

Report Independent Commission Land Conflict -Las Pavas-Bolívar, Colombia

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**INDEPENDENT EVALUATION OF THE LAND CONFLICT IN LAS
PAVAS (BOLIVAR, COLOMBIA)**

(Title Page Photos: The Commission)

BODY SHOP-CHRISTIAN AID

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I. INTRODUCTION

The Body Shop and Christian Aid hired a Commission of four researchers to conduct an independent analysis of the complex land dispute over the Las Pavas¹ lot in the District of Buenos Aires, Municipality El Peñón in the South of the Department of Bolivar, Colombia.

The Commission compiled information and analysed elements leading to a better understanding of both the processes that contributed in generating this dispute and its different dimensions. It also analysed the regional context and business model of the palm in the area and in the country. All this, with the aim of providing information that may contribute in resolving the dispute between the Labrador Consortium and the families in the Buenos Aires district who were partially occupying the Las Pavas lot. On the other hand, this document also offers conclusions and general recommendations directed towards different audiences from public, private and social sectors, who may act within contexts marked by conflict, such as Las Pavas.

The present document makes a critical, systematic and impartial analysis. It addresses environmental, social, economic, political, institutional, territorial and judicial aspects, along with elements linked to the use of land, for identifying and understanding the perspectives and points of view of the various actors and groups involved in this dispute, including a variety of stakeholders, many of which go beyond the local scale of the conflict. The document aims at reaching balance among issues that can be explained and analysed from an international, national, sub regional (South Bolivar), micro regional (Isle of Papayal) and local (Municipality of El Peñón or the District of Buenos Aires) point of view.

This case study, therefore, stresses on an approach based on territorial dimensions and a regional perspective in the analysis of the different periods of time that are relevant for the reconstruction of the different histories regarding: i) the use of land in the area; ii) the community - socioeconomic, cultural and territorial control aspects; iii) the history of the Las Pavas lot and iv) recent developments regarding standards and guidelines for business operations in a complex milieu.

This document is divided into seven (7) main parts: introduction, background, reconstruction and interpretation of the case, analysis of the environmental and geographical context of Las Pavas and the island of Papayal, main remarks extracted by the Commission on the case, and key elements that help to better interpreting and understanding the case and which could have a bearing on the development of the confrontation between the groups in conflict over the Las Pavas lot. It finishes with general

¹ The Las Pavas farm comprises several lots, including: Las Pavas, Si Dios Quiere and Peñaloza. ASOCAB requested a domain submission of these lots. Additionally in the contract of sale added 11 more lots. ASOCAB has assured that these lots are uncultivated and has requested INCODER to adjudicate them. The Consortium, on the other hand, have assured that all the lots in the farm have legal titles, but some have *títulos de posesión* (possession titles) and others have *títulos de dominio* (domain titles). Therefore they can be object of transaction.

recommendations and conclusions. Equally, the document is accompanied by five (5) appendixes² that examine the different themes dealt with in this report.

In turn, the methodology used in the work was the case study. In order to collect the information, participatory techniques were used which included:

- Semi-structured individual interviews
- Group interviews
- Dialogue with key actors and local experts
- Environmental overview with local farmers (*campesinos*) and the members of the Consortium
- Direct observation
- Collection and analysis of relevant documents

II. BACKGROUND

On September 13th, 2009³ the British newspaper The Observer condemned the expulsion of 123 families from their lands due to the expansion of palm crops. Daabon, one of the country's main palm oil producers and a supplier of The Body Shop, was denounced as the cause of the eviction. Similar condemnations had already appeared on the pages of the Colombian print media⁴ and had been the subject of letters, communiqués and responses.⁵

The reports in the press were followed by demonstrations in several cities of Colombia and Europe and international media campaigns. And so, what became known as "the Las Pavas case", burst out into the public sphere as a dispute between 123 families of farmers displaced from their lands and one of the biggest agro-industrial companies in Colombia, interested in expanding its crops of oil palm.

The featuring in these public scenarios has made the case visible, but has sacrificed the complexity that surrounds the actual dispute regarding the Las Pavas lot. Neither the particular characteristics of the local and national contexts surrounding this dispute nor the dynamics perspectives and agendas inherent to the said contexts have been conveyed by the press and the national and international campaigns which have brought this case to public attention. These elements, however, are essential to understanding the "Las Pavas case". In fact, the actual conflict with respect to the Las Pavas lot refers to historical processes of occupation of the territory, local dynamics linked to the armed conflict, lack of

² These include: Appendix 1. Consideraciones sobre el contexto socio-económico, político y del conflicto en la Isla Papayal; Appendix 2: Informe Ambiental; Appendix 3: Análisis de Prácticas Empresariales; Appendix 4: Dinámica del sector palmero en Colombia, la región y en Las Pavas; and, Appendix 5: Contexto socioeconómico de la región, el municipio de El Peñón y las familias de Buenos Aires e impactos del conflicto y de la palma sobre la comunidad.

³ See Body Shop accused as farmers are evicted to make way for palm oil in The Observer, September 13th, 2009

⁴ See, for example, "Polémica por desalojo de desplazados en sur de Bolívar" in El Tiempo, July 17th, 2009; and "Las Pavas, crónica de un desalojo" in El Espectador on August 1st, 2009.

⁵ See for example "Fedepalma (Colombian Federation of Oil Palm Growers) y el reportaje sobre Las Pavas" in El Espectador on August 7th 2009, and "Sobre el desalojo en Las Pavas" in El Espectador August 8th 2009.

capacity for institutional and government intervention, development models, and the interests and agendas of a diverse set of actors.

On July 14th, 2009

On the morning of July 14th, 2009, the police inspector of El Peñón (Bolívar) began proceedings for the reestablishment of status quo in Las Pavas. Since January 2009, a group of residents of the District of Buenos Aires had occupied the lot. They claimed their right to occupy it within the framework of a request of domain submission on the lot. This was the same lot that the Consortium El Labrador had acquired in January 2007⁶, when its former landowner delivered it to the members of the Consortium, and which purchase was completed in March 2007 through a purchase contract. At 2pm, and after several interventions from those who were present, including the lawyer who acted on behalf of the Consortium and the PDPMM lawyer acting on behalf of ASOCAB, the proceedings were concluded: the residents of Buenos Aires who had entered the property several months before, had to return to their homes, with the exception of three women protected by a writ for the protection of human rights that was filed in that same day, who remained on the lot for a few days more.⁷

This scene, which to a large extent catapulted the case into the national and international public sphere, would seem like the final point in a dispute, but in reality it was a point of inflection in a yet unresolved legal and political conflict⁸. Although it is not easy to unravel this dispute, the first step is to inquire about the actors involved in it, the mechanisms through which such interventions have taken place, their reasons for getting involved, their interests and their agendas. In the task of identifying, characterising and mapping these actors, the resulting situation gives some clues. From these, key actors can be streamlined in order to understand the conflict, its nature and the course it has taken. This is the case of ASOCAB, the Consortium, authorities, local leaders and NGOs.

In the light of the above-mentioned facts, actors and press coverage, it is worth asking about the role played by the State, and the role that other actors have allocated and acknowledged to the State. What role should the State play in this case? What role has it, actually, played and what impact has it had in the current dispute? What are the implications of acknowledging the low or high levels of State intervention in this case and of the role that it should play? How have the community and the companies acted? How have we arrived at the current situation?

III. THE RECONSTRUCTION AND INTERPRETATION OF THE CASE

Historical context and the origin of Las Pavas lot

The original inhabitants of the District of Buenos Areas (El Peñón, Bolívar), whose origin in the zone goes back to the 1920s, responded as natives to an amphibian culture - to use the concept proposed by Fals

⁶ In December 2006 the promissory for sale purchase was signed.

⁷ Interviews carried out in Bogotá, Barrancabermeja, El Peñón, Santa Marta and Buenos Aires

⁸ As a reference, see the Chronology of the case in the Annexes

Borda⁹, that is, they made a living out of the river (fishing), extracted timber and developed some livestock farming. With the arrival of new migrations, mainly from Sucre, in the sixties and seventies, the region acquired a dynamic more closely related with the farming of basic food crops that included products like corn, yucca, rice, ahuyama, yam, sugar cane and bananas.¹⁰

In this context, at the end of the seventies, the Colombian Institute for Agrarian Reform INCORA initiated a process for allocating *baldíos* (uncultivated land or land that is not owned by anybody but belongs to the State) but without any support through technical assistance, access to credit or marketing strategies, all of which rendered this economy unstable and the farmers went to private moneylenders in order to develop their crops and livestock. The expensive nature of sharecropping backed up by private moneylenders led to a process by which these same moneylenders gradually acquired lots by buying up *mejoras* (improvements made by small farmers in lots without property titles), resulting in a concentration of the land and the start of intensive livestock farming. The “Si Dios quiere”, “No te canses” “Peñalosa” and “Las Pavas” lots were formed in this way and now correspond to a large part of the Las Pavas farm, which was purchased at the end of the sixties and the early seventies by the livestock company Las Pavas Ltda. Years later, Jesús Emilio Escobar bought these lots that added up to 1,184 hectares, along with other lots, which origin has not been clearly established, that added up to 1,658 hectares more. According to the Farmers' Association of Buenos Aires ASOCAB, these lots correspond to untitled land. According to José Macías¹¹ all the lots in the farm have legal titles, but some have *títulos de posesión* (possession titles) and others have *títulos de dominio* (domain titles).¹² In this way, the whole of the Escobar lot added up to 2,842 hectares that correspond to what nowadays is known as Las Pavas farm.

For 10 years, between 1983 and 1993, Mr Escobar Fernández exploited the farm through extensive livestock farming. He employed some farm workers from Buenos Aires. In the late eighties, the zone witnessed the strengthening of this type of cattle-raising.

However, throughout the nineties the area adjacent to Isla de Papayal was dominated by guerrilla groups, mainly the ELN (National Liberation Army) who massively perpetrated kidnappings, assassinations and cattle theft. This flowed with anxiety the lives of landowners, mainly of those owning larger farms. Armed conflict and the lack of personal safety drove Mr Escobar Fernández to abandon his property, leaving Gustavo Sierra in charge as the farm administrator. Other versions of these events, however, have associated the abandonment of the farm by Mr Escobar Fernández with the death of Pablo Escobar, as Jesús Emilio Escobar was rumoured to be his front man. The lack of actual facts and of

⁹ See, Fals Borda, “Historia Doble de la Costa”, Carlos Valencia Editores.

¹⁰ See, Appendix No. 1

¹¹ José Ernesto Macías is the manager of Aportes San Isidro- This Company is part of the El Labrador Consortium, which is made up by C. I. Tequendama and Aportes San Isidro (hereinafter referred to as The Consortium).

¹² Interview with the Independent Commission Las Pavas Case (hereinafter referred to as the Commission) with José Ernesto Macías, Bogotá. March 26th, 2010

solid evidence supporting these versions prevented the Commission from corroborating this type of accusations.¹³

In 1995, el Peñón became a municipality, after being segregated from the municipality of San Martín de Loba, the second smallest of the department.

The Farmers' Association of Buenos Aires (ASOCAB) was formed in 1998 with the purpose of "producing, marketing and processing agricultural products, developing agro-forestry and pasture programmes, providing healthcare services to the community, increasing awareness and training for the purpose of assuming a leading role in the modern State and highlighting the history of organisations, assuming leadership in locating productive employment to elevate economic living conditions...."¹⁴ Before the formation of ASOCAB, the women played a leading role as the Asociación de Mujeres en Acción (1996-1997); however, this association no longer exists.

Since 1994 and 1995 and given the abandonment of the land by the landowner Jesus Emilio Escobar, the inhabitants of Buenos Aires began a process of partial occupation of the abandoned lots. They partially exploited these lots until the beginning of 2003 when, in accordance with the testimonies of the members of ASOCAB, they were the subject of threats by one of the local commanders of the *Bloque Central Bolívar* BCB of the AUC, who was identified with the alias of "Comandante Raúl". At the request of the then farm administrator, Gustavo Sierra, the aforementioned commander of the BCB ordered the community to meet in the school, where they were ordered to leave Las Pavas farm. This generated a massive displacement of families, which was recorded by the *Personería* (a municipal office) of El Peñón.¹⁵ In the following years, some inhabitants of Buenos Aires intermittently entered the lots in order to partially occupy them. During this period (February 2003 to January 2006) illegal armed groups continued pressuring members of the local communities through the exercise of violence against their animals (horses, donkeys, pigs) and other criminal acts such as robbery of their household goods. In December 2005 and January 2006, according to the testimonies of the same members of ASOCAB, the farm administrator, Gustavo Sierra, in one of his sporadic visits to the place, showed up with a group of armed men commanded by alias "El Rapidito". They gathered the inhabitants of Buenos Aires together again, and under a threat of death banned all those who were partially using the lots from entering the Las Pavas farm. Acts of pressure also included destroying existing crops in the farm. According to the community, in January 2006 the men commanded by "Rapidito" destroyed the cocoa and basic food crops. It was a Creole cocoa of low quality requiring shadow and was sown in small and scattered batches.¹⁶

¹³ See, Appendix No.1.

¹⁴ See the act of constitution of ASOCAB, which has legal capacity No. 516 of the Chamber of Commerce of the city of Magangue, requested on October 3rd, 1998 and granted on December 15th of the same year. The legal representation and chairmanship is on behalf of Misael Payares Guerrero.

¹⁵ Interview granted by the Peñón Spokesperson to the Independent Commission during the first visit, on March 22nd, 2010

¹⁶ Interviews granted by different members of ASOCAB during the first and second visits, as well as a telephone interview carried out by the Independent Commission.

The interest of the Consortium in Las Pavas and the purchase (2004-2007)

In April 2004, representatives of Aportes San Isidro flew over the Las Pavas farm and visited it for the first time, "without finding any anomaly relating to the property and possession of the same"¹⁷. On the other hand, ASOCAB explained the absence of community members in the lot due to the fact that they had been threatened by local commanders of the *Bloque Central Bolívar* BCB of the AUC, at the petition of the then farm administrator Gustavo Sierra.

Also in 2004, Aportes San Isidro suggested to Palmeras de la Costa (a company based in Barranquilla) to purchase the lot jointly. Palmeras de la Costa, then, sent their technicians to take a look at the lot. They carried out a detailed lot survey and flew over several key points of reference. They were concerned about the low-lying land subject to flooding and did not pursue with the idea of buying it jointly due to the fact that based on their survey the area adequate for sowing palm plants would be considerably reduced.

Since their initial interest in the lot and knowing there was reference in the region to landowner Jesús Emilio Escobar's links with drug trafficking, Aportes San Isidro reviewed the Office of Foreign Assets Control-OFAC list, without finding him on it; they then learnt that he was a landowner of large extensions of land in Antioquia, where he grew coffee, and that he was easy to reach. All this, gave them the confidence to make the transaction.

During the second semester of 2006, Palmeras de la Costa made new trips to the area and built a map of the lot. This task took them three months, during which they were in Las Pavas farm. During this time, they found no evidence of occupation of the lot. In November 2006 and after Palmeras de la Costa abstained from purchasing the lot, Aportes San Isidro proposed to CI Tequendama (company of the Daabon Group) the joint purchase of Las Pavas, through the creation of Consorcio El Labrador, a consortium between both companies. According to José Macías, the manager of Aportes San Isidro, this was the first time that his company would participate in a consortium.

In December 2006, negotiations began between C. I. Tequendama and Aportes San Isidro, on the one side, and Mr Escobar Fernández, on the other, after signing an undertaking to purchase. On January 23rd, 2007, the Mr Escobar Fernández transferred the property and physically delivered the lot to the Consortium. The sale was completed in March 2007, with the signing of the public deed.

The activities of ASOCAB (2005-2006)

In turn, in 2005, and in view of the projected investment and plans to plant palm crops at Isla Papayal, ASOCAB attempted by various means – generally not well planned – to gain access to land. They attempted to reach landowner Jesús Emilio Escobar aiming at finding a way to purchase the lot. At this

¹⁷ Alfonso Dávila Abondano. José A. Macías, Readers Letters, "Sobre el desalojo de Las Pavas," El Espectador, 8 August 2009, <http://www.elespectador.com/columna155174-sobre-el-desalojo-de-pavas%20>

time, according to ASOCAB, Escobar rejected any possibility of a transaction in which the State could be involved. They then supposed that the easiest way to gain access to land was to initiate a domain submission process based on the abandonment of the lot, and they designed a strategy which included requesting a loan from the Agrarian Bank for sowing corn crops, with which they expected to produce the economic resources to eventually buy the lot and at the same time restate their economic use the land within the Las Pavas farm.

According to an inquiry made by the Consorcio El Labrador, on the above-mentioned loan, "the loan was approved as seed capital for establishing a corn crop that, in accordance with the terms of the same loan, was going to be sown in lots located in the La Rioja and La Cabaña farms and not in Las Pavas"¹⁸. By contrast, the community assured the Commission that the sowing was effectively going to be carried out within Las Pavas. Such loan, according to the Consortium's inquiry, "was for a value of 240 million pesos (approximately US \$120.000) from which only \$117'129. 670 pesos (US\$ 58.565 approximately) were paid out on August 9th, 2006".¹⁹ The inquiry conducted by the Consortium also shows that no payment of the loan obligation was made and, in November 2007, the Bank had to appeal to the Agrarian Guarantee Fund (FAG by its acronym in Spanish) in order to reinforce the fulfilment of 50% of the loan payment. ASOCAB still owes 50% of the loan.

Simultaneous to the corn project funded with the FINAGRO loan, as part of the strategy envisaged by ASOCAB, in 2005, with support from the Mayor's Office of El Peñón, members of ASOCAB began making nurseries of certified cocoa with the aim of planting it in Las Pavas. At that time, ASOCAB had 200 members. As cocoa producers, the ASOCAB members created a branch of ASOPRODCACAO, which was an association created many years before by Rafael de Jesús Cárcamo and mainly active in El Banco (Magdalena). This person became the main advisor of ASOCAB in these two projects (the one on corn and the one on cocoa) and in the strategy linked to them²⁰. In October 2005, ASOCAB members began the cleaning of the boundaries of the lots, spending 600 working days in conducting this task²¹.

One month later, in November 2005, ASOCAB carried out the first topographic survey, with the support of the then Mayor of El Peñón, Jacobo Angulo. According to ASOCAB members, 2,754 hectares was the measurement of the entire farm.

The corn project represented a setback for the community, as it failed due to: the effects of flooding in the area; the non-payment of the second and final outlay of 50% of the loan; and finally, the way in which Rafael de Jesús Cárcamo, intermediary between the community and the Bank, managed the resources²².

¹⁸ See DAABON, Las Pavas Project Situation of El Labrador Consortium and Community of Buenos Aires, Bogotá, February 2010.

¹⁹ Ibid.

²⁰ See, Appendix No.1.

²¹ See, Appendix No.1.

²² See, Appendix No.1.

On the other hand, and as said before, the planting of both certified cocoa and corn was aimed at serving as a guarantee for a loan, that was never requested, for the purchase of the lot. Around May 2006, ASOCAB produced a map called "Agrarian Reform". This map shows a planned land division of 2,678 hectares into 129 lots.

In parallel with the above enterprises, ASOCAP also sought to gain access to land by other means. With the endorsement from the mayor of El Peñón - who acknowledged the aspirations of this community- and based on Law 160 of 1994 -which stated the confiscation of property due to the lack of economic exploitation- on June 13th, 2006 and through its legal representative, Misael Payares, ASOCAB filed a request of domain submission of Las Pavas to INCODER (Colombian Institute for Rural Development).

The request argued that the lot had been abandoned and left without any economic exploitation for a period of somewhere between 12 and 15 years.²³

On June 9th, 2006, the No. 2 Office for Territorial Links (Oficina de Enlace Territorial) ordered to conduct a *visita previa* (preliminary inspection) in the Las Pavas lot. Two civil servants were appointed for this task: Luis Miguel Berrocal and Alfonso Rafael Buelvas Aldana.

Between June 20th and June 23rd, 2006, INCODER conducted a *visita previa* in Las Pavas, verifying the hydrography, class and state of the soil, total area, nature of economic exploitation and people occupying the lot. According to the report of this *visita previa* the aforementioned employees established the condition of the lot as summarized in the following table.

²³ INCODER, Letter to the Mayor of El Peñón Catalino Meza on the eviction order following the occupation issued by Cl. Tequendama and San Isidro S. Contributions A. in opposition to Misael Payares, Pedro Moreno, Eliud Alvear and others, 23rd June 2009, Bogotá.

Table No. 1
Results of the *visita previa* conducted y INCODER Visit following the request of domain submission of the Las Pavas lot (Buenos Aires, El Peñón, Bolívar) (June 2006)
 Source: Report by INCODER officials, June 2006, signed by Alfonso Buelvas.

District, Town and owner	Surface area (Ha)	Current economic exploitation	- Occupants of the lot and responsible for the crops; -Years of occupation; -Administration;	Conclusions regarding the feasibility of implementing Agrarian Reform (AR) Programmes
Las Pavas (La Quinta) El Peñón Emilio Escobar	146,7	Cacao (6 ha) Banana (3 ha) Corn (14 ha)	29 farmers 6 years ASOCAB	Suitable for AR
Las Pavas El Peñón Emilio Escobar	1.083	Cacao (70 ha) Basic food crops (15 ha) Corn (214 ha)	91 farmers 6 years ASOCAB	Suitable for AR
Peñalosa and Si Dios Quiere San Martín de Loba Emilio Escobar	198 + 42,5 = 240,5	Cacao (2 ha) Basic food crops (15 ha) Corn (15 ha)	22 farmers 6 years ASOCAB	Suitable for AR
TOTAL	1.470,2	Cacao (78 ha) Banana (3 ha) Basic food crops (30 ha) Corn (243 ha) AREA SOWN: 354 ha	142 farmers 6 years ASOCAB	Suitable for AR

The information presented above shows the existence of an inconsistency between the date when ASOCAB filed the request and the date on which INCODER decided to carry out the *visita previa*. This case is characterised by the existence of inconsistencies such as the one referred to. In this case, it is clear the responsibility of INCODER regarding the way in which institutions managed the problem. Furthermore, inconsistencies are also apparent in terms of the expedite way in which some proceedings were carried out, in contrast with more common unjustified administrative delays.

