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Ending years of solitude?
The Round Table on Sustainable Palm Oil and access to land
in Colombia

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Ending years of solitude? The Round Table on Sustainable Palm Oil and access to land in Colombia

Christelle Genoud

Abstract

The issue of land access is at the heart of the more than a half-century long conflict in Colombia. The post-conflict era and article 1 of the peace agreement dedicated to integral rural reform are nurturing hope for more democratic land distribution. At the same time, the government sees peace as an opportunity for economic development through large-scale monoculture such as palm oil, and cases of land grabbing for its production have been reported. In view of this tension, it is relevant to ask how meaningful certifications such as the Round Table on Sustainable Palm Oil (RSPO) ones are to ensuring democratic access to land. The certification establishes criteria that palm oil production has to fulfil in order to be labelled sustainable, but that may also impact local populations' access to land. While the critical literature on certification initiatives highlight their flaws in terms of legitimacy, monitoring and auditing, few authors have focused on their limits from a land access perspective, thus ignoring the land grabbing context in which the RSPO is used. We argue that despite member companies resorting to the certification to counter accusations of land grabbing, the RSPO is unable to ensure democratic access to land because it does not sufficiently take into consideration local practices. Using Pouliot's practice tracing, i.e., a "bottom-up" mechanism, which investigates how practices at the local level generate outcomes at the macro level, we shed light on the disjunction between local practices and the RSPO's principles and criteria. These local practices, observed during field investigation in Colombia, are discussed through two main dimensions: 1) the tensions between land rights and the human right to land, and 2) contract farming. As a result, we will demonstrate that the RSPO does not permit local populations to challenge unequal land distribution in Colombia.

1 Introduction

In his famous novel “One hundred years of solitude”, the Colombian writer Gabriel Garcia Marquez describes the arrival of a foreign banana company bringing development to the town of Macondo. However, because of harsh labour conditions, workers end up in a strike bloodily repressed by national military, echoing the epitaph of one of the townsman: “Look at the mess we’ve got ourselves into (...) just because we invited a gringo to eat some bananas” (Garcia Marquez 1967: 215). Through his “magical realism” Garcia Marquez refers to the 1928 banana massacre of the United Fruit Company’s workers (Kurtz-Phelan 2008). Of course, the bananas themselves are not the culprit. It was a certain economic dimension of their production that prompted the locals to lose control of their land and serve as labour force in unsatisfactory conditions.

The issues of land access and the way food commodities are produced remain vividly contentious in today’s Colombia. More than half a century of civil conflict was prompted by, among other factors, highly unequal land distribution, with most held by *latifundios* (large landowners). This history, combined with the last decade’s renewed wave of global land grabbing, shows that there is a real necessity to ensure democratic access to land for marginalized groups. In this sense, the actual translation into laws of the November 2016 peace agreement between the left-wing rebellious group *Fuerzas Armadas Revolucionarias de Colombia* (FARC) and the Colombian government will be crucial in shaping the agricultural landscape. One main issue of contention relates to the implementation of article 1, on integral rural reform, due to different interpretations by pro-poor actors and agrifood industry proponents. At the same time, recently approved laws such as the Zidres¹ one, yield land to foreign investors in order for the agrifood industry to nurture economic development through large-scale land investment in the post-conflict period (Bodensiek 2016). The palm oil industry plays a crucial role in this development, with Colombia now the fourth biggest producer (Lorenzo Cotula; Nat Dyer; Sonja Vermeulen 2008). Consequently, setting the issue of democratic land access in relation to growing sectors such as palm oil is paramount to ensuring peace.

In this context, how meaningful are certifications such as the Round Table on Sustainable Palm Oil (RSPO) to ensuring democratic access to land? Born in 2004, the RSPO is a multi-stakeholder initiative gathering actors from each step of the global value chain in order to set criteria that the palm oil production has to fulfil to be labelled as sustainable. In the context of the 2008 latest wave of land grabbing, the RSPO has been used by member companies to counter growing criticism against palm oil’s negative effects on the environment and local populations. By advertising itself as a “sustainable certification”, the RSPO legitimizes palm oil production and its principles impacts on local populations’ access to land. The critical literature on certifications has already posited that they bear several limits in terms of legitimacy, monitoring, and auditing (Hatanaka, Bain, and Busch 2005; Fortin and Richardson 2013b; Fouilleux and Loconto 2016; Ponte 2014). Authors have confirmed that such limits also apply in the case of the RSPO (Silva-Castañeda 2012; Roberts 2011; Kiezebrink 2017). However, few studies tackle the issue of “sustainable certifications” from a land access perspective, overlooking the land grabbing context in which the RSPO has to be situated.

