



# Land ownership in Colombia

## The case of Bioenergy

Summary of the Spanish report by Indepaz and SOMO:  
¿Amnistía a la 'concentración productiva' del siglo XXI en la Orinoquía?  
El caso Bioenergy

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### Introduction

Extreme levels of inequality characterise Colombia's distribution of productive resources, especially land. According to a 2017 study by Oxfam, Colombia has the highest inequality in land ownership in Latin America. While '81 per cent of the farms has an average of only 2 hectares and occupies less than 5 per cent of the land (...), 0.1 per cent of the farms owns more than 2,000 hectares and controls 60 per cent' of the land.<sup>1</sup> This situation has resulted in more than half of rural households in the country living in poverty.

Unequal access to land and rural poverty has also been one of the root causes of the armed conflict that has affected the country over the last 50 years. The large majority of victims of the conflict have been smallholder farmers, agricultural workers and indigenous- and afro-descendent peoples, mostly from the rural areas of Colombia. To make matters worse, during the conflict itself, the growing importance of cocaine production and the drugs trade led to further concentration of land in the hands of drug lords, emerald entrepreneurs and paramilitaries. Encouraging land redistribution has been one of the central issues in the peace negotiations between former President Juan Manuel Santos and the Revolutionary Armed Forces of Colombia – People's Army (FARC-EP), which resulted in the Peace Agreement

signed in November 2016. However, official policies to deal with the unequal distribution of land have been highly unsuccessful so far. The institutions that should be responsible for promoting and ensuring fairer distribution of land have been plagued with corruption and inefficiency. For example, Colombia still does not have an inventory of rural lands or a multipurpose cadastre (a clear land registration system).<sup>2</sup> This is a situation that, according to the Constitutional Court, is linked to the 'phenomena of violence, corruption, economic projects and strategies of dispossession disguised as legal transactions'.<sup>3</sup>

Notwithstanding this situation, since the turn of the millennium, the administrations of Álvaro Uribe Vélez (2002-2010) and Juan Manuel Santos (2010-2018) have actively promoted policies to strengthen agroindustry and extractives interests. This has resulted in the further concentration of land in hands of large-scale national and international conglomerates.

This paper summarises the main insights and conclusions drawn from a more detailed report in Spanish that documents the dynamics of land ownership and concentration of land in the hands of a few in the Altillanura, a sub-region of the Orinoquía in Colombia, bordering Venezuela and Brazil.<sup>4</sup> The Orinoquía has been strongly

affected by the conflict, but was also singled out by the administrations of Uribe Vélez and Santos as the region that would help Colombia to become a major producer of food and biofuels.<sup>5</sup> The research focuses specifically on the approximately 25,000 hectares of land acquired and leased in the context of the 'Project El Alcavarán'. This is the ethanol producing complex of Bioenergy S.A.S. (Bioenergy) and Bioenergy Zona Franca S.A.S. (BIO Z.F.) located in Puerto López, a municipality in the department of Meta. Both Bioenergy and BIO Z.F. are subsidiaries of the oil company Ecopetrol, in which the Colombian state is a majority shareholder. The detailed analysis of Bioenergy's land acquisitions offers an interesting case study that highlights the dynamics of land ownership and the complex political and legal processes at play in the concentration of land in the Orinoquía.

The research took place as part of a project on multinational corporations in (post)-conflict Colombia that was carried out by the Centre for Research on Multinational Corporations (SOMO) in partnership with the Colombia-based Development and Peace Studies Institute (Indepaz). The project seeks to monitor the implementation of the human rights and business guidelines and standards to which the Colombian government has signed up, through an analysis of the policies and practices of companies operating in Colombia.

With this in mind, SOMO-Indepaz carried out two studies in the department of Meta before this current study: the case of Poligrow – an Italian-Spanish company in Mapiripán – and the Canadian Pacific E&P – now Frontera Energy Corporation in Puerto Gaitán.<sup>6</sup> As in the case of Bioenergy, Poligrow and Pacific implemented large-scale economic projects requiring extensive areas of land for the production of biofuels (palm oil). Special attention was paid in all three investigations to the land acquisition practices of these companies. The policies and practices of Poligrow, Pacific and Bioenergy were analysed according to relevant national laws – particularly, the Colombian Constitution of 1991, and to relevant international standards on business and human rights that Colombia aims to adhere to, specifically:

- the United Nations (UN) Guiding Principles on Business and Human Rights
- the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises
- the G20/OECD Principles on Corporate Governance
- the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT) of the Food and Agricultural Organisation of the United Nations (FAO).

As in the cases of Poligrow and Pacific, we analysed the origin and conveyance of the plots bought and leased for the 'Project El Alcavarán' of Bioenergy and BIO Z.F. This analysis allowed us to highlight the risks involved in doing business in fragile and post-conflict areas like the Orinoquía, a region characterised by the historical presence of illegal armed groups, massive and systematic human rights violations and violations of international humanitarian law, low levels of governability and governance, and land grabbing dynamics in the midst of legal and illegal agrarian reforms and counter-reforms. Specifically, the report highlights the following phenomena:

- The ethnocide of ancestral populations that found expression, in the 1950s and 1970s, in the 'hunting of indigenous peoples' (*Guahibidas*). This took place at the same time as the arrival of people who had been expelled from Europe by the events of the Second World War and the colonisation processes in the Orinoquía, as well as the arrival of smallholder farmers and settlers who were displaced during the period referred to in Colombia as *La Violencia* (1946-1953).
- The grabbing of land for money laundering and territorial and population control in the 1970s, 1980s and 1990s, by emerald entrepreneurs and cattle ranchers, founders of the *Carranceros* and the *Buitragueños* (pioneering paramilitary groups), drug traders and paramilitary of the United Self-Defence Forces of Colombia (AUC). The massacres of Mapiripán (Meta) and Miraflores (Guaviare), which took place in 1997 and through which the AUC positioned themselves and expanded their presence in the Orinoquía, paved the way to this 'speculative accumulation'<sup>7</sup> of land.
- The 'productive concentration' of '500,000 hectares'<sup>8</sup> in the Orinoquía by individuals and national and international economic conglomerates that participated in the implementation of the 'Megaproject of the Rebirth of the High Orinoquía' of the governments of Uribe Vélez and the Policy of the Altillanura (the first phase of the 'Master Plan of the Orinoquía') of the governments of Juan Manuel Santos.

This concentration took place through different 'typologies', as identified by the Office of the Comptroller General of the Republic of Colombia (*Contraloría General de la República* or CGR in Spanish, hereafter: Office of the Comptroller General),<sup>9</sup> and under the shelter of the governmental promises to restrict the prohibitions of Colombia's Agrarian Law (Law 160 of 1994), to accumulate state-owned land or land that was originally state-owned and to 'sanitise' and 'grant amnesty' to situations where such accumulation had taken place (in the next chapter we elaborate more extensively on this law, its rationale and main legal concepts).

The findings in the Bioenergy case are based on the review of existing legislation, policy documents, judicial rulings, company and media reports, as well as on interviews, workshops and focus groups discussions with relevant stakeholders. Interviews, workshops and focus group discussions took place in May and June 2017 with local actors from the municipalities of Villavicencio and Puerto López, including representatives of various official institutions, representatives of civil society organisations, academics, victims of land dispossession and international agencies operating in the area.

For insights into Bioenergy's land acquisitions, the research also analysed certificates of conveyance and clearance,<sup>10</sup> public deeds of sale and lease contracts of the plots on which the Project El Alcavarán is implemented. The research team also visited the ethanol plant and met with several employees of the company. In Bogotá meetings were held with representatives of the Office of the Comptroller General, the Office of the Presidential Advisor for Human Rights,<sup>11</sup> parliamentarians and their collaborators in the Congress of the Republic, and journalists with expertise on land.<sup>12</sup> A draft version of the report was also shared with Bioenergy and Ecopetrol for review and feedback. In the final version of the report, where relevant, the comments and observations of the company have been incorporated, and their written feedback has been added as annexes to the overall report in Spanish.<sup>13</sup>

This document summarises the main insights gained from the report:

- In Chapter 1, we provide some background on the relevant national legislation on land, which is necessary to understand the legal and political debate around land accumulation in Colombia.
- Chapter 2 describes the dynamics of (violent) land accumulation in the Orinoquía in the twentieth century, showing the importance for anyone acquiring land in this region to perform careful due diligence in order to prevent and avoid situations that go against national and international business and human rights standards.<sup>14</sup>
- Chapter 3 focuses on Uribe Vélez's economic policies to attract national and foreign investors and secure 'the investor confidence' and the various 'schemes' and formulas that national and foreign investors have used to acquire large extensions of land in spite of the legal restrictions to accumulate state-owned land or land that used to be state-owned. These restrictions are explained further in Chapter 1. The managing partners of the Project La Balsa (which later became Project El Alcavarán) came to the region attracted by these policies. In the third chapter, we describe the different

modalities through which Bioenergy gained access to the land required for its agroindustry project.

- Chapter 4 shows how, during the two Santos administrations (2010-2018) the policy for the Altillanura was adopted and legal initiatives were promoted to eliminate the legal barriers to the accumulation of land and 'sanitise' and 'grant amnesty' to the concentration of land for productive means. The chapter discusses how the new 'regional economic development model' is regulated in Law 1776 of 2016, which creates the Interest Areas for Rural, Economic and Social Development (Zidres).<sup>15</sup> In this model, the acquisition of land for large-scale economic projects is privileged, sharpening the tensions with the policy of the Peace Agreement signed by FARC-EP, who seek, amongst other things, to provide reparation for the victims of land dispossession and revert the unequal distribution of land.

## 1 National legislation on land acquisition and concentration

To understand the legal and political debate around land accumulation in Colombia, it is important to know about several laws, especially Law 160 of 1994 and the victims' laws: Law 1448 and Decree-Laws 4633 and 4635 of 2011. The last two refer to victims from ethnic communities.

### Law 160 of 1994 (Agrarian Law) and the Family Agriculture Unit

Law 160, also known as the Agrarian Law, was adopted to put legal limits to excessive land concentration and to promote access to land for both male and female smallholder farmers with limited resources and for afro-descendent and indigenous communities. With this in mind, the Law established a number of restrictions and conditions to the allocation and acquisition of agrarian lands. Agrarian lands include both wastelands (*baldíos* in Spanish – rural property belonging to the state) and plots awarded by the state on wastelands ('awarded wastelands' or *baldíos adjudicados* in Spanish).

Specifically, Law 160 of 1994 determined that the Family Agriculture Unit (UAF) would define the maximum and minimum size of wastelands to award. The UAF is the basic amount of farming land required for a family to generate a decent income. The size of one UAF was established by the Board of Directors of the Colombian Agrarian Reform Institute (Incora)<sup>16</sup> in 1996 and varies by municipality. In the relatively homogenous area No. 7 of Puerto López (referred to as the *sabanas*), the UAF oscillates between 680 and 920 hectares. In other areas of the same municipality it is between 1,360 and 1,840 hectares.<sup>17</sup>



The Agrarian Law established the prohibition to: 1) award government wastelands in extensions that would exceed the size of one UAF, and 2) accumulate Family Agriculture Units, that is: wastelands awarded by the Incora before and after the adoption of the Law 160 on 5 August 1994.<sup>18</sup> As we will see later on, in January 2016, with the adoption of the Law 1776 (also referred to as the Law Zidres), the accumulation of Family Agriculture Units<sup>19</sup> awarded before 5 August 1994 (date on which the Agrarian Law was adopted) was permitted in the Interest Areas for Rural, Economic and Social Development (Zidres) created by the national government.

Law 160 of 1994 also reiterated, as already established in the Civil Code of 1887 and the Political Constitution of 1991, that wastelands are imprescriptible.<sup>20</sup> Therefore, ownership over wastelands can only be acquired through an administrative act expedited by the state (granted by the Incora/ Incoder/National Land Agency) and not through adverse possession (*prescripción adquisitiva* in Spanish), as is the case for private land. 'Adverse possession' is a means to acquire ownership of a piece of land belonging to third parties, if a number of conditions are met.<sup>21</sup> Adverse possession has to be declared by a judge, through a 'judicial ownership process'. The person who claims ownership has to add the certificate of the Registry of Public Instruments,<sup>22</sup> and has to prove that the plot is not government wasteland.<sup>23</sup>

The implementation of Law 160 of 1994 has been challenging for several reasons, starting with the fact that there is still no detailed inventory of rural lands (state-owned and private).<sup>24</sup> Law 200 of 1936 (also known as the *Ley de Tierras*)<sup>25</sup> established that the plots in the hands of individuals who could demonstrate that the plots were exploited economically (e.g. through plantations, livestock etc.), were assumed to be private property. The agrarian lands that were not economically exploited were assumed to be wastelands, that is: state-owned land. However, this seemingly straightforward distinction has been quite difficult to apply in practice because of different interpretations. Therefore, it is still not clear how many hectares can be qualified as wastelands, nor which ones are private property.<sup>26</sup>

The absence of an inventory of rural lands has made it very difficult to control illegal practices regarding wastelands. This has contributed to the concentration of land,<sup>27</sup> in which the displacement of more than 7 million people<sup>28</sup> – of which 87 per cent were expelled from the countryside<sup>29</sup> – the forced abandonment and dispossession of '8.3 million of hectares'<sup>30</sup> have been contributing factors. Additionally, the restrictions of Law 160 of 1994, and especially those related to the non-accumulation of UAF have been contentious from the very moment the law was adopted. Several political and economic actors consider the UAF to be a barrier to commercial, large-scale agriculture. The Santos administration has even referred to the UAF as 'a bureaucratic limitation'<sup>31</sup> that slows

down agricultural progress. Both Santos and his predecessor Uribe Vélez have tried to relax or even eliminate the UAF in various ways, as we will see in the next chapters.

