

Pacífico



Petroleum: Accumulation of oil, water and land in the Attilanura

The case of Pacific: a local multinational in Colombia in process of restructuring

Briefing paper | October 2016

Colombia has suffered more than fifty years of internal armed conflict. Now that the Colombian people have rejected a peace deal with the FARC, the road towards peace has become more insecure. However, subsequent governments have aimed to boost economic activities. As this research shows, this increase in economic activities bears serious risks and can aggravate some root causes of the Colombian conflict. This study looks into the country's largest private company, Pacific Exploration and Production Corporation (Pacific, Pacific E&P or "the company"). The study analyses the context and conditions that enabled the rapid growth of the company, leading it to become the second most important oil company in Colombia a mere five years after it was set up. The research also analyses the factors that caused the severe crisis and restructuring of the company and examines the impacts of Pacific's operations on human rights and the environment in Puerto Gaitán in the department of Meta, where Pacific's most important oilfields are located. This briefing paper summarizes the conclusions of the research report that was published in Spanish.

Introduction

Colombia's internal conflict, which mainly centres around control over land and drug trade, has left over eight million victims in its wake. The future of the peace agreement between the government of President Juan Manuel Santos and the Revolutionary Armed Forces of Colombia (FARC) guerrilla groups is now being discussed, since the 'no' voters gained the referendum in October 2016. Peace talks with the National Liberation Army (ELN) are still in the exploratory phase.

The birth of Pacific and its arrival in Colombia took place in the midst of this process, in a context of institutional changes favourable to the extractive industries that began to be introduced in the late 1990s. The Colombian government reformed the state oil company, Ecopetrol, created the National Hydrocarbons Agency and encouraged foreign investment with incentives such as reduced tariffs and tax breaks for capital goods and less onerous environmental licence requirements.

During President Álvaro Uribe Vélez's two terms (2002-2010), the government promoted investor confidence, focusing on the achievements of the so-called democratic security, its star policy. It also signed free trade agreements (FTAs) ◻

with other countries, including Canada, where Pacific was founded. All this led to a doubling of oil and gas production and an increase in the presence of multinational corporations.

After Juan Manuel Santos took power, the mining, energy and infrastructure initiatives were declared Projects of Strategic National Interest (PINE), which allows companies to circumvent environmental protection laws. Foreign investment was also encouraged in agrofuel production and the so-called Zones of Interest for Rural, Economic and Social Development (Zidres) were created. At the same time, the Santos government has devoted much effort to negotiating the participation of Colombia in the Organisation for Economic Cooperation and Development (OECD) and to implementing the FTAs.

Over the past years, the Colombian government has aimed to promote business and human rights, especially by signing up to international standards such as the UN Guiding Principles for Business and Human Rights, the OECD Guidelines for Multinational Enterprises and the OECD/G20 Principles of Corporate Governance.

The Centre for Research on Multinational Corporations (SOMO), in partnership with the Development and Peace Studies Institute (Indepaz), aim to contribute to the monitoring of these and other standards in countries affected by armed conflict or violent situations. In Colombia, with funding from the Netherlands Embassy in Bogotá and the Dutch Ministry of Foreign Affairs, Indepaz and SOMO have carried out case studies of the multinational corporation Poligrow (published in 2015) and Pacific E&P, presented in this report.

This investigation focuses on the Rubiales/ Piriri and Quifa oil fields and on the company's investments in infrastructure, electricity and projects for the treatment and reuse of water to be used for oil palm plantations, which will be used for the production of agrofuels in the municipality of Puerto Gaitán.

The analysis shows that in countries like Colombia, which have a long history of armed conflict, violence and land conflicts and which are still in a process in search of peace, corporate activities require a high standard of human rights due diligence. Particularly in respect to transparency; security; land tenure and ownership; and conflicts over territorial rights, security and environmental impacts with farmers, settlers and indigenous peoples.

To carry out the research, SOMO and Indepaz organised visits and appraisal workshops with community leaders in Puerto Gaitán, the municipality where Pacific's operations are concentrated, in May, September and November 2015.

Two workshops to share the preliminary results of the research were held in Villavicencio and Puerto Gaitán in early 2016.

In addition, interviews were conducted with academics, experts, authorities and members of Colombia's Congress who have participated in debates on the oil industry, as well as two meetings with Pacific representatives in Bogotá. Pacific's responses to questions presented to them and comments on the preliminary report sent by SOMO-Indepaz in August 2016 were incorporated into the report. The research was complemented by a review of information drawn from the media, corporate databases and reports produced by the company and its subsidiaries.