We argue that despite RSPO’s members using the certification to counter accusations of land grabbing, the RSPO is unable to ensure democratic access to land because it does not sufficiently take into consideration local contexts. While the issue of land grabbing in Colombia takes place in grey areas brought about by the conflict and unclear land tenure, the RSPO provides a simplified account of palm oil production, eluding power relations. Because of this depoliticized simplification, there is a disjunction between the RSPO’s depiction of palm oil production and local access to land. Such

¹ The *Zonas de Interés de Desarrollo Rural Económico y Social* (Zidres) are areas where companies are allowed to accumulate public land normally limited to one *Unidad Agrícola Familiar* (UAF) in order to promote economic development (Minagricultura, Mincomercia industria y turismo, and ProColombia 2016). For a critique, see Bodensiek 2016.

disjunction can be observed through two main dimensions: 1) The tensions between land rights and the human right to land, and 2) contract farming.

We will use Pouliot's practice tracing, i.e., a "bottom-up" mechanism, which investigates how practices at the local level generate outcomes at the macro level (Pouliot 2014), to shed light on the disjunction between the RSPO's content and local practices. Our depiction of local practices is based on a field investigation in Colombia from June to September 2017. Around 40 interviews were conducted in a semi-structured manner with a wide diversity of stakeholders. These ranged from farmers and local communities affected by palm oil large-scale land investments, NGOs working on land issues, RSPO's officials, RSPO member companies and NGOs, government representatives, academics and independent researchers, ministries of parliament, human rights lawyers and unions. Practice tracing based on this field investigation will unveil how in three cases of land grabbing in Colombia, the practices of land rights and contract farming at the local level are disconnected from the transnational content of the RSPO. In other words, the RSPO skirts answering to local concern by overlooking specific Colombian contexts. Consequently, by shedding light on local practices related to access to land, we aim to demonstrate that the RSPO's depiction of palm oil production does not take into consideration grey areas necessary to understand power struggles inside the global value chain.

The rest of this article is divided into three sections. The first is dedicated to the historical context and a literature review. It discusses land issues in Colombia, locates palm oil production in the country political economy, and gives an analytical overview of the RSPO. The following section is where our core argument lies. It is dedicated to illustrating the disjunctions between local practices and the RSPO's principles and criteria through two main subdivisions. The first discusses the tension between the land rights framework of the RSPO and the tendency to refer to the human right to land in local practices. The second highlights differences between the RSPO model of contract farming and the loopholes that become evident in local contexts. The last section concludes the paper.

2 The RSPO and Colombia's land issues

Inherited from the colonial era, Colombia's land distribution is highly unequal (PNUD 2011). Since then, land has been concentrated in the hand of *latifundios* who have unproductively used the land for extensive cattle ranching without paying any property tax² (Centro Nacional de Memoria Historica 2016). In the 1920s, new phase of land appropriation took place with the arrival of North American investments such as the United Fruit Company, leading to the privatization of public lands. Such privatization then provided the necessary supply of cheap labour for the company's plantations (Legrand 1984; Fajardo 1983) with poor working conditions leading to the revolt countered by the Banana massacre novelized by Garcia Marquez. After the Great Depression and rising unemployment, discontent over unequal land distribution culminated in 1948 with the civil war known as *La Violencia* (Reyes Posada 2009). From this period, capitalist development was entangled with the armed conflict creating opportunities for land grabbing (Thomson 2011; Gómez, Sánchez-Ayala, and Vargas 2015). Even today, processes of territorial control involving complex relations between the State, the paramilitaries and agribusinesses are still shaping Colombia's agricultural landscape (Ballvé 2012; O Loingsigh 2013; Ortiz 2016; Grajales 2013). Failed attempts to reform the sector, notably through law 135 of 1961 and more recently through law 160 of 1994 (Borras 2003) highlight the challenge of implementing the peace agreement's article 1 on integral rural reform. Today, the 1% of the biggest landowners concentrates 80% of the land, ranking Colombia in the top position in terms of land inequalities in Latin America (Oxfam 2017).

² For example, in 2012, while around 22 million hectares of land was identified as having an agricultural vocation, only 5 million were used for this purpose. In contrast, while 15 millions hectares were identified as having a cattle ranching vocation, around 35 millions were dedicated to this activity (Centro Nacional de Memoria Historica 2016)

The production of palm oil in Colombia is thus taking place in this context of the land elite's appropriation and privatization of *baldíos* (public land). Palm oil was introduced in Colombia in 1932 and began to be commercially cultivated by the United Fruit Company in 1945 (Ocampo Valencia 2009). It was only in the 1960s that the market flourished with mainly Colombian companies producing for the internal market. The production of palm oil progressively expanded until the 1990s when broad national liberalization policies brought about difficulties for palm oil companies to compete on the international market (Mow and Alvarez Roa 2013b). Because of the government's vision of palm oil as the best way to promote economic development, it launched accelerated support to the palm oil sector, starting with law 138 in 1994 (Clavijo Bernal 2016). This vision was shared by President Uribe, who saw in this large-scale monoculture the opportunity to take back control of territories occupied by armed groups cultivating illegal crops such as cocaine or marijuana (Hort 2014). In this sense, the purpose of Plan Colombia³, a partnership between the American and the Colombian governments, was supposedly to replace illicit crops with crops such as palm oil in order to fight against drug (Tate 2000). The Colombian government policies thus consisted of subsidizing palm oil companies that integrate farmers through contract farming, i.e., a production scheme where the farmer provides the company with the harvest while the company gives insurances to buy it and provides access to credit and infrastructure. The government perpetuated this model with further support to the new biofuels market, which was enshrined in 2001 with law 693 granting new sets of subsidies to the palm oil agroindustry such as tax breaks and favourable fiscal treatment (Pérez-Rincón 2008). These government policies of palm oil support through subsidies to large-scale monoculture thus scaled up land concentration and privatization of public land. Today, permanent crops dedicated to agro-export occupy 75% of the total cultivated surface (Oxfam 2017).

