, there are indications that oil palm growing affects food security at the regional, local and household levels.

Asset laundering and drug trafficker involvement in the palm oil sector are problems specific to Colombia, which are unknown to the sector in Indonesia and Malaysia.

An analysis of the balance of power in the palm oil sector reveals that the economic and political elite has historically been associated with land ownership and that this elite adheres to an ideology of agricultural development based on crops for export as the engine for development in Colombia. In the case of the oil palm, this elite is very powerful, with representation in all the institutions that define palm oil and biofuel policies. People who raise their voices in protest, particularly leaders of civil society, ethnic or labour groups, whether local or national, run a great risk of being murdered or threatened—a situation that also exists outside the palm oil sector.

## 4.2. RSPO feasibility in Colombia

The question posed by Oxfam Novib is whether the RSPO process is feasible in Colombia. The analysis of power has demonstrated that there are many problems within the palm oil sector and that the palm oil elite and the political and economic elite are one and the same. Added to the major role played by drug trafficking in some cases, it is easy to understand that the situation in the palm oil sector is emblematic of the unfair distribution of power in Colombian society. It is unlikely that the RSPO will be able to change this situation.

RSPO members from the Colombian WWF, FEDEPALMA and the DAABON Group, and National Interpretation promoters (the same organisations, plus the Ministry of the Environment, Housing and Territorial Development and the Humboldt Institute), operate as a matter of course within the closed palm oil space. Although the WWF is an international NGO, its participation in the implementation of the RSPO in Colombia has not led to the inclusion of the most important civil society stakeholders in the process, namely, environmental, ethnic and labour organizations. Oxfam Novib directly or indirectly consulted different civil society actors in relation to the feasibility of the RSPO process. Their responses depended largely on the nature of the organization they represented, but, in general, they were of the opinion that it would not be possible to adopt a critical stance in the RSPO process without running a security risk. There were also doubts expressed as to whether the RSPO process could genuinely bring about social change within the sector.

To date the National Interpretation process has been limited to consultative meetings in regard to the RSPO Principles and Criteria. Four workshops, two meetings with what were referred to as experts, and a meeting with social and environmental organizations were held in oil palm regions in February 2009. In this last meeting, no representatives of ethnic groups, labour organizations or trade unions were present, revealing the unwillingness to hear voices raised in criticism of the palm oil industry. The document presented by FEDEPALMA to the RSPO almost entirely excluded the voices of national and local NGOs, ethnic groups, labour organizations, defenders of land and territorial rights and displaced people. As of writing there has been no validation of the process to comply with RSPO requirements for

## **Are the Principles and Criteria** of the RSPO feasible in Colombia?

NI in regard to the document drawn up by FEDEPALMA based on the meetings of February and March of this year. It would be interesting to know whether consultations will result in the inclusion of agreed requirements as to land and territory ownership, labour rights, asset laundering, etc, as, without a National Interpretation text-document that is crystal clear in this regard, it will be extremely difficult to achieve real change in the lives of the men and women working in- the poor conditions of the palm oil sector.

Summing up, it could be argued that the RSPO process in Colombia to date has been kept well within the closed palm oil space. Nonetheless, it could be converted into a space for change given its nature as an international initiative. In order to be able to participate in this international initiative, in fact, Colombia will be obliged to obey the rules. As has been intimated above, change cannot realistically be expected to be initiated by actors at the local and national levels. Consequently, it is crucial that the RSPO ensures that the Colombian process opens up to other stakeholders (NGOs, ethnic and labour organizations, etc) so as to effectively implement the RSPO Principles and Criteria.

The RSPO at the Colombian level is faced with many difficulties and risks. Oxfam Novib has many doubts about the feasibility of the RSPO in a country with a conflict such as that taking place in Colombia. If it is decided to continue with the initiative, it is recommended to partially redo the National Interpretation process so as to include the most relevant stakeholders, that is, ethnic and labour organizations. Moreover, the RSPO Principles and Criteria should be revised to take account of issues and criteria necessary to reflect the Colombian context. Finally, intensive and ongoing national and international monitoring is recommended, not only of the consultation process, but also of subsequent certification phases. One possibility is to create an observatory composed of Colombian bodies representing the different social stakeholders who would work closely with the RSPO at the international level (the certification work group?).

Without measures such as these, Oxfam Novib greatly fears that the RSPO will end up certifying existing practices without bringing about humanitarian and environmental changes.





- **REPORT ON THE NATIONAL INTERPRETATION OF RSPO PRINCIPLES AND CRITERIA IN COLOMBIA**

*Yamile Salinas Abdala*



## SUMMARY

We have analysed the consultation and interpretation process for the RSPO Principles & Criteria (P&C) in Colombia and hereby present our main findings and comments, describing several characteristics and weaknesses of the process, as well as deficiencies of the NI document and final comments concerning the adoption of the principles and criteria.

Due to the manner in which the P&C consultation process was carried out and despite the efforts of the coordinating group led by FEDEPALMA, the process was not sufficiently inclusive because ethnic organisations, workers and NGOs were not adequately represented, and not many companies participated.

In addition, National Interpretation was fragmented. The workshops and meetings lacked prior preparation and a methodology to ensure participation and lasted no longer than one day. This made it impossible to hold plenary sessions to share the results for the three working groups, even though they were interrelated. Moreover, there was no continuity of participants in the expert workshops. Various organisations feel that this was not an exercise to draw up guidance and indicators, but rather to make the P&C known to the people participating in the workshops.

**Weaknesses of the Process.** Asocars sustains that true participation by the regional environmental authorities was not achieved because the officers who attended lacked the capacity to take decisions, such that the regional environmental corporations ended up being onlookers or “yes-men” to a sector in which serious complaints are filed against the actions of some companies that threaten natural resources. Likewise, the Human Rights Ombudsman (Defensoría del Pueblo), Asocars, PDPMM, Grupo Semillas and Indepaz state that attending the meetings and workshops did not imply being involved in the process of developing the National Interpretation. In their view, these events were nothing more than formal spaces, which lacked adequate mechanisms for participation and representation and offered no possibility for addressing or further analysing the problems identified or the scope of the RSPO as an instrument to help seek solutions or to improve the palm industry. The PDPMM feels that the methodology did not encourage interest in learning more about the RSPO and that it was impossible to make any comments or consult with small producers because they had not received the workshop report. In other words, the workshops did not provide answers to concerns such as the low institutional capacity to perform follow-up and verification of social, environmental and production-related RSPO indicators, and the relationships between palm oil and biodiesel production,

even though a number of companies are part of both industries and large-scale expansion is closely linked to biofuels.

Only a few public and private environmental, labour and ethnic organisations were present, and institutions or individuals concerned with indigenous, Afro-Colombian, peasant or victim rights were not invited. State entities concerned with land, territorial, ethnic group and worker protection were also not invited, nor were those involved in the monitoring and surveillance of money-laundering activities and other criminal practices related to drug trafficking and illegal groups.

**National Interpretation of the RSPO.** In the opinion of Indepaz, the RSPO P&C were not drawn up to address the specific Colombian situation associated with the violence and internal armed conflict in the country. Therefore, other instruments from international organisations should be included in the guidance and indicators. Issues such as forced displacement, illegal and violent appropriation of lands and territories by legal and illegal armed actors acting directly and indirectly on behalf of legal and illegal unarmed actors, and the rights of victims of serious human rights and international humanitarian law violations, as well as the influence of drug trafficking and the infiltration of armed groups at political and business levels –“parapolitics” and “paraeconomics”–, are missing from the NI of the RSPO P&C.

The NI document ignores the Colombian setting in terms of violence and internal conflict and their impacts, as well as the increase in human rights and international humanitarian law violations. Failure to mention the conflict also precludes consideration of the violence against some companies in the sector, which results from the intimidation capacity of armed groups and so-called “emerging gangs”, which are directly or indirectly present in at least 24 of the 32 departments of the country. This has led to extortions, kidnappings and threats which in turn have caused many companies to reach agreements with the state forces to ensure their safety and many others to sign contracts directly with private surveillance firms.

Because this violent context is not taken into consideration, the indicators and guidance fail to address ways to prevent links with human rights violation conducts in the expansion of oil palms in territories that have experienced -and are experiencing- a forced exodus and are still controlled by illegal armed stakeholders. Furthermore, initiatives that would guarantee the rights of victims to return and recover goods that they were obliged to leave or that have been misappropriated have not been included.

**Deficiencies in the NI document.** The main gaps in the final document are the following:

- a. There is no contextualisation regarding the RSPO, its scope or objectives, nor is there any description of the reasons or purposes why this industry is seeking to be certified. In addition, there is no mention of the process conducted or the concerns presented.
- b. The proposed indicators do not correspond to quantitative and/or qualitative measures for measuring the companies’ or palm industry’s performance,

defining and prioritising corrective actions, and showing the improvements obtained.

- c. The guidance is generic and represents statements of goodwill, rather than measurable, verifiable parameters.
- d. In some cases, the indicators are confused with guidance.
- e. The APEs and CTAs are given the responsibility to comply with the indicators and guidance, without including companies that act as operators, middle men or marketers.

**Comments on the Principles.** The following comments are made under the assumption that the P&C are only voluntary when they do not refer to compliance with the Constitution, laws or international human rights standards and international humanitarian law. That is to say, compliance with labour, environmental, food safety, ownership, possession and victim rights, among others, is mandatory, with no negotiations or transactions of any kind being allowed.

I) Social Principles: The indicators are deficient and should be much more specific in terms of environmental, social and cultural impact studies, company objectives, shareholders and risk factors such as influence on drug trafficking, relationship with Associated Work Cooperatives, origin of the lands, practices to fight money laundering, to mention a few. They also fail to meet the information and transparency requirements, accentuated by the nonexistence of a centralised system to obtain information on palm growers, worker contract modalities, and modalities for land acquisition and expansion plans. Thus, it is suggested that other instruments on corporate social responsibility and companies and human rights be included in topics such as the following:

- **Labour:** The palm-growing industry is known for its complicity in the increasing precariousness of labour rights and the weakening of union rights; likewise, questions have been raised regarding the implementation of projects without guaranteeing the participation of local communities and the imposition of asymmetric conditions in relationships with workers. In some companies, the CTAs and APEs are trying to prevent the development of union organisations, as well as seeking to lower labour and land costs. Therefore, aspects such as a review of shareholder, worker and union relationships should be included.

- **Safety and Human Rights:** Certainty that the company is not an accomplice, either by commission or omission, in human rights violations, and that it investigates and controls whether its main suppliers, contractors, subsuppliers, active partners or other major business partners are committed to social and human rights issues; obligation to denounce human rights abuses by the security forces and to encourage the respective investigations; safety policy defining the functions and responsibilities of surveillance and security officers, whether company employees or contractors.

