

ANALYSIS ON EXISTING LEGISLATION RELATED TO OIL PALM PLANTATIONS:

CASE STUDIES FROM LATIN AMERICA, AFRICA AND ASIA

Below we have selected three articles which try to unravel the picture of how governments put forward different legal mechanisms to push forward the expansion of Oil Palm plantations. The articles were written by members of local organizations which have been working on the issue since many years ago, following a special invitation from WRM. In the three countries deforestation and human rights violations due to the expansion of oil palm plantations are escalating at alarming rates to feed Northern consumption patterns that must drastically change in order to prevent disaster.

Colombia: Biodiesel from oil palm

The Western world, and in particular the countries of the North, gave in to addiction to fossil fuels. This path has led to something that today nobody can doubt: climate change. Many solutions have been put forth to face it, but most of them let humanity's race towards suicide continue as vigorously as before.

Biofuel mega-projects are some of the proposals to solve the problem. However, have those who submitted them as an alternative measured the consequences their creation could have on important ecosystems, peoples and culture? In the first place, this article delimits the steps taken to open up the field to these projects, focussing in particular on the implications of planting African palms, from which one of the biofuels to be produced is derived.

Biofuel has its own story. Briefly, during the 1973 energy crisis, Brazil reconverted part of its sugar industry to produce ethanol and became the leading exporter. Today, Colombia wants to follow this example and become a producing power, particularly of bio-ethanol and biodiesel.

In 2001, Law 693 was issued, linked to Law 939 of 2004, opening up the way for biofuel production. Law 693 stipulates that Colombian gasoline must contain 10 percent ethanol by 2009 and in a period of between 15 and 20 years, it should gradually reach a proportion of 25 percent. Whereas law 939 of 2004, fosters the production and marketing of biodiesel for diesel motors, at a percentage of 5%.

Since the end of 2005, the production from the sugar cane industry in Cauca, Providencia, Manuelita and Mayagüez (all located in the Department of the Cauca Valley, in the West of the country), in addition to the industry in Risaralda, has been close on one million litres daily of bio-ethanol, aimed at satisfying the demand of the west of the country and the Bogotá Savannah. The talk is now of assembling 27 other plants scattered over 17 departments of the country, to extend the blend of 10% with gasoline throughout the whole Colombian territory. According to the forecasts of the National Fuel Federation, by 2010 internal consumption could double simply by rising the percentage of blend to 15%. By then, Colombia will have the capacity to export a figure close on 2,300,000 litres per day of ethanol.

A similar legislation to that referred to above is being prepared for biodiesel, derived from African palm trees. This plant already has a derivate used for food, which is the one most commonly known today: palm oil, with a production of 600 thousand tons. But in fact, it is biodiesel that is of interest to us in this article.

Before going into figures, it is important to say that the major beneficiaries from bio-ethanol legislation – and now from legislation being prepared for biodiesel – are precisely the sugar cane agro-industrialists from the Cauca Valley whose industries were mentioned on discussing ethanol, and in the case of biodiesel, it is the palm agro-industrialists who will benefit.

The consumption of diesel oil in the country for automotive transport is growing at a faster rate than that of gasoline, exceeding the national oil company Ecopetrol's refining capacity, so the country imports 5%

of the domestic consumption of diesel oil. Thus an opportunity has arisen for African palm agro-industrialists who have year by year, increased the area under cultivation.

In Colombia the expansion of these plantations has shown a sustained growth. In the mid-sixties 18 thousand hectares were under production. By 2003, there were over 188 thousand hectares and presently, approximately 300 thousand have been planted. Furthermore, seven plants are being assembled in different palm regions of the country, at an approximate cost of 100 million dollars. According to the Colombian palm trade union, Fedepalma, since 2001 Colombia is the main producer of palm oil in America and fourth largest producer on a world level, after Indonesia, Malaysia and Nigeria. Out of the total oil production, 35% is exported.

However, several economic studies consider international palm oil markets to be insecure, insofar as world production increases day by day and prices continue to be low. Nevertheless, agro-industrial palm projects have been a priority for the present Government and are promoted, particularly in regions such as the Colombian Pacific, the plains in the east and the Caribbean region, as the characteristics of these regions make them ideal for the development of these plantations. The target is to reach one million hectares in a few years time.