The palm oil industry's increased involvement in land concentration has also placed it squarely in the middle of the land grabbing and populations' displacement in Colombia. First, land intensive technology, high infrastructure costs and the absence of any financial benefit in the first three years while the plant matures, have pushed small-scale producers out of the sector when they are not affiliated to contract farming schemes (Hurtado, Pereira-villa, and Villa 2017). Second, ironically, while President Uribe considered palm oil as a way to reconquer land from the grab of armed actors, cases of populations' displacement prompted by the paramilitaries were reported on land then used to produce palm oil (Mingorance 2006). Such displacements took place for example, on the Pacific Coast, in the Bajo Atrato region (García Reyes 2011; Comisión Intereclesial de Justicia y Paz 2015; Grajales 2015) and in Tumaco (Maughan 2011), as well as in the department of Meta (Maher 2015) and in the area of Magdalena (Goebertus 2008). Third, cases of direct land grabbing by palm oil multinational companies have also been publicized by NGOs (Oxfam 2013; van Dorp et al. 2015; Gómez, Sánchez-Ayala, and Vargas 2015).

In this context of historically unequal land distribution further deepened by palm oil production, it is necessary to analyse how meaningful is the RSPO in ensuring democratic access to land. We have already highlighted that this issue is especially relevant considering that the RSPO has been used to counter criticism against cases of land grabbing for the production of palm oil. In addition, the capacity of the RSPO to secure access to land for small-scale producers also participates in defining what is a sustainable palm oil. The RSPO has arrogated itself this defining role through its labelling activities. Nevertheless, the limits of the RSPO have already been put forward. As part of roundtables governance, i.e., a multi-stakeholder platform gathering private partners aiming to improve the sustainability of a specific global commodity chain (Pattberg 2006), it is criticized for its lack of legitimacy (Auld and Gulbrandsen 2010; Partzsch 2009; Cashore 2002; Bernstein and Cashore 2007), its absence of efficient monitoring mechanisms (Goetz 2013; Fortin and Richardson 2013a; Environmental Investigation Agency and Grassroots 2012), as well as flaws in the auditing procedure

³ Plan Colombia is an agreement between the Colombian and the American governments established in 2000 for a period of six years and aiming to reduce drug trafficking by erasing illegal plantations such as cocaine in Colombia. For a critic of the plan, see Tate 2000.

(Hatanaka and Busch 2008; Sielhorst and Veen 2008). For instance, McCarthy pinpoints that despite the RSPO's attempt to extend justice in agricultural space, palm oil land conflicts continue to proliferate in Indonesia (McCarthy 2012).

Such criticisms are also supported in case studies on Colombia. For example, some authors discuss how Bonsucro (the Roundtable for sugarcane) "provides a veil of legitimacy and authority to a system that is premised on deeply entrenched historical patterns of inequitable land ownership patterns and access to natural resources" (Selfa, Bain, and Moreno 2014: 455). Regarding the RSPO, some authors highlight power asymmetries in the Colombian national interpretation plan⁴ as well as clashes between participants' values to demonstrate internal problems (Marin-Burgos, Clancy, and Lovett 2015). Others observe how the RSPO fail to address the specific context of Colombia in terms of land issues and international conflict (Seiboldt and Abdala 2010). Nevertheless, few assessments of the RSPO are grounded in the disjunctions between complex local practices and the RSPO's simplified account of palm oil production.

3 Disjunctions between local practices and the RSPO

As already mentioned above, Pouliot's practice tracing is useful to shed light on disjunctions between complex local practices and the RSPO's simplified account of palm oil production. Practice tracing is a transitional mechanism playing out "bottom-up" and investigating how actors generate outcomes at the macro level. Nevertheless, we do not understand mechanisms in a positivist sense, i.e., implying a direct causal relationship between a practice and an outcome. Instead, we consider mechanisms as theoretical abstractions whose objective is to draw useful connections (Pouliot, 2014: 238), or in our case lack of connections, between the local practices and transnational guidelines' content. This approach stands at the crossroad between the practical turn in international relations, which builds on social theory (Schatzki 2001), and anthropological work on the practice of human rights (Goodale 2007; Levitt and Merry 2009). This hybrid approach thus aims to analyse whether local practices are taken into consideration in transnational regulations such as the RSPO, assuming that this consideration is key to making a difference at the local level. It does not imply a rigid distinction between the transnational (RSPO) and the local practices of human rights. Rather than seeing the "transnational" and the "local" as separate phases of practice, we strive to outline the evolution of such practices from one side of a continuum to the other.