### Victims Laws (Law 1448 and Decree-Law 4633 and 4635 of 2011)

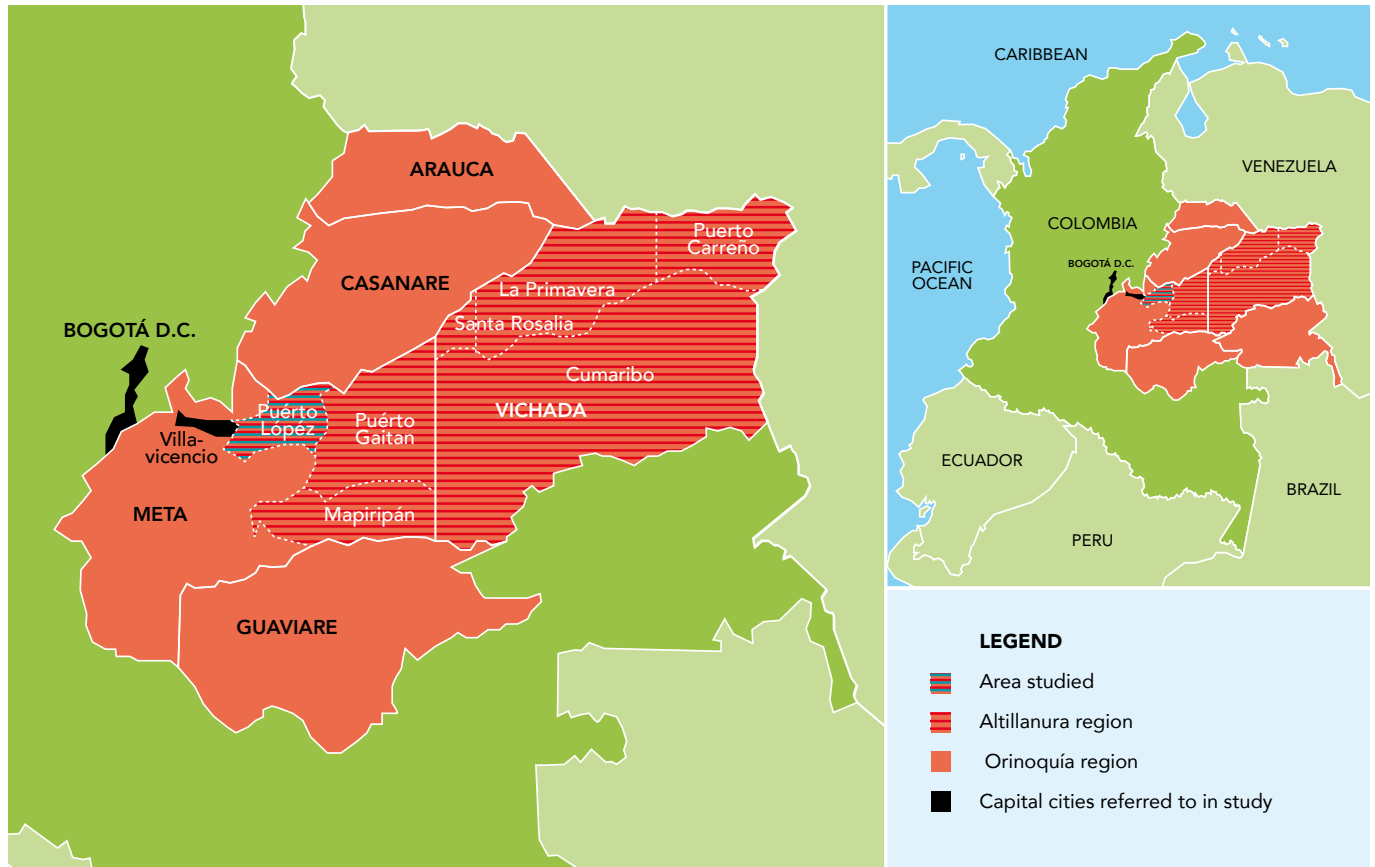
In 2011, several laws were adopted to ensure the restitution of land and ethnic territories to those who were dispossessed from their land as a result of the armed conflict. Law 1448 of 2011, also known as the 'Victims and Land Restitution Law', created the Unit for Victims' Attention and Reparation (Uariv) and the Land Restitution Unit (URT). Under the Victims Laws, people dispossessed from their land in the context of the armed conflict in the period after 1 January 1991 can apply for restitution, or, under certain circumstances, compensation.<sup>32</sup> An important aspect of the law is that the burden of proof does not lie with the claimant, but with the opponent to the restitution claim, who has to prove possession in good faith of the land that is claimed for restitution.<sup>33</sup> In the absence of sufficient proof of good faith, the judicial decision orders the opponents to give the lands back to the victims of forced abandonment and/or dispossession.

## 2 Property, ownership and use of land in the Orinoquía

The Colombian Orinoquía is one of the six natural regions that make up Colombia and covers the departments of Meta, Vichada, Casanare, Auraca, Guainía and Guaviare. Altogether, the Orinoquía encompasses a surface of 380,600 km<sup>2</sup> – one third of Colombian territory. The Altillanura, where Bioenergy's 'Project El Alcavarán' is located, comprises 135,955 km<sup>2</sup> and includes the municipalities of Meta (Mapiripán, Puerto Gaitán, Puerto López) and four of the departments of Vichada (Cumaribo, La Primavera, Puerto Carreño and Santa Rosalía) (see Map 1). There are 130,000 people living in those municipalities. 30 per cent of the inhabitants of the Altillanura are indigenous peoples who live in territories that cover almost 60 per cent of the entire sub-region, of which many are not officially recognised as collective territories.<sup>34</sup> Living conditions in the Altillanura are precarious. According to Oxfam, 67 per cent of the people in the Altillanura find it difficult to make ends meet.<sup>35</sup>

The region also has been – and still is – heavily affected by the armed conflict. Numerous illegal armed actors (neoparamilitaries and dissidents of the demobilised FARC) continue to be present in the area. Disputes and alliances between pioneer paramilitary groups (*Carranceros* and *Buitragueños*) and those of the *Casa Castaño*, who came to the region at the end of the 1990s, have been a constant source of violence. These have continued to affect the region even after the formal demobilisation, in 2005 and 2006, of the paramilitary

Map 1 Altillanura subregion



Produced by SOMO-Indepaz based on DNP, 2014. 'Conpes 3797: Política para el desarrollo integral de la Orinoquía: Altillanura - Fase I'. <https://colaboracion.dnp.gov.co/CDT/Conpes/Econ%-C3%B3micos/3797.pdf> Accessed on 23 March 2018.

structures 'unionised' in the United Self-Defence Forces of Colombia (AUC).

At the end of the 1970s and beginning of the 1980s, *esmeralderos* (emerald entrepreneurs) came to the region and started creating their own armed groups in alliance with paramilitaries and drug traffickers of Puerto Boyacá<sup>36</sup> and other regions of the country. *Esmeralderos*, drug dealers and paramilitaries alternated alliances between themselves to gain territorial control and accumulate land, with disputes over control of the drug trafficking, the territory and its inhabitants. Additionally, the region also had to deal with the presence of the FARC-EP, which came to Meta in the 1970s-1980s and promoted processes of 'armed colonisation'<sup>37</sup> in the *Llanos Orientales* (the Oriental Planes, as part of the Orinoquía is known). These guerrillas funded their armed struggle with the kidnapping of landowners and local politicians, as well as drug trafficking. Their operations in Meta ended with the signing of the Peace Agreement in November 2016, except for those who refused to demobilise. These FARC dissidents are still active in the production and selling of cocaine and charging so-called *vacunas* (vaccines) – a tax system based on extortion of merchants, cattle-ranchers and companies of some of the municipalities of Guaviare and Meta.

The arrival of drug trafficking in the region marked the beginning of an era of forced displacements and processes of repopulation and territorial transformation. Smallholder farmers and indigenous communities were violently expelled from their lands, which became strategic objectives in the drugs trade, especially for money laundering.<sup>38</sup> The informal character of land ownership in the Altillanura and the complicity of offices of notaries and public registrars, and of employees of the Incora/Incode, facilitated land grabbing in the area. However, the process of land concentration and accumulation had already started earlier, with the opening up of the agricultural frontier. After the period known as *La Violencia* (The Violence – 1946-1953),<sup>39</sup> the government promoted the colonisation processes involving smallholder farmers from other regions of the country. The adoption of the Laws 135 of 1961<sup>40</sup> and 160 of 1994 and the resulting increase in the awarding of wastelands enhanced tensions between indigenous peoples, settlers, cattle ranchers and landowners.<sup>41</sup> Because of the lack of policies and financial resources to support smallholder farmers to make the land productive, many farmers sold their land to national and foreign investors. Members of the Colombian oligarchy,<sup>42</sup> rich families from Bogotá,<sup>43</sup> contractors of oil companies<sup>44</sup> and foreigners<sup>45</sup> acquired large extensions of land in the

*Llanos Orientales* for intensive livestock farming, and/or, for speculation. The expansion of cattle ranches profoundly affected the ways of living and the territorial sovereignty of the semi-nomadic indigenous communities living in the area, who were increasingly forced to adopt a sedentary lifestyle.<sup>46</sup>

Thus, the Orinoquía is marked by the historical concentration of land made possible through violence, failed official attempts to redistribute the land and formalise the property of rural and indigenous communities, and the use of political and economic power to acquire and legalise the concentration of land in the hands of illegal and legal actors. Indeed, the Office of the Attorney General<sup>47</sup> did not advance in unveiling the political and military connections of Victor Carranza, known as the *Tsar of the Emeralds*, who had links with paramilitaries and drug traffickers.<sup>48</sup> Similarly, the wastelands that were illegally occupied by Carranza and members of the Buitrago family,<sup>49</sup> and paramilitary groups associated with them (the *Buitragueños* and the *Carranceros*, demobilised under the names of *Autodefensas Campesinas del Casanare* and the *Autodefensas Campesinas del Meta y Vichada*) have not yet been recovered. Neither has progress been made in the recovery of the plots accumulated by narco-paramilitaries in the expansion and consolidation of the *Bloque Centauros* of the AUC. Several of these violently hoarded lands were used for the cultivation of palm oil. In this way, the 'dream' of the former paramilitary commander Vicente Castaño Gil<sup>50</sup> to impose this crop in the *Llanos Orientales* in the same violent way as had already been done in the department of Urabá materialised.<sup>51</sup>

As we will see in the following chapters, this general context of violent land accumulation did not stop the Uribe Vélez and Santos administrations from implementing policies to attract national and foreign investments, including several initiatives to eliminate the legal restrictions and to 'secure amnesty' for the accumulation of lands in the Orinoquía.

### 3 'Productive concentration' and the 'Rebirth of the Orinoquía'

After a road was paved between Bogotá and the city of Villavicencio in Meta in the 1990s, rice, cereals and forestry cultivations started to transform the landscape of the *Altillanura*. This process was taken a step further when Uribe Vélez came to power in 2002 and prioritised the Orinoquía as the region that would secure Colombia's place in the global economy. Assuming presidency after the failed attempt of former president Andrés Pastrana to negotiate a peace agreement with the FARC, and in the midst of the 'global war on terrorism', Uribe Vélez's policies to secure 'investor confidence' were accompanied with increased militarisation in the name of 'democratic security'.

With the aim of making sure that Colombia would compete at the global level in the production of biofuels and food, the government adopted the Megaproject of Rebirth of the Higher Orinoquía in 2004. It proposed to convert 6.3 million hectares of the *Llanos Orientales* into the epicentre of agroindustry. It was part of Uribe Vélez's 'dream' to see the plains of the *Llanos Orientales* 'full of palm'.<sup>52</sup> With this in mind, the government tried to hand over 17,000 hectares of the Hacienda Carimagua in Puerto Gaitán, which were destined for displaced populations, to palm oil entrepreneurs.<sup>53</sup> At the same time, natural and legal persons acquired plots grabbed by Victor Carranza, the deceased *Tsar of the Emeralds*, his associate Jesús Hernando Sánchez Sierra, and his lieutenant José Baldomero Linares, alias *Guillermo Torres*, ex-commander of the *Carranceros*. Grupo Aliar and Grupo Contegral, owners of the Project la Fazenda (located in Puerto López and Puerto Gaitán) and Cargill bought some of these plots with the aim of cultivating corn and soy in Vichada (La Primavera, Cumaribo and Santa Rosalía),<sup>54</sup> as we will describe later on.

The acquisition of land took place despite several obstacles for the implementation of large-scale economic projects in the Orinoquía. These included: 1) the historical informality and concentration of land ownership and many occupations and illegal awarding of wastelands; 2) the history of land dispossession by *esmeralderos* in association with drug traffickers and paramilitaries; 3) the absence of adequate roads and river infrastructure; 4) the lack of public services; and 5) the high costs involved in adapting the soil, which was too acid, low in nutrients and with high levels of aluminium.<sup>55</sup> Most certainly, however the greatest obstacle to agroindustry expansion in the *Altillanura* were the prohibitions imposed by Law 160 of 1994 to the accumulation of wastelands and Family Agriculture Units.<sup>56</sup>

Therefore, much of the efforts of the Uribe Vélez administrations to stimulate investments in the *Altillanura* were directed at taking away these legal barriers. During his two governments, and given the impossibility of eliminating these restrictions through Congress (by reforming Law 160 of 1994), Uribe Vélez invited national and foreign investors to use 'schemes' that would 'offer' juridical security to the investments.<sup>57</sup> He also promoted the use of wastelands that had been improperly occupied and/or awarded. Some of these were actually in the process of being recovered by the state, as was the case for the 38,000 hectares in the municipality of La Primavera, in Vichada, which had been awarded to the former senator Habib Merheg Marún, who was being investigated for his presumed connections to paramilitaries.<sup>58</sup>

#### Bioenergy: ethanol production in the *Altillanura*

In the complex context previously described, amongst the companies that came to the *Altillanura* attracted by Uribe Vélez's economic policies was Bioenergy S.A.,<sup>59</sup> owner of

the Project La Balsa. This company was created in 2005 by Alcoholes de Colombia SA, Transportes Premier SAS and Henry Echeverry Campuzano, Fabio Enrique Fonseca Pacheco and Luis Ricardo Roa Moya (from here on 'managing partners').<sup>60</sup> The aim of the Project La Balsa was to construct an ethanol plant for the production of 330,000 litres/day (industrial component) based on sugarcane, which would be cultivated in the *vereda*<sup>61</sup> of La Balsa, 10 km from Puerto López, on the road Villavicencio – Puerto Gaitán (agricultural component). For the implementation of the ethanol project, the managing partners acquired two properties, La Esperanza I and II, and signed Memoranda of Understanding with the 34 owners of the 13,283 hectares adjacent to these two plots to cultivate sugarcane. The project also included the creation of a Special Permanent Free Zone (ZFPE).<sup>62</sup>

In 2006, the managing partners invited state-owned Ecopetrol to participate as a shareholder in what was set to become the biggest ethanol plant in Colombia. Project La Balsa fitted well in Ecopetrol's plans to invest in the production of biofuels based on palm oil and sugarcane as part of the policies of the Uribe Vélez governments to diversify Colombia's energy basket.<sup>63</sup> Thus, in November 2006, Ecopetrol formally agreed to become a shareholder in the project. With this in mind, and following the recommendations of Visión de Valores S.A. (a stockbroker contracted by the managing partners to ensure that Ecopetrol would become a 'strategic partner' in the project), the Grupo BioOriente was created.

Grupo BioOriente was composed of three Colombian companies (BioOriente S.A., BioOriente I Ltda., BioOriente II Ltda.) and one foreign company, which became the majority shareholder (BioOriente Panamá S.A.). The shareholders of these companies were the same managing partners as those of Project La Balsa. In October 2008 Andean Chemicals Ltda (Andean), subsidiary of Ecopetrol, acquired 78 per cent of the shares of Project La Balsa. In 2012, the Japanese company Mitsubishi acquired a minimum share, which by August 2017 consisted of 5 per cent, leaving Ecopetrol with 95 per cent of the shares.<sup>64</sup>

In the following paragraph, we provide an overview of the different modalities used by Bioenergy to secure access to land for its project. The detailed analysis of Bioenergy's 'Plan to Secure Land' offers an interesting case study on how large-scale agroindustry projects deal with the restrictions imposed by the Agrarian Law on the accumulation of wastelands and Family Agriculture Units and how they find ways to secure access to land.

