

Reconquering and dispossession in the Altilanura

The case of Poligrow



SOMO & INDEPAZ

Colophon

Reconquering and dispossession in the Altillanura

The case of Poligrow in Colombia

November 2015

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The Centre for Research on Multinational Corporations (SOMO) is an independent, not-for-profit research and network organisation working on social, ecological and economic issues related to sustainable development. The organisation has been investigating multinational corporations and the consequences of their activities for people and the environment around the world since 1973.

The Institute for Development and Peace (INDEPAZ) is a non-profit organisation that focuses on education and investigation and aims to create spaces for dialogue and discussion between grassroots organisations, institutions, and International allies. For 15 years, INDEPAZ has been working on topics related to development and peace. Over these years, INDEPAZ has developed the capacities of organisations – focusing on ethnic and youth groups – and has been working on multi-actor dialogues including companies, unions, governments, parties and social organisations.

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Acronyms

ACCU	Peasant Self-Defence Forces of Córdoba and Urabá (Autodefensas Campesinas de Córdoba y Urabá)
ACCIÓN SOCIAL PPTP	Social Action – Project of Land and Patrimony Protection (Proyecto de Protección de Tierras y Patrimonio)
ACMV	Peasant Self-Defence Forces of Meta and Vichada (Autodefensas Campesinas del Meta y Vichada)
ANDI	National Business Association of Colombia (Asociación Nacional de Industriales)
ANM	National Mining Agency (Agencia Nacional de Minería)
ASOAGROMAPI	Association of Small Farmers of Mapiripán (Asociación Agropecuaria de Productores de Mapiripán)
ASOBANCARIA	The Banking Association (Asociación Bancaria y de Entidades Financieras)
AUC	United Self-Defence Forces of Colombia (Autodefensas Unidas de Colombia)
BACRIM	Criminal Gangs (Bandas Criminales)
IDB	Inter-American Development Bank
BIP	Poligrow Informative Bulletins (Boletines Informativos de Poligrow)
CIF	Forestry Incentive Certificate (Certificado de Incentivo Forestal)
CGR	Office of the Comptroller General (Contraloría General de la República)
IACHR	Inter-American Commission on Human Rights
ICRC	International Committee of the Red Cross
CIJP	Inter-Church Justice and Peace Commission (Comisión Interclerical de Justicia y Paz)
CMAPD – CMJT	Municipal Committees for Assistance to the Displaced Population (Comité Municipal de Atención a la Población Desplazada) Municipal Committees of Transitional Justice (Comité Municipal de Justicia Transicional)
CNMH	National Centre for Historical Memory (Centro Nacional de Memoria Histórica)
CONPES	National Council on Economic and Social Policy (Consejo Nacional de Política Económica y Social)
CORMACARENA	Corperation for the Sustainable Development of the Special Management Area of Macarena (Corporación para el Desarrollo Sostenible del Área de Manejo Especial la Macarena)
COP	Colombian Pesos (Pesos colombianos)
CSJ	Supreme Court of Justice (Corte Suprema de Justicia)
CSR	Corporate Social Responsibility
CTA	Associated Work Cooperative (Cooperativa de Trabajo Asociado)
DANE	National Administrative Department of Statistics (Departamento Nacional de Estadística)
DIAN	National Tariffs and Taxes Directorate (Dirección Nacional de Impuestos Nacionales)
DNE	National Narcotics Directorate (Dirección Nacional de Estupefacientes)
DNP	National Planning Department (Departamento Nacional de Planeación)

ELECTRIMAPIRI S.A E.S.P	Electrical Plant of Mapiripán, Incorporated Company of Public Services (Electrificadora de Mapiripán Sociedad Anónima Empresa de Servicios Públicos)
E.T.A.	Associative Work Organisations (Empresa Asociativa de Trabajo)
EOT	Territorial Planning Scheme (Esquema de Ordenamiento Territorial)
ERPAC	Popular Revolutionary Anti-Communist Army of Colombia (Ejército Revolucionario Popular Anticomunista de Colombia)
FAO	Food and Agriculture Organisation of the United Nations
FARC	Revolutionary Armed Forces of Colombia (Fuerzas Armadas Revolucionarias de Colombia)
FEDEPALMA	National Federation of Palm Growers (Federación Nacional de Cultivadores de Palma)
FISCALÍA	Office of the Attorney General of the Nation (Fiscalía General de la Nación)
FIP	Ideas for Peace Foundation (Fundación Ideas para la Paz)
HA	Hectare
IACHR	Inter-American Court of Human Rights
IGAC	Geographic Institute Agustín Codazzi (Instituto Geográfico Agustín Codazzi)
IIRSA	Initiative for the Integration of the Regional Infrastructure of South America (Iniciativa de Integración de Infraestructura Suramericana)
INCODER	Colombian Institute of Rural Development (Instituto Colombiano de Desarrollo Rural)
INCORA	Colombian Institute for Agrarian Reform (Instituto Colombiano de la Reforma Agraria)
INDEPAZ	Research Institute for Development and Peace (Instituto de Estudios para el Desarrollo y la Paz)
INVIAS	National Roads Institute (Instituto Nacional de Vías)
IPSE	Planning and Promotion Institute for Energy Solutions (Instituto de Promoción de Soluciones Energéticas)
IVA	Value-added tax (Impuesto al Valor Agregado)
MADR	Ministry of Agriculture and Rural Development (Ministerio de Agricultura y Desarrollo Rural)
MAPP-OEA	Mission to Support the Peace Process in Colombia of the Organization of American States (Misión de Apoyo al Proceso de Paz en Colombia de la Organización de los Estados Americanos)
Mlm	Millions
MRE	Ministry of Foreign Affairs (Ministerio de Relaciones Exteriores)
OECD	Organisation for Economic Cooperation and Development
OCHA	United Nations Office for the Coordination of Humanitarian Affairs
ILO	International Labour Organisation
UN	United Nations
UNDP	United Nations Development Programme
NCP	National Contact Point
RSPO	Roundtable for Sustainable Palm Oil
SAE	Special Assets Corporation (Sociedad de Activos Especiales)
S.A.S. – SAS	Simplified Stock Corporation (Sociedad por Acciones)

	Simplificada)
SENA	National Training Service (Servicio Nacional de Aprendizaje)
SICAR	Venture Capital Investment Company
SNR	Superintendency of Notaries and Recording (Superintendencia de Notariado y Registro)
SOMO	Centre for Research on Multinational Corporations
SUPERSOCIEDADES	Superintendence of Companies (Superintendencia de Sociedades)
TSJP	Superior Court of Bogotá Peace and Justice Chamber (Tribunal Superior de Bogotá Sala de Justicia y Paz)
TSRT	Superior Court of the Cúcuta District – Civil Chamber specialised in Land Restitution (Tribunal Superior del Distrito Judicial de Cúcuta – Sala Civil especializada en Restitución de Tierras)
UAF	Family Agricultural Unit (Unidad Agrícola Familiar)
UARIV	Unit for the Comprehensive Attention and Reparation of Victims (Unidad para la Atención y Reparación Integral a las Víctimas)
UIAF	Investigation and Financial Analysis Unit (Unidad de Investigaciones y Análisis Financiero)
UNODC	United Nations Office on Drugs and Crime (Oficina de Naciones Unidas contra la Droga y el Delito)
U.S.	United States
URT	Land Restitution Unit (Unidad de Restitución de Tierras)

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Executive Summary

For over 50 years now Colombia has been ravaged by an ongoing civil war. Massacres, selective killings, forced disappearances and other violations of human rights and international humanitarian law have provoked the forced displacement of more than six million people. In total, more than eight million hectares have been abandoned by or removed from their small-scale farms or their indigenous or Afro-descendant communities. The production and trafficking of drugs has further fed the conflict and has fostered crimes such as money laundering. Money is regularly laundered through the acquisition and accumulation of land. Large-scale economic projects such as the production of palm oil, that legalise forced displacement and have consolidated an unequal, discriminatory, exclusive and undemocratic rural economic model contribute to the fragility.

The above-mentioned details are even more critical in regions such as the Altiplanura that have historically had a large FARC presence, and where narcotraffickers, diamond dealers, paramilitary personnel have established a criminal empire to process and traffic cocaine and launder the proceeds. In this region, the heirs of these armed groups, the BACRIM (criminal gangs) continue to fight for control of both licit and illicit businesses.

This, together with a weak State presence, corruption, informal land rights and high levels of poverty and vulnerability, increase the risks for multinationals that wish to operate in these areas. Therefore, companies have the responsibility to apply advanced due diligence to ensure that they do not infringe on national laws and to ensure that they do not cause, contribute or become directly linked to adverse human rights impacts. Companies should publicly state that they respect human rights, irrespective of possible incongruences with public policies such as the so-called *Reconquering of the Altiplanura*.

These responsibilities are part of the OECD Guidelines for Multinational Enterprises that form part of the OECD Declaration on International Investment and Multinational Enterprises, adopted by the Colombian government because of its aspirations to become a member of the OECD. The Ministry of International Trade, where the National Contact Point is located, has the responsibility to diffuse and support the implementation of the *OECD Guidelines*. These Guidelines are consistent with UN human rights instruments and the *UN Guiding Principles on Business & Human Rights*.

SOMO and INDEPAZ executed a case study about the Poligrow *Research + Green Oils* case that shows the complex corporate structure of Poligrow in Mapiripán, one of the municipalities in the Altiplanura. The analysis focuses on six chapters of the *OECD Guidelines* and analyses to what extent Poligrow complies with these standards that the company claims to have 'adopted' in 2012. SOMO-INDEPAZ have found that Poligrow has not adopted an enhanced due diligence procedure to make sure that the company or its strategic allies do not infringe on human rights or violate other *OECD Guidelines*. The main problems encountered by the investigators have to do with community engagement, dialogues and participation with the communities; transparency of its corporate structure, shareholders and financial situation and tax policies on the national and international level; acquisition of land; free, prior and informed consent of indigenous peoples; labour rights; and issues related to the environment and natural resources. Therefore, recommendations have been formulated for Poligrow, government authorities, the National Federation of Palm Oil Producers (Fedepalma) and the Roundtable on Sustainable Palm Oil (RSPO).

1. Introduction

One of the objectives of SOMO and INDEPAZ is to contribute to the monitoring of the policies or standards of international or multilateral organisations so that private companies prevent, avoid, and remedy human rights abuses, especially in countries that are in situations of conflict, post-conflict, or violence, such as Sierra Leone, Liberia, South Sudan, the Democratic Republic of Congo and Colombia.

Colombia aspires to become a member of the OECD, which currently consists of 34 countries, including two in Latin America (Chile and Mexico). One of the first steps toward membership was to in 2011 sign on to the “Declaration on International Investment and Multinational Enterprises”, included in which are the *Guidelines for Multinational Enterprises* (from here on referred to as the *Guidelines*).

After having identified agroindustrial multinationals headquartered in OECD countries with investments in the Colombian Altillanura region, SOMO-INDEPAZ decided to conduct a case study on the oil palm project Poligrow *Research + Green Oils* (from here on referred to as Poligrow), which gave insight into the complicated corporate network of Poligrow in the Mapiripán municipality, in the department of Meta.

Explanation of the programme

This report is published as part of SOMO’s programme on Multinational Corporations in Conflict Affected Areas. This four-year programme, funded by the Dutch Ministry of Foreign Affairs, aims to empower local NGOs and communities to critically analyse the impact of the private sector in conflict-affected areas and to ensure that companies are held to account for corporate misconduct. The programme aims to influence policies at various levels to ensure that multinational enterprises and their suppliers make a positive contribution to post-conflict reconstruction.

Goal of the report

With this report, SOMO-INDEPAZ seek to contribute to the implementation of the *Guidelines* using various recommendations aimed at fostering responsible corporate conduct of transnational corporations operating in Colombia, taking into account the special risks of operating within a conflict-affected country, aiming to overcome these risks and making sure that corporations benefit the local communities.

Target audience

This report is primarily directed towards Colombian politicians, law enforcers and civil servants. We expect this report will help them to investigate Poligrow and other corporations, and to better ensure that corporations are being held to account. Also, this report targets Poligrow and other corporations linked to Poligrow, as we hope that this report will help them to improve their corporate conduct. This report further serves to inform international organisations such as the OECD, RSPO, UN, OAS and others about the risks of investments in the palm oil sector in Colombia. This report further serves to inform (inter)national civil society organisations. Another target audience is the general public of both Colombia and Europe. We hope that the general public becomes more aware of the risks of private sector investment in Colombia. For this purpose, we have written two briefing papers based on this research report: one for the Colombian, and one

for the European public. This research report serves to provide background information for the briefs.

Structure of the report

The report will commence with an explanation of the *Guidelines* and other international corporate and human rights standards, and national standards that are being used for the analysis of the case study, as well as the methodology employed in the investigation.

The report will then describe the context of the Atillanura region, the location of the Mapiripán municipality, and of the agroindustrial project Poligrow. It has been affected by serious violence over the past decades and is still being affected by armed groups. This area is the epicentre of national and foreign investments such as the accumulation of land by economic actors that develop large-scale economic projects. Since the massacre of June 1997, which led to the involvement of the United Self-Defence Forces of Colombia (*Autodefensas Unidas de Colombia*, or AUC, in Spanish), it has become a symbol of horror and barbarity, with both legal and illegal actors colluding in the committing of multiple homicides and other grave crimes, which have led to forced displacements, and the abandoning and expropriation of lands and ethnic territories that later became palm cultivation project sites, used as a mechanism of territorial control and the laundering of assets.

The report continues on to a description of the project Poligrow *Research + Green Oils*, which aims to plant 15 thousand hectares on land controlled by Poligrow and its local allies by 2015, alongside the operation and construction of extraction plants and a special free trade zone.

The report then analyses the Poligrow operation in light of the *OECD Guidelines*. In particular, the business operations will be described in relation to the *Guidelines'* General Principles, guidelines for the disclosure of corporate information, human rights, labour relations, and environmental issues. We will focus specifically on community relations, dialogue and participation; the company's corporate network, including its corporate structure and its financial and juridical service providers; and the human rights impacts of the large-scale acquisition of (indigenous) land.

Finally, conclusions and recommendations are provided for Poligrow and Colombian state entities, which reaffirm the need for the state and the multinational corporations to take the *high risk areas* classification (areas strongly affected by the conflict that have high human rights risks) very seriously, and to evaluate probable impacts on the rights of the communities, employees and partners.

The text also includes annexes, background documents and other source materials. Further background material is provided on the SOMO and Indepaz websites.

Minor corrections have been made since the initial publication of this text on 3 November 2015. This is will be explained in the methodology section.

2. Guidelines, legal framework, and methodology

2.1. International Instruments

OECD Guidelines

The OECD has created more than 230 instruments (accords, standards and recommendations) that establish best practices, which aim for countries to adopt “better policies to improve the well-being of the citizens”. Among these are the *OECD Guidelines for Multinational Enterprises*, which are part of the “OECD Declaration on International Investment and Multinational Enterprises”, adopted in May 2011.¹

The *Guidelines* are recommendations formulated by governments for companies, in order to build mutual trust between companies and the communities in the areas in which they operate, one of the goals being to encourage contributions to sustainable development. The recommendations fall under the following chapters:

- ❑ General policies
- ❑ Disclosure
- ❑ Human rights
- ❑ Employment and industrial relations
- ❑ Environment
- ❑ Combating bribery, bribe solicitation and extortion
- ❑ Consumer interests
- ❑ Science and technology
- ❑ Competition
- ❑ Taxation.²

In order to promote this code of corporate conduct, the Colombian government established the National Contact Point (NCP) in the Ministry of Foreign Trade, which, among its various functions, handles complaints related to the noncompliance of the Guidelines by multinational companies that operate in Colombia. Additionally, the Business Advisory Committee was formed, which is made up of representatives from the corporate sector, the labour unions, non-governmental organisations, and academics.³

United Nations Instruments

The *Guidelines* and other OECD instruments use the Business and Human Rights standards of the UN, such as the Global Compact,⁴ the “Protect, Respect and Remedy” framework, and the “Guiding Principles on business and human rights” (*Guiding Principles*)⁵, as well as conventions

¹ OECD, 2011.

² Ibid.

³ Industry, Business, and Tourism Ministry. Resolution 3879 from 4 September, 2013. Colombia participates in 23 OECD committees and accepted the revision of 14 policy areas, such as economic development, investment, commerce, and regulatory policy. See also: “Ingreso y adopción de estándares OCDE” en Capítulo IX. Buen Gobierno de las Bases del National Development Plan 2014-2018 (DNP, 2015).

⁴ UN, 1999-a. Recognises 10 principles regarding human rights, labour, the environment, and the fight against corruption.

⁵ UN, 2008 and 2011.

against the production and trafficking of narcotics, money laundering and the financing of terrorism, corruption, and organised crime.⁶

In countries like Colombia, these instruments should work together with: i) international human rights standards, ii) the *Voluntary Principles on Security and Human Rights* of the International Committee of the Red Cross (ICRC), which give indications for business practices in situations of armed conflict,⁷ iii) the *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of Food Security* of the UN Food and Agriculture Organization (FAO),⁸ and Convention 169 on indigenous and tribal peoples in independent countries of the International Labour Organisation (ILO).⁹

According to these standards, the Colombian government has the duty to protect against abuses from third parties, including companies, and prevent, investigate, and sanction operations that infringe on human rights. This implies adopting adequate policies to support investment with the vision that the business operations will contribute to well-being and peace building, and to avoid involvement in human rights abuses, conflict, or complicity with or profit from violent contexts linked to illicit economic activity.

For their part, multinationals operating in *high-risk* areas (known as *zonas rojas*) due to internal armed conflict, have the responsibility to respect human rights. These companies have the responsibility to exercise *due diligence* – “conduct through which enterprises not only guarantee compliance with national laws, but also minimize the risk of causing damages to human rights, and aim to avoid this,”¹⁰ avoid situations of *complicity* – “indirect participation in human rights abuses by governments and non-state actors,”¹¹ and to accept the responsibility to respect human rights, “independent of the duties of the State”, and of “inconsistent” public policies aimed at attracting investments.¹²

Unacceptable practices in the field of business and human rights and international humanitarian law include the use of security systems and measures of control to impose conditions and/or take advantages of weaknesses of the State and societies immersed in situations of violence, in order to obtain favourable business conditions or flexibility that would be unacceptable in the countries of origin of the enterprise or according to international standards. Other unacceptable practices include tax evasion or avoidance, the financing of terrorism, corruption and asset laundering. These activities not only distort the economy and threaten national security; they also put enterprises at risk for legal and economic sanctions, and damage their reputation.

In addition, it is common that multinational enterprises use tax havens for banking secrecy and take advantage of special norms for non-residents in order to relocate profits and reduce tax payments, and/or take advantage of tax reductions or exemptions offered by developing countries aiming to attract foreign investors.

To counteract these practices and to be admitted into the OECD, the Colombian government signed on to the Convention on Combating Bribery of Foreign Public Officials in International

⁶ UN, 1988, 1999, 2002 and 2003.

⁷ ICRC, s.f. See: International Alert, 2005, “Conflict-Sensitive Business Practice for the Extractive Industry”.

⁸ See: FAO, 2012.

⁹ ILO, 1989.

¹⁰ UN, 2008.

¹¹ Ibid.

¹² Horizontal inconsistency refers to situations in which “entities of the economic sector act in contradiction to the obligations of the State regarding human rights and the organisations charged with meeting them” whereas vertical inconsistency refers to situations when governments make commitments regarding human rights matters without taking into account their application. (Ibid).

Business Transactions and to the Convention on Mutual Administrative Assistance in Tax Matters (Laws 1573 of 2012 and 1661 of 2013), which are considered to be effective instruments in combating corruption, manipulation, and practices often used by multinationals to minimise taxation (tax evasion and avoidance). Toward this aim, Colombia forms part of a working group of the Anti-Bribery Convention and participates in the application of the standard for the Automatic Exchange of Information (AEOI),¹³ and the “Action Plan on Base Erosion and Profit Shifting” (BEPS).¹⁴ It also adopted fiscal and monetary policy recommendations from the OECD and the *Money Laundering Awareness Handbook for Tax Examiners and Tax Auditors of 2009*.¹⁵

The government is currently analysing the *Review of Agricultural Policies* recommendations presented by the OECD in March 2015¹⁶ and has adopted the “OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-affected and High Risk Areas”.¹⁷

International Instruments

United Nations

- ✓ *Global Compact*
- ✓ *Guiding Principles on Business and Human Rights. Implementing the United Nations “Protect, Respect, and Remedy” framework*
- ✓ *Declaration on the Rights of Indigenous Peoples*
- ✓ *Convention against Transnational Organized Crime and its protocols*
- ✓ *International Convention for the Suppression of the Financing of Terrorism*
- ✓ *Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*
- ✓ *Guiding Principles on Internal Displacement*
- ✓ *Housing and property restitution in the context of the return of refugees and internally displaced persons*

OECD

- ✓ *Declaration on International Investment and Multinational Enterprises*
- ✓ *Guidelines for Multinational Enterprises*
- ✓ *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*
- ✓ *Convention on Mutual Administrative Assistance in Tax Matters*
- ✓ *Money Laundering Awareness Handbook*

ICRC

- ✓ *Voluntary Principles on Security and Human Rights*

FAO

- ✓ *The Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security*

ILO

- ✓ *Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries*

2.2. Internal regulations

National, foreign and multinational enterprises must act in line with the framework of the Political Constitution and national regulations. The former is especially relevant regarding the promotion and growth of foreign investment in Colombia, particularly since 2002.¹⁸ Due to the persistence of armed conflict, drug trafficking, corruption, poor governance or total lack thereof, multinationals

¹³ Adopted during the meeting of the “Global Forum on Exchange of Information and Transparency for Tax Purposes” in October of 2014. See: OECD, 2014-a.

¹⁴ See: OECD, 2014 and DIAN, 2014, “Colombia lidera en américa latina lucha contra la evasión fiscal de multinacionales” and MHCP, 2015, “Combatir la evasión fiscal es importante para el desarrollo de los países: MinHacienda”.

¹⁵ OECD, 2009, “Que hay que saber sobre el blanqueo de capitales. Guía para el Control Fiscal”.

¹⁶ In developing the Convention signed by the OECD and the Ministry of Agriculture and Rural Development and the payment of EU 140,000 to this organ, 45 working sessions were conducted with the MADR and other governmental entities related to the agricultural sector such as unions, associations of producers, universities and NGOs.

¹⁷ OECD, 2013-a.

¹⁸ “Investor Confidence” was one of the main focuses of the Democratic Security Policy and Development Plans 2002-2006 and 2006-2010 and the land recovery policy of the National Development Plan of 2010-2014. With the internationalisation of the economy, Colombia signed various agreements such as the free trade agreements with the United States (Law 1166 of 2007) and the European Union and Peru (Law 1669 of 2013). It also signed bilateral agreements for the protection of foreign investment with Spain (Law 1069 of 2006), Switzerland (Law 1198 of 2008), the UK and Northern Ireland (Law 1464 of 2011) and other countries. See: MRE, 2015.

investing in Colombia should pay special attention to the themes outlined in this report to avoid risking involvement in human rights abuses.

In the first place, the internal framework clearly defines three social and economic aspects that are particularly sensitive to business activities: i) land use and acquisition; ii) labour management; and iii) protection and conservation of the environment and natural resources.

Regarding land use and acquisition, the unlawful transfer of property ownership (fraudulent transfers, unlawful securitisations, and lack of clarity over administrative or judicial extinction of ownership processes)¹⁹ are prohibited. It is also forbidden to occupy ancestral ethnic lands, whether they are recognised as reserves or not, or to acquire untitled public lands (*baldíos*, in Spanish) in excess of the Family Agricultural Unit (UAF), because this public land is destined for land redistribution and for displaced victims of the conflict (Laws 21 of 1991, 135 of 1961, 4 of 1973 and 160 of 1994, and Resolution Incora 041 of 24 September 1996).

Moreover, given the context of forced displacement in Colombia, measures have been adopted to provide comprehensive reparations to victims, which means juridical and/or material restitution of the land they were forced to abandon or which was dispossessed from them, in line with applicable human rights standards (Law 1448 of 2011, known as the Law of Victims and Land Restitution, and Decree Law 4633 of 2011, of Reparation and Restitution of lands to indigenous communities and peoples).²⁰ Similarly, businesses must “diligently, systematically and completely avoid any formal business transactions on land in which the land rights of victims of the conflict have been affected”.²¹ In the same way, it is the duty of businesses to certify their good faith exempt from culpability in the purchase and use of land for their business operations.

Regarding labour, and taking into account institutional weakness in the peripheral regions, companies must apply extreme measures of transparency and *due diligence* in order to guarantee decent and dignified labour conditions free from discrimination, whether this labour is directly linked to the organisation or through third parties (Labour Code and ILO standards).

In relation to protection and conservation of the environment and natural resources, companies have the duty to obtain the necessary environmental licenses and permissions prior to any operation, and to adopt the necessary measures required by the relevant authorities (Law 99 of 1993).

On the other hand, the existence and rise of underground economies²² and their corrupting influence obliges businesses to adopt measures of “advanced due diligence” to prevent being used for or participating directly or indirectly (“contagion risk”) in rights abuses, money laundering, financing of terrorism, or tax avoidance or evasion (Commercial Code and Laws 222 of 1995, 488 of 1998, 1121 of 2006 and 1708 and 1739 of 2014).²³ In this regard, the Superintendence of Companies, the Investigation and Financial Analysis Unit (UIAF) and the National Banking Association (Asobancaria) promote self-monitoring systems and risk management systems against money laundering and the financing of terrorism, which involve, among other elements, information

¹⁹ See: glossary definitions.

²⁰ These international standards include the “Guiding principles on Internal Displacement” and the “Housing and Property Restitution in the Context of the Return of Refugees and Internally Displaced persons” (UN, 1998 and 2005).

²¹ FIP, 2014.

²² The underground economy includes illegal activities, such as the production and drug trafficking and related activities, and productive activities which, despite their legality, involve actions of invasion and elusion on the edge of legality (Arango, López & Misas, 2005, “Economía subterránea en Colombia 1976-2003: Una medición a partir de la demanda de efectivo [Underground Economy in Colombia 1976-2003: A Measurement Starting from the Demand of Capital]). See also: U.S. Department of State, 2015-a, Portafolio.co, 2013, “Lavado de activos, el flagelo que azota a Colombia”, Revista Dinero, 2013-a, “Huellas de lavado”.

²³ Supersociedades, 2014.

about merchants, clients and workers,²⁴ and the 24 classifications of hiding illicitly-obtained funds in the legal economy.²⁵

Labour and business organisations aiming for business practices that respect human rights promote initiatives such as the *Whitebook on Businesses and Human Rights in Colombia* (Libro Blanco sobre Empresas y Derechos Humanos en Colombia) and the *Guide for the Purchase and Acquisition of Land Rights and Land Use Rights* (Guía para la compra y la adquisición de derechos sobre la tierra y derecho de uso) of the Ideas for Peace Foundation (FIP)²⁶ and the *National Interpretation of Principles and Criteria* of the Roundtable for Sustainable Palm Oil (RSPO), which was launched in Colombia by the National Federation of Palm Cultivators (Fedepalma).²⁷

National Regulations

- ✓ *Political Constitution*
- ✓ *Law 200 of 1936. Land Regimen*
- ✓ *Law 135 of 1961. Social agrarian reform and creation of Incora*
- ✓ *Law 4 of 1973. Modifies Law 200 of 1933, 135 of 1961 and 1 of 1968*
- ✓ *Law 30 of 1986. National statute on narcotics*
- ✓ *Law 21 of 1991. Approves Convention 169 on indigenous and tribal peoples of the ILO*
- ✓ *Law 99 of 1993. Management and conservation of the environment and renewable resources*
- ✓ *Law 160 of 1994. Agrarian reform and rural agricultural development*
- ✓ *Law 222 of 1995. Commercial code*
- ✓ *Law 387 of 1997. Prevention, attention, protection, consolidation y socioeconomic stabilisation of persons displaced by violence*
- ✓ *Law 488 of 1998. Tax matters*
- ✓ *Law 975 of 2005. Reinsertion of members of armed groups on the edge of the law – justice and peace*
- ✓ *Law 1121 of 2006. Prevention, detection, investigation and sanction of the financing of terrorism*
- ✓ *Law 1258 of 2008. Creates the Simplified Stock Corporation*
- ✓ *Law 1274 of 2009. Valuation procedure for oil industry easements*
- ✓ *Law 1429 of 2010. Formalisation and generation of employment*
- ✓ *Law 1448 of 2011. Attention, assistance and comprehensive restitution to victims*
- ✓ *Law 1581 of 2012. Protection of personal information*
- ✓ *Law 1708 of 2014. Codifies the extinction of the right of property*
- ✓ *Law 1739 of 2014. Taxation statute*
- ✓ *Law Decree 4633 of 2011. Comprehensive reparations and restitution of land rights to victims from indigenous peoples and communities*
- ✓ *Decree 1300 of 2003. Creates Incoder*
- ✓ *Decree 599 of 2012. Regulates micro-focalisation for land restitution*

2.3. Methodology

This research combined a variety of methods including: interviews, focus groups, field visits to the Mapiropan municipality and workshops. All of these cases involved the careful selection of local actors; state employees working at the national, departmental, regional and local levels; representatives of the company; members and authorities from ethnic communities; social organisations; victim organisations; the Catholic Church; international and labour organisations and journalists.

²⁴ Supersociedades, 2014, UIAF, 2014 and Asobancaria, 2009.

²⁵ According to the UIAF, 80% of the categorisations related to money laundering in the real sector and 20% in the financial sector.

²⁶ FIP, 2012 and 2014.

²⁷ RSPO, 2013 and FEDEPALMA, 2014.

Interviews

Interviews were conducted during the months of May, June, and July 2014 in Bogotá, Villavicencio and Mapiripán. Interviews were held with the following types of organizations or groups::

- ❑ public sector
- ❑ business sector
- ❑ community members
- ❑ non-governmental organisations
- ❑ academia
- ❑ media

In total, 34 people were interviewed. Due to security reasons, neither the names nor the organisations can be disclosed in this report. The interviews focussed on the perceptions around the company Poligrow, principally focusing on the regional context, problems associated with human rights, conflict, the environment and labour relations (Annex 1. List of interviews, meetings, and workshops).

During the research process, the SOMO-INDEPAZ team conducted 5 interviews with Poligrow's legal representative; in July, August, and September 2014, and February 2015. At the same time, the team visited Mapiripán, where they became acquainted with the Poligrow facilities in the town and made contact with the engineers and the Poligrow Foundation in this municipality, and visited the plantation *Los Macondo* with them in July 2014.

Interviews were also conducted in Bogotá with the head of the National Contact Point (NCP) of the Ministry of Industry, Business, and Tourism, a representative from academia and a private sector representative from the advisory committee of the NCP and journalists from the websites *VerdadAbierta.com* and *lasillavacia.com*. Interviews were also carried out with former congressional representatives, and civil servants from the Superintendence of Companies, the General Comptroller of the Republic, Fedepalma, the FIP (Federation Ideas for Peace) and Solidaridad Network. In addition, various experts and organizations have been contacted to provide advice or analysis on the research methodology, process and the local and national context.

In addition to the interviews, three focus group discussions were conducted: the first two in June 2014 in Villavicencio, the capital of Meta, where most of the victims of forced displacement relocated following the massacres in Mapiripán, with representatives of the UN Office of the High Commissioner for Human Rights, the United Nations Office for the Coordination of Humanitarian Affairs, and the Mission to Support the Peace Process in Colombia of the Organization of American States (MAPP-OEA), which, in July of the same year, carried out a municipal consultation in Mapiripán with communities, indigenous authorities from the Sikuani and Jiw peoples, community leaders, employees and former employees of Poligrow and local farmers. In August 2014, SOMO-INDEPAZ held meetings in Bogotá with entities such as the Meta Regional Ombudsman and international organisations. During that same month, the research team visited the indigenous settlement of Sikuani, in the town centre of Mapiripán, and the territory *Las Zaragozas*, provisional seat of the Jiw community.

Due to the dangerous situation in Mapiripán, the researchers faced some challenges when conducting interviews or group discussions. Some people in the communities were afraid to talk in the open and thus some of the interviews were held in people's homes. It was difficult to organise group discussions because community members were afraid they were being watched or listened to and there was a fear about speaking in public. These problems have been mitigated by

engaging in informal conversations with the affected people, by coming back several occasions in order to generate trust, and by anonimising the people we talked to.

Document research

At the same time, documents from public organs, human rights, labour, and academic organisations were revised and analysed, as well as company constitution certificates, legal representation certificates, and certificates of conveyance and clearance for property registration, both emitted in Colombia and abroad. The websites of RSPO, Poligrow and other companies in the corporate network were scrutinized. Also, the research team analysed Poligrow's internal analysis of its compliance with the *Guidelines*, as well as their internal protocols for communication with the indigenous Jiw population. The research team also analysed the Poligrow online bulletins. Moreover, official information requests were submitted to public entities as part of the investigation (Annex 2. Information requests to public entities and responses) and national and international databases were consulted.

Comments on draft report

In November 2014, the first version of this report was sent to the Poligrow's legal representative,, Mr. Vigna Taglianti, who provided 99 comments on the text (included in the section "Observations on the Preliminary Report"). In order to obtain better information and more clarity about the observations, SOMO-INDEPAZ sent a list of 28 questions to Poligrow on 8 December 2014, explaining that: i) the research team is gathering primary source information (contributions from civil servants, labour organisation leaders, farmers and indigenous peoples, those employed by the company, among others) and secondary source material (public and private documents from various institutions and from the company, as well as news articles from the media and civil society organisations, among others), and ii) that the information received from the actors and analysed by SOMO-INDEPAZ carries the same weight and thus the information provided by actors from outside of the company were not considered just "rumours", as stated by Poligrow (Annex 2. Letter from SOMO-INDEPAZ to Poligrow sent by email 8 December 2014).

In the company's response to the questionnaire, received 22 December 2014, the primary sources were said to be "malicious remarks" and the news reports used in the research were called "manipulations". Poligrow's legal representative further argued that the research threatened to harm the good will and reputation of the corporation, and that this could bring future consequences. The Poligrow representative did not specify what these "future consequences" would be (ibid).

In this report, SOMO and INDEPAZ have included Poligrow's statements and have compared these with observations and commentaries from other sources. This ensured that SOMO-INDEPAZ provided various perspectives in the report.

We include an overview of all communication with Poligrow in Annex 3, and the correspondence with Poligrow can be found on the SOMO and INDEPAZ websites. Responses provided by verdadabierta.com and the Inter-Church Justice and Peace Commission (CIJP) to the questionnaires sent by SOMO-INDEPAZ can be found in Annex 4 and 5 (Responses from verdadabierta.com received 21 January 2015; Responses from verdadabierta.com received 13 February 2015).

This text also includes the observations and recommendations gathered in meetings with civil servants at the Mayor's office in Mapiripán, public consultations, civil society organisations, cooperatives, trade unions, and other actors in Mapiripán, Villavicencio and Bogotá in February 2015.

Similarly, this report contains information gathered between January and July 2015, in Colombia and other countries, about Serlick S.A., an associate of Poligrow Inversiones S.L., parent company of Poligrow Colombia, following Taglianti's recommendations "to investigate the company's partners in Uruguay".

In September 2015, SOMO-INDEPAZ gave Taglianti the opportunity to comment on the final revised text, but never received a response.

After the initial publication of this report on November 3, 2015,, SOMO-INDEPAZ received two letters from a lawyer representing Tito Tettamanti and Sterling Strategic Value Limited. After analysing their comments, two minor adjustments have been made concerning the role of Tito Tettamanti and Sterling Strategic Value Limited. These adjustments have been made on page 51 and 53 of the Spanish report. As the English report was released some weeks after the Spanish reports, these changes have directly been included in the English report, on pages 59 and 61.

3. Context and location of the *Poligrow Research + Green Oils Project*

The present chapter describes the context in which Poligrow operates. It includes a general analysis of Colombia and the Altillanura region. This region is considered Colombia's ultimate agricultural frontier, where large-scale economic projects are being supported and where narco-trafficking-related violence is ever-present. In this chapter, we will describe the region's social and economic context and the history of the conflict. Subsequently, this chapter will also include the economic, social and ethnic situation in the municipality of Mapiripán, Meta, and provides a context analysis of the forced displacement and land grabbing in the region as a result of massacres and other violations of human rights and international humanitarian law.

3.1. Colombia

Colombia exists in a situation of long-term internal armed conflict. Violence and massive, systematic attacks against the civil population have for the past 50 years been the primary means of conflict resolution.²⁸ Murders, massacres, forced recruitment, extrajudicial executions, and other war crimes and crimes against humanity forced more than 6 million people (15% of the population) to flee their homes.^{29 30} An estimated 87% of the victims of forced displacement – equal to one-third of the population of the Netherlands – have thus far migrated to rural areas, abandoning or being dispossessed of “more than 8.3 million hectares (358,937 land holdings)”.³¹

The conflict is fuelled by narcotics production. In 2014, coca leaf production for illicit use grew from around 90,000 hectares to 110,000 hectares and the potential production of cocaine hydrochloride from 290 to 442 metric tons.³² After the United States, Europe is the primary destination for the cocaine produced in Colombia, Peru and Bolivia.³³ In 2012, Spain was the principle point of entry and the home of criminal networks involved in the drug trade (Italian, Mexican and Colombian mafias).³⁴ Investigations in Italy such as the *Tiburón Galloway*, *Punto 50*, *Decollo y Meta 2010*³⁵ revealed relationships between La 'Ndrangheta and the trafficking of drugs produced in Colombia. One of the trafficking routes to the European continent uses the ports of Argentina and Brazil, passing through several African countries along the way.³⁶

Regarding this matter, prior to the ratification of the Trade Agreement between the European Union and its Member States, and Colombia and Peru,³⁷ SOMO had already issued warnings about the risks of illicit drug trafficking, money laundering and the evasion and avoidance of taxes, due to the absence of mechanisms that regulate and supervise illicit practices in the agreement.³⁸

²⁸ CNMH, 2013.

²⁹ UARIV, 2015.

³⁰ Colombia's population is 48,032,118 inhabitants (DANE, 2005).

