



Colombia Sugar Industry Situational Analysis

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Introduction

Purpose

The purpose of this analysis is to provide a country specific, factual baseline of child and forced labor in the Coca-Cola Company's (TCCC) sugar supply chain in Colombia, including mills, farms and the sugar industry overall. It includes a summary of Colombia's legal, social, and economic environment and describes how they contribute to issues related to child and forced labor, as well as land rights.

Methodology

This project was carried out in 3 sessions, starting in December 2013 and concluding in March 2015. Research activities included literature review and interviews with in-country stakeholder groups, including civil society organizations, government organizations and industry representatives, both local and international. In addition, field visits were made to both mills and farms in Colombia. Six of seven of the mills producing sugar for TCCC were surveyed for this study, and information about them is included in an anonymous form.

To address land rights, a review of current land issues in Colombia was conducted, focusing specifically on *baldíos*, or vacant land, classified as State-owned land awarded to small-holder farmers as part of an agrarian reform policy. In particular, the information reviewed for the case study took into account allegations from activist organizations and statements from involved parties.

Desk Research

Research was conducted to identify historical labor issues, past efforts to address these, and current conditions that prevail in Colombia's sugar industry. This included a review of third party studies and assessment reports, as applicable. With a focus on child labor, the scope also included forced labor and other labor rights issues that were identified during research. The overall legal, social and economic environment of the country was assessed to provide a contextual understanding of child and forced labor.

In addition, an extensive literature review was conducted to identify relevant reports and publications on the accumulation of vacant land in Colombia. Reports from national and international sources were referenced, including government entities and non-governmental organizations. A review of current national legislation on land rights was also conducted, including laws, regulations and court decisions.

Interviews

Stakeholder interviews were conducted as part of the research process. Meetings with civil society, academia, government, and inter-governmental agencies were held to gather insight into the current context and challenges around child labor, related labor issues and land rights in Colombia as a whole and in the development of large-scale agriculture on *baldíos* in particular. Meetings with industry organizations and company representatives were also held.

Field Visits

Mill Visits

Mill site visits were conducted to review sugar purchasing practices and child labor monitoring protocols of the mills. Visits also served to identify the farm samples for farm site visits. Six out of the seven mills that supply sugar to TCCC were visited for the purposes of this study, which constitutes 46% of the mills in the region.

Farm Visits

Site visits to farms that supply to sugar mills were conducted. Depending on individual ownership structures, the sample of farms included fully owned, rented land and independent farm operations and others as applicable. Due to the sizes and locations of the farms, twelve farms were visited. Farm visits focused on interviews with workers and other key personnel in the fields. The goal was to understand the general labor practices at the farm level through interview and observation. During these field visits, meetings with unions and other organizations were conducted to gather further information related to child labor, access to education, industry efforts to improve living and working standards for workers, and other human rights related topics identified during initial desk research. General awareness of land rights issues was also explored during these interactions.

Scope and Limitations

A primary aim of this project was to generate a greater understanding of the legality of large-scale agricultural development on land designated as *baldíos*. It was originally intended that site visits be conducted to the land in question, which is located in the Vichada Department of Colombia. However, further research uncovered two deterrents to this strategy: (1) there were reports that violent armed groups continue to be active in this area and (2) the areas appeared to be unoccupied by the prior farmer-landowners and void of current settlement. Attempts were made during stakeholder interviews to identify the original landowners but none of the interviewees knew the identity of any former landowners nor had they encountered any testimony or statements from such landowners in the course of their investigations regarding *baldíos*. Therefore, site visits were not conducted and original landowners were unable to be identified.

Information-gathering relied primarily on statements from individuals, including company representatives, government representatives and non-governmental organizations actively engaged with these issues.

Executive Summary

Child Labor

- A 2012 study found no evidence of child labor in Colombia's formal sugar industry. However, a small percentage of children were found working informally on horse carts known as "carretilleros."
- During this current study, there were no children seen or reported in the mills or on the farms. However, there were reports of thefts by the carretilleros of mill farms.
- The current study confirmed that mills have appropriate management systems in place to prevent the hiring of children or adolescents in mills or on their farms.
- Although mills and their owned and operated farms are not directly employing minors, there is some risk in the southern Cauca Valley due to the carretilleros and their employment of children.

Forced Labor

- There is no reported evidence of forced labor in the sugar industry. The current study confirmed this.
- The current study confirmed that mills have management systems in place to prevent forced labor in mills or farms, though it was not apparent that farms are as vigilant about policies, procedures and supplier requirements related to forced labor as they have been with child labor.

Land Rights

- Numerous companies in Colombia have been accused of accumulating multiple Family Agricultural Unit (UAF) lands through irregular means in order to conduct large scale agricultural production on land intended for use by poor farmers.
- While it appears that numerous companies used a variety of legal loopholes to make their purchases, it has also emerged that government agencies failed to meet their obligations regarding land registration practices.
- When considering land issues, special sensitivity should be given to displaced persons and land restitution claims, especially if the land was previously in or currently in a conflict zone.
- The Colombian Rural Development Institute (INCODER) is responsible for key aspects of land registration. However, the Colombian government accountability office has called them out for failure to properly carry out this work. USAID noted, "INCODER has been fraught with corruption."
- For now, these questions of vacant land accumulation and the future of the Altillanura region remain in the hands of the court system. There are several cases waiting to be reviewed and all parties are awaiting further developments.

The Sugar Industry in Colombia

Overview

Colombia is a constitutional, multiparty republic. It has a free market economy and is categorized as an upper-middle income country by the World Bank. In the early 1990s, the country implemented a policy of economic liberalization and began to open to trade, increased privatization of institutions, improved regulation and allowed for adoption of a more liberal foreign exchange rate. The change in policy resulted in several years of growth for the country, until 1998 when the country fell into its greatest recession since the Great Depression. The government responded with policy changes and worked with the International Monetary Fund and the economy began to recover in 2000. By 2003, GDP growth was among the highest in Latin America.¹ GDP expanded 4% in 2012, and in 2013, the World Bank ranked Colombia 43rd out of 189 countries for ease of doing business.²

History of Sugarcane Production

Sugarcane was introduced into the Cauca River Valley in Colombia in the 16th century by Spanish conquistadors. For several centuries, the processing of sugar cane was an artisanal process used to create raw sugar, panela (sugar loaf) and syrups used locally, but by the end of the 1700s, sugar had become an important export commodity.³ It was not until the twentieth century that modern sugar production, as it is known today, began. By 1930, there were 3 established industrial sugar mills.

In the 1950s, existing mills in the region came together and formed the sugar industry association, Asocaña. Later in the 1970s, Asocaña helped to form CENICAÑA, which is a technical non-profit organization fully funded by mills located in the Valle Cauca region. CENICAÑA has provided the sector with valuable information related to varieties of sugar cane, agronomy and technology. It provides services of lab analyses, administers the stations of the Automated Weather Network and continually updates the digital cartography of the cultivated area.⁴

Modern-day Production

Such technical assistance and research, in addition to an optimal climate for year-round sugarcane cultivation, has resulted in Colombia being able to claim that they are the most efficient producers of sugar in the world, yielding on average approximately 120 metric tons (MT) per hectare.⁵ Today there are 2,750 suppliers with 3300 farms with an average of 60 hectares per farm that supply 13 sugar mills in the region.⁶

¹ Steiner, Roberto and Hernán Vallejo. "The Economy". In Colombia: A Country Study (Rex A. Hudson, ed.). Library of Congress Federal Research Division (2010), p. 181.

² Doing Business 2014, Economy Profile: Colombia, A Co-Publication of the World Bank and International Finance Corporation, p. 4.

³ Sturges-Vera, Karen M. "The Colonial Economy". In Colombia: A Country Study (Dennis M. Hanratty and Sandra W. Meditz, eds.). Library of Congress Federal Research Division (1999).

⁴ Who we are, CENICAÑA, www.cenicana.org

⁵ USDA Colombia GAIN Report, April 2014.

⁶ Historia del Sector Azucarero, Asocaña, www.asocana.org

They produce approximately 350 pounds of sugar for every metric ton of cane crop.⁷ Asocaña reported that sugarcane production for the sector in 2012 resulted in 2.3 million metric tons of sugar.



Workers in a sugar field in the Cauca Valley, Colombia.

Colombian sugar cane is harvested year-round, allowing for a continuous process of harvesting, milling and distilling. This is done almost exclusively in the Cauca river valley, located near Cali in the Pacific lowland region. The climate in this zone and the density of mills and distilleries allow for efficient economies of scale for sugar cane production compared with other regions of Colombia. For these reasons, the Cauca river valley in southwest Colombia is the primary growing region for cane sugar. Under normal weather conditions, the Cauca river valley is able to harvest up to 90% of the planted area with the rest of the land idle as part of a land management strategy.

It is estimated that 225,000 hectares of sugarcane are planted in the Cauca river valley, which is close to the total area available for sugarcane that can be planted. This leaves the region almost at full capacity with little land for expansion.⁸ In fact, there has been little growth in the Cauca Valley since 2002, because of the unavailability of contiguous land for use by sugarcane producers. Sugar exports from Colombia have decreased

⁷ Gronewold, Nathaniel, Colombia Pursues Sweet Dream of Becoming a Sugarcane Ethanol Powerhouse, New York Times, May 9, 2011.

⁸ USDA Colombia GAIN Report, April 2014.

in recent years, due to lack of land for growth and diversion of cane to ethanol. Production of sugar has fallen since 2004.