- **Corruption:** Policy regarding transparency and the fight against corruption, bribery, extortion, money laundering and legitimisation of plundering of lands and other goods owned by the victims and the company's contribution to public finance through prompt

payment of its tax obligations (national and local – property, industry and business taxes, etc.), in compliance with current regulations.

- **Guarantee of ownership and possession rights and the full reparation of victims: Support in carrying out censuses on ownership and possession rights; nature of the relationship:** individual, association or collective –ethnic groups–, and the profile of those affected (vulnerable population – displaced persons, female heads of household, etc.), and evaluations of changes in land prices and the relationship with the expansion of palm crops; identification of legal representatives of the local communities with a view to mitigating and compensating the loss of assets due to voluntary resettlements, in a fair, adequate manner that is agreed upon; free prior informed consent from the local communities.

**II) Environmental Principles:** Colombia has no information on suitable areas for palm cultivation based on environmental-ecological-hydrological, social-ethnic-cultural and food safety criteria. Local authorities do not have tools to define zoning and planning in their territory, the definition of land use or competence in the area of biomass production for biofuels. Additionally, the absence of a reparation policy that prioritises the return and restitution of goods pertaining to the displaced population prevents companies from agreeing on projects with the legitimate owners of the lands and territories, whilst also encouraging resettlement processes and legitimisation of plundering. It is necessary to expressly state that compensation to ethnic groups and peasant populations include claims for loss of profit and resulting emerging damages, as well as intangible damages (loss of culture).

It is suggested that the following be undertaken to complement the indicators and guidance:

- a. Apply the Precautionary Principle, by putting a stop to granting by environmental authorities of permits and concessions, as well as loans, stimuli, incentives and funding by the government or international cooperation of projects to be carried out in areas of special environmental, ethnic, culture and social –food safety– interest until areas suitable for growing palm oil have been identified and classified.
- b. Conduct independent studies and assessments of the adverse environmental impacts of the project, as well as pollution prevention and control techniques during the project life cycle (dangers and risks associated with the emissions generated).
- c. Implement a regional and national social and environmental management system for palm plantations that includes the CTAs and APEs in each company.
- d. Have external firms carry out social and/or environmental audits of the companies.
- e. Provide support contributing to the drawing up and implementation of a public environmental policy for the biofuel industry, through cooperative agreements or initiatives that increase environmental awareness and protec-

tion as well as research on ways to improve the long-term environmental performance of the company.

- f. Support the creation of a policy on full reparation for victims of dispossession and displacement and on guarantees regarding non-repetition in the territories where palm expansion is planned, which would mean not acquiring lands until the legitimate owners have been clearly identified.

**III) Production Principles:** The indicators and guidance proposed in the NI do not sufficiently address concerns about the feasibility of some (new) planting projects and about palm expansion, due, on the one hand, to projects seeking to legalise assets and appropriate lands in regions where competitiveness and productivity are not guaranteed, and, on the other, to encourage APEs from an anti-drug trafficking perspective or seeking to increase the rural capitalisation incentive (ICR, incentivo de capitalización rural).

In order to rank the indicators and guidance, it is recommended that they be adapted to the criteria and indicators proposed by the MAVDT and the IAvH in “Evaluación Ambiental estratégica de Políticas, planes y programas de biocombustibles en Colombia con énfasis en biodiversidad” (Strategic Environmental Assessment of Biofuel Policies, Plans and Programmes in Colombia with Emphasis on Biodiversity, MAVDT et al, 2008), in the Technical Standard Project for supply chain sustainability of Colombian biofuels and in the study funded by the Netherlands Embassy, entitled Benchmark of Colombia Sustainability Standard of Biofuels. Ecofys – Netherlands. 2008.

## Conclusions

Despite its limitations, the process being carried out has opened up possibilities for principles and standards to be drawn up at the international level, shaping agendas on corporate responsibility and possible scenarios for interaction with the stakeholder groups, in particular social and community organisations. Therefore, it is important to take on implementation, seek to overcome the difficulties or gaps that have arisen and take into account the problems of the Colombian situation and the scope for contributing to overcoming the conflicts that arise in various areas.

## INTRODUCTION

The International Confederation Oxfam is one of the executive board members of the Roundtable on Sustainable Palm Oil (RSPO), from whom FEDEPALMA intends to obtain approval of the National Interpretation (NI) of the Principles and Criteria (P&C) adopted by the RSPO. Given the concerns of some sectors about this matter, Oxfam Novib has undertaken various activities and commissioned consultancies to gain a greater understanding of the palm industry in Colombia<sup>1</sup>.

This report summarises some of the aspects identified by INDEPAZ in the consultancy contracted by Oxfam Novib, to analyse among other objectives how the consultation and interpretation process of the RSPO P&C has taken place in Colombia and to assess the viability of creating a network to follow up implementation of the RSPO P&C, in the event that the Colombian NI is approved and the companies submit the paperwork and obtain the respective certifications. To prepare this report, meetings have been held with Oxfam Novib officers, public entities, environmental, social and ethnic organisations, and FEDEPALMA.

For such purpose, the context will first be described briefly, several comments will then be made regarding the process used to draw up the NI document, followed by an analysis of the P&C indicators and guidance and, lastly, a set of conclusions.

### 1. CONTEXT

The main strategy for Colombia's rural area in President Uribe's two administrations (2002-2006 and 2006-2010) focuses on expanding the cultivation of oil palm, sugarcane and others from which biofuels can be obtained. Moreover, biofuel policy is set in the context of energy and mining policy, another mainstay of long-term strategy, as detailed in the two policy documents adopted by the National Economic and Social Policy Council (Conpes, Consejo de Política Económica y Social)<sup>2</sup>. With a view to exporting palm oil products, including biodiesel, RSPO members FEDEPALMA and the Daabon Group<sup>3</sup>

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<sup>1</sup> See AIDEnvironment. Palm Oil in Colombia. July 2008.

<sup>2</sup> CONPES. 3477 of 2007 and 3510 of 2008

<sup>3</sup> The Daabon Group, which is affiliated with FEDEPALMA through Comercializadora Internacional Tequendama, hired the Proforest and Control Union firms to conduct the certification process before the RSPO, regardless of the formulation and adoption of the National Interpretation of the RSPO P&C led by FEDEPALMA. This process was halted pending the RSPO's decision in July. Interview with FEDEPALMA officers, 12 May 2009. Available at: [www.rsपो.org/resourcecentre/Anuncio%Publico%Daabon.pdf](http://www.rsपो.org/resourcecentre/Anuncio%Publico%Daabon.pdf)

are promoting the National Interpretation (NI) of the 8 principles and 39 criteria adopted by that platform at the international level.

Regarding the above, there are several viewpoints. Some are categorically opposed to the RSPO because they consider it a means to “greenwash” the image of palm growers<sup>4</sup>. Others, such as FEDEPALMA and some of its affiliates –mainly international sellers (CIs, comercializadoras internacionales) of the Daabon Group– consider NI approval to be an essential requirement for companies to obtain individual certification, a condition increasingly required to access the European Union and United States markets. According to FEDEPALMA in particular, the RSPO may help protect the industry from some of the risks currently present in the country, such as the participation of drug-traffickers, paramilitaries and emerging entrepreneurs<sup>5</sup>, and from palm expansion in unsuitable areas that do not meet the conditions to ensure competitiveness and sustainability and/or that do not have the scientific studies needed to prevent the proliferation of pests and diseases<sup>6</sup>. Likewise, it is hoped that the RSPO will act as a filter to prevent government and international cooperation funding of projects that do not meet the P&C<sup>7</sup> and as a tool to actively involve local and environmental authorities in project monitoring through mandatory registration in municipal planning offices.

Between these two viewpoints, some public sector agencies such as the Ministry of Environment, Housing and Territorial Development (MAVDT) and international organisations such as WWF-Colombia feel that the RSPO and other international (Roundtable on Sustainable Biofuels) and Colombian initiatives (technical standards and studies on the palm supply chain, among others) may contribute to continuous improvement of the palm industry in particular and the agriculture industry for bio mass/ bio based origin fuels<sup>8</sup> in general. Finally, concerns about palm expansion have arisen due to the lack of a map identifying suitable areas for biofuel feedstock without infringing on areas required for food crops<sup>9</sup>, natural resources or the environment, as well as high conservation value areas or land and territorial rights.

Now then, many concerns involving the palm-growing industry are shared by FEDEPALMA, opposers of the RSPO and entities that have been involved in the NI process (WWF-Colombia, the Humboldt Institute [IAvH] and the Instituto Geográfico Agustín Codazzi [IGAC])<sup>10</sup>. These concerns were summarised (see below) by FEDEPALMA at the 30 January 2009 meeting<sup>11</sup>, with further information obtained in interviews conducted with FEDEPALMA officers. They were also outlined by the Oxfam Novib representative

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**4** See Declaration of social organisations and communities regarding the purposes of the First Latin American Meeting of the Roundtable on Sustainable Palm Oil. Cartagena de Indias, Colombia, 16 and 17 October 2008.

**5** See: FEDEPALMA. *Visión del gremio palmero sobre la agroenergía* (Vision of the palm grower federation on bioenergy). PowerPoint presentation given in Villavicencio Meta, January 2008. Available at: [www.FEDEPALMA.org](http://www.FEDEPALMA.org)

**6** Interviews with FEDEPALMA officers and presentations from the FEDEPALMA president in different fora, available at [www.FEDEPALMA.org](http://www.FEDEPALMA.org).

**7** See BALLVE, Teo. *The Dark Side of Plan Colombia*. Available at: [www.thenation.com/doc/20090615/ballve](http://www.thenation.com/doc/20090615/ballve).

**8** Interviews with WWF and MAVDT officers.

**9** Report by Arturo Infante at the Foro Nacional Ambiental (National Environmental Forum) held on 26 March 2009 in Bogotá.

**10** See National Environmental Forum presentations. Available at: [www.foronacionalambiental.org](http://www.foronacionalambiental.org)

**11** Notes taken by the consultant.

at the above Cartagena meeting<sup>12</sup> and discussed in detail at the working session held with social organisations on 28 May 2009<sup>13</sup>. A number of these concerns have been mentioned by WWF-Colombia<sup>14</sup>. It is worth noting that such problems are related to the heterogeneity of the business history and diversity of palm regions, as well as their relationship with the various conflicts and the armed actors.