The results of the research have been presented to Ecopetrol in May 2016 and the final draft of the report has been presented in August this year. Ecopetrol commented on the draft by writing that the SOMO-Indepaz research will be used as "input for the design and execution of strategies that ensure the respect and promotion of human rights."¹

For this research, SOMO-Indepaz used national laws and a number of international standards on business and human rights to which Colombia aims to adhere. The guidelines used for the analysis are:

General Guidelines on Business and Human Rights

- ❑ IFC Performance Standards on Environmental and Social Sustainability
- ❑ UN Guiding Principles on Business & Human Rights
- ❑ OECD Guidelines for Multinational Enterprises
- ❑ International Labour Organization (ILO) Conventions
- ❑ Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security from the Food and Agricultural Organization of the United Nations
- ❑ OECD-G20's nine principles on corporate governance

Conflict-specific Guidelines

- ❑ Rights and Obligations of Business Enterprises under International Humanitarian Law
- ❑ Voluntary Principles on Security and Human Rights
- ❑ International Alert's guide for conflict-sensitive business practice in the extractives sector

Sector-specific Guidelines

- ❑ Extractive Industries Transparency Initiative's Standard and the Principles and Criteria
- ❑ Roundtable on Sustainable Palm Oil Principles and Criteria

Colombia's petroleum sector

Colombia started to restructure its petroleum policies under the Andrés Pastrana administration (1998-2002), following the World Bank's recommendations to deal with Colombia's financial crisis.² The acceleration of activities in the hydrocarbon sector started in 2003, when the government of Álvaro Uribe Vélez (2002-2010) implemented Law 1760, reforming the state oil company Ecopetrol and setting up the National Hydrocarbons Agency.

In order to "enrich the mineral-energy basket", the government promoted the production of agrofuels from palm oil (biodiesel) and sugar cane (ethanol). In line with the Free Trade Agreements signed, incentives were given to construct ports and free trade zones.

Currently, Colombia has more than 80 oil exploration and production companies, and the production doubled from 591.881 barrels of oil equivalent (BOE) in 2008 to 1.005.754 BOE in 2015. In 2015, the largest producer was Ecopetrol, followed by Meta Petroleum, a subsidiary of Pacific.

The boom and crisis in Pacific

Pacific can be described as a local multinational, as it identified a business opportunity in Colombia and went on to build an international network of companies around it. Although its headquarters are in Canada, 72% of the 75 locations where it was operating in December 2015 are in Colombia and 96% of its total oil and gas production took place there.

Pacific was born in 2008 from a merger between Petro Rubiales and Pacific Stratus Energy. The company could grow rapidly because the company's management consisted of former executives of the Venezuelan state oil company PDVSA, who had long experience in the oil sector. The partnership with the Brazilian conglomerate Synergy Group, owned by Germán Efromovich, whose companies held contracts for the Rubiales/Piriri and La Creciente oilfields in Colombia, facilitated a smooth growth. In addition, Pacific benefited from high oil prices and increased production in Rubiales/Piriri, known in the oil industry as "the jewel in the crown", and to a lesser extent in Quifa, the two oilfields operated by the Colombian branch of Meta Petroleum Corp. (Meta Petroleum). In 2014, Colombia's national oil company Ecopetrol decided not to extend the contract for Rubiales/Piriri and to take over the operation of the field from 1 July 2016 onwards, which meant that Pacific had to give up its most profitable oil fields.

According to a PricewaterhouseCoopers study, more than 100 companies form part of Pacific's corporate structure. These companies are domiciled in more than 20 jurisdictions, including Canada, Panama, the British Virgin Islands, Luxembourg, Switzerland, the Bahamas, the United States and the Netherlands. The company has 16 subsidiaries in Colombia.

Between 2009 and 2015, the company brought various businesses and investments in Colombia into its portfolio, including shares in Maurel & Prom Colombia B.V. and Caribbean Resources Corp., companies such as Petrominerales Colombia Corp. and oil production blocks such as Sabanero and CPE 6, declared Projects of Strategic National Interest in 2013.

The company further set up and/or invested in infrastructure companies such as Petroeléctrica, Promotora de Energía Eléctrica de Cartagena & Cía., S.C.A. E.S.P. (Proeléctrica), Oleoducto Bicentenario de Colombia S.A.S. (OBC S.A.S.), Oleoducto de los Llanos Orientales S.A. (ODL S.A.), Olecar S.A.S. and the Zona Franca Bahía de Cartagena S.A.S.. In 2013, the World Bank's International Finance Corporation invested in Pacific Infrastructure Ventures Inc. and Pacific Midstream Inc.