In the report of the *visita previa*, INCODER officials Alfonso Rafael Buelvas Aldana and Luis Miguel Berrocal Acosta state that there is evidence of "economic exploitation by 116 farmers carried out over a

period of 6 years²⁴.” The official also attests the abandonment of the property by its owner, Jesús Emilio Escobar. Official Buelvas signed this INCODER report. Nonetheless, Victor Figueroa Callejas, who acted in name of the Land Liaison Office (Oficina de Enlace Territorial did not sign the document that on July 9th, 2006 ordered to conduct the visita previa to the Las Pavas lot.

After this, Jesús Emilio Escobar appeared again. He returned to the Las Pavas farm in November 2006. Farmers from Buenos Aires say that he expelled from Las Pavas those who were inside the lot and armed men wearing army outfits helped him. Jesús Emilio Escobar destroyed the crops that the farmers were sowing and the nurseries that were part of their strategy to gain access to land, mainly the certified cocoa that the community had obtained through the Major’s office of El Peñón.

The community immediately communicated what had happened to Colonel Melo from the battalion stationed in Magangué. The Colonel arrived on the following day, but by that time, Jesús Emilio Escobar had gone to El Banco, where members of the community, who are running some errands at the bank in this town, saw him.

By then, in Regidor there were multiple complaints from local farmers about outrages carried out by palm farmers advancing their business operations in that municipality, which motivated, among other things, action by the Ombudsman's Office. In spite of the grave facts that occurred in the vicinity of Buenos Aires, the community of Buenos Aires did not go to Regidor, because they did not know what was occurring there. This was due to lack of roads that facilitate the access from one town to the other (back then, the road that today communicates both towns didn’t exist). Due this lack of roads, institutional and managerial activities were carried out in El Banco and El Peñón, to where people travel by boat using the Papayal arm, its main communication route.

Domain Submission, occupation of the lot and legal actions (2007-2009)

As previously noted, between January and March 2007, Jesús Emilio Escobar effectively transferred the lot to C. I. Tequendama and Aportes San Isidro, by the means of deed 619 of 10 March 2007 issued by Public Notary's Office 9 of the Barranquilla Circuit. After the delivery, tensions increased between the community and the companies of the Consortium. In October 2007, the lawyer for the Labrador Consortium filed a complaint against Francisco Morales and other members of ASOCAB "for promoting disturbing acts that affect the possession and ownership of the lot"²⁵.

During the course of these events, on July 28th, 2008, ASOCAB addressed a letter directly to President Álvaro Uribe requesting clarifications about land tenure. On August 1st, the President's Office transferred this request to INCODER. On the same date, the Private Secretary of the President of the Republic wrote

²⁴ In the lot Las Pavas (Quinta) they reported to have found 29 farmers living there, in lot Las Pavas they reported to have found others 91 farmers, and in the third lot they reported to have found 22 more farmers. (Acta de la Inspección Ocular del INCODER).

²⁵ Daabon, “Proyecto Las Pavas, Situación Consorcio El Labrador-Comunidad de Buenos Aires,” document supplied to the Commission, February 2010.

a letter to ASOCAB explaining that its request had been passed on to INCODER for its consideration and for any further considerations.

On November 11th, 2008, two years and 5 months after the *visita previa*, by virtue of the inspections carried out by INCODER officials in June 2006, the UNAT (National Land Unit) issued the Resolution 1473 of 2008. Through it, administrative proceedings were begun aiming at declare or not the domain submission, wholly or partially, of private ownership on the lot. According to INCODER officials, this delay was due to the transfer of competencies over land conflicts from INCODER to UNAT, an agency created by the Statute of Rural Development (Estatuto de Desarrollo Rural (Law 1152 of 2007) that, however, has a short life due to the unenforceability ruling of this statute. In relation to the Las Pavas case, the resolution document issued by INCODER, that includes the conclusions derived from the *visita previa*, states that the Mr Jesús Emilio Escobar Hernández (sic) owned the lot. This resolution document also states that 91 families were farming the land at Las Pavas, with a further 22 families at Peñaloza and Si Dios Quiere.

At the end of 2008 and after Aportes San Isidro (who acted as executor of the project on the farm) had planted of the first 70 hectares of oil palm, the area suffered a flood which affected the work advanced by the Consortium in Las Pavas. Due to this, the work of adapting the land for agriculture was intensified and protection structures were constructed in the lot.

On January 15th, 2009, a group of inhabitants of Buenos Aires entered the lot. According to their testimonies and the testimonies of religious leaders of the region, this entry was made peacefully and in harmony with the nature of the community, which is described by one of those leaders as unpretentious, unarmed and peaceful people. However, the testimonies of the members of the Consorcio El Labrador, show that the contractors and employees who were working on the lot had to move away, as farmers arrived armed with machetes and a home made short gun²⁶.

The Commission observed, during the three visits to Buenos Aires, a community making peaceful resistance from improvised shelters (or homemade tents) on a lot nearby the school.

As a result of this occupation, the Consortium starts a second legal action against the farmers: the Consortium requests police proceedings for the re-establishment of the status quo, against the members of ASOCAB. This request is filed by the Consortium at the Police Department of the municipality of El Peñón. It is only at this point, according to the testimonies of the members of the Consortium, that the companies learnt about the Resolution document issued by INCODER in regards to the request of domain submission of the Las Pavas lot.

In a letter sent to the mayor of El Peñón on July 23rd, 2009, INCODER certified that the farmer families are possessors and that an administrative procedure of domain submission is underway and warned

²⁶ Version of the Consortium ratified in the interview with the Independent Commission, June 8, 2010.

that the appeal issued by the town hall is illegal, because when a domains submission process has begun, the appeal which is being dealt with must be exerted as a legal action and not as a police one. In view of this situation, which obviously exacerbated the dispute, one of the questions raised was whether the companies of the Consortium had resorted to and exhausted all means and procedures to dialogue with the communities. Aportes San Isidro confirmed that it had attempted approaching the community before the eviction; however, according to José Macías, the village was divided in two groups: some favour the company and others were against it. According to Macías he himself went personally seeking to establish a dialogue²⁷.

In spite of the letter sent by INCODER, the request filed by the Consortium was followed by a police procedure. Through Resolutions No. 001 of January 22nd, 2009, Resolution No. 002 of January 28th, 2009 and Resolution No. 003 of February 25th, 2009, issued by the Municipal Town Hall of El Peñón, a police order was issued ordering the protection of the property and the eviction of those occupying the real estate belonging to C.I. Tequendama and Aportes San Isidro.

In view of this, Misael Payares Guerrero and Eliud Alvear Cumplido, acting in representation of ASOCAB, appeared before the Municipal Court of San Martín de Loba (Bolívar) and filed a writ for the protection of constitutional rights against the decision of the Police Department of El Peñón (Bolívar). They argued before the judge that, firstly, since 1997, 123 families had been in possession of the land and had been farming it and making improvements to increase the agricultural yield. Secondly, that the Police Department did not know about and violated the administrative action of domain submission by INCODER, which was being processed at the National Land Unit (UNAT). The court protected their rights by declaring that Resolutions 002 of January 28th, 2009 and 003 of February 25th, 2009 were without effect.

On June 5th, 2009, The Consortium appealed the decision of the Civil and Criminal Judge of San Martín, before the First Court of Circuito de Mompo, which modified the ruling issued on April 30th, 2009, thus refusing the constitutional protection appealed, on behalf of the community, by Misael Payares Guerrero and Eliud Alvear Cumplido.

The decision of the judge at the Mompo Court argued his ruling on the basis that Misael Payares Guerrero and Eliud Alvear Cumplido, “presented the writ for protection of constitutional rights before the Court in their own name and in representation of ASOCAB, whilst having absolutely no material evidence in their capacity as representatives of this Association, and even less on the existence of this body.”²⁸ In this way, the judge questioned the lack of legitimacy of those who set up the writ for

²⁷ Interview of the Independent Commission, march 26 of 2010, in Bogotá.

²⁸ See Juzgado Primero Promiscuo del Circuito, Sentencia de tutela 0060, Ref. Acción de tutela de Misael Payares vs. La Inspección de El Peñón, Mompo, June 5th, 2009.

protection of constitutional rights, and not the right itself, an even stranger situation as ASOCAB has Legal Capacity No. 516 of the Chamber of Commerce from the city of Magangue granted on December 15th, 1998, where the two aforementioned people appeared as members of the Association and Misael Payares appears as its president.

By virtue of the decision taken by the judge at the Mompox Court, the police procedure was carried out on July 14th, 2009. It was made easier by the peaceful withdrawal of the communities.

For its part, the community appealed the decision of the judge of Mompox, on August 18th, 2009, before the Superior Court of the District of Cartagena - Civil Division. The Court decided not to uphold the rights established by the writ for the protection of constitutional rights, noting that there were other more consistent legal considerations due to the inadmissibility of initiating a Writ for Protection against a Tutelary Decision, which had been taken previously. On this basis, the decision of the Police Department was upheld, re-establishing the status quo of the lot, which was claimed by C.I. Tequendama S.A. and Aportes San Isidro S.A.

On July 9th, 2009, ASOCAB wrote to the European Parliament and a group of international NGOs, seeking international solidarity as victims of armed conflict in a situation of internal displacement and requesting that the police proceedings scheduled for Tuesday July 14th were stopped²⁹. From July 17th, the national media began to publicize the case. For example, El Tiempo published "Controversy due to eviction of internally displaced people in south Bolivar". This was the first article circulated nationally on the case. On August 1st, El Espectador published a special report by Alfredo Molano Bravo "Las Pavas, an eviction chronicle".

For its part, on August 7th, Jens Mesa Dishington, Executive President of Fedepalma (the National Federation of Oil Palm Growers of Colombia), published a letter in El Espectador "Fedepalma and the report on Las Pavas". The following day, this same newspaper published a letter of response to Molano's article by Alfonso Dávila and José Macías.³⁰

Search for solutions in ad hoc spaces

Dialogue and, even, multi-actor actions regarding the impact of oil palm crops in the south part of Bolívar have been sought through at least two types of spaces. Attempts to foster dialogue and action

²⁹ Copy of the letter sent to the European Parliament and to NGOs such as FIAN (Germany), Sobrevivencia (Paraguay), Friends of the Earth (Indonesia) and Misereor (Germany) by ASOCAB (in this case signing the letter as the Association of Cocoa Producers of Buenos Aires).

³⁰ See Alfonso Dávila Abondano. José A. Macías, Readers' Letters, "Sobre el desalojo de Las Pavas," El Espectador, August, 8th, 2009

through these spaces have addressed two dimensions, on the one hand, a more general dimension that addresses the intervention of oil palm business in the south Bolívar, and on the other hand, specifically the conflict with respect to the Las Pavas farm.

Around March 2008, the Consortium showed its interest in participating in a space of dialogue held in Río Viejo to address oil palm in general and productive alliances in particular. It then sought to participate in a *Mesa de Diálogo* (Dialogue Table) in Morales (aimed at organising the oil palm farmers). They point out the lack of presence of members from the business community, which according to them was due to restrictions in the invitation process to participate.

After these two meetings and before the conflict on the Las Pavas farm started, the Consortium made some attempts to create a *mesa de diálogo* (dialogue table) promoted by PDPMM at the request of Miriam Villegas.

On August 28th, 2009 and in a context marked by the conflict on the Las Pavas farm, the Consortium sought to initiate a series of meetings, with the participation of NGOs like INDEPAZ. This meeting was, aimed at finding a solution to the conflict. On September 29th, the Consortium organised a meeting at the offices of the town council of Regidor. This meeting included Fedepalma and sought the assistance of this Federation in mediating with the community. The ASOCAB community, the religious leaders of the area and other invitees linked to the *Programa de Desarrollo y Paz del Magdalena Medio* (Programme for Development and Peace in the Magdalena Medio) declined the invitation to attend this meeting.³¹

However, the following parties attended the meeting: the environmental authority, *Corporación Autónoma del Sur de Bolívar* CSB (Autonomous Corporation of Southern Bolívar), C. I. Tequendama and Aportes San Isidro, as well as other companies and twenty five independent oil palm producers. This was the second time that Fedepalma accompanied the oil palm growers of the region. During this meeting, the CSB announced sanctions against the companies due to the infringement of environmental procedures. For its part, Fedepalma stated that "the companies are not in breach of any procedure, because the law does not require management plans", it only requires permission to forest usage and the use of water.

Within this context, Fedepalma presented the environmental guidelines. In 2009, when the case of Buenos Aires emerged, Fedepalma visited the area with the environmental authority and recommended that C. I. Tequendama should cease its activities. The CSB confirmed that there was no primary forest.

Despite this, the process linked to the domain submission of Las Pavas kept following its course at INCODER, and the Consortium argued against it, that:

³¹ Daabon, "Proyecto Las Pavas, Situación Consorcio El Labrador-Comunidad de Buenos Aires" document supplied to the Commission, February 2010, page 39.

- a) The Consortium was never informed of the Resolution document that initiated the domain submission process.
- b) The Resolution document that initiated the domain submission process was issued on November 11th, 2008. That is, 18 months after Escobar Fernández had sold the lot to the El Labrador Consortium (in March 2007).
- c) By not informing the interested parties, it had violated the fundamental rights to a due process and defence.
- d) The Public Registry Office with competence on the case did not report that the Resolution had been issued and therefore the decision to launch domain submission proceedings was not rendered public and for this reason the new owners were covered by the principle of good faith without fault.”³²

Shift in INCODER’s point of view of the problem (2010)

On February 23rd, 2010, INCODER, shifted radically in its view of the case. It argued that the process carried out by INCODER had felt into the violation of the fundamental right to a due process entitled to the registered owners of the lot, that is, the El Labrador Consortium. This Resolution document, in accordance with current officials of the Land Office of INCODER, José Ignacio Lacouture and José Rodolfo Castro, are also based on the existence of grave procedural faults in all the proceedings carried out in the case, and the need to reorganize the process, anticipating possible lawsuits against the Institution that in the future could push back all carried out proceedings. In this regard, the arguments are three:

1. The process has procedural errors due to the fact that during the previous stage of the request filed by ASOCAB to start a domain submission process, proceedings to carry out the *visita previa* to the lot were not signed by INCODER.
2. The lack of publicity of the process, which had to be announced, among other things, in the Office of Public Instruments Registry.
3. The notification of the process was made on behalf of the person who was not the owner at the time of issuing Resolution 1473 of 11th November 2008.

In 2010 and after cancelling the previous domain submission process, it was decided to initiate a new domain submission process. Following this, INCODER carried out a *visita previa* in May 2010. This new process, however, takes place in a scenario in which conditions existing in 2006, when ASOCAB filed its request, have changed substantially. In consequence, INCODER, through its decision of May 25th, 2010, abstained from initiating the domain submission process of the “Las Pavas” , “Peñaloza” and “Si Dios Quiere” lots, “for the lack of legal needed premises” and, consequently, it filed away all the proceedings.

³² El Labrador Consortium, idem (2010).

This result was expected as the ruling against the domains submission, was upheld in a situation in which the community could not enter the lot or stay in it and therefore, could not demonstrate, as they did during the procedures of 2006, that exploited the land, nor was the community able to demonstrate that there was abandonment by the landowners since its current owners are moving forward in their Plan for palm planting.

The reorganisation of the process argued by INCODER was based on the three aforementioned deficiencies that were identified in the previous process, but that, at the same time, form part of the documentary support and arguments put forward by the community to claim their rights. These rights were acknowledged by INCODER during the *visita previa* in June 2006, and were restated by the Resolution 1473 of 2008. For the community, today and under this new approach adopted by the State entity, their rights ended up unrecognised, and as a consequence, openly violated.

The performance of INCODER sends a conflicting signal. In its attempt to reorganise the process, it did not take responsibility for errors that might have committed and maintained for more than three years (June 2006 to February 2010), fostering the expectations and hopes of the community on the lot.

Moreover, INCODER committed publicly to the case, as shown in the following actions:³³

1. It accompanied and provided judicial advice to the members of the community.
2. It characterized the situation derived from the process of re-establishing the status quo on the Las Pavas lot as "an implicit eviction order, police measure that contravenes the provisions in Article 5 of Decree 747 of 1992".
3. It described the performance of the town hall of El Peñón in this same process, as non-compliance to the current legal regulation.
4. It called on State control agencies (*Procuraduría Judicial* and *Procuraduría Agraria*) to intervene in the case and it participated in spaces such as the *Mesa de Diálogo* (Table of Dialogue) convened by the Presidential Program of Human Rights.
5. It called on *Acción Social* to intervene in the emergency endured by the "farming community that shows off the status of internally displaced people".
6. It sought to convene the legislative entities to create policies and social strategies aimed at protecting food security.

By resorting on procedural aspects described as erroneous by the Office of Land of INCODER, this State agency fails to acknowledge the political, ethical and institutional reflections on the commitment with

³³ See INCODER, Head of the Office of Legal Advisor, letter to Foodfirst Information and Action Network, February 22nd 2010.

the community of Buenos Aires community. Such reflection and commitment were expressed in proceedings and measures described before February 22nd, 2010.

Attempts to engage in dialogue

The first contacts of the Consortium with the inhabitants of Buenos Aires date back to 2008, virtually one year after it had purchased the lot. This first attempt to approach the community was initiated when one of the members of the team of Alianzas Productivas of C.I. Tequendama visited the vicinity of Buenos Aires and the vicinity of Los Caimanes. This initial contact consisted of three exploratory visits. In this case, the arrival in the area was through members of the community. At this time, no contact with the local authorities or other key local actors was established³⁴. A map of stakeholders and key actors wasn't produced, and visits weren't documented.

Between 2007 and 2008 there were some attempts to avoid arriving at legal confrontations, through a process of dialogue promoted and developed by the Peace and Development Program of Magdalena Medio (PDPMM) through Miriam Villegas. She suggested to Alfonso Dávila that they participated in a *Mesa de Diálogo* (Table of Dialogue) composed by Dávila (C. I. Tequendama), José Macías (Aportes San Isidro), ASOCAB (legal representative), the Ombudsman's Office, the Attorney General's Office and the PDPMM. In the beginning they agreed and managed to meet twice, with the PDPMM initially acting in representation of the community. Through the PDPMM, the Consortium presented members of ASOCAB with a solution by way of an offer directed to address what the PDPMM had identified as threats to food security. This offer included land (200 hectares that would be delivered gradually, in accordance with the use that the community might make of the first 100 hectares that would be initially delivered) on the other side of the Brazo Papayal and resources to help find a solution to the problem of food security. ASOCAB rejected both offers.

However, the presumption that the Consortium was acting simultaneously outside of the *Mesa de Diálogo*, with the aim of obtaining its legal claims by using its high power of influence over State authorities linked to the case, drove the PDPMM to give up participating in this space for dialogue.

Weeks later, and in order to arrive at a final agreement when faced with the imminent action of re-establishing the status quo due to the occupation of the lot by ASOCAB, the Consortium accepted PDPMM's proposal to initiate a dialogue, provided that balanced conditions were created between the actors. The Consortium, then, proposed that "both parties leave the lot" with the aim of creating a situation in which the possibility of dialogue would not be detrimental to the Consortium's interests on the lot. If the presence of members of the community in the lot was extended for certain period of time,

³⁴ In Río Viejo, the strategy used by one of the Consortium members was different as they not only contacted the community, but also the local authorities.

this will work in the community's favour. Neither ASOCAB members, nor the PDPM officials accepted this proposal.³⁵

The absence of dialogue did not halt the plans of the Consortium. The driving economic interests of the Consortium continued rendering the Papayal Island as a "spot for development". Its main objective is to finish its sowing plan. It is worth pointing out that the objective is the production of oil for bio-diesel.³⁶ The plan involves 60,000 tonnes/year of oil palm fruits and the construction of an extractive plant at Regidor, specifically at the Camagüey farm of César Gil. This major business opportunity will be further enhanced through the establishment of a free trade zone in the area.

Participation and points of view of other parties with regard to the case

The PDPMM begins to support the farmers on the day of the eviction, on July 14th, 2009. But before this, it had been involved in the case through the Parish Priest of Río Viejo and through professionals supporting the PDPMM, who acted under the strategy of creating scenarios for dialogue and exchange of ideas regarding inclusive development and peace, towards local governance and governability, and cultural development of the region. It provided support to the local farmers in order to reduce asymmetric relations, by strengthening their ability to dialogue with the State and the companies.³⁷ The view of the PDPMM is that the farmers remain in the land, that is, they should maintain the settlement.³⁸

On September 13th, 2009 the Las Pavas case gained an international dimension with the publication of The Observer in London. This makes the Body Shop enter onto the scene, an English company that purchases the palm oil used to manufacture its soaps from DAABON. Until the date of the publication, that is, 8 months after the occupation of the estate by the farmers and 2 months after the eviction, DAABON had not officially communicated to The Body Shop about this situation. There are two basic reasons why DAABON confirmed not to have informed The Body Shop: i) because the lot is not in production, and ii) the oil that is purchased by the English company doesn't come from this lot³⁹.

The Body Shop, in spite of the fact that it could simply stop purchasing the oil from DAABON, decided to take the "most difficult route" and is trying to understand if the DAABON group has acted in good faith, suggesting that the debate over land tenure is a core issue in Colombia that surfaces when complex problems are invoked in regards to oil palm sowing. Therefore, this should offer feedback to the RSPO. The Body Shop is aware that if it leaves the case, the farmers would be even more unprotected, that the Consortium companies would perhaps be less interested in the situation of the community and that

³⁵ Interview of the independent Commission with Miriam Villegas of the PDPMM on 28th April 2010 in Bogotá.

³⁶ Interview granted to the Independent Commission by José Ernesto Macías on 26th March 2010.