- a. Land holdings and displacement<sup>15</sup> (e.g. Urabá Chocoano, Tumaco and Sur de Bolívar cases).
- b. Projects in ethnic territories without prior consent<sup>16</sup> (palm planting in territories pertaining to the collective councils of Afro-Colombians in Guapi, Cauca)
- c. Precarious labour conditions; noncompliance by some associated work cooperatives (CTAs)<sup>17</sup> of current regulations and inadequate conditions in the strategic production alliances (APEs)<sup>18</sup>
- d. Unplanned, large-scale expansion involving high conservation value areas without meeting requirements related to infrastructure, research and technological transfer, particularly as it regards the spread of pests and diseases<sup>19</sup>, which threatens the productivity and competitiveness of the palm-growing industry. At the FEDEPALMA congress held in late May, participants backed the idea of intensive crop-raising to achieve higher production levels without using more hectares<sup>20</sup>.
- e. Implications for food safety<sup>21</sup>

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**12** Oxfam Novib Certified Colombian palm oil possible? Cartagena de Indias, 17 October 2008.

**13** This meeting was convened by WWF-Colombia, Oxfam Novib and Indepaz, taking advantage of the presence of WWF's Director, Darrel Webber, in Colombia. See Aide-mémoire.

**14** National Interpretation of RSPO Principles and Criteria. WWF reflections. Presentation by Mary Lou Higgins, WWF Representative, Colombia. Bogotá, 7 July 2008.

**15** The Constitutional Court declared forced displacement to be an unconstitutional situation and ordered that victims must be restituted for plundered goods (Sentences T 025 of 2004 and T 821 of 2007, among others, and proceedings 004, 005 and 008 of 2009 (<http://www.corteconstitucional.gov.co/relatoria/Autos/Autos/2009/A005-09.rtf>).

**16** The Constitutional Court declared the unconstitutionality of Law 1152 of 2007 (rural development statute) and conditioned the constitutionality of the National Development Plan 2006-2010 upon the performance of a consultation regarding work, projects and activities in ethnic territories -Sentences T-461 of 2008 and C-175 of 2009 (<http://www.corteconstitucional.gov.co/relatoria/>).

**17** It is estimated that there are more than 800 CTAs with 24,000 workers in the palm industry (FEDEPALMA. Unificación de criterios en el manejo de Cooperativas de Trabajo Asociado [Unification of criteria in the management of Associated Work Cooperatives]. 19 February 2009). The main criticisms of the CTAs are related to the following: job precariousness, worsening of unfair conditions in employer-employee relationships, denaturing of legal form and distortion of cooperative efforts; evasion of quasi-fiscal contributions; violations of labour legislation and loss of association and striking rights; lack of a trade union that represents them and safeguards their interests; lack of autonomy with regard to companies; inadequate mechanisms of control by the authorities in charge of monitoring and follow-up.

**18** There are more than 100 APEs and almost 20 operators in projects that cover nearly 60 thousand hectares, 50,000 of them funded by AID. The main concerns about the alliances have to do with the insufficiency of criteria related to organisation processes, technical, economic and ecological feasibility, and food safety programmes; lack of precautions with regard to risk factors (land acquisition, borrowing or saving capacity, to cope with pests, palm diseases, child labour); lack of rules that guarantee fair treatment between companies and associations -these are imposed by operators, integrators and marketers- and cases of project non-viability and unsustainability of projects because they are subordinated to anti-drug trafficking strategies -eradication and alternative development programmes- without the participants' conditions and the suitability and infrastructure of the areas where they are conducted necessarily being taken into consideration (FEDEPALMA, Finagro, IICA. Estudio de Caracterización de las Alianzas Estratégicas de Palma de Aceite en Colombia (Characterisation Study of Strategic Palm Oil Alliances in Colombia.))

**19** According to FEDEPALMA officers, oil palm bud rot has affected almost all the crops in Tumaco. Oil palm bud rot has spread in the central region: Puerto Wilches (Bucarellia and Monterrey companies) and eastern region (Meta). Part of this situation is the result of climate changes and relaxation in practices by some companies.

**20** FEDEPALMA. Productores colombianos de palma buscan más producción en menos hectáreas. (Colombian palm growers seek higher production levels with fewer hectares), 29 May 2005. Available at: Noticia No.606

**21** The Conpes Documento Social (social document) 113 of 2008 was issued on this topic, but the document does not establish resources for implementation, unlike the Conpes for the palm industries and biofuels.

It is clear that the issues mentioned above cannot be solved only through the RSPO, but require complex, additional measures. Some are the exclusive responsibility of the state (clear, coherent, fair, equitable policies with differing criteria according to target population)<sup>22</sup>, others concern employers (practices that respect the laws and human rights) and others are the jurisdiction of the Colombian government and the companies (institutional capacity, effectiveness in control mechanisms, follow-up on and compliance with the principles of Corporate Social Responsibility, among other instruments like the RSPO). In all efforts made by the Colombian government and the companies, as well as the society as a whole, the priority should be to overcome the internal armed conflict and, consequently, to construct a fair, equitable society, conditions that are essential to achieve peace in Colombia.

## **2. PREPARATION PROCESS FOR THE COLOMBIAN NATIONAL INTERPRETATION DOCUMENT**

### **2.1. Process Description**

FEDEPALMA, along with WWF-Colombia and with the support of the MAVDT and the IAvH, headed up the process to draw up the RSPO P&C National Interpretation document, which is to be submitted for approval to the Secretary General of the RSPO by 15 June 2009, with a view to be reviewed by the working group before the RSPO EB meeting during the first week of July 2009<sup>23</sup>. The communiqué sent by FEDEPALMA invites recipients to provide comments by 31 May, in accordance with the arrangement agreed by the federation with Darrel Webber of the WWF<sup>24</sup>. FEDEPALMA classifies the projected activities as follows:

#### **2.1.1. Dissemination and Consultation of the RSPO P&C**

These activities include: several reports from international experts from WWF Indonesia and the Indonesian palm industry at the International Oil Palm Congress held in Cartagena in October 2006; publication of the P&C and of the guidance for their implementation as presented at the National Palm Conference in July 2007; publication of short articles on the P&C in the newsletter *El Palmicultor* and four consultation workshops held in palm tree areas in 2007: Aracataca (northern region) on 17 August; Barrancabermeja

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**22** The FEDEPALMA officers interviewed express concerns about what they consider to be contradictory, rash messages from the government, such as encouraging alliances between companies and collective councils for crops in Urabá, Chocó, and Carimagua, Meta. The Attorney General's Office has issued warnings about the risks of alliances involving demobilised population. For example, on confiscated lands – the La Sombra property, in the municipality of El Retén, Magdalena, was confiscated from a drug-trafficker who returned to Colombia after his extradition to the U.S. From: Attorney General's Office. *Derecho a la reparación integral (Right to full reparation)*. Volume II of the Follow-up of public policies relating demobilisation and social reintegration. Bogotá, December 2008.

**23** FEDEPALMA. Communiqué sent on 19 May 2009, making known the Document - Final Version dated 15 May 2009. This document is available on the website of this federation.

**24** Interview with FEDEPALMA officers on 12 May 2009. The arrangement includes that the experts who were involved in the process must endorse it, as well as the final document.

(central region) on 24 August; Villavicencio (eastern region) on 31 August and Tumaco (western region) on 7 September<sup>25</sup>.

The main objectives of the workshops consisted of the following: 1) consult the P&C with stakeholders related to palm activity, including producers, sellers, NGOs, and environmental and territorial authorities from the palm areas and 2) receive feedback about the P&C and the potential applicability thereof in Colombia from these stakeholders<sup>26</sup>. The following agenda was developed for such purpose: i) presentation by FEDEPALMA of progress and prospects for the industry as it regards environmental management; ii) presentation by the WWF on the RSPO P&C; iii) group work to analyse and provide feedback on the P&C; and iv) a plenary session to share suggestions and recommendations.

### 2.1.2. National Interpretation of the RSPO Principles and Criteria in Colombia

From 3 June 2008, meetings of the coordinating group (FEDEPALMA, WWF-Colombia and IAvH) were started,<sup>27</sup> a facilitator was hired from WWF resources and began working on 10 June. On 7 July 2008<sup>28</sup> the process was formally kicked off and the first expert meeting was announced for 13 August. Four regional workshops on the first working document were held between August and September, followed by an institutional workshop on 29 September. A month later, a report on the process was published in the newspaper *El Tiempo*.

The NI document and its amendments during the process could be viewed on FEDEPALMA's website as of August 2008, so that interested parties could give their inputs and comments.<sup>29</sup> The document was then presented at the 1st Latin American RSPO Meeting at Cartagena de Indias, from which ensued the publication of a special edition of the *Palmas* magazine entitled: *La palma de aceite, una agroindustria eficiente, sostenible y mundialmente competitiva* (Oil palm, an efficient, sustainable and world-competitive agricultural industry), volume 29, special 2008 issue. At the request of several organisations (including WWF-Colombia and Oxfam Novib), FEDEPALMA invited various social and environmental organisations to a meeting held on 31 January 2009<sup>30</sup>. The 2nd expert meeting was subsequently held on 12 February to obtain feedback on the guidance and indicators.

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**25** See: FEDEPALMA. Proceso de interpretación nacional de los principios y criterios de la Mesa Redonda de Aceite de Palma Sostenible (Process for the National Interpretation of the Roundtable on Sustainable Palm Oil Principles and Criteria). List of Advances, ver. 1.0, sent to the consultant in April 2009.

**26** See: FEDEPALMA. Proceso de interpretación nacional de los principios y criterios de la Mesa Redonda de Aceite de Palma Sostenible (Process for the National Interpretation of the Roundtable on Sustainable Palm Oil Principles and Criteria). List of Advances, ver. 1.0, sent to the consultant in April 2009.

**27** FEDEPALMA was represented in the group by Miguel Mazorra – Environmental Director, Andrés Castro – Sustainable Development Director, Myriam Conto – Legal Secretary and Laura Mantilla – Environmental Programme Assistant; the WWF was represented by: Juan Carlos Espinosa – Sector Policy Officer, and IAvH was represented by: María Teresa Palacios – Principal Researcher, Intersectorial Policy Research Group and Camila Cammaert – Junior Researcher, Intersectorial Policy Research Group.

**28** At the facilities of the Ministry of Environment, Housing and Territorial Development.

**29** On the submittal form for contributions to the RSPO P&C National Interpretation document. Available at: [www.FEDEPALMA.org](http://www.FEDEPALMA.org).

**30** See Aide-Mémoire prepared by the consultancy.

The version of the document, which included several initiatives of the workshops and meetings held with experts and social and environmental organisations, was examined by two consultants hired by FEDEPALMA and by the managerial staff of this federation and Cenipalma, in order to analyse the feeling among some palm companies that the NI is more stringent than the RSPO P&C<sup>31</sup>. Lastly, the final version was presented to several public entities and companies in a session held in late May. FEDEPALMA considered the process to be completed, although after the presentation of the NI to the RSPO was postponed, Oxfam Novib and Indepaz were given the possibility to provide more feedback. Nevertheless, at the 4 June meeting with FEDEPALMA officer Andrés Castro, it was mentioned that the federation is considering the possibility of postponing the presentation of the document and commissioning a university to review the document, based on the meeting held with WWF directors.