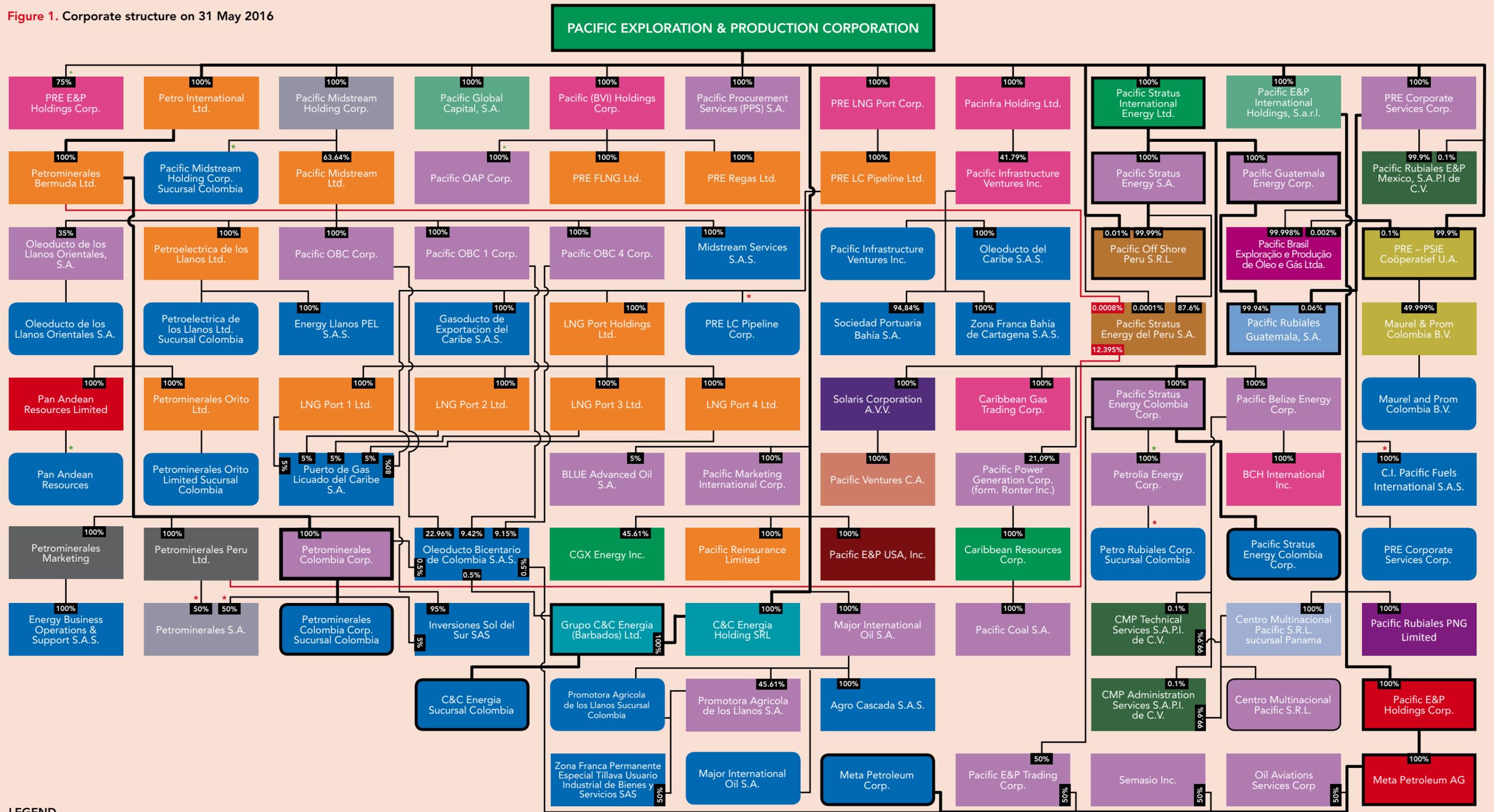
The turnaround in Pacific's fortunes began in 2014 due to a combination of overindebtedness, overestimation of the reserves in the blocks it had acquired and increased investments in infrastructure, all while oil prices were falling. The loans and the emission of bonds for these investments coincided with the steep decrease in the Ebitda³ and the negative increase in profit between 2013 and December 2015, when its net loss amounted to US\$5.461 million.

By 2015 Pacific was officially in crisis and an attempt to sell the company to ALFA S.A.B. de C.V. and the O'Hara Group failed.

In December 2015, Pacific's debt reached US\$5.377 million. After defaulting on its obligations to the holders of senior corporate bonds and bank lenders and their agents on several occasions, Pacific was forced to sign agreements to extend payment deadlines until April 2016, when trading in its shares was suspended on the Toronto and Bogotá stock exchanges and the company went bankrupt.