There are 13 mills and five ethanol distilleries in the Cauca river valley, with more distilleries planned in the near future. These mills and distilleries are part of highly vertically integrated organizations owned by a few companies that manage sugarcane production and processing for ethanol, power generation and the food industry.⁹

Ethanol Production

Over time, sugarcane production has segmented into industrial sugar production, panela (sugar loaf) and ethanol. In 2001, the Colombian Government passed Law 693, which required that all gas sold must contain 10% ethanol by the year 2006 and a 25% blend by 2021. At the time the law was passed, Colombia had no ethanol producing facilities. It wasn't until 2005 that the country began to produce sugarcane based ethanol.¹⁰ The industry was not able to provide sufficient ethanol to allow the government to reach its goals. So, they were required to give the industry time to catch up and reduced required levels to eight percent. Currently, the country is producing approximately 30 million liters of ethanol per month. Five out of six mills interviewed are either producing ethanol or have plans to produce it in coming years.

However, all parties interviewed for this study who have knowledge of the Cauca valley have said that geographic growth within the area is not possible as all land is currently being cultivated. CENICAÑA has reported that there are lands in northwestern and eastern Colombia that are being explored and considered for growth. The amount of land being considered is almost equivalent to the land used for sugarcane in Cauca valley and is five times what is being used for ethanol production currently. CENICAÑA has suggested that the land being considered is not being used or only being used for low-density livestock. So, they say, food security will not be affected.¹¹

⁹ USDA Colombia GAIN Report, April 2014.

¹⁰ Toasa, Jose, Colombia: A New Ethanol Producer on the Rise, Economic Research Service, USDA, 2009.

¹¹ Toasa, Jose, Colombia: A New Ethanol Producer on the Rise, Economic Research Service, USDA, 2009, p. 11-13.

Labor and Human Rights in Colombia

Legal Protections and Human Rights

In 2012, the most serious human rights problems reported were impunity, an inefficient judiciary, corruption, and societal discrimination. Impunity and an inefficient justice system subject to intimidation limited the state's ability to effectively prosecute individuals accused of human rights abuses and to bring to trial former members of paramilitary groups. The availability of drug-trafficking revenue often exacerbated corruption. Societal discrimination against indigenous persons and Afro-Colombians at times restricted the ability of these groups to exercise their rights. Other problems included violence against women and girls and illegal child labor.

Illegal armed groups--including the Revolutionary Armed Forces of Colombia (FARC), the National Liberation Army (ELN), and organized crime groups that contained some former paramilitary members--committed numerous abuses, including the following: subornation and intimidation of judges, prosecutors, and witnesses; restrictions on freedom of movement; violence against women; and killings, harassment, and intimidation of teachers and trade unionists.¹²

As recently as January 2015, there were reports of continued violence and intimidation of trade unionists and indigenous personas in Colombia. According to the Washington Office on Latin America (WOLA), in November 2014, a group of Afro-Colombia women marched from La Toma to Bogota to call attention to illegal mining operations on their lands. In January 2015, in the town of Villa Rica in Cauca, Jesus Enrique Cabezas, a driver for the Unified Afro-Cuacans was shot and critically wounded by a paramilitary group. The work of the United Afro-Cuacans is to defend Afro-Colombian land rights against illegal extraction of natural resources. Afro-Colombia Port Workers continue to face threats and other labor rights violations for attempting to obtain direct contracts for their members. In Buenaventura, port workers have been denied union representation.¹³

The United States is an important trade partner for Colombia. As such, when the U.S. Colombia Trade Promotion Agreement was passed with the inclusion of high labor standards, the U.S. and Colombian Governments agreed to a Labor Action Plan that would address several outstanding concerns, including: violence against labor union members; impunity for such crimes and insufficient protection of workers' rights.

Among the accomplishments of the Labor Action Plan thus far, the Colombian government has assigned 35 new labor inspectorate positions exclusively to address abuses of workers' rights in the priority sectors of palm oil, sugar, mines, ports and flowers. The inspectors have begun conducting preventive inspections in

¹² U.S. Department of State, Bureau of Democracy, Human Rights and Labor, Country Reports on Human Rights Practices 2012, Colombia, p.1.

¹³ Washington Office on Latin America, Afro-Colombian Activists Facing Increased Threats, January 15, 2015, http://www.wola.org/commentary/afro_colombian_activists_facing_increased_threats

these sectors. The Colombian Government recently made a formal request to the International Labor Organization (ILO) to significantly strengthen its presence in Colombia in order to implement the labor rights measures outlined in the Action Plan.¹⁴

However, critics, including the AFL-CIO and the National Union School (ENS), have said that Colombia has not delivered on its promises. The reported failures include such things as: the numbers of jobs have not increased, direct contracts and permanent employment have not increased, freedom of association has not increased and 73 more trade unionist have been murdered in Colombia since the Labor Action Plan was signed. In addition, they claim that not one company fined by the Ministry of Labor has paid its fines.¹⁵

Child Labor

Historical Issues

Considerable documentary evidence suggests that child labor has been a constant in Colombia since the early days of the country. Many children fought alongside adults in the conflicts and wars that shaped the nation's history. There is documentation showing that children worked as laborers and fisherman as well as domestic servants.

There is mid-nineteenth century documentation that reveals that children of farmers or sharecroppers and children of slaves began agricultural work at an early age, especially during harvest time to increase their parents' productivity. At the turn of the twentieth century, children continued to be an important part of the agricultural workforce. It was the principle occupation of children (12-14 years), with 50-60% of all working children working in agriculture as late as 1964.

The 1960s and 1970s were a time of industrial growth in Colombia. Demographic data available for the period demonstrates that with increased industrialization there was a decline in child labor. From the 1970s to 1980s, child labor was more a function of urbanization than of industrialization, particularly in the informal sector.

From the time of Colombia's independence in 1830, focus on education of children has increased. During the early part of the twentieth century, the focus of education was on skills required to find work. Vocational training began to be more popular. As early as 1924 there was legislation passed that made it legal for children over the age of 14 to engage in any work. Children under the age of 14 could work, but could not work in hazardous conditions. In 1927 a law was passed that prohibited children under the age of 12 who had not completed their primary education from working. Plantation owners on whose property more than

¹⁴ Office of the United States Trade Representative, Executive Office of the President, U.S. Colombia Trade Agreement, Labor in the U.S.-Colombia Trade Promotion Agreement, www.ustr.gov/uscolombiatpa/labor.

¹⁵ Richard L Trumka, President AFL-CIO, Making the Colombia Action Plan Work for Workers, <http://www.aflcio.org/Learn-About-Unions/Global-Labor-Movement/Regions/Americas/Making-the-Colombia-Labor-Action-Plan-Work-for-Workers>

20 school-age children lived were required to provide a facility for a rural school. It was not until 1930 that children were prohibited from working in agriculture.

In the 1950s, enrollment rates in the school age population rose to almost 50% and would continue to rise sharply. However, urban schools were much better equipped than rural schools. So, rural-urban disparities were perpetuated. It was not until 1963 that legislation was passed that required 5 years of basic primary education. In 1979 UNICEF, the Ministry of Labor and the District Department of Education conducted a school census in Bogota. They found that although high numbers of children were attending school, this did not mean that they did not work. They would spend half of the day in school and the second half of the day working. By 1985, 89% of children were enrolled in primary school in Valle del Cauca, where the sugar sector is primarily located.¹⁶

Present-Day Practices

Current Colombian labor laws do not allow children or adolescents under the age of 18 to engage in work that is dangerous, detrimental to their health or welfare or considered a worst form of child labor. However, in 2014, the Colombian Ministry of Labor reported that there were 1.7 million children illegally working. Their goal was to reduce the number by 35% or 600,000 in 2014¹⁷. The Ministry of Social Protection and the Colombian Family Welfare Institute have the responsibility of identifying the worst forms of child labor. Agricultural work specific to sugarcane is on the current list. Both the 2011 and 2012 U.S. Department of Labor, Worst Forms of Child Labor report on Colombia stated that children in Colombia are engaged in the worst forms of child labor, many in hazardous activities in agriculture, particularly in the production of coffee and sugarcane.¹⁸ After the publication of the 2011 report, the Colombian Ministry of Labor responded to the U.S. Government concerns. Together with the International Labor Organization (ILO) and Asocaña, the Ministry commissioned a university study that was approved by the National Committee on the Eradication of Child Labor, in towns and areas that had previously been identified as having child labor. They surveyed 42,736 children and adolescents and found the following:

- 4,538 children and adolescents were found working in various activities (construction, agriculture, commercial endeavors, etc.;
- 4,216 children and adolescents were found at risk because they live with children or adolescents that work or help their parents with their work during non-school time or have at some time in their life worked or are willing to work;
- 1,936 children or adolescents were found working in the home doing domestic work more than 15 hours per week

¹⁶ Edited by Cunningham, Hugh and Viazzo, Pier Paolo, Child Labour in Historical Perspective, 1800-1985, Case Studies from Europe, Japan and Colombia, UNICEF, 1996.

¹⁷ Mintrabajo busca reducir en 35% el número de niños trabajadores, El Espectador, July 17, 2012, <http://www.elespectador.com/noticias/economia/mintrabajo-busca-reducir-35-el-numero-de-ninos-trabajad-articulo-360589>

¹⁸ Findings on Worst Forms of Child Labor, Colombia, 2012, U.S. Department of Labor, Bureau of International Labor Affairs.

- 412 children or adolescents were found working in activities in horse carts known as “carretilleros” and in panela (sugar loaf) mills.