To illustrate the disjunctions between the RSPO's content and local practices, we focus on three case studies in Colombia. They have been chosen based on two criteria: 1) allegations of land grabbing by a palm oil company impeding access to land for local communities, 2) the company's membership in the RSPO. The RSPO is mainly necessary for international markets, because purchasers from Europe and the United States, such as Nestlé or Procter and Gamble, require the certification from their furnishers. The second criterion thus implies a transnational dimension in the activities of the furnishing company, which is part of the global value chain. The limited length of this article precludes a full rendition of our three cases. Instead, after a basic description, we will paint with a broad brush their most significant commonalities in terms of land issues and the RSPO.

Geographically, the three cases are located in two of the four regions of Colombia where palm oil is concentrated, namely, the northern, central, eastern and south-western areas. The case of Mapiripan, in the eastern area (Meta Department), involves Poligrow, an Italian-Spanish palm oil company that arrived in 2008 and has now planted around 7 000 hectares. The company is planning to reach 15 000 hectares, spread between land under its own ownership and contract farming⁵. Mapiripan is sadly

⁴ The process through which the RSPO's guidelines and principles are adapted to the national context

⁵ <http://www.poligrow.com/poligrow-sembrara-8-000-hectareas-mas-en-mapiripan/> (accessed in September 2017)

notorious for its 1997 massacre, when paramilitaries of the United Self-Defense Forces of Colombia (AUC), with the complicity of the Colombian army, allegedly killed 49 people suspected of being FARC rebels or collaborators, and displaced more than 10 000 residents. Victims of the forced displacement who are now trying to come back to Mapiripan have seen their land used by Poligrow's palm oil plantation (Miroff 2014). Poligrow has been a member of the RSPO since 2009, but it has not obtained their certification yet. In 2015, the Inter-Church Justice and Peace Commission and the Environmental Investigation Agency (EIA) released a video⁶ denouncing environmental damage related to Poligrow's palm oil activities and its taking over of land belonging to indigenous communities without their free, prior and informed consent. Following this allegation, also supported by other NGOs and newspaper reports (van Dorp et al. 2015; Verdad Abierta 2015), the RSPO decided to launch an investigation, which is still pending⁷. In parallel, the Colombian public prosecutor has accused Poligrow's CEO, Carlos Vigna, of fraud in the acquisition of Mapiripan's land title (Escobar Moreno 2017), with a judicial investigation still afoot.

Another case involving an RSPO member being accused of land grabbing was that of Las Pavas, a hacienda located in the central area (in Southern Bolivar Department). Daabon is a Colombian company that obtained the RSPO certification in 2010. The company was also the first to obtain the RSPO Next, a voluntary add-on exceeding the RSPO's standards, on among other things, human rights.⁸ In 2007, Tequendama (a company belonging to the Daabon group) and Aportes San Isidro bought around 2 500 – 3 000 hectares of land from the hacienda Las Pavas. The land was occupied by 123 families who had been victims of AUC paramilitaries' displacement in 2003. In 2005, these families launched a process of "extinción de dominio", i.e., a judicial process ending land tenure for illegal activity against the owner, Jesus Emilio Escobar, the front man of Pablo Escobar (Vargas et al. 2010). In 2009, while this judicial process was still ongoing, the families were expelled. The Body Shop, Daabon's main client and a member of the RSPO, ended its commercial relation with Daabon following wide international indignation (Syal 2010; Syal and Brodzinsky 2009) and support for the cause of the families (Gómez, Sánchez-Ayala, and Vargas 2015). Such international pressure resulted in Daabon officially selling its share to Aportes San Isidro and exiting the hacienda Las Pavas, although some interviewees suspect⁹ that this sale is a façade, with Daabon still involved in Las Pavas. In 2011, the Constitutional court ruled that Las Pavas' land had to be returned to the families (Carmona 2016). However, this ruling has still not been applied for a complex shambles of lack of political will, institutional flaws, corruption and judicial complications (Ortiz 2016).

The hacienda Bellacruz is also located in the central palm oil area. In 2009, the Extractora la Gloria (an RSPO member since 2014), bought 6 300 hectares in the southern Cesar department and 2 500 hectares in the Bolivar department¹⁰. In 1996, dozens of families had been expelled from these lands by AUC paramilitaries (Verdad Abierta 2017). They had since launched different judicial processes to recover their land mainly through two displaced-persons associations, the *Asociación Colombiana Horizonte de Población Desplazada* (ASOCOL) and the *Asociación de Campesinos Desplazados al Retorno* (ASOCADAR). In 2015, in the name of these two associations, three Colombian parliamentarians filed a complaint against the company, using the RSPO complaints system. The process is still pending¹¹. In parallel, in 2016, the Colombian Constitutional Court ruled in favour of land restitution to the families (Verdad Abierta 2016). However, before such restitution effectively took place, the Land Restitution Unit (URT), the entity in charge of implementing the decision, accused the claimants of being "false victims", i.e., that they have no link to the land, or if they do,

⁶ https://www.youtube.com/watch?v=6q2RU_8RRTc

⁷ <http://www.rspo.org/members/complaints/status-of-complaints/view/86> (accessed in September 2017)

⁸ <https://www.rspo.org/news-and-events/news/colombian-daabon-are-worlds-first-oil-palm-grower-to-receive-rspo-next-certification>

⁹ Suspicions raised by one NGO and one academic working on the case of Las Pavas

¹⁰ <https://www.haciendalagloria.com/portal/quienes-somos/> (accessed in September 2017)

¹¹ <http://www.rspo.org/members/complaints/status-of-complaints/view/87> (accessed in September 2017)

they have left the land for reasons not related to forced displacement (Unidad de Restitución de Tierras 2017). The associations will pursue their efforts for restitution and wait for the advancement of the RSPO investigation.