### Bioenergy's 'Plan to Secure Land'

The initial plans of the managing partners of Project La Balsa consisted of developing the Project on the *vereda* of La Balsa. However, in 2009, a review of the Memoranda

of Understanding agreed with the 34 owners of the farms adjacent to La Esperanza I and II in the application of due diligence procedures, revealed that these plots were related to relatives of Víctor Carranza.<sup>65</sup> Therefore, Ecopetrol decided to relocate the project to the kilometre 43 of the road Puerto López – Puerto Gaitán and change the name to 'Project El Alcavarán'. The project remained the same and still included an agricultural and industrial component. The ethanol plant was now renamed El Alcavarán and its production capacity was topped up to 504,000 litres of fuel on a daily basis. BIO Z.F. was also created, which is in charge of the ZPFE. By September 2018, the Project El Alcavarán was being implemented on 78 plots in several *veredas* of the municipality of Puerto López (see Table 1). According to Bioenergy, the area covers approximately 25,000 hectares, of which 9,832 were owned by this company or were in the process of being acquired, and 15,674 hectares corresponded to lease contracts.<sup>66</sup>

**Table 1 Plots associated with the 'Project El Alcavarán'**

Means	Plots
Buy-sell contracts by managing partners of the 'Project La Balsa'	2
'Real estate trust' agreements	15
Offshore companies in Panamá	3
Lease contracts	57
Contracts with Manuelita	1
<b>Total</b>	<b>78</b>

*Produced by SOMO-Indepaz based on Bioenergy, 2018, Bioenergy 2018-a, certificates of conveyance and information gathered in workshops realised in Puerto López in 2017.*

The acquisition of properties and securing the use of lands was carried out at three moments in time:

- 1 Before the authorisation of the entry of Ecopetrol into the project (June 2008): the managing partners acquired the plots of La Esperanza I and II and signed the Memoranda of Understanding.
- 2 In between the authorisation of the entry of Ecopetrol (June 2008) and the buying of shares by Andean (14 October 2008): the plots of Karikari, Lituania and La Conquista were acquired through the buying of Amandine and Los Arces Group – two offshore companies created in Panamá.
- 3 After Andean bought shares (14 October 2008), land was accessed through 'real estate trusts'<sup>67</sup> and lease contracts, which we explain in more detail below.

A Land Committee, composed of representatives of Ecopetrol, Bioenergy and the managing partners, recommended these transactions.<sup>68</sup> According to Bioenergy,

the Land Committee adopted Ecopetrol's policies and codes of conduct for the acquisition of land.<sup>69</sup>

Bioenergy used the following means to get access to the ownership and use of land:

- 1 **Buy-sell contracts:** The managing partners acquired the properties of La Esperanza I and II from Andrés and Fernando Zambrano Montealegre. The two plots were originally government wastelands on which the occupants made a number of improvements (buildings, cultivations and plantations, amongst other investments realised by the occupant of the plot)<sup>70</sup> in the 1950s. While the property was never awarded by the state, the occupants registered the improvements made on the untitled wasteland in the notary and registry offices and transferred the incomplete right (called false conveyance or *falsa tradición* in Colombian law) through buy-sell transactions involving wealthy people from Bogotá.<sup>71</sup>
- 2 **The purchase of offshore companies:** In order to acquire the plots of Karikari, La Lituania and La Conquista, the managing partners decided to buy Amandine Holding Corp. (Amandine) and Los Arces Group Corp. (Los Arces), companies created in Panamá by resident agents, signatories and directors.<sup>72</sup> All three plots have a history of being government wastelands, with the award holder selling the land through various transactions. By the time Amandine and Los Arces

bought Karikari and La Lituania, the plots were owned by Agropecuaria Santa Cruz Limitada and Enrique Mazuero Arango, construction entrepreneur and pioneer in the planting of corn, soy and sugarcane in the Orinoquía.<sup>73</sup> La Conquista was part of the Hacienda Potosí (approximately 45,000 hectares) of Alfonso López Pumarejo,<sup>74</sup> who was President of Colombia twice and promoter of the *Ley de Tierras* (Law 200 of 1936).<sup>75</sup> In 1959, La Conquista was awarded to his son Pedro López Michelsen. Later, the plot was bought by Jorge Orlando Murcia Sierra, the beneficiary of Casa Verde and owner of Casa Roja (two of the properties leased by Bioenergy).<sup>76</sup> He sold it to Inversiones Montaña Toro y Cía. S. en C., represented by Darío Montañó Ferrer in 1994.

- 3 **'Real estate trust' agreements:**<sup>77</sup> A trust is a separate legal entity that holds property or assets of some kind for the benefit of a third party, known as a 'beneficiary'. Through the trust, one party ('the trustor') transfers one or several assets to another party ('the trustee'). This can be an individual or a corporate entity asked to oversee or manage the assets in the trust. In a 'real estate trust', the assets transferred consist of real estate. Thus, between 2008 and 2011, Bioenergy and the owners of 15 plots constituted eight 'trust funds of assets and property'<sup>78</sup> that were handed over to the corporate entity and trustee Fiducor S.A. (now Alianza Fiduciaria) for a period of five years (see Table 2).

**Table 2 Bioenergy properties acquired through 'real estate trusts'**

Plots	Real Estate Registration	Hectares	Year of adjudication	Awardee	Promising seller - trustor - seller	Public deed
Villa Valentina	234-51	417.66	1976	José Luis Torres Gaona	José Ricardo Gil Garzón	3869 of 28 December 2011 and 6789 of 28 December 2016
Santa Ana	234-12405	204.59	1996	Gustavo Rojas Reyes	Rafael Urrea Martínez	3474 of 22 October 2008
Rancho Bravo	234-7166	770.00	1981	Ricardo Acosta Jaramillo	Oscar Tobón Díaz y Nohora Jaramillo de Tobón	3473 of 22 October 2008
La Piragua 1	234-17254	518.51	1981	Inocencia Larrota viuda de Coy	Jorge Ernesto Ortiz Torres	3648 of 5 November 2008
La Piragua 2	234-17254					
La Porcelana	234-7586	153.40	1987	Iván Darío de Jesús Montoya Ochoa	Alberto Montoya Villa y Luis Iván Correa Peláez	0219 of 30 January 2009
La Preciosa	234-7344	155.47	1987			
Beralhi (San Ignacio, Juan Como, El Morichal, La Lizz, y La Unión)	234-1168 and 234-1169	5,008.19	1960	Julio Pinto Aponte, Aníbal Quintero y José Joaquín Quintero	Familia Murillo Saldaña	1178 of 25 April 2011
Majagual	234-2517	750.00	1959	Pedro López Michelsen	Henry Ocampo Suaza y Rosana Margarita Arregoces Hinojosa	0432 of 21 February 2011
Campo Alegre	234-2119	56.00	1979	Eloísa Rodríguez Vargas		
Chaparral	234-3483	245.80	1984	Rafael Vicente Contreras Hernández	Ana Clovis Barrera de Álvarez	0956 of 4 April 2011

Produced by SOMO-Indepaz on the basis of certificates of clearance and conveyance, public deeds of the mercantile trust agreements and Bioenergy, 2018-a.



Through these 'real estate trusts' the owners of the 15 plots: 1) transferred the ownership of the plots to the eight trust funds of assets and property that Fiducor would manage; 2) conceded to the trustee the 'promise to buy-sell' – contracts that they had previously concluded with Bioenergy;<sup>79</sup> and 3) authorised Fiducor to celebrate bailment<sup>80</sup> or loan contracts with Bioenergy. In this way, Bioenergy, as the only beneficiary of the trust funds of assets and property, was able to plant sugarcane on the 15 plots (see Figure 1).

The 'real estate trusts' that had been set up in 2008 expired in 2013. In that year the public debate over accumulation and concentration of lands in the Orinoquía increased. In the midst of what the newspaper *Semana* called the 'Chicharrón de los baldíos',<sup>81</sup> the Santos administration prepared several legislative initiatives to respond to the recommendation of the Mission for the Transformation of the Countryside<sup>82</sup> to 'sanitise (...) various business projects that are of great interest, but whose legal security is/was called into question', as we describe later on.<sup>83</sup> Bioenergy's legal advisors therefore recommended extending the trusts for at least three years or more, until the Law Zidres would have been processed and decided upon, or until a court decision on the topic would clarify the risks involved in concentrating Family Agriculture Units.<sup>84</sup> As was already explained, the Law Zidres passed through in 2016 eliminated the prohibition to accumulate more than one UAF awarded before the Law 160 of 1994. Bioenergy thus ended the 'real estate trust' agreements and formalised the ownership of the 15 plots it had acquired through the trust funds of assets and property.

According to the Office of the Comptroller General (2017), the 'adjourned sales', as it called the 'real estate trusts', permitted the sellers to evade tax on occasional profit.<sup>85</sup> According to Bioenergy, without the 'real estate trusts', the 'smallholder farmers' would not have sold their plots due to the high cost of the occasional profit tax.<sup>86</sup> However, the sellers were not 'farmers'.

For example, the Murillo Saldaña family owned five plots unified in the Hacienda Belhari and Jorge Ernesto Ortiz, the deceased owner of La Piragua 1 and 2 (where the ethanol and the electricity plant were constructed and where the ZPFE operates), was a partner of BioOriente Panamá, the offshore company through which Ecopetrol acquired the Project La Balsa.

- 4 Lease contracts:** In the midst of the debate on land accumulation, Bioenergy decided that it would not buy plots anymore but would rather sign lease contracts for the cultivation of the sugarcane needed for the production of ethanol.<sup>87</sup> Through these contracts, Bioenergy secured the use of 57 plots (more than 15,000 hectares) for a period of 10 to 20 years with the possibility of extension. The majority of these 'private plots'<sup>88</sup> were originally government wastelands, as is the case for Hato Chico, Manantiales, Shalom, El Capricho, El Caprichito and El Alcavarán, titled in the 1950s to the former president Alfonso López Pumarejo and his relatives (see Table 3). Several of these leased plots ended up, after various transactions, in the hands of companies that are not from the Orinoquía and whose economic activity is the selling of real estate and/or the construction or provision of financial services,<sup>89</sup> as is the case of La Porfía and La Mesa II, leased by Páez Fonnegra Inverrsiones S.A.S. and Inversiones Unidas S.A.S.

'The cultivation of sugarcane on a large scale'<sup>90</sup> required specialised technology to make sure the soil was healthy. Therefore, Bioenergy associated itself with the mills Riopaila Castilla S.A. and Manuelita S.A. The first one plants sugarcane on plots that Bioenergy subleases to these companies, including La Conquista, Majagual, Campo Alegre and Chaparral.<sup>91</sup>

Figure 1 'Real estate trusts'



Elaborated by SOMO-Indepaz on the basis of public deeds of the mercantile trust agreements signed by Bioenergy.

**Table 3 Origin and conveyance of rented properties**

No. Contract	Plot	Real Estate Registration	Origin	Award holder	Hectares Real Estate Registration	Hectares Instituto Geográfico Agustín Codazzi (IGAC)	Certificate of clearance and conveyance holder
0007-12	El Lago	234-1852	R. 1075 03.12.80	Oscar Alberto Tobón Díaz	1,000.00	949.64	Papelería Cervantes Distribuciones y Cía. Ltda.
0022-12	La Morena <sup>I</sup>	234-3448	Falsa tradición	N.A	1,300.00		Hermanos Suárez Isaza
0023-12	La Pradera <sup>II</sup>	234-3705	R. 0345 30.03.84	Eduardo Suárez López	S.I.	688.57	Eduardo Suárez López
0028-12	El Encanto	234-1366	R.721 30.08-79	Severo Olmos Rivera	454.70	484.49	Henry Ocampo Suaza
0047-15	El Rubí <sup>III</sup>	234-2818	Falsa tradición	N.A	507.49	373.91	
0036-12	El Alcaraván	234-836	R. 78 23.04.59	Pedro López Michelsen	200.00	205,.00	Marlio Sánchez Pastrana
0037-12	La Cristalina	234-9319	R.217 21.03.95	Pedro Duque Cubillo	185.28	185.28	
0005-13	Costa Rica	234-1427	R. 22092 20.04.71	Ezequiel Rodríguez Vargas	1,438.62	1,333.30	Credicorp Capital Fiduciaria S.A.
0028-13	Iguazú -Yguasu - El Retiro <sup>IV</sup>	234-167	R. 908 29.08.60	Enrique y Arturo Salazar Gómez	1,300.00	1,299.99	Iguazú S.A.S.
0029-13	Las Marías 1 - Hacienda Las Marías <sup>V</sup>	234-11150	R. 1438 08.09.89	Feddy Villanueva Ramírez	234.56	234.56	Carmen Rosa Roa Piñeros and José Edgar Hernández Vega
0031-13	Lote Las Marías 1 Hacienda Las Marías <sup>V</sup>	234-9495	R. 1438 08.09.89	Freddy Villanueva Ramírez	234.56	234.56	
0008-15	El Cedro - Valle <sup>V</sup>	234-6942	R. 1094 19.09.91	Carlos Antonio Ramírez Rojas	933.21	933.21	Grupo Incon S.A.S.
0013-15	Luisiana - El Manantial <sup>V</sup>	234-4999	R. 1238 23.10.87	Guillermo Villa Jaramillo	569.23	583.99	Inversiones GVJ La Lusiana S.A.S.
0016-15 Aguas Claras	El Capricho - Caprichito 4 <sup>V</sup>	234-679	R. 498 28.10.58	Alfonso López Pumarejo	250.00	845.42	Consorcio de Proyectos Agropecuarios Aguas Claras E.U.
	El Caprichito <sup>I</sup>	234-678	R. 498 28.10.58	Alfonso López Pumarejo	627.00		
0035-15 La Chocolatea	Mi Cachama/ La Chocolatea - El Chocolate <sup>V</sup>	234-8180	R. 0873 19.10.81	Rosa Helena Coy Larrota	129.66	126.00	Inversiones Nayoma S.A.S.
0038-15 San Sebastián	San José - Las Margarita <sup>V</sup>	234-2391	R. 2809 12.04.65	Luis Felipe Peña	38.15	30.19	Jesús María Céspedes Beltrán
	Las Margaritas <sup>I</sup>	234-2392	R. 2784 12.04.65	Margarita Cediél de Peña	30.00	S.I.	
	Buena Vista <sup>V</sup>	234-8485	R. 1845 29.12.93	Triana Tovar de Díaz	55.75	S.I.	
0039-15 La Sonora	Hato Chico	234-2312	R. 484 28.10.58	Pedro López Michelsen y Elvira Teresa de López	100.25	81.59	Heirs of the Isidro Cruz Molina
	La Sonora	234-2259	R. 1182 30.11.81	Alfonso Rodríguez	195.94	200.33	
	San Isidro	234-14456	R. 0143 28.02.78 R. 01013 31.08.82	Concepción Rodríguez Vargas Norberto Díaz Pineda	501.33	501.33	
0051-15	Manantiales	234-14751	R. 484 29.05.59	Elvira Teresa de López	68.35	68.34	Agropecuaria Rancho Santa María S.A.S.
	Shalom	234-14752	R. 484 29.05.59	Elvira Teresa de López	68.35	68.34	

No. Contract	Plot	Real Estate Registration	Origin	Award holder	Hectares Real Estate Registration	Hectares Instituto Geográfico Agustín Codazzi (IGAC)	Certificate of clearance and conveyance holder
0049-15	Casa Verde	234-14006	R. 0238 13.05.03	Jorge Orlando Murcia Sierra y Ruth Yamile Jiménez Ladino	502.50	502.50	Jorge Orlando Murcia Sierra and Ruth Yamile Jiménez Ladino
	Casa Roja	234-13237	R. 0418 24.04.01	Mario Camargo López	137.43	37.00	
0015-16	La Mesa II <sup>I</sup>	234-21254	R. 1901 30.12.88	Luis Carlos Vélez Garcés	501.48		Páez Fonnegra Inversiones S.A.S.
	La Porfía	234-14302	R. 0388 28.04.89	Ernesto Agudelo Hernández	955.80	955.80	Inversiones Unidas S.A.S.
			R. 0868 27.11.97	Ernesto Agudelo Hernández			
			R. 0714 30.06.88	Domingo Agudelo Hernández			
			R. 1424 09.11.98	Humberto e Ismael Agudelo Hernández			
		R. 7395 05.11.70	Ismael Agudelo Herrera				
0019-16	Las Corocoras – Altamira <sup>V</sup>	234-329	R. 5929 31.10.73	Ernesto Agudelo Hernández	732.00	731.99	Emura Castañeda S.C.A., Emura Castro S.C.A., Emura Torres S.C.A.- y Emura Victoria S.C.A. y otros
	<b>Total</b>				<b>13,251.64</b>	<b>11,655.33</b>	

Produced by SOMO-Indepaz based on CGR, 2017, 2018-a and 2018-b. Auto de Apertura de Proceso de Responsabilidad. Fiscal No. 00035 del 22 de enero, Bioenergy 2018-a, certificates of clearance and conveyance and IGAC (Instituto Geográfico Agustín Codazzi). Notes: (I) Not in the IGAC, (II) the Real Estate Registration does not include the area, (III) contract was not in force in 2018, (IV) second name on the data base of the IGAC and (V) two plots with the same real estate registration in the vereda Remolino. R: Resolution or administrative act of entity that has the function to provide titles on wastelands.