Generally speaking, the expert workshops and meetings were divided into two sessions. Firstly, FEDEPALMA and the WWF presented the context of progress made in P&C consultation and the origins and scope of the RSPO, respectively, and described the working methodology. Secondly, social (principles 1, 2 and 6), environmental (principles 5 and 7) and productivity (principles 3, 4 and 8) groups were formed to analyse the principles and criteria under the coordination of a moderator, and to provide input on the guidance and indicators. A rapporteur was also available.

## 2.2. Comments on the NI Process

Attendance at the workshops and meetings was low, taking in account the number of invitation letters sent by FEDEPALMA. Of the 1,350 persons invited, 176 (13%) attended the 4 regional workshops. The two expert workshops were attended by 27% of the 365 invited.

Based on these counts, it can be concluded that, despite the efforts of the coordinating group led by FEDEPALMA, the process was insufficiently inclusive. Most participants were from companies (60%), outnumbering other stakeholders (environmental and social organisations each 13%)<sup>32</sup>. Those who participated partially represent the palm world (according to FEDEPALMA, more than 3,500 natural and legal individuals are registered in the national palm register and 780 are affiliated with the federation). In this regard, the Middle Magdalena Peace and Development Programme (PDPMM) sustains that about a fourth of the 200 stakeholders involved in the palm industry in that region participated in the workshops. The remaining 14% belong to academic sectors, certification companies, media and international agencies.

In particular, there was a lack of information from FEDEPALMA on stakeholders linked to the palm industry, especially those concerned in the problems mentioned in point 1

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**31** Interview with FEDEPALMA officers on 23 and 24 February 2009.

**32** See: FEDEPALMA. Proceso de interpretación nacional de los principios y criterios de la Mesa Redonda de Aceite de Palma Sostenible (Process for the National Interpretation of the Roundtable on Sustainable Palm Oil Principles and Criteria). List of Advances, ver. 1.0, sent to the consultant in April 2009.

(illegal displacement, use and appropriation of lands and territories; noncompliance with the requirement of free prior and informed consent; precarious labour conditions; extensive, unplanned expansion; and implications for food security)<sup>33</sup>. As detailed below (Table 1), attendance by public and private organisations related to environmental, labour and ethnic issues was low and institutions or individuals involved in indigenous and Afro-Colombian rights, peasants and victims were not invited. State entities concerned with land, territorial, ethnic group and worker protection were also not invited, nor were those involved in the monitoring and surveillance of money-laundering activities or other criminal practices linked to drug trafficking and illegal groups.

The Colombian Association of Regional Environmental and Sustainable Development Corporations (Asocars) sustains that true participation by the regional environmental authorities was not achieved and that the officers who attended lacked the capacity to take decisions, such that the regional environmental corporations (CAR's) ended up being “on-lookers” or “yes-men” to a sector in which serious complaints are filed against the actions of some companies that threaten natural resources.

NI development was fragmented. The workshops and meetings lacked prior preparation and a methodology to ensure participation and lasted no more than a day. This made it impossible to hold plenary sessions to share the results from the three working groups, even though they were interrelated. There was no continuity of participants in the expert workshops –some entities did not participate in all meetings and in addition changes were made in the public and private officers–. Various organisations consider that this was not an exercise to draw up the guidance and indicators, but rather to make the P&C known to the people participating in the workshops.

For the Human Rights Ombudsman (Defensoría del Pueblo)<sup>34</sup>, Asocars, PDPMM, Grupo Semillas and Indepaz, attending the meetings and workshops did not imply being involved in the process of developing the NI. In their view, these events were nothing more than formal spaces, which lacked adequate mechanisms for participation and representation and offered no possibility for addressing or further analysing the problems identified or the scope of the RSPO as an instrument to help seek solutions or to improve the palm industry<sup>35</sup>. The PDPMM felt that the methodology did not enhance interests in learning more about the RSPO and that it was impossible to make any comments or consult with small producers because they had not received the workshop report.

Lastly, the workshops did not provide answers to concerns such as the low institutional capacity to perform follow-up and verification of social, environmental and production-related RSPO indicators, and the relationships between palm oil and biodiesel production, even though a number of companies are part of both industries and large-scale expansion is closely linked to biofuels

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**33** Interview with FEDEPALMA officer in which it was stated that they have no databases on organisations other than palm growers. Those they are aware of are those identified in the reports raising concerns about the palm industry.

**34** Colombian Agency for Human Rights Monitoring and Surveillance.

**35** Interviews with officers from the Human Rights Ombudsman (Defensoría del Pueblo), Asocars, PDPMM and Grupo Semillas.

## Are the Principles and Criteria of the RSPO feasible in Colombia?

### Table 1. Participation in the NI groups

ASPECTS AND CRITERIA	PUBLIC SECTOR	SOCIAL, ENVIRONMENTAL, ETHNIC AND EMPLOYEE SECTORS
Social: Principles 1, 2 and 6	Failure to invite the entities in charge of labour issues and CTAs (Ministry for Social Protection and the Solidarian Economy Superintendency) and promotion of APEs funded by the government and international cooperation (Acción Social)	Absence of union organisations and extremely low representation of CTAs and APEs
	Absence of Ministry of the Interior agencies in charge of indigenous and Afro-Colombian rights and agencies in the rural sector with jurisdiction in relation to the right of ownership and possession and of food production	Failure to invite and absence of representatives of native and black communities, peasant and food production organisations
	Failure to invite entities concerned with displacement issues and with guaranteeing and protecting victim displacement rights (Attorney General's Office, Acción Social, National Commission for Reparation and Reconciliation, Incoder, among others)	Failure to invite and absence of organisations of victims of displacement and dispossession or international bodies advocating for such groups
Environmental: Principles 5 and 7	Low CAR participation. In all, 5 of the (at least) 15 that have jurisdiction in palm areas	Minimal attendance by environmentalist organisations in civil society
Production: Principles 3, 4 and 8	Absence of entities involved in promoting biofuels (Ministries of Transport, Mining, Education, Commerce and Ecopetrol)	Participation by fewer than 100 of the 3,500 natural and legal persons registered in FEDEPALMA's palm-grower register and 700 companies affiliated to this federation. Failure to invite companies with biofuel production plants
	Low attendance by territorial authorities (mayor's offices, provincial governments and indigenous authorities in charge of planning and safeguarding soil use in their jurisdictions)	
	Failure to invite entities responsible for phytosanitary affairs (Invima)	Low participation by the academic sector and research centres, except for Cenipalma, Corpoica and IAvH
	Failure to invite entities responsible for fighting money laundering, drug trafficking, illegal land appropriation and other criminal activities (Prosecutor's Office, National Directorate for Narcotics, Antinarcotic Police, Financial Analysis Unit)	Nonparticipation of entities that fund or mediate the provision of incentives, stimuli and other benefits to palm-growing companies.

### 3. NATIONAL INTERPRETATION OF THE RSPO P&C

Firstly, in the opinion of Indepaz, the RSPO P&C were not drawn up to address the specific Colombian situation associated with the violence and internal armed conflict in the country. Issues such as forced displacement, illegal and violent appropriation of lands and territories by legal and illegal armed stakeholders acting directly and indirectly on behalf of legal and illegal unarmed stakeholders, and the rights of victims of serious human rights and international humanitarian law violations, as well as the influence of drug trafficking and the infiltration of armed groups at political and business levels –“parapolitics” and “paraeconomics”<sup>36</sup>, are missing from the RSPO P&C.

Some of these concerns are raised in the report prepared by the Oxfam Novib officer<sup>37</sup> and others are shared by the WWF, which points out several risks for the RSPO and the national and international organisations that support it (loss of reputation, safety risks, etc.). During a visit to Colombia, the WWF representative mentioned the possibility of creating an inspectorship to prevent drug trafficking and paramilitarism influence in the palm industry. This inspectorship would involve FEDEPALMA and organisations from civil society and would include indicators and additional guidance supplementary to the RSPO P&C<sup>38</sup>.

Similarly, Indepaz considers that the RSPO objectives, within the NI guidance and indicators, should be achieved with the help of other instruments that establish the rights and obligations to companies, such as the United Nations Global Compact on Human Rights, the ISO 26000 standard now being adopted, the guidelines of the Organisation for Economic Co-operation and Development (OECD), the Voluntary Principles on Security and Human Rights, the recommendations of the World Bank's International Finance Corporation (IFC), the parameters of corporate social responsibility (CSR)<sup>39</sup>, and the statements by the European Union on biofuels, to mention a few.

Now then, as stated by Indepaz and other organisations, the implementation of principles and criteria such as RSPO P&C helps improve shortcomings as it regards companies' human rights and corporate social responsibility. However, such principles and criteria are only voluntary when they are not associated with compliance with the Constitution, laws or international standards of human rights. Compliance with labour, environmental, food safety, ownership-possession and victim rights regulations, among others, is mandatory and does not allow negotiations or transactions of any kind. This is especially important in principle 2, which should include not only internal legislation, but also all instruments

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**36** See: Angela Rivas Gamboa, Coordinator of the Business Sector and Conflict Area, Fundación Ideas para la Paz (Ideas for Peace Foundation). ¿Podremos escribir el capítulo de la para economía? (Will we be able to write the section about the paraeconomy?) Available at: [www.semana.com](http://www.semana.com), consulted on 1 June 2009.

**37** Oxfam Novib. Aceite de Palma en Colombia. Una exploración del tema de la palma en Colombia en base de un análisis de poder, con especial atención para el proceso RSPO (Palm oil in Colombia. An exploration of the palm oil issue in Colombia based on a power analysis, with special emphasis on the Roundtable for Sustainable Palm Oil process).

**38** Meeting held in Bogotá, on 30 April 2009.

**39** In Colombia, the Colombian Institute of Technical Standards (Icotec, Instituto Colombiano de Normas Técnicas) adopted the technical guidelines on corporate social responsibility -GTC 180 of 2008

and standards related to international human rights law and international humanitarian law (IHL).

Based on these parameters, several observations regarding the National Interpretation document are provided. This does not imply endorsement of the document, particularly in view of the shortcomings identified in the preparation process, as described above.

## **3.1. General Aspects**

### **3.1.1. Country Context**

First of all, the document under review ignores the violence and internal conflict present in Colombia and their impact, despite implementation of the “Democratic Safety Policy” and the so-called recuperation of territories. Clearly, these policies are inadequate to prevent the actions of armed groups (guerrillas, paramilitarism or emerging gangs, drug trafficking groups, among others) and in fact, help increase human rights violations and IHL infringement (arbitrary arrests, extrajudicial executions, the “falsos positivos” phenomenon [murdering of innocent people and claiming they are rebels] and illegal excesses in intelligence services).