Experts on this type of agro-industrial development have denounced that these crops are used to launder money from drug trafficking and as a mechanism used by para-military groups to force displacement of the population as their aim is to take over important and rich regions. Their strategy has been to displace the people and once the land is abandoned palm-growing companies occupy them. Jiguamiandó and Curvaradó, two municipalities in the Pacific region are outstanding examples of this strategy. The Urapalma Company illegally occupied these Afro-Colombian territories.

These Chocó communities received the deeds for their lands in November 2000 after years of reiterated violations of their human rights, nine years after the National Constitution had recognized the territorial rights of Afro-descendent and Indigenous communities. The deeds were received at a time when the communities were displaced. On their return they found their territories occupied with oil palm plantations. A long drawn out legal process started with claims by the communities to recover their territories. This process was tainted with major irregularities to favour the oil palm companies.

Something similar is taking place in the Tumaco region (located in the South of Colombia, on the border with neighbouring Ecuador). The communities have also gone through forced displacement and have been threatened and it is thus that the companies or even the State itself propose that the members of community councils, as an alternative to enable them to stay in their territory, become "rural sector entrepreneurs." In other words, they are being forced to involve themselves in partnerships or productive chains with palm oil companies. In this way, territories that used to be rainforests have now become monoculture palm plantations, depriving the Afro-descendent communities of their culture and their territory and destroying regions that are among the most diverse on the Planet.

Last June, President Uribe declared at the Fedepalma Congress in Villavicencio the following:

"[...] I would beg [...] [the Minister of Agriculture] to fit into quarantine Tumaco entrepreneurs and the Afro-descendent compatriots and not let them leave the office, locking them in until they reach an agreement. It has to be this way...Lock them in and propose as a case [sic], that the State contributes, that they reach agreements on the use of these lands and the government contributes risk capital resources. And propose a date and tell them: gentlemen, we are in conclave and we will not leave this place until we reach an agreement [...] Because here we must recognize what is good and what is bad, in this Meta and in Casanare and in what is starting to yield in the Guaviare, some extraordinary growth of the palm, not in Tumaco, no. And Tumaco, which has the road, go a little further north, that area of Guapi, El Charco with excellent conditions and without a single palm tree, full of coca that we must eradicate [...]"

These declarations filled the Afro-descendent communities with wrath and they responded vigorously to the President of the Republic.

"If this oil palm, Mr. President is your mega pilot project, it is not one on our ethnic territories. Worse still, if it were it would lead to most serious environmental, social and cultural damage. We affirm this on the basis of what we have seen of this monoculture plantation since the end of the sixties to the

present, that is to say, over thirty-five years now, suffering from the impacts of over twenty thousand hectares of forced sowing of this 'Plantation within camera' which still continues to expand in a violent way in our collective territories." (Letter to the President of the Republic from the ethnic territorial authorities and legal representatives of the Community Councils of Afro-descendent communities from the Kurrulao ethnic territory (Colombian South Pacific).

With these proposals for biodiesel production, the palm companies and the promoters of these companies now have new reasons to continue growing. But plantation stories are painful. They are stained with the blood and tears of the Afro-descendent and peasant communities of the Pacific, of Magdalena Medio, and the Colombian Caribbean. It is the silent story of forests disappearing to become plantations. It is the story of ancestral cultures becoming oil palm proletariats. These voices are clamouring to stop the destruction proposed by those defending biodiesel.

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Cameroon: State mechanisms for the promotion of oil palm plantations

One of the main characteristics of Cameroon's economic policies since independence is their institutional promotion of large-scale industrial plantations. Between 1971 and 1981, the state allocated to them no less than 60% of the public funds reserved for agricultural development. The most important feature of these large-scale plantations was – and still is – their domination by only a few agro-industrial firms, highly protected, oligopolistic, and dependant on capital-intensive technologies. The establishment and the expansion of these plantations involved big investments (loans) and created a strong dependency on foreign capital as well as on foreign technologies and management.