In their written response to the U.S. Government, the Colombian Ministry of Labor thought it was important to emphasize that during the process of gathering baseline data from homes, work places and others, there was no child labor found in agricultural activities or industry associated with the sugar mills.¹⁹

According to one mill interviewed there are only three or four mills out of 13 that have had to deal with the issue of carretilleros. These mills are the southernmost mills and most are located in the Cauca Department or near the border of Cauca and Valle Departments. The mills have worked together with Asocaña to find solutions to the issue as the carretilleros who often gather residual sugarcane from their farms or their supplier farms in the region, which they then sell to the panela producers. The original solution was to clean the fields well and to not leave any sugarcane behind with the hope that it would act as a deterrent. However, the carretilleros then began to burn parts of the sugarcane fields before the cane was fully ripe and then illegally harvest what they could during nighttime hours. The theft was extensive and impacting for the mills. Asocaña reported that it could be up to 20% of a farms annual crop.²⁰ As an alternate solution and to avoid future theft, the mills began allowing the carretilleros to gather residual sugarcane, with the agreement that children would not be employed in the process.²¹

Mill Management Systems

The six mills visited were asked to provide documentation for any management systems they have in place to prevent child labor in their workplaces. For owned and operated properties, including mills and farmland, all six mills and their farms have systems, policies and procedures in place that demonstrate that it would be difficult to inadvertently employ child labor. Due to the nature of the supply chain relationship, the mills have less control over the suppliers from which they buy sugarcane. However, all six of the mills interviewed have contractually required their suppliers to agree that they will not hire children on their farms. Several mills have internal audit programs where they conduct unannounced assessments of suppliers. Other suppliers have toll-free numbers workers are able to call if they witness any improprieties or unethical behavior. Several mills have signed on to the UN Global Compact and have required that their suppliers follow the Compact principles.

During visits to the farms, no children were seen. In addition, as part of the study, workers in the fields were questioned about children or adolescents working. All workers were aware of the policy that requires employees to be at least 18 years of age. Many of the farm workers have been working in the fields for many years, and all stated that they have not seen children or adolescents in the fields for at least 10-15 years.

Since 2009, Asocaña has worked with its mill members to increase awareness of the issue of child labor. Each mill interviewed participated in the campaign and have extended outreach campaigns to their employee

¹⁹ Letter from David Luna Sanchez, Vice Minister of Labor Relations and Inspection at the Colombian Ministry of Labor to Marcia Eurgenio, Director of the Office of Child Labor, Forced Labor and Human Trafficking, January 20, 2013.

²⁰ Stakeholder Interview, Nelssy Bonilla, Asocaña, December 2013.

²¹ Colombian sugar mill interview, December 2013.

populations and supplier farms. In addition, the Ministry of Labor, the Colombian Institute of Family Welfare, the ILO, Asocaña and several mills have worked together on an program called “Family Wellbeing” to address the issues associated with the carretilleros to eradicate child labor and promote wellbeing among the children and families. In order to address legal issues, the Colombian Ministries of Labor and Agriculture have increased inspections and general vigilance of sugar cane harvesting.²²

Mill-Supported Schools

Of the mills visited as part of the study, six of six support a local school that was located either on property owned by the mill or very near in proximity. The degree of support varied by mill, but each school guaranteed at least a primary education. Most of the schools included a day care/preschool center for children from birth to age 4. Some schools provided schooling beyond primary school and included middle and high school level education. Two of the schools included vocational training centers where young people could opt to study a vocation rather than following the academic track that would lead to university.



According to the sugar mills interviewed, state support and funding of the schools varied from very little to significant levels. Several of the mills have established foundations in the communities where they operate with the primary goal of educating children in the community. Although a large number of mill and farm employees’ children attend the schools, each mill reported that the schools are open to the community. There are many members of the community that send their children to the schools. For employees or community members who are not able to pay the fees required to send their children to school, there are scholarships and stipends provided either by the state or the mills themselves.

Forced Labor

Historical Issues

The issue of forced labor has existed for quite some time in Colombia in different forms. After the arrival of the Spanish in the 16th century, they began to import slaves from Africa to replace the rapidly declining Native American population. From the time they were brought to Colombia, Africans were forced to work in various hard labor jobs, including on sugarcane plantations. Slavery was not abolished until 1851. Forced labor has been commonplace in mining, agriculture and domestic service for many years.

²² Asocaña Informe Annual 2013-2014, www.asocana.org, p.52-71.

Present-Day Practices

In recent years, Colombian victims of forced labor have been found in many of the same occupations: mining, agriculture and domestic service. There have been reports that guerillas and other armed groups force their relatives and acquaintances to work in the illegal drug trade. Afro-Colombians, indigenous communities and relatives of members of criminal organizations are at high risk for internal trafficking and forced labor.²³

During the last few years, mills have begun to contract farm workers directly. There were many issues with existing cooperatives related to payment of wages and social benefits, and in order to avoid such issues, mills decided to hire workers directly. Mills interviewed reported that this has resulted in better work conditions, as well as improved labor relations. Unions at five of the six mills were interviewed as well and reported the same.

Mandatory overtime is typically viewed as a forced labor issue and is often found in agriculture. However, during the visits to the six mills and their farms, no evidence of forced labor was found. Mills typically work 2 or 3 shifts, limiting the amount of overtime individuals are allowed to work. All human resource personnel interviewed were aware of Colombian labor laws limiting overtime.

Farm workers were interviewed as part of the investigative process as well. All workers interviewed said that they are asked to work overtime occasionally due to abrupt changes in the weather. However, they reported that such overtime is voluntary. If they are not able to work the extra hours they are free to go without fear of retribution by their employers. It should be noted that sugarcane is not on the U.S. Department of Labor, 2013 List of Goods Produced by Forced Labor.²⁴

Mill Management Systems

As part of the study, management systems were assessed, and it was determined that all mills have some form of a management systems in place. All suppliers have procedures in place to prevent forced labor from occurring, and all have requirements that all labor laws be followed, including forced labor. However, there were several noticeable gaps and areas for improvement noted. Most mills do not have a specific policy related to forced labor or mandatory overtime. Furthermore, many are lacking self-monitoring, verification systems to ensure that forced labor is not occurring.

²³ Trafficking in Persons Report, Colombia, U.S. Department of State, 2013.

²⁴ List of Goods Produced by Child Labor or Forced Labor, U.S. Department of Labor, International Labor Affairs Bureau, 2013.

Other Labor Issues

In agriculture there are typically labor issues related to health and safety, especially in the sugar industry. Because so much of the work is conducted manually, and those harvesting cane are required to use large machetes to cut the sugarcane, there are concerns with potentially serious injuries. However, in each of the farm sites visited, workers were provided with complete personal protective equipment. They were provided with thick leather gloves and metal shin guards to prevent against machete injuries. They are all required to wear long sleeved pants and shirts to protect against the sun and surrounding environment. They are provided with hats and headwear that protect them from the sun as well. Workers interviewed reported that there are very few serious injuries. Those that do occur are usually back or muscle injuries due to the physical nature of the job. Workers said that when this occurs, workers' treatment of injuries and lost wages are covered by social security, and they are able to return to work when they are better.



Sugar cane harvester in full personal protective equipment in the Cauca Valley, Colombia

In addition to the personal protective equipment, workers are provided with either potable water at the work site, or they have been given a 1-2 gallon thermos. All workers interviewed stated that they drink large amounts of fluid each day, and that access to water is not an issue. There were no reports from workers interviewed of dehydration.

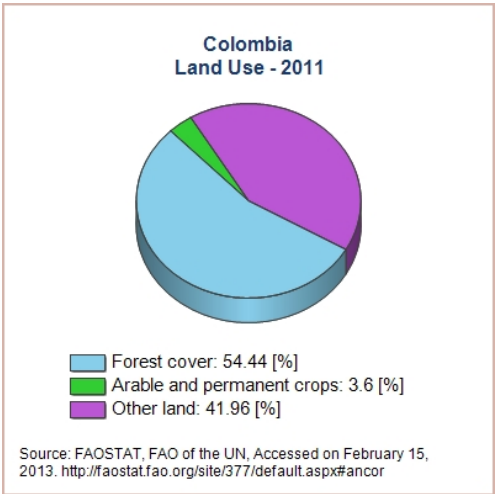
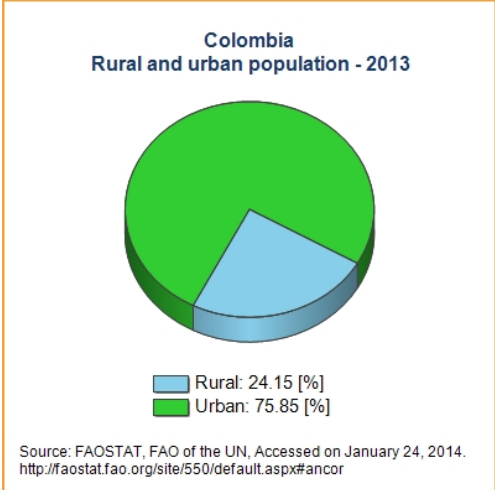
Land Rights in Colombia

Overview

Classified as an upper middle-income country by the World Bank, Colombia today is a predominantly urban society, with less than 25% of the population living in rural areas, primarily due to migration away from conflict regions.²⁵ Agriculture represented just 6.6% of the Colombia GDP in 2013, with services making up 55.6% and industry 37.8%.²⁶

Colombia's GINI coefficient for land (a measure of land concentration that ranges between 0 and 1, where 0 represents total equity in distribution of resources and 1 is entirely unequal) is 0.85, one of the highest in the world.²⁷ According to the USAID, an estimated 0.4% of Colombia's 48 million inhabitants own 62% of the country's best land.²⁸ Colombia's National Report on Human Development 2011 reported that, in 2009, 1.15% of farm owners held 52.2% of the land area of 0.86% of the farms.

Colombia's total land area is 1,109,000 square kilometers, with agricultural land making up 38% of land area.²⁹ Colombia is comprised of coastal lowland areas and Andean highlands that cover one-third of the country. The majority of the population is concentrated in the Andean highlands, where the three most populous cities are found, including the capital of Bogotá. The next most populated areas are the Caribbean lowlands, which are primarily an agricultural area. Among these lowland areas, the Cauca valley, where sugarcane is cultivated, is considered to be one of "the most dynamic centers of economic activity and growth."³⁰



²⁵ Food and Agriculture Organization, FAOSTAT, Colombia, 2013.

²⁶ CIA World Factbook, 2013.

²⁷ Richani, Nazih, "Latest UNDP Report on Colombia: 'It's the Rural Economy, Stupid.'" North American Congress on Latin America, Blog, September 26, 2011.

²⁸ USAID Country Profile, Property Rights and Resource Governance, September 2010.