³¹ CNMH, 2013.

³² UNODC, 2015.

³³ See: UNODC, 2013 and U.S. Department of State, 2015 and 2015-a.

³⁴ Parlamento Europeo, 2012, “Europa y América Latina: La lucha contra la droga y el narcotráfico”.

³⁵ See: Palmira, L., 2011, “Operazione Meta 2010”.

³⁶ Infobae, 2015, “Italia denunció que la droga que llega a Europa sale desde puertos de Argentina y Brasil”.

³⁷ Signed in Brussels, Belgium, 26 June 2012 and ratified in Colombia by the Law 1669 of 2013.

³⁸ See: SOMO, 2012, “Free Trade Agreement EU – Colombia & Peru: Deregulation, illicit financial flows and money laundering”.

The drug trade is associated with other forms of criminality, such as asset laundering, contraband and the trafficking of precursors (raw materials and other chemicals used to produce narcotics). According to Antonio María Costa, “narcotics trafficking became the main source of bank liquidity following the financial crisis of 2008”.³⁹ In 2012, the drug trade moved an estimated \$320 billion.⁴⁰ The ex-director of the UN Office on Drugs and Crime estimates that, “the entry of money derived from crime into the financial sector is so comprehensive that it would probably be more accurate to say that it was not the mafia trying to get into the banking system, but rather that the banking system had a strong interest in getting this criminally-raised capital, not only as deposits, but also by buying stocks in these companies, or even joining its Board of Directors”.⁴¹

In 2013, money laundering was equal to 3% of Colombia’s Gross Domestic Product (COP\$ 18 billion or \$6 million annually).⁴² To combat organised crime, corruption and illicitly obtained wealth, the Colombian government has adopted multiple measures without significant success,⁴³ such as aerial chemical fumigation, the extradition of drug traffickers, and the dismantling of the infrastructures of cocaine production, such as the processing factories, or *crystalizaderos*. Furthermore, Colombia participates in the Financial Action Task Force of Latin America (GAFILAT), set up the Investigation and Financial Analysis Unit (UIAF),⁴⁴ and reformed the law on extinction of property rights to capital, companies, and lands associated with narco-trafficking, illicit gathering of wealth, money laundering and the financing of terrorism.⁴⁵

Victims have been reclaiming their dispossessed goods and the Constitutional Court has declared these dispossessions to be proof of an “unconstitutional state”. According to this tribunal, the forced exodus was not only a collateral effect of the conflict between the Armed Forces and the illegal armed groups – the guerrillas, paramilitaries, and neoparamilitaries⁴⁶ – but is also connected to “economic interests of different agents acting on the land and territories” and the links between legal and illegal actors working together to take over lands and natural resources.⁴⁷

³⁹ See: Interview with Antonio María Costa, Spannaus, A., 2012, “Former UNODC Head Talks About Drugs in the World Banking System”.

⁴⁰ Asobancaria, 2012.

⁴¹ Ibid. Banking entities such as HSBC have been fined for facilitating the laundering of more than \$881 million by Mexican and Colombian cartels (Blickman, T., 2013, “Las deficiencias en la supervisión financiera posibilitan el lavado de dinero”). In 2015, the Geneva Tribunal in Switzerland began an investigation into this bank, based on documents analysed by the International Consortium of Investigative Journalists, in which they deny responsibility for helping clients to launder money and evade taxes. The list revealed by the project “Swiss Leaks” shows the names of 232 Colombian clients with Swiss HSBC accounts, which handled \$276.4 million (El Universal.mx, 2015, “Suiza abre investigación contra HSBC por lavado” and Caracol Radio, 2015-a, “Revelan el listado de los 286 colombianos con cuentas en el banco HSBC”).

⁴² *El Espectador*, 2013, “Lavado en Colombia es de \$18 billones anuales”.

⁴³ See: lasillavacia.com, 2013-b, “Luis Jorge Garay: ‘El sistema político no ha tomado la decisión de romper totalmente con la ilegalidad’” and Entrevista al ex director de la DIAN, Juan Ricardo Ortega, en: *verdad abierta.com* (2015) “Hay que buscar una salida razonable para los activos de las Farc”.

⁴⁴ It aims to prevent and detect “transactions that could be used as a means of hiding, management, investment, or use of any form of money or goods coming from delinquent activities or destined towards the financing of such activities, or to give the appearance of legality to delinquent activities or to funds connected to such activities” (Article 3 of Law 1121 of 2006).

⁴⁵ Law 1708 of 2014. The Office of the Attorney General approves processes of extinction of the right of ownership over lands and companies connected to corruption, money laundering, and illicit accumulation of wealth. These processes are carried out by the Special Assets Corporation (*Sociedad de Activos Especiales*, or SAE), which replaced the DNE.

⁴⁶ These insurgent groups include, among others, the Fuerzas Armadas Revolucionarias de Colombia (FARC), the oldest guerrilla force on the continent, and the Ejército de Liberación Nacional (ELN). Although, between 2003 and 2006 more than 30,000 members of the self-proclaimed Autodefensas Unidas de Colombia (AUC) were demobilised, their successors, named criminal gangs by the government, continue to be active (BACRIM).

⁴⁷ Corte Constitucional, Autos 004 de 2009, 005 of 2009 and 219 of 2011 in development of Sentencia T 025 of 2004. Salvatore Mancuso Gómez, ex-commander of the AUC, maintained that in the “last ten years my legal finances from Colombian agriculture became mixed together with those from the conflict” and described how profits from the drug trade entered “the stream of the national economy ... at the root, in investments in crops by honest businessmen ... that nobody would ever investigate, because if they have ten thousand hectares of sugarcane planted and they plant another 5 thousand hectares, no one will investigate it because this is their property”. See: *Semana.com*, 2007, “Las cuentas de Mancuso”.

Civil servants facilitated these activities and helped to establish economic projects in territories abandoned due to violence and the granting of fraudulent land titles. The failure of the Colombian Institute for Rural Development (Incoder) to recover unlawfully occupied public lands contributed to this worrisome situation.⁴⁸ In addition to these issues, other problems included the ineffective management of the confiscated property and goods seized through the processes of extinction of property rights performed by the National Narcotics Directorate (DNE)⁴⁹ and the uses of “legal tricks” in notary offices, offices of public record and the property register in various regions.⁵⁰

The aforementioned factors led to the concentration of land in the hands of fewer entities (in 2011 the Gini index of lands was 0.874 and of landowners was 0.886),⁵¹ which was caused by massive sales of land in regions with high levels of displacement since the 2000s and the launch of mining and agroindustrial projects. According to the National Centre for Historical Memory, “the cultivation of oil palm in regions such as the Bajo Atrato chocoano, Magdalena Media and the Llanos Orientales in the Altillanura is one of the emblematic cases of economic projects that led to paramilitary expansion.”⁵²

In the Bajo Atrato chocoano, the “Casa Castaño”⁵³ pursued the planting of palm in Afro-descendant-inhabited territories of the Curvaradó and Jiguamiandó community councils, displaced due to the combined action of the National Army (Operation Genesis) and paramilitaries (Operation Cacarica).⁵⁴ According to testimonies from paramilitary chief Vicente Castaño himself, he was personally linked to rich businessmen who invested in this and other regions of the country.⁵⁵ This plunder was part of a money-laundering operation in which paramilitaries and business people participated, such as the Italian Cianci Vega,⁵⁶ and Antonio Nel Zuñiga, owner of the Gradesa company, of which 50% of its shares were seized by the U.S. due to its links to paramilitaries.⁵⁷

The expansion of the palm fields throughout Colombia, including the Altillanura, as well as in incidents of violent and fraudulent land expropriation involve cases of human rights abuses related to environmental damage; insufficient guarantees of the participation of ethnic groups and communities; outsourcing of labour relations; corruption and security measures inconsistent with international humanitarian law.⁵⁸

Despite peace-building efforts, the installation of large-scale agroindustrial projects and the growth of mining and infrastructure projects, sometimes financed through profits from the illegal sector, consolidated an unequal model of rural development which is discriminatory, exclusive and undemocratic.⁵⁹ Which means that the rural violence continues, armed groups remain present and

⁴⁸ Due to Incoder negligence and corruption from 2003 to 2010, the Attorney General concluded that this entity seemed to have been created as “an association to commit crimes for the mafia”. See: PGN, 2015, p. 33.

⁴⁹ Among the reasons for the abolition of the DNE were the lack of a certified inventory of goods, lack of oversight and follow-up to provisional and definitive custodianship, the leaking and loss of information, corrupt sales practices, the loosening of protective measures, and the choice of property custodians. See: El País, “Caos en Estupefacientes, más grave de lo previsto”.

⁵⁰ *El Tiempo*, 2011, “Así le robaron más de 200 mil hectáreas de tierra a desplazados” and 2013, “Con 65 trampas jurídicas se han robado un millón de hectáreas de baldíos en 20 años”.

⁵¹ IGAC, 2011.

⁵² CNMH, 2013 and 2012.

⁵³ It consists of the brothers Fidel, Carlos and Vicente Castaño Gil, founders of the United Self-Defence Forces of Colombia y Urabá (ACCU). See: CNMH, 2012.

⁵⁴ Corte IDH, 2013 and *verdad abierta.com*, 2014, “A la cárcel 16 empresarios de palma en Chocó”.

⁵⁵ *Semana.com*, 2005, “Habla Vicente Castaño”, cited in: CNMH, 2012.

⁵⁶ *Noticias Uno*, 2010, “Revelan vínculos entre paras y palmicultores”.

⁵⁷ *El Tiempo*, 2009-a, “Empresa de ‘Macaco’ se ‘coló’ entre beneficiarios de plata del Plan Colombia”.

⁵⁸ Ver: Seeboldt, S. and Salinas-Abdala, Y., 2010, “Responsabilidad y sostenibilidad de la industria de la palma ¿Son factibles los P&C de la RSPO en Colombia?”, Marín-Burgos, V., 2014, “Access, power and justice in commodity Frontiers. The political ecology of Access to land and palm oil expansion in Colombia”, and Molano, A., 2012, “Paramilitarismo y palma en el Catatumbo”.

⁵⁹ PNUD, 2011, pp. 33-42 and 117.

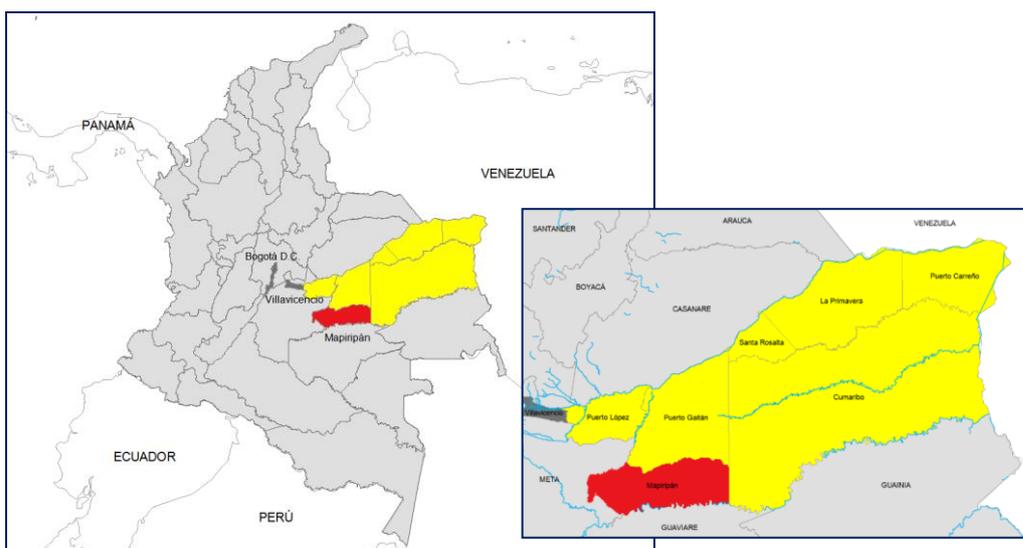
continue to fight for control over legal and illegal operations, institutions remain fragile, networks of corruption are maintained, communities and civil society organisations are further weakened and the rights of victims to truth, justice, reparations and non-repetition of violations are not respected.

These matters are part of the ongoing political, economic, social and academic debates in Colombia. Some of them are included in the National Development Plan Law 2014-2018 and in OECD policy revisions.⁶⁰ The rural development policy, solutions to the illegal drugs problem, and victims' rights were some of the issues that were discussed during negotiations between FARC and the government in Havana, Cuba.⁶¹

3.2. Meta and the Altillanura

The department of Meta, located in western Colombia, is home to more than 700,000 inhabitants. Its 29 municipalities are distributed over three regions: the Piedemonte plains – an area that transitions into the *Cordillera Oriental*, or Eastern Mountains, the Ariari Guayabero and the Altillanura.⁶² The capital, Villavicencio, is located 115 kilometres from Bogotá. Mapiripán, Puerto Gaitán and Puerto López are three municipalities located in the Altillanura region. (Map 1)

Map 1. The Altillanura region and the Mapiripán municipality



SOMO-INDEPAZ map based on information provided by IGAC (2011).

This region is home to more than 130,000 inhabitants (0.28% of the national total), 48% of whom are women.⁶³ More than half of this area's population lives in rural conditions, with a population density of 0.9 inhabitants per square kilometre. 67% of the population there are unable to provide for their own basic needs.⁶⁴

⁶⁰ The policies to be revised include those involving economic development, environment, commerce, investment and territorial development (DNP, 2015).

⁶¹ See: General Agreement for the termination of the conflict and the construction of a stable and lasting peace, signed in August of 2012 (Resolution of the President of the Republic of Colombia No. 339 of 19 September of 2012).

⁶² At 85770 square km, Meta is one of the largest departments in Colombia, which covers a total area of 1.14 million square km.

⁶³ Data retrieved from the DNP, 2014.

⁶⁴ The national average is 27%.

The Altillanura is characterised by its ethnic and environmental diversity. The indigenous population makes up 31% of its inhabitants and at least seven communities have maintained their own languages and ancestral nomadic and semi-nomadic traditions of hunting, gathering, fishing, and collection. The regional indigenous populations include the Sikuni, Puinave, Jiw and Kurripaco, who live in and around Mapiripán, Mesetas, Puerto Gaitán and Puerto López.⁶⁵ These groups are at risk of physical and cultural extermination due to factors that include the expansion of unlawful cultivation, loss of ancestral traditional territory, forced displacement, lack of access to goods and public services, and poor soil conditions in the designated reserves.⁶⁶

The Altillanura forms part of the Orinoquia region, an environmentally strategic region of gallery forests, with a diversity of water sources, flora and fauna that borders Venezuela. This land has been drastically transformed by processes of colonisation, expansion of coca leaf cultivations, agroindustrial projects, massive forestry and cattle raising projects, and petroleum extraction, which have negatively impacted the water sources, soils, flora and fauna and have increased vulnerability to climate change.

As in other parts of the country, the State is present in the municipalities of the Altillanura through mayors and municipal councils, which are responsible for controlling police and environmental authorities, as well as regulating land use and developing public works, many of which are related to improving the tertiary roads. Two additional actors in the region are, on the one hand, the municipal representatives (*personeros municipales*), who are responsible for monitoring respect for human rights, and on the other, the environmental agencies, whose function is to grant permissions for the use of natural resources and observe, monitor, and control activities which could impact the environment or natural resources, and administer appropriate sanctions when necessary. The environmental authority in Meta is Cormacarena (Corporation for the Sustainable Development of the Special Management Area of Macarena).

3.2.1. Reconquering the Altillanura

Since 2000, the Colombian government, following the example of the *Cerrado Brasileiro*, have promoted the development of the Altillanura as a priority area to stimulate economic growth, generate employment, and connect the country to international markets.⁶⁷ The region became the epicentre of large investments in land, capital and technology by multinational and national enterprises, which fluctuates depending on international market developments, such as the fluctuating prices for oil and agricultural products and the 2008 global economic crisis.

Economic development projects

Colombia adopted the Comprehensive Development Policy of the Orinoquia: Altillanura – Phase I in 2014,⁶⁸ which defines the economic development strategy for taking advantage of its potential and overcoming its limitations such as a scarcity of qualified labour and access to land for the development of large-scale initiatives such as the cultivation of oil palm, corn, soy, sugar cane, as well as forestry, meat production, and mining for hydrocarbons and minerals. At the same time, plans have been put in place to install infrastructure following the model of intermodal transport projects such as the Initiative for the Integration of Regional Infrastructure in South America (IIRSA) for which various strategic corridors had been identified, such as the Pacífico-Bogotá-Meta-

⁶⁵ DNP, 2014.

⁶⁶ Constitutional court, Autos 004 of 2009, 328 of 2010 and 173 of 2012 (Jiw and Sikuni), among others.

⁶⁷ DNP, 2014.

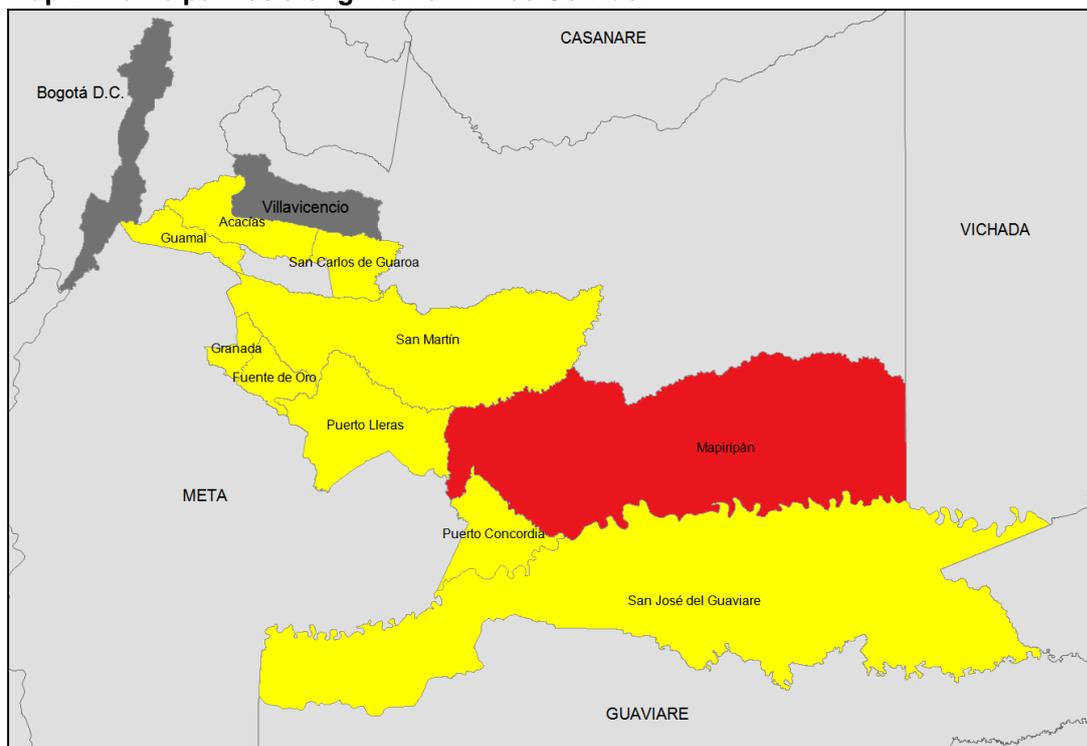
⁶⁸ Ibid.

Orinoco-Atlántico Bioceanic Corridor and the Buenaventura-Puerto Ordaz Corridor (Venezuela), which would connect the Pacific and Atlantic Oceans.⁶⁹

In an attempt to be competitive in international markets, incentives have been initiated over the last 10 years to stimulate the production of vegetable oils for export and/or biofuels for the internal market.⁷⁰ These incentives take the form of special credits, tax and fiscal advantages, the Incentive for Rural Capitalization, Forestry Incentive Certification, and support for the creation of agricultural free trade zones.⁷¹

Since 2002, the local government, in an attempt to dynamise the region, has prioritised the construction and improvement of the road that connects the Meta and Guaviare departments with Bogotá, through the area known as the Palm Tree Corridor.⁷² The project ensured the expansion of the palm fields on both sides of the road in the municipalities of Puerto Rico, Puerto Concordia and San José del Guaviare. According to the National Roads Institute (*Instituto Nacional de Vías*, or Invias), the area cultivated with palm trees in these municipalities will increase to 600,000 hectares in the coming 20 years.⁷³ (Map 2)

Map 2. Municipalities along the Palm Tree Corridor



Elaborated by SOMO-INDEPAZ with information from the IGAC (2011)

⁶⁹ This initiative will include the construction of the Transversal La Macarena Meta – Huila, which will connect the Altillanura region with the port in Buenaventura without passing through Bogotá; the construction of the dual carriageway Bogotá – Villavicencio – Bogotá; improvements to the road Villavicencio – Puerto López – Puerto Gaitán and the construction of the highway Puerto Gaitán – Puerto Carreño, Vichada and improve the navigability of the Río Meta.

⁷⁰ DNP, 2006 and 2008.

⁷¹ See: Proexport Colombia, 2012, “Sector Agroindustrial Colombiano”. Among the benefits of the free trade zones are the sales taxes exemptions on raw materials and imported goods and an income tax rate of 15%.

⁷² Ministerio de Transporte, s.f. “Ejecutar es nuestra prioridad”.

⁷³ Invias (s.f.) Video “El corredor de las palmeras”.

Palm oil export

Colombia has, as a result of these supporting measures, become the fifth largest producer of oil palm in the world, the principle destination of which is the European Union. 40.7% of palm oil and 54.2% of palm kernel oil are exported to the Netherlands.⁷⁴ In 2013, the Eastern region of Colombia – where the Altillanura is located – consisted of 37% of the total area devoted to palm trees in the country (476,781 hectares)⁷⁵ and some municipalities in Meta have more than 20 oil extractor plants.⁷⁶

3.2.2. Presence of armed actors

The Altillanura region has experienced violence and armed conflicts, especially since the 1950s, and most notably over the past three decades, to varying extents in different municipalities. Different factions of FARC guerrillas operate in the region as do drug-trafficking organisations and successor groups to the paramilitary AUC project (United Self-Defense Forces of Colombia) classified as criminal gangs (BACRIM) by the Colombian government.⁷⁷

State actions concerning matters of security, aim to impose control over areas in which different armed actors are fighting for the profits from illegal activities (protection and extortion rackets) and illicit ones (drug trafficking and illegal transport of gasoline and materials used in the production of cocaine hydrochloride).

FARC

The Department of Meta has historically been a strategic location for the FARC guerrilla movement. The FARC leadership is located here in the Eastern Bloc headquarters and the National Secretariat, and the area of refuge for various commanders, as well as the site of conferences and meetings in which the military, social, political, and economic plans and policies are decided.

FARC originally settled in this region through armed occupation that was initiated by the Colombian Communist Party (PCC). In the early days, FARC had an agrarian base and focussed on defending the organising processes of small farmers. Years later, the fronts in the eastern municipalities of Meta and Guaviare were initiated into the coca leaf economy and the resulting disputes over territorial control. The Eastern Bloc continues to operate in these departments and finances its operations financed by kidnappings, extortion, taxation on illegal mining and drug trafficking, an activity that was managed by Géner García Molina, alias “Jhon 40”, known as the “great narco-trafficker of the FARC”.⁷⁸

Currently, Front 44 and one faction of Front 39 are operating in the south of Meta, supported by Fronts 1 and 7, which operate on the right bank of the Guaviare River. This organisation has allied itself with various criminal gangs in order to control the cultivation of coca leaves, their processing and sale and the transport routes leading to Venezuela and Brazil.

⁷⁴ Fedepalma, 2014.

⁷⁵ Ibid. The three other major oil palm cultivation regions are: Norte (30%), Central (29%) and Suroccidental (5%).

⁷⁶ These regions include Granada (Reinel Gaitán Tangarife), San Martín (Entrepalmas S.A and Agropecuaria Santa María), San Carlos de Guaroa (Aceites Manuelita S.A., Aceites Morichal S.A.S, Extractora la Paz S.A, Oleaginosas San Marcos Ltda., Servicios de Maquila Agrícola de Los Llanos S.A.S and Víctor Ramón Baquero Ramírez), and Puerto Rico (Aceites Cimarrones S.A.S, whose operator is the Zona Franca del Pacífico S.A.). DIAN, 2014-a.

⁷⁷ See: TSJP, 2013, Baldomero Linares Moreno and other ex-combatants of the Autodefensas Campesinas of Meta were sentenced by the Superior Court of Justice and Peace.

⁷⁸ Semana.com, 2006, “El capo de las Farc”. Presumed to have died during a 2012 military operation.

The guerrillas have been blamed for the forced recruitment of minors, the use of nonconventional weapons, placement of anti-personnel mines, forced displacements and confinements, threats and executions of civilians and other violations of human rights and international humanitarian law. They are also accused of the “taxation” of multinational enterprises seated in territories they control that they threaten to attack if their economic demands are not met. One example of this is the burning of the helicopter of Pluspetrol, an Argentine oil company that refused to pay its “taxes” in 2010.⁷⁹

Paramilitary Groups

The formation of paramilitary structures in the south of Meta dates back to the end of the 1970s, with the arrival of emerald dealers and drug traffickers who expanded their territories, along with increased marijuana and coca leaf cultivation as well as the purchase of lands.⁸⁰

During this period, drug traffickers like Gonzalo Rodríguez Gacha established collaboration agreements with FARC for the cultivation and processing of narcotic substances.⁸¹ These agreements were terminated in the 1980s, however.⁸² As a result of the war between Rodríguez Gacha and Víctor Carranza, known as the “Emerald Czar”, the drug traffickers and emerald dealers formed an alliance against the FARC.⁸³

In the 1980s, the group Death to Kidnappers (*Muerte a Secuestradores* – MAS), an alliance of drug traffickers and parts of the State-run security forces, was active in the towns of Mapiripán, Puerto López, San Martín, Granada and San José of Guaviare, to rid the region of real or suspected “communists”, as has been documented in the Justice and Peace processes. Toward the end of the decade, most of the leaders of the Patriotic Union (UP), a leftist political party that emerged out of dialogues between the FARC and the Belisario Betancur government (1982-1986) had been assassinated. By the end of the 1990s, the Peasant Self-Defence Forces of Córdoba and Urabá (ACCU) appeared under the command of Carlos, Vicente Castaño Gil and Salvatore Mancuso, Colombian-Italian citizen extradited to the U.S. in May 2008 and recently sentenced to 15 years in prison for crimes associated with narcotrafficking to the U.S.⁸⁴

Upon the initiative of Vicente Castaño Gil, the ACCU formed the *Bloque Centauros*, which was under the command of Miguel Arroyave, alias “Archangel”, also known as “the *Capo* of the Chemicals”, together with financial chief Daniel Rendón Herrera, alias “Don Mario”,⁸⁵ who is wanted for extradition by U.S. authorities on drug trafficking charges.⁸⁶

Bloque Centauros negotiated agreements for the distribution of land with the Peasant Self-Defense Forces of Meta and Vichada (ACMV) – a name used to demobilise members of “*Los Carranceros*”, so named for their relationship to Víctor Carranza, under the command of José Baldomero Linares,⁸⁷ and the *Héroes del Llano* and *Héroes del Guaviare* fronts, under the command of Manuel de Jesús Piraban, alias “Pirata”, and Pedro Oliveiro Guerrero Castillo, alias “Cuchillo”.

⁷⁹ *El Espectador*, 2010-b, “FARC incendian helicóptero de Pluspetrol en Los Llanos Orientales”.

⁸⁰ VerdadAbierta.com, “Autodefensas Campesinas de Meta y Vichada”.

⁸¹ The narcotraffickers paid taxes according to the amount of base produced in exchange for security of their laboratories and transportation routes that brought in supplies and exported the drugs. See: TSJP, 2013.

⁸² Semana.com, 1989, “La guerra de ‘El Mexicano’”.

⁸³ Ibid.

⁸⁴ TSJP, 2013.

⁸⁵ Rendón Herrera, ex-financial commander of the Bloque Centauros and demobilised from the Bloque Elmer Cárdenas, was excluded from the Justice and Peace process when it was proven that he was still engaging in criminal activities after he laid down his arms as stipulated by the agreements between the AUC and the Uribe Vélez government (2002-2006; 2006-2010) and it is still not clear whether Vicente Castaño is alive or dead.

⁸⁶ *El Espectador*, 2014, “Corte Suprema avaló extradición de alias “Don Mario””.

⁸⁷ Run by *Los Carranceros*, those which demobilised under the name Autodefensas Campesinas de Meta y Vichada (ACMV). See: s.f., “Autodefensas Campesinas...”

However, great conflicts arose between them for narco trafficking control,⁸⁸ petroleum profits, and oil palm plantations on dispossessed lands.

In 2003, President Uribe Vélez's administration began negotiations with the AUC's High Command, which culminated in the collective demobilisation of more than 32,000 combatants,⁸⁹ including those in the Bloque Centauros, the ACMV and the *Héroes del Llano* and *Héroes del Guaviare* Fronts.⁹⁰ However, many members re-armed to form the Popular Revolutionary Anti-Communist Army (ERPAC), a group that demobilised in 2011 following the death of its founder, known as "Cuchillo".⁹¹

During the era of ERPAC control, the guerrillas frequently carried out operations known as "los puntos", in which informants, equipped with weapons and radios, terrorised local communities, pressuring the Community Action Council (JAC) and local authorities. Between 2008 and 2011, Germán Ramírez Debia, alias "Vaca Fiada", forced various town council members to support the administration of Maribel Mahecha Hernández, then mayor of Mapiripán,⁹² in efforts to rescind various protective measures and authorise "dozens of negotiations" that legalised expropriation of land to further increase the concentration of land ownership.⁹³ This topic will be discussed in greater detail below.

'Los Llaneros' or 'Los Carachos', are still present in the region and are led by Martín Farfán Díaz González, alias "Pijarbey", ex-soldier in the Airborne Infantry Battalion Services, headquartered in Villavicencio and heir to the "Churchill" enterprises and territories.⁹⁴ Other groups active in the region include the Liberators of Vichada Front (Frente Libertadores de Vichada), Meta Block (Bloque Meta), and the Irregular Armed Forces of Colombia (FIAC).⁹⁵ These groups all have a common enemy, the so-called "Gaitanist Self-defence Forces of Colombia" ("Autodefensas Gaitanistas de Colombia"), also known as "Urabeños" and "Clan Usuga", with whom they fight for control of narcotics trafficking and profits from "security services" supplied to drug dealers, petroleum and agroindustrial companies, and various businesses.⁹⁶ "Clan Usuga", and the collaborators in the infamous "Oficina de Envigado",⁹⁷ were put on the so-called Clinton List (officially known as the Specially Designated Narcotics Traffickers or SDNT list).⁹⁸

Military: counterinsurgency and security for businesses

The southern parts of Meta and Guaviare are areas under the influence of the 19th Airborne Battalion Joaquín París, headquartered in San José del Guaviare, the Special Forces Battalion of Barrancón, the 22nd Brigade of Selva; and the 80th Naval Battalion. Here the *Plan Espada de Honor* ("Sword of Honour") was implemented as a military strategy to combat illegal armed groups, especially the FARC.⁹⁹ Regardless of an increased military presence, violations against civilians

⁸⁸ *verdad abierta.com*, 2012, "Así matamos a Miguel Arroyave".

⁸⁹ Lae 975 of 2005.

⁹⁰ The demobilisations occurred in 2005 and 2006.

⁹¹ *Semana.com*, 2012, "Así hallaron el cuerpo de alias 'Cuchillo'".

⁹² CITpax Colombia, s.f.

⁹³ *El Tiempo*, 2011, "Así le robaron más de 200 mil hectáreas..."

⁹⁴ *El Tiempo*, 2014-a, "Pijarbey", el nuevo capo de la droga en los Llanos".

⁹⁵ *El Tiempo*, 2014, "Cinco bandas se pelean el tráfico de drogas en los Llanos" and 2014-a, "Farc y bandas criminales están violando DD.HH: Defensoría".

⁹⁶ Interviews SOMO-INDEPAZ with the Mayor of Mapiripán and MAPP-OEA in Mapiripán and Villavicencio in February 2015. See also: CITpax Colombia, 2104.

⁹⁷ Created by Pablo Escobar Gaviria, ex-leader of the Medellín Cartel. See: Restrepo J., 2015, "Las vueltas de la Oficina de Envigado. Génesis, ciclos de disputa y reorganización de una empresa criminal".

⁹⁸ This list is currently being drawn up by the Office of Foreign Assets Control of the United States Department of Treasury. *El Tiempo*, 2015, "Los hermanos Gallón caballistas de Antioquia, a lista Clinton".

⁹⁹ Fuerzas Militares, 2013.

persist as do threats to the families of deserters from the guerrilla forces and the slow displacement of communities affected by the armed conflict.¹⁰⁰

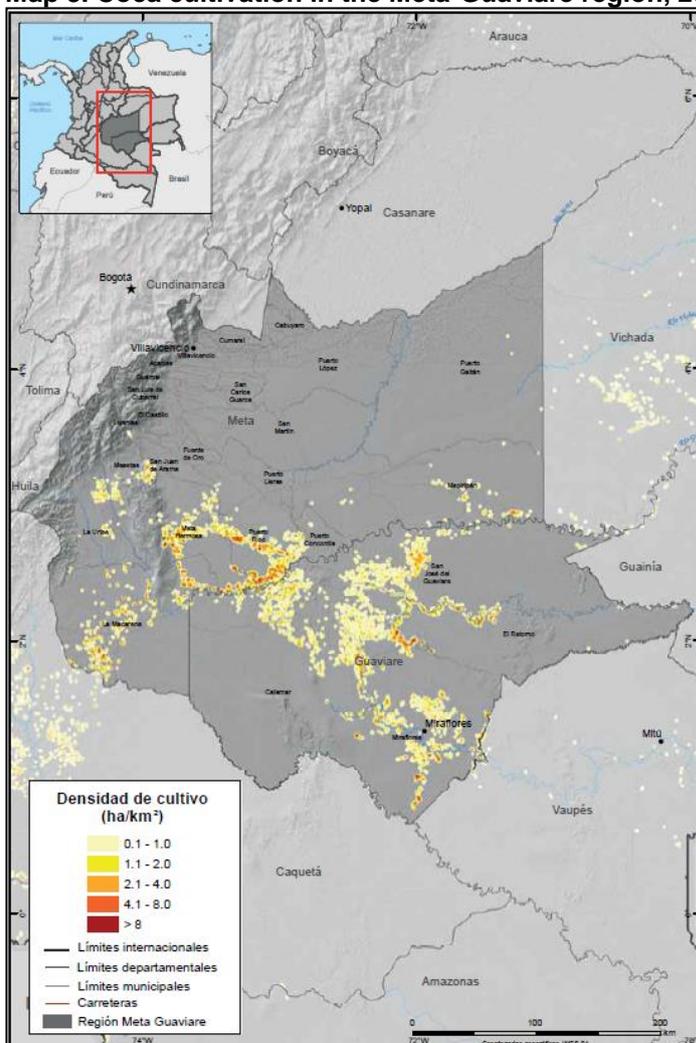
Nongovernmental human rights organisations and state agencies such as the Ombudsman’s Office agree that a greater military presence – justified as a guarantee to the rights to life, physical integrity and property to all the region’s inhabitants – privileges the protection of national and foreign agroindustrial investments and operations to the detriment of the civilian population.¹⁰¹

3.2.3. Narcotics trafficking and money laundering

Coca leaf plantations

Miraflores, El Retorno and San José del Guaviare, Mapiripán and Puerto Gaitán, respectively, have been affected by the presence of the coca leaf plantations, the production and trafficking of cocaine hydrochloride and the laundering of the illicit profits from related activities. (Map 3)

Map 3. Coca cultivation in the Meta-Guaviare region, 2014



Source: UNODC, 2015.

¹⁰⁰ SOMO-INDEPAZ interviews with employees of ACNUR, MAPP–OEA, OACDHNU, the Ombudsman’s Office and the Municipal Representative’s Office of Mapiripán in Villavicencio in June and July of 2014.

¹⁰¹ SOMO-INDEPAZ interviews with employees from Meta’s Civic Human Rights Committee and Meta’s Ombudsman in Villavicencio in July 2014.

The cultivation of coca for illicit use was introduced in the Meta-Guaviare region at the end of the 1970s, and from there expanded to other departments in the Llanos Orientales. The size of the cultivated area has increased exponentially. For example, in Meta, it developed from an annual average of 10,000 hectares planted in the period 1999-2004, to more than 18,000 hectares in 2005.¹⁰²

The State response has been to intensify aerial chemical fumigation, which increased from some 1,500 hectares that were sprayed in 2002, to 30,000 hectares in 2006. This indiscriminate and massive eradication affected animals and subsistence farming, and left the inhabitants of these municipalities without a livelihood, causing displacements.

Although coca cultivation has diminished over the past few years (down from almost 26,000 hectares in 2005 to 11,000 hectares in 2014),¹⁰³ as a result of the “balloon effect” produced by the fumigations, the cultivations have simply moved to reserves and more remote areas, some of them sustained by a barter economy (exchanging coca leaves for goods and services).¹⁰⁴

Production, trafficking, and money-laundering networks

The era of paramilitary control was financed by the production and trafficking of cocaine hydrochloride. The principal provider of these chemical supplies¹⁰⁵ was Miguel Arroyave, who, together with Daniel Barrera Becerra (alias, “El loco Barrera”),¹⁰⁶ built a criminal empire that allowed them to hide capital and traffic and launder their assets. Various techniques were used to accomplish these aims, including: i) the use of politically exposed persons; ii) the creation of paper or shell companies or the use of legal enterprises to access public or private financial products or to transport or camouflage the trade in weapons or drugs, iii) “fictitious foreign investment”¹⁰⁷ and iv) the creation of investment funds, trusts, holdings, brokers, and off-shore companies in- or outside Colombia, through which local and international operations can be performed such as the purchase and accumulation of land, and economic projects can be initiated that appear to be legal.¹⁰⁸ The Bloque Centauros’ palm cultivation project in Mapiripán on land confiscated from victims will be discussed later in this report.