## Investigations of the monitoring bodies and the Office of the Attorney General

In an investigation of Bioenergy's use of public resources,<sup>92</sup> the Office of the Comptroller General found 15 alleged irregularities in the management and administration of resources of the state, declared of 'national impact'.<sup>93</sup> Amongst these 'fiscal irregularities'<sup>94</sup> were: 1) overspending on the industrial and agricultural components of the project and, 2) possible conflicts of interest, use of privileged information and disloyal administration.<sup>95</sup>

Regarding the industrial component, the Office of the Comptroller General referred to the additional costs that Bioenergy paid to the Spanish company Isolux Ingeniería S.A. (Isolux) and afterwards to the Consorcio Menegua (composed of the Colombian companies Ismocol S.A. and Morelco S.A.) that replaced the first one. The overspending was the result of delays in the construction of the ethanol plant, which took more than double the time initially planned for it.<sup>96</sup> That is why the plant only started operating in June 2017. For this reason, Bioenergy had to extend the contract with Riopaila Castilla for the supply of sugarcane and pay for the damage caused to the mill.<sup>97</sup> On the agricultural component, the Office of the Comptroller General found that Ecopetrol paid for the value of the plots of La Esperanza I and II, despite the fact that the managing partners had already registered these

plots as assets of the Project La Balsa (for 8 times their real value)<sup>98</sup> (see Table 4).

Furthermore, for the acquisition of the offshore companies Amandine and Los Arces Group, Bioenergy paid 11 times the value of Karikari, Lituania and La Conquista. Nevertheless, according to the Office of the Comptroller General, in 2017, when the entity investigated the case, Bioenergy did not own the three plots.<sup>99</sup> Thus they paid for plots that they did not own, and paid far more than the market value for it (see Table 5).

The Office of the Comptroller General also showed that Bioenergy made lease payments for plots where no sugarcane was being cultivated because the soil was not suitable, including Casa Verde and Casa Roja of Jorge Orlando Murcia Sierra and El Rubí of Henry Ocampo Suaza.<sup>100</sup>

The alleged conflicts of interests refer to Premier and Henry Echeverry Campuzano, managing partners of Project La Balsa and at the same time the contractors of Ecopetrol. Furthermore, Gustavo Gaviria Ángel and Juan Roa Martínez, shareholders of Visión de Valores, were also simultaneously members of the board of directors of Ecopetrol and of Bioenergy S.A. (the company created by the managing partners, not to be confused with Bioenergy S.A.S. created after Ecopetrol took over and referred to in this summary as Bioenergy)<sup>101</sup>

**Table 4 Transaction and assessment of La Esperanza**

Plot with origin in false conveyance	Real Estate Registration	Hectares Real Estate Registration	Purchase value in pesos as of 2006	Amount paid by Bioenergy in pesos of 2008	Value in accounting records of Bioenergy S,A, in pesos as of 2008
Lote I	234-14837	256.00	600,000,000	711,866,853	5,056,800,000
Lote II	234-14838	249.68			

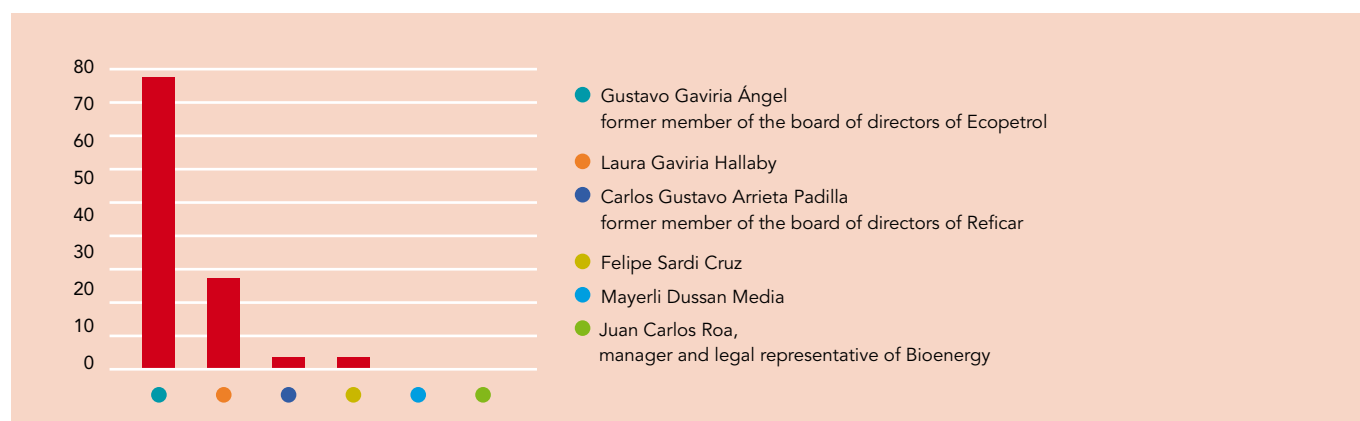
Produced by SOMO-Indepaz based on conveyance and clearance certificates, Public Deeds Nos, 1994 and 1996 of 4 April 2006 of the Notary 45 of Bogotá, CGR, 2017 and Bioenergy, 2018-a.

**Table 5 Purchase amounts of plots and shares**

Plots	Company	Purchase value of plot in pesos as of 2008	Amounts paid for the purchase of the offshore companies in pesos as of 2008
Karikari	Amandine	585,192,155	6,055,213,845
Lituania		37,064,000	
La Conquista – Rancho Yurinema	Los Arces	485,000,000	6,109,700,008
<b>Total</b>		<b>1,107,256,155</b>	<b>12,164,913,853</b>

Produced by SOMO-Indepaz based on clearance and conveyance certificates, CGR, 2017 and Bioenergy, 2018-a.

**Figure 2 Founders and shareholders of Visión de Valores**



Produced by SOMO-Indepaz based on OECD, 2009. "Qué hay que saber sobre el blanqueo de capitales. Guía para el control fiscal". <https://www.oecd.org/tax/crime/44751918.pdf>. Accessed on 23 March 2018, CGR, 2016 and 2017, El Nuevo Siglo.com.co, 29 August 2017, 'Bioenergy, más corrupción en Ecopetrol', El Tiempo.com, 7 June 2018, 'Por case Reficar se abre el mayor juicio fiscal en la historia', and databases available on the Web.

(see Figure 2). Visión de Valores was the stockbroker that recommended the creation of the Grupo BioOriente - through which Ecopetrol bought the project - and of the Land Committee that analysed the transactions over the plots described previously. The Office of the Comptroller General also questioned the fact that the managing partners remained in control of Bioenergy through Juan Carlos Roa Márquez, who managed the company until 2009.<sup>102</sup>

The credibility, legitimacy and legal security of the investments that Ecopetrol and its subsidiaries made with public resources depend on the outcomes of the investigations of the various controlling bodies and of the Office of the Attorney General.<sup>103</sup> It will also depend on the initiatives to favour 'large entrepreneurs' that are transgressing the Agrarian Law<sup>104</sup>, amongst them the 'Law (Zidres) that united Santos and Uribe'<sup>105</sup>, and the Law Project 003 of 2018, known as the *ley de tierras*, that Santos presented to Congress in 2018 and to which we refer to in the next section.



## 4 'Sanitisation' of 'investor confidence'

Under the Santos administrations (2010-2018), the political and legal debate over the concentration of land in the Orinoquía by national and international investors increased.<sup>106</sup> Between 2014 and 2015, the Office of the Comptroller General mentioned 24 cases of alleged accumulation of wastelands and Family Agriculture Units that had been awarded by the Incora/Incoder.<sup>107</sup> Twenty of these cases were handed over to the Office of the Attorney General and to the Office of the Procurator-General (*Procuraduría General de la Nación* or *Procuraduría* in Spanish) so that these entities would investigate possible violations of the Penal Code and infringements to the disciplinary regime of these institutions.<sup>108</sup> In addition to these cases, there are a number of cases that are still under investigation and/or in the process of recovery by the National Land Agency, including those of Pacific E&P<sup>109</sup> and of Poligrow.<sup>110</sup> The cases involve the following situations of land accumulation:<sup>111</sup>

- 1 The failed attempts of the Incora/Incoder/National Land Agency to recover wastelands that were occupied or awarded in an irregular way:** An example of this situation is that of La Cabiona – El Porvenir, illegally acquired by Víctor Carranza. In 2016, the Constitutional Court pointed out that this estate is an emblematic case when it comes to the historical problems of access to land for the smallholder farmer population, the dispossession through legal and illegal ways, and the 'juridical strategies (employed for the) consolidation of a spurious right to property' in which Víctor Carranza played a leading role.<sup>112</sup>
- 2 The constitution of trust funds of assets and property and 'real estate trusts':** Examples of the use of this figure to concentrate wastelands and/or Family Agriculture Units are: i) Pacific E&P, company that acquired 20 plots (approximately 40,000 hectares) for the planting of palm oil to be used for the production of biofuels;<sup>113</sup> and ii) the companies Aliar and Contegral of the Grupo Bios,<sup>114</sup> which wanted to implement the project La Fazenda on the plot El Brasil in Puerto Gaitán (16,000 hectares), awarded irregularly to persons close to Víctor Carranza.<sup>115</sup>
- 3 The 'corporate webs':**<sup>116</sup> This is the case of: i) The Brazilian group Mónica Colombia, which created six companies to acquire 13,000 hectares;<sup>117</sup> ii) the US multinational Cargill that constituted 36 simplified legal entities<sup>118</sup> to acquire 39 adjacent properties in the department of Vichada, through which it concentrated between 53,000 to 66,000 hectares, depending on the source. Several of the plots that Cargill took ownership of were sold by intermediaries from the department of the Valle del Cauca, who bought them from relatives of *Guillermo Torres*, entrepreneur of the emeralds and

former paramilitary commander;<sup>119</sup> and iii) Riopaila Castilla, a mill from the Valle del Cauca, that created 29 simplified legal entities through which it concentrated 38 estates, which together constitute more than 38,000 hectares in the department of Vichada. The plots were transferred to Asturias Holding Sàrl, a business holding that Riopaila Castilla created in Luxembourg, through five companies set up in Spain.<sup>120</sup> In all three cases, in which the same law firm Brigard & Urrutia provided advice, the majority of the plots were originally government wastelands that had been awarded before and after Law 160 of 1994.

- 4 The alleged combination of means to acquire Family Agriculture Units and wastelands:** An example of this is the case of Poligrow in Mapiripán, Meta. As shown in the SOMO-Indepaz report,<sup>121</sup> the Spanish-Italian company plants palm oil on plots that it has acquired directly, through its CEO Carlo Vigna Taglianti, and through ITA Aceites Vegetales, a simplified legal entity in which Vigna Taglianti is a shareholder. Simultaneously, Poligrow signed a promise to a buy-sell agreement<sup>122</sup> for 70,000 hectares of land that had been informally awarded to the former guerrilla Dumar Aljure in the 1950s.<sup>123</sup> Poligrow has pointed out that this contract was later reversed.<sup>124</sup> Even so, it is an example of the practice of individuals and legal entities that occupy large extensions of wastelands in the Orinoquía, and then do business with investors and intermediary buyers.<sup>125</sup> For this purpose, they divide the land 'between relatives or heirs' who apply for adjudication with the help of employees of the Incora/Incoder.<sup>126</sup> Others turn to judicial ownership processes<sup>127</sup> to acquire the titles through legal judgements.<sup>128</sup>

The decisions on agrarian, penal, corporate, commercial and disciplinary matters regarding alleged situations of land concentration should be left with the respective state entities.<sup>129</sup> It is evident, however, that the use of the means previously described enhanced the concentration of land in the hands of national and foreign investors attracted by promises made by Uribe Vélez and Santos to reform the Law 160 of 1994.<sup>130</sup> Indeed, the total number of hectares allegedly accumulated in the various cases singled out by the Office of the Comptroller General, plus those that National Land Agency is currently examining, is 440,000 hectares.<sup>131</sup> That is 88 per cent of the 500,000 hectares that, according to Bioenergy, correspond to the 'new investment (in the) transition to a legal economy, of which the ethanol project of Bioenergy is part'.<sup>132</sup>

The megaprojects in this region are also linked to significant environmental and social impacts. The development of these initiatives led to a rapid increase of the population

in the urban centres and the subsequent need for basic services such as health care, access to housing etc., that are not guaranteed by the national and local authorities.<sup>133</sup> Furthermore, the former minister of environment Manuel Rodríguez Becerra has mentioned the damages caused by the transformation of the 'land used for cattle' into agroindustry projects,<sup>134</sup> particularly the increase of deforestation and the draining of the wetlands, which affects the water sources.

The findings of the Office of the Comptroller General increased the polemic about the accumulation of Family Agriculture Units. On the debate about the scope of Law 160 of 1994, the Office of the Comptroller General, the Superintendence of Notaries and Registries Offices (Superintendence) and the Ministry of Agriculture and Rural Development,<sup>135</sup> as well as other official institutions, argued that the prohibition to accumulate more than one UAF applied regardless of whether they were awarded before or after the date on which the law was adopted (5 August 1994). However, the Foundation for Agroindustry Development in the Altillanura (Fundallanura) and the Society of Farmers of Colombia (SAC) insisted on the juridical insecurity that resulted from such an interpretation of the Agrarian Law.<sup>136</sup> The manager of Bioenergy, Aleck Santamaría, expressed a similar opinion when pointing out that the company used the figure of the 'real estate trusts' to deal with the 'legal void' in the Law regarding the prohibition to accumulate Family Agriculture Units awarded before the adoption of Law 160 of 1994.<sup>137</sup>

The SAC urged the Santos government to protect private investment and find a solution to the 'legal uncertainty over private property'.<sup>138</sup> Indeed, the two Santos administrations combined policies oriented towards reparations for the victims of dispossession and the promotion of peace (the Victims Laws and the Peace Agreement with the FARC), with the continuation of Uribe Vélez's policies to secure 'investor confidence'. This is how the Policy for the Altillanura, the first phase of the Master Plan of the Orinoquía, was approved, with the main goal to use the 15.1 million hectares for agriculture, forestry, livestock or commercial purposes.<sup>139</sup> This would be done through incentives to investments in 'strategic business projects' and the promotion of 'productive alliances between big, medium-sized and smallholder producers to guarantee large-scale economies',<sup>140</sup> and the handing over of wastelands in ways that would not transfer ownership (e.g. leasing or bailment, amongst others).

Furthermore, the Santos government presented various law projects to Congress to eliminate the legal restrictions on the accumulation of wastelands and to sanitise the accumulation of Family Agriculture Units, amongst them the Law Zidres. This law revealed the tensions between the aim to provide

reparations for the victims and the building of peace, with the aim to convert Colombia into an 'agricultural potential at the global level'.<sup>141</sup> In the following overview, we describe the various law initiatives of the Santos government to eliminate the legal barriers to the accumulation of land (the Law Zidres and the *ley de tierras*) and to limit the scope of laws directed at the restitution and redistribution of the land (the Victims Laws and the Integral Rural Reform of the Peace Agreement).