²⁹ USAID Country Profile, Property Rights and Resource Governance, September 2010.

³⁰ Food and Agriculture Organization, Country Pasture/Forage Resource Profile, Colombia, 2006.

According to the FAO, Colombia's diverse climate and topography permit the cultivation of a wide variety of crops and forest products. Despite the variety of agricultural products, only a small fraction of the total land is available for farming.

REGION	PRODUCTS
Sea level to 1,000 m (hot region)	Cacao, sugar cane, coconuts, bananas, plantains, rice, cotton, tobacco, cassava, and most of the nation's beef cattle
Between 1,000 and 2,000 m (temperate region)	coffee, certain flowers, maize, vegetables, and fruit as well as dairy cattle.
Between 2,000 and 3,000 m (cooler region)	wheat, barley, potatoes, cold-climate vegetables, flowers, dairy cattle, and poultry.

According to the FAO, about 20 percent of all cultivated land is under coffee, which is reflected in the countries top export commodities.³¹

Colombia Top Ten Commodities Export Quantity 2011		
	Commodity	Quantity [t]
1	Bananas	1828281
2	Sugar Refined	729100
3	Coffee, green	433646
4	Palm oil	158829
5	Sugar Raw Centrifugal	113778
6	Sugar Confectionery	111996
7	Plantains	86974
8	Palm kernel oil	41605
9	Beverage Non-Alc	28828
10	Food Prep Nes	26194

Source: FAOSTAT, FAO of the UN, Accessed on August 30, 2013.
<http://faostat.fao.org/site/342/default.aspx>

The World Bank has stated that rural land in Colombia is under or over-utilized. Approximately one-quarter of land that is used for grazing cattle could be better used for growing crops, and land that should be conserved as forests is being used to grow crops or to graze animals.³² The combined lack of land tenure and misuse of land has meant that fisheries, forests and waterways are not protected and well maintained.

³¹ New Agriculturist, Colombia Country Profile, January 2010.

³² Grusczyński, Diana Michelle, and Felipe Jaramillo. 2002. Integrating land issues into the broader development agenda, case study: Colombia. Paper prepared for presentation in the Regional Workshop on Land, organized by the World Bank, Pachuca, Mexico May 19–22, 2002. Mimeo.
<http://www.landnetamericas.org/docs/Integrating%20Land%20Issues%20Colombia.pdf>

This map of Colombia shows the Andean highlands and the Caribbean and Pacific lowland areas, including Cauca, the site of the sugarcane cultivations. To the East are the departments of Meta and Vichada, where the state vacant land, or *baldíos*, are located. This area, also called the Atillanura, is the site where large companies have purchased vacant land from farmers in what has been called an irregular accumulation of vacant land.



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Historical Context for Land Ownership

There are three primary types of land tenure in Colombia: state property, private property and communal property held by indigenous groups, Afro-Colombian communities or cooperatives of urban residents.³³

Agrarian land reform was first enacted in the 1930s in order to address inequalities in land distribution. However, these efforts, undertaken throughout the 1900s, have not been successful. In 1971, the national agricultural census showed an imbalance in land distribution: 80% of land was encompassed by 10% of the farms. The situation remains largely unchanged today, with landholding highly concentrated among the few.³⁴

USAID reports that violent land-takings began in 1948 and were later intensified by the civil war between the Revolutionary Armed Forces of Colombia (FARC) and paramilitary militias, including drug traffickers. During the 1980s to 2000, armed groups moved to acquire land as a means of laundering money. They acquired 4.5 million hectares of land, reportedly 50% of the country's most fertile land.³⁵ In such cases, landowners or occupants were often forcibly displaced. Illegal armed groups continue to be responsible for most instances of forced displacement in the country. Most of the displacement has occurred in lands bordering Ecuador and Venezuela. The United Nations High Commissioner for Refugees estimated that in 2013 there were as many as four million displaced persons within Colombia, other humanitarian groups estimate the number is now closer to six million. This has resulted in the creation of a massive network of informal ownership of property. USAID estimates that there are 1.3 million households living in informal or illegal settlements due to the lack of land tenure and basic infrastructure, with women-headed household making up 35-50% of all displaced households. The women's' situations are further complicated by limited access to credit and formal employment opportunities.³⁶

Indigenous groups have long been victims of the violent conflict and displacement. The National Indigenous Organization of Colombia reported that between January and September of 2014, 2,819 indigenous people were displaced.³⁷ The Colombian Court has stated that over 30 indigenous groups are at risk of extinction due to the armed conflict.

As reported by the Washington Office on Latin America, "there are few Colombians whose lives have not been directly or indirectly unaffected by the armed conflict between the government and the Revolutionary Armed Forces of Colombia (FARC). However, throughout more than 50 years of conflict, the damages have disproportionately affected a particular segment of the Colombian population, as national and international human rights organizations frequently indicate in reports. These reports unanimously agree that it is Afro-

³³ UN Habitat, 2005.

³⁴ Food and Agriculture Organization, Country Pasture/Forage Resource Profile, Colombia, 2006.

³⁵ USAID Country Profile, Property Rights and Resource Governance, September 2010.

³⁶ Property Rights and Resource Governance, Colombia, USAID Country Profile, http://usaidlandtenure.net/sites/default/files/country-profiles/full-reports/USAID_Land_Tenure_Colombia_Profile.pdf

³⁷ 2014 Report, The Office of the Rights of Indigenous Peoples, Human Rights, International Humanitarian and Peace Rights, National Indigenous Organization of Colombia, <http://cms.onic.org.co/wp-content/uploads/2014/09/Informe-Anual-2014-Derechos-Humanos-ONIC.pdf>

Colombians who have borne the greatest cost of Colombia's bloodiest war. To illustrate, two million out of the six million people who are currently internally displaced by the conflict are Afro-Colombian".³⁸

The Consultancy for Human Rights and Displacement (CODHES) blames some of the more recent displacement on the passage of the Colombia Free Trade Agreement (FTA) with the United States, with much of the new displacement, especially of Afro-Colombian and indigenous persons, linked to actions undertaken by "both legal and illegal armies that clandestinely work to further the interest of extractive industries and their territorial consolidation."³⁹

Registration records of rural land indicates that 22% is state-owned, 52% privately owned, 23% held by indigenous communities and 3% by Afro-Colombian communities, a minority group in Colombia that is historically impoverished and marginalized.⁴⁰

It should be noted that various sectors in Colombia have encountered a legacy of land rights challenges stemming from past government policies on land acquisition and development. For example, in the 1980s, the Colombian government launched mining and extractives efforts in northeastern Colombia, claiming that the land was uninhabited. In fact, nomadic indigenous groups who were eligible for protection under the law occupied that land. After thirty years and the subsequent privatization of the mining company, multinationals involved in the region today continue efforts to remedy the displacement of these communities.

Present-Day Land Disputes

There are currently two well-articulated philosophies amongst land advocates in Colombia. One is that the most important thing the government can do in making restitution is to formalize the land registry and titling process, thus giving landowners formal and legitimate title to their investments. Some believe this will only pave the way for large corporations and foreigners to invest in Colombia. The second train-of-thought is that restitution should not just be used to 'organize and cleanse' but should "acknowledge farmers' involvement as essential for the construction of the inclusive agrarian model being advanced in the discussion of the historical problem of inequitable land distribution."⁴¹

Land restitution in Colombia is a very heated subject. Land restitution advocates and leaders have been systematically threatened and even murdered. The Colombian Ombudsman's office has a record of 71 murders of land restitution leaders from 2006 to 2011.⁴²

³⁸ Interview on Colombia's Peace Process with Danny Ramirez of the National Conference of Afro-Colombian Organizations, Washington Office on Latin America, January 29, 2015, <http://colombiapeace.org/2015/01/29/interview-on-colombias-peace-process-with-danny-ramirez-of-the-national-conference-of-afro-colombian-organizations/>

³⁹ Gimena Sanchez and Daniel Kovalik, Colombia Reports, January 29, 2013, <http://colombiareports.co/obamas-2nd-term-time-to-take-affirmative-steps-to-ensure-labor-human-rights-in-colombia/>

⁴⁰ USAID Country Profile, Property Rights and Resource Governance, September 2010.

⁴¹ Martinez Cortez, Paula, The Victims and Land Restitution Law in Colombia in Context, An analysis of the contradictions between the agrarian model and compensation for the victims, December 2013, http://www.fdcl.org/wp-content/uploads/2013/12/web_The-Victims-and-Land-Restitution-Law-in-Colombia-in-context.pdf

⁴² Human Rights Watch (2013), The Risk of Returning Home, Violence and Threats Against Displaced People Reclaiming Land in Colombia, September 17, 2013, <http://www.hrw.org/node/118404/section/1>

The Center for Intercultural Studies (CEI) at the Javeriana Pontificate University in Cali has been commissioned by INCODER to investigate land conflicts and manage conflict resolution. They have worked in various geographic areas where there have been conflicts between small farmers, indigenous communities, afro-Colombian Communities and industry. Their model is to resolve conflict between small farmers/indigenous communities/afro-Colombian communities and government, industry and conflicts that sometimes arise between the groups themselves. They are currently focused on conflicts in the department of Cauca, but have started to work in the Altillanura on conflicts that have occurred over land cultivated for palm oil and sugarcane.