Of the large number of politically exposed persons (PEP) that acted as fronts, the two ex-governors of Guaviare Nebio de Jesús Echeverry and Oscar López Cadavid, who had been on the Clinton List since 2005,¹⁰⁹ were denounced.¹¹⁰ Another PEP was Eduardo Leyton Sinisterra who, in his function as legal representative of Agronegocios, Proyectar Valores’s business manager, and Intervalores commission agent was in charge of approving transfers to Colombian accounts of

¹⁰² UNODC, 2014.

¹⁰³ UNODC, 2015.

¹⁰⁴ SOMO-INDEPAZ interviews with employees of public and private institutions in Mapiripán and Villavicencio in May-July 2014.

¹⁰⁵ Potassium permanganate, ammonia, gasoline and diesel, among other substances.

¹⁰⁶ Narcotrafficker extradited to the United States in 2013.

¹⁰⁷ These typologies were based on a Unit for Financial Information and Analysis report. See: UIAF, 2014, pp. 9-28, 33-53, 115-126 and 168-190.

¹⁰⁸ CSJ, 2006 and 2011 plus versions of the formulation, sentencing and acceptance of charges of demobilised members of the Bloque Centauros. See: glossary definitions.

¹⁰⁹ See: Emis Benchmark, 2005, “Últimas actualizaciones Lista Clinton 2015/06/24”, United States Embassy in Colombia, 2010, “Departamento del Tesoro designa a los capos colombianos más buscados vinculados con las Farc como narcotraficantes especialmente designados”, “La fortuna que finalmente le quitaron al ‘Loco’ Barrera”, part of which were the 581 assets valued at COP 78,000,000,000 (\$29,158.879) and *El Espectador*, 2015, “Los enredos de un candidato a la Gobernación del Guaviare”.

¹¹⁰ Bankers, money changers and civil servants were among these *grey agents* (*agentes grises*) who were or remain involved in macrocriminal networks of land or natural resource appropriation in territories that have been depopulated due to the violence (See: lasillavacia.com, 2013-b, “Luis Jorge Garay: ‘El sistema político...’” and Garay, 2014, “Rentismo, control territorial y ruralidad en Colombia”).

resources deposited in Logistical Engineering, Inc. (U.S.).¹¹¹ According to *Semana.com*, between September and October 2007, \$470,000 of “legalized” money from drug sales in Mexico ended up in the hands of Barrera Becerra and his associate Joaquín “El Chapo” Guzmán of the Mexican cartel in Sinaloa.¹¹²

The freight transport company Transciba was another company that was part of the narcoparamilitary network. They operated the lorries that were owned by Danilo Bustos Suárez, front man for Barrera Becerra and “Jhon 40”, ex-FARC commander. Bustos Suárez led “the drug transportation structure” that left from Atlantic and Pacific ports to the United States and Europe.¹¹³

Foreign companies with subsidiaries in Colombia have become involved in the Centauros block’s money laundering, using practices such as “fictitious foreign investment” and “Black Market Peso Exchange”. This was the case, for example, with the Dutch oil company Llanos Oil Exploration Ltda., owned by Albert and Hendrik van Bilderbeek. Money was transferred through Llanos Oil and was held in a foreign bank account, using various brokers (Helm Bank in Miami, Bank of América in Florida Palms and the Mexican Casa de Cambio Puebla S.A. de CV, among others).¹¹⁴ The money ended up in the hands of members of the illegal armed group, using payments for land or legally created juridical entities and (fictitious) suppliers.^{115 116}

Investigations by Colombian and Italian authorities, with names like *Tiburón Galloway*, *Punto 50* and *Decollo*,¹¹⁷ have documented the links between Salvatore Mancuso and the Calabrian mafia known as La 'Ndrangheta – one of whose families is named Mancuso¹¹⁸ – to transport narcotics to Spain and Italy using brokers in South America. The assets obtained through these activities entered Colombia through the purchase of property or merchandise and, once laundered, was reinvested in Italy, a country in which organised crime is said to be its largest industry.¹¹⁹ The Italian Giorgio Sale and the Colombians Celso Alfredo Salazar Castañeda and Francisco Obando participated in these operations. Doménico Mancuso Hoyos also formed part of the network of trafficking and asset laundering until his apprehension in Italy in August 2014, where he met with the son of Salvatore Mancuso.¹²⁰

In Mapiripán and other municipalities in the south of Meta and north of Guaviare, the cocaine hydrochloride continues to arrive from the hidden production labs owned or authorised by illegal

¹¹¹ The transfers were justified “as payments for technical services and engineering”. See: CSJ, 2013.

¹¹² *Semana.com*, 2013, “Leyton Sinisterra, príncipe entre tinieblas” and *El País*, 2015, “‘El Chapo’ Guzmán consigue frenar su extradición a EE UU”.

¹¹³ *Noticias Uno*, 2012, “Extraditan a máximo testaferro de ‘El Loco Barrera’ a Estados Unidos”, *El Tiempo*, 2010, “Tres detenidos en operativo contra ‘El Loco Barrera’ serían beneficiarios de Agro Ingreso Seguro” and *El Espectador*, 2010-a, “Wilmer Ospina Murillo, un lavador de la mafia”, and 2009, “De vendedor de dulces a millonario”.

¹¹⁴ See: CSJ, 2006 and 2011, , *Portafolio.co*, 2011, “Llanos Oil Exploration LTD. Revive demanda contra Ecopetrol”, *verdad abierta.com*, 2011, “Como una multinacional lavó dinero para los paramilitares” and *Pax for Peace*, 2014, “The Dark Side of Coal. Paramilitary Violence in the Mining Region of Cesar, Colombia”.

¹¹⁵ SIU Report no. 157, 30 September 2004, cited in CSJ, 2011, p. 8.

¹¹⁶ Among them Andrés de Jesús Vélez Franco, former Bloque Centauros member, Eustorgio Salomón Ordóñez Montero, former DIAN functionary, Asoganan y Cía Ltda. and C.I. Transglobal Intertrans S.A. See: CSJ, 2011, *El Tiempo*, 2007, “28 bienes de testaferros del Bloque Centauros de las Auc en Antioquia fueron ocupados” and 2005, “Investigan relación de firma con cartel de Tijuana”, and *Caracol Radio*, 2008, “Dura condena contra una red que lavó ocho millones de dólares del paramilitarismo”.

¹¹⁷ CSJ, 2014.

¹¹⁸ The wealthiest criminal organisation in Europe, which has alliances with Mexican and Colombian cartels. See: Corrado, S. & Realacci, F., 2014, “La relación de negocios entre la mafia italiana y los carteles de la droga en México”.

¹¹⁹ U.S. Department of State, 2015-a.

¹²⁰ See: *Caracol*, 2013, “Testaferro de Salvatore Mancuso confirmó vínculos de Giorgio Sale con las AUC”; *Semana.com*, 2014, “Cae el temible primo de Salvatore Mancuso”; Israel, E., 2004, “Ndrangheta: los nuevos capos”; *El Tiempo*, 2013-a “La Fiscalía colombiana ‘descubre’ que la 'Ndrangheta opera en Colombia” and 2013, “El renacer de la mafia italiana en Colombia”; *Antimafia Dosmil*, 2013, “‘El Papa Francisco en la mira de La 'Ndrangueta’: Dice el Procurador Nicola Gratteri”; Vélez, C., s.f., “Proceso a Mancuso por nexos con mafia italiana” and *Albiñana*, s.f. “La mafia italiana y los Mancuso”.

armed groups.¹²¹ These groups control the flow of raw materials and the land and water routes to small Colombian port cities like Tumaco (Nariño), Turbo (Antioquia), Maicao (La Guajira) and Santa Marta (Magdalena), and to Venezuelan, Brazilian, Argentine and Central American states from which they send the drug shipments to the United States and Europe. Recently it was revealed that these criminal gangs and the FARC also supply the La 'Ndrangheta.¹²²

Narcobusiness money continues to be “laundered” using distinct and sophisticated techniques of transnational organised crime such as property investments, illegal mining, casinos, art, and contraband.¹²³

3.2.4. Trade and accumulation of the UAF

In the Altillanura, the informality and precarity of land rights is related to colonisation processes and the failures of agrarian reforms, the irregular origin of ownership (fraudulent transfer or improvements on unclaimed State lands), the irregular adjudication of ancestral lands to non-indigenous third parties, the ceding of public lands to people from outside the region who are not subject to the conditions of agrarian reform,¹²⁴ and the corrupt practices and murky information on the part of Incora/Incode, the DNE, and the offices of the notary, the public register, and the land registry. The land registry, especially, registers land purchases under market values, diminishing the municipal income.

These factors lead to the coexistence of individual and collective property ownership (reserves), occupants of publicly owned and indigenous lands, and possessors of private property,¹²⁵ along with the lack of protection for the lands and territories of the victims of forced displacement and the ignorance of or lifting of protective measures of the Municipal Committees for Assistance to the Displaced Population (CMAPD – now the Territorial Transitional Justice Committees, or *Comités Territoriales de Justicia Transicional*, CMJT),¹²⁶ have contributed to irregular national and international investment practices, particularly the accumulation of lands destined for agrarian reform in sizes greater than a Family Agricultural Unit (UAF), the maximum area of land deeded by the State to farmers, as defined by Incora/Incode, depending on the type of region and soil composition (see glossary for full explanation).

The concentration of ownership and use of land for extensive cultivation, as well as the speculative boom in prices,¹²⁷ have been facilitated by some State agencies that tolerate legal grey zones that benefit investors and are to the detriment of local populations (e.g., restricting the legal prohibition against the accumulation of UAF to lands allocated after the passage of Law 160 in 1994).¹²⁸ These situations occur despite the fact that State entities such as the Congress of the Republic,¹²⁹ the Superintendency of Notaries and Recording,¹³⁰ the Ministry of Agriculture and Rural Development,¹³¹ and the General Comptroller of the Republic¹³² have denounced “semi-legal

¹²¹ SOMO-INDEPAZ interviews with employees of the Municipal Representative's Office and Ombudsmen's Office in Villavicencio and Mapiripán in June and July 2014.

¹²² See: *Semana.com*, 2013, “Los emisarios de la mafia italiana en Colombia” and *Caracol.com*, 2015, “Hasta Italia llegaron las Farc; autoridades buscan a un cabecilla”.

¹²³ *VerdadAbierta.com*, 2015, “Hay que buscar una salida razonable...”

¹²⁴ Since 1936, different procedures have been used to parcel out land to less-fortunate sectors and to avoid the concentration of land ownership (Laws 200 of 1936, 135 of 1961, 30 of 1988 and 160 of 1994).

¹²⁵ See: glossary definitions.

¹²⁶ CGR, 2015.

¹²⁷ A “speculative bonanza in the purchase of land”, has developed in the Altillanura, leading to a 700% inflation in land value since 2006. (DNP, 2011).

¹²⁸ See: *lasillavacia.com*, 2007, “Los pasos de Santos y Uribe para permitir la acumulación de antiguos baldíos”.

¹²⁹ Debates started by Wilson Arias and Iván Cépeda in the Republic's Congress between August 2010 and 2014.

¹³⁰ SNR, 2007, 2012 and 2012-a.

¹³¹ MADR, 2013.

¹³² CGR, 2014.

strategies” to evade the restrictions imposed on the acquisition of public lands destined for small farmers.¹³³

Among the practices recommended by prestigious accountancy firms in Colombia¹³⁴ and other countries,¹³⁵ are the construction of Simplified Stock Corporations (SAS), trusts, *Special Purpose Vehicles*, and venture capital investments (*Leveraged Buy-outs, Management Buy-ins, Buy-in Management Buy-outs and Management Buy-outs*),¹³⁶ as utilised by the following companies:

- ❑ Creation of juridical persons from the same business group (Grupo Empresarial): Sarmiento Angulo Group – Corficolombia (Mavalle S.A., Organización Pajonales S.A., Plantaciones Santa Rita S.A.S, Hevea de los Llanos S.A.S, TSR20 Inversiones S.A.S y Hevea Inversiones S.A.S),¹³⁷ Cargill Group – Black River Asset Management (Cargill Trading Colombia, Black River S.A.S., Cargill de Colombia y Colombia Agro S.A.S.)¹³⁸ and Brazilians Mónica Colombia, Agrocaixas, Monicol and Tilava of the business group Mónica Colombia, whose existence was not reported to the Superintendence of Companies.¹³⁹
- ❑ Creation of business holdings and companies in countries considered to be tax havens or in jurisdictions favourable to international investments.¹⁴⁰ For example, Ingenio Riopaila Castilla, S.A, sole owner of Asturias Holding S.A.R.L., is headquartered in Luxembourg, but is a parent company of the Spanish companies Agropecuaria Segovia S.L, Inversiones Agrícolas Toledo S.L, Agroindustria Ibiza S.L, Inversiones Agrícolas Málaga S.L. and Inversiones Agrícolas Asturias S.L.¹⁴¹
- ❑ Formation of trusts in financial entities: 10 companies linked to Grupo Aliar Contegral (Agropecuaria Visión, Agropecuaria San Martino, Agropecuaria Futuro, Agropecuaria Valores, Entrehogar, Premex, Proyectos La Fazenda, Inversiones Arar, Concesionaria y Prollanura) signed a trust agreement at Helm Trust Bank in order to acquire lands owned by Agualinda, represented by Víctor Carranza’s spouse. These lands, united under the name El Brasil, are used by Grupo Aliar, the La Fazenda Project bailee.¹⁴²
- ❑ Creation of companies in Colombia with the same names as those headquartered in tax havens from which large amounts of capital enter the Colombian companies as foreign investment. This strategy has been used by 10 companies registered under the name of the territory followed by Wood or Timberland Holdings Limited in Colombia and Antioquia Wood Holdings Limited and VM Timberland Holdings Limited in the Virgin Islands.¹⁴³

Mónica Colombia, Helm Trust and Poligrow Colombia (See: Acquisition and use of land) were indicted by Incoder, which is in the process of filing suits against other companies, including those mentioned in Table 1, which, with the exception of Villa Diana, are all companies with the same

¹³³ W Radio, 2013, “El ministro Francisco Estupiñán dijo que baldíos fueron adquiridos irregularmente”.

¹³⁴ Brigard & Urrutia, whose founder served as the ambassador of Colombia in the United States, Contexto Legal, who advised Riopaila and Carguil, and Wood/Timberland Holdings Limited, respectively. See: lasillavacia.com, 2013, “Otra sospechosa compra de tierras en La Primavera” and Rodríguez, C., 2013, “Un país de abogados sofisticados”.

¹³⁵ KPMG, Deloitte & Touche, Ernst & Young, among others. See: Arias, 2013.

¹³⁶ See: glossary definitions.

¹³⁷ See: *verdad abierta.com*, 2013-b, “Polémica por tierras explotadas por agroindustriales y mineras”.

¹³⁸ OXFAM, 2013. “Divide y compraras: La nueva forma de concentrar baldíos en Colombia”.

¹³⁹ Supersociedades, 2013 and Reyes, F., s.f., “Supersociedades no tolerará abusos en la SAS”.

¹⁴⁰ The British Virgin Islands, Colombia, Isle of Man, Italy, Luxembourg, Mexico, the Netherlands, Panama, Spain, Switzerland, United Kingdom, United States, Uruguay, and Venezuela, are included in the list of countries where transactions occur involving profits derived from narco-trafficking and other crimes (U.S. Department of State, 2015).

¹⁴¹ See: Revista Dinero, 2013, “Riopaila: la verdadera historia”.

¹⁴² See: *verdad abierta.com*, s.f., “Grupo Aliar – La Fazenda responde por las tierras de El Brasil”, en Puerto Gaitán”, and “La metamorfosis del Brasil”.

¹⁴³ Arias, W., 2014.

economic activities, partners, board members, legal representation, fiscal auditors, and registered addresses.¹⁴⁴

Table 1. Reported Cases of UAF Accumulation in the Altillanura

Annulment of Ownership Petition Filed	Location	No. of Properties	Hectares, in thousands
Grupo Empresarial Mónica Colombia	Puerto Gaitán, Meta	9	13
Helm Trust S.A and others – La Fazenda	Puerto López, Meta	16	16
Poligrow Colombia – Los Macondo	Mapiripán, Meta	3	5,5
Legal Proceedings in Process	Location	No. of Properties	Hectares, in thousands
Organización Luis Carlos Sarmiento Angulo	Puerto López and Puerto Gaitán, Meta	17	13,7
Grupo Empresarial Cargill	Cumaribo, Santa Rosalía and La Primavera, Vichada	39	52,5
Riopaila Castilla	Santa Rosalía and La Primavera, Vichada	42	42
Wood/Timberland Holdings Limited	La Primavera, Vichada	10	13
Sociedad Villa Diana	Mapiripán, Meta	3	4,6
Total		139	160,3

By SOMO-INDEPAZ based on Incoder, 2015, CGR, 2014, MADR, 2013, OXFAM, 2013 and Arias, W., 2013.

3.3. Mapiripán Municipality

3.3.1. General Characteristics

The Mapiripán municipality was delineated in 1989 and covers an area of 11,938 square kilometres – almost one-third the size of the Netherlands. It is bordered on the north by the Iteviare and Manacacias Rivers (San Martín, Puerto López y Puerto Gaitán), on the east by the Department of Vichada, on the south by the Department of Guaviare, and on the west by the municipalities of Puerto Concordia, Puerto Lleras and Puerto Rico in the Meta department. Its territory is comprised of conservation zones, such as natural savannahs and gallery forests, and agricultural production zones in the alluvial plains around the Ovejas, Siare, Mielón and Jabón Rivers.

The residents of Mapiripán live under difficult conditions: 91% of the municipality's 15,579 inhabitants live in rural areas and towns such as La Cooperativa, El Mielón, Puerto Alvira, Caño Jabón and Rincón del Indio. More than 90% of them are poor¹⁴⁵ and the illiteracy rate is 27%.¹⁴⁶

The municipality is 12 hours from Bogotá by land and can be reached by two roads that connect Mapiripán with the rest of Meta and the country.¹⁴⁷ Better roads to Villavicencio, Bogotá and San José del Guaviare – the capital of Guaviare – are one of the principle demands of the municipality's

¹⁴⁴ Incoder, 2015, CGR, 2014, MADR, 2013, OXFAM, 2013, Supersociedades, 2013 and Arias, W., 2013.

¹⁴⁵ The poverty index measures child labour, unemployment, access to health care and treated water and housing conditions, among other factors.

¹⁴⁶ DNP, 2011.

¹⁴⁷ The first route: La Cooperativa – San Andrés – Guacamayas, at the intersection of Puerto Rico (8 or 9 hours) take the central road that goes from San José to Puerto Lleras – Fuente de Oro – Granada – San Martín – Acacias – Villavicencio (3 hours) and Bogotá (2½ hours). The second route: Caño Ovejas – at the road crossing in Tienda Nueva (town located to the north of Puerto Concordia) (4 hours), take the road to Puerto Rico (1 hour) and head toward Villavicencio – Bogotá. This second route passes through the Caño Ovejas reserve of the Sikuni people. It is also possible to travel via the Guaviare River from San José del Guaviare and by air from Villavicencio to the landing strip in the urban area of Mapiripán in small, 6-passengers planes, with scheduled flights every 3 days.

residents. However, despite the resources invested, the construction of and/or improvements on the 83.6-kilometre road that separates Mapiripán from Tienda Nueva have yet to be built.¹⁴⁸

3.3.2. Economic sector

Mapiripán's economic activities focus on farming, commerce and employment generated by the large oil companies (Metapetroleum – subsidiary of the Canadian company Pacific Rubiales – and Ecopetrol S.A), and Poligrow, as well as Caucho Mapiri S.A., a company owned by Juan Luis Restrepo and Rodrigo Echeverri, which has been in operation since 2007 with the support of Jorge Iván Duque Lenis – the mayor during the periods 2004-2007 and 2012-2015.¹⁴⁹ Other local employers include the municipal administration and the Proaves Foundation of Colombia, which created the El Jaguar Nature Reserve in the rural districts (*veredas*) of Caño Evaristo and Esteros Altos in Mapiripán.¹⁵⁰

3.3.3. Violations of human rights and international humanitarian law

The proliferation of armed groups and related disputes have caused massive, critical, and systematic violations of the human rights of the inhabitants and of international humanitarian law. In February 2015, the National Register of Victims (Registro Único de Víctimas) reported nearly 225,000 victims affected by massacres, targeted killings, threats, kidnappings, and forced displacement, the abandonment of land and expropriation.¹⁵¹

Massacres

There have been four massacres committed in Mapiripán, all by paramilitary forces. The most barbaric of these was the *Masacre de Mapiripán*, which took place in the town of Mapiripán between 15 and 20 July 1997, through which the AUC gained control of the southern Meta and Guaviare regions.

On 12 July 1997, about 100 members of the ACCU left from Necoclí and Apartadó (Urabá Antioqueño) in two planes that landed in San José del Guaviare. Another paramilitary group, dressed in Armed Forces uniforms, drove to the estate known as El Brasil, property of emerald dealer Víctor Carranza and currently managed by Helm Bank.¹⁵² They entered Mapiripán on 15 July, where they selected a group of inhabitants – using a prepared list – who they accused of cooperating with the guerrillas. These victims were tortured, had their throats slit and were dismembered, and their bodies were thrown into the Guaviare River, which is why the exact number of victims remains unknown. The paramilitaries also destroyed homes and businesses during this operation.

According to Carlos Castaño Gil, this massacre was involved the struggle for control of the narco-trafficking against FARC. He said that in order to secure control over the Guaviare River and expand their control in the direction of Arauca, there would be “many more Mapiripáns”.¹⁵³

Paramilitary commandos with similar orders committed massacres in Puerto Alvira or Caño Jabón (4 May, 1998), La Cooperativa (22 Febrero, 1999) and the municipal capital of Mapiripán (13 December, 2002), with deaths tolls of 17, 4 and 6, respectively.

¹⁴⁸ RCN Radio, 2014, “Liquidarán el contrato de construcción de la vía Mapiripán Meta por incumplimiento”.

¹⁴⁹ SOMO-INDEPAZ interviews with leaders in Villavicencio in June 2014, URT, 2014, *El Mundo*, 2006, “Con caucho eliminarán la coca” and Salinas-Abdala, Y., 2014, “Mapiripán: los campesinos siguen en el limbo”.

¹⁵⁰ Proaves, 2015.

¹⁵¹ UARIV, 2015.

¹⁵² The estate was used as a training grounds and a site for torture and assassinations (TSJP, 2013).

¹⁵³ *El Tiempo*, 1997, “Va a haber muchos más mapiripanes”.

National and international juridical entities have recognised the complicity, omission, and acquiescence of members of the Army, Marines, and police in the commission of these war crimes and crimes against humanity,¹⁵⁴ and various paramilitary personnel have confessed to having worked “hand in hand”¹⁵⁵ with emerald merchants, cattle ranchers, narcotraffickers¹⁵⁶ and military personnel.¹⁵⁷

Forced displacements

The *Massacre of Mapiripán* led to the forced displacement of entire families that had to abandon their houses, animals, and land in order to save their own lives. More than 1300 people were forced to flee in 1997, eleven times as many as in 1996,¹⁵⁸ and during the period 1998-2013, 20,867 people were displaced.¹⁵⁹

The most critical years were 2002, the year in which the Patriot Plan (*Plan Patriota*) was implemented against the FARC, following the breakdown of peace talks with the government of then-president Andrés Pastrana Arango, and 2008, the year of increased aerial fumigations of the coca plantations. Mapiripán residents continue to flee, though in smaller numbers.¹⁶⁰ A large percentage of the victims have settled in Villavicencio, Bogotá and the town of Mapiripán.¹⁶¹

Displacements and violations of territorial rights of indigenous peoples

Nearly 700 members of the Jiw people are currently living in Mapiripán, after being displaced from the Barrancón Reserve (Department of Guaviare), and have resettled in an area known as Las Zaragozas, where there is no access to drinking water, housing, education, health care, and food.¹⁶² A number of Sikuanis live in the partially destroyed *Casa Indígena* (Indigenous House) in the town of Mapiripán, with inadequate food and in unhygienic conditions, which adversely affecting the most vulnerable – the young.

Besides the armed conflict, the lack of recognition of ancestral territory (“*Tsuwakia*”) in the basin of the Caño Ovejas has been an important factor in the exodus and has put the survival of the Sikuanis and Jiw peoples at risk. Four indigenous reserves have been declared in Mapiripán, with a total area of 36,000 hectares (3.25% of the total municipal area), and four other reserves are in the process of being formalised (Table 2).

1,720 hectares in two separate areas are currently recognised as being Sikuanis lands, even though the Sikuanis have been claiming more than 80,000 hectares of ancestral land since the 1970s, which has been titled to nonindigenous, or *colonos* – *Los Machos*, *Camaura*, *Camaguay*, *Berlín*, *La Revelde*, *Casuarito* and *Yamú*.¹⁶³ The ownership history of this land will be discussed later in this report.

¹⁵⁴ Corte IDH, 2005 and CSJ, 2014-a.

¹⁵⁵ See: *verdad abierta.com*, 2013, “Condenan a Salvatore Mancuso por masacre de Caño Jabón”.

¹⁵⁶ See: Noticias Uno, 2012-a, “Ganaderos y esmeralderos financiaron masacre de Mapiripán”. Yesid Nieto, assassinated in Guatemala, and Néstor López, alias “Enano” were among the owners of the laboratories in Guaviare, and sold their drugs to Vicente Castaño (*verdad abierta.com*, s.f., “Los primeros pasos de ‘Don Mario’ en las Auc y el narcotráfico”).

¹⁵⁷ The retired general, Jaime Humberto Uscátegui Ramírez, ex-commander of the VII Army Brigade was condemned and the ex-commander of the XVII Brigade in Urabá, retired General Rito Alejo Del Río is currently under investigation. See: *El Colombiano.com*, 2015, “Reanudan proceso contra Rito Alejo del Río por la masacre de Mapiripán”.

¹⁵⁸ UARIV, 2015.

¹⁵⁹ CGR, 2015.

¹⁶⁰ UARIV, 2015.

¹⁶¹ *Ibid.*

¹⁶² Corte Constitucional, Auto 173 de 2012 e INCODER, 2014-a.

¹⁶³ URT, 2014.

The indigenous peoples were also affected by the presence of nonindigenous people who invaded their land in order to grow coca leaves, set up processing labs, transport drugs and raw materials, and plant antipersonnel mines, and add all that to the fumigations and you have a recipe for a growing humanitarian crisis and increased displacements.¹⁶⁴

Table 2. Indigenous Territories in Mapiripán

Ethnic Group	Reserve	Created	Hectares	Applications filed
Sikuani – Betania and Corocito Communities	Caño Ovejas	Res. 139, 20 December 1982	1,720	Expansion and Restitution
Sikuani	Caño Jabón	Res. 042, 21 July 1983	9,040	Expansion
Wanano	Charco Caimán	Res. 13 of 24 May 1996	1,937	Expansion
Jiw or Guayabero	Mocuare	Resolution 054	24,000	
Sikuani	Monte Alto			In process of creation
Sikuani	Chaparral			In process of creation
Jiw or Guayabero	Chaew			In process of creation
Jiw or Guayabero	Morichal			Title clearance
Total			36,697	

By SOMO-INDEPAZ with data from Incoder, 2014 and the Meta Departmental Development Plan.

Oil palm and the dispossession of land

The violent displacement allowed the narcotraffickers and paramilitary groups to buy the land owned by indigenous people and farmers using force and at deflated prices, and to take over state lands (*baldíos*) in the rural district of El Mielón, where they planted 12,000 hectares of palm following the example of the aforementioned Vicente Castaño Gil.¹⁶⁵ Sociedad Agropecuaria Villa Diana participated in this operation, acquiring the ranches (*fincas*) El Secreto I, II and III (4,656 hectares), allocated in 2006, without prior authorisation from the CMAPD-CMJT.¹⁶⁶ One of the founders of this company is Eduard Mattos Mattos, member of a family of cattle ranchers in the department of Cesar, some of whom have been investigated for links to paramilitary groups.¹⁶⁷

The other ally was the Llano Palm Cooperative (Coopalmallano),¹⁶⁸ which acquired the parcels Agrado I, II and III (4,300 hectares) deeded to Diego Rivas Ángel and two other members of the cooperative.¹⁶⁹ Rivas Ángel, investigated for narcotrafficking and money laundering,¹⁷⁰ is the brother of Jaime Eduardo, former secretary of the Minister of Agriculture (2000 and 2002).¹⁷¹

Protective Measures

Due to the increase in large-scale land purchases, the CMAPD-CMJT of Mapiripán denounced the forced displacement and ordered the protection of the rights of landowners, occupiers of *baldíos*,

¹⁶⁴ Ibid.

¹⁶⁵ *verdad abierta.com*, 2011-a, “Las tierras robadas por Vicente Castaño y Miguel Arroyave”.

¹⁶⁶ Resoluciones 949, 948 and 950 of 2006 and Comptroller, 2015.

¹⁶⁷ Arias, W., 2014-a, “Los baldíos de las familias Mattos, lasillavacia.com, “Carlos Mattos” and *verdad abierta.com*, s.f., “La respuesta de Eduard Heriberto Mattos Barrero”.

¹⁶⁸ Cooperative with a registered address in Puerto Concordia, Meta (certified in the Chamber of Commerce in Bogotá on 4 August 2014).

¹⁶⁹ Incoder Resolutions 534, 537 and 537 of April, 2007. See: *El Tiempo*, 2015-a, “Así se adueñaron narcos y ‘paras’ de tierras en Mapiripán”.

¹⁷⁰ See: Radio Santafé, 2012, “Policía realiza primera ocupación de bienes para restitución de tierras a las víctimas de los grupos ilegales”.

¹⁷¹ They are said to be cousins of Carlos Ledher Rivas, drug trafficker who was a member of the Medellín Cartel, extradited to the United States in 1987, believed to be the owner of Cayo Norman Island, in the Bahamas, used as a stopover point for planes bringing narcotics to the United States. See: Las2orillas, 2014, “El día que un Beatle y un Rolling Stone fueron secuestrados por Carlos Ledher” and *verdad abierta.com*, “El Secreto de Mapiripán”.

and possessors.¹⁷² However, massive land purchases, the accumulation of UAFs, and the appropriation of publicly allocated lands did not stop, as then-mayor Maribel Mahecha Hernández¹⁷³ authorised land dispositions without consulting all of the CMAPD-CMJT's members, and sometimes consulting them only after a transaction had been registered.¹⁷⁴

These land grabs raised the Gini index for the concentration of land ownership in Mapiripán, from 0.662 in 2000 to 0.749 in 2011.¹⁷⁵ According to the Comptroller General, 57.9% of the municipal territory was in the hands of 78 people (owners, occupiers and possessors), and 46% of the land parcels (*baldíos*) adjudicated for private ownership in the period 1986-2012 had their titles transferred between 1997 and 1998, when the inhabitants of Mapiripán were fleeing the massacres.¹⁷⁶

Land Restitution

As of June 2014, The Land Restitution Unit (URT) had received more than 4,000 petitions for the restitution of lands in the department of Meta – 700 of which referred to 1,648 land parcels in Mapiripán (totalling 288,000 hectares). Among the properties petitioned for restitution are Agrado I, II and III, El Secreto III, and Madre Selva (*baldío*), in which 1,516 hectares of palm have been planted.¹⁷⁷ These properties are administered by the Victims Unit (UARIV).¹⁷⁸

The prospects of the victims to recover their lands are uncertain, due to insecurity and presence of armed groups (the reason given by the URT for not micro-focalising the rural area of the municipality),¹⁷⁹ the “tensions between the Community Action Councils and the oil companies and Poligrow”¹⁸⁰ and the “possible expropriation and occupation” by local authorities.¹⁸¹

The aforementioned circumstances have made it difficult for the victims of displacement in Villavicencio – united as the Association of Displaced Women of Meta (Asomudem) and the Corporation of Displaced *Mi Consuelo Campesino* (Miconcam) – to return.¹⁸²

Conclusion

The present chapter shows that Colombia, and specifically the Altillanura region where Mapiripán is located, has been and continues to be affected by the internal armed conflict. Illegal actors and people from outside the region have benefited from the displacement of small-scale farmers and indigenous people, disregarding their rights to the land and collective territories, blocking their right

¹⁷² CMAPD-CMJT. Resolutions 030 and 147 of 2008 and 271 of 2010, which authorized an investigation of land and territory rights, according to Law 387 of 1997. See: ACCIÓN SOCIAL- PPTP, 2010 and 2010-a and ACCIÓN SOCIAL-PPTP-INDEPAZ, 2010.

¹⁷³ The former Mayor (2001-2003 and 2008-2011) besides being investigated for alleged links to ERPAC (punto 3.1.2), was convicted, together with ex-Secretary of Finance Jorge Wilson Díaz Montoya, for unlawfully signing contracts without following legal regulations and for falsifying public documents (See: Fiscalía, 2014).

¹⁷⁴ The committee is formed by Army and Police commanders, the Secretary of Public Health and representatives of the Colombian Red Cross and the displaced population (CGR, 2015).

¹⁷⁵ IGAC, 2011. The combined area of titled public land parcels (210.411 hectares) makes up 18% of the area of the municipality.

¹⁷⁶ The Comptroller General launched investigations into the civil servants of the notary, public record and property register offices in San Martín and Mapiripán for not demanding the authorization of the CMAPD-CMJT, modifying and correcting property registration forms, lot numbers and property register certificates, and signing late registry forms and with signs of falsification, among other conduct, and into the Mayor's Office of Mapiripán for not acting to stop the purchase of 9 publicly owned properties of a total area of 1.591 hectares by the Proaves Foundation (CGR, 2015). See also: ACCIÓN SOCIAL-PPTP, 2010, and *El Tiempo*, “Se robaron 150 mil hectáreas con ayuda de registradores y notarios”.

¹⁷⁷ Verdad Abierta.com, 2012-a. “Quién miente entre “Don Mario” y “Pirata”.

¹⁷⁸ UARIV, 2014 and Radio Santafé, 2012, “Policía realiza primera ocupación de bienes para restitución...”

¹⁷⁹ Micro-focalisation is a means of prioritizing cases, according to criteria of the Ministry of Defence.

¹⁸⁰ Background document of the URT March 2014, cited in: CGR, 2015.

¹⁸¹ CGR, 2015.

¹⁸² SOMO-INDEPAZ interviews with employees of the Units for Victims and Land Restoration, and with victims in Villavicencio in June 2014.

to return to the land they originally came from, and blocking their rights to remain in their own territory. This situation has meant that multinationals operating in Colombia have the responsibility to apply advanced due diligence to ensure that their present and future actions do not cause human rights infringements, and to prevent becoming complicit in actions by state or non-state actors that contribute to the conflict.

4. Poligrow Agroindustrial Project

Here the Poligrow company will be described, focusing on how Poligrow presents its corporation and its corporate structure (auto-denominated “Grupo Poligrow”). The chapter also includes information on Poligrow’s allies and suppliers for the production of palm oil.

Poligrow arrived in Mapiripán following the Colombian government’s promotion of foreign investment in the Altillanura and in response to shareholder interest in generating employment and economic opportunities in Mapiripán.¹⁸³ Its goal, by 2016, is to plant “15,000 hectares”: 7,000 hectares on its own land and 8,000 on land controlled by strategic allies,¹⁸⁴ and to produce palm oil and its derivatives in its own factories, for the national and global oil markets.¹⁸⁵

4.1. Poligrow Group

According to its website, the Poligrow Group is composed of “four companies dedicated to generating development in the municipality of Mapiripán (Colombia) by applying innovative and sustainable methods to agroindustrial processes, social responsibility and energy services”.¹⁸⁶ These four companies are described below:¹⁸⁷

Poligrow *Colombia*: Limited liability company that was established in Colombia in April 2008, with capital investments of COP 9.115 billion (approx. \$3.4 million) provided between 2010 and 2011. Its shareholders are the Spanish company Poligrow Inversiones and Carlo Vigna Taglianti (Table 3).

Table 3. Shareholders and Capital of Poligrow Colombia Ltda.

Poligrow Colombia	COP\$	US\$
Authorized capital	9,114,825,318	3,117,336
Poligrow Inversiones S.L.	9,045,575,095	3,153,197
Carlo Vigna Taglianti	72,250,223	25,186

Generated by SOMO-INDEPAZ based on the certificate of incorporation and legal representation of 13 January 2014 and Informa Colombia, 2015.

Its corporate objective is the elaboration of projects and research in the field of biotechnology, alternative fuels and renewable energy, for itself or other public or private entities, and its economic activity is related to the cultivation of grains, legumes, and oil-producing plants.

Poligrow Colombia has received credits from the Colombian State valued at COP 92.8 billion (\$34,6 million) and the Forestry Incentive Certificate (CIF) valued at COP 74 million (approx. \$27,000) for reforesting 50 hectares with acacia and melania.¹⁸⁸

¹⁸³ See: Interview with Vigna Taglianti. En: The Washington Post, 2014.

¹⁸⁴ *El Tiempo*, 2009, “3 mil hectáreas de palma serán sembrados en 2009 gracias a inversión europea en Mapiripán (Meta)”.

¹⁸⁵ SOMO-INDEPAZ interview with Poligrow employees in Mapiripán in May 2014 and Poligrow, 2014-a.

¹⁸⁶ Poligrow. In: <http://www.poligrow.com/> (4.2.2014).

¹⁸⁷ All information is derived from the Articles of Incorporation expedited by the Bogotá Chamber of Commerce, as shown in Annex 8, except that which comes from other sources.

¹⁸⁸ CGR, 2014, pp. 199-202, and Ministry of the Environment, Contract no. 084-2010, of 24 December 2010.

According to information available on the Internet, Poligrow Colombia profits grew in 2012 compared to 2011, the first year of sales of the oil palm fruit, and fell by more than half in 2013 (Table 4).