The document ignores the fact that many human rights violations and IHL infringements (threats, homicides, displacements, exiles and forced evictions, among others) are related to interests involving lands and territories, as stated by the Colombian Constitutional Court. Also, the document does not acknowledge the existence of conflicts for the control of lands or territories, nor the fact that they are often “resolved violently, by actions of armed actors, or else through the direct implementation of agricultural and natural resource megaprojects or through support given to certain companies and economic stakeholders who develop these projects, and with whom they have associated themselves to benefit from the profits of such activities” (proceedings 004/09). In fact, these devastating alliances are considered by the Court to be one of the main causes of forced displacement (*idem*) eventually depopulating the territories.

Failure to mention the conflict also precludes consideration of the violence and intimidation against some companies in the sector. Armed paramilitary and guerrilla groups and so-called “emerging gangs”, are directly or indirectly present in at least 24 of the 32 departments of the country. Many companies have suffered extortions, kidnappings and threats leading them to reach agreements with the state forces to ensure their safety or to sign contracts directly with private security firms.

Finally, as a consequence of the failure to take the context of violence into account, no indicators and guidance have been included to prevent links with human rights violation conducts through the expansion of oil palms in territories that have experienced -and are experiencing- a forced exodus and are still controlled by illegal armed actors<sup>40</sup>. Likewise,

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**40** See: Reports of the OAS Mission to Support the Peace Process in Colombia. Available at: <http://www.mapp-oea.org/>

initiatives that would guarantee the rights of victims to return and recover lands and goods that they were obliged to leave or that have been misappropriated have not been included.

### 3.1.2. Deficiencies in the NI Document.

Some of the shortcomings of the document that was made available for consideration to the participants in the workshop and meetings mentioned above are as follows:

- a. There is no presentation that makes it easier for stakeholders in the palm industry and other public and private stakeholders in society to read and understand the document: there is no contextualisation regarding the RSPO, its scopes or objectives, nor is there any description of the reasons or purposes why this industry is seeking to be certified. In addition, there is no mention of the process conducted or the concerns presented, nor of the sectors to which the natural and legal persons who attended the FEDEPALMA meetings belong.
- b. The proposed indicators do not correspond to quantitative and/or qualitative measures that would, among other aspects, allow the performance of the companies or the palm industry to be measured, corrective actions to be defined and prioritised, and the improvements obtained to be shown. This is especially relevant in view of the gaps in the information on the palm agriculture industry, which make it difficult to meet the requirements of transparency and verifiability for follow-up and control.
- c. The guidance is generic and represents statements of goodwill, rather than measurable, verifiable parameters that the companies must meet.
- d. In some cases, the indicators are confused with guidance. For example, criterion 2.1 includes as guidance which documentation related to legal processes needs to be available.
- e. The APEs and CTAs are given the responsibility to comply with the indicators and guidance, but without including the companies that act as operators, middle men or sellers.

## 3.2. Principles and Criteria

### 3.2.1. Social Principles. Principles 1, 2 and 6

#### 3.2.1.1. Principle 1. Commitment to Transparency

**Problems:** Colombia does not have a centralised system that allows information to be obtained on palm-growing companies, the groups to which they belong and their shareholders. Likewise, no data can be obtained on the number of workers or their contract modalities (CTAs, APEs or others), on work, marketing and technical support agreements and their conditions, on land acquisition modalities and expansion plans, among other

aspects that would enhance the transparency of the industry and provide assurance to entities responsible for supervision and monitoring of the stakeholders' free, prior and informed consent<sup>41</sup>.

**Comments:** The indicators refer to the records of information and response requests, as well as the documents that should be available, without specifying where, when and how they can be consulted. Although the proposed instrument –GRI– is of interest, until it is specified where, when and how it will be implemented and made public, the availability or accessibility of the information is not ensured. The following are some of the issues that should be public because they are related to the problems described in part 1 but are not included in the NI list of indicators:

- a. Environmental, social and cultural impact studies, as well as permits and concessions granted by the environmental authorities and any penalties, specifying the name of the respective environmental corporation(s) (see [www.icontec.org](http://www.icontec.org). and <http://www.colombiaincluyente.org/contenido/contenido.aspx?catID=173&conID=671>)
- b. Corporate objectives, shareholders and risk factors particularly regarding drug trafficking influences, compliance with tax obligations and payments of fines ([www.direcon.cl/documentos/OCDE/DIRECTRICES\\_OCDE.pdf](http://www.direcon.cl/documentos/OCDE/DIRECTRICES_OCDE.pdf)).
- c. List of CTAs and APEs, including at least the following: name of the CTA or APE, number and nature of the shareholders (peasants, displaced and/or reintegrated people, indigenous or Afro-Colombian individuals, women), national or international sources of funding, governing bodies and legal representatives, origin of the lands on which projects are undertaken, types of services provided and entity in charge of control and monitoring. In the case of APEs, indicate if the company acts as an operator, middle men or seller.
- d. List of security contracts signed with state forces or private companies –Voluntary Safety and Human Rights Principles in Extraction Industry <http://www.international-alert.org/pdf/PVsIndicadores.pdf> ([www.voluntaryprinciples.org](http://www.voluntaryprinciples.org)) and the Colombia guidance for other industries ([www.fip.org.co](http://www.fip.org.co))<sup>42</sup>.
- e. Anti-money laundering practices and asset seizure proceedings (Appendix XXX)<sup>43</sup> (Appendix to Recommendation 9, FATF's 40 Recommendations) and corruption (English link: [http://www.fatf-gafi.org/document/28/0,3343,en\\_32250379\\_32236930\\_33658140\\_1\\_1\\_1\\_1,00.html](http://www.fatf-gafi.org/document/28/0,3343,en_32250379_32236930_33658140_1_1_1_1,00.html)). Application of

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**41** By way of example, the FEDEPALMA annals contain no information on the companies, number of hectares planted or in production, the municipalities where they are located, or the CTAs or APEs with which they work, among other aspects. As mentioned in the AID study, it was not possible to obtain this information from the trade union or the Confederation of Chambers of Commerce.

**42** There is a military base on lands where Indupalma crops and people living alongside an access road are located, thus infringing the regulations of international humanitarian law.

**43** FEDEPALMA is concerned about cases of palm-growing companies in asset seizure proceedings (e.g., Comercializadora Internacional Fábrica de Aceites y Margarinas del Magdalena S.A.) (CI FAMAR) and Grasas y Derivados (Gradesa S.A.). Apparently, 50% of Gradesa owned by the Zuñiga family is linked to criminal investigations by the Prosecutor's office of the dispossession and displacement of Jiguamiandó and Curvaradó's black communities in Chocó and of support to paramilitaries. Gradesa sued FEDEPALMA for collection of the contribution, which led to a house arrest order for the federation's president.

Principle 10 of the Global Compact on Human Rights <http://www.pacto-mundial.org> (English link: [www.unglobalcompact.org](http://www.unglobalcompact.org)) and ABC of laundering and funding of terrorism - UIAF). [http://www.uiaf.gov.co/index.php?idc\\_categoria=1988&uiaf\\_2008=90449a08b876162284ef8a887a633da7](http://www.uiaf.gov.co/index.php?idc_categoria=1988&uiaf_2008=90449a08b876162284ef8a887a633da7)

### 3.2.1.2. Principle 2. Compliance with Applicable Laws and Regulations

**Problems:** Although this principle is mandatory in Colombia (and aside from corruption practices in the public and private sector), there are no ethics regarding compliance with the regulations or institutional capacity to verify compliance with the law. There are also no grievance mechanisms for situations involving regulatory violations by companies, their stakeholders and public entities.

**Comments:** The indicators refer to the internal part of the company (internal referencing) and do not cover collective external referencing instruments enabling assessment by all stakeholders and government control agencies.

For example, the existence of company documents related to the ownership and lease of lands does not guarantee respect for ownership rights or populations of rural inhabitants, due to the insecurity of land holdings, delays in land registries, the modalities of land transfer since 2002 and systematic forced displacement<sup>44</sup>. Therefore, information should be cross-referenced with the entities concerned with property zoning, victims rights and money laundering practices (Incofer, Ministry of the Interior, Acción Social, Financial Information and Analysis Unit [UIAF, Unidad de Información y Análisis Financiero], Prosecutor's Office, etc.).

Furthermore, in view of the extent of land plundering and dispossession, the Constitutional Court<sup>45</sup> has stated that it is necessary to establish presumptions of illegality of tenure changes and reversal of the burden of proof for any lands abandoned during periods of dispossession, for areas where a risk report has been issued as well as for ethnic territories acknowledged as such (reserved lands and collective properties) or in the process of acknowledgement<sup>46</sup>. Furthermore, this Court<sup>47</sup> included in the legal regulations the presumption as a matter of law that persons who migrated massively did so because of violence and, consequently, the burden of proof is transferred to the competent legal or administrative authorities and individuals<sup>48</sup>.

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<sup>44</sup> See: Granados and Salinas in <http://www.foronacionalambiental.org.co/libreria/pdf/IGACJorgeGranados1.pdf> and <http://www.foronacionalambiental.org.co/libreria/pdf/IndepazYamileSalinas.pdf>

<sup>45</sup> Constitutional Court. Proceedings 008 of 2009 <http://www.corteconstitucional.gov.co/relatoria/Autos/2009/A008-09.rtf>

<sup>46</sup> In this regard, the draft bill on victims being analysed by Congress protects the presumptions of illegality (Article 76) and absence of fair title (Article 95). The reasons for lack of fair title include utilisation by non-legally formed third parties that do not pertain to armed groups, (...) with violence and intimidation exerted by such groups to acquire real property or have it deeded by the State. In addition, Constitutional Court, proceedings 004, 005 and 008 of 2009.

<sup>47</sup> Constitutional Court. Sentence T 821 of 2007. See Procuraduría General de la Nación (General Attorney's Office). *La garantía y realización del derecho a la propiedad y a la posesión de las víctimas del desplazamiento forzado* (The protection and realisation of the right to ownership and possession of victims of forced displacement.) PGN Project/ United Nations Refugee Agency (UNHCR). Bogotá, October 2008.

<sup>48</sup> Principle 1.5.7 of the Principles on Restitution of Housing and Property for refugees and displaced persons – Pinheiro Principles included in the constitutional section of Sentence T-821 of 2007: "States may, in situations of mass displacement where little documentary evidence exists as to ownership or rights of possession, adopt the conclusive presumption that persons fleeing their homes during a given period marked by violence or

In addition, these principles establish the invalidity of tenure changes and transfers involving homes, lands or property made under pressure or any other type of duress or direct or indirect coercion, or in which international human rights regulations have not been respected (Principle 1 5.8).

