

Reconquering and dispossession in the Atillanura

Colophon

Reconquering and dispossession in the Altillanura: The case of Poligrow Briefing paper

November 2015 (version November 18, 2015)

Authors:

SOMO: Mark van Dorp, Karlijn Kuijpers

Indepaz: Yamile Salinas Abdala, Paula Álvarez Roa

Support during the research: Camilo González Posso, Pedro Arenas, Leonardo González Perafán and Kristóf Rác,

This summary is a translation of the Spanish version. The updated Spanish version contains minor adaptations compared to the initial summary that was published at the public launch in Bogota, on 3 November 2015.

This publication is made possible with financial assistance from the Dutch Ministry of Foreign Affairs and the Embassy of the Netherlands in Colombia. The views expressed in this publication are the sole responsibility of SOMO and INDEPAZ and do not necessarily reflect the views of the Ministry of Foreign Affairs or the Embassy.

Published by:



Stichting Onderzoek Multinationale Ondernemingen (SOMO)
Centre for Research on Multinational Corporations

Sarphatistraat 30
1018 GL Amsterdam
The Netherlands
Tel: + 31 (20) 6391291
Fax: + 31 (20) 6391321
E-mail: info@somo.nl
Website: www.somo.nl



indepaz

Instituto de Estudios para el Desarrollo y la Paz
Calle 62 No. 3b-70
Bogotá
Tel: +571 2258672
Fax: +571 22552679
Website: www.indepaz.org.co

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. Since 1973, the organisation investigates multinational corporations and the consequences of their activities for people and the environment around the world.

The Instituto de Estudios para el Desarrollo y la Paz (INDEPAZ) foundation is a non-governmental organisation that works to encourage a climate of reconciliation, dialogue, non-violence and regard for human life, with respect for social justice, human rights and human dignity.

Briefing Paper

What kinds of risks are at play when a multinational corporation enters a conflict-affected area? How are human rights or the environment affected in a context of armed conflict and weak presence of the state? These questions are at the heart of a case study on the activities of the Italian-Spanish palm oil company Poligrow operating in Colombia since 2008. The company was chosen as a reference case because palm oil is one of the fastest growing sectors in Colombia. Although it has not been studied as intensively as the extractives sector, palm oil is creating numerous problems for local communities. For more than half a century Colombia has witnessed land conflicts and civil war. Now, in the past four years, the country has seen a steep rise in the arrival of multinational corporations, of which Poligrow is just one example.¹ In fact, foreign direct investment in Colombia has grown almost threefold since 2010, especially since the Free Trade Agreement between the EU and Colombia came into force in 2011.² This briefing paper discusses the impacts of Poligrow, using the OECD Guidelines for Multinational Enterprises and the UN Guiding Principles on Business and Human Rights as a benchmark. From that analysis, it draws important lessons about the risks and responsibilities faced by multinational corporations when entering a conflict-affected country such as Colombia.

For more than fifty years Colombia has experienced civil war, and today it has the second-largest number of internally displaced people in the world.³ The Colombian war is rooted in unequal distribution of land, and most of the conflicts indeed revolve around land control. The department of Meta, in the eastern plains of Colombia, is no exception. A protracted conflict involving the FARC, (neo)paramilitaries, state forces and other armed groups has been fought out in the region, with a period of particularly intense outbursts between 1985 and 2005.

The palm oil company Poligrow is located in the Meta department, in the municipality of Mapiripán. This municipality was affected by four massacres, all perpetrated by paramilitaries.⁴ The Massacre of Mapiripán of 1997 was the most notorious of the four: it left at least 30 civilians dead, and members of the army, marine and police were found complicit of war crimes and crimes against humanity.⁵ Both during and after the conflict, a large number of land transactions took place, often facilitating paramilitaries to 'whitewash' their illegally controlled land.⁶ The Colombian Public Prosecutor found that 12 palm oil companies in Meta controlled "irregularly acquired and accumulated land".⁷

¹ Dinero, 2015. ¿Tiene Colombia política industrial? <http://www.dinero.com/edicion-impresa/pais/articulo/llegan-mas-empresas-extranjeras-2015/208965> (2.11.2015).