### Law Zidres – Law 1776 of 2016

Law 1776 of 2016 – also known as the Zidres Law – established the possibility of creating Interest Areas for Rural, Economic and Social Development (Zidres) in isolated regions where the soil is of poor quality and climatic conditions are difficult, the population density is low and the poverty rates are high, and where there is a lack of infrastructure for the transport and commercialisation of products.

The argument used to justify the Law Zidres is that there are 'good lands' to hand over to rural and ethnic communities, and 'bad' lands that should be used for agroindustry due to the high costs to prepare the soil. Most of the 'bad' lands are located in the Orinoquía (where 76 per cent of the Zidres will be located – approximately 7.3 million hectares, the size of Ireland),<sup>142</sup> with 67 per cent located in Vichada and Meta. Regarding this distinction between good and bad lands, the former judges of the Constitutional Court warned that the 'good' lands, considered suitable for small-scale agriculture,<sup>143</sup> are already highly concentrated in the hands of the large landowners or corporations.<sup>144</sup>

The Law 1776 of 2016, as already mentioned above, eliminated the prohibition to accumulate Family Agriculture Units awarded before the adoption of Law 160 of 1994 in the Zidres created by the national government.<sup>145</sup> Furthermore, it authorised the handing over of wastelands in these areas through contracts that do not involve the transfer of property (e.g. lease contracts), for those cases where the productive projects (approved by the Ministry of Agriculture and Rural Development) would include the association with small and medium farmers.<sup>146</sup>

With the approval of Law 1776 of 2016, the first Interest Area for Rural, Economic and Social Development (Zidres) was created in Puerto López, in the area where the 15 plots are located that Bioenergy acquired through the previously mentioned 'real estate trusts'.

### Victims Laws

Law 1448 of 2011 was adopted during Santos' first administration. As was discussed in the first chapter, this law established the procedure for the restitution of lands and collective territories that would, according to Santos, 'help to pay a moral debt'<sup>147</sup> with the victims of the dispossession

and forced abandonment of their lands. However, in the department of Meta this is still a pending debt, due mainly to the fact that the restitution laws can only be applied to land abandoned or dispossessed after 1 January 1991. As explained above, in Meta much of the land dispossession occurred in the 1970s and 1980 in the context of the growth of the drug trafficking and the creation of paramilitary groups such as the *Carranceros* and the *Buitragueños* by Víctor Carranza and Héctor Buitrago.<sup>148</sup>

The *Tsar of the Emeralds* accumulated large extensions of land, including El Brasil – headquarters of the large-scale agroindustry project of La Fazenda – and Hato Cabiona-El Porvenir in Puerto Gaitán, a municipality in which the first Zidres was initially planned.<sup>149</sup> Regarding the latter, Santos announced that the ‘27,000 hectares of El Porvenir’ would be made available to projects that would bring ‘smallholders and big farmers’ together.<sup>150</sup> This, despite the fact that the Constitutional Court ordered the National Land Agency to recover them and award them to the families that had occupied these lands for more than 45 years.<sup>151</sup> This shows the tensions that exist between policies adopted to respect the rights of the victims of the conflict, and promote a better distribution of land in favour of small-scale farming (Law 160 of 1994) on the one hand, and the implementation of a ‘new model for rural development’ established through the Law Zidres, centred around productivity, on the other hand.<sup>152</sup>

### **The Integral Rural Reform of the Peace Agreement and Decree Law 902 of 2017**

The implementation of the Policy for the Altillanura coincided with negotiations between Santos and the FARC that resulted in the Peace Agreement signed in November 2016. The Peace Agreement became state policy, meaning that all institutions had to commit to the implementation of the six chapters that make up the Peace Agreement. The first chapter is that of the Integral Rural Reform with Territorial Focus (RRI). The aim of the RRI was to ‘reverse the effects of the conflict’<sup>153</sup> and ‘contribute to resolving the historical causes of the conflict, like the non-resolved issue of land ownership and particularly its concentration’.<sup>154</sup> Law Decree 902 of 2017 adopted to implement the RRI, regulates the sources that will provide for the 3 million hectares of land brought together in a Land Fund from where the land will be redistributed.

Amongst these sources are the wastelands that were improperly awarded, occupied and/or accumulated and recovered by the state, and plots on which the judicial extinction of ownership<sup>155</sup> has been declared because of their fraudulent origin (e.g. drug trafficking, illicit enrichment, money laundering). The lands that make up the Land Fund will be awarded to small- and medium-size farmers (landless peasants or with insufficient lands). But the Law Decree also establishes the formalisation of 7 million

hectares over a period of 12 years.<sup>156</sup> This formalisation extends to natural and legal persons who also own other plots. This entails the risk of fostering land concentration and at times, might lead to the sanitisation of improperly awarded or occupied wastelands. As such, this aspect of the Law Decree infringes upon the concept of democratisation and fair distribution of the land, objectives of Law 160 of 1994 and of the Peace Agreement.

The formalisation of land titles, added to the precarious advances made in the recovery of improperly occupied and awarded wastelands, and in the enforcement of the extinction of ownership over the plots illicitly acquired by drug traffickers and/or paramilitaries,<sup>157</sup> reduce the available land that the Land Fund has for the RRI.

### **Adverse possessions to ‘grant amnesty’ to the concentration of wastelands and Family Agriculture Units**

Both the Law Zidres and the Decree Law 902 of 2017 have not resolved the ‘legal insecurity’<sup>158</sup> of land acquisitions in the Altillanura. The possibility still exists that judicial instances declare the invalidity of the various ‘schemes’ and means through which national and foreign investors have accumulated wastelands and Family Agriculture Units that have been awarded before or after the adoption of Law 160 of 1994 in those regions that will not have Zidres. In those regions, there is also no certainty about the legal framework applied for the use of wastelands, and the prohibition to accumulate more than one UAF for those that have been awarded after the adoption of Law 160 of 1994 is still in place. In order to address these situations, Santos presented to Congress the *ley de tierras*,<sup>159</sup> with the aim of ending the restrictions imposed by Law 160 of 1994, on the one hand, and ‘grant amnesty’ to the irregular acquisition of wastelands (‘imperfect’ or ‘improper situations’)<sup>160</sup> and Family Agriculture Units (‘situations in jeopardy’),<sup>161</sup> on the other hand.

Thus, the *ley de tierras* eliminates the prohibition to accumulate Family Agriculture Units awarded after the adoption of Law 160 of 1994. Furthermore, it authorises, ‘for once only’, the adverse possession<sup>162</sup> of lands concentrated in the first decades of the twenty-first century, thus infringing on the Law 160 of 1994 and Article 58 of the Political Constitution.<sup>163</sup> It does so by using the concepts of ‘recognition of the social function of property’<sup>164</sup> (in the case of economic exploitation of wastelands) and ‘regularisation on the basis of legitimate expectations’<sup>165</sup> (in the case of accumulation of plots that were originally wastelands).<sup>166</sup>

Both the Law Zidres and the *ley de tierras* are clearly oriented at guaranteeing legal security to the investments of the national and foreign economic groups that accumulated Family Agriculture Units and government wastelands, including those mentioned in this summary. This law also

paves the way for the arrival of new foreign economic groups like Los Grobo, of the Argentine entrepreneur Gustavo Grobocopatel, also known as the 'king of soy' in reference to the thousands of hectares of soy that his group cultivates in Argentina. Grobocopatel even accompanied the Santos government in the negotiations with the FARC to present 'productive projects for post-conflict Colombia'.<sup>167</sup> The government of Santos's successor, Iván Duque Márquez, shares the same vision on rural development. Duque Márquez's government did not even include the RRI in the National Development Plan 2018-2022 and announced that it would continue with the procedure in Congress to pass the *ley de tierras* introduced by Santos.<sup>168</sup>

Civil society organisations and parliamentarians gathered in the Congressional Group for Peace, Life, Democracy and Human Rights<sup>169</sup> have pointed out that the *ley de tierras* not only contradicts the Political Constitution of 1991, the policies of agrarian reform and restitution, but also grants 'pardon and forgetting to all the irregularities and illegal appropriations' of land.<sup>170</sup> Thus, they state that the *ley de tierras* goes against the objectives of the Integrated System of Truth, Justice, Reparation and Non-Repitition, which includes the Commission for Clarification of the Truth, Coexistence, Non-Repitition (Commission) and the Special Jurisdiction for Peace (JEP). Both the Commission and the JEP were created as part of the state policy to implement the Peace Agreement with the FARC.<sup>171</sup> It is the responsibility of the Commission to clarify the responsibilities of the state, the FARC-EP, the paramilitaries and private agents in the internal armed conflict and its relation to the displacement and concentration of land. The JEP has the responsibility of investigating and sanctioning the members of the Security Forces and the FARC for human rights violations committed during the armed conflict. The JEP can also investigate civil agents of the state and individuals that present themselves on a voluntary basis and commit themselves to contribute to peace building and reparation (remediation) of the victims.<sup>172</sup>

## Conclusions and recommendations

This report has shown that the concentration of land ownership in the Orinoquía has a long history, including agrarian conflicts between indigenous people, settlers, large landowners and landless farmers in the beginning of the twentieth century, and the grabbing of land by emerald entrepreneurs, drug traffickers and paramilitaries in the twentieth century. The turn of the millennium saw the concentration of government wasteland and Family Agriculture Units by national and foreign investors for the implementation of agroindustry projects, attracted by the policies of 'investor confidence' of Uribe Vélez and Santos. Both former presidents looked for ways to limit the prohibitions of the Agrarian Law and 'sanitise' situations

that are in conflict with Law 160 of 1994. These initiatives were implemented in the midst of paramilitary demobilisation (Uribe Vélez), the negotiation and signing of the Peace Agreement with the FARC and reparations to the victims (Santos). The Duque administration has expressed its decision to proceed with the *ley de tierras*, which seeks to 'grant amnesty' to the accumulation of wastelands and Family Agriculture Units.

Based on their findings, SOMO-Indepaz have formulated recommendations to the Congress of the Republic, the Office of the Comptroller General, the Office of the Procurator-General, the Office of the Attorney General, the Ombudsman's Office,<sup>173</sup> the Ministry of Agriculture and Rural Development, the Commission for Clarification of the Truth, Coexistence, Non-Repitition and the JEP. The recommendations are oriented at deepening the analysis of the dynamics of concentration of wastelands and Family Agriculture Units in the Orinoquía, and its relation to the displacement and dispossession that occurred in this region.

SOMO-Indepaz also recommend to Congress that they analyse the actions put forth by the National Land Agency, the Office of the Procurator-General, the Office of the Attorney General, amongst other entities, with regard to the cases of alleged concentration that were handed over by the Office of the Comptroller General in 2013, 2014, 2017 and 2018. We also urge the Ministry of Agriculture and Rural Development and the National Land Agency to recover the accumulated wastelands and Family Agriculture Units, and to the Office of the Attorney General and the Special Assets Society<sup>174</sup> to accelerate the extinction of ownership over plots hoarded for money laundering and illicit enrichment. These recommendations require follow up in order to guarantee the right to access to land for smallholder and indigenous communities and/or for the victims of land dispossession of forced abandonment and to make advances in the construction of a stable and sustainable peace and the non-repetition of violations.

We also recommend the Office of the Comptroller General, the Office of the Procurator-General and the Office of the Attorney General should conclude the ongoing investigations into the buying and operation of the industrial and agricultural components of the Project La Balsa – now Project El Alcavarán of Bioenergy and BIO Z.F., subsidiaries of Ecopetrol.



## Maps, figures, tables

### Maps

Map 1 · Altillanura subregion

### Figures

Figure 1 · 'Real estate trusts'

Figure 2 · Founders and shareholders of Visión de Valores

### Tables

Table 1 · Plots associated with the 'Project El Alcavarán'

Table 2 · Bioenergy properties acquired through 'real estate trusts'

Table 3 · Origin and conveyance of rented properties

Table 4 · Transaction and assessment of La Esperanza

Table 5 · Purchase amounts of plots and shares

### Notes

- 1 Oxfam, 2017. 'Radiografía de la desigualdad. Lo que nos dice el último Censo Agropecuario sobre la distribución de la tierra en Colombia'.
- 2 DNP, 2015. 'El campo colombiano, un camino hacia el bienestar y la paz'. Informe detallado de la Misión para la Transformación del Campo. Tomo 1. Bogotá. Nuevas Ediciones; and Corte Constitucional, sentencia T – 488 de 2004.
- 3 Corte Constitucional, auto del 3 de julio de 2012.
- 4 SOMO-Indepaz, May 2019. '¿Amnistía a la "concentración productiva" del siglo XXI en la Orinoquía? El caso Bioenergy'.
- 5 Annex 4 of the overall report in Spanish gives an overview of the different laws and policies adopted to stimulate the production of biofuels and palm oil.
- 6 SOMO-Indepaz, 2015. 'Reconquista y despojo en la Altillanura. El caso Poligrow en Colombia', Bogotá; and SOMO-Indepaz, 2016. 'Petróleo: Acumulación de agua y tierras en la Altillanura. El caso Pacific: Multinacional-local en Colombia'. Bogotá.
- 7 Bioenergy defines speculative accumulation as accumulation that 'looks to capitalise on the overpriced acquisition of land rents at the expense of society' (Bioenergy, 2018. 'Resumen ejecutivo informe de Bioenergy' [Respuesta a SOMO-Indepaz] del 27 de julio de 2018).
- 8 According to Bioenergy, this refers to the accumulation of 'extensions that are adjusted to the production scale of agroindustry projects that are competitive, generate production, employment, profit and taxes (and) the transition from a past dominated by members of the mafia and war lords towards an economy that is competitive at the global level, led by businessmen' (Ibidem).
- 9 CGR, 2013. 'Consideraciones sobre la política de baldíos en Colombia', Bogotá.
- 10 The certificate of conveyance and clearance (*certificado de tradición y libertad* in Spanish) is a public document that includes legal information on a property and its previous ownership. The properties with a history of wasteland (*baldíos* in Spanish, state-owned land) carry a specific notation on the certificate. Oxfam, 2013. 'Divide y compraras. La nueva forma de concentrar baldíos en Colombia'. [https://documentop.com/divide-y-compraras-una-nueva-forma-de-oxfam-international\\_5a0bb8b51723d4dc84cf274c.html](https://documentop.com/divide-y-compraras-una-nueva-forma-de-oxfam-international_5a0bb8b51723d4dc84cf274c.html). Accessed on 23 March 2018.
- 11 *Consejería Presidencial para los Derechos Humanos* in Spanish.
- 12 Annex 1 of the report in Spanish provides information on the meetings, interviews, workshops and focus groups carried out during the research. For security reasons, the names of the people interviewed and the names of those who participated in the workshops and focus groups in Villavicencio and Puerto López are not mentioned.
- 13 Bioenergy, 2018. 'Resumen ejecutivo informe de Bioenergy'. Op. Cit. and '[Respuesta a comunicación [de SOMO-Indepaz] del 8 de septiembre de 2018]'. See Annexes 2 and 3 of the overall report in Spanish: SOMO-Indepaz, May 2019. '¿Amnistía a la "concentración productiva" del siglo XXI en Orinoquía? El caso Bioenergy'.
- 14 ONU, 2011. 'Principios Rectores sobre las empresas y los derechos humanos'. Puesta en práctica del marco para "proteger, respetar y remediar". [https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr\\_sp.pdf](https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_sp.pdf); and 2011-a, 'Principios rectores relativos a las evaluaciones de los efectos de los acuerdos de comercio e inversión en los derechos humanos'. [https://www.ohchr.org/Documents/Issues/Food/A.HRC.19.59.Add.5\\_SP.pdf](https://www.ohchr.org/Documents/Issues/Food/A.HRC.19.59.Add.5_SP.pdf). Accessed on 23 March 2018.
- 15 *Zonas de Interés para el Desarrollo Rural, Económico y Social* – Zidres, in Spanish. The Zidres law and its implications are explained in more detail in the last chapter.
- 16 At the time of the adoption of the law, in 1994, the Incora, which was replaced in 2003 by the Colombian Institute for Rural Development (Incoder) and later by the National Land Agency (ANT), was responsible for the management of the wastelands and of the parcels of land acquired for redistribution. The Incora was closed down in 2002 for corruption and replaced by the Incoder in 2003. The Incoder was in turn liquidated for corruption in December 2015 and replaced by the National Land Agency. See: ANT, 2018a. 'Estructura agraria y corrupción burocrática: retos para la autoridad de tierras de la Nación'. <http://www.agenciadetierras.gov.co/wp-content/uploads/2018/10/ESTRUCTURA-AGRARIA-Y-CORRUPCION-BUROCRACTICA-RETOS-PARA-LA-AUTORIDAD-DE-TIERRAS-DE-LA-NACION-final.pdf>. Accessed on 3 February 2019.
- 17 Resolución del Incora 041 de 1996.
- 18 Article 72 of the Law 160 of 1994, establishes that 'no single person is allowed to acquire ownership over properties that were initially adjudicated as baldíos, if their extensions exceed the maximum limits for titling as defined by the Board of Directors for the Family Agriculture Units in the respective municipality or region'. In other words, it is not allowed to accumulate more than one UAF.
- 19 *Unidades Agrícolas Familiares* in Spanish. The singular *Unidad Agrícola Familiar* – abbreviated UAF, is the maximum extension/amount of hectares of wasteland that the government can award to one single natural or legal person. Law 160 of 1994 prohibits the accumulation of more than one UAF. When referring to the accumulation of more than one UAF, we use the unabbreviated plural *Unidades Agrícolas Familiares* (Family Agriculture Units in English).
- 20 'Imprescriptible' is a legal concept. It refers to something that cannot be taken away or transferred. In the case of wastelands, it means that they cannot be acquired through adverse possession.
- 21 Código Civil de 1887, artículos 768, 771 a 774 y 778 a 780.
- 22 Código General del Proceso, article 82.
- 23 Law 160 of 1994, article 48.
- 24 Corte Constitucional, sentencia T-488 de 2014.