³⁷ Interview granted to the Independent Commission by the officials of PDPMM in Barrancabermeja on 20th March 2010.

³⁸ Interviews granted by religious leaders and by Miriam Villegas of the PDPMM on 28th April 2010 in Bogotá.

³⁹ Interview granted by Alfonso Dávila to the Independent Commission on 17th February, 2010

somehow the high profile of the case is maintained by the presence of The Body Shop. The Body Shop focuses its attention on community groups, on fair-trade programmes and stable long-term agreements.

During September and October the statements about the case by the Consortium are increasingly present in the local mass media and new reports are published in magazines such as the one published by Cambio on October 8th, 2009.

On October 14th, representatives of the DAABON group met with representatives of Christian Aid to discuss the case⁴⁰. Equally and with the same intention they met with Christian Peacemaker Teams. In none of the cases were concrete results obtained⁴¹.

Christian Aid became involved in the process in July 2009 in support of the PDPMM, its co-partner since 2004⁴². Christian Aid has supported co-parties in Choco since 1997, even before the development of the oil palm project in year 2001. It supports its co-party *Comisión Intereclesial de Justicia y Paz* which has worked with communities in Curvaradó since 2001. Additionally, since 2007, it has had a project financed by the European Union in Curvaradó.

Christian Aid engaged in the process seeking to support local farmers and one of its objectives is to contribute to ongoing debates pertaining to palm-oil monoculture. For this reason, it seeks to broaden the case from a narrow local perspective and expand it to a much wider context, as it is a situation that threatens many communities that are powerless to halt the impact caused by this type of situations. The hypothesis of Christian Aid is that Las Pavas isn't an isolated case.

IV. GEOGRAPHICAL AND ENVIRONMENTAL CONTEXT LAS PAVAS AND THE ISLAND OF PAPAYAL

⁴⁰ Daabon Group. "Comunicado: Disputa las Pavas," oct. 19, 2009, <http://www.daabon.com/pavas/pdf/Comunicado%2019-10-09.pdf>.

⁴¹ Daabon, *Proyecto Las Pavas, Situación Consorcio El Labrador-Comunidad de Buenos Aires*, document shared by the Consortium with the Independent Commission, February 2010.

⁴² It has funded Peace Laboratory programmes, mining roundtables, Ciénaga del Opón, and land ownership and production projects.



The area of the Las Pavas farm is registered in the municipalities of El Peñón and in a lesser proportion that of San Martín de Loba, and the Regidor and Río Viejo municipalities also have a strong influence, all of which belong to the department of Bolívar and are found on Papayal Island (see Map 1). Isla Papayal is formed by the inlets of Río Viejo and Morales, which are tributaries of the River Magdalena and by Caño Papayal. It forms part -along with the other two islands of Mompox and Morales- of the Momposina Depression that became the most boggy and flooded region of the country due to the vast quantity of inlets, rivers, swamps and marshes that form the rivers Magdalena, Cauca and San Jorge. The territory of Isla Papayal covers the entirety of the towns of El Peñón and Regidor and a small but significant part of the town of Río Viejo, as the main centre is located there, and marginally San Martín de Loba.⁴³ The island is characteristically connected to the southern region of Bolívar that corresponds to the physiographic unit associated with the lower section of the forested massif of Serranía de San Lucas.

Bolívar is the department with the highest number of wetlands in the country. The area has 645 named swamps, corresponding to 34% of all the identified swamps in the country (1900), covering 113,736 square metres, as well as 3549 unnamed swamps, corresponding to 26.6% of all the unidentified swamps in the country (13,334), covering an area of over 35,000 square metres (Ideam, 1998)⁴⁴. The highest concentration of swamps is located in the Mompóx Depression, accounting for some 80% of the area

⁴³ Due to the marginal nature of San Martín de Loba compared to the other more significant towns, this document will refer to Isla Papayal in terms of its connection to El Peñón, Regidor and Río Viejo.

⁴⁴ Ideam (2001). El Medio Ambiente en Colombia. Tomo 4, El Agua. Editor Pablo Leyva. P. 128

(UN, 2000)⁴⁵. The municipalities of Papayal Island, which covers a surface area of 60 thousand hectares⁴⁶, have strategic ecosystems that “connect” the Serranía of San Lucas with the complex of wetlands of the Momposina Depression.

For the purposes of this document, we can see the fact that the sub region South Bolívar is second in importance in offering water from the lower basin of the river Magdalena⁴⁷. Both in the wetlands of the micro region (Papayal Island) such as in the sub region (South Bolívar) hydrological and ecological processes are occurring as a product of the interaction between the soil, water, flora and fauna that explain the large variety of functions being carried out, not only at local level for the farmers, but for the inhabitants of the whole region of South Bolívar, and, additionally, for the inhabitants of the divergence zones of the River Magdalena: filtration and storage of water, aquifer recharge, natural reproduction of reophilic species unique to the Magdalénica basin⁴⁸, retention of nutrients and sediments for controlling contamination and flooding of the river. They are a critical habitat for conservation of the collective inheritance of biodiversity and reduction and control of flooding; as well as carbon sequestration and a regulatory function for the hydrological passage and microclimate.

Papayal Island is made up of a complex of wetlands and swamps that make it up, among other things, due to the complex of wetlands in Uvero, Mataperros, Ponedera, la Escondida, Solera and Pone Ollas, which in turn are interconnected with the wetlands of the municipality of Río Viejo, El Peñón, Regidor, Morales and Altos del Rosario. As observed, the main resource of Isla Papayal is water, as it determines the ecological structure and functions of the swamps. These functions are particularly vulnerable to the change induced by human beings or by natural causes and “have repercussions on non-industrial fishing and on the water table level, which has a bearing on good agricultural development, the production of wood, the storage of water and the regulation of flooding, at the same time as establishing the coastal strips, purifying the waters and they are essential for the survival of species of flora and fauna, some of which are in danger of extinction”⁴⁹.

Appendix No. 2 explores the environmental issues of this report and contains a list of some of the bodies of water in the Las Pavas estate and adjacent properties⁵⁰. It is noteworthy that a large part of the bodies of water are not named, making more accurate descriptions difficult. On the other hand, and as

⁴⁵ Plan de Manejo Integral de los Humedales de la Depresión Momposina. Ministerio del Ambiente, Vivienda y Desarrollo Territorial. 2002.

⁴⁶ Proyecto CAEMA– ARD/CAPP. Estudio De Evaluación Ambiental. Proyecto de Palma de Aceite (*Elaeis Guineensis* Jacq.). Municipio de Río Viejo, Departamento de Bolívar. Colombia – Sur America. March 31st, 2005.

⁴⁷ Ministerio de Ambiente, Vivienda y Desarrollo Territorial (2002). Plan de Manejo Integral de los Humedales de la Subregión de la Depresión Momposina, parte baja de los ríos Cauca, Magdalena y San Jorge y Cuenca del río Sinú en el área de la jurisdicción de la CSB, CVS, Corpormojana, Corpamag y Corantioquia.

⁴⁸ “Blancas”, big as the bocachico.

⁴⁹ Consejo de Estado, Sala de lo Contencioso Administrativo, Acción Popular, Septiembre 20th, 2001, M. P.: Jesús María Lemos Bustamante en Ponce de León, Eugenia “Humedales. Designación de Sitios Ramsar en Territorios de Grupos Étnicos en Colombia. Abril 2004.

⁵⁰ Some of these were listed based on the information provided by inhabitants of Buenos Aires in the second field visit. See Appendix 2.

was mentioned above, the Las Pavas estate has a small fringe of secondary forest still belonging to it, due to, among other things, the protection provided by the inhabitants of the sector.

To the north, the island borders the town of El Banco (Magdalena); to the east, Tamalameque (Cesar) and La Gloria (Cesar); to the southeast, the town of de Rio Viejo (Bolívar) and to the east, San Martín de Loba (Bolívar). Historically the area has been socially, economically and politically influenced by the surrounding towns, which also includes, to a certain extent, the conflict experienced in the region. The dynamics of colonisation have mainly attracted waves of migrants from the departments of Sucre, Magdalena and from the Depresión Momposina.

Due to its geographical location, Isla Papayal is influenced to a major extent by the social, economic and political impact of its two sub-regions and, to a lesser extent, the impact of a third region. Regarding Rio Viejo and Regidor, the influence is primarily from Aguachica (Cesar), located on the eastern bank of the Magdalena River, as its economy is mainly controlled by investors and agricultural cooperatives from this town. In turn, the economy of this city was strengthened and increased with respect to its radius of action, the neighbouring municipalities on remaining on the Troncal de Oriente, a main road that joins Bogotá and Bucaramanga with Santa Marta.

In the second place, the municipality of El Peñón closest to Brazo de Loba, has a greater commercial and migratory flow with Magangué, Mompóx and El Banco, the latter municipality belonging to the department of Magdalena.

Finally, this area also has links (to a lesser extent) with the sub-region of Mojana, located at the western margin of the foothills of Serranía de San Lucas, via sites such as Achí and other towns in Bolívar with strong economic links to San Marcos (Sucre) and Caucasia (Antioquia). This cross of influences is also reflected in the fact that the commercial registry of South Bolívar is looked after by three different Chambers of Commerce, as are those of Magangué (Bolívar), Aguachica (Cesar) and Barrancabermeja (Santander).

The Municipality El Peñón is located between the river Magdalena and el Brazo Papayal, this inlet has a length of some kilometres until it rejoins the river's main channel. The El Brazo Papayal is subject to the dynamics that are characteristic of the flood plains of the river Magdalena, overflowing banks, development of dikes, complexes of banks and other wide varieties of geo-forms. It also receives waters from the streams of the Serranía de San Lucas and therefore it is considered as inflow (Ingeominas [The Colombian Institute of Geology and Mining 1999])⁵¹.

The bodies of water from the boggy complex of river Magdalena are a system for hydraulic regulation, because they achieve the purpose of reducing the flooding and of “discharging” water during the drought period. In the area they are essential habitats for various species of fauna: they function as places of supply, protection and rearing.

⁵¹ Ingeominas (1999). Análisis de la Dispersión Geoquímica de Metales Traza en el Río Magdalena Sector Simití-Regidor, Sur de Bolívar.

The countryside around the rural area of El Peñón municipality is notable for the presence of a secondary woodland⁵² of a little over 500 hectares, 30% of which falls under the control of Las Pavas⁵³. Because of its high yield and therefore its poor presence, "these wooded remnants are made up of in situ genetic banks"⁵⁴ and fulfil an ecological function for the conservation of certain species of fauna, as well as water regulation for certain canals in Las Pavas and its nearby areas⁵⁵; b) many weeds (over 2000 hectares); and c) marshland and lake-based vegetation amounting to approximately 14,000 hectares (i.e.: almost 41% of the total area of the municipality).⁵⁶

With regard to wetlands, the standards only permit uses which ensure the conservation of ecosystems - which are public property - in other words which are under a closely-monitored protection scheme which must be complied with above all other standards, and we must therefore consider wetlands and marshland as being areas of special environmental importance and which must as a consequence be protected. According to the International RAMSAR Convention, "Wetlands are areas of marsh, fen, peat land or water, whether natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salt, including areas of marine water the depth of which at low tide does not exceed six metres"⁵⁷.

V. KEY MESSAGES OF THE LAND DISPUTE AT LAS PAVAS: UNDERSTANDING AND EXPLAINING THE PROBLEM

This point relates to the main messages taken from the complex land dispute in Las Pavas. For a better understanding of these messages, please see this summary document and its appendices.

V.1 Context: the problem has become a complex social and political issue.

To address the dispute between the El Labrador Consortium and ASOCAB one has to bear in mind the nature of the context and its salient features, since they are closely intertwined. Las Pavas is located in a region that, like many other areas of the country and the world, can be considered a complex milieu. This is a milieu in which all or some of the following factors are present: armed actors acting outside the

⁵² According to the literature this is "one of the most threaten ecosystems from the Neotropic", and in Colombia is consider one of the most degraded, fragmented and less know ecosystems. Some assessments show that "of dry and sub-humid forests in our country only exist about 1,5% of the original coverage that was 80.000 km², this is why their conservation and recuperation is a high priority in Colombia". Janzen, 1993; Etter, 1993. On: GEMA, 1998 y Evaluación Ambiental Estratégica del Ministerio de Ambiente, Vivienda y Desarrollo Territorial y el Instituto de Biodiversidad, 2008.

⁵³ From: "Plan de manejo ambiental para el cultivo de palma africana Empresas Palmeras El Labrador, Amiagros S.A., Palmeras Libre y Aportes San Isidro" document supplied to the Independent Commission by señor José Ernesto Macías, Aportes San Isidro

⁵⁴ According to FAO, 2002,

⁵⁵ Plan de Manejo Ambiental. Aportes San Isidro. Op. cit.

⁵⁶ El Peñón municipality. EOT, 2001.

⁵⁷ Law 357 of 1997, ratification of the RAMSAR Convention.(Iran, 1971)

law, illegal economic activities, fragile institutions and/or weak governance.⁵⁸ This complexity is due to the following conditions:

a. A region involved in a context of armed conflict; a conflict that has not yet been overcome and which has had serious impacts on the civilian population

Despite the fact that it has not been an epicentre of the armed conflict in Colombia, Isla Papayal has been historically influenced by several insurgent armed groups such as the National Liberation Army ELN (the Anorí Company and the Alfredo Gómez Quiñonez Front mainly at Rio Viejo, from Serranía de San Lucas), to a lesser extent the Revolutionary Armed Forces of Colombia FARC (Fronts 37 and 24 also from Serranía de San Lucas) and the Self-Defence Groups (AUC) at the head of the *Bloque Central Bolívar* BCB (led by alias Macaco) and, within it, the *Frente Cacique Pipintá* (led by Ernesto Báez). Currently, there is evidence that armed groups outside the law are carrying out paramilitary activities that include threatening social leaders and perpetrating criminal acts.

Throughout the 1990s but especially between 1996 and 1997, the region was affected by an increase in kidnappings perpetrated by guerrillas mainly acting against ranchers in the area, as well as livestock theft, which seriously affected this economic sector.

Landowners were forced to leave the region. Massive kidnapping and cattle-theft affected cattle ranch all over in the region. Between the early and the late 1990s, Rio Viejo alone went from having a herd of 27.500 animals to have just 7.500 cows.

This and the lack of personal safety provided by the State contributed to generating conditions conducive to the rise and expansion of private modalities of providing security. This was through a process of paramilitary intervention that was originated in the southern part of the Sur de Bolívar region and gained control over the area nearby the Serranía de San Lucas and began to influence the municipalities of Isla Papayal.

The paramilitary axis bordered the entire Isla Papayal from the south, west and north. Only urban and rural areas of both Regidor and Peñon had a reduced influence, unlike the rest of region. Although these two municipalities also came under paramilitary control, the paramilitary activities were less intensive, compared to Rio Viejo.

The impact of the armed conflict in the region generated forced internal displacement, particularly in Rio Viejo that throughout the period from 1997 to 2009 ranked higher than El Peñon and Regidor as expelling area.⁵⁹

⁵⁸ Regarding these features and its implication for business practices, see, among others: International-Alert Conflict-Sensitive Business Practice: Guidance for the extractive industries 2005; Business and Human Rights: the role of business in weak governance zones: Business proposals for effective ways of addressing dilemma situations in weak governance zones 2006.

The characteristics of the forced internal displacement differed in the three cases. In the case of Rio Viejo and during this 13-year period, individual displacements were far more common than massive ones. This pattern is linked to the arrival of paramilitary squads in the region, with a clearly defined rationality in terms of the adaptation of the resources-objectives to control the territory. This phenomenon was accompanied by selective threats, which were often made to individuals, using lists drawn up beforehand. The internal displacement in Rio Viejo peaked between 1997 and 2002 - a period of paramilitary occupation and consolidation in the area.

In the case of Regidor, although individual displacements were also observed, the numbers compared to those leaving Rio Viejo during the same period were vastly inferior. The forced internal displacement in Regidor can be explained by the proliferation of specific threats issued in 2004, combined with so-called "social cleansing campaigns" ran by self-defence groups whose political leader and security structures had no setback in the urban centre of the municipality, in spite of the presence of the police and the armed forces in the same municipality.

With regard to El Peñón, the situation was atypical compared to the other municipalities, as 2002 experienced a massive displacement of 840 persons – a departure from the individual pattern of displacements observed over the 13-year period.⁶⁰

b. A region where the state institutions (regional and local) are extremely weak. A situation also reflected in very few interventions by the central State

The financial structure and management system of the three municipalities is extremely weak. In the case of El Peñón, 62% of its regular income is spent on administrative expenses. In Rio Viejo and Regidor administrative expenses correspond to 73.7%, and 92% respectively. The three municipalities are highly dependent on national assistance, averaging over 92%.

In general, the financial situation of these three municipalities is of worrisome due to the high participation of the country's resources in their total income. This trend reveals their incapability to secure financial self-sufficiency. This means that they are unsustainable and highly inefficient. Such an untenable situation reflects on low levels of investment in social projects and infrastructure.

The capacity for savings in the three municipalities is also extremely low and their situation remains extremely precarious in terms of fiscal performance compared to the national average (in the lowest levels). Even compared to the Department of Bolívar they are lagging far behind.

⁵⁹ See, Appendix No.1.

⁶⁰ Contrary to the case of Río Viejo, this massive displacement is bewildering. In accordance with the *Personería* of El Peñón, the case is linked to the inspection of Buenos Aires. However, the central event consisting of a threat to the population was only recorded in June 2003, which was the starting point for the use of force in the conflict.

Projected sources of income to support its budget are also limited compared to the level of investment currently entering the region through the palm oil companies. To provide a single example, the investments required by the El Labrador Consortium to set up 2000 hectares of palm (USD \$16 million) are equivalent to around six years of El Peñón's municipal budget (based on figures for 2009)⁶¹.

Political participation and institutional weakness

In terms of electoral political participation, the region is frequently used by departmental politicians to fraudulently increase their number of votes. The tradition in Regidor, for instance, is significant in this sense. It has been highlighted several times as being a high-risk due to atypical participation levels.⁶²

In a methodological exercise carried out in advance of the 2006 Senate elections, the Electoral Mission, qualified the situation in El Peñón, Regidor and Rio Viejo as providing sufficient evidence to raise questions about the legitimacy of the electoral results and recommended a thorough review of the procedures as well as the staff working for the Local Registry responsible for monitoring the forthcoming elections.

During the latest elections for the Congress in March 2010, El Peñón together with the towns of Arenal, Calamar, Córdoba and El Guamo were flagged up as presenting the highest risk in the Department of Bolívar with regard to the Senate elections.⁶³

Institutional weakness, poverty and access to basic services

The financial crisis in the municipality and the high percentage of its income spent on bureaucratic expenses is reflected in its failure to adequately provide public services. The sewage system supplied by Regidor and El Peñón is practically non-existent and the El Peñón aqueduct only supplies under half the homes in its area; furthermore, the inhabitants who do receive such services report that the quality of the water supplied is extremely poor.⁶⁴

In terms of the figures for Unsatisfied Basic Needs (UBN), the situation in El Peñón and Rio Viejo is serious as they post UBN percentages of over 70% for El Peñón and 80% for Rio Viejo. This situation is far worse in the rural areas of each of the municipalities, with the exception of Regidor.

⁶¹ This does not imply that private investment is negative *per se*. This comparison only seeks to point out the critical financial and institutional situation faced by these municipalities.

⁶² Source: Misión de Observación Electoral, MOE (2010). Mapas de riesgo por anomalías e irregularidades electorales 2010. Mapa de riesgo consolidado por variables electorales. Senado 1998-2006 y Cámara 1998-2006. www.semana.com/documents/Doc-2019_2010218.pdf.

⁶³ See AjáCartagena: 9 municipios de Bolívar presentan riesgos (N.D.)

⁶⁴ For more information see Appendix 4.

c. A region experiencing a harsh transition from pre-modern mixed farming methods to modern agribusiness practices affecting the communities settled in the region on a social and cultural level

There have been three significant stages in the history and territorial organisation of the Isla Papayal region.

1. Firstly, the original inhabitants of the region were historically associated with the area and had adapted to the natural conditions of the swampy and flood-prone region, criss-crossed by numerous inlets, channels, swamps and bogs formed by the Magdalena, Cauca and San Jorge rivers. Very early on, their subsistence was linked to fishing, small-scale wood exploitation and small-scale livestock farming.
2. Secondly, a stage marked by a growth in agricultural practices (during the 1960s) through subsistence crops and the selling of the excess produce of subsistence crops such as maize, banana, cassava and rice. The State had a very weak and temporary participation in this process, through the provision of loan-credits to farmers. However, this loan-credit system was extremely short lived and gave way to private moneylenders who started to acquire and accumulate the improved land of local farmers, who had put up their land as a guarantee for the loan credit granted.

The crisis in the farming economy, caused partly by a lack of major support from the central State and the weakness of the macroeconomic policies in this sector, resulted in a land-occupation process that led to a consolidation of a land ownership system based on the concentration of agrarian property. This system led to a bi-modal structure of land tenure, in which the emergence of large livestock farms was at the expense of smaller farms, many of which were *baldíos* granted to local farmers by the Colombian Institute for Agrarian Reform (INCORA).

Any social conflict, however, was somewhat dampened by informal arrangements between local farmers and landowners. The latter allowed the farmers to have access to the land in order to farm consumer goods. Additionally, local farmers could fish in the wetlands and channels that had survived to the first environmental impacts derived from the consolidation of the large rural livestock estates.

This pattern can also be observed among the inhabitants of Buenos Aires, a poor and marginal community⁶⁵, which gradually experienced a slow transformation of its territory. As it was the case with the rest of the region, the inhabitants of Buenos Aires witnessed the shift from the exploitation of natural resources through fishing, timber logging and livestock breeding; to the rise of agriculture and the emergence of an extensive livestock model characterised by:

⁶⁵ For more information see Appendix 4.