² European Commission, 2013. EU-Colombia trade agreement takes effect on 1 August. http://europa.eu/rapid/press-release_IP-13-749_en.htm (22.06.2015).

³ Internal Displacement Monitoring Centre, 2015. Global Figures. <http://www.internal-displacement.org/global-figures> (22.06.2015).

⁴ Mapiripán massacre (15-20 July 1997), massacre of Puerto Alvira o Caño Jabón (4 May 1998, 17 victims), massacre of La Cooperativa (22 February 1999, 4 victims), massacre in the centre of Mapiripán (13 December 2002, 6 victims)

⁵ See the following Inter-American Court of Human Rights ruling. Corte Interamericana de Derechos Humanos. *Caso de la Masacre de Mapiripán Vs. Colombia*. Fondo, Reparaciones y Costas. Sentencia de 15 de septiembre de 2005. Serie C No. 134. In: http://www.corteidh.or.cr/docs/casos/articulos/seriec_134_esp.pdf (27.10.2014) and the Supreme Court of Colombia (Corte Suprema de Justicia)

⁶ National Center for Historical Memory, 2014. Tierras y territorios en las versiones de los paramilitares. Bogotá, Centro Nacional de Memoria Histórica.

⁷ Contraloría General de la República, 2014. Informe de actuación especial (ACES) instituto de desarrollo rural- Incoder "Actuación especial sobre la acumulación irregular de predios baldíos en la Altillanura Colombiana (año 2012)". <http://www.observatoriodeltierras.org/wp-content/uploads/2014/04/Contralor%C3%ADa-General-de-la-Rep%C3%BAblica->

Poligrow is one of the companies that acquired and accumulated land in an irregular way.⁸ The company arrived in Mapiripán in 2008, as part of a government strategy to develop the eastern plains of Colombia and contribute to economic development.⁹ From the 2000s onwards, the region was transformed into a new investment area for national and multinational corporations, mainly for the development of agro-industrial projects.

The Company

Poligrow Colombia Ltda. is the Colombian subsidiary of Spanish Poligrow Inversiones S.L., a multinational corporation headquartered in Spain that has no physical activities there.¹⁰ Poligrow Colombia Ltda. has made no profits since its establishment about seven years ago, which is peculiar for a company investing in such a high-risk environment.¹¹ Poligrow Inversiones S.L. further controls two companies in Brazil, although one of them has recently been dissolved.¹²

Poligrow Inversiones has parent companies in Italy, the UK, Luxemburg and Uruguay. The most important individuals in the corporate structure come from Italy. Agostino Re Rebaudengo, an Italian investor in renewable energies, controls various companies in Poligrow's corporate structure. Ninety percent of the shares of Poligrow Inversiones are controlled by Serlick SA. Until 2012 this company was controlled by Tito Tettamanti, a Swiss entrepreneur and risk capital investor. According to Tettamanti's lawyer, he ceased to be related to Serlick in 2012. According to La Silla Vacía, an online media platform in Colombia, Serlick SA uses The Sparkling Trust, a trust in Panama of which Agostino Re Rebaudengo is the protector, to invest in Poligrow.¹³ The CEO of Poligrow Colombia is the Italian Carlo Vigna Taglianti. He is also a former director of one of Poligrow's parent companies.

Due diligence

Like many other enterprises in Colombia, Poligrow operates in a high-risk area; at least four (neo)paramilitary groups are active in Mapiripán.¹⁴ There is a history of conflict and displacement in the region, as well as unclear structures and corruption cases surrounding land titles. The fragility of the area is further aggravated by the weak presence of state authorities.

[INCODER-Acumulacion-Irregular-de-Baldios-Informe-ACES.pdf](#) (7.07.2014).