Table 4. Profit, sales, and debt of Poligrow Colombia in thousands of COP or US\$

Income	2013		2012		2011	
	COP (thousands)	US\$ (thousands) ¹⁸⁹	COP (thousands)	US\$ (thousands)	COP (thousands)	US\$ (thousands)
Profits	237,065	83	545,825	190	197,860	69
Sales	5,993,697	2,089	340,161	118,577	5,724,758	1,996
Debt	57,41%		53,31%		29,87%	

Generated by SOMO-INDEPAZ based on information from Informa Colombia, 2015.¹⁹⁰

Poligrow Agroindustrial: This corporation is a so-called SAS (simplified stock company) registered on 4 October 2011, with COP 100 million (approx. \$37,000) in capital. Its objective is to “construct an oil palm extraction plant” in Mapiripán.¹⁹¹

Poligrow Foundation: Nonprofit entity created in 2010, in charge of Corporate Social Responsibility (CSR) projects and community relations.¹⁹²

Electrificadora de Mapiripán S.A E.S.P (Electrimapiri): Corporation created in 2011 by Poligrow Colombia and the Poligrow Foundation, with a capital of COP 600 million (approx. \$224,000). It is headquartered in the offices of Poligrow in Bogotá and is represented by Angélica Villalobos Hernández.¹⁹³

Allies of Electrimapiri include the Departmental Government of Meta and the Institute of Planning and Promotion of Energy Solutions for non-interconnected zones of the Ministry of Mines and Energy.¹⁹⁴ The electric plant operates with diesel bought in Facatativá, in the municipality of Cundinamarca. According to the company, this purchase is supervised by the Superintendency of Residential Public Services.¹⁹⁵ There are future plans to run the electric plant on vegetable fuel.¹⁹⁶

Poligrow *Servicios Agrícolas I, II, III and IV*, in liquidation,¹⁹⁷ are additional related entities. They were incorporated in 2011 and 2012, with the aim of providing services and personnel to the Poligrow *Research + Green Oils* project,¹⁹⁸ and about which Poligrow Colombia reported that they

¹⁸⁹ Exchange rate on 12 October 2015.

¹⁹⁰ This information is supported by the account balances presented by Poligrow Colombia to the Superintendence of Companies. Based on financial data up to 31 December 2013, Informa Colombia notes a profit margin of 3.96% with an “unfavorable trend” and that the company carries a “debt level of 57.41% negative trend compared to the previous year”.

¹⁹¹ Poligrow, 2014-b.

¹⁹² “¡La Fundación Poligrow es una realidad!”. In: BIP no. 9 of 5 June 2010, p. 3.

¹⁹³ Document of Public Record 602 of 1 April, 2011 of Notary number 10 of Bogotá, observations on the preliminary report, p. 21 and BIP No. 17 of August 2012, p. 3.

¹⁹⁴ ASJA, 2015-c, p. 20.

¹⁹⁵ Observations on the preliminary report, p. 21.

¹⁹⁶ Regarding the Electrimapiri operations, Mapiripán residents complain that they lack public information about fees and stratification (SOMO-INDEPAZ interviews with Mapiripán’s mayor and ombudsman in May and June 2014). The ombudsman filed a protection order in response to complaints about noise pollution caused by the electric plant. There was no compliance with the original order, so a new protection order was filed by the ombudsman in Villavicencio (Complaint lodged to Justice of the Court Danilo Veloza Bonilla of Mapiripán, Rad. 2013-00007, verdict Rad. 2013-0004 5 June, 2013, verdict on 8 April 2014 rejects contempt verdict and process Rad. 503254089001-2014-00003-00).

¹⁹⁷ SOMO-INDEPAZ interview with Vigna Taglianti in September 2014.

¹⁹⁸ SOMO-INDEPAZ interview with Vigna Taglianti in June 2014.

had established a subordinate relationship.¹⁹⁹ Poligrow *Servicios Agrícolas I, II* were originally named *Sociedad Comercial Santa Ana I and II S.A.S.*

This section shows that Poligrow discloses only part of its corporate structure on its website or in its own communication material. As will be shown in chapter five, Poligrow's corporate structure is more complicated than this.

4.2. Parent Company and Shareholders

Poligrow Inversiones S.L.

The parent company of Poligrow *Colombia* is Poligrow Inversiones S.L., a Spanish company constituted in November 2007 by Ibertax Servicios Integrales S.L., as sole shareholder and administrator, with social capital amounting to COP 8,657,713 (US \$3,237).²⁰⁰ It is registered as a holding company and its income is generated by the "distribution of dividends of its subsidiaries, financial operations and the sale of shares and non-strategic equity stakes".²⁰¹

Its corporate purpose is "the direction and management of the representative value of the funds belonging to entities both inside and outside Spanish territory and the allocation of the financial resources derived from the activities outlined in charter of the corporate constitution, through the corresponding organisation of resources and personnel, and provision of services and support to the participating entities".²⁰²

The shareholders of Poligrow *Inversiones* are: *Serlick*, Uruguayan corporation, and *Asja Ambiente Italia S.p.A.*, whose shareholders are *Condusio Societa Fiduciaria* and Agostino Re Rebaudengo.²⁰³ The shareholders will be investigated in greater detail in chapter five.

4.3. Allies of Mapiripán

Poligrow promotes strategic alliances with natural and juridical persons who sell their entire palm harvest to Poligrow. Through these alliances they aim to "pass on knowledge and technical experience", as well as guarantee that their partners "comply with strict environmental regulations".²⁰⁴ In order to do this, allies receive technical assistance in the planting and maintenance of the plantations.

¹⁹⁹ One of the legally mandated corporate monitoring mechanisms that regulates the existence and operation of business groups (Articles 28 of Law 222 of 1995 and 260 of the Commercial Code).

²⁰⁰ Central Mercantile Register, 2014, Certification of registration of Ibertax Servicios Integrales of 18 June. Provides legal services to more than 100 companies in various sectors. See: <http://www.infocif.es/empresas-vinculadas/ibertax-servicios-integrales-sl> (29.10.2014).

²⁰¹ Poligrow Inversiones, 2010, p. 4.

²⁰² Ibid., p. 19.

²⁰³ Responses 1, 2, 5 in annex 5 and SOMO-INDEPAZ interviews with Vigna Taglianti in September 2014 and February 2015.

²⁰⁴ "Alianzas estratégicas: más motores de desarrollo para la región". In: BIP no. 19 of June, 2013, p. 5.



Picture 1. Plants on the Los Macondo plantation

According to Poligrow their “strategic allies” are:²⁰⁵

ITA Aceites Vegetales: Simplified Stock Company created in September 2009 in Bogotá with an authorised capital of COP 3 billion (approx. \$1.121 billion) from Torino Oli Vegetali S.R.L, a company owned by Poligrow Inversiones since 2012, as mentioned below.²⁰⁶ Its corporate purpose is listed as agricultural activity and “any other legal economic activity in or outside Colombia”.

In 2011, ITA Aceites signed agreements with Poligrow Colombia and Poligrow Agroindustrial. They agreed that ITA Aceites would make land and capital available and would administer its taxes, in exchange for the provision of the technological needs, goods and services, and Poligrow Colombia’s administration of the project. They agreed with Poligrow Agroindustrial to sell them their entire palm harvest for 28 years.²⁰⁷

Mesa Cárdenas & Garcés is a Simplified Stock Corporation that was created in the same year as ITA Aceites with an authorised capital of COP 15 million (approx. \$5.607 million). Part of its corporate purpose is the “representation and management services for national or foreign firms” and the “investment of funds in stocks ... and interest shares in national or foreign corporations, as well as the negotiation of all kinds of rights”.

In 2012, the company split and, without liquidating, transferred part of its assets to Argema S.A.S, now in liquidation. In 2014, Mesa Cárdenas & Garcés reported assets of COP 675 million (approx. \$252,357).

Carlo Vigna Taglianti is the legal representative of the Poligrow Group companies, except for Electrimapiri, and the owner of the property Las Toninas Hoy on which oil palm owned by Vigna Taglianti and Poligrow Colombia is grown. Poligrow Colombia also plans to construct its main extraction plant on this site, and it will also be the future site of the special free-trade zone solicited by Poligrow Agroindustrial.²⁰⁸

²⁰⁵ Observations on the preliminary report, pp. 18, 19 and 41, Responses 11 and 12 of annex 5 and SOMO-INDEPAZ interviews of Vigna Taglianti in September 2014 and February 2015.

²⁰⁶ ASJA, 2014, p. 15.

²⁰⁷ See: CIJP, 2015, “Los claro oscuros del grupo Poligrow”, pp. 36-40.

²⁰⁸ SOMO-INDEPAZ interviews with Vigna Taglianti in June 2014 and February 2015.

Other Poligrow allies, as of December 2014, were the owners of the properties Yamú, La Cristalina, Casuarito y El Bogante²⁰⁹ (described below).

In chapter five the role of the strategic allies in land acquisition and palm cultivation will be further explained.

4.4. Palm Cultivation

The Poligrow agroindustrial Project emerged as part of the Colombian government program to attract foreign investment to the Altillanura región and because of the interest that Poligrow's shareholders had in generating employment and licit alternatives to coca cultivation in Mapiripán.²¹⁰ The company aims to have planted "15,000 hectáreas" by 2016²¹¹: 7,000 on its own land and 8,000 on land from its strategic allies.²¹² Poligrow aims to produce palm oil and its derivatives in its own plants, and wants to export it to national and international markets.²¹³

In 2008, Poligrow Colombia began the preparation and adaption of the soil to reduce salinity and achieve lower concentrations of aluminium on the Los Macondo plantation, located in the rural district (or vereda) of Guacamayas of Mapiripán,²¹⁴ which includes the properties Macondo I, II and III, Barandales and Barandales Parte.²¹⁵ As of December 2014, there were 6,500 hectares planted with oil palm, most of which on the plantations of Los Macondo and Las Toninas Hoy, owned by Poligrow entities, and at least 130 hectares on the lands of its allies: Yamú (100 hectares) and El Bogante (30 hectares).

In 2015, there are plans to expand the cultivated areas of *Yamú* and *El Bogante*²¹⁶ and involve reintegrated members of armed groups in the planting of fields owned by Incofer, an initiative promoted by the national government through the Territorial Consolidation and Reconstruction Unit (*Unidad de Consolidación y Reconstrucción Territorial*).²¹⁷

The cost of establishing one hectare of palm in 2014 was COP 12 million (approx. \$4,484),²¹⁸ which means that about COP 78 billion (approx. \$29.1 million) would have been invested in that year.²¹⁹

²⁰⁹ See: BIP No. 18 of November, 2012, p. 15 and No. 19 of June, 2013, p. 5 and Preciado, M., 2013, "Poligrow Research + Green Oils".

²¹⁰ Interview with Vigna Taglianti. *The Washington Post*, 2014.

²¹¹ Respuesta 17 en el anexo 4; La República, 2012, "Poligrow invertirá US\$7,5 millones para apoyar el desarrollo sostenible en la Orinoquía" y Entrevista SOMO-INDEPAZ con Vigna Taglianti en septiembre de 2014.

²¹² *El Tiempo*, 2009, "3 mil hectáreas de palma serán sembrados en 2009 gracias a inversión europea en Mapiripán (Meta)".

²¹³ Entrevista SOMO-INDEPAZ con funcionarios de Poligrow en Mapiripán en mayo de 2014 y Poligrow, 2014-a.

²¹⁴ In 2008, Poligrow found "'chagras' (parcels) of coca" in *Los Macondo*. SOMO-INDEPAZ interview with Vigna Taglianti in July 2014 and BIP No. 6 of 7 December 2009, p. 6.

²¹⁵ Preciado, M., 2013.

²¹⁶ SOMO-INDEPAZ interview with Vigna Taglianti September 2014.

²¹⁷ In previous years, the company presented a similar proposal to the government. SOMO-INDEPAZ interview with Vigna Taglianti in September 2014.

²¹⁸ SOMO-INDEPAZ interview with Vigna Taglianti in February 2015.

²¹⁹ In this document, the exchange rate on 17 March of 2015 was used: \$1 = COP: 2,675.



Picture 2. Extracting plant on the Los Macondo plantation

4.5. Processing Palm Fruit

The plantation Los Macondo yielded its first harvest in December 2011, when it began to sell its palm fruit²²⁰ to companies located in the Palm Corridor (Corredor de Las Palmeras), previously mentioned.²²¹

In September 2014, the construction of the first extractor plant on *Los Macondo* was completed. It is capable of processing seven tons of palm fruit bunches per hour.²²² The construction of the second plant is dependent on three conditions: the planting of 15,000 hectares by 2016, improvements in the intermodal corridor that will aid the transport of the palm oil to the Atlantic and the Pacific, and the creation of the Permanent Special Free-trade Zone requested by the company Poligrow *Agroindustrial*.²²³

4.6. Supply Chain

Poligrow's supply chain is made up of its strategic allies as well as suppliers of lime and dolomite, and fertilizers (Calizas del Llano S.A and Geoquímica SOM, S.A.S.) and seeds (Empresa ASD Costa Rica,²²⁴ amongst others), and the companies that provide transport, workforce and food services. Although Poligrow aims to export its palm oil, the only current buyers are Colombian enterprises that produce for the domestic market, such as Aceites Cimarrones, Agropecuaria Santa María, Entrepalmas S.A.S. and La Riviera Gaitán, among others.

It can be concluded that, despite the efforts of Poligrow and its strategic allies, and the state support received, the company is still far from its goal of planting 15,000 hectares in 2016 and its pilot extracting plant only went into operation in 2014. These topics are related to the drop in yields and the unprofitability of the project thus far.

²²⁰ BIP no. 8 of 5 April 2010 and 15 September 2011, p. 7.

²²¹ Interviews with Poligrow employees Mapiripán in May and June of 2014.

²²² BIP no. 23 of October-December 2014, p. 4.

²²³ SOMO-INDEPAZ interview with Vigna Taglianti in September of 2014.

²²⁴ See: <http://www.asd-cr.com/>.

5. The Operation of Poligrow and the *OECD Guidelines*

This chapter will analyse Poligrow's activities using six chapters from the *OECD Guidelines for Multinational Enterprises*:

- ❑ II: General Principles
- ❑ III: Disclosure
- ❑ IV: Human Rights
- ❑ V: Employment and Industrial Relations
- ❑ VI: Environment
- ❑ XI: Taxation

These chapters have been selected because they are the most relevant to Poligrow's operations. Chapters III and XI of the *Guidelines* will also be covered in this section.

In 2012, Poligrow announced that it would implement the OECD Guidelines.²²⁵ The company is also in the process of obtaining RSPO certification,²²⁶ and has started corporate social responsibility (CSR) initiatives that have helped to improve the situation of Mapiripán's inhabitants. According to many of them, Poligrow's provision of access to electricity improved a lot.

This chapter will analyse Poligrow's activities and its strategic allies, based on the normative framework established in chapter two. In this chapter, information used includes that which was received from Poligrow, interviews, and information received from national and international sources (see Methodology). The chapter will show that there are various situations in which Poligrow does not comply with its internal norms and where it does not respect human rights, does not remediate adverse impacts, and does not effectively contribute to sustainable development. These situations, as will be explained further on, are mainly the result of problems related to community engagement, dialogue and participation; transparency concerning Poligrow's corporate structure, shareholders, financial situation and tax policies; acquisition of land; free, prior and informed consent of indigenous peoples; labour rights; and environmental conservation.

5.1. General Principles

OECD Guidelines and other standards

Chapter II of the *Guidelines* focuses on 15 fundamental principles. The general principles for "responsible corporate conduct in the global context", include the duties of corporations to respect the human rights of those affected by the company's operations, stimulate the creation of local capacity and employment, generate forums for dialogue with communities, and consider commentaries from internal and external actors, including affected parties.

Similarly, the Colombian government needs clear policies that are consistent with international and national standards, to ensure that Poligrow is not involved in human rights abuses, and the government needs to have mechanisms in place to launch investigations into negative impacts or

²²⁵ In October 2014 Poligrow shared an analysis of its compliance with the OECD Guidelines. Poligrow claimed that it complied with 90% of the guidelines that 'applied to them'. However, Poligrow excluded the chapters on human rights, competition and taxation; Interview SOMO-Indepaz with Vigna Taglianti in September 2014.

²²⁶ The RSPO website indicates that Poligrow's mission is to promote the development of agriculture in marginalised regions of South and Central America and to respond to the market demand for vegetable oils.

conducts that do not comply with national and international regulations, and, when necessary, impose the appropriate sanctions.

Due diligence responsibilities in high-risk areas such as Mapiripán imply that Poligrow “identifies, prevents and mitigates real or potential negative impacts of its activities, and informs how it deals with these impacts”.²²⁷ As stipulated in the *OECD Guidelines*, the “incongruence in policies” or situations in which public servants do not respect the country’s law do not exempt the company from its responsibilities to respect human rights and remediate adverse impacts.

International norms further state that companies have the responsibility to make sure that companies in its supply chain respect human rights. This means that corporations have the responsibility to apply due diligence when selecting or contracting allies, suppliers, clients or contracts. When (possible) adverse human rights impacts should be identified in the actions of suppliers, clients or allies, companies have a responsibility to apply measures to prevent or mitigate these impacts.²²⁸

5.1.1. Community Relations

Poligrow Policy

In the framework of the *Guidelines*, Poligrow plans to implement a “Social Impact Assessment”.²²⁹ SOMO-INDEPAZ did not receive information about the content of this assessment, nor about the mechanisms for integrating the communities in its design or application.

Corporate social responsibility activities

The Poligrow Foundation promotes Corporate Social Responsibility initiatives such as home and school gardens, environmental weeks with mothers from the community and students from the Jorge Eliecer Gaitán school; sponsorship of technological careers in the Agroindustrial Polytechnic Institute of Villavicencio; capacity-building activities with the National Training Service (*Servicio Nacional de Aprendizaje – SENA*); support for the community radio station and sports championships, and activities with indigenous peoples, especially the Jiw.²³⁰

²²⁷ OECD, 2011.

²²⁸ Ibid.

²²⁹ Poligrow, 2014, “Matriz de Avances Líneas Directrices de la OCDE”.

²³⁰ SOMO-INDEPAZ interview with employees of the Poligrow Foundation in July of 2014.



Picture 3. Jorge Eliecer Gaitán college in Mapiripán

The Foundation has carried out projects such as the improvement of 51 spots on the road from Mapiripán to La Envidia, using resources from the Mapiripán Mayor's Office (COP 55.3 million – approx. \$20,681)²³¹ and contributions from Poligrow Colombia, via the Foundation, which amount to COP 590 millions (approx. \$220,829).²³²

The Foundation, together with Electrimapiri, promote the Project “Energy self-sufficiency through the use of vegetable oil in the municipality of Mapiripán”, winner of the IDEAS Energy Innovation Contest of the Inter-American Development Bank, the organisation GVEP, the German development agency (Giz), and the Korean government. To that end, the Association of Small Farmers of Mapiripán (Asociación Agropecuaria de Productores de Mapiripán – ASOAGROMAPI) was created, which is comprised of small producers of *jatropha curcas*, a shrub that produces oil seeds that can be used as biofuel. In 2014, of the 300 hectares planned, “more than 30 ha.” had been planted with *Jatropha*.²³³

The Asja Group, referred to later on, has supported the Poligrow Foundation in the implementation of environmental and social projects, including a contribution to the Christmas festivities in 2013.²³⁴ In 2014, Agostino Re Rebaudengo, founder and president of the Asja Group, presented the project a “Self-supply of electricity from vegetable oil extracted from local crops in Mapiripán”, as a successful model fit for Mediterranean regions²³⁵ and Colombia.²³⁶

²³¹ Contract no. 099 of 8 November, 2013 signed by the Municipality of Mapiripán and the Poligrow Foundation, seen in annex 5 and “Movilidad en Mapiripán: articulados y mejor conectados”. In: BIP No. 20 of September, 2013, p. 4.

²³² Response 18 of annex 5 and certification of donation of “specified destination” from 17 December, 2014 received from Poligrow Colombia.

²³³ Response 21 of annex 5 and observations on the preliminary report, p. 21.

²³⁴ ASJA, 2014-a, p. 75.

²³⁵ RES4MED, 2014.

²³⁶ ASJA, 2015-c, p. 20. In the second semester of 2014, Jorge Iván Duque Lenis, Mayor of Mapiripán, at the invitation of Poligrow and the Asja Group went to Italy to learn about alternatives in the production of vegetable oils (Interviews, SOMO-INDEPAZ with the Mayor of Mapiripán and Vigna Taglianti in February of 2015).



Picture 4. *Jatropha* plants on the Los Macondo plantation

Observations

Civil and military authorities, as well as local leaders, have mentioned the numerous advantages of Poligrow's arrival to the municipality, such as the bus service *La Macarena*, internet access, the generation of employment, 24 hour electricity Access, and the installation of a cash machine from the *Banco Agrario*, the only banking facility in the municipality.

However, community members, organisations and public authorities, among others, also note the negative impact of Poligrow's operation, particularly in the areas of human rights, labour rights, environmental rights, and mobility (damages to the already precarious public roads).²³⁷ The indigenous authorities complain that when they attend meetings called by Poligrow Foundation, they are photographed and recorded without their permission, and they are forced to sign forms for CSR programs, which are never carried out.²³⁸

5.1.2. Dialogue and participation

According to the *OECD Guidelines*, companies should disclose clear, truthful, sufficient, freely accessible information to the communities and government authorities, and should establish mechanisms for dialogue to generate trust and good faith. These mechanisms should enable communities to participate in the making of decisions about the company's plans and projects. This means that companies should set up transparent, reliable, and accessible grievance or complaint mechanisms.²³⁹

²³⁷ It was mentioned that the precarious road that connects the town of Mapiripán with at least 15 rural districts, or *veredas* (including Esteros Bajos, Esteros Altos, San José, Chaparral, Caño Minas, Puerto Alvira, El Silencio, Realidad, Puerto Siare, Anzuelo and Rincón del Indio) was damaged during soil improvement operations on the Las Toninas property, and although Poligrow promised in writing to fix it, "it was never repaired". This observation is not shared by the company (observations on the preliminary report, p. 54).

²³⁸ SOMO-INDEPAZ interviews with indigenous community members in Mapiripán in February 2015.

²³⁹ OECD, 2011.

The *Guiding Principles* prescribe that companies should properly consult potentially affected groups and other interested parties,²⁴⁰ and should obtain free, prior and informed consent from indigenous peoples who could be affected by its operations. The aforementioned is reiterated in the Principles and Criteria of the RSPO²⁴¹ and in the national regulations and jurisprudence that implement Convention 169 of the International Labour Organization (ILO) and the Declaration of the United Nations on the rights of indigenous peoples,²⁴² instruments that recognise the fundamental right to adequate, informed, prior and good faith consultation with indigenous communities, in spaces in which they can give free, prior and informed consent (FPIC) according to their vision of development.²⁴³

Poligrow Policy

In 2009, Poligrow initiated the “Multi-stakeholder Forums” which it defines as a “space of dialogue” between the municipal authorities, police, armed forces, merchants, the community and the workers, among other actors, “directly or indirectly involved in the palm-growing project”.²⁴⁴

Observations

The Forums, convened by the Poligrow Foundation, are more a space to voice complaints than an interactive and participatory dialogue about corporate operations. There is no differentiation between the responsibilities of Poligrow’s institutions or those of its allies, and they don’t always notify the relevant local authorities (the offices of the Comptroller, Municipal Attorney, and ombudsman) and the regional and national environmental and labour authorities about upcoming forums.

There are also doubts about the frequency of these forums. The forums that followed the SOMO-INDEPA’s visit to Mapiripán in July 2014,²⁴⁵ in which the complaints of authorities, workers and communities about impacts on the ecosystems of Las Toninas and the Caño Yamú (a local waterway flowing to the sea) as well as labour issues, were discussed,²⁴⁶ do not seem to have been continued, as stated during interviews conducted in February 2015.²⁴⁷ However, the Poligrow representative stated that a forum was held in December to share the results of the previous forums.²⁴⁸

Mapiripán farmers that were invited to become allies in the Poligrow project maintain that they do not receive sufficient or clear information about the conditions of the strategic alliances.²⁴⁹ According to Poligrow, the difficulties in increasing the number of local allies is related to the lack of land titles, the high costs of establishing a hectare of palm, the size of the Family Agricultural Units (UAF) and the difficulty of getting bank loans due to the fact that Mapiripán’s residents lack a credit history.²⁵⁰

²⁴⁰ UN, 2011.

²⁴¹ Concerning territorial rights, the RSPO demands prior, informed and freely given consent (Criteria 2 RSPO, 2013).

²⁴² UN, 2007.

²⁴³ Law 99 of 1999 and Constitutional Court, Sentence T 129 of 2011.

²⁴⁴ See: BIP no. 6 of 7 December 2009, p. 8 and no. 7 of 5 February 2010, p. 9.

²⁴⁵ Regarding forums held 7 July, 11 and 29 August 2014.

²⁴⁶ Fundación Poligrow, 2014.

²⁴⁷ SOMO-INDEPAZ interviews with authorities, community members and workers, in February 2015.

²⁴⁸ SOMO-INDEPAZ interview with Vigna Taglianti in February 2015.

²⁴⁹ SOMO-INDEPAZ interview with cattle ranchers and farmers in Mapiripán in July 2014.

²⁵⁰ SOMO-INDEPAZ interview with Vigna Taglianti in September 2014.

Conclusions

Although community members have seen some benefits such as improved roads and access to electricity since Poligrow's arrival, Poligrow does not comply with the guidelines concerning community relations and stakeholder engagement. Corporations are expected to engage in meaningful engagement with communities and to provide a space for dialogue. Community members argue that they do not receive sufficient information to engage in real dialogue and that the discussions are one-way company presentations instead of real discussions or dialogues. Indigenous people have not given their free, prior and informed consent, and they are often asked to sign for CSR projects that fail to be implemented.

5.2. Disclosure of company and tax information

This section will discuss Poligrow's complex corporate structure both in Colombia and internationally, based on publicly available information, and will show how this relates to international guidelines for disclosure of corporate information and tax issues. It also looks into those actors who have facilitated Poligrow in the establishment of their complex corporate structure.

Normative framework

The *Guidelines* state that corporations should ensure that timely and accurate information is disclosed on all material matters regarding their activities, structure (owners, shareholders, and associates), financial situation, performance, ownership and governance. In the same way, they should also inform about its governance structures and policies, in particular, the content of any corporate governance code or policy and its implementation process.²⁵¹

According to the *Guidelines*, the companies should contribute to the public coffers of their host countries, complying with the "letter and spirit" of the tax laws and regulations, providing sufficient information so that the authorities can accurately calculate their taxes, and they can pay them dutifully.²⁵² The OECD prohibits the practices of tax evasion and tax avoidance, which result in great losses in developing countries, adds to the inequality between small and medium-sized businesses, and reduces the resources available for host states to use to guarantee the rights of its residents.

Different UN and ICRC instruments refer to the risks of corporate operations involved in money laundering and the financing of terrorism in countries hosting armed conflict and illicit economies. As explained in the previous chapters, in the production and narcotics trafficking networks in the southern Meta and northern Guaviare, narcoparamilitaries have used various financial strategies to launder illicit assets. These situations demand that corporations exercise measures of "enhanced due diligence" to avoid becoming involved in the laundering of assets and/or acting in complicity with illegal actors and thus running reputational risks.

As will be seen below, the Poligrow Project includes the participation of companies from European and Latin American countries that have subscribed to the *OECD Guidelines*, and which should be promoting and disseminating the application of the *Guidelines* and other international standards, both in the country of origin and in those in which they operate.

²⁵¹ OECD, 2011.

²⁵² OECD, 2011.

Poligrow Policy

The Poligrow website contains information about Poligrow *Colombia*, Poligrow *Agroindustrial*, Poligrow *Global*, *Strategic Alliances* and other issues (Poligrow's Informational Bulletins or *Boletines Informativos de Poligrow – BIP*).

The annual sustainability report, in line with “Global Reporting Initiative” requirements,²⁵³ one of Poligrow's compromises²⁵⁴ was to obtain an RSPO certification, which was not disclosed to SOMO-INDEPAZ.

With information disclosed on Poligrow's website and provided by Vigna Taglianti in interviews and in correspondence,²⁵⁵ it was not possible to fully identify Poligrow's complex corporate structure (Graph 1)²⁵⁶. Therefore, this section is based on external sources, which are listed in annex 6.

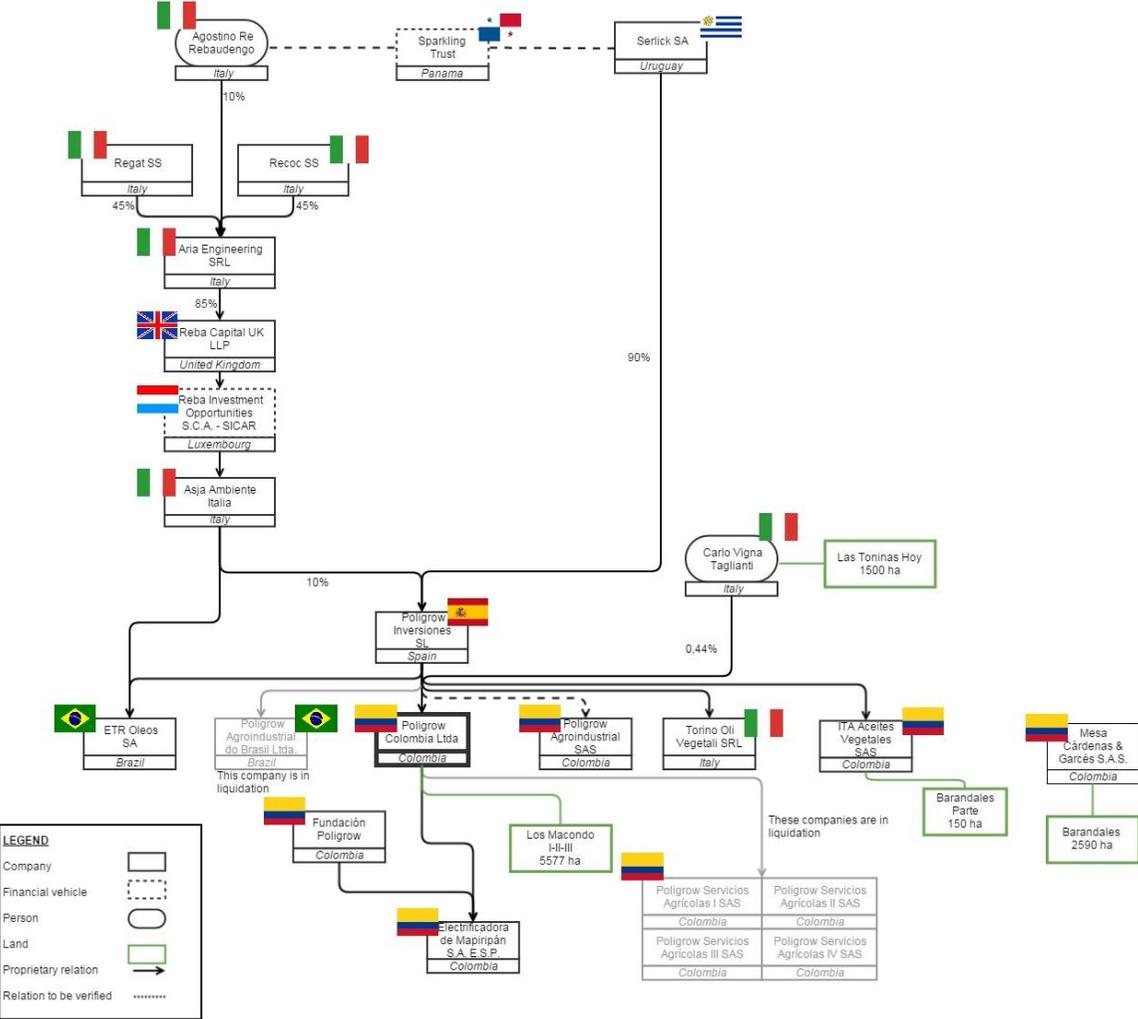
²⁵³ GRI, 2015.

²⁵⁴ Poligrow, 2014-d and REBA CAPITAL UK LLP, 2015, p. 9.

²⁵⁵ Annex 4: correspondence between SOMO-INDEPAZ and Poligrow; Annex 5, response of Poligrow received 22 December 2012.

²⁵⁶ Based on sources listed in annex 7.

Illustration 1. Corporate structure of the Poligrow Network



By SOMO-INDEPAZ, based on databases, certificates, and web pages (See: Annex 6)

5.2.1. Poligrow Corporate Network in Colombia

As was mentioned earlier, Poligrow’s website indicates that “Grupo Poligrow” in Colombia is composed of: Poligrow Colombia, Poligrow Agroindustrial, Poligrow Foundation, and Electrimapiri S.A E.S.P.²⁵⁷ There is no mention on the website of Poligrow Servicios Agrícolas I, II, III and IV; the “strategic allies” (ITA Aceites Vegetales, Vigna Taglianti and Mesa Cárdenas & Garcés) and the Simplified Stock Corporation (SAS): Ganadería Santa Ana. (Table 5)

Table 5. Juridical people linked to Poligrow in Colombia

Company	Date of constitution	Associates	Shareholder	Tax number (NIT)	
Poligrow Colombia Ltda.	29.04.08	Poligrow Inversiones S.L. and Carlo Vigna Taglianti	Poligrow Inversiones S.L.	900215262-1	
Poligrow Agroindustrial S.A.S.	04.10.11			900471113-9	
ITA Aceites Vegetales S.A.S.	2.09.09	Poligrow Inversiones S.L. - Torino Oli Vegetali S.R.L		9003120511	
Poligrow Servicios Agrícolas I S.A.S. – en liquidación	04.04.11	Poligrow Inversiones S.L. - Poligrow Colombia Ltda.	Poligrow Colombia Ltda.	900425910-7	
Poligrow Servicios Agrícolas II S.A.S. – en liquidación	04.04.11			900425899-3	
Poligrow Servicios Agrícolas III S.A.S. – en liquidación	02.12.11			900481362-9	
Poligrow Servicios Agrícolas IV S.A.S. – en liquidación	09.04.12			900481362-9	
Fundación Poligrow	2010			900356360-1	
Electrimapiri S.A. E.S.P.	2011			Poligrow Inversiones S.L. - Poligrow Colombia Ltda. and Fundación Poligrow	900432368-3
Mesa Cárdenas & Garcés S.A.S.	23.11.09			Fernando and Luis Felipe Ramírez Ramírez, Juan Pablo Mesa and Pedro Manuel Calderón	9003288619
Carlo Vigna Taglianti – Persona natural		Poligrow Inversiones S.L. - Poligrow Colombia Poligrow Colombia Ltda. (contrato de arrendamiento)		E365821	
Ganadería Santa Ana S.A.S.	3.09.09	Carlo Vigna Taglianti and members of the Aljure family		900320860-5	

By SOMO-INDEPAZ based on Chamber of Commerce certificates, responses from Poligrow and interviews with Vigna Taglianti in 2014 and 2015.

Vigna Taglianti told SOMO-INDEPAZ that the corporate network in Colombia:

- ❑ “Poligrow Colombia Ltda is a Colombian corporation and as such pays taxes”,²⁵⁸ and the dividends are paid after “taxes and other necessary contributions”.²⁵⁹
- ❑ Poligrow Agroindustrial and Poligrow Colombia “have the same shareholders”.²⁶⁰ The former was founded in order to create “skilled jobs” and to become “a motor for economic development in the region”.²⁶¹ The two corporations have a “direct reciprocity around the operation of the African palm project”, the former as the processor and petitioner to the Special Free Economic Zone, and the latter as the cultivator and processor of the fruit.²⁶²

²⁵⁷ Poligrow. In: <http://www.poligrow.com/> (4.2.2014).

²⁵⁸ Observations on the preliminary report, p. 53.

²⁵⁹ Response 4 in annex 5.

²⁶⁰ Response 8 in annex 5.

²⁶¹ Response 12 in annex 5.

²⁶² Ibid.

- ❑ The relationship between Poligrow Colombia and Mesa Cárdenas & Gárces comes from “a valid signed contract of Strategic Alliances” and there is no relationship between the former and Angerma.
- ❑ “Poligrow Colombia LTDA (sic) is related to ITA Aceites Vegetales through a contract of strategic Alliance for the cultivation of African palm”.
- ❑ Mesa Cárdenas & Gárces’s associates are Fernando Augusto, Luis Felipe Ramírez Ramírez, Juan Pablo Mesa and Pedro Manuel Calderón.²⁶³

Among the 11 legal entities linked to the Poligrow project, is Ganadería Santa Ana, a Simplified Stock Company that was not mentioned in the interviews or documents sent by Vigna Taglianti. It was established in Villavicencio in September 2009 with capital amounting to COP 150 million (approx. \$56,075) invested by Taglianti and Aljure family members (mentioned in the chapter on Acquisition and Use of Land). Its stated purpose is “livestock farming”.

Comparable cases to the Poligrow Network in Colombia

In the past, various corporations in Colombia have misused complicated corporate structures to illegally accumulate large parcels of land. This was, for example, shown by the Superintendence of Companies in the case of the land acquisition by the Brazilian *Mónica Semillas* group, a clear case of “*unidad de empresa*”,²⁶⁴ mentioned in earlier sections. (Table 6)²⁶⁵ Poligrow shares various characteristics with these corporations, as will be revealed below.

Persons, investments, and titles

Taglianti is an Italian citizen with a long history in the Asja Group. He is also a Poligrow Colombia and Poligrow Agroindustrial shareholder. As Poligrow Colombia, Poligrow Agroindustrial and ITA Aceites Vegetales’s legal representative, he signed various alliances such as Poligrow Colombia – ITA Aceites Vegetales and Poligrow Agroindustrial – ITA Aceites Vegetales.²⁶⁶ He is also a founding partner and the legal representative of Ganadería Santana and the four Simplified Stock Companies in liquidation, two of which were initially named Sociedad Comercial Santa Ana I and II.

Miller Alexis Preciado Peña, legal representative of Mesa Cárdenas & Garcés, has also been Poligrow Colombia and ITA Aceites Vegetales’s deputy representative since March 2015. Preciado Peña is also a member of Electrimapiri’s Board of Directors. Mauricio Bahamón Bahamón, deputy representative of Mesa Cárdenas & Garcés is also Electrimapiri’s deputy representative. Preciado Peña and Bahamón Bahamón are – or were – also employed by Poligrow Colombia.²⁶⁷

Luis Alfredo Martín Puentes and Javier Leonardo Jerez Reyes are tax auditors at Poligrow Colombia, Poligrow Agroindustrial Colombia and ITA Aceites Vegetales, and of the four SASs in liquidation.