- 25 The *Ley de Tierras* of 1936 (adopted in the first administration of Alfonso López Pumarejo - President of Colombia from 1934 until 1938), also referred to as the First Agrarian Law, is important because it established the difference between private property, governed by the Civil Code of 1887 and agrarian property (the wastelands), that are imprescriptible, meaning that ownership cannot be acquired over these lands through adverse possession and judicial ownership processes as is the case of private property. See also chapter two on the legal framework ruling land acquisition in Colombia.
- 26 In the Sentence T-488 of 2014 the Constitutional Court ordered the Colombian Institute for Rural Development (Incodr) – now National Land Agency (ANT), and the Superintendence of Notaries and Registries Offices, amongst other entities, to move forward with the National Plan for Clarification and Recovery of the Rural lands (*Plan Nacional de Clarificación y Recuperación de Tierras Rurales*).
- 27 Corte Constitucional, sentencia T-488 de 2014.
- 28 Uariv con corte a 1° de enero de 2019, 2019. 'Registro Único de Víctimas'. <http://rni.unidadvictimas.gov.co/RUV>. Accessed on 3 January 2019.
- 29 CNMH, 2015. 'Una nación desplazada. Informe Nacional del desplazamiento forzado en Colombia', Bogotá, Imprenta Nacional.
- 30 Ibidem and CNMH, 2013. '¡Basta ya! Colombia: Memorias de guerra y dignidad', Bogotá.
- 31 Santos, J., 2010. 'Buen gobierno para la prosperidad democrática. 109 iniciativas para lograrla'. <http://redescolombia.files.wordpress.com/2010/05/plan-de-gobierno-juan-manuel-santos.pdf>. Accessed on 23 March 2018.
- 32 This compensation can be money, or another plot.
- 33 The Constitutional Court has reiterated that, contrary to the simple faith, the simple good faith (*buena fe simple*) requires consciousness, possession in good faith requires both consciousness and certainty that the person who is selling is really the owner and that the selling of the land is done voluntarily (Sentence C-1007 of 2002). This means that the consent of the seller cannot be the result of the use of force or violence (Civil Code, article 1502).
- 34 DNP, 2011. 'Caracterización de las condiciones de desarrollo territorial de la Altillanura'. Bogotá.
- 35 Oxfam, 2013. 'Divide y compraras. La nueva forma de concentrar baldíos en Colombia'. [https://documentop.com/divide-y-compraras-una-nueva-forma-de-oxfam-international\\_5a0bb8b51723dddc84cf274c.html](https://documentop.com/divide-y-compraras-una-nueva-forma-de-oxfam-international_5a0bb8b51723dddc84cf274c.html). Accessed on 23 March 2018. Op. Cit.
- 36 Puerto Boyacá is a municipality of the department of Boyacá located in the region of Magdalena Medio, where the first generation of paramilitaries was formed in the 1980s. See: Gutiérrez, F. 2014. 'El orangután de sacoleva. Cien años de democracia y represión en Colombia (1910-2010)', Bogotá, IEPRI/Debate.
- 37 CNMH, 2018. 'Violencia paramilitar en la Altillanura: autodefensas campesinas de Meta y Vichada. Informe N.º 3. Serie: Informes sobre el origen y actuación de las agrupaciones paramilitares en las regiones'. Bogotá, Imprenta Nacional.
- 38 Reyes, A., 2009. *Guerreros y campesinos. El despojo de la tierra en Colombia*. Bogotá, Grupo Editorial Norma; INDH-PNUD, 2011. 'Colombia rural. Razones para la Esperanza. Informe Nacional de Desarrollo Humano', Bogotá.
- 39 On *La Violencia* and its impacts on the rural population, see: Centro de Memoria Histórica Paz y Reconciliación, 2012. 'Bogotá, ciudad memoria'. Bogotá, and CNMH, 2013. '¡Basta ya! Colombia: Memorias de guerra y dignidad', Bogotá.
- 40 Known as the 'First Agrarian Reform Law' (*Primera Ley de Reforma Agraria* in Spanish).
- 41 See: Gómez, A., 1998. 'La guerra de exterminio contra los grupos indígenas cazadores-recolectores de los Llanos Orientales (siglos XIX y XX)'. *Anuario Colombiano de Historia Social y de la Cultura* (25), p. 351-376; and 1998-a. 'Llanos Orientales: colonización y conflictos interétnicos, 1870-1970'. Flacso sede Ecuador.
- 42 Examples are the former President Alfonso López Pumarejo and members of his family, who received plots in the 1950s on which the Project El Alcavarán now operates (El Capricho, El Caprichito, Hato Chico, Manantiales, El Alcaraván y Majagual y La Conquista).
- 43 La Esperanza I and II, plots owned by Bioenergy, have their origin in the 'purchase of improvements' (*compra de mejoras* in Spanish) realised by Jacobo Esquenazi in 1957, then transferred to Cecilia Peralta Beltz (1969), Whilmar Nicholls (1969), Florentino Vásquez Borda (1970) and Florentino Vásquez Villa (1990). See also the paragraph on Bioenergy's plan to secure land in this paper.
- 44 This is the case of Víctor Machado 'who assumed as his own approximately 25 thousand hectares' of the Hato Cabiona (also known as El Porvenir), later acquired by the *Tsar of the Emeralds* (VerdadAbierta.com, 14 May 2013, 'El oscuro pasado de El Porvenir'. <https://verdadabierta.com/el-oscur-pasado-del-porvenir-1/>. Accessed on 23 March 2018).
- 45 An example of this is the farm Karikari, adjudicated in 1982 to Otwin Ebner Hofbauer, later sold to Agropecuaria Santa Cruz Ltda of Enrique Mazuera Arango, the owner of La Lituania.
- 46 CNMH, 2018. 'Violencia paramilitar en la Altillanura: autodefensas campesinas de Meta y Vichada. Informe N.º 3. Serie: Informes sobre el origen y actuación de las agrupaciones paramilitares en las regiones'. Bogotá, Imprenta Nacional; and Gómez, A., 1998. 'La guerra de exterminio contra los grupos indígenas cazadores-recolectores de los Llanos Orientales (siglos XIX y XX)'.
- 47 *Fiscalía General de la Nación* in Spanish.
- 48 Evans, 2012, 'Develando al "Zar de las esmeraldas" de Colombia'. <https://verdadabierta.com/develando-al-zar-de-las-esmeraldas-de-colombia/>; and VerdadAbierta.com, 3 February 2012, 'Los paramilitares que han salpicado a Carranza'. <https://verdadabierta.com/los-paramilitares-que-han-salpicado-a-carranza/>. Accessed on 23 March 2018.
- 49 Héctor José Buitrago Rodríguez, alias *Tripas*, cattle-rancher and founder of the paramilitary group *Autodefensas Campesinas del Casanare* (previously known as the *Buitragueños* in the 1970s), and his son Héctor German Buitrago, alias *Martín Llanos*, who took over the leadership of the *Autodefensas Campesinas del Casanare* from his father.
- 50 Vicente Castaño Gil was the founder of the Casa Castaño in the region of Urabá and commanded the *Bloque Centauros* of the AUC that operated in the Orinoquía.

- 51 In Urabá, paramilitary groups, businesspeople and sectors of the state conspired to dispossess the afro-descendant communities of Chocó to impose the cultivation of palm oil. See: CNMH, 2012. 'Tierras y territorios en las versiones de los paramilitares', Bogotá, Imprenta Nacional; and Corte IDH, 2013. 'Caso de las Comunidades Afrodescendientes Desplazadas de la Cuenca del Río Cacarica (Operación Génesis) Vs. Colombia. Excepciones Preliminares, Fondo, Reparaciones y Costas'. Sentencia del 20 de noviembre. Serie C No. 270.
- 52 Uribe Vélez cited in Molano, 2016, 'Yarí, la historia de una zona histórica'. Between 2001 and 2007, 'Meta and Casarane doubled the cultivations (of palm) by passing from 57 thousand to 125 thousand hectares' (Viloria, J., 2009. *Geografía económica de la Orinoquia*. Cartagena: Banco de la República).
- 53 López, C., 2008. 'Carimagua, un modelo desplazador'. <https://www.elespectador.com/noticias/politica/articulo-usted-simbolo-del-modelo-desplazador-cecilia-lopez>. Accessed on 23 March 2018.
- 54 Rutasdelconflicto.com, 2017. 'Vichada: tierra de hombres para hombres sin tierra'. [http://rutasdelconflicto.com/especiales/vichada/tierra\\_hombres\\_sin\\_tierra.html](http://rutasdelconflicto.com/especiales/vichada/tierra_hombres_sin_tierra.html). Accessed on 23 March 2018; and Oxfam, 2013. 'Divide y compraras. La nueva forma de concentrar baldíos en Colombia'. Op. Cit.
- 55 According to Bioenergy (2018), the preparation of the soil to make it productive costs approximately 10 million pesos per hectare. (2018. 'Resumen ejecutivo informe de Bioenergy'. Op. Cit.).
- 56 For this reason, Argentine companies like El Tejar and Grupo Los Grobo, and the Brazilian Blairo Maggi postponed their installation waiting for the modification of Law 160 of 1994. See: Salinas, 2011. 'El Caso de Colombia' in Soto y Gómez (eds.). *Dinámicas del mercado de la tierra en América Latina y el Caribe: concentración y extranjerización*. FAO (Organización de las Naciones Unidas para la Alimentación y la Agricultura y Portafolio.co, 11 June 2010. 'UAF marginó a grupo Los Grobo 70'. <https://www.portafolio.co/economia/finanzas/uaf-margino-grupo-grobo-70-298430>. Accessed on 23 March 2018.
- 57 Presidencia de la República, 2008. 'Palabras del Presidente Álvaro Uribe Vélez en su visita al complejo agroindustrial "La Fazenda"'. [http://historico.presidencia.gov.co/discursos/discursos2008/junio/fazenda\\_24062008\\_i.html](http://historico.presidencia.gov.co/discursos/discursos2008/junio/fazenda_24062008_i.html). Accessed on 23 March 2018. Part of these 'schemes' were participation contracts (*contratos de participación* in Spanish) used by the sugar mills of the south-west of Colombia, and productive alliances (used in the palm oil industry) between companies owning the extracting plants and small and medium-sized companies and smallholder producers that provided the palm fruit (Ibidem).
- 58 El Colombiano.com, 8 October 2018. 'Por parapolítica, excongresista Habib Merheg Marún irá a la JEP'. <http://www.elcolombiano.com/colombia/paz-y-derechos-humanos/por-parapolitica-excongresista-habib-merheg-marun-ira-a-la-jep-DA9460324>. Accessed on 28 October 2018.
- 59 After the Project La Balsa bought these plots the Company transformed into Bioenergy S.A.S., subsidiary of Ecopetrol, to which we refer in the report as Bioenergy.
- 60 The last two are the founders of the National Federation of Biofuels of Colombia (Fedebiocombustibles), created in 2004 to promote the use of alternative energy using the incentive measures introduced by the national government.
- 61 A *vereda* is a territorial division within the municipalities.
- 62 CGR, 2017. 'Informe actuación especial a la inversión de los recursos públicos en el Proyecto Bioenergy S.A. por parte de Ecopetrol S.A.'. <https://www.contraloria.gov.co/documents/20181/764185/INFORME+ACES+BIOENERGY+S.A.+VIGENCIA+2016.pdf/3a562c07-6ca9-4ade-be51-c961cfce239e?version=1.0>. Accessed on 23 March 2018.
- 63 IICA, 2007. 'Atlas de la agroenergía y los biocombustibles en América Latina'. IICA. San José.
- 64 CGR, 2017. 'Informe actuación especial a la inversión de los recursos públicos en el Proyecto Bioenergy S.A. por parte de Ecopetrol S.A.'. Op. Cit., and Arcila, 2017. 'Bioenergy, historia de un fracaso empresarial'. <https://www.las2orillas.co/bioenergy-historia-fracaso-empresarial/>. Accessed on 23 March 2018.
- 65 Arcila, 2017. 'Bioenergy, historia de un fracaso empresarial'. <https://www.las2orillas.co/bioenergy-historia-fracaso-empresarial/>. Accessed on 23 March 2018.
- 66 Bioenergy, 2018. 'Resumen ejecutivo informe de Bioenergy'. Op. Cit.
- 67 'Fiducias de parqueo' in Spanish. This modality is explained later in this chapter.
- 68 CGR, 2017. 'Informe actuación especial a la inversión de los recursos públicos en el Proyecto Bioenergy S.A. por parte de Ecopetrol S.A.'. Op. Cit.
- 69 Bioenergy, 2018. 'Resumen ejecutivo informe de Bioenergy'. Op. Cit.
- 70 Also called *mejoras* in Spanish.
- 71 For the names of these people, see footnote 43.
- 72 Specifically, law firms whose function is to represent anonymous companies in Panamá (Laws 32 of 1927 and 2 of 2011 and Decree 147 of 1996 of the Republic of Panamá), like Mossack Fonseca, the law firm mentioned in the so-called Panama Papers (La Capital, 12 February 2017, 'Detienen a los abogados del estudio del "Panamá Papers", Fonseca y Mossack') and people related to the creation of various offshore companies, respectively.
- 73 Revista Altillanura, 2008. 'Enrique Mazuera, exitoso esfuerzo'. No. 12 de julio.
- 74 Giraldo, G., 2017. 'Personajes en la historia de Puerto López'. <https://gustavogiraldobermudez.wordpress.com/2017/09/08/p-e-r-s-o-n-a-j-e-s-e-n-l-a-h-i-s-t-o-r-i-a-d-e-p-u-e-r-t-o-l-o-p-e-z/>. Accessed on 23 March 2018.
- 75 See also endnote 25 on the *Ley de Tierras*.
- 76 CGR, 2018. Auto de Apertura de Proceso de Responsabilidad Fiscal No. 00035 del 22 de enero.
- 77 *Contratos de 'fiducias de parqueo'* in Spanish. The Office of the Comptroller General called these 'real estate trust' agreements 'adjourned sales', because of the fact that they were only concretised with the elimination of the restriction to accumulate Family Agriculture Units awarded before the Law 160 of 1994 through the adoption of the Law Zidres (CGR, 2017. 'Informe actuación especial a la inversión de los recursos públicos en el Proyecto Bioenergy S.A. por parte de Ecopetrol S.A.'. Op. Cit.).
- 78 *Patrimonios autónomos* in Spanish.
- 79 Through private documents that were not registered in the registry offices (Public scriptures of the mercantile trust agreements, see Table 3).
- 80 A bailment contract involves the temporary placement of control over, or possession of personal property by one person, the bailor, into the hands of another, the bailee, for a designated purpose on which both parties have agreed. It does not involve the transfer of ownership, as the bailor retains ownership. See: <https://legal-dictionary.thefreedictionary.com/bailment>. Accessed on 20 August 2019.