The Ontario Superior Court of Justice (Canada) approved the restructuring plan presented by Catalyst Capital Group Inc. and a group of debt holders. This plan was approved by the company's assembly and the Colombian Corporations Superintendency. During this process, the board of directors refused several alternative proposals, which caused criticism by minority shareholders, because they are about to lose

Figure 1. Corporate structure on 31 May 2016



LEGEND

| | | | | | | | | | | |
|------------|---|--|---------|------------------|------|----------------------|-------------|------------------|--------------|-----------|
| Applicants | Branches to be subject to Colombian Proceedings | * in liquidation process * to be liquidated | | | | | | | | |
| Aruba | Bahamas | Barbados | Bermuda | Brazil | BVI | Canada AB, BC, ON | Colombia | Colombian Branch | Ecuador | Guatemala |
| Mexico | Luxembourg | The Netherlands | Panama | Papua New Guinea | Peru | Spain | Switzerland | UK | USA Texas | Venezuela |

most of their share value in the current restructuring plan. The company's projects and assets are planned to be transferred into the restructured company.

Pacific's operations and human rights standards

Pacific's production of heavy crude has been concentrated in Puerto Gaitán, a municipality in the Altillanura (high plains) region of eastern Colombia, where the government aims to increase the land used for agribusiness, forestry and cattle raising from 113.000 hectares in 2012 to 779.000 hectares in 2024.

In the Altillanura, a large proportion of the rural and indigenous population has been the victim of massacres, murders, forced recruitment, disappearances, antipersonnel mines, kidnappings, forced displacement and the forced abandonment and takeover of land, as a result of the armed conflict and both legal and illegal economic interests. Attacks against oil industry infrastructure have also taken place in the region, affecting Pacific's and Ecopetrol's operations.

The region is characterized by multiple violent conflicts related to the absence of an environmental and territorial order. Land tenure is chaotic, because only 61% of the 1.753.000 hectares have been granted official state titles to private persons (894.000 ha) and indigenous peoples (167.000 ha). This results in a high number of land conflicts.

Currently, the National Department of Planification affirms that the "lack of legal security about property rights has facilitated the dispossession and abandonment of territories". The Ideas for Peace Foundation (FIP) warns that drug traders, emerald traders and armed groups use to buy and sell land and invest in agroindustrial activities such as palm oil plantations to launder money. In Puerto Gaitán, the Land Restitution Unit identified "a complex phenomenon of

dispossession which combines, in part, the dispossession of indigenous communities and legitimate settlers, and, dispossession of the state through the occupation of state-owned land (baldíos) by networks of drug traders, illegal armed groups, figureheads and local and foreign allies who are not subject to agrarian reform".

Puerto Gaitán, a municipality with more than 30.000 inhabitants, demonstrates various indicators that demonstrate the high levels of poverty: 65% of the population has unmet basic needs, the illiteracy rate stands at 18% and infant mortality is 6 per thousand live births.

The arrival of agroindustrial companies in the region in the 1980s was followed in the 1990s by the oil boom. As this study shows, the boom in mining and farming has had a negative impact on local communities and the environment. There have been no reparations or compensation for the damage caused, despite the millions paid to the Government in royalties and the resources this area of the country has provided to the companies involved.

As far as armed groups are concerned, both guerrilla groups such as the FARC and paramilitaries have established a presence in the Altillanura region. The violence perpetrated by the paramilitaries peaked in the 1990s when they set up the structure known as the Carranceros, supposedly linked to Víctor Carranza, known as the tsar of the emeralds; which supported the arrival and consolidation of the United Self-Defence Forces of Colombia (AUC).

The demobilisation of the AUC in 2006 led to the emergence of new groups known as Criminal Gangs or Organized Armed Groups (GAO). They are currently fighting over the revenue from drug trafficking and are said to be responsible for human rights violations against local people in the region, as well as being involved in extortion, the pillaging of land and facilitating the establishment of new economic projects, activities that have all been amply reported by the Office of the Human Rights Defender.

Figure 2. Pacific share value on the Colombian stock exchange (in Colombian pesos)



Transparency and corporate governance

Pacific publishes annual reports on its operations, but the highly technical language used in these reports restricts access to up-to-date information about all the relevant matters involving the company, its development and impacts, such as its planned projects, its owners, its strategy or its financial status, especially for people directly affected by the company.

These constraints on access to information are largely due to the company's implementation of an expensive and aggressive publicity campaign in the media. There are various reports of journalists critical of its operations being put under pressure and one journalist has been sued several times by the company. The access to information is further hindered by the company's delay in registering controlling interests (for which it was fined by the Corporations Superintendency) and the fact that many of its subsidiaries are registered in countries like Panama and other tax havens.⁵

Some company directors and associates have set up Panama-registered companies through which they received fees and through which they held the shares in the Company. 80% of their remuneration consists of shares. Pacific has a number of Panama-based companies where its directors, ex-directors and functionaries are shareholders and/ or directors of these companies. These companies are linked to the acquisition of land, palm oil plantations, and water treatment projects in Puerto Gaitán.