Company addresses: Except for Poligrow Servicios Agrícolas III and IV, which are in liquidation, all of the companies share the same company address in Bogotá while Poligrow Colombia, the

²⁶³ Observations on the preliminary report, p. 43. However, these associates told the *lasillavacia.com* website that the owners are “other investors over there [in Italy] who are our allies”; Source: *lasillavacia.com*, 2015, “La Maraña de tierras y empresas de Poligrow”.

²⁶⁴ The term “*unidad de empresa*” is used when *there is an*: “economic complex focussed on production, acting as one singular organization which takes maximum advantage of the different elements that form part of it: capital and labour force, including machinery and the different locations or worksites of the involved entities” (CSJ, 1972).

²⁶⁵ Articles 95 of Law 488 of 1998 and 26 to 44 of Law 222 of 1995. See: *Supersociedades*, s.f.

²⁶⁶ See: “ACUERDO DE ALIANZA ESTRATÉGICA PRODUCTIVA ENTRE ITA ACEITES VEGETALES S.A.S. Y POLIGROW COLOMBIA LTDA. No. 0.1 DE FECHA FEBRERO 26 DE 2010”. In: CIJP, 2015, “Los claro oscuros...”, pp. 39-41.

²⁶⁷ BIP no. 14 of June 2011, p. 6, Preciado, M., 2013 and <http://co.linkedin.com/pub/dir/Mauricio/Baham%C3%B3n> (20.1.2015).

Poligrow Foundation, ITA Aceites Vegetales and Mesa Cárdenas & Garcés all share the same office in Mapiripán.

Table 6. Common elements of Poligrow related-entities

Company	Legal Representatives – principle and deputy	Board of Directors	National Tax Auditor – principle and deputy	Tax Auditor and juridical director	Address
Poligrow Colombia	Carlo Vigna Taglianti, Miller Alexis Preciado Peña and Santiago Gutiérrez Borda ²⁶⁸		Luis Alfredo Martín Puentes and Javier Leonardo Jerez Reyes		Calle 97 Bis No. 19-20 Of. 702
Poligrow Agroindustrial	Carlo Vigna Taglianti		Javier Leonardo Jerez Reyes and Luis Alfredo Martín Puentes		
ITA Aceites Vegetales	Taglianti and Miller Alexis Preciado Peña		Luis Alfredo Martín Puentes and Chistian Camilo Albarracín Coronel	Ernst Y, Young Audit S.A.S	
Mesa Cárdenas & Garcés	Miller Alexis Preciado Peña and Mauricio Bahamón Bahamón		n/a		
Poligrow Fdn.	Taglianti		n/a		
Electrimapiri	Angélica Villalobos Hernández and Mauricio Bahamón Bahamón	Carlo Vigna Taglianti and Miller Alexis Preciado Peña		Ernst & Young Audit S.A.S	
Poligrow Servicios Agrícolas I, II	Taglianti		Luis Alfredo Martín Puentes and Javier Leonardo Jerez Reyes		
Poligrow Servicios Agrícolas III, IV	Taglianti				AK 19 No. 97-05, Of. 702
Ganadería Santa Ana SAS	Carlo Vigna Taglianti		n/a		K 12 No. 17-36, Gra, Meta

By SOMO-INDEPAZ, based on certificates of constitution and legal representation. Clarification: n/a means information unavailable.

Supply chain: Poligrow does not provide information about the different corporations involved in the purchase of raw materials or services, nor in the volume of palm fruit purchased by Poligrow Colombia, ITA Aceites Vegetales, Mesa Cárdenas & Garcés and Vigna Taglianti, or its allies.

Taxation: SOMO-INDEPAZ did not receive any information about the amount of taxes paid by the institutions in the Poligrow network on the national level (income), nor about the income tax

²⁶⁸ The lawyer mr. Santiago Gutiérrez Borda resigned as legal representative of Poligrow in the second half of 2015. However, as the company did not appoint a replacement, his name continued to appear in the register until October 2016, when the company was transformed into a Simplified Stock Corporation as stated in the certificate issued by the Chamber of Commerce on October 14, 2016. Following the request by mr. Santiago Gutiérrez Borda this clarification is made in February 2017.

exemptions gained since the commencement of palm cultivation until the complaint was filed by Incoder.²⁶⁹

The Mapiripán Mayor's Office did not respond to SOMO-INDEPAZ's query regarding Poligrow's tax assessments and the property, industry, and commercial taxes it paid.²⁷⁰

Poligrow Colombia is reported to have control over the parent company, Poligrow Inversiones S.L., and the SAS Poligrow Servicios Agrícolas I, II, III and IV, which are in liquidation, according to the terms stipulated by commercial and tax laws. SOMO-INDEPAZ did not have access to the consolidated financial statements that were delivered to National Directorate of Taxes and Customs (DIAN) for purposes of tax controls.

5.2.2. Corporate Network of Poligrow in Europe and Latin America

The corporate network of Poligrow also has companies registered in Spain (Poligrow Inversiones S.L.), Great Britain (Reba Capital UK LLP), Italy (Asja Ambiente Italia S.p.A and Torino Oli Vegetali S.R.), Uruguay (Serlick S.A.) and Brazil (Agroindustrial do Brasil Ltda. and ETR Óleos S.A.); law and accounting firms in Spain (Ibertax Servicios Integrales S.L.), Panama (Alemán, Cordero, Galindo & Lee) and Uruguay (Pereira & Castagno), and Special Purpose Vehicle companies in Panama (Sparkling Trust) and Luxembourg (Reba Investment Opportunities GP S.à.r.l. and Reba Investment Opportunities SCA-SICAR).²⁷¹

When they were asked about their corporate network, Poligrow's legal representative at the Research + Green Oils project stated that:

- ❑ Poligrow Colombia “does not have a direct relationship” with Reba Capital UK LLP, Reba Investment Opportunities SCA-SICAR, or with “the Re Rebaudengo gentlemen”.²⁷²
- ❑ There is no relation between Poligrow Colombia or Poligrow Agroindustrial do Brasil – in liquidation – and ETR Óleos S.A.²⁷³
- ❑ Serlick is a trust whose investors consist of between five to ten European businessmen.²⁷⁴ Taglianti recommended that SOMO-INDEPAZ look in Uruguay to “learn about the corporate structure” and “the flow of investments and returns” between this company and Poligrow Inversiones.²⁷⁵
- ❑ Vigna Taglianti indicated that he does not know the details of the transactions to draw up the constitutions of the Sparkling Trust and Serlick.²⁷⁶

In 2008, *Serlick S.A.* became the sole shareholder of Poligrow *Inversiones* and its capital grew to COP 2,880,144,018 (\$1,076,689, or €1,000,000).²⁷⁷ That year, Poligrow Inversiones reported a debt to Serlick, the “dominant company” of the “group of enterprises” that owns the Spanish corporation.²⁷⁸ According to *lasillavacia.com*, the transaction was made via the trust represented by Agostino Re Rebaudengo, in his role as “protector” of the Sparkling Trust.²⁷⁹

²⁶⁹ See: CIJP, 2015, “Los claro oscuros ...”, p. 46.

²⁷⁰ Right of petition filed 2 July 2014.

²⁷¹ *lasillavacia.com*, 2015, “La Maraña de tierras y empresas...”

²⁷² Response 3 of annex 5.

²⁷³ Response 9 and 10 of annex 5 and BIP no. 3 of 5 of June 2009, p. 8. “Poligrow al ritmo de samba”.

²⁷⁴ Response 2 of annex 5 and SOMO-INDEPAZ interview with Vigna Taglianti in February 2015.

²⁷⁵ Responses 4 and 7 of annex 5.

²⁷⁶ According to *lasillavacia.com*, Poligrow hired the firms of Alemán, Cordero, Galindo & Lee and Pereira & Castagno to draw up the constitutions for the Sparkling Trust and Serlick, respectively; See: *lasillavacia.com*, 2015, “La Maraña de tierras y empresas...”

²⁷⁷ Document that shows increase in social capital and modification of joint statutes related to Poligrow Inversiones, no. 282 of 13 February 2008.

²⁷⁸ Poligrow Inversiones, 2010, pp. 17 and 19.

²⁷⁹ *lasillavacia.com*, 2015, “La Maraña de tierras y empresas...”

In September 2012, in the year that Reba Capital UK LLP was created, the Asja Group traded the Torino Oli Vegetali company (100% owned by Asja Ambiente Italia) for a 10% share in Poligrow Inversiones.²⁸⁰ This transaction raised Poligrow Inversiones's capital to over COP 3,200 million (approx. \$1.196 million or €1,111,111). Currently, the Poligrow Inversiones S.L. shareholders include Serlick S.A. (90%) and Asja Ambiente Italia S.p.A. (10%)²⁸¹ (Illustration 2).

Illustration 2. Certification of Incorporation, Poligrow Inversiones S.L.



CENTRAL MERCANTILE REGISTER	
TYPE OF SEARCH: PERSON SEARCHED: POLIGROW INVERSIONES SL	
Company Name	POLIGROW INVERSIONES SL
Registry	MADRID
Section	8
Page	451009
Duplicate page	
CIF (VAT)	B85262184
OPERATIONS BEGIN	22/11/2007
ADDRESS	
Address	C/ GENERAL DIAZ PORLIER 21 - ENTREPLANTA B
City	MADRID
Province	MADRID
Company aim	LA DIRECCION Y GESTION DE VALORES REPRESENTATIVOS DE LOS FONDOS PROPIOS DE ENTIDADES RESIDENTES O NO RESIDENTES EN TERRITORIO ESPAÑOL Y LA COLOCACION DE LOS RECURSOS FINANCIEROS DERIVADOS DE LAS ACTIVIDADES CONSTITUTIVAS D
CAPITAL	
Endorsed	1111111 E
Paid Out	1111111 E
Observations	

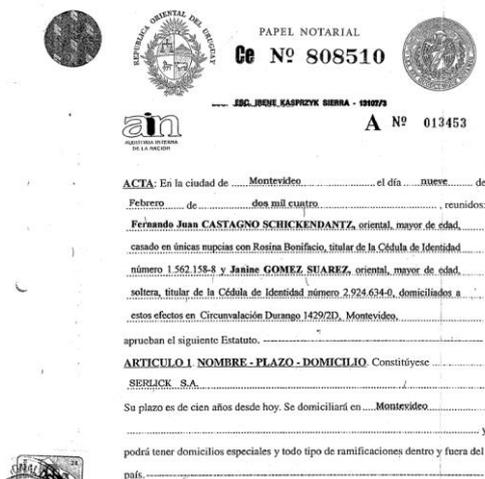
miércoles, 18 de junio de 2014 9:45:21 - Page 1

Source: *lasillavacia.com*, 2015, "La Maraña de tierras y empresas de Poligrow".

Torino Oli Vegetali S.R.L., which acquired ITA Aceites Vegetales, was incorporated in 2007 by Re Rebaudengo and Taglianti, and has its headquarters in Turin, Italy.²⁸² Its purpose is to investigate and develop biotechnologies and the management and storage of vegetable oils.²⁸³

Serlick was incorporated by Juan Fernando Castagno Schickendantz and Janine Gómez Suárez, founder and secretary of the Uruguayan accounting firm Pereira & Castagno. Serlick shares a Montevideo, Uruguay address with Pereira & Castagno (Circuvalación Durango 14292 D) (Illustration 3).

Illustration 3. Certificate of Incorporation of Serlick S.A.



PAPEL NOTARIAL
Ce Nº 808510

JDC. JORGE KASPRZYK BERRA - 13107/13
A Nº 013453

ACTA: En la ciudad de Montevideo, el día nueve de Febrero de dos mil cuatro, reunidos: Fernando Juan CASTAGNO SCHICKENDANTZ, oriental, mayor de edad, casado en únicas nupcias con Rosina Bonifacio, titular de la Cédula de Identidad número 1.562.158-8 y Janine GOMEZ SUAREZ, oriental, mayor de edad, soltera, titular de la Cédula de Identidad número 2.924.634-0, domiciliados a estos efectos en Circuvalación Durango 1429/2/D, Montevideo, aprueban el siguiente Estatuto.

ARTICULO I NOMBRE - PLAZO - DOMICILIO. Constitúyese SERLICK S.A. Su plazo es de cien años desde hoy. Se domiciliará en Montevideo y podrá tener domicilios especiales y todo tipo de ramificaciones dentro y fuera del país.

Source: *lasillavacia.com*, 2015, "La Maraña de tierras y empresas de Poligrow".

²⁸⁰ ASJA, 2013-a, p. 15.

²⁸¹ ASJA, 2015-b, p. 33. A "loan" of €6,751,000 to Poligrow Inversiones is registered in ASJA's accounts in 2012, which in 2014 would be worth more than €7,776,952 (COP 19.322 billion); when calculated with interest, and the balance of Poligrow Inversiones S.L is Euros 5.000.000.

²⁸² Camera di Commercio Industria Artigianato e Agricoltura di Torno, 2014, certificate of incorporation of the company Torino Oli Vegetali, pp. 21, 35, 36 and 38.

²⁸³ *Ibid.*, pp. 8-9.

One of Serlick's early investors in Serlick is Tito Tettamanti,²⁸⁴ director and shareholder of the Sterling Strategic Value Limited investment firm. Until 2012, Tettamanti controlled the majority of shares in Serlick.²⁸⁵ According to Tettamanti's and Sterling's lawyer, since 2012 Serlick is no longer controlled by Sterling and Tettamanti does no longer have any relation with the company.²⁸⁶ The principle activity of Sterling Strategic Value Limited is investing in small- to medium-sized businesses. Its headquarters is located in Tortola, British Virgin Islands; it also has an office in Monaco.²⁸⁷

Asja Ambiente Italia S.p.A.: Owner of 10% of Poligrow Inversiones's shares and parent company (*Capogrupo*) of Grupo Asja,²⁸⁸ is also incorporated in Turin, Italy. It's stated purpose is the production and sale of electricity through the group's companies.²⁸⁹

The Italian corporation shareholders are: "Cordusio Trust Company" (Cordusio Società Fiduciaria) of the UniCredit Group (85%),²⁹⁰ Ago Renewables S.P.A. (7%), the Dutch Swifterberg Capital BV (5%)²⁹¹ and Agostino Re Rebaudengo (3%).²⁹² The latter is president and owner of 10% of the shares of Aria Engineering S.R.L., majority shareholder (85%) of Reba Capital UK LLP,²⁹³ a company created by Reba Investment Opportunities GP S.à.r.l. in 2012,²⁹⁴ which was registered in Luxembourg in 2013 and headquartered in London.²⁹⁵

Reba Capital manages Reba Investment Opportunities SCA-SICAR, a venture capital investment company²⁹⁶ whose principle project is Poligrow Research + Green Oils, which the Asja Group describes as cultivating 15,000 hectares of palm "in the region of Meta, Colombia",²⁹⁷ which is about three times the size of the island of Manhattan.²⁹⁸

In Latin America, the "Poligrow Group"²⁹⁹ includes the Brazilian companies Poligrow Agroindustrial do Brasil Ltda, in liquidation,³⁰⁰ and ETR Óleos S.A.³⁰¹

²⁸⁴ Response to preliminary questions by email on 25 November 2014.

²⁸⁵ In the original text, it was erroneously stated that Tettamanti controlled the majority of Serlick shares until 2013. After receiving two official letters with corrections from Sterling Strategic Value Limited and Tito Tettamanti, this mistake was redacted. In those same letters, Tettamanti's lawyer confirmed that Tettamanti, through Sterling Strategic Value Limited, controlled Serlick SA until 2012. WashTec AG is a company that sells equipment for washing cars. It is headquartered in Augsburg, Germany. See: <http://www.dgap.de/dgap/News/pvr/washtec-release-according-article-section-the-wphg-the-german-securities-trading-act-with-the-objective-europewide-distribution/?companyID=19&newsID=623036> (29.10.2014).

²⁸⁶ letters received from Avv. Dr. Tito Tettamanti and from Sterling Strategic Value Limited, 6 November 2015.

²⁸⁷ See: <http://www.sterlingstrategicvalue.com/> (29.10.2014).

²⁸⁸ ASJA, 2015, p. 9.

²⁸⁹ ASJA, 2013, 2013-a, 2014, 2014-a, 2015 and 2015-a.

²⁹⁰ Responses 1 and 2 of annex 5. UniCredit is a European commercial bank that operated in Italy and is registered in Great Britain. See: <http://www.cordusiofiduciaria.it> (10.01.2015).

²⁹¹ One of the Poligrow Inversiones S.L. creditors See: Poligrow Inversiones, 2010, p. 17.

²⁹² ASJA, 2015, p. 26 and 2015-a.

²⁹³ Camera di Commercio Industria Artigianato e Agricoltura di Torino. Company Certificate. The other Aria Engineering partners are Regat S.S. and Recoc S.S, each with 45%.

²⁹⁴ Reba Investment Opportunities GPS à r.l. is a limited liability corporation incorporated in Luxembourg See: <http://www.etat.lu/memorial/2014/C/Html/0127/2013172597.html> (20.1.2015).

²⁹⁵ See: <http://www.rebacapital.com/investment-strategies/reba-sustainable-palm-oil-fund/> (29.10.2014). In the structure of Grupo ASJA (ASJA, 2015-c, p. 5) and in ASJA reports, there is no mention of Reba Capital. See, for example: ASJA 2013, 2014 and 2015.

²⁹⁶ Authorised and regulated by the supervisory authority in Luxembourg, la Comisión, la Financiadora Surveillance du Secteur – CSSF. See: REBA, 2014, "Annex to Sustainable Palm Oil Opportunity. Country data- Colombia, Reba Capital". In: http://www.rebacapital.com/wp-content/uploads/Annex_Country_Data_Colombia_20140701.pdf of 1 July (10.09.2014).

²⁹⁷ ASJA, 2013-a, p. 15.

²⁹⁸ ASJA, 2005-b, p. 9. See also: Preciado, 2013 and online Poligrow videos (8.8.2014).

²⁹⁹ The RSPO website states that Poligrow's mission is to promote the development of agriculture in marginalised regions of South and Central America and to respond to the market demand for vegetable oils.

³⁰⁰ See: <http://empresasdobrasil.com/empresa/poligrow-agroindustrial-do-brasil-ltda-09387157000196> (20.5.2015).

³⁰¹ Poligrow Inversiones, 2010.

The former was incorporated in February 2008 with a capital amounting to COP 832 million (approx. \$311,199), with 99% invested by Taglianti and the rest by Enrico Maria Roveda. In May 2015, the shareholders formation was changed when Poligrow Inversiones became the majority shareholder, with COP 811 million (approx. \$303,419) in investments and Taglianti with COP 20 million (approx. \$7,780).³⁰² The company was liquidated in 2012.

The ETR Oleos corporation was registered in November 2005 with Brazilian investor capital valued at COP 1.248 billion (approx. \$466,798). In June 2008, Poligrow Inversiones acquired 52% of this company, of which Taglianti and Maria Roveda became administrative consultants.³⁰³ Asja Ambiente Italia holds 8% of the shares.³⁰⁴

The Brazilian companies have invested in the “acquisition of large tracts of lands” to adapt them for use in cultivation, the construction of infrastructure, and supporting services.³⁰⁵ In this framework, the Grupo Asja’s “associated companies”, as of December 2014, had received €20,346,327 (approx. COP 50.550 billion), distributed among Poligrow Inversiones (€7,8 million, or approx. COP 19.322 billion), ETR Óleos (€1.8 million – COP 4,562 million) and Poligrow Colombia (€10,8 million – approx. COP 30,913 million).³⁰⁶

Common elements among the international institutions in the Poligrow network

People, investors and titles

Re Rebaudengo, Vigna Taglianti and Roveda are key people in the Poligrow *Research + Green Oils* Project (Table 7).

Table 7. Key people in the Poligrow network, in Europe and Latin America

Companies	Re Rebaudengo	Vigna Taglianti	Roveda
Asja Ambiente Italia – Asja Group	Founding President	Advisor	
Reba Capital UK LLP	Founding President	Advisor	
Aria Engineering	Founding President	Advisor	
The Sparkling Trust	Protector		
Poligrow Inversiones S.L.	Shareholder	Shareholder and representative	
Torino Oli Vegetali S.r.L.	Founding President	Shareholder and Advisor	
Poligrow Agroindustrial do Brasil – in liquidation	Shareholder	Shareholder	Shareholder and director
ETR Óleos S.A.	Shareholder	Advisor	Advisor and director
Poligrow Colombia Ltda.	Shareholder	Shareholder and representative	
ITA Aceites Vegetales	Shareholder	Shareholder and representative	
Poligrow Agroindustrial		Shareholder and legal representative	

By SOMO-INDEPAZ, based on certificates of transfer and clearance, documents of public record and private documents.

³⁰² Ibid.

³⁰³ Governo do Estado de São Paulo. Secretaria de Desenvolvimento Econômico, Ciência e Tecnologia. Junta Comercial do Estado de São Paulo. Ficha Cadastral Completa. Nire: 35300327161 de 2013.

³⁰⁴ ASJA, 2015, p. 16.

³⁰⁵ Poligrow Inversiones, 2010, pp. 4-5.

³⁰⁶ ASJA, 2015-b, p. 34. These investments (capital plus interest) make up 40% of Asja’s total investments in 2014. Poligrow Colombia received 53% of the investments destined for Brazil and Colombia, mostly in 2014, the year in which the experimental plant was constructed. See: ASJA, 2014, p. 26.

Re Rebaudengo: works in the business of electricity generation, emissions reductions, and art.³⁰⁷ He is the owner and founder of the Asja Group³⁰⁸ and Reba Capital UK LLP.³⁰⁹ In his role as an Asja Ambiente Italia and Poligrow Inversiones shareholder,³¹⁰ he met with Juan Camilo Restrepo, then-Minister of Agriculture, days before Incoder filed a complaint against Poligrow Colombia for alleged accumulation of UAF (See: Acquisition and use of lands).³¹¹

Vigna Taglianti was, before moving to Colombia, the director of Aria.biz S.A., an Argentine company owned by the Asja Group. It constructed the biogas capture and treatment plant in Rosario, Argentina.³¹² He has been an advisor to and a shareholder in Poligrow's companies.

Enrico Maria Roveda is an Italian citizen and the director of Poligrow Agroindustrial do Brasil Ltda – company in liquidation – who also held this position at ETR Óleos.³¹³

Location of Poligrow network companies in Latin America and Europe

In Poligrow's corporate structure there are companies registered in countries that the OECD considers to be tax havens, and/or off-shore jurisdictions³¹⁴ or in "territories that have committed to improve the exchange of information in tax matters",³¹⁵ such as Uruguay, Luxembourg, the British Overseas Territories and Panama.³¹⁶ The latter was classified by Colombia as a tax haven in 2014.³¹⁷

Uruguay: Serlick, the dominant shareholder in the Spanish Poligrow Inversiones is registered in this country, which guarantees the privacy of company and financial information, making it more difficult to lift the corporate veil of secrecy during these investigations.³¹⁸

Panama: Boasts a flexible legal framework for the creation of offshore companies, trusts, and family foundations, among other financial vehicles.³¹⁹ According to lasillavacia Rebaudengo registered the Sparkling Trust in Panama.

Luxembourg: Location of the headquarters of both Reba Investment Opportunities GP S.à.r.l. and Reba Investment Opportunities. It continues to be one of the most important jurisdictions for bank

³⁰⁷ See: ASJA, 2015, p. 11 and 2015-c and Tendencias del arte, (s.f.), "[Patrizia Sandretto Re Rebaudengo: 'Llevo el coleccionismo en la sangre'](#)".

³⁰⁸ With its headquarters in Italy (Asja Ambiente Italia S.p.A), China (Asja Renewables Shenyang Co., Ltd and Asja Renewables Kunming) and Brazil (Asja Brasil Serviços para o Meio Ambiente Ltda). In 2013 Asja joined the group Asja da, asjaGen. In: <http://www.asiagen.com/?lang=en>, <http://www.asja.biz/projects/index.php> and <http://www.rebacapital.com/> (8.8.2014).

³⁰⁹ Reba Capital, Team, "Investment Team". In: <http://www.rebacapital.com/team/> (10.09.2014).

³¹⁰ Response 6 of annex 5.

³¹¹ The meeting was arranged by Germán Cardona during his tenure as the Colombian Ambassador to the Vatican. See: lasillavacia.com, 2013, "El negocio 'baldío' de Poligrow".

³¹² See: Notife, 2006, "Rosario: en agosto estará lista la lista (sic) de biogás" and ASJA, s.f.

³¹³ Governo do Estado de São Paulo. Secretaria de Desenvolvimento Econômico, Ciência e Tecnologia. Junta Comercial do Estado de São Paulo. Ficha Cadastral Completa. Nire: 3522211428 del 11 de abril de 2013.

³¹⁴ It should be mentioned that SOMO-INDEPAZ does not claim that the established headquarters, subsidiaries, affiliates, or allies of Poligrow's complex corporate network abroad are in any way used to evade taxes or launder assets.

³¹⁵ See: OECD, s.f.

³¹⁶ See: Presidencia República Oriental del Uruguay, 2011, "OCDE retira a Uruguay de lista gris al firmar 18 acuerdos de intercambio tributarios"; El Faro, 2011, "OCDE retira a Panamá de lista de 'paraísos fiscales'", RTVE, 2009, "Luxemburgo deja de estar en la lista gris de los paraísos fiscales de la OCDE" and La Nación Argentina, 2013, "Los paraísos fiscales ceden ante la presión de más transparencia".

³¹⁷ Portafolio, 2015, "Se agota el tiempo para acuerdo tributario con Panamá" Members of Mónica Escobar & Cía., one of the owners of the El Bogante and Santa Marta lands, created a company in Panama called. Luga Management Inc. See: Adquisición y uso de tierras and <https://opencorporates.com/officers/125337354> (29.4.2015).

³¹⁸ See, for example: Tax justice network, 2012, "Did Messi hide behind offshore structures in UK, Switzerland, Uruguay and Belize?"

³¹⁹ Family foundations are different from "trusts" because juridical people transfer goods, which are verified by a private document outside of the statutes and in which the beneficiaries are named. Furthermore, they do not need Panamanian nationality to constitute these. They can be bought and sold and legal actions can be taken from outside the country. See: Eco-Finanzas, s.f. "Diccionario Economía- Administración- Finanzas- Marketing".

secrecy in the world. It is well known for its legal loopholes in tax matters and lax financial regulations for transnational companies.³²⁰

United Kingdom: London is the headquarters of Reba Capital and houses many multinational companies with links to other tax havens, in particular with the British Overseas Territories.³²¹

Spain: Madrid is the headquarters of Poligrow Inversiones, the parent company of Poligrow, which shows no records of any economic activities. In 2005, Colombia signed the Agreement for the Promotion and Reciprocal Protection of Investments with Spain, which became effective in 2007,³²² the year that Poligrow Inversiones was incorporated.

Italy: Among Poligrow's investors are the Italian companies Asja Ambiente Italia and Torino Oli Vegetali.

Law firms and accountants: The Poligrow corporate network companies in Europe and Latin America have received legal and accounting services from firms in Spain, Uruguay and Panama.³²³

Spain: Ibertax Servicios Integrales S.L., funding partner and current administrator of Poligrow Inversiones, is an accounting firm represented by Gonzalo Bobo Mayor, which shares its headquarters in Madrid with Poligrow Inversiones, Poligrow Colombia's parent company and sole associate of Torino Oli Vegetali S.R.L., the majority shareholder of ITA Aceites Vegetales.³²⁴

Uruguay: Pereira & Castagno was established in 1997 for the stated purpose of advising in the "constitution, sale, restructuring, and liquidation of corporations" (Sociedades Anónimas),³²⁵ one of whom is Serlick. The Pereira & Castagno office has been involved in irregular situations involving the companies that they have created, including companies that have been accused and/or convicted of financial crimes.

In this regard, Juan Fernando Castagno Schickendantz, one of Pereira & Castagno's founders admitted that "we create companies and sell them before they have even done business, like cars on an assembly line. After that, what each person does with the car, whether they are run over or kill someone or win a race with it, that is not our responsibility. For this reason we also don't buy back companies, because within 10 minutes it could become a disaster".³²⁶

Panama: Alemán, Cordero, Galindo & Lee is a Panamanian law firm that represents Sparkling Trust-Sparkling Trust Settlement. It was established in 1985 for the purpose of offering legal advice to businesses from diverse sectors and banks established in Panama, and to provide "offshore services" (regarding multi-jurisdictional solutions, corporations, private banks, family offices, private capital, hedge funds and trustees) to meet the needs of its clients. Its main domicile is in Panama City (Humboldt Tower, East 53rd Street) and it has offices in the Virgin Islands, Belize, Bahamas, Uruguay and Luxembourg, as well as agencies in Europe, the United States, and Latin America.³²⁷

³²⁰ See: Red de Justicia Fiscal – Índice de Secreto Bancario (2013) "Narrative Reporto on Luxemburg".

³²¹ See: Hoy Digital, 2012, "Reino Unido se está convirtiendo en paraíso fiscal para empresas de EEUU".

³²² MRE, 2005 and Law 1069 of 2006.

³²³ See: Portafolio, 2015, "Se agota el tiempo para acuerdo tributario con Panamá" Miembros de Mónica Escobar & Cía., una de las sociedades propietarias de los predios El Bogante y Santa Marta, crearon en Panamá la sociedad Luga Management Inc.; See: Adquisición y uso de tierras y <https://opencorporates.com/officers/125337354> (29 4.2015).

³²⁴ Central Mercantile Register, 2014, Certificate of the company Ibertax Servicios Integrales of 18 June. This company provides legal services to more than 100 businesses from different sectors <http://www.infocif.es/empresas-vinculadas/ibertax-servicios-integrales-sl> (29.10.2014).

³²⁵ <http://www.percast.com.uy> (29.12.2014).

³²⁶ Alconada, H., 2012, "Schickendantz: 'Nosotros vendemos sociedades vírgenes, y el resto no lo sé'".

³²⁷ <http://www.alcogal.com/> and <http://latinlawyer.com/firms/1256/11250/aleman-cordero-galindo-lee/profnotice/> (29.12.2014).

Companies that were established and/or advised by the Panamanian firm have been involved in money laundering, the financing of armed groups, and a disregard for local regulations in countries where they operate.

Tax Auditors: Ernst & Young is Asja Ambiente Italia's tax auditor and Ernst & Young Audit S.A.S., its affiliate Colombia, provides tax auditing and legal services for ITA Aceites Vegetales.³²⁸

The information detailed above shows that Poligrow has a complex corporate structure that involves a number of countries that are known for their financial secrecy or known as tax havens. Moreover, Poligrow is also being aided and advised by companies that have been involved in money laundering scandals before.

Poligrow should have disclosed its corporate structure, the functions of its various entities, and *it* should have disclosed where it pays taxes and how much. Since Poligrow has not disclosed its full corporate structure, Poligrow is in breach of the *OECD Guidelines*. The fact that Poligrow operates in a conflict-affected environment where the state's capacity to gather taxes is limited, and where financial crimes are widespread, makes this a potentially even more alarming situation.

5.2.3. Network of strategic allies

As described above, Poligrow establishes alliances with land owners to achieve its goal of planting 15,000 hectares of land. Besides its strategic allies that form part of the Poligrow corporate structure, the company also entered into alliances with the owners of the Yamú, La Cristalina, Casuarito and El Bogante territories.

SOMO-INDEPAZ could not find any information on the identity of the owners of La Cristalina, Casuarito and El Bogante due to its "internal company policies" and the "protection of personal information".³²⁹ The Poligrow representative confirmed that the owners of the Hacienda Santa Marta also own El Bogante, and are not allies, nor are they considering becoming allies.³³⁰ But this will be discussed in greater detail below.

It also remains unknown how much land is under palm cultivation on the *La Cristalina* and *Casuarito* properties and what environmental measures have been adopted by its allies, in particular the baselines, the permits, and the environmental concessions. This will be discussed in greater detail below.

There is also a lack of clarity concerning the agreements made between various members of the Aljure family, who are part of the SAS Ganadería Santa Ana and who signed the deed to the property known as Hacienda Santa Ana with Vigna Taglianti. Vigna Taglianti, however, maintains that "Poligrow has no plans to plant on the Santa Ana and Esmeralda properties".³³¹ Mapiripán residents, local and departmental authorities, as well as the CIJP,³³² to the contrary, claim that Poligrow has indeed begun cattle ranching and palm cultivation on the property.

³²⁸ ASJA, 2025 and certification of incorporation and legal representation of ITA Aceites Vegetales.

³²⁹ Response 27 of annex 5 and interview SOMO-INDEPAZ with Vigna Taglianti in February of 2015.

³³⁰ Observations on the preliminary report, p. 20.

³³¹ SOMO-INDEPAZ interview with Vigna Taglianti in September 2014 and observations on the preliminary report, p. 17.

³³² NGO that accompanies and assists victims in legal matters in various regions of the country, including Meta. SOMO-INDEPAZ interview with employees of the Commission in Bogotá in February 2015, and response in annex 7, in which they mention the existence of several videos and photographs that show the Hacienda Santa Ana land cultivated, and SOMO-INDEPAZ interviews with leaders and employees of the ombudsman's Office and the Municipal Representative's Office (Personería) in Villavicencio and Mapiripán in June and July 2014.

Transparency regarding strategic allies is crucial, as Colombia has experienced many cases of illegal land accumulation by strategic allies. The information in this section provides the setting for the subsequent section, which analyses how Poligrow has acquired its land to cultivate palm oil and illustrates the role of its strategic allies.

5.3. Human Rights

The following section will discuss the ways in which Poligrow has a negative impact on human rights. In the Colombian context, land acquisition is an important focus, as the internal conflict has been strongly linked to armed conflict and corporations are often involved in the expelling of people from their own land and illegally accumulating land that is destined for land restitution. The chapter will therefore focus on Poligrow's land acquisition policies and practices. The company's impact on indigenous peoples' rights will also be assessed.

Normative framework

According to the *Guidelines*, and in agreement with the *Guiding Principles*, companies have a responsibility to respect human rights. However, as has already been mentioned, the principle of human rights is not included in Poligrow's efforts to comply with the *Guidelines*.

In general, business operations must comply with domestic law and international regulations on land tenure and the rights of victims,³³³ as well as on security measures.³³⁴

5.3.1. Acquisition and use of land

Normative framework

Different instruments, such as the Universal Declaration of Human Rights, the Guiding Principles on Internal Displacement, and the UN Principles on Housing and Property Restitution recognise individual and collective property rights, and the right to material and juridical restitution of lands and collective territories.³³⁵ The latter has been incorporated into the Laws for Victims and the Restitution of Lands and Collective Territories, which demand that businesses prove they acted with good faith exempt from culpability in the acquisitions of lands and territories claimed by victims.³³⁶

Due to irregular national and foreign investments in land, the Fop's "Guide for Land Purchase and Acquisition of Rights over the Land and its Use" (*Guía para la compra y la adquisición de derechos sobre la tierra y derecho de uso*) stipulates that companies must apply due diligence "in the most complete and exhaustive manner possible".³³⁷ This means obtaining prior and sufficient information to analyse the area and the risks of abuses of traditional indigenous [land] rights; restrictions on cultural and recreational practices; tensions between property owners, occupants and possessors; and threats by illegal armed groups. Due diligence implies applying the Precautionary Principle – to abstain from purchase – upon encountering irregularities in the titles or in the chain of transfer, and a demand of good faith exempt from culpability on the part of allies and other natural and juridical persons along the supply chain.

³³³ OECD, 2011 and UN, 2008 and 2011.

³³⁴ ICRC, s.f.

³³⁵ UN, 1948, 1998 and 2005.

³³⁶ The judges specialised in land restitution have rejected appeals or opposition by land owners or occupiers of lands reclaimed by victims for not being able to prove that they had not taken advantage of the coercion and intimidation on the part of illegal armed actors and the ignorance of the widespread phenomenon of forced displacement. See: TSRT, 2013.

³³⁷ See: La "buena fe exenta de culpa en el contexto empresarial para casos de restitución de tierras a víctimas de despojo", FIP, 2014, pp. 31 and 33.

The Guide recommends gaining an understanding of how State institutions function, with the aim of identifying “potential patterns of corruption or co-optation”,³³⁸ and not acquiring lands at low or highly discounted prices that could cause damage or create possible grounds for malfeasance or tax fraud, nor at excessively high prices that could lead to property speculation.

As will be explained, in Mapiripán *haciendas* were created in the 50s and 60s,³³⁹ using fraudulent land transfers, and constructed on *baldíos*, using irregular sales and land titles to sell them to Antioquia entrepreneurs in the 70s and 80s,³⁴⁰ who did not live in the municipality and who left their lands in the care of local residents. This led to their occupation by people who claimed their rights of possession using judicial processes of prescription or declarations of the administrative extinction of right of property for leaving the land unused. In Mapiripán there have also been cases of judicial processes of extinction of property rights as a result of narco-trafficking and money laundering activities.

In *high risk zones* like Mapiripán, the adoption of enhanced due diligence measures, the formulation of action plans for the use and acquisition of both company lands and the lands of allies,³⁴¹ and the transparency of transactions all have special relevance, with the aim of avoiding negative impacts to the reputation or leading to juridical or administrative actions.

Poligrow Policy

SOMO-INDEPAZ were unable to obtain information about the existence of a policy that governs land use and acquisition, but according to a representative of the Poligrow *Research + Green Oils* project:

- ❑ “... all of the project’s properties, independent” of whether they are owned by “the company or its allies were originally allocated to persons having no land titles or no characteristics consistent with small farmers”.³⁴²
- ❑ “... Los Macondo and the other properties were purchased and acquired according to the legal processes established in the Colombian legislation”.³⁴³
- ❑ “... all of the sales have been approved by the committee”³⁴⁴ [Municipal Committee for Comprehensive Assistance to the Displaced Population].
- ❑ Poligrow “always acts according to the value of transparency”.
- ❑ “We have seen that in this country the documents do not always show the worth of the land”.³⁴⁵ We are foreign investors and sometimes we are asked to justify the money coming in to the country and in what it will be invested ... I turned down deals on lands in this area because people did not want to register the deal. In this case, people are obliged to report the windfall profit.³⁴⁶

³³⁸ Ibid., p. 14.