The CEI has worked with some indigenous communities, afro-Colombian communities and sugar mills in Cauca, and have reportedly found creative ways to resolve land conflicts in a way that respects everyone's rights and has allowed everyone to profit from the productive use of the land. In the case in Cauca specific to sugarcane, the indigenous owners of the land, who do not have the resources to cultivate and grown sugarcane, provide their land to mills; the mills plant and harvest the sugarcane, providing the capital to grow and process the sugarcane. Later when the sugar is sold, a previously agreed upon portion of the profit from the sales are returned to the indigenous community for the use of their land. "With a vision of sustainability, they [the mills] realize that it is best to have very good relations with those that surround them, and this is essential to ensuring that there is added-value."⁴³

The Department of Valle Cauca

According to the 2005 census conducted by the Administrative Department of Statistics (DANE), 72% of the population of Valle Cauca is white or mixed race, 27% is of African descent and less than 1% of the population is indigenous. The total number of forcefully displaced persons in Valle Cauca during 2013 was 142,181. It was the only department that increased in number of displacements from the previous year.⁴⁴

The indigenous groups in the department include the: Embera, Embera Chami, Nasa Waunan, and there are 26 indigenous reserves. The estimated number of indigenous inhabitants in Valle Cauca in 2011 was 9,903. According to the National Indigenous Organization of Colombia, there were no indigenous persons displaced in Valle Cauca in 2014. However, there were several threats to indigenous communities, leaders and individuals.⁴⁵

⁴³ Stakeholder Interview, Manuel Ramiro Muñoz, Director, Center for Intercultural Studies, Pontificate University Javeriana, February 2015.

⁴⁴ Valle Cauca es el departamento con mas desplazados en Colombia, Redaccion Judicial, June 11, 2014, <http://www.elespectador.com/noticias/judicial/valle-del-cauca-el-departamento-mas-desplazados-colombi-articulo-497679>

⁴⁵ 2014 Report, The Office of the Rights of Indigenous Peoples, Human Rights, International Humanitarian and Peace Rights, National Indigenous Organization of Colombia, <http://cms.onic.org.co/wp-content/uploads/2014/09/Informe-Anual-2014-Derechos-Humanos-ONIC.pdf>

The Department of Meta

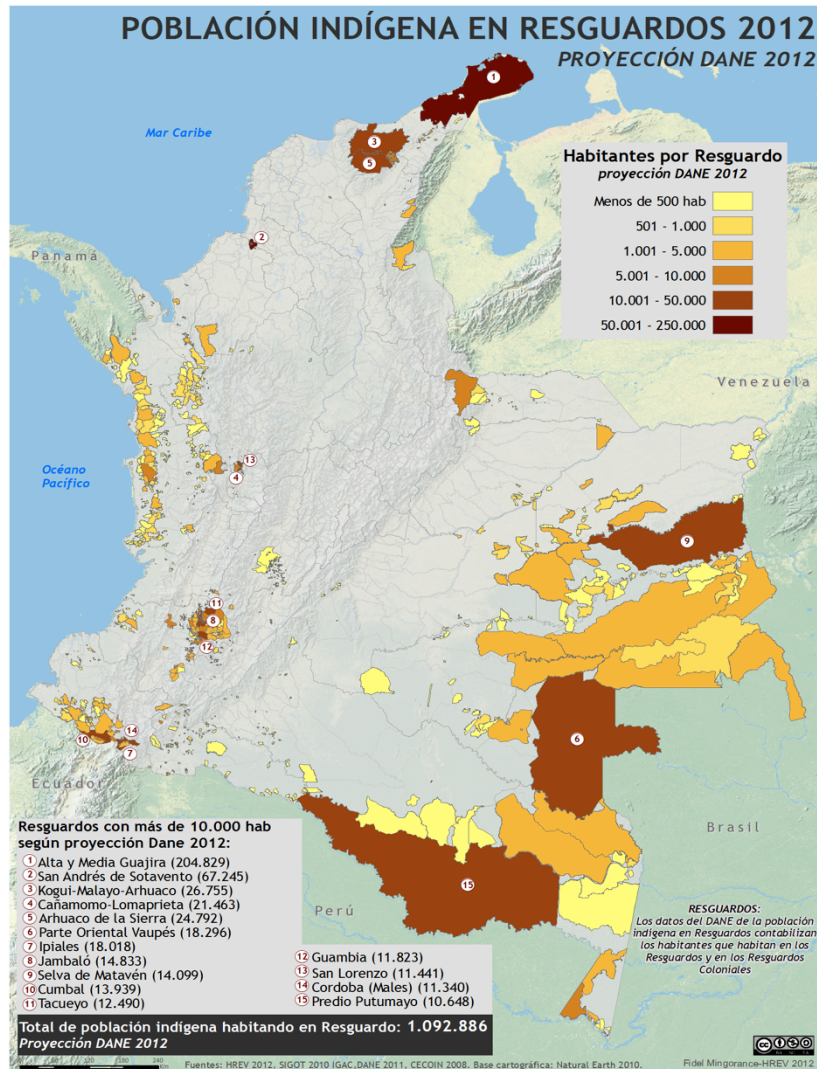
According to the 2005 census conducted by the Administrative Department of Statistics (DANE), 96% of the population is white or of mixed race, 2.6% is of African descent and 1.3% indigenous. The total number of forcefully displaced persons in Meta during 2013 was 5,257.⁴⁶

The indigenous groups in the department include the: Sikuanis, Guayabero, Achagua, Piapoco, Saliba, Nasa, Embera and Pijao. According to the National Indigenous Organization of Colombia, there were no indigenous displaced persons in Meta in 2014.

The Department of Vichada

According to the 2005 census conducted by the Administrative Department of Statistics (DANE), 52% of the population of the Vichada is white or mixed race, 44% of the population is indigenous or American Indian and 2.8% are of African descent.

The indigenous groups in the department include the: Kurripako, Piapoco, Piaroa, Puinave, Saliba and the Sikwane, and there are 32 indigenous reserves. Based on 2005 census data, DANE estimated that there would be several areas within Vichada with more than 10,000 indigenous inhabitants. According to the National Indigenous Organization of Colombia, there were no indigenous persons displaced in Vichada in 2014. However, they reported that between 1 and 11 indigenous persons or protected persons were threatened in 2014.⁴⁷



⁴⁶ El Desplazamiento Forzado y la Imperiosa Necesidad de la Paz, Informe Desplazamiento 2013, CODHES, <https://www.verdadabierta.com/documentos/victimas-1/desplazados/1100-informe-desplazamiento-forzado-codhes-junio-2014>

⁴⁷ 2014 Report, The Office of the Rights of Indigenous Peoples, Human Rights, International Humanitarian and Peace Rights, National Indigenous Organization of Colombia, <http://cms.onic.org.co/wp-content/uploads/2014/09/Informe-Anual-2014-Derechos-Humanos-ONIC.pdf>

National Policy and Legal Framework

Efforts at land reform began in 1936 with the passage of Law 200, the first land reform law. Additional legislation was passed in 1961 under Law 135, followed by Law 160 in 1994. Since the National Development Plan of 2010-2014 was established, the national government has focused on rural development and in redressing and restoring rights for the displaced. As a result of the 2010-2014 plan, the Victims and Land Restitution Law of 2011 was established. The 2014-2018 National Development Plan includes a focus on *Transformation of the Countryside* and includes a goal to organize rural territories and increase land access to rural populations. Influenced by the peace process currently between negotiated between the national government and the FARC, the policy includes provisions for an improved land registry, formalization of small informal land holdings, strengthening of the Victims and

Land Restitution Law of 2011 and the establishment of a land fund that will manage new rural land distributions. It should be noted, however, that no representatives of popular agrarian sectors are involved in the peace process. Critics of the current government say that “even though negotiations with the guerrillas is an important step, they only represent one dimension of the discussions that need to take place. The implementation of social, political and economic justice is also crucial if a solid foundation for peace is to be constructed.”⁴⁸

A more detailed description of relevant legislation follows.

Peace Process 5-point Agenda
1. Rural Development
2. Political Opposition and Citizen Participation
3. End to the Armed Conflict
4. Drug Trafficking
5. Victims Rights

Constitution of 1991

Article 58 of the Constitution provides for the right to private property and prevents such rights from being infringed upon by subsequent laws. The Constitution also defines property as “a social function that implies obligations.”

Article 63 provides protections for property in public use, such as natural parks, communal lands of ethnic groups and other property “determined by law [to be] inalienable, imprescriptible, and unseizable.”

Article 64 establishes the duty of the state to “promote the gradual access of agricultural workers to landed property in individual or associational form [...] with the purpose of improving the incomes and quality of life of the peasants.”

Law 160 of 1994

Law 160 of 1994 created the National Land Reform System, which includes the land redistribution program. Aimed at the redistribution of land to balance structural inequalities and to address the widespread underutilization of land, the law regulates agricultural reform through a series of programs such as rural subsidies and the national land reform system. One such program relevant to this report is the titling of vacant land, or *baldíos*.

⁴⁸ Martinez Cortez, Paula, The Victims and Land Restitution Law in Colombia in Context, An analysis of the contradictions between the agrarian model and compensation for the victims, December 2013, http://www.fdcl.org/wp-content/uploads/2013/12/web_The-Victims-and-Land-Restitution-Law-in-Colombia-in-context.pdf

Vacant state land shall be entitled to farmers through the UAF program [see sidebar] provided the farmers can prove that they have been productively exploiting at least two-thirds of the land for not less than five years. This allocation “cannot be made to persons having another property in the country or to persons having a capital exceeding 1,000 times the minimum wage. [...] INCODER is responsible for control over the titling process.”⁴⁹

Article 72 further limits the accumulation of vacant land beyond the UAF limit as well as controlling the sale of such lands to companies who may ultimately exceed the UAF limits. It also instructs registrars not to register sales of such land.

UAF: Family Agricultural Units

Article 38 defines Family Agricultural Units (UAF) as “basic agricultural, cattle raising, aquaculture or forestry production units, whose extension, according to the agro-ecological conditions of the area and adequate technology, allows a family to earn income from their labour and to have a surplus value to help in the development of their assets.” In other words, it is a unit of land determined by productivity and cultivability to provide sufficient income for a single family. The size of the UAF varies by location.

72. [...] No person shall acquire ownership of land initially allocated as vacant land, if the expanse exceeds the maximum limits indicated by the Board of Directors for the Family Agriculture Unit in the respective municipality or region. Also null and void are any acts or contracts under which a person cedes to a company or association of whatever nature the ownership of land awarded as vacant land, if as a result such companies or associations consolidate ownership of such land in surface areas exceeding that fixed by the Institute for the Family Agriculture Unit [UAF].