Colombian authorities observe that the creation of Panamanian companies to exclusively operate in Colombia makes it difficult to access information about the company and increases the risk at tax evasion and avoidance.

Governance problems

Pacific has been criticised by various analysts for a number of corporate practices. One of them is that members of the management team and some of the company's independent directors have held high-level posts in government or seats on the boards of directors of other companies. This could have given them access to information and influence on decisions benefiting themselves and/or the company.

This report also finds evidence that members of the board of directors have been involved in companies that sell services to Pacific or became its suppliers. The company set up the New Business Opportunities Committee (NBOC) to analyse transactions with related parties such as the leasing of office space, the provision of transport services and payments made to directors.

The sanctions imposed on the company by Colombian authorities likewise reflect the problems with corporate governance. For example, in 2011 the National Tax and Customs Authority (DIAN) fined Meta Petroleum for making use of practices that are against the law (ghost suppliers) in order to pay less income tax. There have also been several disputes between the DIAN and Pacific about the amount of value added tax paid, and with Ecopetrol over the settlement of accounts on various contracts.

This study also highlights that Pacific has set up companies in countries such as Panama and Canada. State authorities have interpreted this as a move by the company to exonerate it from meeting its obligations under company, financial and stock market laws in Colombia and it limits the possibilities of state authorities to take action against the company. Even today, in response to Pacific's insolvency, the actions being taken by Colombian authorities, particularly the Corporations and Financial Superintendencies, are minimal. The Financial Superintendency has made shareholders – about 8,000 Colombians – bear the burden of Pacific's losses, without evaluating the actions taken by the stock market brokers under its oversight and control.

Security and human rights

The company has reiterated its commitment to respect human rights on several occasions, including in the Declaration of Human Rights approved by its board of directors in 2013. Since 2013 Pacific has been implementing the recommendations made by the Ideas for Peace Foundation (FIP) in its "Final project report on implementing a system of due diligence under the UN Guiding Principles for Business and Human Rights". The aim is to ensure that its commitment to respect human rights is expressed "at the highest levels of the company" and included in all its operations.

However, it is not known what the company's official position is in response to the reports of threats made against workers and local communities and infringements of their rights in the areas where it operates, or the allegations regarding pressure to pay extortion charges.

Pacific, as well as Ecopetrol and other companies, has signed security conventions with the Ministry of Defence that are kept highly confidential (see Table 1).

It should be pointed out that these agreements have, for example, reduced the number of kidnappings and attacks on oil infrastructure. However, the security model is based on the militarisation of the territory and a combination of military and private security, meaning that the company is implicated in operations related to the internal armed conflict. It also affects the civilian population, as many local people have complained of restrictions on their freedom of

Table 1 Security conventions between companies and the Ministry of Defence

| Company | Period | Value (in million US\$) |
|--|-----------|----------------------------|
| Pacific Rubiales and Meta Petroleum | 2007-2014 | 41.16 |
| Isagen | 2008-2014 | 34.80 |
| Oleoducto Bicentenario (Pacific, Ecopetrol, Hocol, Canacol, Vetra and Grupo CIC) | 2011-2014 | 25.01 |
| Ocensa | 2002-2014 | 10.54 |
| Empresas Públicas de Medellín | 2008-2014 | 19.10 |
| Carbones del Cerrejón | 2008-2014 | 10.66 |
| Drummond | 2009-2014 | 3.63 |
| Anglogold Ashanti | 2008-2012 | 3.52 |

Source: Elaborated by SOMO-Indepaz, based on document from Senator Iván Cepeda.⁶

movement and their right to organise, even members of Colombia's Congress. These complaints have been rejected by the company.

Community leaders of Rubiales point that besides the direct activities of paramilitaries, they are being molested by security teams of Meta Petroleum, a subsidiary of Pacific. The following complaints are being heard frequently:

"I have been persecuted by Pacific's security forces. I've received threats that they were going to kill me for talking about the labour union."

"There are reports that Pacific's private security forces are involved with paramilitary groups that are becoming stronger in this region... They're involved in Pacific Rubiales activities to threaten people..."

"They're threatening people, telling us to move away from here... They wave their mini uzi (small machine guns) around and say they don't want to hear anything from us, they hate us..."