### 3.2.1.3. Principle 6. Responsible Consideration of Employees and of Individuals and Communities by Growers and Millers

**Problems:** The palm-growing industry is known for its complicity in the increasing precariousness of labour rights and the weakening of union rights; likewise, questions have been raised regarding the implementation of projects without guaranteeing the participation of local communities and the imposition of asymmetric conditions in relationships with workers<sup>49</sup>, CTAs and APEs.<sup>50</sup> There are concerns resulting from the sector's failure to help improve living conditions in regions where plantings are located. Quite the contrary: it is associated with negative effects such as the loss of cultural, environmental and social values and the deterioration of the right to sovereignty and food safety<sup>51</sup>.

In some companies, the CTAs and APEs focus on preventing the development of union organisations, as well as seeking to lower labour and land costs<sup>52</sup>. The differences between CTAs and APEs are not clear and, in some cases, people simultaneously participate in both systems<sup>53</sup>.

**Comments:** Context evaluation. Effective application of Principle 6 in harmony with Principle 3, which is a part of companies' commitment to prevent and refrain from directly or indirectly participating in conflicts in the area where their projects are implemented, will require analysing the risk factors and assessing the impacts resulting from

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disaster have done so for reasons related to violence or disaster and are therefore entitled to housing, land and property restitution. In such cases, administrative and judicial authorities may independently establish the facts related to undocumented restitution claims<sup>49</sup>.

- 49** There is no information on the number of industry workers working under labour agreements nor on the contracting systems used according to legislation on the topic and, therefore, FEDEPALMA is preparing a booklet on the issue.
- 50** Because there are no regulations on marketing contracts, asymmetric and differentiated situations occur, according to the operator. The FEDEPALMA – IICA study states: "The strategic alliances in the palm industry have led to a diversity of contracts with different levels of risk distribution. However, they are not always adequately balanced between the parties. Negotiations of contractual terms show a lack of empowerment and effective participation of producers. This leads to a risk of nurturing future conflicts and tensions inside alliances due to the distribution of benefits and perceptions about fairness in the forms of settlement and payment. In general, growers have little information for adequate understanding of the marketing rules and payment conditions". Available at: FEDEPALMA – IICA. Estudio de Caracterización de las Alianzas Estratégicas en Palma de Aceite en Colombia (Characterisation Study of Strategic Palm Oil Alliances in Colombia). Vol. 1. 2007.
- 51** See: INTERNATIONAL ALERT. Buscando la paz del mundo: manual de recursos para la transformación de conflictos- Reflexiones sobre el conflicto (Seeking world peace: resource manual for conflict transformation- Reflections on the conflict.) Available at: Empresas y Derechos Humanos" (Companies and human rights)
- 52** An advantage of small and medium operations is non-union organisation of industry, precisely one of the main reasons that lead large palm-growing companies to restructure their hiring system, encourage associated work cooperatives and award contracts for the provision of produce<sup>52</sup>: "In: FEDEPALMA – IICA. Estudio de Caracterización de las Alianzas Estratégicas en Palma de Aceite en Colombia. Vol. 1. 2007.
- 53** Alliances of palm-growing companies can be created with various associations or cooperatives, such as the case of the Tequendama company, whose milling plant is located in Aracataca, with the crops being located in Copey, Aracataca and El Retén, and which is organised in three cooperatives and two associations grouping together 164 families. Growers may belong to both types of organisation, as understood from the following answer to the question about differences between the two: "in reality, I don't know what (sic) the differences are between the two, the only thing I know is that cooperatives have an administrative board and associations have board of directors, but we both work for the company. . . . with the associations we are paying the five-year loan given to us by FINAGRO, and so we set aside 10% of what we earn to pay the loan, along with 20% of the profits we have because we're in the cooperative. From: Tertulias Palmeras. Alianzas estratégicas en palma de aceite en Colombia. Estudio de caracterización. (Strategic Palm Oil Alliances in Colombia. Characterisation Study.) Document 77. FEDEPALMA-IICA-FINAGRO. Bogotá, October 2006, p. 2.

external factors (armed conflict, instability in public policies, deficiencies in institutions and regulations, corruption and inability of entities to provide services to the communities) and internal situations (relationships with stakeholders [workers, authorities, local communities and suppliers]). External aspects to be assessed include the situation in the area, such as for example a region where there are serious human rights violations (massacres, displacements, etc.) or where the conflict persists and legal or illegal armed groups are present. Internal aspects include the origin of shareholders' and business partners' goods, compliance with labour standards and effective enforcement of policies against child labour, discrimination, etc., both as regard the employees and the companies contracted to hire them: A statement regarding the use of ILO standards is insufficient if such standards are not reflected in the companies' internal regulations and business practices.

The right to participation and consultation is limited to ethnic groups, disregarding local communities and other stakeholders involved. Likewise, the obligation to ensure free, prior and informed consent (not just previous consultation) is ignored. Effective right to participation is closely related to the availability of complete, adequate information—Principle 1 (United Nations Declaration on the Rights of Indigenous Peoples, IFC guidance on relations with the community and other stakeholders [www.ifc.org](http://www.ifc.org) and <http://www.corteconstitucional.gov.co/relatoria/2008/C-461-08.rtf>).

Local development programmes are not linked up with participatory, informed assessment of the social, environmental and cultural impacts of company projects, nor with the creation of indicators to assess, prevent, mitigate and compensate such impacts. Therefore, they remain charity natured. They are also not part of solutions to counteract the conflicts. For example, despite IAvH warnings on the “simplification of agri-food systems” associated with the implementation of palm monocultures, no indicators and guidance to prevent “national or local food safety conflicts” are planned<sup>54</sup>.

The following instruments could supplement the indicators and guidance of Principle 6:

- a. Review of internal conflicts and situations – relations with shareholders, workers and unions ([www.ifc.org](http://www.ifc.org)).
- b. Certainty that the company is not an accomplice, either by commission or omission, in human rights violations, and that it investigates and controls whether its main suppliers, contractors, subsuppliers, active partners or other major business partners are committed to social and human rights issues (<http://www.undp.org/py/pactoglobal>.) (English link: [www.unglobalcompact.org](http://www.unglobalcompact.org))
- c. Obligation to denounce human rights abuses by the security forces and to encourage the respective investigations ([www.international-alert.org/pdf/PVsindicadores.pdf](http://www.international-alert.org/pdf/PVsindicadores.pdf))

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<sup>54</sup> IAvH. Sostenibilidad ambiental de políticas, planes y programas de biocombustibles en Colombia. Resumen Ejecutivo (Environmental sustainability of biofuel policies, plans and programmes in Colombia. Executive Summary), 2008.

- d. Safety policy defining the functions and responsibilities of surveillance and security officers, whether company employees or contractors ([www.international-alert.org/pdf/PVsindicadores.pdf](http://www.international-alert.org/pdf/PVsindicadores.pdf)).
- e. Policy regarding transparency and the fight against corruption and extortion (Appendix to Recommendation 9 (FATF's 40 Recommendations) and corruption (English link: [http://www.fatf-gafi.org/document/28/0,3343,en\\_32250379\\_32236930\\_33658140\\_1\\_1\\_1\\_1,00.htm](http://www.fatf-gafi.org/document/28/0,3343,en_32250379_32236930_33658140_1_1_1_1,00.htm)). Application of Principle 10 of the Global Compact on Human Rights (<http://www.pactomundial.org>) (English link [www.unglobalcompact.org](http://www.unglobalcompact.org)).
- f. Company's contribution to public finance through prompt payment of its tax obligations (national and local – property, industry and business taxes, etc.), in compliance with current regulations.
- g. Interventions governed by the principles of Conflict-Sensitive Approaches and Do No Harm, ANDERSON, Mary. Do No Harm: How Aid Can Support Peace - or War and (COSUDE. [http://www.sdc.admin.ch/en/Home/Themes/Conflict\\_prevention\\_and\\_transformation/Conflict\\_prevention/resources/resource\\_es\\_159292.pdf](http://www.sdc.admin.ch/en/Home/Themes/Conflict_prevention_and_transformation/Conflict_prevention/resources/resource_es_159292.pdf)) (English link: [http://www.sdc.admin.ch/en/Home/Themes/Conflict\\_prevention\\_and\\_transformation/Conflict\\_prevention/ressources/resource\\_en\\_159292.pdf](http://www.sdc.admin.ch/en/Home/Themes/Conflict_prevention_and_transformation/Conflict_prevention/ressources/resource_en_159292.pdf)).
- h. Guarantee of property and possession rights<sup>55</sup> and full reparation of victims<sup>56</sup>. Performance of censuses on rights of ownership, possession, occupancy, holdings; nature of the relationship: individual, association or collective –ethnic groups–, and the profile of those affected: vulnerable population – displaced persons, female heads of household, etc., and evaluations of changes in land prices and the relationship with the planting or expansion of palm crops ([www.ifc.org](http://www.ifc.org)).
- i. Identification of legal representatives and measures to mitigate and compensate in a fair, adequate and agreed manner for loss of assets in case of voluntary resettlement (United Nations Human Rights Website - Treaty Bodies Database - Document - General Comments - and [www.ifc.org](http://www.ifc.org)).
- j. Free, prior and informed consent of local communities (United Nations Declaration on the Rights of Indigenous Peoples and [www.ifc.org](http://www.ifc.org)).

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**55** Universal Declaration of Human Rights. Article 17. 1., American Declaration of the Rights and Duties of Man. Article XXIII. American Convention on Human Rights (ACHR). Article 21. 1. Protocol II Additional to the Geneva Conventions, Convention for the Elimination of All Forms of Discrimination Against Women and ILO Convention 169.

**56** United Nations international standards included by the Constitutional Court in the section on constitutionality – mandatory compliance – (Sentence T-821 of 2007 and T-025 of 2004 and Proceedings 004, 005 and 008 of 2009, among others): Principios y directrices básicos sobre el derecho de las víctimas a interponer recursos y obtener reparaciones, cuando se trata de violaciones manifiestas de las normas internacionales de derechos humanos y de violaciones graves del derecho internacional humanitario. (Basic principles and guidance on victims' right to file lawsuits and obtain reparations, in the case of manifest violations of international human rights regulations and serious violations of international humanitarian law (Doc. E/CN.4/RES/2005/35, 20 April 2005), Guiding Principles on Internal Displacement – Deng Principle (Doc. E/CN.4/1998/53/Add. 2, 11 February 1998); Principles on the restitution of refugees' and internal displaced persons' housing and property – Pinheiro Principles (Doc. E/CN.4/Sub.2/2005/17, 28 June 2005).

- k. Policies regarding labour rights and the freedom of association in the company, CTAs and APEs ([www.ilo.org](http://www.ilo.org), [www.pactomundial.org](http://www.pactomundial.org) (English link: [www.unglobalcompact.org](http://www.unglobalcompact.org)) and [http://www.direcon.cl/documentos/OCDE/DIRECTRICES\\_OCDE.pdf](http://www.direcon.cl/documentos/OCDE/DIRECTRICES_OCDE.pdf)).