- o Low job creation
- o No taxes paid into the local system
- o Irrational use of the soil which can be seen in the low yield per hectare for the existing livestock
- o A process based on land concentration according to a bi-modal structure
- o A production model with a fairly detrimental effect on the environment
- o A farming system, unsuited to generating modern production relationships.

These characteristics, ended up favouring cultural backwardness of the region, which was also fostered by a notorious lack of communications, high illiteracy rates and a limited education system. However, at the same time, this allowed communities to survive, insofar as this land use model left some room for the use of land by impoverished farming families seeking to secure their subsistence. This model also allowed them to maintain their traditions. A sense of community, solidarity and the hierarchical nature of authority, was then, maintained.

One of the most significant aspects worth noting is that in this model a perception of land in terms of its value of use could remain intact. Consequently, the value of the land remained unaffected by the commercial market and prices did not rise excessively. Culturally, therefore, the factors favouring a transition to a free-market based economy did not occur.

3. Thirdly, a stage marked by corporate investment in palm crops, which has profoundly transformed the cultural, social and economic scene by creating a radically different social, economic and cultural context over a very short timeframe. Investment in palm plants:
 - o Introduced production relationships centred on a market economy
 - o Introduced the commercialization of social relationships through the establishment of a contract system
 - o Suddenly changed in the value of land use in terms of a market economy and thereby increasing its exchange value leading to sharp rises in the price of land⁶⁶.
 - o Introduced individual relationships vis-à-vis a modern credit system. This has brought to an end the pre-modern practices common in the region during the period prior to the process

⁶⁶ When the oil palm industry arrived in the area, land prices were significantly low: between \$300.000 and \$700.000 Colombian pesos per hectare. Today one (1) hectare can cost more than 3 million Colombian pesos.

of land accumulation that was led by investment capital and users based in the surrounding area.⁶⁷

- In establishing a correlation between credit and formal land ownership to provide guarantees for the financial system, it had radically changed the value of the land and has resulted in the sudden introduction of new market relationships, which are profoundly different from those existing previously. This is an ongoing process.

Expression of these three stages in the case of the Buenos Aires community

The first stage focused on fishing, breeding animals and logging wood; and the native inhabitants of Buenos Aires originally carried out all these activities combined with local bartering practices. Bartering took place in shops in the town centre where newly arrived settlers (carrying out farming) exchanged their produce, with the indigenous population supplying fish and meat.

In Buenos Aires the second stage saw the consolidation of an economic model based on extensive livestock farming. The inhabitants entered into arrangements with landowners through a system of sharecropping that guaranteed their access to land and that they were allowed to farm the land that was not used for pastures. The story of the Las Pavas farm provides a good example of such agriculture practices with local farmers sowing basic food crops such as maize, banana and cassava.

Regarding the third stage and the Buenos Aires community, corporate investment has led to a change in the perception of the socio-cultural environment and, at the same time, has infused inhabitants with anxiety vis-à-vis the traditional relationship they maintained with the land under the land tenure structure that prevailed when land was dedicated to extensive livestock farming.

This infused the community with alarm and anxiety and drove it to develop a distressing fight for survival in facing the disappearance of the pre-modern relationships that previously ruled their daily existence. This situation confronted them with a need to explore new types of relationships in a market economy, placing an emphasis on the pressing need for land ownership as a means of guaranteeing their future existence.

d. This is an area affected by the lack of clarity in the origin of landownership and the lack of order in the processes of legalizing land tenure

In Isla Papayal, settlers from various regions originally colonized uncultivated areas; some of these tracts of land were later granted to the settlers whilst others continued to be considered as uncultivated land subject to informal rights of possession. Land property in this area was consolidated through informal practices that included purchasing reclaimed land from the settlers and formalizing this ownership

⁶⁷ For a better understanding of this point see Annex 1.

through State grants. Much of this land was subsequently transferred by the means of purchase agreements that in many cases resulted in the accumulation of land by a single owner. This ended up reversing the initial land grants that were aimed at democratizing land ownership.

In terms of the current laws, the above scenario has resulted in an extremely problematic situation with regards to land titles in the area. The region is marked by generalized problems in the legality of land tenure and by the widespread adoption of informal practices of land ownership. These practices mainly became entrenched during the period of extensive livestock farming.

With the advent of corporate investment in palm oil crops, the issue of land ownership and the legality of land tenure has become a key element in the production process. This is mainly due to the need to provide guarantees (via bone fide titles) to gain access to loan credits that are needed in order to have a working capital and are also required to sustain producers during the non-production phase. Such issues are also crucial to guarantee the security of major investments in crops with long-term returns, as is the case of palm oil.

The Commission also observed that companies have adopted diverse approaches to the complex issue of land ownership. In several cases, the land-consolidation process continued through the purchase of small to medium-sized estates to form wide tracts of land to be used for planting palm oil crops. With regard to such purchases, the Commission received dozens of reports in Barrancabermeja and Regidor about the harassment to which small and medium-sized landowners have been subjected. This harassment has resorted to actions such as: diverting bodies of waters, blocking access to public highways or changing communal shallow areas; all of which is seriously affecting the sustainability of the existing small farmers.

Complaints voiced in Regidor and Barrancabermeja also talk about threats – in what is locally known as the Numa case– from illegal armed groups in relation to local farmers who were claiming the right of possession of a disputed lot, which had been abandoned by its presumed owner, who in turn had been threatened by guerrillas. The farmers were forced to abandon the lot and are now considered as internally displaced people. The lot was ultimately converted for a palm oil crop.

The Commission also collected testimonies, mainly with regard to Regidor, concerning the steep rise in the price of land as a result of the investments in palm crops, which has led to a widespread drainage of the wetlands and the areas of shallows that are subsequently incorporated into the informal rights of land possession and then might be entitled within the traditional land tenure system. This type of scenario has also been observed in cases such as one in El Peñón. Members of ASOCAB also reported being obliged to set up a citizen's watch type of program to monitor and prevent the spontaneous and illegal occupation of wetlands and shallow areas by persons seeking to sell this land at a premium to palm oil companies. All these events have led to an extremely messy situation that requires further investigation to clarify the legal status of land ownership; furthermore, any infringement of the rights pertaining to public areas that are not permitted to be transferred or seized should also be examined.

Finally, reports were also received of seemingly legal purchases from local farmers influenced by the sharp rise in the price of the land – a situation that can be explained by the low price of land during the period of extensive livestock farming.

The concentration of landownership has generally been facilitated by the predominantly informal nature of land tenure.

In the case of the Las Pavas farm, this relates to a process of land accumulation that includes a group of lots whose original ownership is clearly set out and result of the land grants brought about by agricultural reform. These correspond to:

Lot	Accumulation of lots	No. Hectares	TOTAL
Las Pavas	No te canses	473	
	Las Pavas	471	
	El Oasis	61	
	El Componente	110	
	El Deseo	13	
	No te Pases	116	1253 (according to 1969 entries) and subsequently appearing with a capacity of 1127 hectares
Si Dios quiere	-	42.5	42.5
Peñaloza	-		

Lot	Accumulation of lots	No. Hectares	TOTAL
			1367.5 (in different INCODER documents a total of 1223 hectares is given)

However, 11 more lots were incorporated to what is now known as Las Pavas farm, making a total of 14 lots. The sum of all the lots adds up to an extension of 2842 hectares⁶⁸. Unlike the above listed lots (Las Pavas, Si Dios quiere and Peñaloza), the other 11 do not have an original deed of ownership, meaning that there is no initial land grant to show that they came out of the State's ownership. Some of the records corresponding to the 11 estates show an initial annotation reading "Improvements in national uncultivated land", alongside "false tradition".

Taking into account the fact that State property is *imprescriptible* (meaning that ownership is not earned over time or usage) nobody may appropriate the property of the Nation. In this case and due to the role that land ownership should play in rural areas as stated in law 160 of 1994, legal advisors of ASOCAB allege that the Consortium cannot be subject to agricultural reform and be granted land by the State. According to them, the State would not be fulfilling its role correctly if it continued supporting the concentration of land in the hands of few people while communities of small farmers are claiming the right to access land. Based on this, ASOCAB requested the protection of the lots in the RUPTA (Registry of Abandoned Lots). This request was filed in Acción Social, the State entity that is in charge of compiling information, making maps and reviewing land registry records along with INCODER, which is the entity that certifies protection.

In the letter sent to INCODER on June 9th, 2006 requesting the domain submission over the farm, Misael Payares (head of the ASOCAB) outlined the case of Las Pavas stating that approximately half of the consolidated lot "did not possess any formal title".

A more structural perspective of the problem reveals two major irregularities. Firstly, according to the Legal Department at the Universidad Javeriana, the case involves an illegal purchase of land and, therefore, the legal origin of the land transferred must be questioned by virtue of the provisions of Article 72 of Law 160 of 1994. This law has remained in force after the Rural Development Code [Law 1152 of 2007] was declared to be unenforceable. This article provides that:

⁶⁸ See Relación de Predios de Las Pavas. Document supplied by Aportes San Isidro S.A. to the Commission.

Article 72: “No one is entitled to acquire the ownership of property initially granted as uncultivated land, if the area exceeds the maximum ownership limits determined by the Board of INCORA for family farming units (UAF = area of land able to generate income for a family) in the municipality or region in question. Shall be declared null and void any deeds or contracts by virtue of which a person transfers to companies or communities of any nature the ownership title for land previously granted as uncultivated land, when, as a result of the transfer to the companies or communities, the total surface area of such land exceeds the limits determined by the Institute for Family Farming Units”.

The maximum limit for land tenure in this area, as set out in Article 7 of Resolution No. 041 of 24 September 1996 of the Board of INCORA, is 115 hectares. This means that the disputed purchase manifestly exceeds the limits established by the relevant Colombian legal rules.

Moreover, the Constitutional Court in Decision C-536 of 1997 relating to the prohibition set out in Article 72 of Law 160 of 1994, clarified the spirit of the standard, declaring that:

“...Therefore, this limit on land grants is consistent with the challenged precept, as it prevents any person acquiring land initially granted as reclaimed land when the area thereby obtained exceeds one UAF (area of land able to generate income for a family), which supports the social function of the precept in the public and social interest; it also demonstrates the concrete duty of the State to promote progressive access to land ownership for agricultural workers... In order to improve the income and quality of life of smallholders (Art. 64 C. P.).⁶⁹

Despite this rule and the case law of the Constitutional Court mentioned above, the purchase was completed and registered in the Public Registry Office.

For the Consortium's legal advisors, the official statement and interpretation of Article 72 of Law 160 of 1994 included in Resolution 7528 of 2005 for the Office of Civil Records clarifies the controversy regarding the legality of the purchase. Resolution 7258 of 2005 provides for an appeal lodged before the registry presented to an office for the registry of public instruments, by virtue of the retroactive application of Article 72 of the Law 160 of 1994.

The argument stated here states that the norm governs future cases and does not set limitations on reclaimed land ruled upon prior to its entry into force (1994). This ruling, which governs the Office for the Registry of Public Instruments, performs a legal analysis of both jurisprudence and doctrine in the retroactive attribution of the law, vested rights and legal safeguards. It concludes that:

“The above is not a recognition of the applicability of the Law 160/94, since it is a legal ruling which was not in place in the institutional framework in the year 1993. When it appeared in the

⁶⁹ Pontificia Universidad Javeriana, “Violación del ordenamiento jurídico colombiano para la expansión del cultivo de palma de aceite en el sur de Bolívar”, el caso C.I. Tequendama y Aportes San Isidro.(s.f.)

legal scene, there existed already eight separate properties (referred to in the case under scrutiny by the Office of Civil Records) that were different from each other - both real estate and land terms- with regard to their specifications.”

According to the Consortium's legal advisors, this interpretation does not contradict the Decision C-536 of 1997 by the Constitutional Court, which reviews the constitutionality of Article 72 of Law 160 of 1994, and which incorporates the limitations to ownership set out in the standard, but says nothing about retroactive application and vested rights.

The second aspect that requires clarification refers to the Misael Payares’ affirmation that almost half of the area transferred by Jesús Emilio Escobar to the Consortium correspond to *baldíos* (uncultivated land) that haven’t t been granted. This demands further clarification. It is worth mentioning that the domain submission was requested only for the lots that have title deeds.

The process involved in purchasing the Las Pavas farm exhibit difficulties linked to the nature of ownership titles. This situation has still not been entirely resolved. Palmas De Tumaco S. A. - a company that was offered the first chance to purchase Las Pavas, reported on this. According to the version given by their current executives, the transaction did not go ahead as “they did not fully trust the land titles of the Las Pavas farm and therefore decided to purchase an adjacent farm, as the formal titles for that property were completely trustworthy”. They also decided against purchasing the Las Pavas farm, as when they met local communities they were informed that the a local community had expectations to be granted the lot.⁷⁰ However, according to the evidence provided by the former manager of Palmas De Tumaco S. A., who was in charge of the company between 2006 and 2009, the company attempted to purchase the farm and studied the owner (Jesús Emilio Escobar) and the land title, finding put that out of the 15 lots that the farm comprises, 5 had a formal title and the others had rights of possession (belonging to Jesús Emilio Escobar). The company continued negotiating with Jesús Emilio Escobar, but the negotiation ground to a halt. At the end of 2006, when Palmas de Tumaco resumed negotiations with Jesús Emilio Escobar he informed the company that an undertaking to purchase the estate had already been agreed. Tumaco then withdrew from the purchase.⁷¹

The legal controversy that revolves around the complex and intricate nature of property titles of the Las Pavas farm might be resolved in judicial spheres.

e. Business practices and Corporate Social Responsibility strategies in complex milieus

⁷⁰ Interview granted by Juan Manuel Villegas, Legal Representative, Carlos Santana, Lawyer and Fernando Rodríguez, Agronomist at Palmas de Tumaco S. A. to the Independent Commission on May 3rd, 2010

⁷¹ Interview granted by Joaquín Palou to the Independent Commission on April 26th, 2010.

The actions of the El Labrador Consortium⁷² at the Las Pavas farm and surrounding areas are analyzed here as a business operation in a complex milieu⁷³, taking into account the challenges and risks that such a milieu involved.

The Consortium does not have a Corporate Social Responsibility division, nor does it have its own social policy or social management program. Social issues have been managed by resorting on what each of the Consortium members has developed in this field and according to the role that each of them plays in regards to daily affairs at Las Pavas.

In theory, this scheme could potentially bring together all the strengths of the parties involved; however, it ended up highlighting their shortcomings. This has negatively affected the management of social issues and of the ongoing dispute between ASOCAB and local actors, on one side, and the companies of the Consortium, on the other side.

Actions undertaken by the Consortium in the social sphere correspond to the Corporate Social Responsibility scheme proposed by each of its members. However, questions can be posed about whether such schemes are adequate to advance business operations in a context such as the one encountered at Las Pavas. What has happened up to now shows that neither the contents nor the ways in which this scheme has been implemented have contributed in advancing on issues that are critical to secure the operations of the Consortium. Furthermore, they have not contributed to the identification, prevention and management of the risks and challenges that a business operation might face in such a complex milieu.

Despite virtues and best practices that might be linked to the *Alianzas Productivas* (Productive Alliances), the scheme used by the Consortium to manage social issues had shortcomings that are worth identifying. These, in some cases, help in explaining the difficulty in preventing and managing the current dispute on the Las Pavas farm.

- Work aimed at tackling social issues started late : the subsequent course of events and the actions taken by the Consortium in terms of its interaction with the population of Buenos Aires, show that work aimed at tackling social issues started fairly late and rapidly became embroiled in a dispute, which main actors and dynamics were insufficiently known by the Consortium. The course of events in this dispute has resulted in a high degree of polarisation, meaning that any attempt to interact with the population of Buenos Aires and perform constructive work on social

⁷² The Consortium El Labrador includes C.I. Tequendama and Aportes San Isidro. Each of them owns 50% of the Consortium. They play different roles in the operation of the Consortium: Aportes San Isidro manages the farm, and C.I Tequendama acts as an investor. Palmeras Labrador is the operator of the project.

⁷³ About this characterization and implication for business operation see: International-Alert Conflict-Sensitive Business Practice: Guidance for the extractive industries 2005; Business and Human Rights: the role of business in weak governance zones: Business proposals for effective ways of addressing dilemma situations in weak governance zones 2006.

issues has been extremely difficult - if not impossible - due to the lack of trust and mutual recognition of the parties.

- Uneven participation in managing social issues: The members of the Consortium have participated in an uneven manner in the management of social issues and in the interaction with the population of Buenos Aires. This participation shows a lack of balance between Aportes San Isidro, which oversees the day-to-day operations but has a low capacity for managing social issues, and CI Tequendama, which has greater capacities for managing social issues but does not take part in the day-to-day operations. The difference in terms of capacity and participation of the members of the Consortium in the management of social issues, as stated above, has had a negative impact on the management of these social issues as well as of the current dispute between ASOCAB and local actors, on one side, and the Consortium, on the other side.
- Lack of a comprehensive social management scheme: The Consortium does not have a comprehensive scheme for managing social issues. The complexity of the dispute over the Las Pavas farm shows the relevance of having such a scheme. Although previous experience of one of its members, C. I. Tequendama, pertaining to *Alianzas Productivas* reveals positive elements and was initially thought of as a possible working scheme for Las Pavas, this line of thinking was abandoned following the first visit, due to problems in accessing the area. The *Alianzas Productivas* scheme was once more taken up by the Consortium as a way of getting out of the crisis.⁷⁴ However, due to the specific characteristics of the population of Buenos Aires, *Alianzas Productivas* are not necessarily feasible, nor suitable to advance on tackling social issues. Thus, a comprehensive social management scheme is required. This might be more apparent when taking into account the specific features and the unfolding of the current dispute between ASOCAB and local actors, on one side, and the Consortium, on the other side⁷⁵.
- Lack of enough documentation, systematization and social mapping. The members of the Consortium are aware of the general dynamics of the region and reported that they have attempted several times to interact with the population of Buenos Aires, before and after the dispute in relation to Las Pavas farm had broken out. However, this interaction has not been sufficiently documented or systemized. Equally, this interaction hasn't been framed by the social mapping o, which in this case is a critical input. For example, the Consortium didn't start by mapping stakeholders and key actors. Neither, the Consortium created a social management scheme by building on demographic and socio-economic data on the population of Buenos Aires or on information that could had provided a better understanding of the historical, social and political dynamics of this population.

⁷⁴ Proyecto Las Pavas. Situation of the Labrador Consortium – Comunidad de Buenos Aires. Document shared by the Consortium with the Independent Commission, p 42

⁷⁵ An integral strategy also includes working with State institutions.

- Lack of engagement with stakeholders and local key actors Initial interactions of the Consortium with the people of Buenos Aires as well as its subsequent attempts to interact with them have focused on seeking direct channels between the companies and the inhabitants of Buenos Aires. In this sense, they turned to the *Junta de Acción Comunal* JAC (Neighbourhood Social Action Committee) to act as an interlocutor of companies and to help them convening meetings with the rest of inhabitants of Buenos Aires. Such a direct interaction might have uncountable virtues. However, the interaction with other actors, who at the onset weren't contacted, is equally relevant and might be critical. This is the case with local authorities and local institutions that were not contacted at the very beginning. This, for instance, might explain why many of the local authorities and institutions learnt about the Consortium and its operations in the area only after the dispute on the Las Pavas farm broke out.

A few missing elements are also worth taking into account such as the fact that the Las Pavas farm is located in what can be described as a complex milieu and the social management of the Consortium has failed to respond to this specific feature. The list below shows some of the elements that companies working in complex milieus are expected to take into account:

- Analysis of risks, opportunities and impacts for both companies and local actors
- Systematic work on issues pertaining to human rights, conflict, institutions and governance
- Participatory identification and definition of strategies to prevent negative risks, enhance opportunities and mitigate impacts

In addition to the elements listed above, it is also important to note that in this case the management of social issues and the interaction with the inhabitants of Buenos Aires were affected not only by the absence of a comprehensive social management scheme and a strategy aimed at advancing business operations in complex milieus, but also by the presence and active participation of other parties, the specific characteristics of the population and the particular dynamics of the area.⁷⁶

V.2 THE ENVIRONMENTAL RICHNESS AND FRAGILITY OF THE AREA REQUIRES GREATER ATTENTION TO ENVIRONMENTAL ISSUES BY THE OIL PALM COMPANIES. THIS MAY EVEN INVOLVE CARRYING

⁷⁶ These elements are thoroughly examined in other parts of this report. For a better understanding, review those sections.

OUT ENVIRONMENTAL IMPACT STUDIES OR DESIGNATING CERTAIN NATURAL SITES AS PROTECTED AREAS⁷⁷

In terms of the ecosystem, we need to take a comprehensive look at the palm farming development in the area because, when seen as a whole, this is a large project which could lead to ecological and environmental imbalances or which could affect the carrying capacities of the ecosystems in these areas. In other words, it is not enough to look solely at the establishment of oil palms in the Las Pavas lot, but a more comprehensive look is needed. This is a look that takes into account the system and applies a systematic focus. This is because each owner only analyses the lot in which he is growing crops, without taking into account the activities and actions carried out by owners in neighbouring lots.

a. RECONSTRUCTION OF AN ENVIRONMENTAL BASELINE FOR THE AREA

i. Hydric and wetland ecosystems

An environmental aspect which characterises the Sur de Bolívar region, and within this the Papayal Island, is the important integrated system of palustrine wetlands and channels which are prone to flooding and which vary in size during one given hydrological year depending on the volume of water which the entire region receives. These ecosystems are fed by rain and one of their functions is to regulate the waters of the Magdalena River through their different branches and through a complex system that includes surface and sub-surface channels, wells, canals and other elements. The dynamic of the flood plain is what defines the richness and diversity of the regional ecosystem, which includes the El Peñón Municipality where 41% of the area corresponds to lake vegetation and a bog complex. It is precisely these ecosystems where the greatest biodiversity of flora and fauna species in the micro-region can be found. The same Territorial Ordering Plan of the Municipality shows that almost 50% of the municipal area (17,486 hectares) has a high ecological and environmental value.⁷⁹

In spite of the high production potential of the wetlands, there is a general tendency to disregard their importance. For the oil palm companies, the bodies of water "are a problem".

ii. Biodiversity in the area and biological importance

In spite of human interventions in the Isla Papayal micro-region, there are still important ecosystems, which, from the point of view of biodiversity and the environmental resources and services that they

⁷⁷ More information about the environmental characteristics of the area can be found in Appendix 2.