⁸ Colombian National Audit Office. Contraloría General de la República, 2014. Informe de actuación especial (ACES) instituto de desarrollo rural- Incoder "Actuación especial sobre la acumulación irregular de predios baldíos en la Altillanura Colombiana (año 2012)". <http://www.observatoriodetierras.org/wp-content/uploads/2014/04/Contralor%C3%ADa-General-de-la-Rep%C3%BAblica.-INCODER-Acumulacion-Irregular-de-Baldios-Informe-ACES.pdf> (7.07.2014).

⁹ Nick Miroff, 2014. In Colombia, a palm oil boom with roots in conflict. The Washington Post, 30 December 2014. http://www.washingtonpost.com/world/the_americas/in-colombia-a-palm-oil-boom-has-its-roots-in-years-of-fighting/2014/12/29/ae6eb10c-796b-11e4-9721-80b3d95a28a9_story.html (10.10.2014).

¹⁰ Central Mercantile Register Madrid, 2014. Poligrow Inversiones S.L.;

¹¹ Financial statements 2014. Poligrow Colombia Limitada, 2015. Balance y cuenta de resultados 2014.

¹² Basic profile. Poligrow Agroindustrial do Brasil Ltda, 2015. Perfil básico. <https://www.infoplex.com.br/perfil/09387157000196> (17.06.2015).

¹³ lasillavacia.com, 2015, "La Maraña de tierras y empresas...". <http://lasillavacia.com/historia/la-marana-de-tierras-y-empresas-de-poligrow-50391> (1.11.2015)

¹⁴ 'Los Llaneros', also known as 'Los Carachos'; 'Frente Libertadores de Vichada'; 'Bloque Meta'; 'Los Urabeños- Autodefensas Gaitanistas'; Fuerzas Irregulares Armadas de Colombia (FIAC). El Tiempo, 2014. 'Pijarbey', el nuevo capo de la droga en los Llanos'. 24 March 2014. <http://www.eltiempo.com/archivo/documento/CMS-13714717> (27.10.2014); El Tiempo, 2014. 'Cinco bandas se pelean el tráfico de drogas en los Llanos', 20 October 2014. <http://www.eltiempo.com/politica/justicia/trafico-de-drogas-en-el-meta-y-casanare/14717316> (22.06.2015); 'Farc y bandas criminales están violando DD.HH. en el Llano: Defensoría'. 9 September 2014. <http://www.eltiempo.com/colombia/otras-ciudades/violacion-de-derechos-humanos-por-parte-de-las-farc-y-bandas-criminales-en-el-llano-/14510338> (22.06.2015); Interviews with the mayor of Mapiripán and MAPP-OEA in Mapiripán and Villavicencio, February 2015.

According to international standards such as the OECD Guidelines for Multinational Enterprises, or the UN Guiding Principles on Business and Human Rights, Poligrow should have proceeded with due diligence before entering the region; the company should have analysed the conflict, as well as its own potential impacts on conflict and human rights.¹⁵ Poligrow has to understand the regional context, its role in the region's fragility, the history of land control, and the impact of armed groups in the region. Policies should have subsequently been developed to prevent adverse impacts.

But Poligrow has not sufficiently exercised due diligence. The company could not provide us any analysis of the conflict or the relation between the company and the region's fragility. It has not sufficiently studied the local history of land rights and other risks related to entering such a complex region. Furthermore, Poligrow has – as far as we know – not developed any human rights policies. In light of this lack of human rights due diligence and its absence of adequate human rights policies, Poligrow has generated various adverse impacts in the already difficult context of the region.