The recent most important initiative promoting oil palm plantations is the 2001 "oil palm project" of the Ministry of Agriculture. Considered as a "national priority", this project was launched within the framework of a "volontarist modernisation of the agriculture". It aims at promoting the development of the agro-industrial sector as well as the "village plantation" sector – which is mainly a way of subcontracting in favour of the agro-industries and which embodies the "new era" of oil palm extension in the country. The objective is to increase the plantation area by at least 5000 ha per year in order to produce 250,000 tons of palm oil by 2010.

However, a few other initiatives were already in place during the 90s: The state promoted the development of so-called village plantations through three main projects. The "Pépipalm" project – financed by the European Union and coordinated by the Ministry of Agriculture – aims at technically supervising and financially supporting a network of private nurseries of selected oil palm seedlings. The project implemented a system of monitoring and regular controls. Globally, these nurseries sold to small planters about 45,000 plants in 2000, 73,000 in 2001 and about 130,000 in 2002. Another project is the "South West Development Authority" (SOWEDA) which promotes different actions in rural technical education and in the supervision of village plantations. Also, the "Project of Rural Development Centres" (PPDR), created in 1993, focused its attention on the promotion of contractual village plantations.

At the international level, the main programme promoting oil palm plantations is a result of the initiative "heavily indebted poor countries" – launched in 1996 by the G7 and managed by international financial institutions. In order to be eligible for this category, a given country has to meet several strict conditions and notably has to produce a "document on poverty alleviation strategy" which must show how resources obtained through debt alleviation will be used. In Cameroon, this document includes a specific section devoted to the oil palm sector. Its goal is to increase the oil palm production and productivity in order to cover national needs (in deficit) and to improve international competitiveness. The development strategy is based on: (1) the development of the agro-industrial sector (through privatisation, increase in production, and implementation of new contractual relations with village

planters); (2) the development of the village sector (use of improved seedlings, technical education, increase in productivity); and (3) the implementation of an improved research framework, mainly through the state-owned Institute of Agricultural Research for Development (IRAD) which is particularly active in the production and selection of oil palm seeds. The World Bank and the FAO are key actors in the promotion of this programme, while France provides with financial and technical support, notably through the CIRAD (Centre de coopération internationale en recherche agronomique pour le développement). The funding of the programme has already reached about 6 million euros and at least 8,000 ha of selected oil palms had already been planted in 2004.

This brief review of the main programmes promoting oil palm plantations in Cameroon shows that the role of the state – as well as the role of international actors – were and continue to be important, even during the age of so-called non-interventionist neo-liberalism.

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Indonesia: Government Policy on Palm Oil Development

Based on an analysis of the evolving legislation on plantations, it is possible to identify five phases in government policies for palm oil development in Indonesia. We shall call these the PIR-Trans phase (up until October 1993), the Deregulation Phase (1993-1996), the Privatisation Phase (1996-1998), the Cooperatives Phase (1998-2002) and the current Decentralization Phase (2002-2006). It should be noted, however, that these phases were neither wholly discrete nor did the initiation of a new phase imply the ending of the previously launched processes.

PIR-Trans: Before October 1993, Government efforts to establish oil palm plantations were centred on taking over forested areas on the Outer islands and allocating these areas to PTPN [State-owned plantation company] operators, which controlled both inti [large-scale operations on extensive areas] and plasma [individually operated smallholdings] holdings, supplied with a workforce and smallholders through the Transmigration programme. Laws were passed in 1986 and 1990 designed to ensure better coordination between government agencies and so speed up the process of permitting required to release forest lands for conversion. Control of forests remained centralized with regional forestry offices (Kanwil Kehutanan) only being authorised to release up to 100 ha. for plantations.

During this period, resident communities' customary rights in land were often not recognised. Instead indigenous peoples were inserted into the Transmigration schemes either by being resettled as Transmigrant villages made up of local people (Translok) or by being slipped into mixed settlements (Transmigrasi sisipan) comprising local people and State-sponsored migrants from Java, Madura and Bali. Most PIR-Trans schemes allocated only 2 hectares to each Transmigrant family, half of which they were expected to plant with rice and half of which was to be developed as oil palm to supply the mills established alongside the nucleus estate. Migrants complained of sub-standard housing, low prices for fresh fruit bunches of oil palm (FFB) and long delays in the payment of wages, settling debts and transferring land titles.