In all three cases, the companies are members of the RSPO while at the same time being accused of land grabbing (Comisión Intereclesial de Justicia y Paz 2015; van Dorp et al. 2015; Verdad Abierta 2011). In contrast, the majority of interviewed small-scale farmers related to our three cases did not know the RSPO or had a very limited knowledge of it. In the case of Las Pavas, some farmers from ASOCAB had acquired this basic knowledge through training provided by NGOs. In the case of Bellacruz, only the leaders of the peasant associations were acquainted with the RSPO because of the Ministries of Parliament filing the case against the Extractora la Gloria in their name. Nevertheless, neither the senators themselves nor the peasant leaders had any hope in this process yielding any result: “I do not believe in the RSPO. But I did use their complaint system anyway for the Bellacruz case. Here in Colombia, we are used to impunity” (Alirio Uribe, Colombian Representative)¹². Finally, in the case of Mapiripan, the interviewed victims of forced displacement now unable to return because of Poligrow’s palm oil plantation, were totally unaware of the RSPO, left aside the fact that Poligrow was a member: “We do not know anything about the RSPO, including how they work. We would not know who to talk too in order to seek for their help” (Victim of Mapiripan forced displacement). This generalized ignorance about the RSPO is significant because the RSPO usually does not investigate a case without a formal complaint being filed.¹³ Without any knowledge of the RSPO, Rural communities are thus dependent on intermediaries such as NGOs or Ministries of Parliaments to have their case brought to the Roundtable’s attention.

This paper skirts taking a position on land grabbing accusations. Instead, its goal is to analyse how the RSPO situates itself inside local practices related to land access for local populations. In order to do so, we now focus on two common dimensions of the cases: 1) the tensions between land rights and the human right to land, and 2) contract farming.

4 Land rights and the human right to land

One of the major contributions of critical agrarian and geography studies on land grabbing is to demonstrate that the phenomenon cannot be restricted to violent change of property (Borras Jr et al. 2012; Marin-Burgos 2014; Cotula, Djire, and Tanga 2008; Berry 1992). Land grabbing is about access to land, i.e., the ‘ability to derive benefits from things’ whereas property refers to the ‘right to benefit from things’ (Ribot and Peluso 2003). Furthermore, access to land is crucial for the enjoyment of various human rights, such as to food and safe housing (Cotula 2014; Daniel and Mittal 2009; Golay and Biglino 2013; Rosset 2011; Narula 2013). While the human right to land is not officially recognized and does not appear in any international human rights documents (Gilbert 2013), in practice the right is widely accepted by actors working on land grabbing (Künemann and Monsalve Suárez 2013). In its campaign for the recognition of a UN Declaration on the rights of peasants and other people working in rural areas, La Via Campesina advocates for the official recognition of the right to land in order to achieve food sovereignty (Edelman and James 2011). From this practical perspective, the human right to land is essential for all human beings who are deprived of a certain standard and need land to be able to conduct a life in dignity (J. C. Franco, Monsalve, and Borras 2015: 67). Consequently, the human right to land is deeply anchored in practices tackling the issue of land grabbing at the transnational level.

Such practices of the human right to land are also very much present at the local level. In our three cases, local communities’ focus on land as a human right is significant. In the Mapiripan case, four

¹² For details about the process, see <http://www.rspo.org/members/complaints/status-of-complaints/view/87>

¹³ The case of Poligrow was an exception due to the release of the video mentioned above (Interview with Latin America RSPO’s representative).

interviewed victims of the 1997 massacre and forced displacement insist on land being at the heart of their fight as a mean to achieve an adequate standard of living.¹⁴ Although some of them did sell the land to paramilitaries little by little, they explain this was out of necessity in a context of threats and lack of economical perspective. They consider that the price they were paid was extremely undervalued, and that to be able to build a new life based on adequate food and housing, they need to have access to land. According to one source,

“We are not interested in the salaries that Poligrow could pay us if we work for them. They have to recognize our right to land and the damages they have done to us. We want them to recognize that they bought this land at a very low price, so that we can have justice”.
(Displaced person from the Mapiripan massacre).

Such practices can also be identified in the case of Bellacruz. In the context of paramilitaries’ threat, some inhabitants left the land without being able to sell it, while others did sell at what they consider to be an extremely low price. According to the interviewees, both associations gathering the displaced people of Bellacruz consider access to land as a condition for living in dignity. They underline their desire to cultivate the land as they wish, i.e., to be able to choose or reject agro industrial models, in order to enjoy their right to food and their right to an adequate standard of living in the countryside (interviews with members of ASOCOL and ASOCADAR).