³³⁹ Tom and Ruth Kirby, of the United States, composed the *hacienda* La Mapiripana from a parcel of vacant land. See: Revista Dinero, 1994, ¡Arre, arre plata! y Rodríguez, I., 2014, “Despojo, baldíos y conflicto armado en Puerto Gaitán y Mapiripán (Meta, Colombia entre 1980 y 2010)”.

³⁴⁰ SOMO-INDEPAZ interviews with victims, leaders, authorities, and journalists in Mapiripán and Villavicencio in July 2014. They refer to businessmen from the departments Antioquia and Córdoba, in which the narco-trafficker Pablo Escobar Gaviria formed the Medellín Cartel and the Castaño Gil brothers formed the ACCU.

³⁴¹ FIP, 2014.

³⁴² Observations on the preliminary report, p. 40.

³⁴³ Interview SOMO-INDEPAZ with Vigna Taglianti in June and September 2014.

³⁴⁴ Observations on the preliminary report, p. 44.

³⁴⁵ Ibid., p. 42 and Response 25 of annex 3, which alludes to the existence in Colombia of differences between the property register assessment and the commercial assessment.

³⁴⁶ See: Interview with Carlo Vigna Taglianti, “La respuesta de Poligrow: Podemos superar un problema histórico”. VerdadAbierta.com, 2013-a, “El Macondo de Mapiripán”, observations on the preliminary report, pp. 13 and 40 and Verdad Abierta’s response in annex 6.

- ❑ “Really, what land does not have some sort of history in Colombia? Does any such land exist?”³⁴⁷ and “... there is a discussion about the retroactive applicability of Law 160 of 1994, which obviously applies to the Poligrow case, and which should be cleared up either by the government itself, or by a judicial decision.... “Poligrow will obviously abide by the decisions of the Justice system”.³⁴⁸

Poligrow carries out its operations on 12 properties, some of which are shown on Map 4.

Map 4. Fields of Poligrow’s corporate network and its allies



By SOMO-INDEPAZ, based on certificates of transfer and clearance, documents of public record and IGAC databases.

Eight of the properties were acquired by Poligrow’s holdings: six form part of the plantations in Los Macondo, Barandales Parte-Barandales and Las Toninas and two are urban properties acquired by Poligrow Colombia. As was previously mentioned, there are reportedly palm cultivations on the Hacienda Santa Ana property (Table 8).

³⁴⁷ See: video in: Miroff, N., 2014, “In Colombia, a palm oil boom with roots in conflict”.

³⁴⁸ Ibid, p. 58.

Table 8. Fields of Poligrow's operations

Property	Adjudicator	Resolution	Current owner	Last seller	Public Deed	Hectares
Macondo 1	Eudora Rodríguez	2125 (22.12.89)	Poligrow Colombia	Angela María Mejía Santamaría	317 of 26 January 2009	1,807,16
Macondo 2	Laguna	1055 (11.07.89)				1,126,01
Macondo 3	Álvaro Gallego Palau	1557 (13.12.88)				2,644,41
El Porvenir - Urbano	Pablo Julio Castro Ladino	926 (30.06.89)		Pablo Julio Castro Ladino	1030 of 14 May 2012	3.99
La Cuadra - Urbano	Alcides Rodríguez Gutiérrez	922 (23.09.96)		Alcides Rodríguez Gutiérrez	1079 of 24 April 2013	7.38
Las Toninas Hoy	Eberth Betancourt Henao and Jorge Suescún Hernández	985 (30.06.89) and 805 (1.07.92)	Carlo Vigna Taglianti	Eberth Betancourt Henao and Jorge Suescún Hernández	742 of 7 July 2011	1,500
Barandales Parte	Argemiro Mesa Cárdenas	973 (31.08.82)	ITA Aceites Vegetales	Fernando Augusto y Luis Felipe Ramírez Ramírez, Juan Pablo Mesa Paulo and Pedro Manuel Calderón - Mesa Cárdenas & Garcés S.A.S	1275 of 24 September 2009	150
Barandales			Fernando Augusto and Luis Felipe Ramírez Ramírez, Juan Pablo Mesa and Pedro Manuel Calderón - Mesa Cárdenas & Garcés - ITA Aceites Vegetales	Mesa Cárdenas & Garcés, S en C, in liquidation	2538 of 25 June 2008 sale possession (1) and 3867 of 10 December 2011	
Total						9,829.49
Santa Ana	Unadjudicated land reclaimed by the Aljure family			Promise of Sale, Poligrow Colombia and Badil Aljure		70,000.00

By SOMO-INDEPAZ, based on certificates of transfer and clearance of the Register of Public Instruments of San Martín and Mapiripán of September and October 2014, observations of the preliminary report, public deeds of sale of possession – Ladino a Fernando Augusto Ramírez Ramirez and others, and the record of the out-of-court settlement of extrajudicial actions between ITA Aceites and the owner.

The allies' properties consist of four fields, totalling 11,000 hectares (Table 9).

Table 9. Fields of the Allied Landowners

Property	Ally	Area	Area cultivated with palm	Origin
Yamú	Bustamante Family - Empresa Agroindustrial Yamú	2,109	100	Adjudication of <i>baldíos</i> - Res. 507 (20.04.90)
El Bogante	Information not provided	6,998	30	Sale
La Cristalina	Information not provided		N.I.	N.I.
Casuarito	Information not provided	2,291	N.I.	Adjudication of <i>baldíos</i>
Total		11,398	130	

By SOMO-INDEPAZ, based on documents of the Office of Registry of Public Instruments of San Martín and Incoder. Clarification: N.I. means No Information.

Situations related to their origin and the accumulation of UAF exist on these properties, such as the elimination of protective measures and the purchase sums, the inscriptions and modifications in the registry, and the inability to properly identify the owner-allies.

History of the properties

Baldíos and the adjudication of UAF: The rural lands came from four neighbouring farms: Macondo, Barandales, El Bogante and Santa Marta. Barandales Parte or Arizona was separated from Barandales and Las Toninas Hoy from El Bogante. The transfer of Macondo I, II and III, Barandales-Barandales Parte or Arizona, Las Toninas Hoy, La Cuadra and El Porvenir was part of the adjudication of *baldíos* (Table 10). These properties add up to 10,000 hectares, or more than five UAF,³⁴⁹ and more than half of this area is included in the complaint filed by Incoder and is the subject of the Public Prosecutor's investigation of Poligrow Colombia.³⁵⁰

³⁴⁹ A UAF in Mapiripán varies from between 1,360 to 1,840 hectares (Incora, Resolution 041 of 24 September 1996).

³⁵⁰ See: Vox populi, 2012, "Denuncia penal contra Poligrow por compra masiva de tierras en Meta".

Table 10. Incora adjudications

Properties	Situation	Title transfer
<i>Macondo I, II and III</i>	<i>Baldío</i> initially occupied by Jorge Gordillo, ³⁵¹ divided in 1988. <i>Macondo III</i> was awarded to Álvaro Gallego Palau and <i>Macondo I and II</i> to Eudora Rodríguez Laguna, his foreman. ³⁵²	Deeded to persons other than the occupant and divided into parcels of less than 3,000 hectares. ³⁵³
<i>Barandales-Barandales Parte</i>	<i>Baldío</i> adjudicated to Argemiro Mesa Cárdenas in 1982, though it has been property of the <i>El Bogante</i> estate since 1979. ³⁵⁴	Titled six times more than legally allowed. ³⁵⁵
<i>Toninas Hoy</i>	Awarded to Jesús Betancourt Henao and Jorge Suescún Hernández. ³⁵⁶	Designated as a <i>baldío</i> after being acquired by property adjudicators.
<i>La Cuadra</i>	Property located in the urban area.	Resolution of the adjudication is registered in the Registry Office of Public Instruments of San Martín but not in Incora/Incoder's database. ³⁵⁷

By SOMO-INDEPAZ, based on certificates of transfer and clearance, public deeds and private documents.

Unadjudicated Baldío: In 2008, Poligrow Colombia and Badil Aljure signed a promise-to-purchase agreement for 70,000 hectares of the Hacienda Santa Ana-La Esmeralda,³⁵⁸ though it was known to be a property claimed by the heirs of the *guerrillero* liberal Dumar Aljure, demobilised in the 1950s.³⁵⁹ Poligrow's lawyer, Wilson Saray Palacio, and Gabriel Jairo Ángel Bernal, Angela María Santamaría's husband, who sold Los Macondo, witnessed the signing.

In the contract, the sellers agree to "collaborate with the pertinent documentation and management of the titling and/or adjudication of the property"³⁶⁰ in exchange for a total payment of COP 4.2 billion (approx. \$1.5 million) divided into a COP 50 million signing fee and COP 320 million for the property itself, with the remaining amount to be adjudicated "once the adjudication titles are received from Incoder".³⁶¹

According to Vigna Taglianti, this "promise was never kept";³⁶² the land is still the property "of the Aljure family" and "the Poligrow company has nothing to do with the differences between the parties" (sic), and "the Aljure already sold a large part of this land to others totally unrelated to the project"; without naming names or providing any source for this information.³⁶³

³⁵¹ See: Certificates of transfer and clearance hacienda Santa Marta and Miroff, N., 2014, "In Colombia, a palm oil...".

³⁵² Incoder, 2014.

³⁵³ Articles 29 of the Law 135 of 1961, modified by articles 14 and 29 and Laws 4 of 1973 and 30 of 1988, respectively.

³⁵⁴ Public Document 6314 of 21 November 1979 of the Bogotá notary number 1.

³⁵⁵ There is no mention of Incora's authorisation in the adjudication of a parcel of this size, as specified in Resolution 973 of 31 August 1982, (Incoder, 2014-a).

³⁵⁶ Incora, Resolution 985 of 30 June 1989 clarified by the Resolution 805 of 1 July 1992 and Public Document 5787 of 27 November 1981 of the Bogotá notary number 1.

³⁵⁷ CGR, 2015.

³⁵⁸ Located in the district of La Esmeralda or Rincón del Indio, two and a half hours from the town of Mapiripán, via Puerto Gaitán. See: lasillavacia.com, 2013-a, "El negocio 'baldío' de Poligrow" and CIJP, 2014-a and response in annex 7.

³⁵⁹ Partition decision of the District Court of San Martín, 26 March 1993.

³⁶⁰ Promise of sale signed 31 October 2008.

³⁶¹ Ibid.

³⁶² Response 24 of annex 5 states that "legal affairs become done and become undone in the same way, and in the end if a promise of sale is signed, it is enough that the parties come together and call it off ... and so the plan for doing business with the Aljure family was cancelled as were other sales and other offers of real estate, property, and services with no obligation to publicise the completion or not of these transactions".

³⁶³ Observations on the preliminary report, pp. 40 and 44.

Baldíos, fraudulent transfer and irregularities in the property history: The property known as El Bogante, consists of an area of 12,000 hectares that was registered as a fraudulent transfer in 1968.³⁶⁴ It has been the object of various transactions since. In 1979, it was purchased by businessmen from Antioquia, such as Argemiro Mesa Cárdenas and Álvaro Correa Ángel.³⁶⁵ They sold their titles in 1981: the 1,500 hectares now known as Las Toninas Hoy to Betancourt Henao and Suescún Hernández and the rest to Rafael Suaza, who sold it to la Sociedad Agropecuaria El Bogante S.A. in 1982,³⁶⁶ along with the Santa Marta property, which is also the result of a fraudulent transfer.³⁶⁷

Even though this firm was liquidated in 1993, this fact was only registered some 16 years later, in Medellín.³⁶⁸ In the meantime, the then-operational DNE started an extinction of the right to property process against them regarding the properties El Bogante and Santa Marta,³⁶⁹ which was suspended in 2004, a year in which the Prosecutor's Office ordered the lifting of the protective measures.³⁷⁰ In spite of this, the DNE awarded these lands to Incoder in 2006,³⁷¹ and in 2007 to Emma Peláez Fernández, lawyer for departmental representatives and for the comptroller of the Department of Guaviare who were relieved of their public duties by the Attorney General's Office.³⁷²

In 2008, the year that Poligrow started its operations in Mapiripán, the DNE decided to comply with the Prosecutor's Office 2004 order and demanded that the two properties from the liquidated firm Sociedad El Bogante be transferred to them.³⁷³ As evidenced in Table 11, the owners of El Bogante and Santa Marta are the same. This is also the case with the financial brokerage firms Promotora Correa Vélez & Cía. S.A.S.³⁷⁴ and Mónica Escobar & Cía., that are listed as the owners of more than 50% of each of these properties. Members of Mónica Escobar & Cía., Álvaro Escobar Restrepo & Cía. and Escobar Restrepo & Cía. have corporate links to C.I. Fundiciones Escobar and are shareholders in Mineros de Colombia S.A. – today known as Mineros S.A.³⁷⁵ In turn, members of Mónica Escobar are executives of Luga Management Inc., a corporation created and registered in Panamá in 2011³⁷⁶ by Lima y Asociados.³⁷⁷

³⁶⁴ Public Document 359 of 18 October 1968 in the only Notary in San Martín.

³⁶⁵ Public Document 6314 of 21 November 1979 in Bogotá notary number 1. The others were Mario Echeverry Toro, Oscar Moreno Restrepo, Juan L. Restrepo Londoño and José Paul Restrepo Santamaría.

³⁶⁶ Public Document 794 and 793 of 5 May of 1982 of Notary number 13 of Medellín.

³⁶⁷ The first transfer was a fraudulent transfer, or the sale of a false title, to Juan Luis Restrepo Londoño in 1981 who sold it to Rafael Suaza the following year (Public Documents 171 of 7 January of 1981 of the only notary in San Martín and 230 of 19 February 1982, Medellín Notary 13).

³⁶⁸ Public Document 3231 of 31 December 1993 of the Medellín Notary 13.

³⁶⁹ DNE, Oficio 24254 of 21 November 1997.

³⁷⁰ Resolution of the Fifth Prosecutor's Office to the Penal Court Judges of the Specialised Circuit Court of Villavicencio, Meta Ratified 34730 on 23 February 2004.

³⁷¹ Resolution DNE 0083 of 24 January 2006, "by which the judicial holds and/or custody is removed and they are provisionally considered to be real estate".

³⁷² Resolution DNE 1515 of 27 December 2007 and Inspector General's Office Rad. 013 (100655/04) of 27 September 2004. The custodian was the comptroller and representative of the Chamber for the Department of Quindío.

³⁷³ Resolution DNE 1596 of 3 of December 2008, "by which the judicial order has been fulfilled".

³⁷⁴ See: Promotora Correa Vélez & CIA S.A.S. In: <http://empresita.eleconomistaamerica.co/PROMOTORA-CORREA-VELEZ-CIA-SCS.html> and Mónica Escobar & Cía. S. en C. In: <https://www.companybooknetworking.com/CO0000000881304570> (20 4.15).

³⁷⁵ Document Titled "Mineros de Antioquia S.A. Código del Buen Gobierno" submitted to SOMO-INDEPAZ. The founders of C. I. Fundiciones Escobar formed Mineros de Antioquia S.A. in the '70's. In 2011 C.I. Fundiciones Escobar was investigated for alleged irregularities in the purchase of gold. See: Revista Dinero, 2011, "La nueva lavandería".

³⁷⁶ Certificate Circuit of Panamá 2090384 of 11 March 2015 of Notary number 8 and <https://opencorporates.com/companies/pa/755022> (15.06.15).

³⁷⁷ Panamanian law firm that offers services of Agent Resident to corporations that register in the country, according to the terms of Law 2 of 1 February of 2011 of the Republic of Panama. See: <http://www.limayasociados.com/> (15.06.15).

Table 11. Distribution of the Liquidation of holdings of the Sociedad Agropecuaria El Bogante

Santa Marta liquidation MI 236-6965 (5,702 hectares)			El Bogante Liquidación 2009 – following the sale of Las Toninas Hoy MI 236-7861 (6,998 hectares)		
Owners at liquidation	%	Title changes from the liquidation	Owners at liquidation	%	Title changes from the liquidation
Álvaro Escobar Restrepo & Cía. S. en C	10.6		Álvaro Escobar Restrepo & Cía. S. en C	10.6	
Jaime García Isaza	2.54		Jaime García Isaza	2.54	
Inversiones Alborada Ltda.	3.85	Fabio Aristizabal Hoyos	Inversiones Alborada Ltda.	3.85	Fabio Aristizabal Hoyos
Inversiones Barajas Ltda.	2.35		Inversiones Barajas Ltda.	2.35	
Juan Martín Isaza & Cía. S.C.	3.05		Juan Martín Isaza & Cía. S.C.	3.05	
Mesa Cárdenas & Cía. S en C	2.07	Jaime García Isaza	Mesa Cárdenas & Cía. S en C	2.07	Jaime García Isaza
Octavio Escobar R & Cía. S C S	12.12	Diego Escobar & Cía. S.C.S	Octavio Escobar R & Cía. S C S	12.12	Diego Escobar & Cía. S.C.S
		Carlos Escobar Restrepo			Carlos Escobar Restrepo
		Escobar Restrepo & Cía. S en C			Escobar Restrepo & Cía. S en C
		Mónica Escobar & Cía. S. en C			Mónica Escobar & Cía. S. en C
Promotora Correa Vélez & Cía. S en C - hoy Promotora Correa Vélez & Cía. S.A.S.	37.95		Promotora Correa Vélez & Cía. S en C - hoy Promotora Correa Vélez & Cía. S.A.S.	37.95	
Restrepo & Cía. S en C	10.8		Restrepo & Cía. S en C	10.8	
Ovidio Restrepo	3.05		Ovidio Restrepo	3.05	
Álvaro Restrepo	1.4		Álvaro Restrepo	1.4	
Uribe y Correas S. C. C.	8.64		Uribe y Correas S. C. C.	8.64	
María Pía Vélez de R	1.62		María Pía Vélez de R	1.62	

By SOMO-INDEPAZ, based on Certificates of Transfer of 12 June 2014.

Baldíos, fraudulent transfer, extinction of the right of property and occupiers: the Hacienda Barandales is divided into two properties: Barandales and Barandales Parte. Barandales Parte (150 hectares) was given to Ricardo Ladino Landinez in 1991 as payment of a debt,³⁷⁸ and sold to Mesa Cárdenas & Garcés in 2008.³⁷⁹ (Illustration 4)

This sale was carried out even though Barandales was occupied and used by third parties for farming and raising livestock. Mesa Cárdenas & Cía. became aware of this in 2008 when they tried to sell the property to Jairo Ángel.³⁸⁰ Apparently, among the occupants of the land, were Pedro

³⁷⁸ Public Document 9141 of December of 1991 of Notary number 1 of Bogotá.

³⁷⁹ Public Document 2316 of June 6 of 2008 of the Notary number 19 of Bogotá, delivered by Poligrow with the observations on the preliminary report, p. 43, in which it says: “see documents 2316 and 2538 of June 2008 where Ladino sells to Mesa”.

³⁸⁰ Document signed by Gabriel Mesa and Jairo Ángel the 15 of October 2008, received by SOMO-INDEPAZ in February of 2015.

Manuel Calderón, Fernando Augusto and Luis Felipe Ramírez Ramírez, associates of Mesa Cárdenas & Garcés, and Juan Pablo Mesa, and the supposed heir to Argemiro Mesa Cárdenas.³⁸¹

Another occupant, whose name is omitted here for security reasons, filed for recognition of the right of possession for “more than 20 years”,³⁸² which led Incoder to initiate a process of extinction of the right of property in 2009 against Argemiro Mesa Cárdenas for not using the land for agriculture or livestock.³⁸³

In spite of this, Mesa Cárdenas & Cía. sold the 2,590 hectares of Barandales in January 2011 to Mesa Cárdenas & Garcés.³⁸⁴

Other observations associated with land acquisitions

In addition to the irregularities mentioned above, irregularities regarding the protective measures of the Municipal Committees for Assistance to the Displaced Population and the Municipal Committees of Transitional Justice (committees that have to overlook land transactions to ensure that land is not being sold at the disadvantage of displaced persons) and the prices of the lands can be observed. Also, modifications of documents can be observed.

Protective measures of the Municipal Committees for Assistance to the Displaced Population (Comité Municipal de Atención a la Población Desplazada) and Municipal Committees of Transitional Justice (Comité Municipal de Justicia Transicional)(CMAPD-CMJT)

Besides the lifting of protective measures and of the authorisations of the sales of *Los Macondo*, *Los Barandales* and *Las Toninas Hoy*, granted exclusively by Maribel Mahecha Hernández and/or by her and Wilson Díaz Montoya, when they served as Mayor and Finance Secretary Mapiripán, respectively,³⁸⁵ the following situations were also observed:

Los Macondo I, II and III: The beneficiaries of the protective measures are Eudora Rodríguez Laguna and Álvaro Gallego Palau, however, between 1999 and 2002, these lands had been acquired by Angela María Mejía Santamaría (*Macondo I and II*) and Carlos Quinchia Restrepo (*Macondo III*).

Los Barandales: In the CMAPD-CMJT resolutions, Argemiro Mesa Cárdenas is registered as the occupant of the Barandales property,³⁸⁶ even though it was said to have been transferred to Mesa Cárdenas & Cía. The names of the supposed sellers of Barandales Parte and the supposed owners of Barandales (Juan Paulo Mesa Ojeda, Camilo Ernesto Pedro Manuel Calderón Vega y Fernando Augusto y Luis Felipe Ramírez) are not mentioned in the Resolutions of CMAPD-CMJT, nor in the report of Acción Social – PPTP.³⁸⁷

In 2011, the sale of Barandales-Barandales Parte was authorised between Mesa Cárdenas & CÍA, in liquidation, and Mesa Cárdenas & Garcés, upon the request of Fernando Parra González, “authorised representative of MESA CÁRDENAS Y CÍA. S. EN C. IN LIQUIDATION ... in possession of the “certificate of ownership of the property known as Barandales”, who stated he was under “no type of pressure”.³⁸⁸

³⁸¹ SOMO-INDEPAZ interviews with community members and employees of oversight organisations in Bogotá in October 2014 and February 2015.

³⁸² See: CIJP, 2014, “Continúa la siembra ilegal de palma extensiva”.

³⁸³ Resolution Incoder 711 of 10 December 2009.

³⁸⁴ Public Document 3867 of 1 December 2011, supposed certificate of transfer and clearance of 4 September 2014.

³⁸⁵ Verdad Abierta.com, 2013-a, “El Macondo de Mapiripán” and Resolutions 214 of 22 September 2010 and 387 and 379 of 14 of October 2011, delivered by Poligrow in annex 5.

³⁸⁶ CMAPD-CTJT, Resolutions 030 and 147 of 2008 and 271 of 2010.

³⁸⁷ ACCIÓN SOCIAL- PPTP, 2010 and 2010-a.

³⁸⁸ CMAPD-CMJT 387 of 14 October 2011, sent by Poligrow.

Las Toninas Hoy: The authorisation of the transfer of titles signed by Maribel Mahecha Hernández is dated 14 October 2011, three months later than the date on which Vigna Taglianti bought the titles from Jesús Betancourt Henao and Jorge Suescún Hernández.³⁸⁹

Prices at the time of the sale of the property

As can be seen in Table 12, the value per hectare varies between COP 6,371 (\$6) and COP 1,3 million (\$521), except for Hacienda Santa Ana.

Table 12. Property prices 2008-2011

Property	Hectares	Year	1st Sale	Price/ hectare	Purchase Price Poligrow	Year	Price/ha
Macondo 1	1,807	1999	12,491,000	6,913	1,561,560,000	2009	864,173
Macondo 2	1,120	1999	12,491,000	11,152	1,561,560,000	2009	1,394,126
Macondo	2,644	2002	10,900,000	4,122	780,000,000	2008	294,962
Las Toninas Hoy	1,500	N.A	N.A	N.A	700,000,000	2011	466,667
Barandales Parte	150	N.A	N.A	N.A	15,000,000	2009	100,000
Barandales	2,590	2008 (1)	5,000,000	1,931	16,500,000	2011 (2)	6,371
Santa Ana	70,000	N.A.	N.A	N.A	4,200,000,000	2008	60,000,000

By SOMO-INDEPAZ, based on Public Deeds and promise-of- purchase agreements. Clarifications: (1) Sale of the rights of possession by Ladino Landinez to the associates of Mesa Cárdenas & Garcés and (2) sale by Mesa Cárdenas & Cía – in liquidation – to Mesa Cárdenas & Garcés S.A.S.

Poligrow Colombia paid a sum of COP 3.903 billion (approx. US \$1.4 million) for Los Macondo I, II and III – an average of COP 700,379/ha (\$263 – €283), while its sellers had acquired it for COP 35 million (approx. \$13,414) – an average of COP 6,435/hectare (approx. \$2).³⁹⁰ This shows a price increase of 99%. In the interview with *verdadabierta.com* Poligrow’s representative said this increase was due to the need to “account for” the investment that entered the country.³⁹¹ This statement was disavowed with the argument that the interview “was totally manipulated”.³⁹² However, *verdadabierta.com* did not receive any rectification or request to make a clarification from Vigna Taglianti.³⁹³

In 2009, Poligrow Inversiones estimated that the value of the 1,144 hectares planted with palm on Los Macondo had tripled (from COP 400,000/ha to 1,225,316/ha as of 2015), as a result of the construction of infrastructure, improvements and cultivation.³⁹⁴

In the Santa Ana promise of purchase agreement the agreed-upon price per hectare was COP 60 million (approx. \$22,430), almost 86 times more than the average value paid per hectare for the Macondo I, II and III properties. This is despite the property’s location over two hours away from the town of Mapiripán, with precarious routes of access and a lack of electricity and water access.

³⁸⁹ Resolution 379 of 14 October 2011 and Public Document 742 of 7 July of 2011 of Notary 46 of Bogotá.

³⁹⁰ CGR, 2014, p. 135.

³⁹¹ See: Interview with Vigna Taglianti, “La respuesta de Poligrow: Podemos superar un problema histórico”. In: *VerdadAbierta.com*, 2013-a, “El Macondo de Mapiripán” and the response of Verdad Abierta in annex 6.

³⁹² Observations on the preliminary report, pp. 13 and 40.

³⁹³ Response Verdad Abierta in annex 6.

³⁹⁴ Poligrow Inversiones, 2010, pp. 5 and 6.

ITA Aceites Vegetales and Mesa Cárdenas & Garcés purchased Barandales Parte for COP 15 million (approx. \$5,607) and Barandales for COP 16.5 million (\$6,168).³⁹⁵ This means that the price/ha of Barandales Parte in 2009 was COP 1 million (\$374) and for Barandales it was COP 6,731 (\$2) in 2011. This last value does not correspond to prices paid per hectare in Barandales Parte (which were almost 16 times less), Las Toninas Hoy (73 times less) and Santa Ana (9,471 times less).³⁹⁶ This might be related to the practice of lowering the property taxes and/or increasing taxes charged for occasional gains during the succession of Argemiro Mesa Cárdenas.³⁹⁷

Modifications and clarifications of documents

The Protection of Land and Patrimony of the Displaced Population Project (Proyecto de Protección de Tierra y Patrimonio de la Población Desplazada) by Acción Social, warned about irregular situations in property sales in Mapiripán, including modifications, retrospective and missing registrations of titles and other administrative acts, and the changing of lot and registry numbers, which helped to spur the creation of a notary office in Mapiripán that would take over the functions of the San Martín office.³⁹⁸ The inspection of certificates of transfer and clearance have yielded the following observations:

In the case of Barandales, modifications in the chronological order of entries on the history of the territory were made to include the protective measure favourable to Ricardo Ladino Landinez. Also, the sale agreement between him and Mesa Cárdenas & Garcés was not registered.³⁹⁹

Validated corrections appear in the certificates of El Bogante and Santa Marta; the chronological order of the entries has been modified regarding the liquidation of the company Sociedad Agropecuaria El Bogante and acts of the extinction of the right of property process. In the certificates there is no mention of appointing of Emma Peláez Fernández as custodian.

Unidentified allied lands

As was explained in previous sections, the representative of the Poligrow Research + Green Oils project would not give SOMO-INDEPAZ the name(s) of the allies-owners of El Bogante and La Cristalina.⁴⁰⁰ In Mapiripán, there are five pieces of land with the same name (*matrículas inmobiliarias* nos. 236-40916, 236-30235 y 236-30253).⁴⁰¹

This section shows a large number of irregularities of land acquired by Poligrow and its strategic allies. Poligrow, together with its allies, illegally accumulated a large number of UAF's. Poligrow is further involved in fraudulent land transfers, and a number of its territories contain irregularities in the property history. Furthermore, for a number of titles the protective measures by the Municipal Committees for Assistance to the Displaced Population (Comité Municipal de Atención a la Población Desplazada) and Municipal Committees of Transitional Justice (Comité Municipal de Justicia Transicional)(CMAPD-CMJT). [not a complete sentence. Something missing?]

³⁹⁵ As previously mentioned, Mesa Cárdenas & Garcés incorporated with a capital of COP 15 million (approx. \$5,607), about the same value as what they paid for Barandales.

³⁹⁶ In Colombia, the sale of property and goods is frequently registered at a lower price than the actual value in order to avoid taxation on occasional gains.

³⁹⁷ As Vigna Taglianti noted, in Colombia it is common practice to avoid taxation for occasional gains, or incomes, using methods like selling real estate for out-dated values, self-assessment of property value to equal the price of sale with the aim of not showing the true worth, and sales for the value shown in the property register, which is generally lower than the commercial value. See: Interview with Vigna Taglianti, "La respuesta de Poligrow: Podemos superar un problema histórico", response 25 of annex 3 and Piza & Caballero Consultores, 2013, "Ganancias ocasionales".

³⁹⁸ CGR, 2015.

³⁹⁹ Public Document 2316 of 6 June of 2008 on Notary 19 of Bogotá, delivered by Poligrow with the observations on the preliminary report, p. 43, in which it says: "see documents 2316 and 2538 of June 2008 where Ladino sells to Mesa".

⁴⁰⁰ Refers to Law 1581 of 2012 (Response 27 of annex 5 and interview SOMO-INDEPAZ with Vigna Taglianti in February 2015).

⁴⁰¹ Resolution 271 of 2010.

As Poligrow has allegedly breached Colombian law, it has directly breached the *OECD Guidelines*. Furthermore, by acquiring large amounts of land, Poligrow hinders those affected by the internal conflict from returning to their properties. Poligrow thereby harms these people's right to housing and property. This is further aggravated by the fact that Poligrow has not consulted the affected people about the land acquisition, and also because Poligrow – as far as is known – has not sufficiently studied the history of land occupation in the region, which is crucial in an area with a long history of land conflicts. It is therefore clear that Poligrow has violated the *OECD Guidelines* in a number of ways.

5.3.2. Territorial rights of the indigenous Sikuni

The *Guiding Principles* and the *Principles and Criteria* of the RSPO in agreement with Convention 169 of the ILO, state that businesses must receive free, prior and informed consent from the indigenous peoples in order to carry out activities or projects which could affect their rights. The State's own failings in this regard does not exempt companies from exercising due diligence, especially if their operation and those of their allies are carried out in ancestral lands inhabited and used by indigenous peoples. In this section, it will be discussed to what extent Poligrow respects these rights. With regards to territorial rights, the *OECD Guidelines* refer to UN and ILO instruments, among them the ILO 169 convention.

Poligrow Policy

The company's representative stated that Poligrow:

- ❑ Complies with the laws on territory rights and participation, with documents filed with the Ministry of the Interior regarding the presence or absence of indigenous communities.⁴⁰²
- ❑ Launched a Project to connect with the indigenous peoples as “guardians of biodiversity” and authorized the hunting of 10% of the protected species.⁴⁰³ SOMO-INDEPAZ were not allowed to visit this project.
- ❑ About the allies: “Poligrow cannot/should not consult with third parties because it is not authorised” (sic).⁴⁰⁴
- ❑ “A letter signed by the Governor of the ‘caño ovejas’ (sic) reserve that declares that Bustamante can plant” on the Yamú property.⁴⁰⁵

Findings

The certifications of the Ministry of the Interior regarding the absence of indigenous people in the areas of the projects mentioned in Table 13 were obtained after having acquired the properties and the planting of palm had commenced.

⁴⁰² Observations on the preliminary report, p. 59.

⁴⁰³ SOMO-INDEPAZ interview with Vigna Taglianti in February 2015.

⁴⁰⁴ Ibid., p. 44.

⁴⁰⁵ Observations on the preliminary report, p. 44. The letter was neither delivered to SOMO-INDEPAZ nor was it mentioned in the meetings with the indigenous community in Mapiripán.

Table 13. Certifications of the Ministry of the Interior

Petitioner/Company	Project	Properties	Date
Poligrow Colombia	Plantation for the production of palm oil	Macondo I, II and III	26 February 2013
Carlo Vigna Taglianti - ITA Aceites Vegetales	Sustainable plantation for the production of palm oil	Barandales and Barandales Parte	29 del 10 de enero de 2014
Carlo Vigna - Poligrow Agroindustrial	Palm oil extraction plant	Las Toninas	Date illegible
DIAN - Poligrow Agroindustrial	Declaration of permanent free economic zone	Las Toninas	1318 June 2012

By SOMO-INDEPAZ, based on the website of the Ministry of the Interior, 2014.

Of the allies' four properties, two were originally *baldíos* that form part of ancestral lands reclaimed by the Sikuani.⁴⁰⁶ (Table 14)

Table 14. Properties of the allies in the indigenous territory

Properties	Situation
Yamú	Awarded to Clara Angarita de Bustamante in 1989.
Casuarito	Awarded to Álvaro Correa Ángel in 1991.

By SOMO-INDEPAZ, based on Incora Resolutions.⁴⁰⁷

Sikuani authorities complain that, without having consulted the Sikuani, Poligrow provided technical assistance, seeds and seedlings to Yamú's owners. The Sikuani claim that Poligrow supports Yamú's owners in the planting of 200 additional hectares.⁴⁰⁸ They also mentioned restrictions in mobility, hunting, fishing, and gathering,⁴⁰⁹ and cultural practices at sacred sites such as Capalaure, Peyatsevitsuto and Yavetsaniibot, located on the Los Macondo, Casuarito and Yamú plantations.⁴¹⁰

Since Poligrow has not received free, prior and informed consent from indigenous peoples for the acquisition and occupation of its land, it is in breach of the *OECD Guidelines*. The fact that the Colombian government does not acknowledge the indigenous rights doesn't exempt Poligrow from its obligations to respect indigenous rights.

⁴⁰⁶ The same situation can be seen in the case of the Los Machos property with an area covering 1,644 hectares on the banks of the Yamú River, which was awarded to Augusto Bustamante (Resolution Incora 506 of 1990).

⁴⁰⁷ Resolutions Incora 395 of 1989 and Public Documents 6314 of 21 November 1979, 5787 of 27 November 1981 and 231 of 19 February 1982 and 507 of April 1990.

⁴⁰⁸ SOMO-INDEPAZ interviews and meetings with indigenous people in Mapiripán in July 2014.

⁴⁰⁹ "Prohibida la caza y la pesca". In: BIP no. 6 of 7 December 2009, p. 8.

⁴¹⁰ SOMO-INDEPAZ interviews and meetings with indigenous people in Mapiripán February of 2015 and URT, 2014.



Picture 5. Sign regarding the prohibition of hunting and fishing

5.3.3. Security

In conflict zones, businesses face greater risks in safeguarding their personnel, installations, and goods. Similarly, they face complex challenges to prevent and avoid situations of collaboration or association with illegal armed actors involved in security, control of the population, forced displacement, plunder or the taking of advantage of contexts of violence to acquire lands and restrict cultural practices, and how not to get involved in matters that should be handled by the Armed Forces.⁴¹¹

According to the *Guiding Principles* and the Guidance of the ICRC, businesses operating in high-risk zones like Mapiripán should guarantee that the security measures used are transparent and respectful of human rights, and to apply special measures of due diligence to avoid being involved in direct or inadvertent complicities with armed groups to the benefit of their operation.

Poligrow Policy

The security policy of Poligrow, which forms part of the “internal corporate policies”⁴¹² is found in the *Quality Management Systems Manual ISO 9001:2008*, which states:

“... Responsibility and authority ... all employees have the obligation and commitment of not making any sort of payment or contribution of illegal taxes, nor extortions and in this way explicitly reject any kind of relationship to illegal armed groups, underground organisations, or mafias ...”⁴¹³

Vigna Taglianti maintains that Poligrow resolutely refuses to “become involved in the armed conflict”, will not pay “security surcharges” and will not contract security companies⁴¹⁴ given that “it is the community that provides them with security”.⁴¹⁵

⁴¹¹ ICRC, s.f.

⁴¹² Response 20 of annex 5. Sent on request of SOMO-INDEPAZ.

⁴¹³ The first Incontec certification was received in March 2012. See: BIP No. 16 February 2012, p. 3.

⁴¹⁴ Ibid.

The ISO Manual does not stipulate Poligrow's policy regarding armed forces. The representative stated that the Poligrow Foundation, within its social spending budget, provides in-kind resources (gasoline and "material to remodel the military base and build a chapel").⁴¹⁶ These "donations given to the military forces on the part of the Poligrow Foundation are valued at approximately 12 million pesos (approx. \$5,015) in common currency, annually" (sic).⁴¹⁷

State security

In Mapiripán, the army and the police provide security for the plantations and the offices in town, as well as for its executives and visitors.⁴¹⁸ The army provided security for SOMO-INDEPAZ when they visited the Los Macondo plantation in July 2014; however, it was not possible to visit the local base due to "security concerns".⁴¹⁹

The National Police in Mapiripán contribute to the inspection of the criminal histories of the people that hope to gain a relationship with Poligrow.⁴²⁰ However, in August 2014, the Guaviare Police and the Airborne Battalion Joaquín París conducted a "surprise operation" at the Los Macondo plantation "to check the criminal history of nearly 400 workers".⁴²¹

Indigenous authorities claim that they receive threats from members of the army whenever they hunt, fish, gather, or visit their sacred sites.⁴²²

Situations affecting Poligrow's operations

Throughout the Poligrow Project there have been situations that illustrated the consequences of operating in a high-risk zone. One of these situations shows the difficulty of contracting personnel from Mapiripán, since many of the residents – faced with a lack of legal alternatives and the pressures of the illegal armed groups – end up with criminal histories via their involvement in the cultivation of coca.⁴²³

The paramilitary massacres and the fumigations of illicit coca cultivations provoked displacement and abandonment of lands which, added to the insecurity of land tenancy, impact the acquisition and use of lands in the Poligrow operations, as described here:

- Heirs of Jorge Gordillo, the first occupant of the Macondo property, state that they did not know about the land transactions made after their displacement.⁴²⁴ Álvaro Gallego Palau, the Antioquen rancher awarded Macondo III assured *verdadabierta.com* that he was displaced and "did not know that anyone would have bought the property".⁴²⁵ The location of Eudora Rodríguez Laguna, the owner of Macondo I and II, is unknown.