Acquisition and use of land, and indigenous peoples' rights

Pacific's operations take place in regions where land tenure is highly informal, with a long tradition of disputes over land. In addition, the armed conflict and the entry of megaprojects are among the main causes of the risk of physical and cultural extermination of the Sikvani and Piapoko indigenous peoples who live in the Altillanura region.

According to Colombian law, both the state and corporations have the obligation to consult indigenous communities to obtain their free, prior and informed consent (FPIC) when business operations may affect them. Indigenous leaders in the region have complained that the procedures required by national and international standards are not followed. On the contrary, they report that consultations are replaced by bilateral negotiations between company representatives and indigenous authorities who do not represent the community, often leading to payments being made to certain leaders.

The state, as the main guarantor of this right, does not always participate in the meetings or fails in its duty to certify the presence of communities in the affected areas. The report describes three cases in which indigenous peoples' collective rights to territory and participation were infringed by Pacific and state authorities. This also undermines other rights, including the right to self-government and the right to exercise traditional usages and customs.

A member of an indigenous community affected by one of Pacific's pipelines, expresses the following:

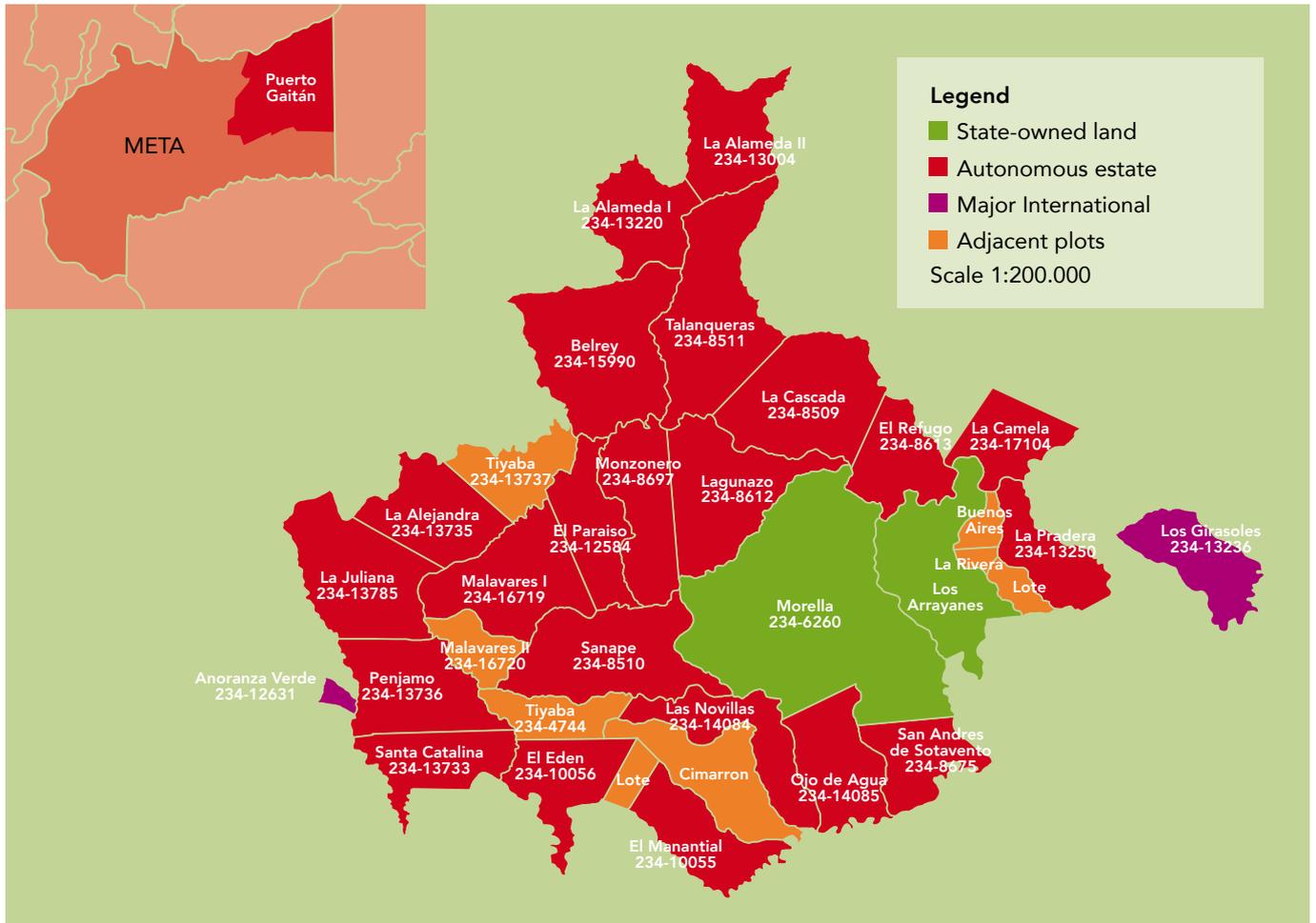
"After the pipeline they banned us from coming here, the children can't move around freely anymore, because what we have there now is people wearing their camouflage gear. You know that this was already a war zone [...] It was a war unleashed by the paramilitaries, and there were a lot of massacres around here, but you didn't hear about it on the radio. That's why the children are afraid of coming here, we no longer use the place freely as we used to before the pipeline came through."