Finally, in the case of Las Pavas, the human right to land is assimilated in the relationship that farmers have with the land, as well as to a life in dignity. One leader underlined the necessity for peasants to be granted the same right to land as the indigenous people¹⁵ and the afro-descendants¹⁶:

“In the 1991 Colombian Constitution, a preference was established for Indigenous and Afro-Colombians. We, the farmers, are considered as third-class citizens. We thrive for the same right to land that is recognized for the Indigenous and Afro-Colombians”. (Leader of the *Asociación de campesinos de Buenos Aires – ASOCAB*)

A crucial element that the Indigenous and Tribal Convention (No. 169) and the Colombian Law 70 on Afro-descendant communities’ collective territorial rights over ancestral lands acknowledge to the respective groups of people they deal with, is a special relationship to their land and territories (ILO 2009; Cárdenas 2012). Although the human right to land is not explicitly mentioned, such a conception echoes the relationship that the peasants of Las Pavas have with their land as a human right:

“A peasant without a land is like a fish without water” (Leader of ASOCAB)

“For me access to land is like access to the education for you (the PhD students). I go to the school of land: I learn and I have employment” (Peasant of Las Pavas)

Consequently, in our three cases, local communities claiming access to land have developed practices of the human right to land. As Tate describes, such practices allow human rights to be used against competing groups in the Colombian context and to mobilize political action (Tate 2007). Merry converges in this direction, highlighting the necessity of incorporating local practices into imported

¹⁴ Article 25 of the Universal Declaration of Human Rights and Article 11 of the International Covenant on Economic, Social and Cultural Rights

¹⁵ The 1989 International Labour Organization (ILO) Indigenous and Tribal Convention (No. 169) deals exclusively with the rights of these peoples, including their right to land (article 13).

¹⁶ The 1993 Colombian Law 70 grant Afro-descendant communities’ collective territorial rights over ancestral lands. <https://www.minagricultura.gov.co/Normatividad/Leyes/Ley%2070%20de%201993.pdf> (Accessed September 2017)

institutions in order for their human rights content to make a difference (Merry 2006). Such a practice of the human right to land stands in sharp contrast with the RSPO's guidelines and principles, which focus on land rights. In contrast to the human right to land, land rights are not universally recognized for all human beings who are deprived of a certain standard and need land to be able to conduct a life in dignity. Land rights fundamentally differ from the human right to land. From a legal perspective, "land rights include rights to hold, use, access, manage or transact a particular piece of land" (Cotula 2014: 17). They are thus "specific individuals' rights to specific resources and not universally necessary to protect the existence or dignity of human beings" (Wisborg 2013: 1202). Land rights can be shaped by colonial inheritance of land tenure (Borras JR and Franco 2010). As a result, there is a disjunction between local communities' human right to land practices and the RSPO's content.

For example, Criterion 2.2. focuses on land, and reads: "The right to use the land is demonstrated, and is not legitimately contested by local people who can demonstrate that they have legal, customary or user rights" (RSPO 2013). This means two important things. First, for the local communities' contestation against palm oil plantation to be considered as legitimate, they are responsible for demonstrating their land rights. Nevertheless, land tenure in Colombia is extremely contested. First, there are no clear data on rural property because the national land registry is partial, discontinued and scattered (Amnesty International 2014). For the 7 millions internally displaced people, proving their history of using the land before the displacement involves a very long administrative hurdle undermined by various procedural flaws¹⁷ (Saffon 2010; Cortés 2013). Second, the company has to demonstrate the right to use the land. However, land tenure in Colombia is extremely unequal. Their ability to demonstrate the right to use the land does not prevent companies from impeding national land redistribution efforts (Oxfam 2013) This is why Colombian farmers have opposed the 1993 market-led agrarian reform of the World-Bank, which does not include the expropriation of *latifundios* or multinational companies monopolizing the land (Mondragon 2012). Consequently, to refer to land tenure as clearly established, and depoliticized overlooks the main challenges that Colombia is facing and one of the main reasons the country has gone through a more than a half-century conflict. The focus on unproblematic land rights diverts attention from local communities' claim to the human right to land. Contrary to land rights, the human right to land would constitute a remedy to historically unfair land concentration because land would be distributed to people who needs it to achieve a minimum standard of living.