- In 2011, the year of the assassination of Hernán Gaviria, one of the first Poligrow employees to apparently serve as the property owner of Barandales,⁴²⁶ ITA Aceites agreed with Mesa Cárdenas

⁴¹⁵ Interviews SOMO-INDEPAZ with Vigna Taglianti in Bogotá in June and September 2014.

⁴¹⁶ Observations on the preliminary report, p. 21 and BIP No. 18 November 2012, p. 15.

⁴¹⁷ Response 19 of annex 5.

⁴¹⁸ Phone interview with the commander of the Mapiripán army base in July 2014.

⁴¹⁹ Ibid.

⁴²⁰ SOMO-INDEPAZ interview with Magician's Police Chief in July 2014.

⁴²¹ Article published by a Mapiripán radio journalist and a SOMO-INDEPAZ interview by with Vigna Taglianti in September 2014.

⁴²² SOMO-INDEPAZ interview with indigenous people in Mapiripán in February 2015.

⁴²³ Colombian legislation penalizes the small cultivators of coca (Law 30 of 1986).

⁴²⁴ See: Miroff, N., 2014, "In Colombia, a palm oil..." and interview with victims in July 2014.

⁴²⁵ *VerdadAbierta.com*, 2013-a, "El Macondo de Mapiripán".

⁴²⁶ RCN Radio, 2012, "Las autoridades investigan metre de ganadero en Mapiripán, Meta" and a SOMO-INDEPAZ

& Cía to provide security services to avoid “the invasion of persons, unauthorised tenancy of goods, robbery of belongings, construction without proper authorisation, burning and cutting of forests, among other damages or acts on the property”.⁴²⁷

The CIJP has reported threats from a paramilitary known as “Tres Ocho”⁴²⁸ against the occupant who is allied with ITA Aceites, an act which is denied by Poligrow’s representative.⁴²⁹ However, the Commission confirmed to SOMO-INDEPAZ that “in three certified declarations it became known that Carlo Vigna Taglianti had made contact with paramilitary groups, [and that] after this the pressure and threats to the occupants of the hacienda Barandales began, to the point that they were forced to accept the terms established by the company and sign a document of apparent agreement”.⁴³⁰

The CIJP has also reported threats and the displacements of members of the Aljure family who opposed the promise of sale agreement of *Santa Ana*, on the part of José María Conde, alias “El Chato”, allegedly a paramilitary who lives on the property.⁴³¹

The mobility of the business operation was restricted by the installation of checkpoints on the bridge over the Ovejas River and ongoing attacks against the nearby infrastructure by FARC guerrillas.⁴³² This organisation is blamed for extortion and threats against companies and people (e.g., in the case of Pluspetrol and the Parish of Mapiripán in 2014, which led to the suspension of activities by the oil company and the relocation of the priest).⁴³³

The climate of violence in the region has caused a rise in fear of violent retribution being used against workers who denounce abuses of their labour rights.⁴³⁴ Acts of aggression are known to have occurred against Poligrow supervisors,⁴³⁵ and in July 2014, a worker was murdered on the plantation, during the workday and in front of his coworkers.⁴³⁶

Security measures

In this complicated environment, in which “gangs fight over drug trafficking” and commit serious violations of human rights, extortions, and threats,⁴³⁷ Poligrow’s security measures remain unclear. For social organisations and state entities, like the Office of the Ombudsman, the mere support of the community does not seem sufficient to guarantee security,⁴³⁸ nor to prevent alleged “interactions” with illegal armies in Mapiripán.⁴³⁹

interview with Vigna Taglianti in September 2014.

⁴²⁷ Document “Vigilancia y administración del predio Barandales” of 26 January of 2011, allegedly signed by Vigna Taglianti and Fernando Parra González, as representatives of ITA Aceites and Mesa Cárdenas & Garcés. The price for these services – COP 30 million (approx. \$11,320) – will supposedly be withheld from the total sale price.

⁴²⁸ CIJP 2014-a. “Continúa la siembra ilegal de palma extensiva” and CIJP, 2015, “Los claro oscuro...”

⁴²⁹ Observations on the preliminary report, p. 41.

⁴³⁰ CIJP, response in annex 7.

⁴³¹ Response CIJP in annex 7 and CIJP, 2014-a, “Continúa la siembra ilegal...”, 2015-b, “Paramilitares hostigan a defensores de D.H.” and 2015-a, “El Despojo palmero continúa”.

⁴³² See: *El Universal*, 2014, “Guerrilleros del frente 44...” and *El País*, 2014, “Vía intermunicipal del Meta, afectada por atentado de las Farc”.

⁴³³ SOMO-INDEPAZ interview with Father Crisanto of the Secretariat of Victims of the Government in Villavicencio in June 2014.

⁴³⁴ Interviews with the Mayor of Mapiripán and interviews, meetings, and workshops in May, June, and July 2014.

⁴³⁵ Interviews by SOMO-INDEPAZ with authorities, workers, and community members in Mapiripán in June 2014.

⁴³⁶ CIJP, 2014, “Paramilitares asesinan a joven en campamento de Poligrow” and interviews by SOMO-INDEPAZ with authorities, workers, and community members in Mapiripán and with Vigna Taglianti in Bogotá in February 2015.

⁴³⁷ See: *El Tiempo*, 2014, “Cinco bandas se pelean...” and 2014-a, “Farc y bandas criminales...”

⁴³⁸ SOMO-INDEPAZ interviews with employees of the Ombudsman’s Office of the Meta Region and international cooperation organisations in Villavicencio in July 2014.

⁴³⁹ CIJP, 2014-a, “Continúa la siembra ilegal...”.

In a context so heavily affected by conflict as Mapiripán is, companies should be transparent about their security measures and arrangements. If not, there is a serious risk of adversely affecting the conflict. Poligrow should certainly explain how it can remain safe and secure without hiring private security companies. Poligrow's response that 'the community grants its security' has been deemed as insufficient by various experts.

5.4. Employment and labour relations

The *OECD Guidelines* are based on international standards in matters of freedom of association and collective bargaining, dignified and decent labour conditions, non-discrimination and rights of workers to information and to participate in decisions about working conditions, among which are the Conventions and the Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy of the ILO.⁴⁴⁰

Based on these instruments, the *Guiding Principles* and the principles of the RSPO, in zones of conflict, weakness, and weak State presence, commercial operations should take enhanced measures of due diligence to guarantee labour rights and the rights of association, and prevent and avoid rights abuses on the part of the allies and contractors.

These concepts are highlighted in the *Guiding Principles* and in the Guide, "Free and Fair Labour in Palm Oil Production" – currently in development – which are promoted by different organisations on an international level.⁴⁴¹

Poligrow's Policy

Poligrow's employment policy is currently "in the process of improvement" in order to meet the *Guidelines* standards.⁴⁴² SOMO-INDEPAZ did not have access to it nor to information about the existence of policies or the number of employees working for Poligrow's allies.

5.4.1. Contracting workers in Poligrow's corporate network

Poligrow has tried out different forms of contracting personnel in the different phases of palm cultivation.⁴⁴³ In the beginning, workers were hired directly; later, through worker cooperatives.⁴⁴⁴ In these cooperatives, women and the displaced were hired to work in the palm nursery (Coopmaipalma) while men were hired to work in areas involving soil improvement (Coopmapiripan).⁴⁴⁵ According to Poligrow, the cooperatives were eliminated because of administrative mismanagement, who appropriated the "resources for the wages of the workers".⁴⁴⁶

⁴⁴⁰ ILO, 2006. Colombia has ratified more than 50 Conventions of the ILO, including those regarding the equality of the workers (Law 22 of 1967 - Convention 111) and the application of human rights principles to worker collective organising (Law 27 of 1976 - Convention 98).

⁴⁴¹ See: Humanity United, Oxfam & others, 2015.

⁴⁴² SOMO-INDEPAZ interviews with Vigna Taglianti in September 2014 and Poligrow, 2014.

⁴⁴³ Cleaning of empty lots and the installation of channels of lime for the preparation of lands and soils; establishing vegetable groundcover; installation of pre-nurseries, nurseries and planting; weed control to facilitate the harvest of fruit; pruning; fertilization; pest control; and cutting of bundles.

⁴⁴⁴ BIP no. 1 of 5 February 2009.

⁴⁴⁵ The creation of the worker cooperatives, broadly questioned due to doubts about creating an outsourcing mechanism that does not know the labour regulations, was limited through the Law 1429 of 2010 Formalisation and Generation of Employment. In the palm-cultivation sector, businesses like Aceites Manuelita S.A, Plantaciones Unipalma de los Llanos S.A and Guaicarami S.A, have signed agreements of formalisation with the Ministry of Labour and companies such as Tierra Viva S.A.S and Poligrow Colombia Ltda. are currently in the process of signing.

⁴⁴⁶ SOMO-INDEPAZ Interview with Vigna Taglianti in June 2014.



Picture 6. Worker in the Los Macondo plantation nursery

In 2011 and 2012, Poligrow Colombia created Poligrow Servicios Agrícolas I, II, III and IV, to provide employment, transportation and food services. As a result of the strikes at the end of 2013, Poligrow decided to hire most of its workers directly again.⁴⁴⁷

In February 2014, the aforementioned companies were liquidated and others formed in Mapiripán and in other municipalities in Meta. In February 2015, there were four SAS contracted by Poligrow, two in Mapiripán and two from outside, whose names Vigna Taglianti could not remember.⁴⁴⁸

Poligrow audited the four SAS in 2013 through a third party

According to Poligrow's representative, the monthly salary for agricultural workers is slightly higher than the current legal monthly minimum wage (COP 644,350 – \$241 in 2015).⁴⁴⁹ Workers receive bonuses for meeting targets defined every six months,⁴⁵⁰ and the work is done in teams of four, or "cuadrillas" of workers engaged in the same activity.⁴⁵¹

According to the Poligrow Foundation, as of July 2014 there were 490 workers,⁴⁵² distributed as shown in Table 15, 35% were indirectly contracted by Poligrow Colombia.⁴⁵³

⁴⁴⁷ Director of the Poligrow Foundation in a meeting and workshop held in the Municipal Council headquarters Mapiripán in June and July of 2014.

⁴⁴⁸ SOMO-INDEPAZ Interview with Vigna Taglianti in February 2015.

⁴⁴⁹ The transportation allowance that should be guaranteed to a worker receiving minimum wage is COP \$74.000/month (\$28).

⁴⁵⁰ SOMO-INDEPAZ Interview with Vigna Taglianti in February 2015.

⁴⁵¹ Observations on the preliminary report, p. 48.

⁴⁵² The Grupo Asja refers to the 500 people employed on the plantations. See: ASJA, 2015-b, p. 9.

⁴⁵³ Poligrow, 2014-c.

Most of the professionals come from other regions in Colombia, as do nearly 70% of its supervisors, including six former civil servants.⁴⁵⁴ The supervisors are trained by the National Training Service (SENA).⁴⁵⁵

Table 15. Poligrow Employees as of July 2014

Employees	Men	Women	Total
Total direct employees of Poligrow	274	46	320
Indigenous	7	6	13
Residents of Mapiripán	130	24	154
From outside Mapiripán	137	16	153
"Indirectly Employed by Poligrow Colombia"			170
Residents of Mapiripán			62
From outside Mapiripán			108

By SOMO-INDEPAZ, based on Poligrow (2014-c).

Reports about Poligrow Colombia, Poligrow Agroindustrial and ITA Aceites are available on the internet and show an increase of 18% in workers in Poligrow Colombia between 2010 and 2014 and a decrease in Poligrow Agroindustrial, and those of ITA Aceites remain constant. The report of Mesa Cárdenas & Garcés does disclose information on the number of employees (Table 16).

Table 16. Contracted Employees 2010-2014

Employees	2010	2011	2012	2013	2014
Poligrow Colombia	32	71	110	138	179
Poligrow Agroindustrial		40	10	10	1
ITA Aceites Vegetales			10	10	10
Mesa Cárdenas & Garcés					
Total	32	111	130	158	190

By SOMO-INDEPAZ, based on *Informa Colombia*, 2015, 2015-a, 2015-b y 2015-c.

Poligrow plans to establish a housing development project in Mapiripán for the workers and community members on a four-hectare piece of land owned by the company.⁴⁵⁶

5.4.2. Labour Rights of agricultural workers

In the beginning of the Poligrow project, workers questioned the fees withheld from wages for alimentation and housing.⁴⁵⁷ The operation of the Empresa Asociativa de Trabajo H y M Alimentos, E.T.A., a catering company created by Poligrow in 2009,⁴⁵⁸ "was abandoned because they were found to be unnecessary by those entrusted to run it".⁴⁵⁹

⁴⁵⁴ Observations on the preliminary report, p. 20, responses 14, 15 and 16 of annex 5 and the SOMO-INDEPAZ Interviews with Vigna Taglianti in June of 2014 and Poligrow employees in Mapiripán in May, June, July, and September 2014.

⁴⁵⁵ SOMO-INDEPAZ Interviews by with Vigna Taglianti in June 2014 and Poligrow employees in Mapiripán in May, June, July, and September 2014.

⁴⁵⁶ SOMO-INDEPAZ interview with Vigna Taglianti in February 2015.

⁴⁵⁷ Interviews and workshops in Mapiripán May, June, July 2014.

⁴⁵⁸ "El Comisariato ¡Es una realidad!". In: BIP no. 4 of August of 2009, p. 5.

⁴⁵⁹ Response 17 of annex 5.

In 2013, due to the ineffective attention to, and resolution of, complaints related to the non-affiliation, sporadic affiliation, and/or disaffiliations of health and social security services by the SAS – despite the monthly fees collected – the workers went to the Municipal Representative’s Office in Mapiripán, who required Poligrow and the four SASs to live up to their legal obligations. In October of that year, Poligrow contracted an external auditing firm to inspect each SAS regarding social security, assets and properties, hiring policies, social benefits, and parafiscal taxation.⁴⁶⁰ Since the second quarter of 2014, Poligrow has done its own auditing.⁴⁶¹

As a result of the 2014 audit, the SAS Semillas de la Esperanza “was punished with two months of inactivity”⁴⁶² which, according to Poligrow’s representative, caused “a little revolution” in Mapiripán.⁴⁶³ In any case, workers claimed that the punishment was related to the fact that the SAS is owned by Wilson Díaz Montoya,⁴⁶⁴ the ex-Secretary of Finance, who was convicted of crimes involving public administration, together with the ex-mayor Mahecha Hernández.⁴⁶⁵ For their part, representatives of the SAS blame Poligrow for not paying wages, paying below market rates, and for not having clear rules about the surcharges to be paid each period.⁴⁶⁶

These situations were discussed in the Multi-stakeholder Forum held after SOMO-INDEPAZ’s visit in 2014, in which there was no clear differentiation of the responsibilities of Poligrow and its allies.

In January 2015, the workers went on strike to demand three daily meals,⁴⁶⁷ that had been provided on the Los Macondo plantation in 2014 for workers coming from outside Mapiripán.⁴⁶⁸ The strike was sparked when Poligrow adopted a continuous work day, from “6 a.m. to 1:30 p.m.” and making the meal provision conditional on “company policy”, salary, position, and “targets met”.⁴⁶⁹

During the visit of SOMO-INDEPAZ in February 2015 workers and community members repeatedly said that “things were going the same or getting worse”. The complaints included: hiring still being done through the SAS, a high turnover of personnel, changes in rules and expectations of targets, wages, surcharges, and fees, failure to deliver contracts, misuse of monthly contracts, the need for workers to own tools, motorbikes, and bank accounts in order to be hired, and the poor quality of the food and transport provided by the SAS. They also reiterated the need for potable water and electricity in the camp, which caused some workers to move to Mapiripán, where they would have to pay for their own food and housing.⁴⁷⁰

⁴⁶⁰ Minutes of the Poligrow meetings with the municipal representative, 17 of October 2013 and of Poligrow meeting with the service providers Semillas de Esperanza SAS, Agroservicios e Inversiones Flor Amarillo SAS, Confeagro SAS, Mapiripetrol SAS and Macrollanos Ltda., in Villavicencio the 18 of October 2013.

⁴⁶¹ SOMO-INDEPAZ interview with Vigna Taglianti in February 2015.

⁴⁶² SOMO-INDEPAZ interview with Vigna Taglianti in September 2014.

⁴⁶³ Observations on the preliminary report, p. 47.

⁴⁶⁴ SOMO-INDEPAZ interview with company workers of July 2014.

⁴⁶⁵ Prosecutor’s Office, 2013 and Noticias de Villavicencio, 2015, “Ex alcaldesa de Mapiripán aceptó cargos por delitos contra la administración pública” and 2013, “Condenaron por peculado a la ex alcaldesa y ex tesorero de Mapiripán (Meta)”.

⁴⁶⁶ SOMO-INDEPAZ interview with municipal representative employees, and meetings with SAS representatives in Mapiripán in June 2014.

⁴⁶⁷ Interview by SOMO-INDEPAZ with community members and workers in February of 2015.

⁴⁶⁸ In February 2015, 47 workers were living on the plantation. SOMO-INDEPAZ interview in February 2015.

⁴⁶⁹ SOMO-INDEPAZ interview with Vigna Taglianti in February 2015.

⁴⁷⁰ Ibid.



Picture 7. Workers compound on the Los Macondo plantation

SOMO-INDEPAZ were informed about the situation involving 15 workers who were sick or suffered from work-related injuries and the death of a worker struck by lightning on the plantation in February 2013,⁴⁷¹ none of whom had received assistance or compensation. A case was also reported of a worker who had not received attention following an injury on the job and who had been transferred to tasks that paid lower wages.

No unions or labour organisations have been formed in Mapiripán due to the perceptions that “the company is very strong” and “the workers do not know the laws enough to defend their rights”.⁴⁷² Complaints and demands are filed at the offices of the Poligrow Foundation in Mapiripán and, on occasion, at the offices of the Municipal representative.⁴⁷³

5.4.3. Labour rights of indigenous workers

Since Poligrow’s arrival, the indigenous Jiw displaced from their reserve in Guaviare requested that they be included in agricultural employment opportunities. To this end, the “Jiw – Poligrow Group Communications Protocol” was established with the help of academics from the Universidad de Los Andes.⁴⁷⁴

⁴⁷¹ SOMO-INDEPAZ interviews with the Mayor of Mapiripán and the head of the Municipal Representative’s Office in Mapiripán, and interviews, meetings, and workshops in Mapiripán in May, June, and July 2014 and in February 2015.

⁴⁷² Ibid.

⁴⁷³ SOMO-INDEPAZ interviews with the head of the Municipal Representative’s Office and workers in July 2014.

⁴⁷⁴ Undated document sent by Poligrow to SOMO-INDEPAZ on 15 October 2014.



Picture 8. Housing of the indigenous Jiw in Las Zaragozas

Regulatory agencies and international cooperation organisations have warned of the risk of the loss of traditions and identity (acculturation) related to the participation of the indigenous people in the oil palm project.⁴⁷⁵ Certain jobs, such as adding lime to the soil, carry increased health risks due to malnutrition and the precarious living conditions experienced in Las Zaragozas and in the Casa Indígena.⁴⁷⁶

Due to a lack of experience in the agroindustrial sector, many indigenous workers have had more difficulty meeting their targets. Sometimes they are forced to share their shift with other workers, meaning that their daily salary falls below the current minimum wage (COP 21,478 or approx. \$9).⁴⁷⁷

In February 2015, indigenous Jiw workers again complained about not having seen the agendas or minutes of meetings to discuss their participation, and the permanent failures of Poligrow to honour their commitments since their arrival.⁴⁷⁸

According to workers' testimonies, Poligrow adversely affects their rights in a number of ways. Poligrow grants them irregular contracts and often changes the contracts, and prevents them from forming unions. Workers live in precarious situations in low-quality housing, and often do not get sufficient food. Most workers receive less than the Colombian minimum wage. These are all clear breaches of the *OECD Guidelines*. The majority of workers come from remote areas, which is possibly a breach of Colombian law, since a certain percentage of workers must be hired locally. Furthermore, as most workers come from far away and receive low wages, they are more or less "trapped" in Mapiripán, as they cannot pay for a return ticket to their homes. The situation for indigenous workers is even worse, as they have lower skills and less experience, which means that they have more difficulties in meeting the targets, and thus receive lower wages.

⁴⁷⁵ SOMO-INDEPAZ interviews with employees from the Ombudsman's Office – Meta region and organisations of international cooperation Villavicencio in July 2014.

⁴⁷⁶ SOMO-INDEPAZ interviews with indigenous people and teachers in Mapiripán in February 2015.

⁴⁷⁷ SOMO-INDEPAZ interviews with indigenous people in Mapiripán in June and July 2014.

⁴⁷⁸ SOMO-INDEPAZ interviews with indigenous people in Mapiripán in February 2015.

5.5. Environmental sustainability

A healthy environment and the conservation of ecosystems and natural resources is the duty of the State, companies, and communities.⁴⁷⁹ The *Guidelines* promote practices that contribute to sustainable development and the implementation of environmental management systems,⁴⁸⁰ and in compliance with the Principles and Criteria of the RSPO, the corporate operations should guarantee community participation and obtain free, prior and informed consent.

In fragile ecosystems like the Altillanura, where the presence of State environmental agencies is small and not well coordinated, businesses should exercise enhanced due diligence to recognise, mitigate, and remedy damages to the environment and natural resources.

Poligrow Policy

Poligrow, together with governmental and non-governmental entities, has taken steps to protect the flora (orchids and other plants) and fauna (Morrocoy tortoise, Orinoco crocodile, and feline species).⁴⁸¹ As of 2009, according to Poligrow Inversiones S.L. COP 102,171,205 – €34,708 had been invested “in environmental projects, such as reforestation, biodiversity research, etc”, in line with the *Principles and Criteria* of the RSPO.⁴⁸²

Poligrow earned the Incontec ISO 9001_2008 Certification and is currently in the process of getting certifications from Rainforest Alliance and Carbon Neutral of Costa Rica.⁴⁸³ According to Vigna Taglianti, “the environmental policies of Poligrow take into account all the local ecosystems, respect the *morichales* (wet areas that are crucial for local water provision) and gallery forests and leave a protective strip bordering water larger than that stipulated by law” (sic).⁴⁸⁴ SOMO-INDEPAZ did not receive the photographs which, according to the representative, would show this.

5.5.1. Environmental baselines and permits

In 2010, Poligrow Colombia drafted its “Baseline of the Macondo Hacienda – Inventory of Fauna and Flora (5,680 hectares)”,⁴⁸⁵ which was publicised on its corporate website and in presentations for the Cormacarena.⁴⁸⁶ They filed for and received permits and water concessions from Cormacarena for the nursery on the Los Macondo, and pay the corresponding ecological taxes.⁴⁸⁷

SOMO-INDEPAZ did not receive any information about the permits and concessions of the other Poligrow institutions or their allies, whose environmental planning and policies, according to the representative of the Poligrow *Research + Green Oils* project, “do not have to be made public, and also do not require the participation of any authority, since it is an internal corporate matter and not the concern of any authority”.⁴⁸⁸

⁴⁷⁹ The Political Constitution specifies that “all persons have the right to enjoy a healthy environment. The law will guarantee the participation of the community in decisions that could affect it. It is the duty of the State to protect the diversity and integrity of the environment, conserve areas of special ecological importance, and foster the education to accomplish these goals” (Chapter III).

⁴⁸⁰ OECD, 2011, according to the Principles 7, 8 and 9 of the Global Compact.

⁴⁸¹ SOMO-INDEPAZ interview with Vigna Taglianti in September 2014.

⁴⁸² Poligrow Inversiones, 2010, p. 9.

⁴⁸³ SOMO-INDEPAZ interviews with Vigna Taglianti in June, August, and September 2014.

⁴⁸⁴ Observations on the preliminary report, p. 50.

⁴⁸⁵ Rodríguez, D., 2010, “Caracterizaciones biológicas en la Hacienda Macondo (Mapiripán, Meta)”.

⁴⁸⁶ “Presentación de gestión ambiental ante Cormacarena”. In: BIP no. 4 of 5 of August 2009, p. 8.

⁴⁸⁷ Between COP 442.000 and COP 444.000 per year, approx.. US\$180. SOMO-INDEPAZ interviews with the Environmental Inspector General’s Office and Cormacarena in June and July 2014.

⁴⁸⁸ Response 23 of annex 5 and observations on the preliminary report, p., 50.

According to Mapiripán’s Mayor and the Municipal Representative (Personero), Poligrow had not requested permission from the Mayor’s Office to plant palm, or engage in the construction of the extractor plants or the free trade zone, initiatives which in the opinion of these officials, did not fit the plan laid out in the Territorial Planning Scheme (EOT), which is currently being revised.⁴⁸⁹ The representative stated that Poligrow had been sanctioned for encroaching on the riparian buffer zone of a river during the construction of the housing project in town, and had been investigated for the use of construction materials without the appropriate permits.⁴⁹⁰ SOMO-INDEPAZ did not have access to these measures. In February 2015, the Mayor asserted that, due to policy decisions, there were “less problems than before” with Poligrow’s operations.⁴⁹¹

5.5.2. Pollution and damages to ecosystems

Mapiripán residents and authorities refer to the impact of the Poligrow project, such as pollution, loss of biodiversity, and impacts on culturally and environmentally important ecosystems, such as the *morichales* and bodies of water. They especially point out the impacts on the Caño Yamú, which has been traditionally used by Mapiripán residents for fishing and recreation: “the fishing and swimming are over”.⁴⁹²

These complaints were discussed in the aforementioned Multi-stakeholder Forum and the meeting in which the subject of “Protection of the tributaries of the Caño Yamú, as an area affected by the plantation” was discussed as well as during the visit by community members to the extraction plant.⁴⁹³

Authorities and community members warn of the impacts caused by the construction of the extractor plant and the free economic zone on the property of *Las Toninas Hoy*, site of gallery forests and the lagoons known as *Las Toninas*. These ecosystems, habitat of the pink dolphins of the Orinoco River known as *toninas*, are considered by local residents to be the “only touristic attractions” in the municipality and are claimed by the indigenous community to be part of their ancestral territories and a sacred site.⁴⁹⁴

Poligrow breaches the Guidelines because it operates without the necessary environmental permits. Furthermore, Poligrow’s activities affect the river water quality, adversely affecting ecosystems and food security for communities. SOMO and INDEPAZ did not get access to the environmental impact assessments, so cannot judge the quality of the assessments that Poligrow claims to have carried out for its operations.

⁴⁸⁹ SOMO-INDEPAZ interviews with the Mayor and the Municipal Representative in May and June 2014.

⁴⁹⁰ SOMO-INDEPAZ interviews with the Mayor in May and the Municipal Representative in June 2014.

⁴⁹¹ SOMO-INDEPAZ interview with the Mayor in February 2015.

⁴⁹² Meetings and workshop held in Mapiripán’s Municipal Council with council members, public servants from the Mayor’s Office, social, community, and indigenous leaders, and Poligrow Foundation employees, in July 2014, and interviews and meetings with authorities and community members in February 2015.

⁴⁹³ “Informe del foro Multi interesados número 17 y visita de la comunidad a Poligrow” sent in annex 5.

⁴⁹⁴ SOMO-INDEPAZ interviews with indigenous leaders in Mapiripán in February 2015.

6. Conclusions and Recommendations

It can be concluded that Poligrow has not sufficiently implemented a policy of enhanced due diligence. Combined with the incoherence of public policies and the acts of civil servants in Colombia, this puts human rights at risk. By doing so, Poligrow does not fully comply with the *OECD Guidelines*, the UN Guiding Principles, the RSPO Principles and Criteria, and the Colombian normative framework, specifically regarding the following subjects:

- ❑ The corporate structure is very complex and is not fully disclosed by the company itself. Part of the corporate structure consists of investors and partners from countries that are known as tax havens, and there is also the involvement of legal firms with a reputation for their involvement in money laundering.
- ❑ Poligrow has negatively affected the rights to individual and collective land ownership. During the investigation, various situations were encountered that seem to not be in line with Colombian legislation, like the acquisition of land with irregular titles, titles in liquidation or titles with extinction of the right of property by judicial means. Furthermore, various land titles were transferred while only one or two members of the Municipal Committee for Assistance to the Displaced Population had authorised the transfer. Also, UAF (Family Agricultural Units) were accumulated, and the company intended to buy public lands (*baldíos*), which is against Colombian law. Conflicts with the occupants already on the land, conflicts over payment sums, and cases wherein Poligrow supported allies to cultivate oil palm on the ancestral land of the Sikuani people have been reported.
- ❑ With regard to security arrangements, due diligence has not been sufficiently applied, and transparency was insufficient. As a result, Poligrow and its allies run the risk of becoming directly or indirectly related to human rights abuses by Public Forces, illegally armed groups or criminal organisations.
- ❑ Part of the land used by Poligrow is ancestral territory. Poligrow and its strategic allies infringe upon the rights of indigenous groups by failing to obtain their free, prior and informed consent. Simultaneously, Poligrow and its strategic partners occupy ancestral territory and prevent indigenous people from hunting and fishing on this land. The fact that the Colombian government has an incoherent policy related to ethnic land rights and the state's negligence or weakness to guarantee free, prior and informed consent do not set Poligrow nor its partners free from their responsibility to respect the rights of the indigenous Sikuani and Jiw.
- ❑ Workers, both directly or indirectly employed by Poligrow, repeatedly complained about Poligrow's unilaterally changing the rules of the contracts, or not giving copies of the contracts to the workers. In some cases, workers claim that a contract never existed. Workers further complain about the irregular and low salaries. They further report that Poligrow fails to pay for public health or social security. The workers and community members resent the militarisation in the area and the difficulties they encounter in try to organise, to present complaints and to set up trade unions. Although Poligrow has contracted indigenous workers, this has not mitigated their situation of extreme vulnerability and generates new risks such as the loss of their habits and traditional customs.

- ❑ Despite the environmental policies and the development of the “Guidelines of the Macondo territory – Inventory of Fauna and Flora”, in the implementation of the Poligrow project, various negative environmental impacts have occurred. These have not been sufficiently mitigated or compensated for. Public authorities observe that the company doesn’t sufficiently respond to the requirements of the local population. They further observe that Poligrow does not respect restrictions established in municipal regulations. The plans to install an extracting plant in the free economic zone in an area with high conservation value – although not yet formally declared – threaten the local ecosystem. This ecosystem is home to special species such as the pink dolphins that form part of the cultural life of the Mapiripán people.

6.1. Recommendations to Poligrow

Based on the conclusions, we present some recommendations to Poligrow, government entities, Fedepalma, and the RSPO, based on Colombian regulations, the OECD Guidelines, the UN Guiding Principles, and the RSPO Principles and Criteria. These recommendations deserve special attention because Poligrow operates in a fragile context with a large history of armed conflict, violations of human rights and international humanitarian laws, narcotrafficking and money laundering, informalities of land titles, forced displacements and weak institutions.

Therefore, Poligrow should implement policies that respect human rights. These policies have to be approved at the highest level and have to be elaborated in participatory processes with communities, Colombian authorities and other interested groups. These groups should be heard and should have access to sufficient information. The policies should contemplate measures to prevent human rights abuses, to remediate harms and respond to complaint, especially for the following aspects:

6.1.1. Disclosure of company and tax matters

Poligrow maintains a complex network of investors, affiliates and associates in Colombia and abroad.

Recommendations

Share clear and simple information about the corporate structure of Poligrow and its functioning. This includes, but is not limited to, information on the following:

- ❑ The shareholders of Poligrow Inversiones S.L..
- ❑ The investors and owners of Serlick S.A..
- ❑ The owners and investors of ITA Aceites Vegetales and their relationship with Mesa Cárdenas & Garcés, and the relation between these two companies and Poligrow.
- ❑ The relationship between Agostino Re Rebaudengo and Reba Investment Opportunities with Poligrow’s institutions in Colombia.
- ❑ The financial and operational results, including statistics on sales, profits, and tax payments in each jurisdiction where Poligrow headquarters, partners, and/or investors are located.
- ❑ The property of majority shareholders, voting rights, relationships of control and relationships within the Poligrow group.

6.1.2. Land tenure

Various situations were encountered during the SOMO-INDEPAZ investigation that did not seem to comply with the internal regulations, like the irregularities in the acquisition of lands, liquidation processes of companies, and processes of extinction of right of possession, land transfer

authorisations signed by only one or two members of the Committee for Assistance to the Displaced Population, accumulation of UAF, attempts to buy *baldíos*, conflicts with occupants and support to allies for the cultivation of palm in the ancestral territory of the Sikuani people.

Recommendations

- ❑ Confirm the origin and ownership history of all land owned and used by the company and its allies, and the good faith exemption from culpability in the acquisitions and use of the lands.
- ❑ Publicly respond to the complaints filed by the Comptroller, the Superintendency of Notaries and Recording, and other agencies about the irregularities in the purchase and use of lands, and recognise, when appropriate, any negligence, without detriment to the corresponding authorities.
- ❑ Respond and take juridical action regarding the complaint filed by INCODER and the investigation by the Prosecutor's Office for alleged accumulation of UAF in the purchase of the properties Macondo I, II and III.
- ❑ Publicly respond to and clarify the complaints of displacement and/or pressure from legal and illegal actors in the acquisition and use of lands, especially those related to the occupants of the Barandales, Barandales Parte and Santa Ana properties.
- ❑ Publicly disclose the information about allied property owners of properties in Mapiripán, including those of El Bogante and La Cristalina.
- ❑ Disclose information about the real value of the properties and the amounts paid in property taxes by Poligrow's institutions and allies.

6.1.3. Security

According to international instruments, businesses must exercise extreme due diligence in order to avoid becoming directly or indirectly involved in situations of human rights abuses committed by the armed forces, illegal armed groups and/or criminal organisations.

Recommendations

- ❑ Implement a comprehensive security policy that expressly includes the commitment to refuse to pay illegal taxes or extortion sums, and the rejection of any relationship with illegal armed groups, mafias, and military initiatives of the State.
- ❑ Assess the risks of situations that could produce human rights abuses, such as possible tensions between the communities, the workers, and the civil and military authorities or between the communities and workers and the Poligrow operation.

6.1.4. Rights of indigenous peoples

The territory that serves as the site of the Poligrow project and where it plans to expand contains ancestral indigenous territory. The inconsistencies of the State regarding ethnic territorial rights and its negligence or lack of effort in gaining free, prior and informed consent does not exempt Poligrow and its allies from their responsibility to respect human rights.

Recommendations

- ❑ Disclose information about the policies and evaluations of impact in accessible formats and in the Sikuani and Jiw languages.
- ❑ Implement and apply protocols created in consultation with the Sikuani and Jiw authorities aimed at ensuring free, prior and informed consent, territorial, environmental, and cultural rights, and the presentation and attention to complaints.

- ❑ Lift the restrictions on hunting, gathering, fishing and visitation of sacred sites, and repair the damage caused by these restrictions.
- ❑ Abstain from promoting the cultivation of palm in lands claimed by the Sikuani people, including Yamú, Casuarito and Los Machos, until the petition to re-establish territorial rights filed by the Victim's Unit and the Sikuani authorities is resolved.

6.1.5. Employment and labour relations

The most common complaints regarding labour relations were related to the preference of Poligrow and related service providers to hire workers from other regions, changes in hiring and employment policies, failure to produce or deliver copies of contracts, salaries that are late or at a lower rate than agreed upon, and the non-affiliation or inconsistent affiliation and/or disaffiliation of health and social security services. The workers and residents are affected by the militarized environment, and by the difficulties of self-organisation, the filing of complaints, or forming of unions.

The involvement of indigenous people in Poligrow activities contributes to the critical human rights situation of these people, and generates risks related to human rights (right to food, health, security), and has an impact on their customs.

Recommendations

- ❑ Work toward improving the Employment policy using standards related to equal opportunities, decent work conditions, and nondiscrimination.
- ❑ Increase the amount of capacity-building activities to allow for a greater number of employees from the municipality of Mapiripán.
- ❑ Provide workers with the necessary information to be able to have constructive negotiations about labour conditions.
- ❑ Provide copies of work contracts.
- ❑ Disclose the protocol for relations with the Jiw indigenous communities and, if necessary, create such a protocol together with the Sikuani people.
- ❑ Guarantee the affiliation of health and social security services.
- ❑ Create accessible, transparent, and independent spaces to file and resolve complaints and remedy damages, if needed.
- ❑ Guarantee the right to form unions and worker organisations.
- ❑ Provide detailed information about the number of workers, and the type of contract, for both institutions and allies of Poligrow.

6.1.6. Environmental sustainability

Despite the environmental strategies and the construction of the baseline study (inventory of flora and fauna) in the *Macondo hacienda*, the installation of the agroindustrial project has generated negative impacts and insufficient mitigation and compensation measures have been adopted. Public authorities warn that Poligrow does not respond adequately to the local requirements of the municipality, and is not aware of the restrictions stipulated in the Territorial Planning Scheme (EOT) of the municipality of Mapiripán.

The plans to install an extraction plant and free trade zone in a high conservation value area – though not formally declared as such – threaten a local ecosystem with a large presence of forests and protected species, such as the *tonina*.

Recommendations

- ❑ Put in place a comprehensive environmental policy that will involve all of Poligrow's institutions, allies and contractors.
- ❑ Disclose adequate, measurable, and verifiable information about the potential impacts of the Poligrow project on the environment and natural resources.
- ❑ Agree with the communities and State authorities on measures to prevent, mitigate and remedy environmental damage and impacts.
- ❑ Perform an adequate and thorough assessment before the construction of an extractor plant and free trade zone that takes into consideration all of the foreseeable impact it will have on the environment, the flora and fauna, and the health and recreation of the local residents, and assess, as needed, the construction of the plant in another location.