Deregulation Phase: In October 1993, the government passed two laws as part of a National Deregulation Policy Package. The overall aim of the policy was to give local governors greater authority to promote regional development, while seeking to ensure that private companies had a long term commitment to the areas they were investing in. Under these laws, Governors could issue permits for the conversion of forest areas up to 200 hectares, while areas over 200 hectares remained the responsibility of the Directorate General of Estate Crops in Jakarta. Private companies applying for forest conversion permits, on the other hand, were not allowed to transfer ownership of leaseholds so secured.

Privatisation Phase: The final years of the Suharto dictatorship saw a concerted drive across several sectors, including estate crops, to privatise para-statal companies, encourage private sector initiatives and facilitate foreign direct investment. A number of laws were passed designed to accelerate estate crop development in this way and ensure fair play between companies. The procedures by which companies secured permits for developing estates were clarified – a temporary, one year, start-up

permit (ijin prinsip), which could be converted to a permanent permit (ijin tetap) and to which an expansion permit could be added (ijin perluasan). Requirements were introduced to ensure that companies planning to convert forests first secured the consent of any logging companies with logging permits (HPH) over the same areas. A new law also clarified that forest lands cleared and planted with estate crops were to be classified in Provincial Spatial Plans as agricultural lands but with no rights to plantation permits attached.

Cooperatives Phase: The fall of the Suharto regime resulted in an era of reform (reformasi) which allowed politicians with alternative ideas about rural development to gain power temporarily. Efforts were made to encourage models of development that would allow local communities to benefit more directly from lands and natural resources. While a law was passed prohibiting forest conversion in protected forests (hutan lindung), so harmonizing local and regional spatial planning procedures, a decree was passed to allow three-year plantation permits (ijin usaha perkebunan) to be granted to cooperatives for areas up to 1000 hectares by provincial Governors or up to 20,000 hectares by the central Ministry of Forests and Estate Crops.

Decentralization Phase: The fall of Suharto also ushered in a period of radical political change in Indonesia, whereby far greater powers to control lands, resources and to administer regional budgets were entrusted to local governments and legislatures. Since 2002, these changes have also had some impact on the development of the palm oil sector, while still limiting local authorities to encouraging medium-scale plantations. A new law allows district level regents (bupati) to issue permits of up to 1000 hectares, while any areas overlapping district boundaries remain the prerogative of Provincial Governors. However, authority to issue permits of over 1000 hectares was entrusted to the Ministry of Agriculture. Moreover, responding to concerns about the rate at which forests were being cleared for plantations even though vast areas of degraded lands were available for planting, in 2005 the Government passed another law establishing a moratorium on forest conversion for estate crops.

The moratorium was introduced following the signing of a letter of intent between the Government of Indonesia and the IMF, although this did not make clear for how long the moratorium should be maintained and whether it referred to a moratorium on actual conversion of forest cover or a moratorium on changing the status of forest lands to allow planting. In February 2005, the Ministry of Forests released two contradictory circulars to the local government. One stated that the moratorium was still effective, while the other stated that in order to optimise the use of forest land for estate crops the Ministry would evaluate proposals for conversion on their merits. The same split views can be discerned in the way the Ministry has responded to the proposal to establish 1.8 m. ha. oil palm plantation in the heart of Borneo.

Excerpted from: "Promised Land: Palm Oil and Land Acquisition in Indonesia - Implications for Local Communities and Indigenous Peoples", by Forest Peoples Programme, Sawit Watch, HuMA and the World Agroforestry Centre, [http://www.sawitwatch.or.id/images/Publikasi/Land%20Acquisition%20\(English\).pdf](http://www.sawitwatch.or.id/images/Publikasi/Land%20Acquisition%20(English).pdf). Published on WRM Bulletin 124.



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