### 3.2.2. Environmental Principles – Principles 5 and 7

#### 3.2.2.1. Principle 5. Environmental Responsibility and Conservation of Natural Resources and Biodiversity, and 7. Responsible Development of New Plantings

**Problems:** Crop expansion in conservation areas, ecosystem and natural resource degradation aggravated by low awareness of environmental regulations and authorities' poor capacity to supervise and monitor companies in their practices –permit requirements and environmental guidance for the palm-growing industry are insufficient to guarantee adequate environmental management and sustainable use of natural resources–.

Colombia has no information on suitable areas for new palm plantings that is based on environmental-ecological-hydrological, social-ethnic-cultural and food safety criteria. The IGAC, IDEAM and Cenipalma, with technical support from the WWF-Colombia, MAVDT and IAvH, are conducting the Identification and Characterisation of Suitable Areas for Oil Palm Cultivation project, which is intended to identify and characterise suitable areas for oil palm cultivation in Colombia using an integral approach, in order to contribute to ecological, environmental, economic and cultural sustainability of palm regions and the country in general<sup>57</sup>.

Local authorities do not have tools for zoning and planning in their territory, nor to define land use and competition between the production of biofuel feedstocks and the exploitation of natural resources<sup>58</sup>. Likewise, environmental authorities do not have instruments to prevent, control, mitigate or compensate for impacts on biodiversity that are derived from biofuel production-processing or to grant permits, concessions and licences and to follow-up, control or penalise them<sup>59</sup>. In this regard, it is worth mentioning that the recommendations made by the IAvH to the government entities have not been adopted<sup>60</sup>.

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<sup>57</sup> The following projects are also being conducted for this purpose: 1) inclusion of environmental criteria in the identification and characterisation of suitable areas for oil palm cultivation (Interadministrative contract IDEAM –MAVDT-BID 1556/OC-CO), and 2) land evaluation for mapping of suitable areas for oil palm cultivation, at a scale of 1:500,000, based on the FA methodology (MAVDT- BID 1556/OC-CO).

<sup>58</sup> In the Ariari region of the Meta department, palm, yucca and sugarcane projects are competing simultaneously with castor oil plant and jatropha crop initiatives and entrepreneurial interests of the region to continue producing foods and livestock for the national market. In the Bolívar and Sucre departments, sugarcane projects are being conducted—the goal is 45,000 hectares between Mahates and María la Baja and the construction of three ethanol plants in María la Baja (Bolívar), San Onofre (Sucre) and Momil (Córdoba) and palm plants in María la Baja, where Asopalma and the Hacienda Las Flores have 4,000 hectares of palm. Other companies, such as the Daabon Group, have made arrangements for lands to be handed over by Incofer, which has generated conflicts with peasants who claim rights of possession.

<sup>59</sup> See: Humboldt Institute (<http://www.foronacionalambiental.org.co/libreria/pdf/IAVHMPalacios.pdf>).

<sup>60</sup> An example of this is the government's insistence to proceed with palm planting in Guapi, although even FEDEPALMA has asked the government to perform a critical assessment taking in account its economic and financial sustainability.

Given the nonexistence of such a map, the territorial and environmental authorities do not have instruments to plan territories and soil use. Additionally, as they are the last ones to find out about palm expansion projects, they cannot prevent or control the impacts thereof and do not have instruments to control palm cultivation expansion in their municipality. This is even more the case as palm cultivation does not require environmental licences issued by the regional autonomous corporations (CARs).

On the other hand, as stated in Principle 6, the uncertainty of landholdings, displacement and ensuing dispossession are factors curbing the rights to ownership and possessions. Additionally, the absence of a reparation policy ensuring the return and restitution of goods to the displaced population prevents companies from agreeing on projects with the legitimate owners of the lands and territories, whilst also encouraging resettlement processes and legitimisation of plundering.

Comments: In general terms, the indicators and guidance aim to cover the content of the criteria in terms of fauna and flora protection, high conservation value areas, energy and fire use, soil use, emissions and waste management, among other aspects. However, due to the weaknesses of the environmental and territorial authorities' planning processes and the above problems, NI approval may speed up the implantation of crops in specially protected ecosystems and areas of high conservation value, despite the deterioration of natural resources.

The wording of the guidance for indicator 7.6 is not clear: “[T]he criterion applies to African descendents, indigenous Raizal peoples, even more if they are peasant communities”, which reflects discussions on this point at the meetings and workshops. For some of the participants of events to draw up the NI, it is not possible to compensate the ethnic groups by any agreed acquisition of lands or rights waiver, as ethnic territories are nonseizable, imprescriptible and unalienable. As a consequence, private persons are constitutionally prohibited from acquiring lands in the collective territories of ethnic groups, as well as in the cultural and environmental areas of special relevance referred to in Article 63 of the Political Constitution. Likewise, ILO Convention 169 and the United Nations Declaration on the Rights of Indigenous Peoples expressly prohibit relocation of ethnic groups. Nevertheless, in Colombia there are situations that violate these prohibitions<sup>61</sup>.

In view of these violations of the fundamental rights of these communities, private individuals should materially and legally return illegitimately and illegally occupied territories. In addition, and without prejudice to the foregoing, they are obligated to provide reparations for any resulting damage by paying the respective indemnities, which should include physical and spiritual harm<sup>62</sup>.

Moreover, in any situations in which indigenous and Afro-Colombian communities have autonomous, voluntarily and freely decided to enter into associative schemes for palm cul-

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<sup>61</sup> This is the case of the Afro-Colombian territories of the Pacific Coast (Chocó: Jiguamiandó, Curvaradó, Nariño: Tumaco and Cauca: Guapi), in which illegal purchases were also funded and legalised with the support of public officers.

<sup>62</sup> See Procuraduría General de la Nación (Attorney's General Office). *Primero las Víctimas – Reparación integral de grupos étnicos* (First, the victims – full reparation of ethnic groups). Phase 2. 2008.

tivation, equitable sharing of the profits of the project should be ensured, including compensation for limitations to their rights to collective ownership and environmental and cultural impact. A similar situation may occur in cases in which the entities declare the public usefulness and social interest of projects aimed at guaranteeing the infrastructure required by the palm agriculture industry in territories that have been acknowledged or are in the process of being awarded and deeded. In such cases, the form in which the community will be collectively indemnified should be defined previously in a fair, adequate and participatory manner<sup>63</sup>.

Additionally, it is necessary to expressly state that compensations to ethnic groups and peasant populations include claims for resulting loss of profit and consequential damages.

The following are suggested as complementary to the indicators and guidance:

- a. Apply the Precautionary Principle<sup>64</sup>, by putting a stop to granting by environmental authorities of permits and concessions, as well as loans, stimulus, incentives and funding by the government or international cooperation of projects to be carried out in areas of special environmental, ethnic, culture and social –food safety– interest until areas suitable for growing palm trees for oil have been identified and classified United Nations Division for Sustainable Development - Agenda 21 - Rio Declaration.
- b. Regardless of the foregoing, any company aiming to conduct a palm project that may cause environmental and social damage should be obligated to prove that it is safe and acceptable, thus releasing the persons and communities affected by the risk from the responsibility to prove that they are indeed harmful (inversion of the burden of proof).
- c. Conduct independent studies and assessments of any adverse impact of the project on environmental conditions -present and future use of the land, existing environmental conditions, project proximity to ecologically sensitive areas or protected areas, and possible cumulative impacts with uncertain and irreversible consequences, and measures for pollution prevention and control during the project life cycle (dangers and risks associated with the emissions generated) and use of IFC Environmental, Health, and Safety Guidelines ([www.ifc.org](http://www.ifc.org) and [www.pactoglobal.org](http://www.pactoglobal.org)) (English link: [www.unglobalcompact.org](http://www.unglobalcompact.org)).
- d. Implement a regional and national system for social and environmental management of palm cultures which includes, for each company, the CTAs and APEs to which it is linked, and covering aspects such as (i) environmental,

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**63** This is the case of the construction of ports, roads and dams. An example of this would be the Ranchería dam and the Dibulla port, in La Guajira, which are components of the palm expansion policy in the northern region. Although not related to palm planting, these works threaten the territorial rights of the indigenous peoples of Sierra Nevada de Santa Marta.

**64** According to the Rio Declaration on Environment and Development (1992). This principle states that “In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.”

social and biodiversity assessment; (ii) management programmes; (iii) organisational capacity; (iv) capacity building; (v) community participation; (vi) supervisory mechanisms; and (vii) reporting ([www.ifc.org](http://www.ifc.org) and [www.pactoglobal.org](http://www.pactoglobal.org) (English link: [www.unglobalcompact.org](http://www.unglobalcompact.org)).

- e. Have external firms carry out social and/or environmental audits of the companies in order to analyse specific areas of concern, types of problems, risks and impacts and community participation ([www.ifc.org](http://www.ifc.org)).
- f. Provide support contributing to the drawing up and implementation of a public environmental policy for the biofuel industry, through cooperative agreements or initiatives that increase environmental awareness and protection, encourage enhanced awareness among clients regarding the environmental impact of using the products and services of the company; and research into how to improve the company's long-term environmental performance ([www.ifc.org](http://www.ifc.org)).
- g. Support the creation of a policy on full reparation for victims of dispossession and displacement and on guarantees regarding non-repetition in the territories where palm expansion is planned, which would mean not acquiring lands until the legitimate owners have been clearly identified<sup>65</sup>. This involves the application of the presumptions mentioned in Principle 6, particularly in the cases of disputes between rural populations and companies with or without the backing of the public authorities<sup>66</sup>.

### 3.2.3. Production Principles – Principles 3, 4 and 8

#### 3.2.3.1. Principle 3. Commitment to Long-Term Economic and Financial Viability

**Problems:** There are concerns about the viability of some palm planting and expansion projects, derived from projects that seek to legalise assets and land appropriation in regions where competitiveness and productivity is not guaranteed, on the one hand, and to promote APEs from an antinarcotic perspective or in seeking to increase the rural capitalisation incentive (ICR) “in areas that are unsuitable or with producers who do not have the necessary skills or ability, as well as the dispersion of crops”<sup>67</sup>. To counteract the perverse effects of incentives, the design of such incentives, whether aimed at companies or NGOs,

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<sup>65</sup> By way of example, in North Santander, palm expansion has contributed to the massive purchase of lands, to the detriment of the rights of victims of paramilitary violence.

<sup>66</sup> One of the types of dispossession identified by the MAVDT consists of declaring expiration due to abandonment and nonexploitation of the land and its award to a third party without taking the phenomenon of displacement into account. This, in addition to violating victims' rights, increases land conflicts between the legitimate owners and the second occupants.