6.2. Recommendations to State entities

Regarding Poligrow

6.2.1. *Disclosure of corporate and tax matters*

To the Superintendence of Companies, Ministry of Finance, and the Investigation and Financial Analysis Unit (UIAF): Study and inspect Poligrow's corporate structure.

To the DIAN: Analyse and evaluate the taxes paid by Poligrow's institutions and allies.

To the Office of the Mayor of Mapiripán: Publicly disclose tax revenues received from Poligrow's institutions and allies, and those that provide services to them.

6.2.2. *Land tenure*

To the Ministry of Agriculture, Incoder, the Municipal Attorney's Office (or *Procuraduría*), Comptroller's Office, Superintendency of Notaries and Recording, Prosecutor's Office and various judicial entities: Evaluate the acquisition and use of lands by the Poligrow's institutions and allies, and publicly disclose the measures that are taken.

6.2.3. *Security*

To the Offices of the Prosecutor, the Comptroller, the Municipal Attorney General, and judicial operators: Investigate the alleged perpetrators of threats, homicides, intimidation, and displacement of people linked to Poligrow's operations.

6.2.4. *Rights of indigenous peoples and traditional communities*

To the Ministry of the Interior, and the offices of the Ombudsman, the Comptroller, the Municipal Attorney General, Incoder, the Land Restitution Unit and judicial entities: Take steps aimed at guaranteeing the rights of the Sikuani and Jiw regarding free, prior and informed consent, territory, fishing, hunting and gathering and cultural practices, decent and dignified work, and nondiscrimination in Poligrow's operations.

To the monitoring and oversight agencies and entities: Inspect Poligrow's certifications granted by the Ministry of the Interior regarding the absence of ethnic or indigenous groups in areas under cultivation, extraction plants, and the free trade zone, with the aim of adjusting them to recognise the ancestral territory of the Sikuani and Jiw peoples.

6.2.5. Employment and labour relations

To the Ministry of Labour: Visit the palm plantations in Mapiripán to assess Poligrow's compliance and that of its allies and related service providers with labour standards.

6.2.6. Environmental Sustainability

To the Ministry of Environment and Cormacarena: Visit Mapiripán in order to assess the impacts of the Poligrow project, and analyse the viability of creating a high conservation value zone in the ecosystem around the lagoons and forests of Las Toninas in the Guaviare River.

To the Ministry of Finance – DIAN: Refuse to authorise the creation and functioning of a free trade zone on the property of Las Toninas Hoy until documents and assessments are received from the Ministry of the Interior, Incoder, and the Land Restitution Unit regarding the claims to indigenous territory, and the Ministry of Environment and Cormacarena about the environmental impacts, or lack thereof, of the proposal.

6.2.7. Compliance with the Guidelines

To the National Contact Point of the Ministry of Industry, Business, and Tourism: Disclose this report, analyse it within the framework of OECD standards and promote the adoption of these recommendations.

General Recommendations

To the Ministry of Defence: Adopt measures to guarantee life and physical integrity and the rights of property, occupation, and position to the people of Mapiripán.

To the Land Restitution Unit and the Ministry of Defence: Micro-focalise the rural area of the municipality of Mapiripán with the aim of processing the restitution petitions claims of the victims of displacement and forced abandonment or dispossession of lands.

To the Office of the Mayor of Mapiripán: Comply with the orders of the Constitutional Court related to the voluntary relocation, with dignity and security, of the Jiw people currently located in the Las Zaragozas properties.

To the Ministry of the Interior, Victim's Unit, Ombudsman's Office, and the Mayor's Office of Mapiripán: Identify the members of the Sikuani who live in the Casa Indígena in Mapiripán, in order to offer them the alternatives of return or voluntary relocation in conditions of dignity and security.

To the Land Restitution Unit and the land restitution judges: Reach a decision as soon as possible about the petition for restitution and reestablishment of territorial rights of the Sikuani people.

To the Victim's Unit: Move ahead in the formulation and execution of the Collective Reparation Plan for the Sikuani and Jiw peoples and the Collective Reparation Plan for the victims of Mapiripán, that contributes to identify and sanction those responsible for the rights violations.

To the Congress of the Republic: Do not approve bills that permit the accumulation of Family Agricultural Units (UAFs), the occupation of indigenous territories and *baldíos*, and the legalisation of situations of violent or fraudulent expropriations.

6.3. Recommendations to Fedepalma and the RSPO

Distribute this report and analyse Poligrow's activities using the RSPO Principles and Criteria, with regard to the certification process that Poligrow is involved in.

Glossary

Activist investors: People who buy stock in large companies so that they can gain admission to the board of directors and their decisions, and those who create or direct hedge funds.

Adjudication of public land (Adjudicación de baldíos): Form of acquiring ownership of State-owned properties through an administrative act (resolution) constituting the title to the property (Ley 160 de 1994).

Acquisitive prescription of the right of ownership (Prescripción adquisitiva de dominio): Form of acquiring property by demonstrating having occupied said property for five to ten years, depending upon the good or bad faith with which the property was occupied and if it was acquired using pacific or violent means. This does not apply to uncultivated or ethnic lands, which cannot be prescribed by occupation.

Agency responsible for the rights of indigenous peoples (Entidad responsable de los derechos de los pueblos indígenas): The Ministry of the Interior is responsible for declaring whether or not indigenous peoples are present in the area where a company wants to start work or projects. The ministry is further responsible for overseeing the consultation process for free, prior and informed consent, and has to make sure that this consultation meets national and international standards.

Ancestral collective lands (Territorios colectivos ancestrales): Lands traditionally occupied and used by indigenous peoples for subsistence and cultural activities. Lands here is used to mean “the entire habitat of the regions that the relevant peoples occupy or use in some manner” (Convention 169 of the ILO).

Bailee (Comodatario): Person who uses land while agreeing to return it to the landowner according to the terms of a gratuitous bailment contract (also known as an accommodation contract, or loan for use contract).

Baldíos: State-owned lands principally designated for small-scale farmers and indigenous peoples. This includes land destined for land restitution by Incodec.

Balloon effect (Efecto globo): Migration of coca plantations to more remote regions of the country, where aerial eradication is more difficult, or to ethnic territories or federal nature reserves, in which aerial chemical fumigation is prohibited.

Beneficiary (Trust) (Beneficiario): Persons designated by the trustor (or the protector) to receive the benefits generated by properties and/or the property deed or land rights of the same.

Beneficiary (Fideicomisario): Natural or juridical person that receives the benefits derived from the trust.

Brokers: informal financial intermediary from the illicit capital and valuta markets who are in charge of moving capital into international markets in exchange for a commission (Felaban, 2003, cited in UIAF, 2014).

Business groups (Grupos empresariales): “Various companies, with a unified plan and policy structure that function as a single entity with sufficient power in the same companies” (Laguado, D., 1991, page 2). A business group is formed when the activities of all of the comprising entities work towards a common aim determined by the parent company or controlling company in the development of their goal, without damaging the juridical and administrative independence of the distinct companies and their own business goals (Articles 28 of Law 222 of 1995 and 260 of the Commercial Code).

Buy-in Management Buy-out (BIMBO): Acquisition of a business in which an external management team installs itself in the target company and, together with the existing management team, acquires the target company.

Contagion risk (Riesgo de contagio): The possibility that an enterprise may have its reputational, legal, or economic status affected by the actions of related or associated enterprises.

Displaced person (Desplazado): “Any person who has been forced to migrate inside national territory abandoning his or her place of residence or livelihood due to threat or danger to his or her life, physical integrity, security, or personal freedom often due any of the following circumstances: internal armed conflict, internal tension and strife, widespread violence, massive human rights violations, violations of international humanitarian law or other consequences of the aforementioned circumstances which can drastically alter the public order” (article 1 of Law 387 of 1997).

Dispossession of land (Despojo de tierras): Act by which, taking advantage of a situation of violence, a person is arbitrarily deprived of his or her property, possession or livelihood, either by force, through juridical negotiations, administrative act, decree, or as a cause of crimes associated with the situation of violence. (Article 74 of Law 1448 of 2011).

Entities responsible for public lands, or baldíos (Entidades responsables de los baldíos): Ministry of Agriculture, Colombian Institute of Rural Development (Incodor), Superintendency of Notaries and Recording, and the offices of the notary public, public records and land registry.

Extinction of the right of property by judicial means (Extinción de dominio por vía judicial): Declaration that a constitutionally supported right to a property does not exist because the property comes from or is linked to criminal activities or infringement on social values (Article 15 of Law 1708 of 2014).

Extinction of the right of property for neglected lands (Extinción de dominio sobre tierras incultas): Declaration made by the Colombian Institute of Rural Development (Incodor) when the owner of a vacant property does not comply with the social function required – economic use of the land, or the environmental function – or when the land activity damages natural resources (Chapter XII of Law 160 of 1994).

Family Agricultural Unit (Unidad Agrícola Familiar – UAF): Maximum area of land deeded by the State to farmers, as defined by Incora/Incodor depending on the type of region and soil composition. This is the amount of land that should be sufficient to guarantee two minimum monthly salaries. Until 1994 the maximum area that could be transferred from public land was 450 hectares, except for special exceptions made by Incora. In the 80s, this limit was 450 hectares except for special designations made by Incora in the natural savannahs of the “Eastern Llanos” – the location of the Altillanura municipalities (Articles 29 of Law 135 of 1961, modified by articles 14

and 29 of Laws 4 of 1973 and 30 of 1988, respectively). Since 1994, the UAF was established according to Resolution 041 of the Incora Board of Directors on 24 September 1996.

Trusteeship (Fideicomiso): Juridical act by which the Trustor delivers goods for the trustee to administer and allocate according to the instructions given by the trustor and/or protector (see, Trust).

Fiducia: Act through which one person delivers assets to a trust company, either transferring ownership or not. The two forms are: management trust (*encargo fiduciario*) where the assets delivered do not leave the ownership of the trustor, and mercantile trust (*fiducia mercantile*) where the assets leave the ownership of the trustor and become assets held by the trust (Commercial Code Book Four Title X). (see, Trust)

Financial intermediation (Intermediación financiera): “Professional reception of resources through passive operations (deposits), as well as the transfer of such resources through active operations (giving of credit)”, with the prior authorisation of the Financial Superintendence of Colombia.⁴⁹⁵

Forced abandonment of land (Abandono forzado de tierras): Temporary or permanent situation in which a person is forced to leave their lands, impeding them from the management, use, and direct contact with the land where they lived or carried out their economic activities (article 74 of Law 1448 of 2011).

Fraudulent transfer (Registro de falsa tradición): Transfer of property for which there is no right of ownership (or only partial right of ownership), for example, of a property listed in the notary office or property register as being unowned *baldíos*, and therefore results in the sale of property over which there was no previous legal grounds for ownership.

Gallery forest (Bosques de galería): Forested area containing native tree species that also contributes to maintaining water sources.

Gini Coefficient (Coeficiente Gini): Measures the concentration of wealth or land ownership. The closer the index gets to 1, the greater the inequality in distribution of wealth or land ownership.

Good faith exempt from culpability (Buena fe exenta de culpa): The belief that people or organisations have that they have acted correctly, without causing harm, but without verifying the legality of the activity and the contexts of human rights, armed conflict and risks of asset laundering and financing of terrorism.

Holder (Tenedor): Person who occupies a piece of land with the permission of its owner (as a tenant, user, beneficial owner, etc.)

Improvements (Mejoras): Crops, dwellings, fences and land management operations performed by the occupants of *baldíos*, or state-owned or unclaimed lands (Ley 160 de 1994).

Land restitution (Restitución de tierras): Duty of the State to return collectively owned fields or lands to victims that had been forced to abandon them and/or had been dispossessed. This can be

⁴⁹⁵<https://www.superfinanciera.gov.co/jsp/loader.jsf?IServicio=Publicaciones&ITipo=publicaciones&IFuncion=loadContenidoPublicacion&id=18542&dPrint=1>

done by juridical means – through a deed transfer – or materially via the physical delivery of the land.

Landowners (Propietarios): Persons that hold the title (by virtue of a deed of sale, a decree of ownership of *baldíos* by the Incora/Inceder, the formation of indigenous reserves or a legal decision, among other means of acquiring property), and registered in the offices of the notary and public records.

Leveraged Buy-out (LBO) (Adquisición apalancada): Term that describes acquisitions characterized by a significant amount of financial leveraging, meaning that most of the funds used to finance the purchase are obtained by taking out bank loans which are guaranteed using the anticipated profits of the acquired company. This term can be used to describe transactions such as *MBI*, *MBO* and *BIMBO*.⁴⁹⁶

Management Buy-in (MBI): Form of *LBO* in which the new management team (usually in collaboration with a venture risk fund) acquires a stake in the investment capital of the target company acquired by the fund and takes over the management of the company.⁴⁹⁷

Management Buy-out (MBO): Form of *LBO* in which the management team of the target company acquired by a venture capital fund buys a stake in the same company and continues on as the management team.⁴⁹⁸

Micro-focalisation for land restitution (Microfocalización para la restitución de tierras): Processes that define regions and municipalities where restitution policies will be implemented, based on information obtained from the Ministry of Defence about security risks faced by the claimant (Decree 599 of 2012).

Money laundering (Lavado de activos): Process by which assets obtained through illicit activities, such as drug trafficking or paramilitary activities, are given the appearance of coming from legal activities (Article 323 of the Penal Code).⁴⁹⁹ The steps involved in money laundering are: placement – the money is placed in a different location from the place of the criminal activity; layering – money is moved using financial transactions, or property or asset acquisition, to give it the appearance of legality; and integration – a series of economic activities or commercial operations that can justify the possession or propriety of large sums of money.⁵⁰⁰

Morichales: Vegetation found growing in wet zones such as the mouths of rivers, or in wetlands, harbouring species of regional flora and fauna and protecting water sources.

Occasional gain (Ganancia ocasional): Income or profit a person or business receives from the occasional or sporadic sale of a good that does not form part of their ordinary business practices, such as income coming from inheritance, bequests and donations (Articles 302, 303, 307 and 308 of the National Tax Law).

Occupants (Ocupantes): Persons who make use of a piece of unused land without having State permission to do so (Law 160 of 1994).

⁴⁹⁶ <http://www.recari.es/detalleGlosario.php?sec=3&id=87#irDetalle>.

⁴⁹⁷ <http://www.recari.es/detalleGlosario.php?sec=3&id=96#irDetalle>.

⁴⁹⁸ <http://www.recari.es/detalleGlosario.php?sec=3&id=95#irDetalle>.

⁴⁹⁹ http://www.uiaf.gov.co/sistema_nacional_ala_cft/lavado_activos.

⁵⁰⁰ <http://www.supersociedades.gov.co/inspeccion-vigilancia-y-control/prevencion-riesgo-lavado-de-activos/abc-del-lavado-de-activos/Documents/ABC-lavado-activos-y-financiacion-terrorismo.pdf>.

Offshore financial centres (Centros financieros offshore): Jurisdictions that offer “financial services to nonresident individuals and businesses in exchange for low taxes, stability, and financial confidentiality”.⁵⁰¹

Oil industry easements (Servidumbres petroleras): Payments made by companies in exchange for occupying lands on which they construct the infrastructure for the extraction of hydrocarbons (Law 1274 of 2009).

Paper company or front company (Sociedades de papel o fachada): Companies that are created in order to hide persons, the origin of resources, evade or avoid taxation, and/or divert illicit. They generally have very broad business plans, assets that do not seem adequate for the business profile they maintain, and registered addresses matching those of the lawyers and accountants.

Personal Holding Companies: More rudimentary construction than a “trust” in which an “off shore” company is created in a jurisdiction with favourable taxation, with bearer shares registered in the name of the trustee, which are later transferred to the true owner.⁵⁰²

Plunder (Pillaje): Acquisition of goods by force. Plunder is considered to be the contractual acquisition of goods when the contract has been based on threats, intimidation, pressure, or the presence of a power differential due to armed conflict in the area; as well as the transfer of company shares as a consequence of fear and intimidation, the management of commercial companies for the benefit of those who are not the company’s owners, and the acceptance of goods with the knowledge that they were not obtained with the consent of their true owner (CIRC, s.f.).

Politically exposed persons (PEP): An individual who is or has been entrusted with a prominent public function. Due to their position and influence, it is recognised that many PEPs are in positions that can potentially be abused for the purpose of committing money laundering offences and related predicate offences, including corruption and bribery, as well as conducting activity related to terrorist financing.⁵⁰³

Possessors (Poseedores): Persons who occupy and act upon a piece of land that is not unclaimed, to use in good faith (including cultivation, construction of dwellings, paying taxes, etc.), in a legal manner (peacefully and in good faith that the land does not have an owner) or illegally (with the knowledge that the land is owned by another – in bad faith – and/or with the use of force or violence).

Postulados: Demobilised paramilitaries which, following the process of complying with the conditions of the Peace and Justice Law, giving testimonials of their crimes and handing over goods to be returned to the victims to be able to receive a maximum penalty of eight years, regardless of the severity of the crimes that they have committed.

Prohibition to accumulate Family Agricultural Units (Prohibición acumular Unidades Agrícolas Familiares): “No person can take ownership of land adjudicated to be public land (*baldíos*) in dimensions that exceed the maximum limits for ownership stipulated by the Board of

⁵⁰¹ <https://www.imf.org/external/pubs/ft/fandd/spa/2011/06/pdf/Gonzalez.pdf> (10.10.2015).

⁵⁰² http://noticias.juridicas.com/articulos/45-Derecho-Civil/199911-moores_03.html.

⁵⁰³ <http://www.fatf-gafi.org/media/fatf/documents/recommendations/Guidance-PEP-Rec12-22.pdf>.

Directors as a Family Agricultural Unit corresponding to that municipality or region” (Section 9 of Article 72 of Law 160 of 1994).

Property assessment (Avalúo de inmuebles): Estimated value of a property. This can take the form of a) tax assessments (determined and used by the state for taxation purposes) and b) commercial assessments (determined by market dynamics). Generally the first type will have a lesser value than the second.

Protector: Figure used in Panama that performs functions similar to those of a Settlor or Trustor and/or controls the trust without his or her identity being known.⁵⁰⁴

Public Document (Escritura pública): Document signed and authorised by a notary that certifies the validity of its content.

Recovery of baldíos (Recuperación de baldíos): Action performed by Incoder to return lands illegally and inappropriately adjudicated or occupied by third parties to the State’s possession.

Reserves: Territories recognised by the state as collectively owned indigenous land, which cannot be sold or transferred to nonindigenous third parties or acquired by prescription (Articles 63 and 329 of the Political Constitution of Colombia).

Roundtable on Sustainable Palm Oil (Mesa de Aceite de Palma Sostenible – RSPO): A “nonprofit organisation that brings together diverse actors in the palm oil production chain, aiming to promote environmentally, socially, and economically sustainable production and use of palm oil. RSPO is the most recognised sustainability initiative internationally in this sector”. Fedepalma, an ordinary member of RSPO, promotes the application of its standards in Colombia.⁵⁰⁵

Sale (Venta): Transfer of the legal ownership title of a piece of land.

Simplified Stock Corporation (Sociedades Simplificadas por Acciones – SAS): “Juridical means of performing any sort of business activity”.⁵⁰⁶ They can consist of one or more natural or juridical persons, and can benefit from all available instruments for their creation and functioning, such as favourable tax policies (Law 1258 of 2008).

Simulation (Simulación): Refers to a fraudulent declaration of intent which appears to substantiate a legal transaction that in fact did not occur, or is partially or completely different to what is represented in the declaration (Article 1766 of the Civil Code). Examples of simulated transactions include agreeing on payments far lower than the value of a property, agreements intended to exclude assets from marital property co-ownership, inheritances, or business partnerships, and donations meant to hide the fact that the buyer and seller are actually the same person (Articles 1946 to 1954 of the Civil Code).

Special Purpose Vehicle (Sociedades Vehículo – SPV): Generic term for an ad hoc company created by investors to carry out an LBO.⁵⁰⁷

⁵⁰⁴ <http://www.mmctrust.com/wp-content/uploads/2012/02/brochure-memo-fideicomiso-oct10.pdf>.

⁵⁰⁵ <http://web.fedepalma.org/rspo>.

⁵⁰⁶ http://www.bancoldex.com/documentos/2180_Guia_SAS-web.pdf.

⁵⁰⁷ <http://www.recari.es/detalleGlosario.php?sec=4&id=133#irDetalle>.

Strategic allies (Aliados estratégicos): Small, medium, and large producers that join together with an enterprise to grow a product, and that receive technical assistance, seeds and support to access credit in exchange for selling their product to the aforementioned enterprise.

Straw Man (Testaferro): Person or business that serves as a cover for illicit or illegal activities such as the illegal purchase of lands from victimised people, money laundering, tax evasion, and/or the financing of terrorism.

Subsistence crops (Cultivos de *pancoger*): Crops that satisfy the dietary needs of the rural and indigenous populations, such as corn, bananas, yucca, and vegetables.

Suspicious transactions in land acquisition (Operaciones Sospechosas en compra de tierras): The utilisation of third parties in acquisitions (straw men and trustees); property transactions made in quick succession (double or triple rapid sales), to transfer the property to different owners quickly, without apparent reason; massive purchases made outside of the buyer's usual profile; purchases made in a short period of time by the same buyer or by interrelated buyers; land purchases made by buyers coming from faraway places who arrive in an area for the sole purpose of making the purchase; acquisition of highly valued land by persons using little investment and/or acquisitions made by people of unknown domicile, whose personal data is difficult to verify and/or who do not register the sale in the appropriate public registries or with the appropriate agencies, purchases of land for ridiculously low prices (UIAF, 2014).

Also considered suspicious is the formation of front companies (those that carry out and develop illicit activities under the guise of apparently licit ones), or paper companies (legally registered companies but whose functioning and operations are fictitious). In these situations we also find: the formation of companies using funds or partners coming from countries considered to be high risk countries; companies with broad business plans; with owners that also own other companies; the buying and selling of bankrupt companies and the assumption of debts or capital of persons with economic difficulties; and companies with owners, investors or board members in common and/or that share a common legal representative or registered address (SNR, 2007, Supersociedades, 2013 and Arias, W., 2013, 2014, 2014-a).

Tax avoidance (Evitación fiscal): Practice of using legally allowed methods to avoid paying taxes or minimise the amount of taxes owed.

Tax evasion (Evasión fiscal): Practice of not paying taxes owed, classified as a tax crime.

Transfer (Enajenación): Passage of ownership from one person to another through sale, exchange, or donation.

Transparency (Transparencia): Principle governing the management of institutions and the rules by which they are managed in which these institutions and their functioning should be directly visible to the citizens.

Trust: Juridical act by which a settlor transfers ownership of certain assets to a trustee, which are not added to the assets of the trustee, but rather held separately, and which will produce benefits for other persons, or beneficiaries, according to the instructions given by the settlor to the trustee. The settlor can be the only beneficiary of the trust.⁵⁰⁸

⁵⁰⁸ <http://www.mmtrust.com/wp-content/uploads/2012/02/brochure-memo-fideicomiso-oct10.pdf>..

Trustee (Fiduciario): Natural or juridical person given the task of management, administration and allocation of the trust assets. Upon putting these assets in a trust, the title to these assets is passed to the property trust, but the operations are controlled by the Trust Agreement and the instructions of the trustor or the protector.

Trustor or Settlor (Fideicomitente o constituyente): Natural or juridical person who forms the trust, supplies the property, and designates the beneficiaries, the trustee and/or protector.

Unlawful securitisation of public lands (Titulación irregular de baldíos): Judicial verdicts against legal prohibitions, for example, those that fall on lands that form part of ethnic territories or national parks, or that are larger in size than the Agricultural Family Unit (UAF) or that favour those who are not eligible to benefit from agrarian reform (landowners or with a network of over thousand times the legal minimum monthly salary) (Law 160 of 1994).

Annex 1. List of interviews, meetings, and workshops

Interviews

May 29 Mapiripán

- Mayor of the Municipality of Mapiripán
- Councillors of the Municipality of Mapiripán
- Poligrow Foundation
- Municipal Representative's Office of Mapiripán
- Community Leaders
- Environmental Leader of the Municipality
- Poligrow Engineers
- Journalist

June 3-5 Bogotá

National Point of Contact – PNC

- Ministry of Industry, Business, and Tourism
- Externado University
- National Business Association of Colombia – ANDI

June 12-15 Villavicencio

- Attorney General Delegate for Environmental and Agrarian Affairs, Meta Region (Delegada para Asuntos Ambientales y Agrarios)
- Business Association for the Development of Orinoquia (Asorinoquia)
- Unit for the Comprehensive Attention and Reparation of Victims (UARIV), Meta Region
- Special Administrative Unit for the Management and Restitution of Lands (UAEGRTD), Meta
- Pastoral Social Regional Suroriente Colombiano
- Secretariat of Victims, Human Rights, and Peace Building of the Government of Meta (Secretaría de Víctimas, Derechos Humanos y Construcción de Paz de la Gobernación del Meta)
- Ombudsman's Office, Meta Region
- Municipal Representative (*Personero*) of Mapiripán

June 29-30 – Bogotá

- Legal Representative of Poligrow
- VerdadAbierta.com
- Lasillavacia.com

July 1-3 – Mapiripán

- Pastor of Mapiripán
- Proaves Foundation Colombia
- Police Chief of Mapiripán
- Base Commander of the Army of Mapiripán
- Engineers in the *Macondo* Plantation
- Members of the Community Action Council (Junta de Acción Comunal) of the rural district Esteros Altos
- Civil Servants of the Municipal Representative's Office (Personería) of Mapiripán

July 3-5 Villavicencio

- Corporation for Sustainable Development of the Area of Special Management La Macarena - Cormacarena
- Ombudsman's office, Meta Region
- Government of Meta

- Civic Committee on Human Rights

August 4

- Poligrow's legal representative – via skype

August 22

- Ex-Congressional Representative, Wilson Arias

September 17 - Bogotá

- Poligrow's legal representative – corporate headquarters

October 17 – Bogotá

- Ombudsman's Office and Comptroller's Office

Focus Groups

June 12-15 Villavicencio

- Mapiripán Victims of massacres and displacement
- Representatives of the Office of the United Nations High Commissioner for Human Rights, Office of the United Nations Office for the Coordination of Humanitarian Affairs, and the Organisation of American States Mission to Support the Peace Process in Colombia – MAPP- OEA

July 1-3 – Mapiripán

- Municipal authorities, community leaders, members of the Community Action Councils (JAC) of rural districts, and indigenous people, in the Municipal Council
- Sikuani Indigenous Authorities, in the Municipal Council
- Jiw Indigenous Authorities, in Las Zaragozas
- Workers and ex-workers at Poligrow
- Mapiripán ranchers and farmers

June 28-30 – San José de Guaviare

- Community leaders

August – Bogotá

- Telephone interviews with civil servants from the Ombudsman's Office and MAPP-OEA

Visits

May Mapiripán

- Poligrow Headquarters

July 2-3 Mapiripán

- Occupation of the *Casa Indígena* of Mapiripán
- Macondo Plantation
- Municipal Representative's Office, Mapiripán
- Mayor's Office, Mapiripán
- Farm Las Zaragozas

Workshops on human rights standards, commercial enterprises, and OECD Guidelines

July 2 Mapiripán

- Councillors
- Roundtable for Victims of Mapiripán
- Poligrow Foundation
- Municipal Representative's Office, Mapiripán
- Company employees
- Indigenous Sikuani
- Businessman
- Management coordinator EDESA

July 8 Bogotá

- Fedepalma
- International Alert
- Forum Syd
- Ideas for Peace Foundation (*Fundación Ideas para la Paz - FIP*)
- National Environmental Licensing Authority (ANLA)
- Renacer Foundation
- Commission for Information about Businesses and Human Rights
- Ecopetrol
- Educar consumidores
- Corporate Accountability International
- Mesa de Cerros
- Ombudsman's Office, Delegate for Indigenous and Ethnic Minority Affairs
- Ministry of Industry, Business, and Tourism
- National Point of Contact
- Women's Network
- Human Rights Program – USAID
- Castro Forero Firm
- Unit for the Attention and Reparation of Victims
- Special Administrative Unit for Land Restitution
- Presidential Program for Human Rights and International Humanitarian Law
- Avina Foundatoin
- Fundación Mujer
- Ministry of Interior
- PODEC

February 2015 Bogotá

- Poligrow
- Representative of the European Commission in Bogotá
- Embassy of the Netherlands
- Fedepalma
- National Point of Contact
- Foundation Ideas for Peace
- Solidaridad Network
- Oxfam Colombia
- Office of the Comptroller General
- Superintendence of Companies
- Inter-Church Commission of Justice and Peace

February 2015 Villavicencio

- MAPP-OEA

February 2015 Mapiripán

- Mayor of Mapiripán
- Members of the Municipal Council
- Civic and community leaders
- Presidents of the Community Action Council (JAC)
- Workers from Mapiripán and other regions hired through the SAS
- Owners and possessors of lands
- Authorities of the Sikuani and Jiw peoples
- Workers and workers' family members with problems involving health, occupational hazards and social security
- Mapiripán's Police Chief unilaterally cancelled the appointment with SOMO-INDEPAZ

Annex 2. Information requests to public entities, and responses

Entity	Date of Petition	Date of Response	Response
Victim's Unit	22.05.14	31.10.14	Progress in fulfilling commitment to Auto 173 of 2012
Ministry of the Interior	22.05.14		No response, Progress in fulfilling commitment to Auto 173 of 2012 (Jiw and Sikuani)
Incoder	22.05.14 11.09.14	Of. 20144214482 (16.06.14), 2014 3125889 (18.06.14) 20142147661 (24.06.14), 20142159997 (10.07.14) and 201443130005 (16.07.14)	Reserves, management of legal orders (Autos), recovery of <i>baldíos</i> , zones reserved for smallholders, resolutions of adjudications and list of demands of extinction
DIAN	22.05.14	Of. 34725 (10.07.14)	List of free trade zones
Ombudsman's Office	22.05.14		No response, situation of indigenous Jiw community
IPSE	18.06.14		No response, energy service
Mayor's Office, Mapiripán	2.07.14		No response, property taxes, industry and commerce tax
Cormacarena	07.14	Of. 9105 (4.07.14)	Refused to respond about permits, environmental
SAE	11.09.14	Of. 13304 (18.11.14)	Refused to respond, juridical situation of lands Santa Marta and El Bogante

Annex 3. Timeline of correspondence between SOMO-INDEPAZ and POLIGROW

05.11.14. Preliminary report sent to Poligrow for comments
10.11.14. Observations of preliminary report received – comments inserted in the text and by email
25.11.14. Responses to preliminary questions received from Poligrow
08.12.14. Comments and questions sent to Poligrow
22.12.14. Responses received from Poligrow along with annexed documents – see list below
29.12.14. Request for legible copies of annexes 5 and 6 sent to Poligrow
30.12.14. Annexes 5 and 6 and Resolution 387 of 2011 received
31.08.15. Final report sent to Poligrow for comments
07.09.15. Reminder sent to Poligrow for comments

Documents received from Poligrow

1. “Donation Certificate” from Poligrow to Poligrow Foundation
2. Contract 099 of 2013 signed by the Mayor’s Office of Mapiripán and the Poligrow Foundation – road improvements
3. Quality Management Systems Manual ISO 9001:2008
4. Report Multi-stakeholder Forum number 17 and visit by the community to Poligrow (Seasonal drought of the Yamú channel)
5. Resolution 214 of 22 September 2010 – Lifting of protective measures on the land Barandales
6. Resolution 379 of 14 of October 2011 – Authorisation of the sale of the properties Las Toninas Hoy
7. Public Document 2316 June 11 2008 of Notary number 19 of the Circuit of Bogotá
8. Public Document 2538 of 25 June 2008 of Notary number 19 of the Circuit of Bogotá
9. Resolution 387 of 14 October 2011 – Approved authorisation of Mesa Cárdenas & Cía., as the notarised proxy of the titleholder of Barandales

Annex 4. Response from *verdadabierta.com* received via internet, 21 January 2015

Bogotá, 21 of January 2015

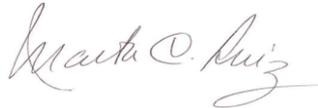
Sirs,
Somo and INDEPAZ
The city

Subject: response to the petition

A cordial greeting

In response to your petition, allow me to inform you that following the journalistic investigative report *Tres agroindustrias de los Llanos compraron tierras con líos y violencia* ("Three agroindustrialists from los Llanos purchased lands with trouble and violence"), published in VerdadAbierta.com in April 2013, that also contains the report, *El Macondo de Mapiripán* ("El Macondo of Mapiripán") and *¿Quién es Poligrow?* ("Who is Poligrow?"), Verdad Abierta did not receive any petition of rectification from Mr. Carlo Vigna Taglianti.

Sincerely,



Marta Ruiz
Director
VerdadAbierta.com
Teléfono: 6468400

Annex 5. Response from CIJP received via internet 13 February 2015

Bogotá, D.C., 13 February 2014

Sirs
SOMO-INDEPAZ

Cordial greeting.

As requested in your letter of 10 February, permit us to respond to your questions related to the exchange of correspondence between your organisations with Poligrow, in which you allude to information published by our Justice and Peace Commission.

1. Sale of the *Hacienda Santa Ana*

The *hacienda Santa Ana* belongs to the Aljure family, one of the heirs of which signed the promise of sale document without informing the others, and received a payment for this action. When the other heirs became aware of this, they opposed it and impeded and objected to the sale.

It is worth mentioning that the *hacienda Santa Ana*, previously known as *La Esmeralda*, is currently involved in an inheritance procedure by Ana Felisa Peña. Until this process is finalised, no other family member can perform any kind of negotiation.

Even though this transaction was cancelled and the businessman affirms that this property belongs to the Aljure family, there is still a de facto possession of the property by persons that are on the property under the orders of Mr. Carlo Vigna, with whom those workers are in frequent communication.

It was possible to confirm this situation by making two site visits, in the presence of members of the international community, which are documented in photographs, on video, and institutional reports.

In these site visits it was possible to confirm the cultivation of oil palm on this property, operated by Poligrow, according to those taking care of the plants.

2. About the *hacienda Barandales*

The *hacienda Barandales* has a history that cannot be ignored by simply recognising its ownership by the Mesa family.

These lands were abandoned for more than 20 years (without title, at this time) by the Mesa family, during which time persons lived on the land and made use of it, and obtained the Right of Real Possession, acquired in good faith, which was violated by the Poligrow Group.

Through three certified declarations it was possible to establish that Carlo Vigna made contact with paramilitary groups, after which they began to pressure and threaten the people that inhabited Barandales hacienda to the point of forcing them to accept the terms demanded by the company and sign a supposed agreement. This agreement is nullified due to the paramilitary pressure and coercion.

3. About the petition of rectification

We have not received any communication from Poligrow in which we have been asked to clarify anything published in any of our reports.

We hope to have responded to your questions and we are attentive to any further questions.

Cordially,

Inter-Church Justice and Peace Commission

Annex 6. Sources used for investigating Poligrow's corporate structure

- ❑ Global Orbis Database from Bureau Van Dijk⁵⁰⁹
- ❑ Global Bloomberg Database
- ❑ Bundesanzeiger Database – Unternehmens Register
- ❑ Certificates of constitution and legal representation in Colombia, Spain, Italy, Great Britain and the Netherlands
- ❑ RSPO website
- ❑ Poligrow's Informative Bulletins published on the internet
- ❑ Communication media, internet and web portals in Colombia, Spain, Brasil, Italy, Germany, Uruguay and Luxembourg
- ❑ Various documents (Balances, documents of public record, and certifications)
- ❑ Reports and promotional materials of corporations available on the internet
- ❑ Interviews with different sources
- ❑ Information received by SOMO-INDEPAZ
- ❑ Observations on the preliminary report and responses and documents received from Poligrow (Annexes 4. List of correspondence SOMO-INDEPAZ and POLIGROW and 5. Response from Poligrow received via internet on 22 December, 2012).

⁵⁰⁹ Orbis database Bureau van Dijk of Aria Engineering, Asja Ambiente Italia, Poligrow Colombia Limitada, Poligrow Inversiones S.L. Reba Capital UK LLP, Recoc S.S. Regat S.S., Serlick S.A., Torino Oli Vegetali, among others, Chamber of Commerce certifications and websites (See: Annex 8).

Annex 7. Databases, reports, national and international certifications and web pages

Databases

Boletín Oficial del Registro Mercantil – BOE

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Mauricio Bahamón. En: <http://co.linkedin.com/pub/dir/Mauricio/Baham%C3%B3n> (20.4.2015).

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Luga Management Inc. En: <https://opencorporates.com/officers/125337354> (29.4.2015).

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Aria Engineering SRL (25.08.2014).

Asja Ambiente Italia (27.08.2014).

Poligrow Colombiana Limitada (03.06.2014).

Poligrow Inversiones SL (03.06.14).

Reba Capital UK LLP (25.08.2014).

Recoc SS (10.09.2014).

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Serlick SA (07.08.2014).

Torino Oli Vegetali (18.06.2014).

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Reconquering and dispossession in the Altillanura

The case of Poligrow

This report contains the results of an extensive investigation into the Spanish-Italian palm oil company Poligrow that operates in the Colombian Altillanura. SOMO and Indepaz investigated Poligrow using the OECD Guidelines as a benchmark. The research concludes that in a country where land disputes are a key driver of the conflict, and where territorial issues are highly contested, land-intensive sectors like palm oil risk creating renewed conflict and caution is warranted. Although Poligrow claims to have contributed to local development, the research paper sheds light on the many negative impacts of their operations. SOMO and Indepaz found many high-risk situations during the field work in the Meta region. These relate mainly to failures in community participation; lack of transparency of its complex corporate structure and tax payments; irregular situations in land acquisition, labour relations and environmental sustainability. The case of Poligrow shows how booming large-scale economic initiatives, such as extensive oil palm plantations, can lead to an increase in land dispossessions and at the same time consolidate an inequitable, discriminatory and undemocratic economic model. These investments rather increase the instability than enhance stability, as they collide head-on with the root causes of the conflict: the unequal distribution of land.