Registrars of Public Documents shall refrain from registering acts or contracts of traditional properties whose initial domain comes from national vacant allotments, where the authorization of INCODER was not processed when such acts or contracts with those properties were being divided.

Finally, of interest in Law 160 is Article 83 related to Areas of Business Development. This article allows for the use of vacant land for larger commercial operations through the establishment of Zones of Business Development. It says in part, “Companies of any kind which are recognized by the Ministry of Agriculture as specialized farming operations, [...] may request adjudication of vacant land in Zones of Business Development.”

Constitutional Court Decree SU039-97

The Constitutional Court set jurisprudence, based on the International Labor Organization’s Convention 169, that requires prior consultation with indigenous groups before natural resources in their lands may be used. In the decree, the court stated that prior consultation is “an instrument that is essential to preserve the ethnic, social, economic and cultural integrity of indigenous communities and to ensure, therefore, their survival as a social group”.⁵⁰ As determined by the court, the consultation is a collective right and must be conducted in good faith. The consultation must be done through public, mandatory due process and must

⁴⁹ UN Habitat, 2005.

be conducted in a language understood by the indigenous peoples. The court also requires that the process allow access to clear, accurate and timely information.

Victims and Land Restitution Law in June 2011

As a response to the forced displacement of persons from their land, the government enacted this law with the intent of reintegrating displaced persons to their communities of origin. However, progress has been slow and effects of the implementation of the law were not seen until the end of 2012. Security risks have complicated reintegration. In addition, approximately half of displaced persons now residing in cities are unwilling or unable to return to their communities of origin.⁵¹

Critics of the law say that the law is ineffective for various reasons but mainly because it “is being applied before the conflict has even ended. The challenge faced by the law is enormous: victims from the past are joining those from the present and future.”⁵² Although very few have been successful in their claims for land restitution, Human Rights Watch has reported that some of those who have been awarded land have faced abuses, threats, new incidents of displacement and have even been killed. Government data showed that between January 2012 and May 2013 510 land restitution claimants and leaders from 25 departments reported being threatened. Authorities investigations of claims found that 363 of the claimants were at “extraordinary risk” due to their reclamation activities.⁵³

Proposed Law 133 of 2014

This law was under consideration in late 2014, but it was not passed. The law proposed and referred to as the Urrutia-Lizarralde law, after the two senators who were strongly advocating for its passage, would establish Rural and Economic Interest Zones (ZIDREs) in vacant lands such as the baldíos. Large corporations would be allowed to buy land in these zones and cultivate them with some stipulations. One important point of the proposed law was that it would waive the requirements of Article 72 of Law 160 of 1994 that limits the amount of land any one person or corporation can own. Critics of the proposed law said that it would provide a firm legal basis for Cargill and other large corporations that have purchased large plots of land in the baldíos.

Implementation

There are numerous institutions responsible for various aspects of land management and land tenure. The Colombian Rural Development Institute (INCODER) is responsible for devising and executing agricultural policies, rural development and some aspects of land registration. The Ministry of Agriculture and Rural Development also oversees rural development and land policy. Other Ministries, departments and institutes have roles related to urban development, the cadaster system and national land planning.⁵⁴

⁵⁰ Colombian Constitutional Court, <http://www.corteconstitucional.gov.co/relatoria/1997/su039-97.htm>

⁵¹ United Nations High Commissioner for Refugees, Country Operations Profile, 2013 Colombia. p.1-2.

⁵² Martinez Cortez, Paula, The Victims and Land Restitution Law in Colombia in Context, An analysis of the contradictions between the agrarian model and compensation for the victims, December 2013, http://www.fdcl.org/wp-content/uploads/2013/12/web_The-Victims-and-Land-Restitution-Law-in-Colombia-in-context.pdf

⁵³ The Risk of Returning Home, Violence and Threats Against Displaced People Reclaiming Land in Colombia, Human Rights Watch, September 17, 2013, <http://www.hrw.org/node/118404/section/1>

⁵⁴ USAID Country Profile, Property Rights and Resource Governance, September 2010.

According to a 2010 USAID report on Colombia Property Rights and Resource Governance, in 2003 the government of Colombia implemented institutional reforms that reduced staffing and financial resources committed to land administration. “INCODER has been largely ineffective due to limited financial and staff capacity. The organization has been fraught with corruption. Since 2002, ten directors have lost their positions due to corruption charges.”⁵⁵

Colombia Ranking on International Indices on Land Security and Corruption

Index	Indicator	Colombia Score	Rank
Millennium Challenge Corporation Scorebook, 2009	Land Rights and Access Range: 0-1, 1=best	0.733	-
World Economic Forum. Global Competitiveness Index 2012-2013	Property Rights Range: 1-7, 1=poorly defined/not protected by law	3.8	96/144
World Bank, Doing Business 2013	Registering Property, Range: 1-185, 1=best - number of procedures - days required - cost (% of property value)	7 15 2.0%	52/185
Index of Economic Freedom 2014	Rule of Law - Property Rights Range 0-100, 0=no private property - Freedom from Corruption	50.0 33.2	
Corruption Perception Index 2013	Corruption Perception Index 2013 Range 0-100, 0=highly corrupt	36	94/177

Vacant Land Awards (*Baldíos*)

Under the Law 160 of 1994, land determined to be vacant and seizable by the State could be awarded to poor farmers in order to address inequality of land and to promote agrarian livelihoods. All land transfers must be conducted by deed and must be prepared before a Notary Public. Land transfers must also be registered locally at the Superintendence of Notaries and Registry.⁵⁶

The amount of vacant land that can be awarded to any individual is limited to a single Family Agricultural Unit (UAF), the size of which is determined based on the potential productivity of such land. Oxfam notes that in the Altillanura region, including the departments of Meta and Vichada, “due to the low productivity of the soil and limited infrastructure, a much larger area is considered necessary for a viable family business. Therefore, the UAF in this region can reach a maximum expanse of 1,725 hectares in some municipalities, much higher than the national average.”⁵⁷

“The baldíos will play a central part in the peace process.”
Dr. Andreí Suarez Gomez,
British Academics for a Colombia Under Peace

⁵⁵ USAID Country Profile, Property Rights and Resource Governance, September 2010.

⁵⁶ USAID Country Profile, Property Rights and Resource Governance, September 2010.

⁵⁷ Oxfam, Divide and Purchase, September 2013.

The new land fund being established by the Colombian government as part of the National Development Plan 2014-2018 will, in part, be used to support current efforts in awarding and developing UAFs in the baldíos to small farmers and previously displaced persons.



Family Agricultural Unit (UAF) in the Department of Meta. Photo courtesy of Maria Teresa Palacios Lozano.

Case Study

A Colombian agribusiness, referred to for the purpose of this case study as “the Company,” has 95 years of experience in domestic and international production of sugar, honey and alcohol and is considered to be a leading sugar producer in the country. Their 2013 sustainability report notes that they carry out commercial activities in the US, Peru, India, Brazil, as well as other countries in the European Union and Latin American.

In Colombia, their operations are located in the Cauca river valley as well as the departments of Quindío, Risaralda, Meta and Vichada, the latter two being part of the Altillanura region. Physical operations are located in Cauca and the Altillanura region.

There are two separate projects in the Altillanura region, both described in the 2013 sustainability report. One project is in the Vichada department, cultivating palm and grain on land purchased by 29 companies owned by a related holdings company, comprising 38,096 hectares of land. Another operation is in Meta on land owned by the company Bioenergy. Through a lease agreement, the company is growing, harvesting and

delivery sugarcane to Bioenergy.

Vichada Project

According to the Company, “in 2012 £ 6.5 million euros were invested in a holding company which is the parent company of twenty-nine companies which own 38,096 hectares in the department of Vichada.” This land is currently being developed for cattle, palm and grain production with the aim of attracting “potential partners, both institutional and strategic, for these projects.”⁵⁸ Given the legal challenges around the land ownership, the company has slowed the development timeline. Currently, there are soy, corn and rice in production on several thousand hectares.⁵⁹

According to the Vichada Operations Manager, there are some indigenous populations in the area of the project, located in the Santa Rosalia Indigenous Reserve. The company has submitted a report to the Ministry of the Interior in order to determine the requirements for a prior consent process. Other studies conducted include environmental impact, economic, cartographic, and soil tests. Institutions and organizations including the University of the Andes, Corporación Ambiental and Traducir Internacional carried out these studies.

Meta Operation

The Meta operation supplies cane to the Bioenergy Plant in the Meta department. Bioenergy is the landowner and the Company has been contracted to grow and harvest sugarcane for delivery to Bioenergy. The Company began cultivating this land in 2011.⁶⁰ According to one account, the Company has a partnership with Bioenergy to distribute 40% of the cane from the new distillery being constructed in Meta. Meta is expected to reach 500,000 tons per year, produced under more cutting edge practices of watering and sustainability, compared with that in Valle del Cauca.

According to their sustainability report, “in 2013 [...] 3,300 hectares received as a lease from Bioenergy SA for planting sugarcane were completed, of which 2,680 correspond to net usable area for this crop. They are in the process of receipt of 2,620 ha, that must be delivered in 2014, with which is expected to complete the planting of 5,300 ha.

“This year the purchase of machinery and equipment necessary for the preparation of land and mechanized cultivation survey work was completed. The start of operations for Bioenergy is scheduled for August 2014, at which it was agreed to start delivery of the cane.”⁶¹

⁵⁸ 2013 Sustainability Report.

⁵⁹ Interview with company manager, June 2014.

⁶⁰ Interview with company manager, June 2014.

⁶¹ 2013 Sustainability Report.



Bioenergy S.A.