Furthermore, Criterion 2.3., reads "The use of the land for oil palm does not diminish the legal, customary or user rights of other users without their Free, Prior and Informed Consent (FPIC)"¹⁸. This overlooks the fact that in the Colombian context, such FPIC can be legally infringed upon. For example, in the case of Mapiripan, some displaced people claim access to land through law 1448 of 2011, called the Victims and Restitution Law. This law was passed by President Santos, establishing the government's official recognition of the internal conflict and the need for reparations for the victims (Amnesty International 2012). Despite the welcoming improvement in land restitution that this law aims at, some loopholes have to be touched upon. According to article 99, when the land from which displaced people had to flee is now used for an agro industrial project, such as a large-scale palm oil plantation, the victim's right to use the land can be restricted. Indeed, if the company undertaking a productive project can prove that it acted "in good faith", i.e., without knowing of the displacement previously occurring on the land, it can disregard the complainant's right to land (Saffon 2010). The case of Mapiripan thus illustrates that in Colombia, land rights are not always ensuring

¹⁷ This process refers to law 1448 of 2011, called the Victims and Restitution Law, which is discussed in further details in the following paragraph.

¹⁸ During the elaboration of the Colombian National Interpretation Plan (NIP), the process through which the RSPO Principles & Criteria are further adapted for use by each country, FPIC has been a major talking point. Finally, it has been decided to extend FPIC to all communities and not only to Indigenous and Afro-Colombian communities (Interview with an official representative of the RSPO of September 2017 and see RSPO 2016).

FPIC and access to land for local populations. Instead, the objective is to integrate small-scale farmers in agro-industrial projects. Such legal disposition as article 99 reminds us that the Victims and Restitution Law was one of the guarantees of good faith that foreign governments required to sign free trade agreements with Colombia. In this sense, the Victims and Restitution Law is profoundly anchored in the Colombian government extractive economic model developed through foreign investments (Cortés 2013), which in some areas of the country enters into tension with access to land (Vélez-Torres 2014; Amnesty International 2015; Kuijpers et al. 2016). Consequently, the RSPO implying that respecting land rights is a sufficient criterion for palm oil to be labelled as sustainable, overlooks the complexity of local contexts.

In addition, in the Colombian context, FPIC is also countered with the concept of “false claimant”. In our three cases, “false claimants” are people who are fraudulently resorting to the Victims and Restitution Law or to the Agrarian Reform Law 160 of 1994 aiming to avoid land concentration. In all three cases, some claimants have been accused of not having any relationship with the land from which they claim to have been displaced (El Espectador 2017; Carmona 2016; Verdad Abierta 2017). This relationship to the land that is investigated by the Public Prosecutor is a requirement to either land restitution or allotment of another property. Although we cannot exclude that cases of abuse do exist, the systematization of the accusation of “false claimant” in our three cases hints towards an instrumentalization of such concept in order to infringe the exercise of FPIC by deligitimizing the local communities claiming access to land. A type of negative depiction used in this sense is illustrated in the following quote from one representative of Fedepalma (the Colombian oil palm grower union):

“In these communities (such as Bellacruz, Las Pavas and Mapiripan) there is a culture of easy money because of the war, drug trafficking and the Escobar era. That is why there are false claimants who pretend it was their land because they want to take advantage of the situation” (Representative of Fedepalma).

Overall, this section puts forward the gap between the land rights’ content of the RSPO and local communities’ advocacy for the human right to land. By ignoring local practices anchored around the human right to land, the RSPO sidelines power relations taking place inside the palm oil global value chain and the politicization of land rights.

5 Contract farming on paper and on the ground

A second element of disjunction between the RSPO’s content and local practices resides in contract farming. The RSPO’s Colombia National Interpretation Plan (the process through which the RSPO Principles & Criteria are further adapted for use by each country), promotes a Colombian type of contract farming called “Strategic Productive Alliance” (SPA) (RSPO 2016). Fedepalma defines it as a formalized relationship between producers and agricultural industries with the support of a public or private organism, and which purpose is to commercially expand cultivation area such as palm oil, as well as to modernize small-scale producers taking part in such model¹⁹. In other words, small-scale producers provide a palm oil company with land and labour force in exchange for access to infrastructure and credit. The first SPAs were established in 1998 by then-Minister of Agriculture and so-called “palm oil tsar” Carlos Murgas Guerrero, who is also the owner of the palm oil company Oleaflores²⁰. In 2011, around 5 000 small-scale producers were participating in 109 SPA (Mesa-dishington 2011).

¹⁹ <http://web.fedepalma.org/sostenibilidad-social-alianzas-estrategicas> (accessed September 2017)

²⁰ <https://agronegocios.uniandes.edu.co/2016/04/26/una-historia-sobre-el-grande-de-la-palma-colombiana-oleoflores/> (accessed September 2017)

While there are cases of successful SPAs improving farmers living condition (Cairo et al. 2006), they are not always the redistributive win-win strategy that Fedepalma and the Colombian government describe (USAID, Fedepalma, and SNV 2010)²¹. Critical agrarian studies have already highlighted that SPAs and contract farming schemes have often resulted in the privatization of land because of the companies' requirement to possess clear private land titles, as well as the insertion of land into the financial market (Mcmichael 2013; Akram-Iodhi 2008). Although land privatization is not a negative evolution per se, it has to be analysed in the context of unequal power relations in the palm oil global value chain. Concretely, to take part in an SPA, small-scale farmers need to have clear land titles in order to get a credit from the bank, with the palm oil company acting as guarantor. This credit is used to pay for the seeds, counsel and infrastructure that the palm oil company provides. The farmers pay the credit back to the bank thanks to the money they receive when selling their crops to the company. Nevertheless, the farmer is alone in bearing the risks, for example of bad harvests related to hazardous weather conditions or crops' diseases. Should such an incident take place, chances are that the farmer will not be able to reimburse the loan he contracted towards the bank. Although a solution can be negotiated with the palm oil company in its capacity as guarantor, in cases of protracted inability to reimburse, the bank will seize the farmer's land (Mow and Alvarez Roa 2013a; Marlin 2010). Consequently, in some cases, SPA schemes have resulted in dispossession of small-scale producers' land thus benefiting palm oil companies' land extension (Ojeda et al. 2015).