⁷⁸ Ministerio de Ambiente, Vivienda y Desarrollo Territorial (2002). Plan de Manejo Integral de los Humedales de la Subregión de la Depresión Momposina, parte baja de los ríos Cauca, Magdalena y San Jorge y Cuenca del río Sinú en el área de la jurisdicción de la CSB, CVS, Corpomojana, Corpamag y Corantioquia.

⁷⁹ Municipio El Peñón (2001). Esquema de Ordenamiento Territorial (EOT).

provide, are fundamental to guarantee both productive and cultural activities⁸⁰. The diversity of the species on the Las Pavas lot shows that the ecosystems in the complex of secondary forest, scrubland and bodies of water are in a good state of conservation and that this is one of the most productive ecosystems in the sub-region. The wildlife of Papayal Island depends on the availability of fresh water – in terms of quantity and quality – as well as primary productivity that in turn depends on the state of the wetlands system.

The environmental appendix to this document shows an example of the important biodiversity of the island and the lot. Yet, it is worth highlighting that ecosystems on the Las Pavas lot were still in a good state of conservation - fact that is corroborated by the study drawn up by Aportes San Isidro in January 2010. We can see, for example, that:

The presence of indicator species such as the *Calligo illioneus* and *Caligo telamonius* butterflies, in an estate with a large forest area, an observation which is quite unusual in the lower areas of the Caribbean⁸¹, and the *Nica flavilla* and *Pyrrhogyra neaerea* species of butterfly show that this is a forest which has experienced little intervention.⁸²

The study by Aportes San Isidro reports that there are 53 fauna species in the aquatic ecosystems while there are 26 species in the land ecosystems.⁸³

What stands out is the presence of species which help maintain the ecological balance such as the aquatic macrophytes which provide food and shelter to countless species and which also help purify the water; and numerous bird species which require this habitat to nest or pass through; there were 135 bird species grouped into 42 families, which is a very high level of diversity if you compare this with the number of species reported for the entire Momposina region - 171. It is precisely the wetland areas and the surviving (secondary) forests with low levels of intervention (no palms) that have the highest numbers of birds. 13 genera and 13 families of mammals, 41.9% (31 genera) and 61.9% (21 families) of which are found in the Momposina Depression; 11 families of reptiles, 91.6% of which are found in the Momposina Depression (12).

Reports also show that there is a premontane humid forest (Bh - PM) in the Buenos Aires District.⁸⁴

⁸⁰ Observed during the two environmental tours carried out by the Independent Commission, study drawn up by Aportes San Isidro (January 2010) and the farmers' testimonies collected by the Independent Commission (for more information, see appendix 2)

⁸¹ Andrade *et al* (2007) in Plan de Manejo Ambiental para el cultivo de palma africana Empresas Palmeras El Labrador, Amiagros S.A., Palmeras Libre y Aportes San Isidro.

⁸² Aportes San Isidro (2010). Plan de manejo ambiental para el cultivo de palma africana Empresas Palmeras El Labrador, Amiagros S.A., Palmeras Libre y Aportes San Isidro.

⁸³ Municipio El Peñón. EOT, 2001

⁸⁴ Municipio El Peñón. EOT, 2001

b. Use of environmental resources and services as means of support for the Buenos Aires community

The knowledge and assessment of the environmental functions and services, as well as the socio-ecological interrelationships on Papayal Island by the farmers is a sine qua non condition to prevent, mitigate and manage unwanted alterations and to ensure continuity and sustainability. According to the information provided by the farmers in Buenos Aires, some of the traditional activities which they carry out to guarantee their food security and survival - fishing, agriculture, shepherding, recreation, transport, sustainable use of the forest and wildlife and the supply of fresh water for different uses - depend on the environmental resources and services provided by the wetlands. This is one of the reasons why the conservation of the ecological and environmental functions of the swamp complex cannot be postponed.

Given this context, the availability of fresh water is one of the most critical environmental issues for the inhabitants of the entire Sur de Bolívar sub-region, including Papayal Island. A major problem is the contamination of the bodies of water due to the type of relationship that the communities have with their surroundings, but also due to farming activities (extensive cattle raising in the past and the development of agro-industrial activities linked to the production of oil palms today). It is important to highlight the fact that there is a close link between the quantity and the quality of water that is suitable for human consumption. So, as the water is contaminated by human activities of any kind, the quantity of available drinking water that is suitable for direct human consumption also decreases.

c. The impact of human activities on the ecosystem base

i. Extensive cattle raising and the subsequent recovery of the ecosystems following the abandonment of cattle ranches

We cannot ignore the fact that extensive livestock rearing and the implementation of extensive short and medium yield crops such as cotton and rice in the area since the 1960s has contributed to the environmental deterioration of the region. However, this model could co-exist better, not only with smallholdings and farming activities, but also with the wetlands, canals, forests, bio-diversity and communal areas, because extensive livestock rearing and the farming economy do not prioritise maximising the use of the land. In the context of closed economies, the income from the land and livestock income are sufficient to accumulate large amounts of money and to live comfortably. This is why they did not use natural resources intensively and although they contributed to the environmental deterioration of the region, they did not do so as intensively as the palm oil activity in such a short space of time. This is recognised by the studies commissioned by Aportes San Isidro, one of the members of

the Consortium working in Las Pavas. The studies state that: "Livestock activities left some forest species which, through the process of ecological succession, have been building a secondary forest which is not very diverse in species, but which plays an ecological role for some fauna species and helps with hydric regulation of some canals in the estates which have been assessed"⁸⁵. To describe the relative low level of intervention on the estate when the Consortium arrived, the employees of the El Labrador Consortium outline the access problems as there were no roads, just bridal paths and everything came to a standstill during the winter period. The first tour of the estate was carried out by Mr Ernesto Granda (Palmeras de la Costa) who found that there were "mountains, stubble, poor livestock, and that the estate was "abandoned".

Subsequently, with the abandonment of livestock activity due to pressures from violent groups, the ecosystems were able to make a significant recovery from the over farming and the degradation of the soil. The case of the Las Pavas estate is an example to show the capacity of the wetlands and the ecosystems in general on Papayal Island to "adjust" to changes in the land use. Therefore, after the impact that the extensive livestock rearing had on the wetlands system, there was a period of over 12 years when disruption was scarce or minimal. The activities of the farmers in the area were linked to rotation, letting the land rest and letting it recover its fertility. The abandonment of the estate and the consequent paralisation of livestock activity let the physical, biological and chemical components recover "naturally" without outside help. And the secondary forests once again played a vital role for the other ecosystems in the area⁸⁶. Therefore, the palm intervention on the estate and in the area in general will affect highly recovered ecosystems.

ii. *The environmental impact of oil palm activity*

The environmental impact of oil palm activity in the area is not only connected to the joining of extensive areas of single-crop farming, but in the form of the intervention: through levelling layers of vegetation, grasslands, stubble and secondary forests using farming machinery and levelling machines and their subsequent burning for "civilización"⁸⁷ and the levelling of the soil to sow oil palms. This also includes the construction of roads, the drying out of wetlands, the canalisation of channels, the construction of trenches, jetties and unpaved roads which allow for the expansion of the agricultural area, affecting the interconnections between the hydric ecosystems all across the region. The construction of engineering works for irrigation and drainage that includes the construction of siphons, sewers, modifications to water basins, flood protections and/or the construction of a drainage network to regulate the water level, are works which significantly affect the ecosystem balance of the region and its wide biodiversity. Alongside this destruction, the habitat where the area's community has obtained its means of support to survive is also affected. When asked about the management of the wetlands, Mr Villegas stated that he didn't know the location of the canals; the bulldozer operator started the clean-

⁸⁵ Plan de Manejo Ambiental (2010) para el cultivo de palma africana realizado por las Empresas Palmeras: El Labrador, Amiagros S.A., Palmeras Libre y Aportes San Isidro

⁸⁶ Idem.

up and then realised; “we've messed up here”⁸⁸ In fact, in spite of all the intensive activity for “preparing the soil”, no physical delineation of the areas to be protected was noted at either inspection visit.

To establish an approximate total of 13 thousand hectares of African oil palms on Papayal Island in the short-term, the palm farmers have developed land adaptation work which, according to on-site observations, involves the clearing and movement of land; the construction of an infrastructure of internal and external roads on the plantations; the construction of bridges; capturing and using surface water; the occupation of basins; the construction of wells and the extraction of underground water; the inadequate disposal of solid and liquid waste; the destruction of vegetation which protects the banks of the wetland areas; open-air burning and the use of different techniques to get rid of and/or dry out the bodies of water. To round off the project, an extraction plant is being installed in Regidor. Cumulative large-scale impacts are therefore envisaged as the risks are now greater. In practical terms, we are not dealing with a 3 thousand hectare estate, this is a sub-region with shared communal resources - fragile and vulnerable ecosystems and biomasses and resources such as water -, which cross various adjoining estates.

The impact generated by palm oil activity on the forests and the hydric ecosystems is even recognised by the palm companies' own studies. “We need to carry out an assessment of the forest biomasses which were affected to set up the African Palm farms. These secondary forests which are once again playing a vital role for other ecosystems in the area, are compared with the change of suitability for use of the soils and the impact which could be generated through the years mainly in the biodiversity of flora and fauna and the hydric resources”. And it also states that: “The introduction of the African palm has helped decrease the forest coverage even further and has therefore led to a decrease in the existing currents in the area since the solar brightness of the area has affected the quality of the water, leading to eutrophication and thermal contamination in all of the remaining canals on the estate. This aspect has altered a biological corridor which includes the Papayal Branch and which connects to the el Peñón and San Martín de Loba branches”⁸⁹.

These activities without doubt result in significant external disruption, the effects of which are the replacement of the complex wetland system and the traditional form of diverse and sustainable agricultural production, by a highly vulnerable and exclusionary artificial system (palm farming). A crop that eliminates the auto-recovery capacity of the system (irreversible damage) and minimises or removes the capacity to sustain biodiversity, thus affecting the food safety and sovereignty of the population. But it also affects various wildlife species, in particular the capybara (*Hidrochaeris hidrochaeris*), the manatee (*Trichechus manatus*) and other species such as the river turtle (*Podocnemis*

⁸⁷ This Spanish term is locally used to refer to a complaint or the preparation of the land for agriculture.

⁸⁸ Interview with Eduardo Villegas, Agricultural Engineer and operator of Las Pavas.

⁸⁹ “Plan de manejo ambiental para el cultivo de palma africana Empresas Palmeras El Labrador, Amiagros S.A., Palmeras Libre y Aportes San Isidro (2010) ” shared with the Independent Commission by Mr. José Ernesto Macías, Aportes San Isidro.

lewyana) and the red-eared slider (*Trachemys scripta*); as well as migratory birds which suffer from the impact of the alterations and/or modifications to the original state of their habitat, the hydrological conditions and the herbaceous and shrub vegetation.

The vulnerability of the wetlands and ecosystems to bio-geophysical effects and to adverse climatological conditions increases as the interventions increase. In the past 5 years the increase in the intensity of the use of the soil for palm farming activity on Papayal Island and in the Sur de Bolívar sub-region, has affected the ecological processes that are characteristic of the wetlands, and this then becomes a threat for these bodies of water. The reduction of the functions of the wetland areas is imminent in terms of the mitigation and control of floods and recharging of the aquifers, and in the medium-term an increase in erosion is envisaged, while the resilience and resistance of the farmers and other inhabitants of Papayal Island and the sub-region decreases; in other words, the capacity of the society and the organisations to manage the natural environment and prevent degradation.

iii. Environmental management activities on the Las Pavas estate by the palm Consortium

The environmental impact from the development of palm farming is constant and on the increase and the Consortium believes that Las Pavas does not have an adequate organisational structure to allow for a better environmental management of this area of great environmental richness and fragility. Two inspection visits made by the Independent Commission revealed an intensive clean up and land clearing activity and tree-felling without any obvious protection for bodies of water. There was no respect for the obligatory withdrawal set out in the Colombian Natural Resources Code (Law 2811 of 1974); upon requesting the plans that the Consortium should have prior to the earthworks and tree felling, some plans were shown which did not indicate the coordinates of bodies of water or the location of the works, as would have been expected.

Among the permissions which should previously have been transmitted by the Labrador Consortium were: forest management, administration of surface water, administration of ground water (complex permission which includes permission to drill wells and administration of ground water), wastewater discharge, channels and, in some cases, permission for burning and handling solid waste.

The underestimation of the environmental issues can be seen in some specific situations: the Consortium does not have a "resident" specialist or technical officer on the Las Pavas estate responsible for environmental management; it did not develop a baseline for environmental issues on the estate; the environmental studies conducted took place two years after the work had started on adapting the soil and the breeding ground, etc.; the environmental permits were applied for by Mr José Macías (Aportes San Isidro) after activities had taken place (applications filed on 8 April 2010 and 1 December

2009). All of these environmental management recommendations are set out in the Environmental Guide (Fedepalma)⁹⁰ and the criteria of the Roundtable for Sustainable Palm Oil, RSPO⁹¹.

The palm farming companies have the documents listed above, which contain the minimum principles they must meet, including the observation of the environmental regulations in the first place. However, the Commission did not find any evidence that these requirements had been observed by the Consortium and in general by the companies working on Papayal Island. According to the legal office of the regional environmental authority (CSB), no permits were granted to the Palm Oil Companies Labrador, Aportes San Isidro or C. I. Tequendama. We can also see that the company did NOT observe the preventative measure of the environmental authorities, as it continued cutting down and burning trees on the estate, in spite of the application of a suspension measure on cutting down trees and the opening of a preliminary investigation into this matter and into the planting of crops and the use of the water source through decree number 239 of 10 September 2009.

Appendix 2 includes an analysis of the environmental management steps carried out by the Consortium in the Las Pavas estate in terms of two main aspects: i) the environmental management documents of the Consortium and, ii) the environmental permits which the companies must apply for to plant the crop.

In the first case, for the environmental management of the palm oil crop on the Las Pavas estate, the Consortium has three different environmental studies that have yet to be submitted to the Autonomous Regional Corporation of Sur de Bolívar (CSB), the environmental authority with jurisdiction for estate⁹². The environmental studies performed by the various companies making up the Labrador Consortium are: The document Environmental Management Plan for the cultivation of African oil palms by the Palm Companies El Labrador, Amiagros S.A., Palmeras Libre and Aportes San Isidro, drafted by the Corporación de Consultorías Ambientales y Bioprocesos – Cambio (Plan 1) and the document “Environmental Management Plan for the cultivation of oil palms in the Brisas y Pavas, Regidor, Bolívar estates, 2007, drafted by SUPALMA LTDA. / Eduardo Villegas de los Ríos – Ing. Agronomo⁹³ (Plan 2); the third document delivered to the Independent Commission by C. I. Tequendama is a socio-environmental account of the area of influence of the El Labrador S. A Consortium (Plan 3)⁹⁴. The delivery of the three separate documents by the Consortium indicates the absence of an environmental strategy,

⁹⁰ Mazorra, Miguel (2002). Guía Ambiental para el subsector de la Agroindustria de la Palma de Aceite. Ministerio de Ambiente y Fedepalma.

⁹¹ C.I Tequendama is one of the members of the Consorcio El Labrador and part of Fedepalma. Also part of the RSPO.

⁹² Document shared with the Independent Commission by Mr. José Ernesto Macías

⁹³ Document shared with the Independent Commission by Mr. Eduardo Villegas. Only relates to the agricultural phase of the project for the establishment of Oil Palm cultivation in the estates known as BRISAS and LAS PAVAS.

⁹⁴ Document shared with the Independent Commission by C.I Tequendama. Its object is to characterize social and environmental elements of the zone influence of the Consortium, as a point of departure to define strategies to secure social and environmental sustainability, to reach a comprehensive view of current affairs involving the inhabitants of Buenos Aires and, to offer recommendations regarding these.

improvisation and disorganisation in environmental management. The three documents raise different issues, contradicting each other not only on environmental issues, but also in terms of strategy, planning and the timescale for growing oil palms on the estate.

For example, Plan 3 states, contrary to Plan 2 given by the agronomist Villegas, that the "crop does not require irrigation". However, they are using underground water to irrigate the crop via sprinklers. Furthermore, Plan 2 highlights the importance of the hydric resources for oil palm cultivation in the following manner: "Water is an essential component in production, and both the quantity and quality of the water can have an impact on production. The hydric deficit in the area is very high, estimated at between 600 and 800 mm a year with regard to the needs of the oil palms, so irrigation is essential in this area. This requires an irrigation infrastructure which takes water from the same canals which are used for natural drainage".

Plan 3 from C. I. Tequendama states that the estate has no permanent bodies of water that have been affected or which could be affected; and that the natural drainage basins have not been altered, merely cleaned as part of the conservation work. This contradicts another statement within the first part of the same document which states that (...) "the land where they are planting these oil palms has generally high water table levels; in other words, in general terms this is low-lying land which is affected by the levels of the hydric complex from the Magdalena river, which includes the surrounding canals and swamps". This is also stated in Plan 2 (by the agronomist Villegas) regarding the adjustments required to establish the African oil palm crop where the company would have to intervene in the wetlands system of the study area. The same document shows photographs of a multi-purpose pump which has already been installed for the drainage of the Solera Canal, in other words to manage the water and the use of the water for the irrigation system. This was also observed during the visits by the Commission. The agricultural engineer from Aportes San Isidro and the manager of Las Pavas talked about the loss of 70,000 plants sown at the start of 2008 due to the flood at the end of the same year.

And none of the documents mention an analysis of the hydric balance in support of the interventions, because if they move the excess water to the flood plains during return periods, this will have an impact on the system if the water from the water basins is used during drought periods. They would need to study the effects on the system and therefore on the farmers in the area. Not to mention the impact on the bodies of water which are used for subsistence fishing.

According to Plan 1 (San Isidro), basin diversion work has been going on at some of the bodies of water for some time; however, they do not outline the responsibilities of the current project or specify whether these diversions have the relevant environmental permits. Here it is worth mentioning that at the site visit by two members of the Independent Commission, they observed that 2 bodies of water had been filled with material from clearing the land. They also observed the interruption of two canals on account of the construction of access roads, the removal of plants and the burning of vegetation at the bodies of water.

d. Institutional deficiencies of the environmental authorities

Public environmental interventions to combat threats to the hydric ecosystems, forests and biodiversity have not taken place or, in the few cases where there have been interventions, these have arrived late. In spite of the fact that the legal protection regime has an array of instruments to ensure effective and efficient public environmental management (the Political Constitution, laws, decrees and resolutions), as well as the fact that the Regional Autonomous Corporation of Sur de Bolívar (CSB) is authorised to issue laws, execute these laws and verify and control their implementation, it was found that this organisation has a weak position and operational and technical capacity in its area of jurisdiction.

In the case of Papayal Island and Las Pavas, they observed a complete inability by this organisation to fulfil its duties and a lack of any system to control and monitor activities that cause environmental damage, such as the development of oil palm cultivation.

Complacency, disorder and infrequent presence by state bodies were seen, resulting in low environmental control. In the photographs delivered by Aportes San Isidro as evidence of the fieldwork made to perform the forest inventory for the Las Pavas estate (and other estates owned by this company) to the Independent Commission, the active participation of the CSB officer, Alfredo Chávez, can be seen in the forest survey activities. Because he is a forestry engineer with the CSB, this situation makes him responsible for drawing up the technical plans relating to forestry management permits.

There is no Comprehensive Wetland Management Plan for the Isla Papayal. This position should clearly be fulfilled by the environment authority, in accordance with the applicable legislation (Resolution 0157 of 12 February 2004), “regulating the sustainable usage, conservation and management of wetlands, and the development of aspects in reference to these in application of the Ramsar Convention.”

In the same way, there is a marked lack of a solid, comprehensive, strategic and regionalised environmental policy for the agro-industrial palm sector, which would allow them to combat these environmental impacts and threats for regions of the country with a high level of biodiversity and which are rich in hydric ecosystems such as the study area; and which, in turn, would allow for the incorporation of the social impacts in socio-economically and culturally complex areas. A crop of this size, with such widespread environmental implications, in a heterogeneous country with wide biodiversity, cannot be based on generic legislation for all regions that does not require environmental and social impact assessments for areas such as these. This shows a lack of knowledge of the reality of the situation. It is important to have legislation and policies for the palm-farming sector that are adapted to meet the needs of the different regions and sub-regions.

The impact that these institutional and normative deficiencies have on the areas where the oil palms are grown on a large scale, is the absence of environmental protection for the ecosystems, resulting in irreversible damage, the alteration of the soils and the hydric cycles, destruction of habitats, loss of

biodiversity, etc., which are not picked up by experts and by public opinion and which are cases which are not recorded or assessed.

But public environmental management also comes too late because the study “Areas environmentally suitable for oil palm cultivation in Colombia, Support Programme for SINA II”⁹⁵(2009) shows that this sub-region (Sur de Bolívar) is not suitable for oil palm cultivation on account of permanent or severe environmental restrictions, as has already been shown in the initial environmental characterisation. The edaphic, climatic, ecological and socioeconomic characteristics of the sub-region mean that oil palm cultivation is not viable here⁹⁶. However, the final version of the abovementioned document has yet to be published because, according to the analysis of the technicians from the Ministry of the Environment, Housing and Territorial Development and the IGAC, the results of this coarse filter could affect investment decisions for the development of the sector. In sub-regions such as Sur de Bolívar and Papayal Island⁹⁷ where development is still fairly recent, if this study is taken into consideration, the criteria of which will not change and therefore their conclusions should stay the same, we cannot continue growing African oil palms in these areas.