Actual adverse impacts

Land rights

Poligrow acquires and accumulates land in various ways. Some of the land is owned by the enterprise Poligrow, other parts are owned by its CEO, Carlo Vigna Taglianti, and other stretches of land are property of so-called 'strategic partners'. Poligrow grows oil palm on its own land, as well as on land owned by its strategic partners.¹⁶ In total, Poligrow and the companies that are part of its corporate structure own five times more land as is allowed under Colombian law. Taken together, the total amount of land controlled by strategic partners and used by Poligrow exceeds 13 times the legal limit.¹⁷ By controlling such large amounts of land, Poligrow harms the small-scale farmers' constitutional right to land.¹⁸

Furthermore, Poligrow has acquired land with unclear land titles¹⁹ and is therefore contributing to the adverse impacts on the right to ownership. Various stretches of land acquired by Poligrow are disputed. About 700 internally displaced families from the municipality of Mapiripán have tried to reclaim their land (a total of 276.000ha) before the Colombian state, but these cases have not yet been solved.²⁰ By acquiring disputed land, Poligrow hinders these populations from returning to the land they originally come from and are strongly dependent upon. Furthermore, the people who were driven off their land during the violent conflict still live in settlements and suffer from precarious conditions.²¹ Many of them stem from indigenous groups such as the Sikuni or the Jiw, and have internationally acknowledged

¹⁵ OECD, 2011. OECD Guidelines for Multinational Enterprises. Paris, OECD. United Nations, 2011. Guiding Principles on Business and Human Rights. Implementing the United Nations "Protect, Respect and Remedy" Framework. New York and Geneva, UN.

¹⁶ Comments on the draft report by Carlo Vigna Taglianti, February 2015.

¹⁷ The maximum allowed amount of controlled land (Unidad Agrícola Familiar) is 1840ha. The companies in Poligrow's corporate structure control 9979,49 ha. The strategic partners control 13088 ha.

¹⁸ Legislation: Leyes 200 de 1936, 135 de 1961, 30 de 1988 y 160 de 1994

¹⁹ Colombian National Audit Office. Contraloría General de la República, 2014. Informe de actuación especial (ACES) instituto de desarrollo rural- Incoder "Actuación especial sobre la acumulación irregular de predios baldíos en la Altillanura Colombiana (año 2012)". <http://www.observatoriodetierras.org/wp-content/uploads/2014/04/Contralor%C3%ADa-General-de-la-Rep%C3%ABlica.-INCODER-Acumulacion-Irregular-de-Baldios-Informe-ACES.pdf> (7.07.2014).

²⁰ Land Restitution Unit. Unidad de Restitución, "La Restitución de Tierras Ilega a Mapiripán, municipio del Meta que sufrió uno de los episodios más violentos de la historia de Colombia". <http://restituciondетиerras.gov.co/?action=article&id=1064> (27.10.2014).

²¹ Various field visits by SOMO and Indepaz in 2014 and 2015; interviews with inhabitants of Mapiripán. See the report for a full list of visits and interviewees.

indigenous rights that are not being recognised by the Colombian government.²² These indigenous and non-indigenous groups are strongly dependent on their land for food provision through agriculture, hunting, fishing or the collection of food.

Security

Poligrow operates in an insecure environment where at least four paramilitary groups are present. The company's director says Poligrow is not entangled in the armed conflict. However, Poligrow provides material support to the Colombian army and the police in Mapiripán in exchange for security. As far as we know, Poligrow does not have policies in place to deal with the human rights risks related to this support. Poligrow should have investigated the possible human rights impacts of its support to the military, and should have looked into the history of conflict in the region and the role of the military in it. By failing to do so, Poligrow risks contributing to the armed conflict or to human rights violations in the region.

Labour rights

The workers at the Poligrow plantations work in precarious conditions. Most of the workers are being subcontracted²³, receive salaries far below the minimum wage²⁴, and have uncertain or informal contracts²⁵. Various workers never received a copy of their contract, and some say that Poligrow changes the contracts unilaterally.²⁶ Although the company and its subcontractors deduct a certain percentage of the wages for health insurance, they sometimes fail to actually pay the health and social security authorities. As a result, some workers do not receive appropriate health care.²⁷ Furthermore, Poligrow and its subcontractors often rotate personnel and hire people from other regions. A large number of the workers live on the plantation in plastic shelters of very poor quality.²⁸ Drinking water on the plantation is scarce, and sometimes the owners of the plantations fail to provide meals to the workers.²⁹ As a result, Poligrow adversely impacts the right to health, food, housing and a proper income.