As far as land ownership in the Altillanura region is concerned, the report reveals that Pacific has acquired – either directly or by means of trust arrangements – at least 26 plots of land covering an area of nearly 55,000 hectares (more than double the size of Amsterdam). The La Morelia and Los Arrayanes plots are state-owned land where Pacific, through Meta Petroleum and Major International, has built installations (Map 1).

The other 24 properties, with a total of 44,740 hectares, were formerly state-owned land. Excessive accumulation of state-owned land is prohibited by Colombia's Agrarian Law (article 72 of law 160 of 1994), but Pacific acquired equivalent to 24 times the maximum amount of accumulated land (the family farm unit, or UAF) allowed in Puerto Gaitán.

The acquisition of these plots is part of an oil palm project in Puerto Gaitán, in which Pacific Green and Major International Oil S.A. participate. The project started in 2012, and in December 2012, the local environmental authority, Cormacarena, granted a water license for this project.

Map 1 Plots owned by Pacific- Major International



Source: Elaborated by SOMO-Indepaz, based on the Cadastral Base of the Geographical Institute Agustín Codazzi. The names of the plots in the cadastral information do not always coincide with the names in the certificates of liberty and tradition.

Map 2 shows the plots owned by Major International, in which, according to Pacific, “projects of public use and social interest” are being developed. Pacific does not specify who granted this status to these projects.

The setting up of trusteeships and autonomous trust arrangements makes it more difficult to find out who actually holds title to properties that were formerly state-owned land. It also allows both the buyers and sellers of land to benefit from the transaction, to the detriment of the constitutional objective of distributing land and enabling the most vulnerable sectors of the rural population to gain access to it. Furthermore, several properties associated with the reuse of waste water and the production of agrofuels seem to have involved the award of titles and land accumulation at odds with Colombian law.

Although this is a practice often facilitated by certain government officials, it does not exempt the company from its responsibility, especially when some of its properties appear to be associated with the alleged use of front men,

laundering of drug money and land speculation. This is the case with the Girasoles estate of Major International, which was previously owned by Miguel de los Santos Peña Torres. He was investigated by US authorities for presumably forming part of a network of drug traders led by Daniel Barrera Barrera, alias “El Loco Barrera”, and Pedro Olivero Guerrero Castillo, alias “Cuchillo”. Pacific responded to this, stating that “mr. Santos was not included in any sanctions lists back then and is not on these lists today”.

Environmental impacts

In the Rubiales/Piriri and Quifa oilfields, Pacific is authorised to dump about 300,000 barrels of water per day in the Rubiales River and to reinject 3 million barrels per day in the soil. According to local people, the dumping of this waste water has polluted springs, rivers, streams and wetlands, and this has been corroborated by state institutions such as the Comptroller General’s Office and the National Environmental Licensing Authority (ANLA).

The Agrocascada project, which was launched in 2012, poses a further threat to the environment. The project aims to increase the production in the Rubiales/Piriri field and to treat wastewater and reuse it to irrigate agroindustrial crops of Pacific's companies and third companies. In September 2015, the Ecoeficiencia-Tedagua⁷ consortium terminated the construction of the water treatment plant. In August 2016, the plan still had not been entered into operation, because the conditions under which the water would be supplied to third parties, among them Proagrollanos, had not been agreed upon.

The environmental impacts are compounded by the use of the STAR increased recovery technology, patented by Pacific. This has led to criticisms and complaints from communities and has been questioned by environmental authorities and oversight bodies. One of the problems most keenly felt by local people in Puerto Gaitán is the increase in earthquakes since 2013. The cause of this has not yet been determined, partly because the report by Pacific and Ecopetrol evaluating the use of the STAR technology (in 2013 and 2014) has not been made public. The courts are yet to take a decision on the class action that seeks to establish whether or not there is a connection between the increased number of earthquakes and ANLA's decision in 2013 to authorise an increase in the amount of water Pacific is allowed to reinject.

Community members express the following concerns:

"These days you can't catch a single fish in the rivers around here. They all smell of oil."

"We've seen the rivers dry up because of the impact on the springs, and the fish have died."