VI. OTHER KEY ELEMENTS TO REACH A BETTER UNDERSTANDING O THE CASE

a. The analysis and understanding of the case requires a regional approach

The diagnosis, analysis and solution options for the problem should be addressed in terms of the region and not simply as a dispute between big business and the Buenos Aires community. This means that Papayal Island is not just a “point of reference”, but also the background against which the solutions should be set out.

A regional perspective acknowledges the symbiotic nature of the Island’s environment. It also acknowledges that the Island is undergoing a series of socioeconomic and cultural problems derived from a shift in its productive model, which is moving towards a business model, and the introduction of economic and socio-cultural referents that are rapidly changing the scene of Isla Papayal.

⁹⁵ Identificación y Caracterización de Zonas Aptas para el Cultivo de la Palma de Aceite. IGAG, IDEAM and Cenipalma, with technical support from WWF-Colombia, MAVDT e IAVH, 2009. on: <http://www.cbd.int/doc/meetings/agr/rwspubio-01/other/rwspubio-01-biofuel-colombia-es.pdf> (consulted March 18th, 2010).

⁹⁶ The CONPES 3477 (July, 2007) states the public strategy for the development of the oil palm sector. It also commissions to various institutions the task to establish a zoning system of the areas of the country according to the nature of their soil. Such a task, according to this document, should be performed in 6 months. A preliminary version of the commissioned document has been under revisions since 2008. The CONPES 3477 (July 2007) also establishes the need to include best practices in environmental management and conservation”.

⁹⁷ The document published in the web page, as mentioned before, points out that Bolivar does not have areas suitable for oil palm: 88.907 hectares have severe limitations (A3) and 4.306 have moderate limitations (A2).

This perspective also involves recognizing the effects of such a transition on several parties:

- This transition has affected local and regional institutions. For instance, due to the increasing number of interventions, environmental authorities at local and regional levels are now expected to conduct strict supervision and control. However, conducting needed activities in these fronts has been practically impossible due to the lack of both technical personnel and economic resources that are need to transport public servants to perform such activities. Additionally, the increasing demand on supervising and controlling activities to be performed by environmental authorities at the local and regional level hasn't been accompanied by the central government, or by a timely development of adequate information management systems.
- Municipal authorities and offices responsible for agricultural and environmental activities in El Peñón, Regidor and Río Viejo have faced similar situations to the ones described above.
- This transition has also impacted communities that are organized around the agricultural, cattle, mining and fishing sectors. For instance, fishing, which is a salient activity in the area, has been impacted by both extractive activities and activities linked to agribusiness. Even agriculture and cattle have witnessed rapid transformations in the vacuum of robust environmental and land use programs. This has impacted these traditional activities.
- As this transformation has impacted the size and mobility of both rural and municipal populations, schools have witnessed an abrupt decrease in the number of students. This has put at stake the stability of the local education system.
- Impacts on the demographic structure and the stability of local communities increase both social and cultural problems. Local religious leaders have had to face many these problems through their pastoral work. Likewise, shifts in the social sphere impact the local cultural identities (e.g. changes in time use and management, changes in the sense of solidarity, changes in referents regarding traditional forms of authority). This also impacts the role of the church in the area.
- This transition has brought up debates regarding different development models and the future of regions like the Island of Papayal. Local and regional NGO devoted to development issues play a role in this. The existence of different points of view in regards to development at the local and regional level highlights the role of non-governmental organizations that seek to help social organizations and local communities.
- Private investors are fairly new to the region but have impacted dynamics that characterized the social, economic, political and cultural spheres at the local level. This has been mainly

due to the size and scale of the changes prompted by the new investments and the emergence of novel development models.

The intervention of a variety of actors, like the ones mentioned above, and the decisions that lead to such intervention cannot ignore the nature of the local context and key contextual features.

On the other hand, the scale of the upcoming transformations demands a series of adjustments. Local institutions need to be prepared, civil mechanisms to supervise environmental issues should be in place, and the institutional, technical and legal capacity of environmental authorities should be enhanced. The magnitude of these transformations also reveals the need to have in place clear mechanisms to secure the participation of local communities and the relevance of addressing land use not as a subject matter that is confined to the limits of the municipality, but as issue that is linked to the complexities of the region.

b. The case tends to be oversimplified as a conflict between two actors, but it actually involves a variety of actors

The press releases and reports in the national and international media, as well as the campaigns run by different national and international organizations have publicized the current conflict on the Las Pavas farm. However, they have also oversimplified it, overlooking the complexity that this conflict encompasses. Neither the particularities of the local and national contexts in which this dispute is embedded, nor the dynamics, perspectives and agendas inherent to these contexts have been conveyed by media coverage and campaigns that have brought this case to public attention.⁹⁸ These elements, however, are essential to understand the current dispute on the Las Pavas farm. In fact, this dispute refers to historic land occupation processes, local dynamics linked to armed conflict, institutional and government intervention capacity, development models and the interests and agendas of diverse actors.⁹⁹

c. A high level of polarization and lack of mutual recognition between parties

Together with the press releases and campaigns that have put the Las Pavas case into the public domain, the case has also been the subject of studies and reports, the central topic of corporate communiqués, and the core motive of public declarations and campaigns; all these have deepened infused polarization into ASOCAB and the members of the Consortium. This polarization has been fostered not only by the actions of each of these two parties, but also by the actions of those who have supported

⁹⁸ For more on this, see the reconstruction of the case in this document.

⁹⁹ For more on this, see the reconstruction of the case and the description of the different actors.

each of them. False accusations, sweeping generalizations and, above all, the lack of mutual recognition as valid interlocutors; are all elements that have deepened the polarization between on the one hand ASOCAB and the organizations that support its members, and on the other hand the Consortium and those who support it. Such a polarization, among other things, has hindered any attempt to advance a constructive dialogue aimed at finding real solutions to the current dispute on the Las Pavas farm.¹⁰⁰

d. Asymmetry and polarization between involved parties

There is an undeniable gap between the very limited power of ASOCAB and the political and financial muscle of the Consortium. NGOs, CSOs and others involved in the case have addressed this gap by using the concept of asymmetry.¹⁰¹ The notion of asymmetry serves to highlight these differences and the ways in which they are expressed in, for instance, differences in access to mechanisms for resolving the dispute in one's own favour and the availability of resources for doing so. It should be noted, however, that shush asymmetry has been fostered by the weak presence of the State and its rather sporadic intervention, along with its lack of performance as an actual arbiter in the dispute.

A review of the Las Pavas dispute reveals different mechanisms that have been put in place aiming at overcoming the asymmetry between the lack of power of the farmers and the power of the companies. Within these mechanisms, it is worth mentioning advice on legal matters and proceedings; economic support, for example through food supplies delivered to the members of ASOCAB; the dissemination and promotion of support through campaigns, for example through reports and documentaries which have tried to raise awareness of the case in countries where there are palm oil buyers and consumers of products containing palm oil; and raising awareness, for instance, through the national and international media.

The ways in which these mechanisms have been involved in the dispute on Las Pavas show various pivotal elements. Three of these elements that are worth pointing out are raising awareness, confrontation and denial. With regard to the former of the three, it is clear that it is precisely thanks to the participation of other parties that the current dispute on the Las Pavas farm is known and has become a topic of interest. In terms of the second element, the course taken by dispute shows that confrontation has been a central element in the attempt to overcome asymmetry. Confrontation is clearly expressed, for example, in two of the routes through which the dispute has been handled: legal channels and the media. The third element is expressed, for instance, in the refusal to hold bilateral dialogues with the Consortium.

¹⁰⁰ For more on this, see Appendix 3.

¹⁰¹ An example of this is the notation of the members of the *Clínica Jurídica* who have supported the PDPMM and the community from a legal point of view with regard to the reasons to support the community in this case. For them, this is an asymmetrical confrontation between the business community and the farmers. Interview with members of the *Clínica Jurídica* at the Pontificia Universidad Javeriana. Bogotá May 3rd, 2010

In addressing asymmetry, in this case, it is also useful to consider those actions that haven't sought to overcome it, but, on the contrary, have ended up contributing or aggravating it and even exacerbating the mechanisms that have sought to overcome asymmetry. In this respect, it is worth looking at some of the actions of the Consortium that, to follow the description above, can be characterized in terms of three elements: simplification, confrontation and denial. The first element refers to the manner in which part of the Consortium has focused on searching for answers to economic issues. This is best expressed in the offer of economic solutions such as productive partnerships and income generation alternatives, which are not necessarily wrong but ignore the political aspects inherent to the asymmetry and, in this case, the dispute itself. The second element is exemplified in legal actions taken by the Consortium in response to current social problems that have in the Las Pavas farm one of their scenarios, and in public reactions to the reports and articles that brought the case to public attention. The third element, denial, is expressed through not recognizing ASOCAB, from the beginning, as a valid interlocutor.

The elements mentioned above have also infused polarization to the already polarized dispute. We should remember that a conflict may or may not be constructive depending on how it is handled. This shows the need to develop actual dialogue mechanisms that are beyond the logic of winners and losers and of all or nothing. These are mechanisms that could really contribute in searching for solutions. The current logic surrounding the dispute does not appear in the long term to contribute either to the political and economic strengthening of ASOCAB as a representative body, nor to the construction by the Consortium of a social license to operate, which relates directly to the sustainability of its operation in the area and its recognition as a valid interlocutor.

These days oil palm cultivation is framed by an ongoing political and academic debate regarding development models, which needs to be looked into in more depth¹⁰²

i. The development models

The Las Pavas conflict is not just the result of a dispute over land between two socio-economic parties with different viewpoints; nor is it just the result of a political conflict between the palm farmers and the organizations that support the Buenos Aires community. These disputes reflect and are the result of the confrontation between two rural development models or approaches.

The first model promotes the development of capitalism in the countryside through large agro-industrial companies growing oil palms or other products to be exported or sold on the large internal market. This model seeks to take advantage of the comparative benefits of the country by intensively exploiting its natural resources. It is based on single-crop farming and, thus, it requires

¹⁰² More on this debate can be found in Appendix 4.

large amounts of capital and a high level of occupation of the land. This model might have some positive impacts on the national and regional economy. It strengthens production chains, integrating the agricultural sector with the industrial sector. It generates network economies and jobs with added value. It multiplies exportations. It increases money flow at the local level due to the existence of employment salaries and this boosts local economies. However, this model also entails costs. A single-crop model requires an intensive use of natural resources including the land and produces significant environmental impacts. This also impacts food security and sovereignty in the area where agribusiness activities are carried out and in the country as a whole. It poses limitations to permanence among local communities and smallholders, due to its non-intensive nature with regard to the workforce during all of the phases of the farming cycle which limits its capacity to effectively absorb the surplus workforce resulting from the shift in land use. Finally, it does not improve the direct tax income of the municipalities and thus doesn't generate municipal extra income that could be used in social programs.

The second model is based on farming economy of smallholders and is aimed at self-consumption and meeting the internal demand at a local and regional level and in some cases at a national level. Often, this model does not use natural resources intensively. It has low capital requirements. It is an important support for food security and sovereignty and, thus, contributes to preserve the customs and traditions of the communities. This alternative and traditional model may have a different emphasis: developing production chains at a regional and local level to meet regional and local markets; ecological agriculture looking for sustainable consumption niches and fair trade; agriculture focused on the production of food to be sell at the markets of big cities through large retail chains; or, in its simplest and most traditional form, subsistence agriculture which perpetuates poverty and marginality. All of these versions of the model have in common a basic feature: they keep rural communities and their families in the countryside and preserve their way of living as farmers. Nevertheless, dominant forms of succession in the areas of smallholdings lead to the subdivision of land up to unproductive levels, intensifying the exploitation of natural resources due to the limited availability of land and generating deforestation, decreasing biodiversity, affecting water resources and eroding soils. Furthermore, the resulting surplus workforce has to look for ways of making a living by resorting to temporary jobs in nearby farming areas, in commercial agriculture markets, in service activities or in the expansion of the agricultural frontier, which might include working on activities linked to illicit crops¹⁰³.

ii. The promotion of the palm oil sector

The national government has made a big effort to promote large agribusiness as its main strategy to contribute towards rural development in Colombia. In the case of oil palm, since the 1960s the

¹⁰³ Fajardo, D. (2009). Territorios de la agricultura colombiana. Universidad Externado de Colombia.

expansion of this crop was driven by a State policy that sought to replace vegetable oil imports. The oil palm was one of the main beneficiaries of credit-loans and tax incentives that were defined as instruments of the protection development model that prevailed until the 1990s. This allowed oil palm farmers to gain a comparative advantage and to capture both the national and the international market (Kalmanovitz and López, 2006).¹⁰⁴ Subsequently, from the Pastrana administration onwards the palm industry has been promoted as one of the axis of rural development in the country. More recently, the Uribe administration defined the production of bio-fuels, both sugar cane ethanol and palm oil bio-diesel, as one of the strategies for the Colombian countryside.

The clear State support to the palm farming sector can be seen in a series of policies that deal with three main aspects: the compulsory consumption of bio-diesel, tax exemptions and fiscal support, and, policies aimed at promoting this sector through the allocation of resources to foster its development and the promotion of international cooperation, mainly from North America. The latter, relates with the use of oil palms as a strategy to consolidate territorial control, to combat illicit crops and to promote alternative development. All these, are pillars in the war on drugs and terrorism, the backbone of *seguridad democrática* (democratic security). In this way, the expansion of the palm cultivation is set out as a supplement social component for territorial recovery¹⁰⁵. During the period from 2002 to 2007 around \$381 billion Colombian pesos were provided via loan-credits; \$102 billion Colombian pesos were provided in guarantees through the Agricultural Guarantee Fund (FAG); and the Ministry for Agriculture and Rural Development invested a little over \$74 thousand million Colombian pesos in the oil palm sector through the Rural Capitalization Incentive (ICR), the Science and Technology Research Program, the Productive Partnerships Program and the Exchange Cover Program. Likewise, Free Trade Zones for the agro-industrial palm oil and bio-fuels were established across the country.

The National Government's expectations in regards to this agro-industrial sector and the development model for the countryside are best expressed in existing projections for the sown area and palm oil production for 2020. In fact, the government expects to more than double the production of oil and the area sown with oil palms from 1.2 million ton and 443 million hectares estimated for 2010 to 3.4 million ton and 996 million hectares by 2020 (DNP, 2010 and the Ministry of Commerce, 2010)¹⁰⁶. This represents an increase in the sown area of 125% over a period of 10 years, meaning an investment of \$442 billion per year on a single crop, within a context where financial resources are scarce. The scale of

¹⁰⁴ Kalmanovitz, S. y López, E. (2006). La agricultura colombiana en el siglo XX. FCE y Banco de la República, Bogotá.

¹⁰⁵ Salinas, Y. (2008). La expansión de la palma. Konrad-Adenauer-Stiftung, No. 2 KAS Papers, Bogotá.

¹⁰⁶ DNP, Departamento Nacional de Planeación (2010). Estadísticas del Sector Agropecuario.

[<http://www.dnp.gov.co/PortalWeb/Programas/Agriculturapecuarioforestalpescaycaza/EstadisticasdelSectorAgropecuario/InformaciónAgrícola/tabid/437/Default.aspx>; Mincomercio (2010). Apuesta Exportadora Agropecuaria. Cultivos de Tardío Rendimiento. [<http://www.mincomercio.gov.co/eContent/documentos/Competitividad/InsumosApuesta2.pdf>.

this policy can be seen by comparing it with credit resources provided to the palm sector between 2002 and 2007, which reached \$60 billion per annum.

iii. Lack of crop implementation and impact management plans

Projections for palm crop expansion, both for oil and bio-diesel, promoted by the national government, lack a rigorous socio-environmental assessment that allows identifying main impacts that these kind of projects might have on the national, regional and/or local levels. The implementation of this policy has been improvised and has lacked adequate planning and preparation by the national, regional and local organizations that allow for greater control over palm development and the establishment of mechanisms that facilitate better distribution of the benefits among the different social parties involved in the production chain, the rest of the society and the municipalities. The implementation of this policy should exclude from the development of the crop any areas with a forest and conservation vocation, communal lands and areas where food security and sovereignty are strategic elements for the country and the regions. In keeping with this, the Instituto Von Humboldt (IVH) and Conpes 3477 recommended an identification and characterization study of the areas that are suitable for oil palm cultivation at a scale of 1:100.000. However, the development of the oil palm has advanced without these studies. This has led to conflicts over this resource, the occupation of ethnic land, land concentration and speculation on land prices (Fedepalma, 2007)¹⁰⁷.

Deficiencies at the level of State institutions play a role in the ways in which things have evolved, however, these days it is also expected that companies in the oil palm sector and their Federation (Fedepalma) move beyond institutional vacuums and act within the framework of Corporate Social Responsibility and existing relevant standards for palm oil and bio-fuels, such as the ones comprised in the Roundtable for Sustainable Palm Oil and the Roundtable on Sustainable Bio-fuels – RSOP and RSB, respectively.

Another important aspect to point out is the fact that oil palm cultivation is been developed in an open economy aimed at the large national and international markets. This requires maximizing income from the soil in order to remain competitive. For this same reason, it tends to reduce labour costs and to externalize environmental costs, generating high ecological impacts and a severe change in the landscape. A comparison between the average cost of production of a ton of palm oil in Colombia with that in Malaysia or Indonesia reinforces the need to secure competitive prices. While in Colombia this cost was US\$354 in 2004/2005, in Malaysia and Indonesia it was US\$246 and US\$158, respectively. Increasing competitiveness through the intensive use of the land pushes the price of the land up. This generates a series of interrelated effects. It creates incentives to sell the land among local farmers and owners. It generates the need to grow products that correspond to the higher prices of the soil. It brings

¹⁰⁷ Fedepalma (2007). La Agroindustria de la Palma de Aceite y sus perspectivas en la región de la Orinoquía. Presentación en power point, Jens Mesa Dishington, Presidente Ejecutivo, en X Cumbre de Gobernadores y de Parlamentarios de la Región Amazorinoquia. Villavicencio August 31st, 2007.

changes in the use of the land from livestock, small and medium commercial crops and small farming production, to oil palm. It forces farmers to move to the municipal capitals or larger cities. It relates to the decrease in the local food offer and lack of basic farming products. It prompts changes in people's livelihoods: from farmers to wage earners or economic migrants.

The so called three Ps (plantation, palms, profit) help in estimating the importance and weight of oil palm in the international context. Since 1995 the worldwide production of oil palms has doubled. If you take the capitalization of the market as an indicator, the company Sime Darby (Malaysia) is twice as big as Lufthansa; the other large company on an international scale, Wilmar (Singapore), founded in 1991 and employing 80,000 people is worth more than BMW or the German postal company "Deutsche Post" and its profits last year were approximately 1.6 billion Euros.¹⁰⁸

The above is a general overview. However, similar dynamics can be observed in Las Pavas, in Papayal Island and in the region. The international context and the national policies, together with the fact that both soil and local weather conditions are suitable for palm cultivation, generate incentives for the private sector to develop its palm project in the region. This includes, promoting Productive Partnerships with both large ranchers and smallholders, buying cattle land and small farms, and appropriating communal land (e.g. river bars, wetlands, uncultivated lands), either directly or indirectly through purchasing smallholdings or large farms that have previously incorporated these areas into their lots. This might be the case with the Las Pavas farm. The former owner, Jesús Emilio Escobar, added to the entitled lots 1658 hectares more, which origin is not clearly established. According to ASOCAB those hectares correspond to uncultivated land. However, according to Aportes San Isidro all lots in the Las Pavas farm have titles: some lots have *títulos de dominion* (deeds of ownership) and some lots have *títulos de posesión* (deeds of possession). Furthermore, the environmental Appendix shows some evidence of the drying out of wetlands in the area, observed by the Commission.

In the sub-region, the Commission also collected testimonies regarding forced economic migration of the population, prompted by the lack of income-generation opportunities. For instance, according to the head of the school in Buenos Aires, the number of students registered at the school in La Solera has decreased from 60 to 13 students in less than two years. This, according to him, is due to the fact that the parents sold their land to oil palm companies and could not find a job in the palm plantations, given the employment pattern of the oil palm industry. This sort of phenomenon is mainly present in those farms that originate from buying small lots as in the case with Las Brisas, a farm owned by Aportes San Isidro, which originates in the purchase of land from small farmers in the area. There are other conflicts over land in the area that relates to the palm cultivation and were mentioned by the church leaders of the region and some of the interviewed people. These are included in point IV.1, in which the Numa stands out

¹⁰⁸ Revista Focus: http://www.focus.de/finanzen/boerse/tid-18251/palmoel-puder_aid_507610.html (Consulted May 15,2010)

On the other hand, a comprehensive analysis reveals threats inherent to a policy that makes the palm business profitable at a micro and local level, but on the whole creates serious social, environmental and economic risks. The process of productive specialization in which everyone sow oil palm is encouraged by the profitability of the business and is facilitated by the subsidies scheme, but may lead to two types of risks: environmental and socio-economic. The former, are created when the expansion of the agricultural frontier towards new areas that are rich in biodiversity, water and forest resources, takes place in the midst of institutional vacuums and low environmental standards. Socio-economic risks, on the other hand, are connected with two possible phenomena: i) A drop in the demand for products from derived from oil palm (palm oil and bio-diesel), due to the emergence of alternative raw materials as a result of technological development; ii) An increase in the oil and bio-diesel supply worldwide when new producers and countries enter the international market. This might lead to erroneous paths of specialization that generate perverse scenarios in which underdevelopment is perpetuated in the midst of environmental deterioration and exhaustion. This uncertainty is even more significant due to the major initial investments required by the palm crop and to the fact that this is a late maturing crop that cannot be removed in the short-term.