<sup>67</sup> FEDEPALMA - IICA. Estudio de Caracterización de las Alianzas Estratégicas en Palma de Aceite en Colombia. Vol. 1. 2007. Palm projects funded by AID can be viewed in <http://www.foronacionalambiental.org.co/libreria/pdf/USAidCarlosEspinal.pdf>

should include “target conditions related to minimum productivity levels in crops promoted through alliances”<sup>68</sup>.

In view of the above, the indicators and guidance proposed in the NI are insufficient, particularly with regard to (1) transparency, anti-corruption and anti-plundering legitimization policies, and (2) the existence of information on suitable lands, which should include determining any possible lacks or risks related to infrastructure, research, technological transfer and crop management. If infrastructure is lacking, cultivation would not be rational, and inadequate practices foster the appearance of pests and diseases.

Consequently, the guidance and indicators of other principles should be included in this principle.

### 3.2.3.2. Principle 4. Use of Appropriate Best Practices By Growers and Millers and Principle 8. Commitment to Continuous Improvement of the Agriculture Industry

In order to rank the indicators and guidance presented in the reviewed document and to link the palm cultivation industry to biofuel promotion, it would be appropriate to adjust them to the criteria and indicators proposed by the MAVDT and the IAvH in the Evaluación ambiental estratégica de políticas, planes y programas de biocombustibles en Colombia con énfasis en biodiversidad (Strategic environmental evaluation of biofuel policies, plans and programmes in Colombia with emphasis on biodiversity)<sup>69</sup>, as well as adjusting the wording to the technical standard for biodiesel<sup>70</sup>.

The above will facilitate the follow-up and verification of indicators, particularly for companies simultaneously producing palm oil and biofuels (e.g., Daabon Group and Hacienda Las Flores), as well as those growing sugarcane and produce ethanol, in addition to the above products (e.g., Manuelita S.A.).

Likewise, it would be advisable to include relevant recommendations from the study funded by the Netherlands Embassy, entitled Benchmark of Colombia Sustainability Standard of Biofuels. Ecofys – Netherlands. 2008.

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**68** Idem.

**69** Ministry of Environment, Housing and Territorial Development. Palacios-Lozano M.T., Camacho A., Cammaert C., Rincón S., Guzmán L., Mejía S.L., Valbuena S., Romero C., Franco C. (2008). Evaluación ambiental estratégica de políticas, planes y programas de biocombustibles en Colombia con énfasis en biodiversidad (Strategic environmental assessment of biofuel policies, plans and programmes in Colombia with emphasis on biodiversity), 2008. Contract 2071648 FONADE IAvH, pursuant to Convention 113 of 2005 (Fonade No. 195077) with resources from the IDS BIRF 7335-CO loan.

**70** MAVDT. Technical Standard Project. Requisitos de sostenibilidad cadena productiva de biocombustibles colombianos. (Requirements for Colombian Biofuel Supply Chain Sustainability). (Version Zero). Contract No. C0059-08. Bogotá D.C., 15 October 2008.

## CONCLUSIONS

In acknowledgment of the efforts of the palm-growers federation and various of its affiliates, it can be concluded that there is still no National Interpretation proposal that meets the special requirements of the problems related to the palm industry in the terms suggested by the RSPO. Despite its limitations, the process being carried out has opened up possibilities for principles and standards to be drawn up at the international level, shaping agendas on corporate responsibility and possible scenarios for interaction with the stakeholder groups, in particular social and community organisations. Additionally, this initiative in the process of consolidation can contribute to full sustainability of this industry, and hence to the peace of Colombia. Therefore, it is important to take on implementation, seek to overcome the difficulties or gaps that have arisen and take into account the problems of the Colombian situation and the scope for contributing to overcoming the conflicts that arise in various areas.



## CHAPTER 3



- **COMMENTS FROM FEDEPALMA**



## COMMENTS

With regard to this report written by Oxfam Novib and the report ‘report on the national interpretation of RSPO principles and criteria in Colombia’ that was commissioned by Oxfam Novib and written by Indepaz, we would like to inform you about the following: In the light of the ‘right for both sides to be heard’ Oxfam Novib asked Fedepalma for comments on both reports and offered for these comments to be integrated in the reports before distributing them. In December 2009 Fedepalma sent an informal email to Oxfam Novib in which they explained what they had done so far in reaction to the reports and expressed that they would not be reacting officially to the reports. At the beginning of February Oxfam Novib offered for this email to be included in the reports sent to the Executive Board of the RSPO. Fedepalma responded positive to that and also sent a letter that originally was directed towards SGS, but that explains the role of Fedepalma in the process of National Interpretation. The relevant parts of both emails have been taken out, translated from Spanish to English by Oxfam Novib and can be found on the pages below.

Addressee: Sandra Seeboldt, Oxfam Novib

Sender: Andrés Castro, Fedepalma

Date: 13th December 2009

*“For us in Fedepalma, the documents from OXFAM and Indepaz are official and we have been working based on them to be able to face the difficulties that we have encountered during the process of National Interpretation from the P&C and the RSPO. So have we organized public exposure in several scenarios, both with palm oil producers also with the stakeholders as well. (Presentation in the Palm Congress in Santa Marta, May 2009)*

*We don’t want to ignore the reality of the palm in the conflict areas. On the contrary, in conflict situations, palm oil can become a productive and self reliable alternative (...)*

*Actually at this moment we have a meeting (December 2009) in Bucaramanga in the Regional working groups to discuss a strategy for the organizational strengthening*

*for small holders, convened and supported by USAID/MIDAS. Here are present between others the cooperative van Alianzas de Indupalma and the farmers from Fedepalma (PDPMM), all convinced that the palm is the solution of the conflict.*

*In account with our comments to the report, we are working very hard to overcome the obstacles and questionings raised.*

*There have been some adjustments to the document available in our web site about the moneylaundry, private security and working matters. The new introduced data refer to the scope and content of the “prisma” of the P&C in the particular case of Colombia.*

*Also we are doing a thematic review with input from WWF that will lead to the document of National Interpretation; unfortunately this document is not ready yet. In addition and taking into account the recommendations from OXFAM and Indepaz, we are organizing a team of experts in land and land titles. We have contacted the ICODER, the Ethnic Directive from the Inland Ministry and thematic experts to form a team which would come with the conflict solution proposals about the land titles and territory dominion.*

*We are on the good way in this aspect but we will need some patience to see results.*

*I can conclude that I can not deliver any formal documentation before our Executive Council endorses them. In that sense, Fedepalma never officially has presented the process of endorsement of National Interpretation to the RSPO. All the acquired information is preliminary and the access of the documents has been made in a transparent process. Finally, I rectify our commitment with the self reliability of the Agro Industry of the palm oil in Colombia.*

*We hope to have a satisfactory ending of the National Interpretation process, taking into account the recommendations from the OXFAM-Novib and Indepaz, with the validation from the “Board” by the RSPO.*

*As consequence, there will be a challenge for the national producers to submit to this certification process, and who should see it as a model or guide to sustainable development for the growth and extraction of the palm.*

*Fedepalma will promote this working scheme, even if the National Interpretation process isn't validated, because it considers that it is a reference or valid international parameter, adopting the principles, criteria, indicators and guidelines of National Interpretation as a productive model of the palm in Colombia.*

*Using the ‘right to present the other side’ that you granted us with regard to the reports, don't expect more comments from Fedepalma.*

## **Are the Principles and Criteria of the RSPO feasible in Colombia?**

Extracts from letter, From Executive President of Fedepalma, Jens Mesa Dishington, to SGS Colombia S.A. 25th of January 2010.

*“Reference: Consultation with regard to the evaluation process of DAABON Group in the P&C of the RSPO.*

*Dear Auditor:*

*With respect to the subject of reference and taking into account the fact that Fedepalma has been*

*identified as the third party of interest in this process, we take the freedom to give you our opinion in relation to the audit that is currently being executed by the Grupo DAABON with regard to the fulfilment of the P&C of the Round Table for Sustainable Palm Oil. First we would like to clarify that the National Federation of Palm Oil Producers (Fedepalma) represent and defend the interests of the palm oil industry in Colombia. An industry that has been continuously growing for the last 50 years, with currently around 360 000 hectares under cultivation, divided over almost a hundred municipalities. Around 87% of the Colombian palm oil is produced by members of Fedepalma. The sector employs directly and indirectly over 100 000 people (...) and over 500 000 people benefit from the palm oil agro industry. (.....) Also, Colombia has an expansion potential of over 3 million hectares for palm oil cultivation, without affecting forest or rainforest.*

*Fedepalma has been a member of the RSPO since 2004(...) and occupied the seat of ‘rest of the*

*world’ in the Executive Board. It is in this context that it is worth giving you a short overview of the role Fedepalma has played in the NI process of the P&C in Colombia. Fedepalma took a leading role in 2008 and 2009 in setting up a process of national interpretation that would lead to a specific guide for the compliance with the P&C of the RSPO, relevant for the Colombian context.*

*In order to do this, and with the accompaniment of WWF and The Ministry for Environment, Housing and Territorial Development (MAVDT), after launching the process in the Ministry expert meetings were organised. As well as regional workshops, workshops with institutions and with NGOs in which over 430 people participated, from the public and the private sector, international entities, certifying bodies, universities, environmental NGOs and palm oil companies.*

*The participants qualified the content of the P&C and the processes of applying and implementing them as positive, viable, and relevant, because the NI document takes into account the fundamental basics from an environmental, social and economic point of view that it will strengthen position and distinguish raw materials and products that come from Colombian palm oil. In that sense, Fedepalma is of the opinion that the process of the NI and the way it was organized, is valid and sufficient for the corresponding auditors and the Colombian companies that would like to certify their palm oil production. Taken all this into account, one should not forget that Colombia is facing an internal conflict for years. This has had consequences for the public order and has had particular regional expressions.*

*This political and social phenomenon has drawn the attention of many organizations that, in the search to identify responsible actors, have tried to link the palm oil industry as an actor in the conflict. In this sense, Oxfam Novib, member of the Executive Board of the RSPO, has formulated suggestions to improve the NI process, because they consider that the participation of social organisations (unions, cooperations, representatives of ethnic minorities etc) has been, to their opinion, insufficient. Among their objections is the opinion that the National Interpretation needs to include the problems that are specific for Colombia, like conflicts about land ownership, propagandize of palm oil project in Indigenous territories, precarious labour and social conditions and unplanned palm oil expansions. To our opinion, this perception is mistaken and pretends that the palm oil sector can solve problems that go way beyond our possibilities.*

*Taking into account these concerns and until these situations are not clarified, the NI document with the indicators and the guidelines for Colombia will not be sent for consideration for validation of the Board of the RSPO. Fedepalma, with the intention to improve the understanding of the national reality is working on aspects that are going further than the validation of the mentioned document, such as indicators and guidelines specifically related to money laundry, armed groups , labour issues and land title and registration issues, an effort to clarify the concerns of some NGOs.*

*(....)".*