Environment

Poligrow operates in an area with a fragile environment with high biodiversity values. Poligrow's monocultures of oil palm require large amounts of lime and pesticides, which pollute the environment, affecting farmers and indigenous people in the region. Most fish in the regional waters is reported to have died. The indigenous Sikuni are most strongly affected by pollution, as they live closest to the palm fields and are dependent on hunting, fishing and collection of food. Poligrow further uses large amounts of water and contributes to the loss of biodiversity. Plans are in place to build a processing plant in a very fragile environment that is in the process of being declared a protected area.³⁰ As far as we know, Poligrow has not carried out any environmental impact studies for this plant.

²² Colombian Ministry of Interior, 2014.

²³ Director of Fundación Poligrow, in a meeting organized in Mapiripán, June and July 2014; Meetings between Poligrow and the Public Defender of Mapiripán, 17 October 2013; Meeting of Semillas de Esperanza SAS, Agroservicios e Inversiones Flor Amarillo SAS, Confeagro SAS, Mapiripetrol SAS and Macrollanos Ltda., in Villavicencio, 18 October 2013.

²⁴ Interview with Carlo Vigna Taglianti, February 2015.

²⁵ Interviews with workers, June 2014, July 2014, February 2015.

²⁶ Interviews with workers, February 2015.

²⁷ Interviews with workers, the mayor of Mapiripán, and the public defender of Mapiripán, May, June and July 2014, February 2015.

²⁸ Visit to the plantations, July 2014.

²⁹ Interviews with workers, June 2014, July 2014, February 2015.

³⁰ Meetings in Mapiripán with councilors, government officials, public defender, social leaders, indigenous, employees of Fundación Poligrow, July 2014.

Tax havens and secrecy jurisdictions

Poligrow has a complex corporate structure with subsidiaries in various countries. Several of these companies are located in countries with secrecy jurisdictions known as tax havens, such as Uruguay, Luxemburg, Panama and the United Kingdom.³¹ Although it cannot be proven that Poligrow created any of the subsidiaries for reasons of tax avoidance or secrecy, this complicated set-up is noteworthy, and the company's management should at least be transparent about the rationale behind it, and it should also provide information on where the company pays its taxes. This transparency is especially important because in Colombia drug traders and paramilitaries have laundered money and have been involved in illegal financial transactions using legal companies, often in the palm oil sector. This context requires from corporations such as Poligrow to exercise advanced human rights due diligence to make sure that it doesn't become involved in money laundering or financial crimes.

Dialogue & meaningful engagement

As described above, Poligrow is not transparent on a number of crucial issues, such as human rights policies, labour conditions, or tax issues. This lack of information has a negative impact on the possibilities of communities to meaningfully engage with the company. Although Poligrow claims to have developed various spaces for dialogue with the population, affected communities are not satisfied with these initiatives, as they claim there is no real space for dialogue during these meetings. Poligrow did not obtain free, prior and informed consent from indigenous groups affected by its operations.³² Although Poligrow claims to have a protocol for communication with indigenous Jiw, these indigenous people do not know about the existence of such a protocol. The Sikuani and Jiw communities have expressed that Poligrow does not sufficiently engage in dialogue and stakeholder engagement.³³

Conclusions

The preceding analysis shows that Poligrow has refrained from exercising advanced human rights due diligence, which is crucial in a high-risk area such as Mapiripán. As a result, Poligrow has caused or contributed to a number of adverse impacts. 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.

Responsibilities of Poligrow

Given the high-risk environment in which Poligrow operates and the adverse impacts the company is already causing or contributing to, it is of crucial importance that Poligrow follows the recommendations below.

Poligrow should:

- ❑ Develop a human rights policy in line with human rights and international humanitarian law and concretize these for the local context of Mapiripán
- ❑ Apply a policy to prevent adverse human rights impacts, provide remedy for any harms done, and respond to complaints by the people affected.