Although municipal authorities of El Peñón deem local soils as having potential for the oil palm and consider it as a future development axis for the municipality, they also express major concerns in regards to the ways in which the crop is expanding. Oil palm expansion in the area has been mainly through the purchase of small lots from local farmers, who, as a result, have lost their access to land. This has become a determining element in local unemployment and in social risks faced by the municipality. This is why the local administration states in its Municipal Development Plan that it is interested in "promoting the conservation of the land by small producers in order to avoid a severe social crisis later on" and in settling their linking to the oil palm production chain, through an informative and participatory strategy (El Peñón municipality, 2008).¹⁰⁹

Finally, part of the ongoing discussion about the development model and the cultivation of oil palm has to do with financial risks and vulnerabilities faced by small farmers who choose to invest in the oil palms. Investment in this economic sector has three main bottlenecks: the establishment or investments needed for the start of cultivation in the first year that adds up to \$85.6 million pesos per 10 hectares of land; the working capital needed in the first three years before the production of fruit starts, which adds up to \$31.1 million per 10 sown hectares and which should allow the farmer to receive some income for his workforce; access to credit to cover these costs which not only requires deeds of ownership, but also management capacity and financial knowledge. This is one of the reasons that lie behind the development of *Alianzas Productivas* (productive partnerships) promoted by companies, and the *Finca Campesina* (farmers farm) promoted by the PDPMM.¹¹⁰

¹⁰⁹ El Peñón municipality (2001).EOT.

¹¹⁰ More information about these models can be found in Appendix 4

Besides, there are also vulnerabilities associated to some of the variables that determine the viability of oil palm projects at a small scale. Determining variables for the profitability of oil palm cultivation are: the price of the fruit, the productivity per hectare which depends on technology, the cost of transporting the fruit and the agreement regarding this that is made with the buyer, and the existence of an initial investment subsidy that in this case corresponds to the Rural Capitalization Incentive (ICR). When any of these variables change for the worse, the viability of the oil palm business for small-scale farming becomes more difficult. In small-scale production, subsidy for the initial investment and the price of the fruit are critical in determining the profitability of the crop. To secure that small-scale production is profitable, the price of the fruit cannot be lower than \$269,156 /ton (price for 2010). As it has been observed in recent years, international oil prices, which are the basis for estimating the price of the palm fruit, have tended to decrease (see Appendix 4). This analysis, however, doesn't take into account the implicit subsidy connected to the overuse of the workforce due to the participation of every member of the family in the oil palm activity.

Besides, an element that has not been taken into consideration in the financial analysis are the risks associated with diseases and plagues of the oil palms such as bulb rot (BR) and lethal wilt (LW), which have produced losses of US\$50 million in the past 16 years (Fedepalma, 2008).¹¹¹ The creation of guarantees for small farmers is needed. Otherwise, they will be forced to assume the costs of these diseases and plagues.

In short, this debate is not over. There are still serious doubts and questions about agro-industrial development models, which demand further studies, corrective measures and policies aimed at securing their compliance with international standards in human rights. Likewise, the debate on the economic, environmental and social relevance of these models has not been looked into fully.

f. The dispute over land in the case of Las Pavas and the expansion of the palm area heightens the vulnerability of the population of Buenos Aires in terms of their human rights, their livelihoods and their food security and sovereignty.¹¹²

The 1991 Political Constitution establishes the competence of the Municipal Councils to establish the uses of the soil in their areas. Law 388/97 establishes the procedure for drawing up Land Use Plans (POT by their Spanish acronym) and defining a long-term land occupation model, indicating for rural land that environmental and agricultural restrictions of a higher order should be considered, respecting, among other things, the constitutional mandates on: i) protection of diversity and integrity of the environment

¹¹¹ Fedepalma (2008). Visión del gremio palmero sobre la agro-energía. Presentación en power point, Jens Mesa Dishington, Presidente Ejecutivo, en XXVIII Feria Agroindustrial, Equina, Bovina y Turística Catama 2008. Villavicencio, January 23rd, 2008.

¹¹² For a more information see Annex 5.

(Art. 79 CP); ii) use and preservation of renewable natural resources (Art. 80 CP); iii) food security (Art. 65 CP) and iv) access of the farmers population to rural property (Art. 64 CP). This is the background against which the following analysis is carried out.

The agro-industrial rural development model based on the cultivation of oil palm involves important interventions in the landscape where this is implemented. This is due to its nature as a late maturing crop and on account of the need to maximize the use of the land in order to effectively compete on national and international markets. As such, the arrival of the oil palm industry in an area is a major change factor in local-regional dynamics, production models, social relations, the quality of life of the local population, food security and sovereignty, and access to and ownership of natural resources such as land, wooded areas, water ecosystems and fertile soils. The change in these aspects increase the socioeconomic vulnerability of the inhabitants of Buenos Aires and the members of ASOCAB through three main effects: the effect in their human rights; the effect in their means to secure their own subsistence, and the effect on food security and sovereignty. These effects become more critical in geographically isolated communities with a high level of social vulnerability, without land, with a low institutional presence and with high levels of poverty, as is the case with the population of Buenos Aires.

i. Impact on human rights

What is now know as “the United Nations Framework”¹¹³ in the business and human rights field is based on three pillars: 1) the State duty to protect against human rights abuses by third parties, including business, through policies, regulations and appropriate measures; 2) corporate responsibility to respect human rights, which involves acting with due diligence and avoiding affecting the rights of others; and 3) greater access by victims to effective remedy judicial and non-judicial.

This framework is a useful reference point to analyze the current dispute on the Las Pavas farm, as well as the role and responsibilities of the different parties involved in it. Likewise, it offers insights to analyze the relationship between business activities and human rights in the context of this case.

As stated before, palm policy in Colombia has been put into practice with a high level of imprecision in its implementation by the Colombian government and with a low level of assistance to and control by local and regional institutions, including the environmental authorities. This has facilitated the generation of major ecological and social impacts and the failure to comply with Colombian legal regulations regarding labour, social and environmental matters; all these with a high degree of impunity.

¹¹³ The “United National Framework” corresponds to the policy framework drawn up by John Ruggie (Special Representative of the UN Secretary General on Business and Human Rights) and approved by the United Nations Human Rights Council through resolution 8/7 of 18 June 2008. For more information on the work of Ruggie and the developments within this reference framework, see <http://www.business-humanrights.org/SpecialRepPortal/Home>

As the UN Commissioner himself states, governmental vacuums "provide a permissive atmosphere in which these unlawful acts are committed by all kinds of companies without the proper sanctions or remedies". It is the State's duty to protect these rights, but it is also the reasonability of companies to respect them. Thus, it is expected that given the existence of legal and governmental vacuums, companies will adopt standards on human rights. The work of the States and companies should be mutually reinforced to set up a dynamic and interactive system to promote the enjoyment of human rights within a country.¹¹⁴

Specifically, the expansion of oil palm crops in the area and the conflict on the Las Pavas farm have had an impact on the human rights of the population of Buenos Aires. A large part of this population depends on natural resources such as land and water and forest ecosystems to meet their subsistence needs; respecting, protecting and guaranteeing their access to these resources might be deemed human rights duties. Under current circumstances, access by the inhabitants of Buenos Aires to natural assets on which they live off is affected. Rights such as the use and enjoyment of the biodiversity, the right to subsistence, freedom of choice, food security, the right to land, usufruct rights to communal property and the right to protect oneself against natural threats, are all infringed. Remedy to this cannot be limited to the creation of jobs and the payment of salaries, resulting from a shift in their way of life from farmers to wage earners. One of the arguments put forward by ASOCAB is that single-crop palm farming violates their right to maintain their culture and the free development of their personality. In this respect they deem unacceptable that freedom in choosing how to use time and space is being violated when they are forced to engage in an employer-employee relationship. This involves the displacement of the farmer from the location where he grows his crops. Likewise, they believe that the enjoyment of freedom (the right to choose one's way of life) also involves confirming their sovereignty¹¹⁵.

ii. Impact on the livelihood of the population of Buenos Aires

The concept of livelihood allows us to take a closer look at the survival strategies developed by rural communities in different geographic areas and contexts. Livelihood is "a combination of the resources used and the activities carried out in order to survive"¹¹⁶. In small-scale farming, harvesting and fishing economies, income levels, consumption levels and quality of life highly depend on the access to the use of the means of production or natural assets, in particular land, forests and water ecosystems. If people are unable to access these resources, their quality of life will deteriorate, putting their existence at risk, changing their way of life, or leading to their displacement to other

¹¹⁴ ONU, Human Rights Council. Fourteenth session. Agenda item 3 (2010). Report of the Special Representative of the Secretary General on the issue of human rights, and transnational corporations, and other business enterprises, John Ruggie. 9 April, 2010. A preliminary attempt at regulating Transnational companies in 2007 was categorically rejected by the international institutions representing the large companies, which demanded that the Sub-commission project was filed away.

¹¹⁵ For more information see Annex 5.

¹¹⁶ DFID, Department for International Development (1999). Information sheet on sustainable livelihoods, 1999. <http://www.livelihoods/dfid/>.

areas. In palm or agro-industrial economies, livelihoods basically depend on the salaries earned by those employed by companies. Therefore, an analysis of the implications of the shift in the use of land towards palm cultivation have to go beyond addressing the capacity for generating jobs linked to this economic activity. It has to address also other aspects that might affect the way of life of the farmers.

Farmers in Buenos Aires and many others living in Isla Papayal have developed diverse livelihoods that involve permanent adaptations in response to the changing environment in which they live. The strategies used to create these livelihoods include small-scale agricultural production in areas of communal grasslands and river bars and on lots belonging to other farmers through a sharecropping system, or in private land devoted to extensive livestock rearing, production of minor species and vegetables in areas close to their homes, fishing and harvesting. More recently and to an even lesser extent, they have been involved in day labouring and piecework in the palm oil farms. Different types of factors that affect and limit their livelihoods are permanent threats. The expansion of the palm area becomes a growing threat that increases the vulnerability of the population of Buenos Aires and affects their livelihood strategies. This is due to the exclusionist nature of the oil palm, both in terms of the use of land and capital requirements, the institutional shortcomings, the lack of a policy aimed at securing State regulation and control in the area, and the lack of Corporate Social Responsibility measures that respond to special needs and particularities of the context.

In a relatively short period of time, the landscape has changed drastically, threatening the stability of the people that used this land differently and under another rationality. This means that the farmers have to adopt different survival strategies on account of the "drastic" shift in the use of the soil, creating a new context of vulnerability for the population in the region, which does not have assistance policies from the State or from the companies working in the area. The oil palm might be a new employment option given the precariousness of job opportunities at the local level, but in turn it affects the traditional farming production system and access to natural resources such as the land and water ecosystems, which have been the traditional source of livelihood for the community in this area. Furthermore, the oil palm industry is neither able to absorb the entire displaced workforce, nor are there any reconversion and alternative employment training programs. Again, this reveals an agro-industrial development policy that does not take negative impacts into consideration in order to mitigate them.

Restrictions on the farmers in Buenos Aires in terms of access to land are a fundamental limitation to improving their livelihood but also to establishing any kind of negotiation model with the Consortium. Given their cultural characteristics as subsistence food farmers and harvesters, the solution to their problems concerns not only access to land, but also ownership of the land.

iii. Food security and sovereignty¹¹⁷

One of the main concerns at the Roundtable for Sustainable Palm Oil (RSOP) [Principle 6] and at the Roundtable on Sustainable Bio-fuels (RSB), relates to the possible effects of the sowing of oil palms on the shortage and even the increase in the price of foodstuffs, due to the prioritization in land use and financial resources for sowing oilseeds. This concern is linked to the fact that oil palm might replace other crops that are part of the family shopping basket. In this respect, the former United Nations commentator for the right to food, Jean Ziegler, states: "using productive land to produce food that will be burned as bio-fuel is a crime against humanity".

In the case analyzed here, the restriction on access to the use of environmental resources (land, water and forest ecosystems) on account of the cultivation of oil palm limits the development of productive and extractive activities that might let the community obtain its food and income, which then affects its food security. This situation is accentuated by the land dispute on the Las Pavas farm, as it includes lots where they could access those environmental resources for their survival. The single-crop palm farming cannot guarantee that food security risks are overcome by maintaining purchasing capacity to buy food, in spite of where and how it has been produced. This is due to, on the one hand, the fact that food prices increase when food supplies have to be imported; on the other hand, because the purchasing capacity of all of the members of the community depends on the capacity of the palm sector to generate enough jobs in order to absorb the entire workforce displaced by the single-crop farming, and to offer stable and good-quality jobs. However, the experience in the area, the experiences in other municipalities and the low intensity of the use of the workforce by the sector throughout the crop cycle does not guarantee this. On the contrary, the Commission observed that the community has to buy almost everything from outside, be it from one of the nearest cities (El Banco) or from other areas outside the region. This leads to the paradox of the city providing food to the countryside. This situation brings high risks and uncertainties regarding food security among the local population, which are accompanied by the absence of State and company policies to help reduce possible impacts.

Finally, understanding food sovereignty as the right to produce one's own food and the right to decide what one consumes, oil palm farming and the lack of access to land by inhabitants of Buenos Aires radically restricts this right. This happens through three interrelated effects: i) The transformation of their way of life and livelihood: from production farmers and harvesters without land to poorly paid wage earners and day workers. ii) The limitations imposed on access to land, to water and forest ecosystems and to communal land to cultivate, hunt, harvest or fish. iii) The change in consumption and culinary patterns as the products that were traditionally eaten tend to be brought in from outside the region with different flavours, spices and forms and at higher prices.

¹¹⁷ A more in-depth discussion of this point can be found in Appendix 5.

g. The solutions to the conflict should be framed by current debates about farming economies and new understandings of the rural Colombian sector

The Colombian agricultural sector tends to consolidate a bimodal structure of land tenure that is contradictory and inefficient in contributing to promote economic growth and equality.

The general tendency, on the one hand, is to consolidate large lots and, and, on the other hand, to split up medium-size lots into smallholdings. These smallholdings are fragile and almost always economically unviable, due to the difficulties to access credit, lack of technical assistance, cost of supplies and difficult conditions in terms of marketing and competitiveness. As such, the old claim to gain access to land but without claiming a set of conditions that secure the sustainability of smallholdings makes them unviable and almost always ends in conditions of poverty.

The defence of smallholdings and medium size lots, thus, should be framed by the promotion of multimodality. This is, the creation of processes that allow smallholdings to relate and establish agreements with medium size and large agro-exploitations. All this, aiming at advancing in agro-industrial integration, strengthening property, and securing access to marketing through clusters and by articulating and effectively taking advantage of the services that the stronger sectors offer in terms of their market competitiveness.

It would be a mistake to think that all the inhabitants of rural areas want and should become landowners. These days, being a landowner and staying in the agricultural business requires training, access to modern marketing systems, and adequate management of credit resources, among other things.¹¹⁸ In other words, today, the accumulation of human capital - education, training -, social capital - strong partnership associations-, and productive capital, is needed. This means that one cannot simply demand the redistribution of the land, as this is deceitful in just offering access to land property, without having access to other services and institutions needed to break the vicious cycle of poverty. Likewise, following this new rural perspective, production activities are an option but not the only one. The rural sector has experienced the growing demand for other kinds of activities such as the provision of services, the development of non-agricultural production activities, and marketing specialization, etc.

New trends in rural dynamics are exemplified in the work of Fundepalma. This is an organization that started by specializing in technical assistance services, credit management, and organizational assistance for communities.

¹¹⁸ See Machado, Absalón "La Reforma Agraria, una deuda social y política" Universidad Nacional, 2009.

VII. CONCLUSIONS

The nature of the problem

Territory is at the core of the problem in Isla Papayal, and, within it, the Las Pavas, farm. This is a micro-region that is characterized by the existence of a complex ecosystem based on the intercommunication of existing bodies of water, which have been seriously affected by a lack of rationality in the processes of intervention throughout its history.

This leads to face the dispute on the Las Pavas farm, not as one which resolution rest on solving the dilemma between, on the one hand, breaking the lot down to contribute to an accumulation of smallholdings, or, on the other hand, consolidating a large lot devoted to the large-scale production of oil palm.

There is enough literature and studies that show the non-viability of dividing the land into smallholdings under a traditional productive model. The lack of sustainability of this model will inevitably lead to the gradual sale of the small lots to investors, who, in this case, would mainly invest in oil palm. This will take us back to where we started and will imply a strategic loss for everyone involved in the dispute. Therefore, reducing the problem to the land claimed by ASOCAB, under a too narrow view of private property, is erroneous. The main problem is the territory and, within it, land use.

On the other hand, establishing a large property with single-crop palm will contribute to consolidate a model that does not necessarily correspond to the nature of the environment that predominates in the region and, as such, will be a factor for mid and long term destruction of the ecosystem.

The problem has deep social causes

Socially specking, the core problem of the Buenos Aires community is suffering from serious social exclusion and the existence of major difficulties to secure its sustainability as a community. These are made worse by the impact of the emigration of the younger generations, due to the lack of prospects for them in the local context. What this community faces exemplifies the irrationality that taints the situation in which the most vulnerable farming economies are struggling in Colombia. It reveals the absence of macroeconomic policies aimed at strengthening small-scale producers and the limitations of local planning. It unveils the consequences of the conditions of residual survival linked to a pre-modern economic model that, over the last forty years, was generated by extensive stockbreeding. It also expresses the inequality in access to land. Today, the community of Buenos Aires is highly vulnerable in the face of a shift of model like the one prompted by oil palm. Although this new model has introduced new modernizing rules, these cannot be characterized as fully democratic and inclusive.

In the search for solutions, the Alianzas Productivas (productive partnerships) proposal as a way out of the Las Pavas problem fails in acknowledging the conditions of the population of Buenos Aires, the complexity of the case and the particularities of Isla Papayal .

The Consortium endorses a Productive Partnership model that, in this case, would confront very adverse conditions:

Firstly and generally speaking, the population of Buenos Aires does not own much land. Having land is a requisite to participate in *Alianzas Productivas* (productive partnerships).

Secondly, the community of Buenos Aires plays against significant limitations to face the challenges that a global society and economy impose. To begin with, among the Buenos Aires people, there is a lack of experience of operating in a market economy and of doing business. This differentiates them from other farmers who have engaged in *Alianzas Productivas*, in which CI Tequendama affirms its model. This is the case with several farmers in Magdalena. Additionally, Buenos Aires houses high levels of poverty and its inhabitants have low levels of formal education. All these, pose limitations to the people of Buenos Aires to face the challenges of a global economy and society¹¹⁹.

Some of the failures experienced by ASOCAB in its attempts to move towards a market economy are, in part, explained by the elements listed above. This means that part of the community needs basic educational processes and the solution of fundamental problems to guarantee their survival, as well as the right to exist as a farming community in decent conditions.

Finally, this proposal continues to act within the second alternative presented as part of the dilemma: consolidating the expansion of single-crop oil palm, involving the few areas that remain with small and medium sized owners, even to the detriment of the few spaces that are environmentally important and have not been affected by that productive dynamic.

High levels of asymmetry and polarization between the parties characterize the dispute

There is an undeniable gap between the very limited power of ASOCAB and the political and financial muscle of the Consortium. NGOs, CSOs and others involved in the case have addressed this gap by using the concept of asymmetry. The notion of asymmetry serves to highlight these differences and the ways in which they are expressed in, for instance, differences in access to mechanisms for resolving the dispute in one's own favour and the availability of resources for doing so. It should be noted, however, that such asymmetry has been fostered by the weak presence of the State and its rather sporadic intervention, along with its lack of performance as an actual arbiter in the dispute.

Added to this is the posture adopted today by the Government, mainly through INCODER, which in the aim of denying everything carried out by the officials who took on the case between 2006 and 2009, is

¹¹⁹ Some representatives of ASOCAB, for instance, have only attended to one year of elementary school.

creating the conditions for this asymmetry to reach unforeseen levels which could work against the Consortium in terms of its social and business profile.

The ways in which the conflict has been managed has lowered the profile of the State's responsibility and this has contributed to the polarization.

In the long term, the polarization that currently frames the dispute doesn't contribute to the political and economic strengthening of ASOCAB as a representative body, or to the construction by the Consortium of a social license to operate. The latter relates directly to the sustainability of the Consortium's operation in the area and its recognition as an important actor and valid interlocutor. Mutual recognition, by both parties, as valid interlocutors and the creation of spaces to reduce both polarization and tension between them, are needed.

It is therefore urgent to create scenarios for the parties to meet, where they can recognize each other as valid interlocutors and set up a dialogue that allows them to generate ways to begin solving the dispute. In doing this, is important that the Consortium stops seeing Isla Papayal under one-dimensional perspective as a "development hub", an area for promising investments. It is desirable that it begins recognizing that beyond the opportunities for investment and accumulation of capital, there is a diverse population which is settled there, an environmental complex that requires obligations of compliance with regulations and, as a result, the need to create an atmosphere that favours a solution based on dialogue. The Consortium should also ease its perception of the oil palm as the solution to all the region's problems.

For its part, ASOCAB should recognize its weakness as an organization and the need to structure a process to effectively create social capital (relationships based on the prospect of development for the territory), human capital (seek more training for its leaders and members) and productive capacity based on the conditions imposed by the new market economy that already exist and poses new challenges. ASOCAB should not put everything at stake around a traditional agrarian reform without assessing the conditions required to bring about and make sustainable its continuance in the region. In this respect, it should look again at its relationships with other organizations, which would be willing to support it in its organizational strengthening process.

To do this, ASOCAB should adopt as strategic perspective that guides it, insofar as rather than the land, as we have already stated, the issue is the territory.

Recovering the perspective of the territory involves giving precedence to the natural character of the wetlands and the amphibian culture of the inhabitants of the micro-region Isla Papayal. Therefore, economic proposals should correspond to the protection of the complex system of existing bodies of water, as one of the most important characteristics of the territory of Isla Papayal. All of this involves new organizational developments, new productive practices and, as a result, new relationships with other institutions (at local, national and even international level) within a frame of strategic planning and not just on the basis of a fight against a palm farming company.

These new relationships demand creating a technical profile (e.g. use of geo-referenced systems to monitor what happens to the bodies of water), developing agro-ecological production systems, generating an environment friendly culture and strengthening the training profile of its educational structure in that direction. Universities, research centres and international cooperation could support processes linked to advancing in the aspects mentioned above.