- 81 *Chicharrón* is a traditional dish with sauce that is popular in Colombia and other Latin American countries. *Semana* used the term to refer to the accumulations of Cargill and Riopaila with the guidance of Brigard and Urrutia, amongst others. *Semana.com*, 15 June 2013. 'El chicharrón de los baldíos'. <https://www.semana.com/nacion/articulo/el-chicharron-baldios/346489-3>. Accessed on 28 May 2019.
- 82 The Mission for the Transformation of the Countryside (*Misión para la Transformación del Campo* in Spanish) was created in the second presidential term of Santos with the objective to formulate policy recommendations to close the gaps between the countryside and the city. The mission was headed by José Antonio Ocampo, Minister of Agriculture when the Law 160 of 1994 was approved and included within its ranks the former ministers of Agriculture Cecilia López, Roberto Junguito and Juan Camilo Restrepo, and the president of the Grupo Manuelita Henry Eder, the president of the Society of Farmers of Colombia (Sociedad de Agricultores de Colombia – SAC in Spanish) Rafael Mejía and the experts in agrarian matters Albert Berry, Jorge Rondón, Julio Berdegue, Absalón Machado, Alejandro Reyes and José Leibovich.
- 83 DNP, 2015. 'El campo colombiano, un camino hacia el bienestar y la paz'. Op. cit.
- 84 Bioenergy, 2014. Acta Junta Directiva No. 126 del 18 de diciembre.
- 85 The occasional profit tax is a tax on the incomes obtained from the selling of an asset (Estatuto tributario, artículo 299).
- 86 Statement by the former manager of Bioenergy, Aleck Santamaría de la Cruz (*Semana.com*, 13 June 2013. 'Ecopetrol y los baldíos'. <https://www.semana.com/nacion/articulo/ecopetrol-baldios/348456-3>). Accessed on 23 March 2018.
- 87 CGR, 2017. 'Informe actuación especial a la inversión de los recursos públicos en el Proyecto Bioenergy S.A. por parte de Ecopetrol S.A.'. Op. Cit.
- 88 Bioenergy, 2018-a. 'Respuesta a comunicación [de SOMO-Indepaz] del 8 de septiembre de 2018'. Op. Cit.
- 89 Called by Ramos 'rentier and absent' owners (no date, 'Derecho agrario y ley 1448 de 2011'. [https://www.javerianacali.edu.co/sites/ujc/files/node/field-documents/field\\_document\\_file/derechoagrario.pdf](https://www.javerianacali.edu.co/sites/ujc/files/node/field-documents/field_document_file/derechoagrario.pdf). Accessed on 23 March 2018) and by Bioenergy (2018) 'owners who do not live from production' but from speculative income.
- 90 CGR, 2017. 'Informe actuación especial a la inversión de los recursos públicos en el Proyecto Bioenergy S.A. por parte de Ecopetrol S.A.'. Op. Cit.
- 91 CGR, 2017. 'Informe actuación especial a la inversión de los recursos públicos en el Proyecto Bioenergy S.A. por parte de Ecopetrol S.A.'. Op. Cit. and Riopaila, 2013. 'Informe de Gestión 2012'. <http://www.riopailasuprema.com/archivos-riocastilla/Informe%20de%20Gestion%202012.pdf>. Accessed on 23 March 2018 and interviews in Puerto López, Villavicencio and Bogotá in May and June 2017.
- 92 The Office of the Comptroller General analysed the investment of public resources of Ecopetrol and its subsidiaries, particularly Bioenergy and the Refinery of Cartagena S.A. (Reficar). See: CGR, 2013. 'Inversiones extraterritoriales de Ecopetrol S.A.'. <http://www.contraloria.gov.co/documents/20181/479194/Informe+A.E.-ECOPETROL-Inversiones+Extraterritoriales+de+Ecopetrol.PDF.pdf/f61e3bb5-c584-4bae-8f33-fa34526fe657?version=1.0>; CGR, 2016. 'Estudio sectorial. Proceso de maduración del proyecto para el abastecimiento de biocombustibles. Caso Bioenergy – Ecopetrol S.A.'. <http://www.contraloria.gov.co/documents/20181/566714/Estudio+Sectorial+Bioenergy.pdf/7aa1c8fc-8981-46a4-9d13-fee3b77e264b>; CGR, 2016-a. 'Informe de actuación especial al Proyecto de modernización y ampliación de la Refinería de Cartagena – Reficar'. <https://www.contraloria.gov.co/documents/20181/479262/INFORME+AUDITORIA+REFICAR+-+VIGENCIA+2015.pdf/d11b02ac-379f-41a6-a3a8-d54daa5a91b8>; and CGR, 2017. 'Informe actuación especial a la inversión de los recursos públicos en el Proyecto Bioenergy S.A. por parte de Ecopetrol S.A.'. Op. Cit. See also: Las2Orillas.co., 25 September 2017. 'Las dos debacles de Ecopetrol, Reficar y Bioenergy: ¿incompetencia o corrupción?'. <https://www.las2orillas.co/las-dos-debacles-de-ecopetrol-reficar-y-bioenergy-incompetencia-o-corrupcion/>. Accessed on 23 March 2018.
- 93 CGR, 2017-b. 'Contraloría General encontró 10 hallazgos fiscales por \$709.342 millones en Bioenergy, la planta de Etanol de propiedad de Ecopetrol'. [https://www.contraloria.gov.co/contraloria/sala-de-prensa/boletines-de-prensa/boletines-prensa-2017/-/asset\\_publisher/0hcbp-bxJNnDG/content/contraloria-general-encontro-10-hallazgos-fiscales-por-709-342-millones-en-bioenergy-la-planta-de-etanol-de-propiedad-de-ecopetrol?inheritRedirect=false](https://www.contraloria.gov.co/contraloria/sala-de-prensa/boletines-de-prensa/boletines-prensa-2017/-/asset_publisher/0hcbp-bxJNnDG/content/contraloria-general-encontro-10-hallazgos-fiscales-por-709-342-millones-en-bioenergy-la-planta-de-etanol-de-propiedad-de-ecopetrol?inheritRedirect=false). Accessed on 23 March 2018.
- 94 *Hallazgos fiscales* in Spanish refers to situations where the malicious or guilty behaviour of those in charge of the fiscal management causes damage to state assets. The responsible entity to further the process to establish fiscal responsibility would be the Office of the Comptroller General. <http://www.sdp.gov.co/transparencia/informacion-interes/glosario/hallazgo-fiscal>. Accessed on 5 June 2019.
- 95 Practices that go against the Constitution and the laws and against the UN Guiding Principles on Business and Human Rights, the OECD Guidelines on Multinational Enterprises and the OECD-G20 nine principles on Corporate Governance.
- 96 CGR, 2017. 'Informe actuación especial a la inversión de los recursos públicos en el Proyecto Bioenergy S.A. por parte de Ecopetrol S.A.'. Op. Cit.
- 97 CGR, 2018. Auto de Apertura de Proceso de Responsabilidad Fiscal No. 0921 del 10 de julio.
- 98 CGR, 2017. 'Informe actuación especial a la inversión de los recursos públicos en el Proyecto Bioenergy S.A. por parte de Ecopetrol S.A.'. Op. Cit.
- 99 Ibidem.
- 100 Ibidem y 2018-a. Auto de Apertura de Proceso de Responsabilidad Fiscal No. 00035 del 22 de enero.
- 101 CGR, 2017. 'Informe actuación especial a la inversión de los recursos públicos en el Proyecto Bioenergy S.A. por parte de Ecopetrol S.A.'. Op. Cit.
- 102 Ibidem.
- 103 The investigations are 'in progress' and in the case of the investigation of the Office of the Comptroller General Bioenergy is implementing 'an improvement plan' agreed upon with this entity (Bioenergy, 2018. 'Resumen ejecutivo informe de Bioenergy'. Op. Cit.)
- 104 Juan Camilo Restrepo quoted in *VerdadAbierta.com*, 20 June 2015. 'Modelo de desarrollo agrario de la Altillanura: ¿Agroindustria o campesino?'. <https://verdadabierta.com/modelo-de-desarrollo-agrario-de-la-altillanura-agroindustria-o-campesino/>. Accessed on 23 March 2018. See also: Bermúdez, A. and León, J., 2013. 'En los baldíos, Santos tendrá que escoger entre los cacao y su discurso en La Habana'. <https://lasillavacia.com/historia/en-los-baldios-santos-tendra-que-escoger-entre-los-cacaos-y-su-discurso-en-la-habana-45332>. Accessed on 23 March 2018; and 'Carta del Dr. José Félix Lafaurie, al Jefe del Equipo Negociador del Gobierno Nacional Dr. Humberto de la Calle Lombana'



- (Fedegán, 2013. <https://ramiromblog.wordpress.com/2013/06/28/carta-del-dr-jose-felix-lafaurie-al-jefe-delequipo-negociador-del-gobierno-nacional-dr-humberto-de-lacalle-lombana/>. Accessed on 23 March 2018).
- 105 *Semana.com*, 18 December 2015. 'La ley que unió a Santos y a Uribe'. <https://www.semana.com/nacion/articulo/santos-uribe-unidos-por-la-ley-sobre-zonas-deproduccion-agricola/454008-3>. Accessed on 23 March 2018.
- 106 Including those who acquired lands in what Bioenergy called the 'productive concentration' (2018).
- 107 CGR, 2014. 'Actuación especial sobre la acumulación irregular de predios baldíos en la Altillanura colombiana – 2012'. <http://www.observatoriode-tierras.org/wp-content/uploads/2014/04/Contralor%C3%ADa-General-de-la-Rep%C3%BAblica.-INCODER-Acumulacion-Irregular-de-Baldios-Informe-ACES.pdf>; CGR, 2014-a. 'Estudio de caso: despojo y abandono de tierras en el municipio de Mapiripán – Meta'. Bogotá, CGR, 2014-b. 'Acumulación irregular de predios baldíos en la Altillanura colombiana'. [https://www.contraloria.gov.co/documents/20181/703164/Inf\\_Baldios\\_pub2017.pdf/fc83b206-c806-414e-a253-6bf355b01ccf](https://www.contraloria.gov.co/documents/20181/703164/Inf_Baldios_pub2017.pdf/fc83b206-c806-414e-a253-6bf355b01ccf) and CGR, 2015. 'Informe final de denuncia' Radicado 2014-71026-8211-D. Oficio al Incoder. Rad. 2015EE066202.
- 108 CGR, 2017-a. Comunicado de Prensa No. 59. Bogotá y 2018. Comunicado de Prensa No. 26. Bogotá. These infractions can involve corruption, conflicts of interest, the improper use of privileged information, to illicit enrichment, amongst others.
- 109 ANT, 2018. 'Informe de gestión de la ANT, 2017'. <http://www.agenciade-tierras.gov.co/wp-content/uploads/2018/01/Informe-de-gestion-2017-ANT-31.01.2018-v2.pdf>. Accessed on 23 March 2018.
- 110 This concerns more than 4 thousand hectares identified in the 'Estudio de caso: despojo y abandono de tierras en el municipio de Mapiripán – Meta' (CGR, 2014-a. [https://www.contraloria.gov.co/documents/20181/703164/Inf\\_Baldios\\_pub2017.pdf/fc83b206-c806-414e-a253-6bf355b01ccf](https://www.contraloria.gov.co/documents/20181/703164/Inf_Baldios_pub2017.pdf/fc83b206-c806-414e-a253-6bf355b01ccf). Accessed on 23 March 2018).
- 111 These situations are based on the reports of the Office of the Comptroller General, the Superintendence of Notaries and Registries and the Superintendence of Corporations, Oxfam and SOMO-Indepaz and media, amongst other sources that are quoted in the overall report (see: Indepaz & SOMO, May 2019. '¿Aministía a la "concentración productiva" del siglo XXI en la Orinoquía? El caso Bioenergy').
- 112 Corte Constitucional, sentencia SU 426 del 11 de agosto de 2016.
- 113 'Petróleo: Acumulación de agua y tierras en la Altillanura. El caso Pacific: Multinacional-local en Colombia'. Op. Cit.
- 114 Created in 2017, and that includes Contegral, the Fábrica de Alimentos Concentrados Para Animales, the Operadora Avícola Colombia, Avícola Triple A, the holding Agropecuaria Aliar-La Fazenda, GranKarga and the Compañía de Puertos Asociados S.A. (Dinero.com, 27 April 2017, 'Grupo Bios, el nuevo gigante de la agroindustria'. <https://www.dinero.com/edicion-impresanegocios/articulo/grupo-bios-nueva-asociacion-que-compite-en-agroindustria/244539>. Accessed on 23 March 2018).
- 115 See: Jaramillo, 2017. 'El megacriadero de cerdos en los Llanos al que le apostaron Uribe y Santos'. <https://www.las2orillas.co/la-fazenda-el-megacriadero-de-cerdos-en-los-llanos-al-que-le-apostaron-uribe-y-santos/> and VerdadAbierta.com, 22 April 2013. 'La metamorfosis de El Brasil'. <http://www.verdadabierta.com/tres-agroindustrias-de-los-llanos-compraron-tierras-con-lios-y-violencia/249-especiales/especial-altillanura/4552-la-metamorfosis-de-el-brasil>. Accessed on 23 March 2018.
- 116 *Los 'entramados societarios'* in Spanish. Supersociedades, 2013. Sentencia No. 800-55 – Finagro contra Mónica Colombia S.A.S., Tilavá S.A.S., Monicol S.A.S. y Agroacaxias S.A.S. This practice consists of creating various companies that are part of the same corporate group. Each one of these companies acquires one UAF, but they are all intended for the same agroindustry project.
- 117 Ibidem.
- 118 *Sociedades Anónimas Simplificadas* – S.A.S. in Spanish.
- 119 See: Oxfam, 2013. 'Divide y compraras. La nueva forma de concentrar baldíos en Colombia'. CGR, 2014. 'Actuación especial sobre la acumulación irregular de predios baldíos en la Altillanura colombiana – 2012'. Op. Cit.; CGR, 2014-b. 'Acumulación irregular de predios baldíos en la Altillanura colombiana'. Op. Cit.; and RutasdelConflicto.com, 2017. 'Vichada: tierra de hombres para hombres sin tierra'. Op. Cit., amongst other sources.
- 120 Dinero.com, 21 November 2013. 'Riopaila: la verdadera historia'. <http://www.dinero.com/edicion-impresainvestigacion/articulo/riopaila-verdadera-historia/188644>. Accessed on 23 March 2018.
- 121 SOMO-Indepaz, 2015. 'Reconquista y despojo en la Altillanura. El caso Poligrow en Colombia'. Op. Cit.
- 122 *Promesa de compraventa* in Spanish. This is a preliminary contract in which one party promises to sell and the other promises to buy.
- 123 Bermúdez, A., 2013. 'El negocio "baldío" de Poligrow'. <https://lasillavacia.com/historia/el-negocio-baldio-de-poligrow-45234>. Accessed on 23 March 2018.
- 124 See: SOMO-Indepaz, 2015. 'Reconquista y despojo en la Altillanura. El caso Poligrow en Colombia'. Op. Cit.
- 125 Intermediary buyers are private persons and public employees who accumulated lands to sell them to national and foreign investors. Examples are María Catalina Raffo Palau and Carlos Andrés Llano Henao, and Marco Sergio Rodríguez Merchán, representative of Vichada the Colombian national congress and former spouse of Nery Oros Ortis, herself former director of the Incoder in Vichada and a former congresswoman. The lands awarded to members of the family of Guillermo Torres and emerald entrepreneurs, were later acquired by Cargill. See: Rutasdelconflicto.com, 2017. 'Vichada: tierra de hombres para hombres sin tierra'. Op. Cit. and Lewin, J., 1 December 2014. 'Lo que la tierra ha unido, que no lo separe el congreso'. <https://lasillavacia.com/queridodiario/lo-que-la-tierra-ha-unido-que-no-lo-separe-el-congreso-49194>. Accessed on 23 March 2018.
- 126 Procuraduría, 2015. 'Reflexiones sobre el Incoder y la institucionalidad agraria en Colombia', Bogotá, Imprenta Nacional de Colombia.
- 127 See Chapter 1 for the legal concept of adverse possession that is applied to private land (in contrast with wasteland). Adverse possession (acquiring ownership of land if specific conditions are met) needs to be declared by a judge in a judicial ownership process. Adverse possession is not applicable to wastelands, which are imprescriptible and can only be acquired through an administrative act by the state.
- 128 A clear example of this is the estate Buenavista of the congressman Gustavo Londoño García and entrepreneur Nicolás Laserna. According to Alejandro Reyes, 'This is the classic case of illegal appropriation of wastelands through judicial ownership processes conceded by a judge who is not applying the law' (Vice.com, 11 March 2019. 'Un congresista se adueña de la tierra en Vichada'. [https://www.vice.com/es\\_latam/article/a3bqe5/congresista-centro-democratico-aduena-tierra-vichada](https://www.vice.com/es_latam/article/a3bqe5/congresista-centro-democratico-aduena-tierra-vichada). Accessed on 11 March 2019).