Concretely, interviewed small-scale producers tended to mistrust SPAs. In the case of Las Pavas, Daabon offered the land claimants a chance to participate in such a scheme, but they refused, among other reasons because they feared losing their land if they could not reimburse the bank: "I will never be able to leave a productive alliance alive, because in the end they are going to take my land" (Peasant of Las Pavas). It is worth mentioning here that such fear also has a history dating back to the 1970s, when Las Pavas' farmers resorted to private moneylenders under onerous loan conditions, leading to land concentration in the hands of the latter. Again, in 2005, ASOCAB contracted for credit with the Agrarian Banc of Colombia, to which they still owe the 50% (Vargas et al. 2010). Such a mistrust of SPAs is also present in Bellacruz. ASOCOL rejects the scheme because of the unequal power relations that it would establish and their ideological condemnation of palm oil: "I don't want to be Efromovich's (Extractora la Gloria's majority shareholder) cheap workforce. I want to choose what I cultivate and how I cultivate it. Palm oil means dead because you cannot eat it" (Leader of ASOCOL).

This quotation also touched upon SPA restrictions on farmers' choice of what to produce and how to produce it. Such restrictions are also shaping the land access of the other Bellacruz's association. Indeed, a peasant of ASOCADAR explains that he is willing to enter into an SPA and produce palm oil, because he feels it is his only way to get his land back. But he insists in doing it in a way that respects traditional agriculture and integrates subsistence crops such as rice, maize and yucca: "They (the government) will not give us our land back to do what we like, because the (palm oil) project is productive. So, we have no choice but to sustain the palm oil plantation. We would agree to enter into a productive alliance if the Extractora la Gloria let us work the palm in a way that respects our traditions and lets us (also) cultivate subsistence crops" (member of ASOCADAR). We have discussed above the Colombian government conditioning of subvention and access to land to small-scale producers taking part in SPA to cultivate certain crops such as palm oil. The lack of perspective it offers to farmers desiring another mode of agriculture than large-scale monoculture of cash crops was also mentioned by a leader of an Afro-Colombian association: "The only agricultural model that the government offers us is to integrate us in the value chain. If you want a small-scale plantation, the government does not help you. The government reduces us to agroindustry's workforce. But we, the villages, have another economic logic". (Leader of the Black Communities Process – PCN).

²¹ See also <https://www.minagricultura.gov.co/tramites-servicios/desarrollo-rural/Paginas/Proyecto-apoyo-a-alianzas-productivas-PAAP-.aspx#tabs-1b> (accessed September 2017)

As a result, we have seen that the RSPO's promotion of contract farming as a "win-win strategy" for palm oil companies and small-scale producers does not take into consideration unequal power relations in the palm oil global value chain. The practice of contract farming in the Colombian local context illustrates risk of losing access to land as well as restriction in cultivation choice.

6 Conclusion

Land access has been at the heart of the Colombian conflict. It was the first point negotiated between the FARC and the Colombian government in La Havana, and the first article of the peace agreement relates to integral rural reform (Oxfam 2017). This has nurtured hope for more democratic access to land in a country ravaged by unequal land distribution. At the same time, the Colombian government's view of the post-conflict situation as an opportunity for economic development, has been accompanied by measures encouraging large-scale land investment in exportation crops such as palm oil. This tension between rural reform and economic development through large monoculture sheds light on the role of the RSPO in the post-conflict period. Considering that member companies are using the certification to legitimize their activities against charges of land grabbing for palm oil production, the RSPO's principles and criteria impact access to land for local populations.

This situation prompted our paper analyzing how meaningful certifications such as the RSPO are to ensuring democratic access to land. By highlighting the disjunctions between complex local practices and a simplified and depoliticized RSPO's content, we have demonstrated the limit of the RSPO in ensuring democratic access to land. Indeed, by focusing on land rights and overlooking local practices of the human right to land, the RSPO does not challenge Colombia's traditionally unequal land distribution. In addition, by promoting SPA as a "win-win strategy", it hides cases where such schemes have led to small-scale producers' dispossession, as well as the choice restriction inherent in presenting monoculture as the only possibility for rural development. These observations do not mean that the RSPO is intrinsically negative and that no improvements in palm oil plantations have taken place. Our point here is that the RSPO is a tool that can be used by palm oil companies to legitimize land grabbing. Indeed, by overlooking local practices, the RSPO's principles and criteria are not well equipped to ensure democratic access to land for local populations.

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