Bioenergy S.A. was established in 2005 by ALCOL S.A. a group of entrepreneurs, technicians, scientists and lawyers, to carry out projects for the production of biofuels.⁶² In 2008, Ecopetrol, the Colombian State-owned energy company, became the majority shareholder, with 80% of the shares in Bioenergy.⁶³

According to news reports, Bioenergy holds 11,400 ha for sugarcane cultivation in the Colombian department of Meta. According to Aleck Santamaria de la Cruz, manager of Bioenergy, “particularly in Colombia’s Altillanura (highlands) region, we have excellent conditions to develop sugarcane and, therefore, ethanol. We have high productivity in terms of tons of sugarcane per hectare.”⁶⁴

As much as half the land holdings of Bioenergy are reportedly leased, posing no dilemma regarding vacant land purchases under the law. What are under scrutiny are approximately 5,800 ha from a dozen sites

⁶² <http://www.bioenergy.com.co/Ingles/Pages/QuienesSomos.aspx>

⁶³ Cleantech Investor, “Spotlight on Colombia: Building a biofuel economy,” July/August 2009.

⁶⁴ Project Management Institute, “Biofuel from Seed to Factory,” March 2014.

previously classified by the State as vacant lands. Acquired between 2008 and 2011, the vacant lands were reportedly purchased through a loophole that was considered “a presumption of legality,” according to Aleck Santamaría de la Cruz.⁶⁵ To accomplish this, the vacant lands were converted to “pension trusts,” effectively classifying the land as a group of assets with unique rights and attributes. This allowed Bioenergy to use and benefit from the land without being considered the legal owner of the land.

There is currently very little information available about the Bioenergy / Ecopetrol land holdings. They do not appear to be part of any current government review related to UAF land accumulation. However, according to Colombia’s government accountability office, this type of purchase would be considered by them to be similar to the practices of allegedly irregular land accumulation in other cases under review by said office, though it is not currently under review by the State.⁶⁶

Land Grabbing Allegations

Numerous companies in Colombia have been accused of accumulating multiple UAF lands through irregular means in order to conduct large-scale agricultural production on land intended for use by poor farmers. These allegations originated in large part from the office of Congressman Wilson Arias, affiliated with the political party Polo Democrático Alternativo, an opposition party to the current president, who represents the Social Party of National Unity. Congressman Arias represents the Cauca Valley region, home to the Colombian sugar industry, and began speaking out on land issues more than 10 years ago.⁶⁷ In 2010, when he entered Congress, Arias began denouncing land grabs. Since that time, he has initiated more than five debates on land in Congress.⁶⁸

With the support of other opposition Senators, Arias was able to move his investigations to Colombia’s government accountability office, the Contraloría. In February 2014, the office of the Contraloría released a 240 page report detailing their review of 14 cases in which companies accumulated vacant land by purchasing directly from farmers. This report focused on estimating the financial harm caused by these practices.⁶⁹ During the same time period, Oxfam released a report in September 2013 entitled “Divide and Purchase: How Land Ownership is Being Concentrated in Colombia.” This report, highlighting the practices of the company Cargill, focused on the idea that the accumulation of vacant lands intended for smallholder farmers contributes to on-going rural unrest and economic inequality.

Previous Owners of Vacant Land

The allegations do not contend that farmers were illegally deprived of their land. In fact, there is very little said publicly about the role of the previous land owners. Various communications, including the report of the Contraloría, list the specific properties that were purchased by the company in the Altillanura.⁷⁰ However, no

⁶⁵ Semana magazine, “Ecopetrol y los baldíos,” June 22, 2013.

⁶⁶ Interview with the Office of the Contraloría of Colombia, June 2014.

⁶⁷ Interview with Andres Fuerte, Office of Wilson Arias, June 2014.

⁶⁸ La Silla Vacía, “Wilson Arias, el detective de los baldíos,” July 2013.

⁶⁹ Interview with Andres Fuerte, Office of Wilson Arias, June 2014.

⁷⁰ Contraloría of Colombia, “Actuación Especial Sobre La Acumulación Irregular de Predios Baldíos en La Altillanura Colombiana,” February 2014.

information is provided on the farmers who sold the land. Multiple queries to the Contraloría, the office of Wilson Arias, and to other groups involved in reviewing these cases, disclosed that none of these entities have spoken directly with the farmers who sold the land. It was not possible to identify any of the previous landowners or to locate their possible whereabouts. Instead, the allegations focus on evasion of regulations that limit the number of vacant land lots (UAFs) that can be held by an individual or organization.

As previously noted, the size of a UAF in the Altillanura is larger than other regions, due in part to the poor soil. The region is remotely located, without much human settlement or infrastructure, including roads or irrigation. When questioned how poor farmers could occupy and cultivate at least two-thirds of their large land allocation for five years prior to the awarding of the title (as required under Law 160) in such poor and remote conditions, no stakeholder groups were able to provide a response.⁷¹ While some organizations like the Colombian Society of Farmers (SAC) believed only large-scale enterprises have the resources to develop this sort of remote and challenging terrain, it is the view of other groups, including Oxfam, that the government should offer assistance to poor farmers to ensure they have access to the necessary resources and support for developing such land, including provision of infrastructure like roads and irrigation.

There is an example of a program that was created to address the issue of the small farmer in the region. The Volunteers for Economic Growth Alliance (VEGA) are a non-profit organization that was co-created, with Purdue University and funded by USAID that is called Farmer to Farmer. The program partners are the Association of Municipalities of Ariari, Farm school of Altillanura, The University of Los Llanos and Asorinoquia. The goal is to “promote rural development to support a sustainable and economically equitable peace in the Orinoquia region of Colombia, through integrated volunteer technical assistance to Colombian farmers.” It includes three objectives:

- 1) increase farm productivity to increase yields
- 2) improve processing and markets
- 3) enhance networks⁷²

Accumulation of Vacant Lands

Government Policies

According to the office of Wilson Arias, the government has invited sugar companies to invest in the region of the Altillanura, which has been called “the final Colombian agricultural frontier.”⁷³ Oxfam reports that the Colombian government’s 2014 goal for the Altillanura region is to “convert a total of 5 million hectares into large plantations: of corn, soy, oil palm, sugar cane, rubber, rice, and sorghum [...]”⁷⁴

⁷¹ Interviews with the Office of the Contraloría of Colombia, the Colombian Commission of Jurists, Andres Fuerte, the Office of Wilson Arias. June 2014.

⁷² Farmer to Farmer, Volunteers for Economic Growth Alliance, <http://vegaalliance.org/our-programs/farmer-to-farmer-f2f-in-colombias-orinoquia-region/>

⁷³ Interview with Andres Fuerte, the Office of Wilson Arias. June 2014; Semana magazine, interview with Juan Camilo Restrepo, Minister of Agriculture, November 6, 2010.

⁷⁴ Oxfam, Divide and Purchase, September 2013.

Competing government priorities within institutions and political opposition parties have pegged economic agendas and rural agrarian reform policies against each other. At the same time, it remains unclear what are the government priorities for land use and development, up to the presidential level.⁷⁵

Land Titling

There are structural deficiencies within the government that have contributed to the problem of UAF accumulation.⁷⁶ According to USAID, vacant land awarded to farmers as UAFs must be registered by the farmers through local registry offices. This registration must declare the land as state vacant land, ensuring any subsequent re-sale of the land is limited to the State or other UAF eligible persons. This would ensure companies are aware that they are not eligible to purchase this land. However, in many cases, the farmers did not register their land and if they did, the registration did not contain the required notice of UAF status.⁷⁷

Furthermore, INCODER has failed to produce an inventory of State-owned land. USAID has been supporting 10 land registration offices, with INCODER working on others. However, the local registries do not yet connect to INCODER. The records and systems within INCODER are so challenged it is reportedly not uncommon for land titles to be issued to the wrong people.⁷⁸ To address the shortcomings of the current system, there is discussion within the National Planning Department to create a new land authority, with a separate body for land issues such as titling, registration and restitution, and another body for rural development. The Contraloría has called on INCODER to address deficiencies in the organization related to staff training, turnover, information security, and the adjudication process itself, including failures to define land boundaries and verify conditions of land prior to adjudication, including occupation and development of land.⁷⁹

Legal interpretations

The interpretation of Law 160 of 1994 is at the core of the controversy. According to SAC, this law prevents the accumulation of vacant land apart from 1994. Any land awarded as vacant land from 1994 and onward cannot be accumulated. However, Art. 72 says, “No person shall acquire ownership of land initially allocated as vacant land...” One question under debate is “what is initially allocated?” Is all land considered to have originated as vacant land? Or only land that has been awarded as vacant land? ⁸⁰

According to Luis Forero, Secretary General of the Colombian Society of Farmers (SAC), UAF restrictions apply only to adjudicated land. Furthermore, Forero states that land acquired or sold prior to 1994 is not subject to UAF restrictions under Law 160. This viewpoint was reiterated by Francisco Uribe, lawyer for the firm Brigard y Urrutia, who conducted completed land transactions on behalf of local companies. According to Uribe:

⁷⁵ Interview with Marcela Chavez, Land and Sustainable Livelihoods Advisor, USAID Colombia, June 2014.

⁷⁶ Interview with Marcela Chavez, Land and Sustainable Livelihoods Advisor, USAID Colombia, June 2014.

⁷⁷ Interview with Marcela Chavez, Land and Sustainable Livelihoods Advisor, USAID Colombia, June 2014.

⁷⁸ Interview with Marcela Chavez, Land and Sustainable Livelihoods Advisor, USAID Colombia, June 2014; Caracol.com.co “Contraloría llama la atención al Incoder por adjudicación de baldíos,” June 18, 2013.

⁷⁹ Caracol.com.co “Contraloría llama la atención al Incoder por adjudicación de baldíos,” June 18, 2013.

⁸⁰ Interview with Luis Fernando Forero Gomez, Sociedad de Agricultores de Colombia, June 2014.