- 129 In 2013, 2017 and 2018, the Office of the Comptroller General handed over the cases of alleged accumulations contrary to Law 160 to the Incoder – ANT, the pertinent Superintendents and the Office of the Attorney General of the Nation.
- 130 Under Santos' first administration, the accumulation of Family Agriculture Units was authorised for the implementation of Special Projects for Agricultural and Forestry development (Artículos 60, 61 y 62 del Plan Nacional de Desarrollo 2010-2014 – Ley 1450 de 2011). The Constitutional Court declared these articles were unconstitutional for privileging competitiveness over the right of the smallholder population to get access to land (sentencia C-644 de 2012).
- 131 Number calculated by SOMO-Indepaz on the basis of the reports of the Office of the Comptroller General, *Semana.com*, 9 May 2017. 'Uribe, familiares de Iragorri, Lizarralde y otros, en líos por baldíos'. <https://www.semana.com/nacion/articulo/el-uberrimo-de-uribe-en-la-mira-de-la-contraloria/524599>; El Morichal, 10 June 2017. 'Forest First planea sembrar 150 mil hectáreas de árboles en Vichada'. <https://elmorichal.com/2017/06/10/forest-first-planea-sembrar-150-mil-hectareas-de-arboles-en-vichada/>; and Riopaila, 2013. 'Informe de gestión 2012'. <http://www.riopailasuprema.com/archivos-riocastilla/Informe%20de%20Gestion%202012.pdf>. Accessed on 23 March 2018, amongst other sources.
- 132 Bioenergy, 2018. 'Resumen ejecutivo informe de Bioenergy'. Op. Cit.
- 133 Interview with Víctor López, Mayor of Puerto López and workshops and interviews in 2017 in Puerto López and Villavicencio.
- 134 Rodríguez, M., 2013. 'Tierra a la Vista. La Orinoquia: medio ambiente'. <http://www.manuelrodriguezbecerra.org/tierraalavista.html>. See also: Andrade, G. et.al, 2009. 'La mejor Orinoquia que podemos construir. Elementos para la sostenibilidad ambiental del desarrollo'. <http://www.foronacionalambiental.org/wp-content/uploads/2011/11/Orinoquia2011.pdf>. Accessed on 23 March 2018.
- 135 See, for example, Supernotariado, 2013. 'Instrucción administrativa 8 de 2013'; MADR, 2012. Directiva No. 00001 del 10 de agosto. Bogotá; MADR, 2013. 'Implementación de la política integral de tierras 2010-2013'. Bogotá, and Bermúdez, A., 2013. 'El viraje del Supernotariado con los antiguos baldíos'. <http://lasillavacia.com/historia/el-viraje-del-supernotariado-con-los-antiguos-baldios-45632>. Accessed on 23 March 2018.
- 136 SAC, 2015. 'SAC pide al gobierno voluntad para garantizar seguridad jurídica a la propiedad de la tierra'. <https://sac.org.co/sac-pide-al-gobierno-voluntad-para-garantizar-seguridad-juridica-a-la-propiedad-de-la-tierra/>. Accessed on 23 March 2018; El País.com.co, 25 November 2013. "'No más improvisación en el agro nacional": SAC'. <https://www.elpais.com.co/economia/no-mas-improvisacion-en-el-agro-nacional-sac.html>. Accessed on 13 February 2019; and *Semana.com*, 15 June 2013. "'En el caso de Riopaila no hubo nada ilegal'". <https://www.semana.com/nacion/articulo/en-caso-riopaila-no-hubo-nada-ilegal/346488-3>. Accessed on 23 March 2018.
- 137 *Semana.com*, 13 June 2013. 'Ecopetrol y los baldíos'. Op. cit.
- 138 SAC, 2015. 'SAC pide al gobierno voluntad para garantizar seguridad jurídica a la propiedad de la tierra'. Op. Cit.
- 139 DNP, 2014. 'Conpes 3797: Política para el desarrollo integral de la Orinoquia: Altillanura - Fase I'. <https://colaboracion.dnp.gov.co/CDT/Conpes/Econ%C3%B3micos/3797.pdf>. Accessed on 23 March 2018
- 140 Ibidem.
- 141 *Semana.com*, 6 November 2016. 'El "Cerrado" colombiano'. <https://www.semana.com/economia/articulo/el-cerrado-colombiano/124179-3>. Accessed on 23 March 2018.
- 142 The defenders of the Zidres, amongst them Bioenergy, point out that in this region it is only possible to implement large-scale projects by companies that have financial capacity.
- 143 On this matter, Bioenergy affirms that the government should recover the 'fertile wastelands [that] were dispossessed with legal tricks (in regions like the Caribbean coast and in the Magdalena)' (Bioenergy, 2018).
- 144 In the study on the constitutionality of Law 1776 of 2016, the judges Luis Ernesto Vargas Silva, María Victoria Calle Correa and Jorge Iván Palacio Palacio consider that the elimination of the prohibition to accumulate Family Agriculture Units awarded before the Law 160 of 1994 and the contracts on the use of wastelands did not take into account the right to the democratisation and access of the land for the smallholder communities, which are protected by the Political Constitution (See: Corte Constitucional, 2017. 'Comunicado No. 5'. <http://www.corteconstitucional.gov.co/comunicados/No.%2005%20comunicado%2008%20de%20febrero%20de%202017.pdf>. Accessed on 23 March 2018).
- 145 Ley 1776 de 2016, parágrafo 3 del artículo 3.
- 146 Ley 1776 de 2016, artículo 13.
- 147 Quote in El Pilón.com, 18 September 2010. 'Ley de víctimas ayudará a saldar una deuda moral: Presidente Santos'. <https://elpilon.com.co/ley-de-victimas-ayudara-a-saldar-una-deuda-moral-presidente-santos/>. Accessed on 13 February 2019.
- 148 See: VerdadAbierta.com, 26 July 2012. 'Restitución frustrante entre Puerto López y Puerto Gaitán'. <https://verdadabierta.com/restitucion-frustrante-entre-lopez-y-gaitan/>. Accessed on 23 March 2018.
- 149 El Espectador, 29 January 2016. 'Se cocina la primera Zidres'. <https://www.elespectador.com/noticias/economia/se-cocina-primera-zidres-articulo-613675>. Accessed on 23 March 2018.
- 150 Presidencia de la República, 2016. 'Palabras del Presidente Juan Manuel Santos durante la sanción de la Ley de Zidres'. <http://es.presidencia.gov.co/discursos/Palabras-del-Presidente-Juan-Manuel-Santos-durante-la-sancion-de-la-Ley-de-Zidres>. Accessed on 23 March 2018.
- 151 Corte Constitucional, sentencia SU 426 del 11 de agosto de 2016.
- 152 Juan Camilo Restrepo quoted in VerdadAbierta.com, 20 June 2015. 'Modelo de desarrollo agrario de la Altillanura: ¿Agroindustria o campesino?'. Op. Cit.; Bermúdez, A. and León, J., 2013. 'En los baldíos, Santos tendrá que escoger entre los cacao y su discurso en La Habana'. Op. Cit.; and 'Carta del Dr. José Félix Lafaurie, al Jefe del Equipo Negociador del Gobierno Nacional Dr. Humberto de la Calle Lombana'. Op. Cit.
- 153 According to the National Government (Acuerdo de Paz, 2016: 7).
- 154 According to the FARC (Acuerdo de Paz, 2016: 3).
- 155 *Extinción de dominio judicial* in Spanish. This consists of the judicial declaration through which one's right of ownership over a given property is annulled because of its fraudulent origin (e.g. drug trafficking, money laundering and illicit enrichment) and infringes upon the moral order (Ley 1708 de 2014, artículo 15).
- 156 The formalisation of lands of 'private nature' consists of handing over ownership titles that are legally registered, in those cases where the conditions of the law are met regarding adverse possession on ownership and inheritance.

- 157 As is the case for Hato Cabiona-El Porvenir of the *Tsar of the Emeralds*, and the 38,000 hectares awarded to the former senator Habib Merheg Marún, amongst others, see: *El Tiempo*, 19 April 2015. 'Buscan que exsenador fugitivo devuelva cerca de 38.000 hectáreas'. <https://www.eltiempo.com/archivo/documento/CMS-15597879>. Accessed on 23 March 2018.
- 158 MADR, 2018. 'Exposición de motivos' del Proyecto de Ley 003 de 2018 'Por el cual se modifica la Ley 160 de 1994 y se dictan otras disposiciones', in *Gaceta del Congreso Año XXVII – No 540 del 24 de junio de 2018*.
- 159 Not to be confused with Law 200 of 1936, also referred to as the '*Ley de Tierras*' with capitals.
- 160 *Situaciones imperfectas o indebidas* in Spanish. *Leyes 1776 de 2016*, artículo 21 y 160 de 1994, artículo 48.
- 161 Calles by the Mission for the Transformation of the Countryside *Situaciones en entredicho*, in Spanish (DNP, 2015. 'El campo colombiano, un camino hacia el bienestar y la paz'. Op. cit.).
- 162 *Prescripción adquisitiva* in Spanish. See also the first chapter on national standards on land matters for an explanation of adverse possession.
- 163 This law points at the obligation to protect the right to private property of national and foreign investors, always and when they comply with Colombian law, particularly the Civil Code and the Agrarian Law. However, as we have highlighted, some of these investors accumulated wastelands and Family Agriculture Units despite the internal legal restrictions and the national standards on Business and Human Rights. In this regard, the Constitutional Court has pointed out that the right to property protected by the Political Constitution 'is the one that has been acquired in a licit manner, adjusted to the requirements of the law'. Consequently, '(N)o one can demand guarantee nor respect for its property when the title he or she holds is flawed' and lacks legitimacy (sentencia C-374 de 1997).
- 164 *Reconocimiento a la función social de la propiedad*, in Spanish.
- 165 *Regularización por confianza legítima*, in Spanish.
- 166 Proyecto de Ley 003 de 2018, artículos 12 y 13.
- 167 Lewin, J., 20 March 2016. 'La visita del "rey de la soya" a La Habana'. <https://lasillavacia.com/content/la-visita-del-rey-de-la-soya-la-habana>. Accessed on 23 March 2018. In 2010 the entrepreneur postponed his investments in the Orinoquía (Portafolio.co, 11 June 2010. 'UAF marginó a grupo Los Grobo'. <https://www.portafolio.co/economia/finanzas/uaf-margino-grupo-grobo-70-298430>. Accessed on 23 Marzo 2018).
- 168 Emilio José Archila in *El Tiempo.com*, 11 February 2019. "'Gobierno Nacional no tiene intención de frenar lo pactado'". <https://www.eltiempo.com/politica/gobierno/miguel-ceballos-y-emilio-archila-hablan-del-el-y-del-proceso-con-las-farc-325626>. Accessed on 18 February 2019.
- 169 Created by Congressmen and women of *Colombia Humana*, the *Lista de la Decencia*, a sector of the *Polo Democrático*, the *Partido de la Fuerza Alternativa Revolucionaria de Colombia* and the *Movimiento Alternativo Indígena y Social*.
- 170 Mojica, J., 2018. 'Bancada del Congreso por la Paz'. <https://lasillavacia.com/silla-llena/red-rural/historia/bancada-del-congreso-por-la-paz-66017>. Accessed on 20 October 2018. See, also: *VerdadAbierta.com*, 8 August 2018. 'El proyecto de ley sobre tierras es lesivo para comunidades rurales vulnerables'. <https://verdadabierta.com/proyecto-ley-tierras-lesivo-comunidades-rurales-vulnerables/>. Accessed on 23 March 2018; and Medina, A., 2017. 'Borrón y cuenta nueva en materia de tierras'. <https://colombia2020.elespectador.com/pais/borron-y-cuenta-nueva-en-materia-de-tierras>. Accessed on 23 March 2018.
- 171 Acto Legislativo 01 de 2017, Decreto Ley 154 de 2017 y sentencias C-674 de 2017 y C-017 y C-025 de 2018 de la Corte Constitucional.
- 172 Acto Legislativo 1 de 2017, artículo 16 y Corte Constitucional, sentencia C-674 de 2017.
- 173 *Defensoría del Pueblo* in Spanish.
- 174 *Sociedad de Activos Especiales*, in Spanish. The Special Assets Society manages special assets that are in the process of extinction or on which judicial extinction of ownership has been declared.

## Colophon

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