³¹ Orbis database, about: 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), Regat SS (10.09.2014), Serlick SA (07.08.2014), Torino Oli Vegetali (18.06.2014); response by Carlo Vigna Taglianti (25.11.2014); comments on the draft report by Carlo Vigna Taglianti, February 2015.

³² Interviews with Sikuani and Jiw communities, July 2014 and February 2015.

³³ Interviews with Sikuani and Jiw communities, February 2015.

More specifically, Poligrow should:

- ❑ In relation to land acquisitions:
 - Investigate the history of conflict and land tenure in the region
 - Publicly respond to the allegations by Colombian authorities about the irregularly acquired land, and acknowledge that it illegally accumulates large amounts of land
 - Exercise due diligence to ensure that future land acquisitions do not contribute to the armed conflict or interfere with territorial rights of farmers or indigenous people.
 - Repair adverse impacts on those people who are hindered from returning to their land as a result of Poligrow's activities
 - Consult people affected by future land transactions.

- ❑ In relation to security issues:
 - Evaluate the risks related to its support to the local police and military, taking due account of the history of the conflict and other local circumstances such as the enduring tensions in the region
 - Put in place a security policy in line with the recommendations of the UN Guiding Principles and the Voluntary Principles on Security and Human Rights, and in fulfilment of national and international law. This policy should include a public statement declaring that Poligrow will abstain from making illegal payments to (illegal) armed groups.

- ❑ In relation to indigenous rights:
 - Establish protocols in consultation with Sikuani and Jiw authorities, including statements on free, prior and informed consent, as well as complaint procedures. The protocol should cover indigenous land issues, labour rights and environmental issues, and should provide steps to solving adverse impacts or providing remedy for them.
 - Mitigate adverse impacts such as the restricted possibilities for indigenous people to hunt, collect food, or fish
 - Provide translations of its policies and consultations in Sikuani and Jiw languages.

- ❑ In relation to labour issues:
 - Respect the right to form unions and workers' organizations, or to affiliate with them
 - Strive for equal opportunity, especially with regard to indigenous rights, and abstain from labour discrimination
 - Abstain from providing inadequate working conditions such as excessively long working days or insufficient water and food during work hours
 - Employ local personnel whenever possible
 - Provide workers with the information they need to engage in constructive negotiations
 - Make sure that bills for health care and social security are duly paid.

- ❑ In relation to environmental issues:
 - Put in place an environmental management system
 - Provide information on the future impacts of the company's operations on the environment
 - Develop policies to prevent and mitigate the adverse impacts felt by communities
 - Investigate the adverse impacts of the newly planned extraction plant, taking into account impacts on the environment, health and security, and finding ways to prevent these impacts.

- ❑ In relation to its corporate structure:
 - Provide transparency on the corporate structure

- Provide transparency on the countries where Poligrow pays taxes, and the amounts paid
- Clarify the company's tax policies.

Responsibilities of Subcontractors

Although subcontractors might not have caused or contributed to the adverse impacts discussed above, they still bear a responsibility to use their leverage to improve Poligrow's conduct. They should make efforts to improve Poligrow's respect for human rights, and should strive to prevent Poligrow from causing or contributing to adverse impacts. This applies to companies that supply products or services to Poligrow, but also to corporations that provide finance or companies that purchase Poligrow's products.

Responsibilities of the Colombian State

States have a duty to protect human rights. This means that the Colombian state should protect the human rights of its citizens. The Colombian state should solve the uncertainties surrounding land tenure and should protect the human rights of those affected by Poligrow. The Colombian state should create a climate where enterprises respect human rights and contribute to real development of the country. The Colombian state should also put in place mechanisms to investigate, punish and mitigate adverse impacts caused by companies.

Responsibilities of the Spanish and Italian State

The duty to protect human rights also applies to Spain and Italy, the home states of Poligrow. These countries should, possibly through their Colombian embassies, assist the Colombian state in preventing Poligrow from causing or contributing to adverse human rights impacts. Spain and Italy should also have effective mechanisms in place that can receive complaints from the people affected.