“The law cannot be retroactive and in order for a ban to be effective certain formalities must be met. That is to say that vacant land prior to 1994 does not fall into the category of prohibition. And in regard to lands that are supposedly vacant land after 1994, for it to be illegal to purchase such land, such a ban must be public knowledge, for which such would have to be registered in the award resolution and the certificate of tradition and freedom. We obviously did not buy any land whose titles expressed such limitation.”⁸¹

Forero seconds this argument, stating that the cases of land accumulation in the Altillanura were land purchases made in good faith and there is an obligation for the government to meet their own requirements of the purchase process. According to Forero, if land titles lacked the required UAF statements, this is a deficiency in the government process.⁸² Uribe further states that landowners were paid a fair market price for their land.

On the other end of the argument, the Contraloría, or government accountability office, appears to have taken the view that under Law 160, Art 72, any land classified as a UAF cannot be acquired or sold. The investigation conducted by the Contraloría resulted in fourteen cases that they would like to take through the court system to determine whether land transactions should be nullified. The Contraloría report focuses primarily on the failure of INCODER to properly implement Law 160 of 1994 and the failure of the Superintendencia of Notaries and Registry to properly document such land transactions.⁸³

These debates are yet to be resolved by the courts. According to the office of Wilson Arias, it will take some time to see the intention of the courts. INCODER has reportedly failed to present the lawsuits as they should, with some rejected due to a lack of required signatures, seals, photocopies, or other technicalities. There appears to be a disinterest in addressing these questions by INCODER and the courts alike.⁸⁴ As a result, the current court cases have not yet advanced. There are several cases waiting to be reviewed and all parties are awaiting further developments. For now, these questions of vacant land accumulation and the future of the Altillanura region remain in the hands of the court system.

⁸¹ Semana magazine, June 15, 2013.

⁸² Interview with Luis Fernando Forero Gomez, Sociedad de Agricultores de Colombia, June 2014.

⁸³ Contraloría of Colombia, “Actuacion Especial Sobre La Acumulacion Irregular de Predios Baldios en La Altillanura Colombiana,” February 2014.

⁸⁴ Interview with Andres Fuerte, the Office of Wilson Arias. June 2014.

Conclusion

Based on the outcomes of this study, the following conclusions can be made:

Child Labor

Although mills and their owned and operated farms are not directly employing minors, there is some risk in the southern Cauca Valley due to the carretilleros and their employment of children and adolescents. The sugar mills in question appear to have no culpability in the practice of the carretilleros. However, there is reputational risk downstream through the supply chain, since the farms are financially tied to the mills. The mills in the affected region have been working with Asocaña, the ILO and the Ministry of Labor to address the issue and seek solutions to achieve their goal to eradicate the worst forms of child labor in the industry. Based on interviews with mills, workers and organizations within Colombia, awareness of the issue is quite high. There has been a concerted focus on the issue of child labor since 2009.

Forced Labor

No evidence of forced labor was discovered through research or during the field visits. Mills have implemented many best practices related to the payment of wages and social security by their suppliers to farm workers, such as unannounced visits and internal audits of their suppliers' records.

Land Rights

Colombia has more internally displaced persons than any other country in the world. Although the government is negotiating peace with paramilitary groups and has implemented policies and laws to address ongoing displacements and to begin to provide restitution to its citizens, it continues to be one of the most difficult and serious issues faced by the country and its citizens. It cannot be ignored, and should be taken into consideration by companies when making decisions about expansion and growth.

The issue of vacant land accumulation is an emerging issue in Colombia, a country with a complex history of land access and use. Agrarian land reform policy to benefit the rural poor is being pitted against the government's development agenda, including ethanol production mandates, with both policies looking to the Altillanura for a solution. According to the information examined for this study, the legality of various companies' practices regarding land purchases in the Altillanura will be decided in the Colombian court system. This process is still at its beginning stages and all parties await progress from a judicial perspective to settle the questions around Law 160 of 1994 and vacant land purchases. While it appears that numerous companies used a variety of legal loopholes to make their purchases, it has also emerged that government agencies failed to meet their obligations regarding land registration practices. Companies currently holding such land will likely wait to further develop the land pending court decisions.

Appendix A: Industry Statistics

Number of Children or Adolescents employed in Coca Cola mills or farms in Colombia	None discovered
Number of Children employed in sugar industry in Colombia	None reported
Number of children employed by Carretilleros in Colombia*	412
Number of persons engaged in forced labor in Coca Cola mills or farms in Colombia	None discovered
Number of persons engaged in forced labor in sugar industry	None reported

**Information not provided by age. In this case, children or adolescents include anyone under the age of 18.*

Appendix B: Mill Statistics

Suppliers	Number of Hectares owned and/or managed by Mill	Number of Farms	Number of Employees	Number of Supplier Hectares	Number of Farms	Number of Supplier Employees
Mill 1	10,017	204	327	17,283	409	Not provided
Mill 2*	N/A		N/A	N/A		N/A
Mill 3	9,695	Not provided	504	15,120	Not provided	542
Mill 4	13,345	74	1128	15,371	36	1025
Mill 5	4,962	40	798	2,007	36	675
Mill 6	5,160	24	1015	10,702	Not provided	966

*See Mill Key for explanation

Appendix C: Mill Management of Child Labor

	Mill 1	Mill 2	Mill 3	Mill 4	Mill 5	Mill 6
Child Labor						
Company has management systems in place to address the issue of child labor	X	X	X	X	X	X
Company has a written policy regarding the employment of minors	X	X		X		X
Company has procedures in place to ensure minors are not hired	X	X	X	X	X	X
Company has verification process to ensure procedures are properly followed	X	X		X		X
Company has contracts in place with suppliers and sub-contractors that require compliance to child labor policies	X	X	X	X	X	X
Company has participated in ILO/Asocaña campaign for the eradication of worst forms of child labor	X	X	X	X	X	X
Company supports local school financially and/or in kind	X	X	X	X	X	X
Company has grievance system or hotline that allows workers to report any improprieties	X	X	X	X	X	X
Participants in UN Global Compact	X	X	X			X
Workers Interviewed reported instances of child labor						

Appendix D: Mill Management of Forced Labor

	Mill 1	Mill 2	Mill 3	Mill 4	Mill 5	Mill 6
Forced Labor						
Company has management systems in place to address the issue of forced labor	X	X	X	X	X	X
Company has a written policy regarding forced labor						X
Company has specific policy that prohibits mandatory overtime						
Company has procedures in place to ensure forced labor does not occur	X	X	X	X	X	X
Company has verification process to ensure procedures are properly followed						
Company has contracts in place with suppliers and sub-contractors that require compliance to forced labor policies						X
Company has policy that requires all labor laws be met, including regarding forced labor	X	X	X	X	X	X
Workers interviewed reported instances of forced labor						

Appendix E: Mill Management of Land Rights Issues

	Mill 1	Mill 2	Mill 3	Mill 4	Mill 5	Mill 6
Land Rights						
Company has expanded geographically in the last 5 years	X	X				X
Describe growth	+42,000 Hec-tares**	See Suppli-er 1	None	None	-500 Hec-tares	300 Hec-tares
Company reported plans to expand geographically in coming years						
Company produces ethanol or plans to produce ethanol in coming years	X	X	X	X		X
Company is known to be currently engaged in legal or ethical debate on land acquisitions	X	X				

**See Mill Key for explanation.

Appendix F: External Stakeholder Consultations

Government

- Eduardo Bejarano Hernandez, Director, Fundamental Labor Rights, Colombia Ministry of Labor.
- Andres Fuerte, Office of Senator Wilson Arias, Congress of Colombia
- Mónica Viviana Pava B., Auditor, General Accounting Office for the Agricultural Sector, Colombia.
- Marcia Eugenio, Director Office of Child Labor, Forced Labor and Human Trafficking. U.S. Department of Labor, Bureau of International Labor Affairs.
- Brenna Dougan, International Relations Officer. U.S. Department of Labor, Bureau of International Labor Affairs.
- Pilar Velasquez, International Analyst. U.S. Department of Labor, Bureau of International Labor Affairs.
- Anthony Gilbert, US FAS Agricultural Attaché
- Alejandro Reyes Posada, Consultant to the Ministry of Agriculture and Presidential Advisor to the Havana Peace Process

Industry

- Nelssy Bonilla, Manager, Social and Environmental Management. Asocaña.
- Fernando Forero, Secretary General of the Colombian Society of Farmers (SAC)
- Rafael Mejia Lopez, President, Colombian Society of Farmers (SAC)

Inter-government Organizations

- Marcela Chavez, USAID, Land and Sustainable Livelihoods Advisor

*NGOs

- Dr. Gustavo Gallón, Director of the Colombia Commission of Jurists
- Provash Budden, Director of Mercy Corps, Colombia
- Maria Goretti, Palm Oil Specialist, Colombia and Ecuador
- Sergio Coronado, Director of the Center for Research and Popular Education (CINEP)
- William Villas, Director of The Center for the Cooperation of Indigenous People (CECOIN)
- Camilo Espinoza, Asorinoquia
- Libardo Herreño, Latin America Institute for Society and Alternative Rights (ILSA)
- Hana Ivanhoe, previously of Fairfood International
- Ines de Real Tovar, Fairfood International
- Max Shoening, Human Rights Watch

Academics

- Dr. Andre Gomez Suarez, Founding member for British Academics for a Colombia Under Peace and member of the Sussex Center for Conflict and Security Research
- Dr. Jenny Pearce, Professor of Latin American Politics, University of Bradford
- Maria Teresa Palacios Lozano, Biologist
- Andrea Elizabeth Burniske, International Programs in Agriculture, Purdue University
- Alvaro Ocampo Duran, Professor/Investigator, Universidad de los Llanos
- Manuel Ramiro Muñoz, Director of the Center for Intercultural Studies

Trade Unions

- Fabio Arias, Secretary General of the Unified Center of Workers of Colombia
- Munir Cure, General Confederation of Workers of Colombia

Workers

- Approximately seventy-five workers from six mills

** Not all NGOs interviewed as listed here, as some preferred not to be cited as a source in the report.*

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