"The springs have been damaged by the drilling and the water is polluted by the dumping of waste."

"Since Pacific came here, the wetlands and swamps have dried up."

Conclusions and recommendations

Although Pacific has investments and companies in other countries, its main assets and investments are located in Colombia, and it must therefore be held accountable under Colombian laws and regulations and to the Colombian authorities. Evidence of this is the fact that in December 2015, most of its operations and assets are located in Colombia. This means it can be considered a local multi-national.

The company's rapid growth took place in a context where the Colombian government facilitated the development of the oil industry and large-scale economic projects, and in a time when oil prices were high.

During this boom, state and government policies in Colombia to encourage private investment and promote the oil industry to foster the country's development have brought new risks and conflicts. In theory, the internal armed conflict situation obliges companies to conduct the strictest due diligence, but in the case of Pacific there are instances of a failure to abide by the country's laws and standards for business and human rights in aspects related to security, the acquisition and use of land and indigenous territories, environmental management, transparency and corporate governance.

In part, these failings are related to incongruities in the state's dual role as human rights guarantor and foreign investment promoter. This is compounded by negligence, leniency and lack of oversight on the part of the public institutions responsible for land issues, environmental sustainability and protecting the rights of indigenous peoples, workers and communities living in the areas of influence of Pacific's operations.

It does not help matters that the company's headquarters are in Canada and its subsidiaries are registered in countries like Panama and other tax havens. For Colombian institutions such as the Corporations and Financial Superintendencies, these are grounds for exonerating it from responsibility in matters such as the setting up of a business group, the duties of the members of the board of directors and the rights of minority shareholders in the company restructuring process.

According to Colombian law, state institutions are obliged to analyse the company's rise and fall and its impact on human rights. Such an evaluation ought to extend to the IFC and other financiers of the company, the subsidiaries' host governments and the future owners of the restructured company.

Pacific's future will depend on the negotiations with Ecopetrol about the Rubiales/ Piriri oilfields. It further depends on the profits generated by the assets acquired just before bankruptcy, like projects in the electricity sector and waste water treatment services. The company's reputation depends on demonstrating its commitment to respect human rights standards, contribute to peace-building in Colombia and fulfil its corporate responsibilities.

In line with the results of this study, recommendations were formulated to the company. Summarizing, we recommend the company to further implement the recommendations formulated by the Ideas for Peace Foundation, and to intensify the due diligence in matters related to transparency, corporate management, security and human rights, land use and tenure and indigenous territorial rights, and environmental management.

Recommendations to Ecopetrol, Colombian state entities, IFC and home state governments have been formulated as well.

Endnotes

- 1 Ecopetrol. Respuesta al borrador del informe remitido por SOMO-Indepaz el 17 de agosto de 2016, recibida por correo electrónico el 1o de septiembre de 2016.
- 2 DNP. Petróleo en el cambio para construir la paz. En: Mares, A. Petróleo en las Conversaciones de paz. Bogotá : INDEPAZ – Mandato Ciudadano por la paz, 1999.
- 3 Earnings before interest, taxes, depreciation and amortization
- 4 PWC. Radicación bajo la CCAA. [online]. (30 May 2016); Available at: http://www.pwc.com/ca/en/car/pacific/assets/pacific-014_042716.PDF (consulted on 11 May 2016).
- 5 In 2014, Colombia included Panama in the list of tax havens
- 6 CEPEDA, Iván. Convenios entre empresas del sector minero energético y la fuerza pública: ¿Cuál es el papel de la fuerza pública en el posconflicto armado?. This document was originally presented in the debate in Commission II of the Senate on 3 November 2015 and was given to SOMO-Indepaz afterwards.
- 7 Técnicas de Desalinización de Aguas S.A., branch of the Grupo Actividades de Construcción y Servicios S.A.

Colophon

Authors:

SOMO: Karlijn Kuijpers, Mark van Dorp

INDEPAZ: Camilo González Posso, Yamile Salinas Abdala

Support during the research: Natalia Duarte Cáceres,
Juan Felipe Harman, Leonardo González Perafán,
Pedro Juan Munar Huertas

Text editor: Sara Shields

Layout: Frans Schupp

Photo: SOMO

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Stichting Onderzoek Multinationale Ondernemingen
Centre for Research on Multinational Corporations

Sarphatistraat 30

1018 GL Amsterdam, The Netherlands

T: +31 (0)20 639 12 91 – F: +31 (0)20 639 13 21

info@somo.nl – www.somo.nl

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Instituto de Estudios para el Desarrollo y la Paz

Calle 62 No. 3b-70 Bogotá, Colombia

T: +571 2258672 – F: +571 22552679

www.indepaz.org.co

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