A new model for the use of the territory demands, among other things, political willingness of all governmental levels. It also demands that environmental and territorial planning is based on knowledge of the structure and ways of functioning of the wetlands. Following this same line of thought, the resolution of conflicts regarding the use of land should seek to maintain the key functions of the wetlands and thus guarantee the continuous provision of goods and services. This model might also require the creation of farmers' reservations, through a system of shared land ownership, for developing agro-ecosystems. Likewise, it might also require the formation of social and human capital in the micro-region. Finally, it might also benefit from a fair cooperation between companies and farmers, which central elements are: consulting with all stakeholders and searching for a consensus, joining efforts and collective work.

Organizationally speaking, it might be impossible to channel these processes without channeling actions through *ad hoc* agencies. These agencies ought to be created and must convene a broad representation of stakeholders in Isla Papayal. They should convene representatives of: social organizations from the farming, fishing and mining industries; the regional environmental authority (CSB), Cormagdalena; municipal authorities of El Peñón, Regidor and Rio Viejo, including the government officers responsible for farming and environmental activity; the churches and the educational community; local, regional, national and international development NGOs; and the private sector that is investing in the area. These might be national agencies committed with a Regional Development Plan that incorporates Municipal Development Plans, which have already been designed and, thus, are a point of departure that already exists in the region.

The problem is framed by a complex problem involving land tenure that should be mainly addressed by the State

The region faces a generalized problem in the legalization of land title deeds, which should be remedied through the structuring of a specific public policy around the issue of land tenure in Isla Papayal. The existing disorder is leading, among other things, to a chaotic situation that includes the arbitrary use of land aimed at public use (e.g. wetlands, riverbeds, etc.) and which cannot have a lien placed on it or be transferred. This lack of order is increased by the impact of increasing land prices and therefore increasing income derived from land. The Colombian Government has major responsibilities in all this; particularly through its Ministry of Agriculture and the organizations responsible for managing land (INCODER, IGAC), including the land registry office.

Situations reported by the local community as dispossession should be investigated and dealt with for the sake of clarity, which interest both farmers and business investors. The lack of security in title deeds for farmers cannot continue helping in promoting land concentration. If the aim is to create conditions for the coexistence of a multimodal model where the farming economy and large lots coexist alongside one another, this relationship cannot revolve exclusively around the oil palm as the defining factor of power relationships in the region. Other formulas for coexistence should be found. An aim in this regard, for instance, should be to guarantee food security and sovereignty. An institutional, political and financial framework that contributes to maintain the communities in their territories should support this.

The adoption of a rural and environmental perspective of the territory involves expanding the income options and options to make a living. This could be not necessarily through access to land, but also through the offer of specialized services (e.g. environmental, financial, for the use of water resources, assistance in research on flora and fauna, productive assistance to agro-ecological systems, rational fishing, marketing, etc.)

Institutional weakness

The region faces serious problems derived from institutional weakness, especially at the level of municipal offices that continue to be manipulated by regional politicians, who use the area as a political wild card for electoral purposes. As long as this continues to be the “function” assigned and developed by the territorial institutions, it will be difficult for them to play an active part in solving the problem. International donors and cooperation agencies have a significant work on institutional strengthening. Programs such as ADAM from the USAID cooperation had and should continue to have significant experience in this respect. Local authorities should seek to develop agreements with international cooperation to advance on this front. This will help in strengthening and expanding participatory spaces for the local communities, which creation is urgent in the area. These agreements should be made on the basis of a strategic plan for the region that should be defined by local communities, along the lines already stated. This will allow production systems that are supported by international donor to be agreed with the local communities, instead of been defined beforehand and outside the region.

Security and Development: a problem that has not been solved

This point highlights the need for strategies and mechanisms to provide security for the civilian population, within the framework of respect for life and basic rights as an inexorable and fundamental condition. The history of control exercised by illegal armed groups that affected the region's economy, and the impact of selective killings and forced displacement lead to the creation of secure conditions for the civilian population as one of the foundations for its autonomous participation.

The situation of Isla Papayal reveals a model of governmental intervention that is based on militarization and the promotion of private investment. This approach has a negative impact on the social, economic and cultural rights of those who live in the territory. The governmental intervention in Isla Papayal hasn't been based on a comprehensive presence but has focused on military aspects. Such an intervention follows the sequence Security (1) – Investment – Security (2).¹²⁰ This generates institutional vacuums that could end up contributing to human rights' abuses. With regard to this, the Government is expected to intervene in such a way that it can effectively protect human rights and companies are expected to adopt standards to ensure the respect to human rights.¹²¹

Lack of Solid, Comprehensive and Strategic Policies in the oil palm sector

In the oil palm sector there is a marked lack of policies that effectively integrate the conservation of ecosystems that allows dealing with environmental impacts and threats for regions of the country with high biodiversity and rich in water ecosystems such as the area studied here.

A crop of this magnitude, with such environmental implications, in a heterogeneous country with great biodiversity, cannot be based on generic legislation for all regions that does not require environmental and social impact assessments for areas such as these. This fails to acknowledge the reality of the situation.

The Sur de Bolívar sub-region is not suitable for growing oil palm due to environmental restrictions. This is highlighted by the study entitled “*Zonas aptas ambientales para el cultivo de palam de aceite en Colombia, Programa de Apoyo al SINA II*” (Areas environmentally suitable for oil palm cultivation in Colombia, Support Program for SINA II”). According to this study, African palm cannot continue to be grown in this sub-region.

Misuse of the natural productivity of the wetlands

The unplanned interventions for starting to grow African palm crops on Isla Papayal show the lack of knowledge about the structure and ways of operation of the wetlands in the micro-region (Isla Papayal) and the sub-region (Sur de Bolívar). They also reveal an underestimation of the value of local ecosystems. They are a critical habitat for the conservation of the biodiversity (a collective heritage) and the control of flooding. Similarly, they are essential for carbon sequestration and fulfill a regulatory function for the hydrological landscape and microclimate.

¹²⁰ The sequence shows a high level of militarization in security (1) and a clear role of the development model in the security (2), which consolidates a territorial order that encourages investments that are made in certain regions with different consequences depending on the type of population, geography, etc.

¹²¹ See Appendix 3

The lack of enough attention by the Consortium to environmental matters is shown in the fact that: it does not have a specialist or technical officer based at the Las Pavas farm and responsible for environmental management; it did not develop an environmental baseline of the lot; the environmental studies were conducted two years after the works for adapting the soil and establishing nurseries of oil palm had started; the environmental permits were requested after activities had taken place.


There is no evidence as to the compliance with any environmental management plan. The seriousness and responsibility assumed by the Consortium remain to be seen for the application of business practices that respect the protection of the fragile ecosystems of wetlands to guarantee the continuity of ecological processes that provide environmental services.

General Recommendations

As it is the case with other regions where armed conflict exists, Las Pavas is located in a region that can be described as: i) A complex milieu for business operations due to the existence of weak institutions and fragile government; disorder and widespread informality in land titles which causes ambiguities in land tenure and rights over land; the existence of illegal economies and money laundering; presence of illegal armed actors; and a fragile ecosystem. ii) An area with significant deficits in terms of human security, which are expressed in high poverty levels, high rates of unsatisfied basic needs, and the absence of local development programs (lack of public development policies in a district with very limited access to its town centre), low State and government presence, which is expressed for instance in a low coverage of basic social services and unequal access to the means and factors of production.

This document presents a series of general recommendations in the context of the micro-regional dynamics, addressed to different parties. These recommendations are not aimed at resolving the dispute for land between ASOCAB and the El Labrador Consortium. Rather, they stand as an invitation to acknowledge the complexity of the scenario and to include all the actors, especially those who should play a role in the case but are not yet carrying out their legal duties and constitutional mandates. This is also an invitation to recognize and tackle, first of all, the actual nature of the ongoing conflict, when looking for participatory and inclusive solutions:

To the public sector

-  Promote the development of a unified strategy around Isla Payapal with a territorial focus. And articulate and coordinate inter-institutional interventions among all the levels of the public sector in this micro region.

- ④ The study of areas suitable for cultivating oil palm and the maps from them are to scale 1:500,000, which is still too broad to i) "discard" areas that are not suitable and which have strong restrictions to establish oil palm crops, ii) conduct urgent studies aimed at gaining a detailed knowledge of those micro-regions that are "suitable" or have minor or moderated restrictions, iii) promote the use of precautionary principle¹²² when facing projects of great magnitude. This is the case with palm cultivation in Isla Papayal¹²³ that involves approx 14400 hectares and goes beyond the Las Pavas case. The precautionary principle in this case suggests that if there are doubts regarding environmental issues, palm cultivation should be suspended in the whole sub-region, particularly in the Isla Papayal micro-region to prevent further environmental degradation.
- ④ To adopt a culture of biodiversity protection in the policies and programs of the agrarian sector, especially in those that address African palm production, including financial incentives and mechanisms.
- ④ To design a public policy for the use of ecosystems transformed for ecological agricultural production with the participation of the inhabitants of the sub-region.
- ④ Supplement the strategic environmental evaluation made for bio-fuels with another that includes oil palm expansion and addresses long-term economic aspects of oil palm cultivation. This should allow planning the growth of potential crops for palm oil production, "to avoid pressure on natural ecosystems, economic losses and social conflicts. This plan should differentiate strategic areas for the production of food and for the production of palm oil, to avoid conflicts in local or national food security"¹²⁴. It should also help avoiding to fall into specialization models that might make our economy vulnerable on a macroeconomic level.
- ④ Guarantee the participation of small farmers and other local actors (comply with the first two articles of the Colombian Constitution) in decision-making processes linked to the design of economic, social and environmental public policies that directly impact on their development.
- ④ Improve both the budget and infrastructure on which environmental authorities resort. This implies hiring more officials and fighting corruption among them. This particularly urgent in the CSB, which jurisdiction includes Southern Bolívar.

To INCODER

- ④ Develop a plan for studying and reforming land tenure in Isla Papayal and reinforce an institutional strategy on a local and regional level aimed at advancing in the legalization of existing land tenure.

¹²² In the Colombian legislation this corresponds to the first Article in Law 99 of 1993

¹²³ Approximately a quarter of Isla Papayal

¹²⁴ Evaluación Ambiental Estratégica del Ministerio de Ambiente, Vivienda y Desarrollo Territorial y el Instituto de Biodiversidad, 2008

- 🌐 Exercise control on illegal acquisition and ownership of uncultivated land and wetlands
- 🌐 In this sense INCODER should commission a study of titles to a group of experts. This study should include maps of the lots and of land property in the area, and should check the cadastral maps and registration sheets against each deed. Likewise INCODER should start needed administrative procedures to clarify ownership and where necessary start a process to recuperate uncultivated land.
- 🌐 Develop dissemination strategies to inform farmers about land ownership and procedures linked to it. It should also develop mechanisms to accompany farmers in processes related to the land market in Isla Papayal.
- 🌐 Likewise INCODER should quickly take care of to the situation of landless farmers who have been victims of dispossession. It could do so through policies aimed at providing access to land property and guarantees for the sustainability of rural economies.

To Municipal authorities and offices

- 🌐 Structure an Institutional Strengthening Plan that should be presented to international donors, among others, with experience in this type of processes.
- 🌐 Generate conditions for the development of citizen surveillance mechanisms over municipal management.
- 🌐 Establish mechanisms for public accountability reports that include transparency standards.
- 🌐 Develop a process for the integration of municipalities around a Regional Land Use Plan that includes the municipal plans into a wider context
- 🌐 Follow up and control on the uses of rural soil and the application of existing policies regarding it, in accordance with the Land Use Plan approved by the Municipal Council

To the Corporación Autónoma del Sur de Bolívar CSB (Autonomous Regional Council of Southern Bolívar) (environmental authority)

- 🌐 It is urgent to move forward to restoration programs on areas affected by processes of environmental degradation, loss and transformation¹²⁵, to counteract the negative effects that

¹²⁵ Plan Nacional de Desarrollo 2006 - 2010 "Estado Comunitario: desarrollo para todos"

have been accumulating and which worsen the quality of the ecosystems and therefore the quality of life of the farmers and inhabitants of the sub region.

- ④ Fulfill the third goal of the *Política Nacional para Humedales Interiores de Colombia* (National Policy for Internal Wetlands), the strategy of management and rational use, processing management plans for wetlands to match the uses of the rural soil of the Land Use Plan of El Peñón. Territorial Management Plan. This is, to set up special protection in the areas of the water bodies and refilling zones, in order to maintain its ecological characteristics and the offer of environmental goods and services.
- ④ Adopt the Environmental Guide for the protection of wetlands, which applies for all the wetlands in the country included or not in the RAMSAR convention List of Wetlands of International Importance, or under any other category of environmental management or protection. The main objective is to plan actions directed at the conservation and rational use of the country's wetlands.
- ④ Advance in the environmental management plan to guarantee the functionality and sustainability of the wetlands of the micro region and sub region, which support the population and social and economic processes. Conflicts for the use of land in this sub region should be resolved based on the objectives of national policies that address the protection of water resources¹²⁶ and wetlands, to preserve water sources and, through the protection of the flora and fauna, preserve the environmental balance in slopes, rivers and other fresh water sources.
- ④ Regulate all the works done in the sub region for the use or exploitation of the water resources, or the ones that jeopardize the basin and/or bed of the bodies of water¹²⁷ (Article 77 of the Code of National Resources).
- ④ Make good use of the natural productive potential of the Isla Papayal micro region.
- ④ Comply with Colombian environmental legislation.

To CORMAGDALENA

- ④ Complete, as an urgent matter, a comprehensive study that proposes rehabilitation works for the swamp complex (what is possible and what is essential) so that Isla Papayal can recover some of its dynamic and re-establish its ecological functions.

¹²⁶ Water is the central axis of environmental protection in the Strategic Caribbean eco-region.

¹²⁷ See: http://www.minambiente.gov.co/contenido/contenido_imprimir.aspx?catID=1060&conID=5134&pagID=4945 (Web page consulted on April 16th, 2010)

To The national government (Agencies responsible for human rights)

- 🌐 Must generate strategies and mechanisms to provide security to the civilian population of Buenos Aires and Isla Papayal. These strategies and mechanisms should be framed by the respect for life and fundamental rights, as an inexorable and principal condition.
- 🌐 The State must develop concerted strategies with the civil society to defend the social, economic and cultural rights of those who live in the territory.
- 🌐 These policies must be based on a comprehensive State presence to balance military intervention.
- 🌐 Likewise the state must facilitate and encourage the adoption, by palm companies, of standards attentive to human rights.

To the national government (Agencies responsible for rural development)

- 🌐 Structure a rural development and agricultural development policy to strengthen the rural economies, allowing rural populations to consolidate socially and economically through alternative and sustainable models, different from the large single crop models. These models should be comprehensive and include not just the allocation of land but also technical assistance and funding for the development of crops and livestock, as well as for the development of strategies of commercialization with the different productive chains. Such models should aim at allowing local communities to remain on the region and at improving living conditions among these communities. They should do so, through the development of a model of land use that respects the environment and promotes sustainable development and the social eco-systemic assessment. This strategy must include a significant amount of training and education activities.

To the farmers

- 🌐 Social and environmental risks must be an incentive for political action, thus local farmers should request the Colombian State to the "active doubt"¹²⁸ and the "precaution principle". These are particularly relevant in the control of socio-environmental risks as a consequence of refilling and drying bodies of water over which infrastructure has been built infrastructures in the Isla Papayal (and even in the entire sub region). In this case, risks include flooding cycles

¹²⁸ This concept has been used by Dino Bellorio Clabot, professor at Universidad de Buenos Aires, to refer to the precaution principle.

which will become increasingly frequent and which biggest impacts affect human settlements (people's lives and their belongings) and the precarious infrastructure.

- ④ Structure a training plan aimed at strengthening the organization of the community. This process should seek the creation of a technical profile (use of geo-referenced systems to monitor what happens to the bodies of water), the development of agro-ecological production systems, the generation of an environmental culture and the strengthening of the training profile of its educational structure. The latter, for instance, might include specialized courses on various agricultural techniques, on environmental preservation and economic diversification (e.g. a course on Agro-tourism s). This could include processes supported by universities, research centers and international donors.
- ④ The community should promote creation of a new model for the use of the territory, which demands, among other things, political willingness of all governmental levels. It also demands that environmental and territorial planning is based on knowledge of the structure and ways of functioning of the wetlands. Following this same line of thought, the resolution of conflicts regarding the use of land should seek to maintain the key functions of the wetlands and thus guarantee the continuous provision of goods and services. This model might also require the creation of farmers' reservations, through a system of shared land ownership, for developing agro-ecosystems. Likewise, it might also require the formation of social and human capital in the micro-region. Finally, it might also benefit from a fair cooperation between companies and farmers, which central elements are: consulting with all stakeholders and searching for a consensus, joining efforts and collective work.
- ④ Develop intraregional exchange processes with rural communities with experience in agro-ecological systems.

To the private sector

- ④ In facing complex milieus, like the one described in this study, companies can develop and adopt business practices that are sensitive to conflict and human rights. What is now known as the United Nations Framework offers elements for companies to develop business operations that are attentive to human rights. Similarly, in the past few years the business and human rights field has witnessed important developments that have contributed elements and best practices to this field, which could be adopted by oil palm companies. Three elements are worth mentioning: 1) Analysis of risks, impacts and opportunities for both companies and local actors; 2) Systematic work on issues pertaining to human rights, conflict, institutions and governance; and 3) participatory identification and definition of strategies to prevent negative risk, enhance opportunities and mitigate impacts.
- ④ It is advisable that companies operating in Colombia in complex milieus, like the one described in this study, adopt and develop business practices that are conflict and human rights

sensitive. This might be critical in securing sustainability and building a social license to operate. Additionally it might also be vital in seeking competitiveness within global markets.

- ④ To face those elements that characterize complex milieus, like the one describe in this study, companies can adopt and develop guidelines and standards that allow them to operate in a responsible and attentive way, even when facing legal vacuums in regards to particularly sensitive issues such as land tenure. There are several international referents on this matter, but it is still necessary to deepen into the particularities that such guidelines and standards for business operations in Colombia should address. This stands as an important opportunity to improve existing tools aimed at companies operating in complex milieus. International and national experiences in the design of guidelines and standards show the importance of doing it through multi-stakeholder initiatives. These are, initiatives in which diverse actors who have an interest on the topic (e.g. government, business associations, civil society organizations, etc.) are invited to participate and to collectively define guidelines and standards for a company to operate attentive to those issues that make its operational context a complex milieu.
- ④ In light of the elements mentioned above, it is desirable the promotion and development of a multi-stakeholder initiative to define business operation guidelines and standards on issues pertaining to the land acquisition and use.
- ④ Comply with the preventative measures imposed by the environmental authority.
- ④ Built an environmental base line and conduct environmental studies before starting any activity. Environmental studies and management plans are not just requirements for issuing environment licenses. They are also useful, for instance, for making decisions regarding the establishment of the crop and the incorporation of flora and fauna, forestry, water patterns, water cycles, and the working of each wetland. Likewise, they are useful for making decisions on the techniques for adapting the soils to mitigate impacts on the soils and water ecosystems and, thus, prevent undesirable impacts on the productivity of the crop.
- ④ Perform activities that require environmental permission once this has been granted.
- ④ To take into account that environmental impacts aren't circumscribed to tropical rain forests. The expansion of the agricultural frontier for cultivating palm can also impact wetlands and cause deforestation of secondary woodland, loss of species, and loss of aquatic ecosystems. Unplanned cultivation (as it is today) in farms that are going through a recovery process or in zones that are not suitable or have severe limitations, can affect the soil, water, air and diversity.
- ④ To insist that the government publish the final map of the areas that are suitable for oil palm cultivation at a scale of 1:100.000. The government is not complying with Conpes 3477 of 2007 that focuses on promoting African palm cultivation in Colombia. This document gave 6 months to publish a final map to scale 1:500.000. Three years after Conpes 3477 was

approved, that map hasn't been published. Due to the complexity of the micro region (studied here), its map should be at a scale of at least 1:25.000

- 🌐 Comply with what Conpes 3477 of 2007 states in regards to new plantations: plan agricultural activities in productive scales that are environment friendly and socially accepted.
- 🌐 Create conditions for the development of dialogue and cooperation among the different sectors living in or impacting on Isla Papayal.
- 🌐 Support proposals aimed at organizational strengthening of the communities.
- 🌐 Support the specific aspects of the Regional Land Use Plan.

To National and international NGOs

- 🌐 Support the community initiatives around an organizational strengthening plan.
- 🌐 Develop processes of education and technical training on agro-ecological systems, to form and train the people from Buenos Aires in these matters.
- 🌐 Support, structure and fund the use of geo-reference systems by local communities, as a way of facilitating their supervision of environmental problems in the region of the Isla Papayal.
- 🌐 Contribute to promote and participate in scenarios aimed at fostering constructive dialogue among the different actors and stakeholders that participate in conflicts like the one studied here.

To the Development Cooperation Agencies

- 🌐 To structure plans aimed at institutional strengthening of the various municipalities of Isla Papayal. These plans must address effective governance and community participation.
- 🌐 Support a plan for the organizational strengthening of the community of Buenos Aires.

To all the actors

- 🌐 To secure social, economic, institutional and environmental sustainability in Isla Papayal, actions and interventions of the different parties must be coordinated by ad hoc agencies. These agencies ought to be created and must convene a broad representation of stakeholders in Isla Papayal. They should convene representatives of: social organizations from the farming, fishing and mining industries; the regional environmental authority (CSB), Cormagdalena; municipal authorities of El Peñón, Regidor and Rio Viejo, including the government officers

responsible for farming and environmental activity; the churches and the educational community; local, regional, national and international development NGOs; and the private sector that is investing in the area. These might be national agencies committed with a Regional Development Plan that incorporates Municipal Development Plans, which have already been designed and, thus, are a point of departure that already exists in the region.