



Palmas del Cesar

Case study



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Palmas del Cesar – Case Study

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Publication date

December of 2021

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Funding is provided by the United States Department of Labor under cooperative agreement number IL-32820-18-75-K. 100 percent of the total costs of the project is financed with federal funds, for a total of 6,000,000 US dollars.

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Case Study Preface



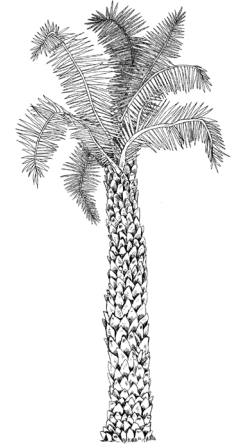
This case study examines the decisions and actions of Palmas del Cesar, a medium-size producer and extractor of crude palm oil (CPO) based in Bucaramanga, Colombia, concerning sustainable labor practices. The purpose of this case study is to serve as a basis for instructor-led discussions among policy makers, executives, professionals and graduate students in order to raise awareness of the issues facing an important agro-industry sector and to develop the critical thinking skills required to recommend appropriate actions.

As teaching vehicles used as a basis for class discussion, case studies of this nature feature a main character who must make decisions that will affect many different stakeholders. The case study approach begins with an understanding of the situation facing the case protagonist, its symptoms, and its underlying causes. Such an understanding enables the decision-maker to set objectives, establish priorities, and develop a long-term vision for the future.

In the case of Palmas del Cesar, the main character is Fabio Gonzalez, the company's general manager since 1996. Fabio is driven by a vision of labor peace and the building of respect among managers, workers, and suppliers. However, he faces practical challenges in terms of helping his suppliers to adopt and demonstrate fair labor practices and obtain certification. His decisions for how to best assist associate producers to adopt fair labor practices affect the livelihoods of the Palmas del Cesar employees and their families, along with hundreds of suppliers and the workers on those independent plantations.

There are no "correct" solutions for this case; only reasoned courses of action based on the facts and opinion presented in the case. There are, however, valuable lessons that may be learned from the case and its rigorous analysis and discussion in the classroom.

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Case Summary



Palmas del Cesar is a medium-size producer and extractor of crude palm oil (CPO) based in Bucaramanga, Colombia that has successfully emerged from two prolonged strikes and obtained Roundtable on Sustainable Palm Oil (RSPO) certification for its own plantations. However, most of its palm fruit comes from uncertified suppliers. In this case, protagonist Fabio González, general manager of the company since 1996, must decide how he can best assist his associate producers—the 300-plus independent suppliers who provide two-thirds of the fresh palm fruit that fuel his extractor mill—to adopt fair labor practices and become certified by RSPO, widely regarded by global food companies as the ideal certification to have. He strongly believes that he must do this for two reasons. The first is to continue competing in world markets which increasingly demand 100% RSPO-certified palm oil. The best that he can offer now is a mixture of certified and “conventional” palm oil extracted from certified fruit from the company plantations and non-certified fruit from those of his suppliers, which is less attractive to buyers seeking a 100% sustainable product.

But his second reason is equally powerful. He believes that all workers should earn a fair wage, receive the benefits entitled to them by law, enjoy dignified working conditions, and have the right to assemble and organize. He also considers that no one should hire children or force anyone to work against their will. There was a time when outsourcing was a common industry practice, employed to meet the needs for field labor, leading to abuses. At Palmas del Cesar, worker discontent with outsourcing led to two debilitating strikes which came to an end in 2015, when Fabio decided to end this practice and to formalize direct labor contracts with the company, in compliance with Colombian legislation and RSPO certification criteria. The description in the case of how wounds were healed by a “Palmas en Acción” team made up of workers and managers, provides valuable lessons for cultural transformations.

Aware that noncompliance with certification criteria is likely to exist among his suppliers, many of them smallholders with low productivity, Fabio has organized a technical team to assist a group of one hundred interested palm growers in raising productivity, and to implement fair labor practices, aiming to certify forty producers by the end of 2020, another thirty in 2021, and the last thirty by 2023. As the case closes, the Palmas del Cesar implementation team is preparing to undertake the final set of activities with the first group of forty, which involves compliance with Colombian labor legislation and RSPO criteria for workers' rights and conditions, implying increased labor costs and paperwork that most of Palmas del Cesar's associate producers are ill-equipped to bear.

Fabio realizes that improved labor practices among his associate producers are necessary for Palmas del Cesar to export RSPO-certified palm oil, and, more importantly, to maintain and improve rural incomes and the sustainability of smallholder oil palm production in the world markets demanding increased compliance with sustainability criteria. But he wonders whether the current focus on RSPO certification, with its emphasis on extensive, costly, and time-consuming research and reporting of environmental compliance, particularly in terms of deforestation—less an issue in Latin America where oil palm was typically cultivated on existing agricultural land than in the extensive and expanding palm plantations of Southeast Asia, where RSPO had been created—, was the most appropriate.

Might there be another approach? Would this help Palmas del Cesar to meet future global market expectations for both labor and environmental sustainability? Given these many developments in the company's environment, Fabio feels that it is time to review Palmas del Cesar's objectives in working with its smallholder providers, and to explore a range of initiatives that the company might undertake to meet those objectives.



Introduction



By mid-2019 Fabio Gonzalez, General Manager of Palmas del Cesar, an integrated palm oil company based in Bucaramanga, Colombia, faced an increasing need to assist his over 300 independent suppliers of palm fruit to improve their labor practices. Four factors had combined to heighten the urgency to improve labor practices in the Colombian palm oil sector:

1. The Colombian Action Plan Related to Labor Rights (Labor Action Plan or LAP), negotiated between Colombia and the United States (US) as a precursor to the signing of the US – Colombia Trade Promotion Agreement in 2012, had identified the palm oil sector, along with the sugar, mining, ports, and flower sectors, as requiring improved labor law enforcement. Under the LAP, the Colombian Government had agreed to implement measures to strengthen and improve compliance with existing labor laws regarding labor contracting and workers’ rights to organize. A report published by the US Department of Labor’s (USDOL) Office of Trade and Labor Affairs (OTLA)¹ pointed to several areas of noncompliance, including inadequate labor inspections and follow-up and violations of subcontracting prohibitions and other practices which inhibited workers’ rights to organize and bargain collectively.
2. A growing number of international consumer products companies had announced their intention to source only “sustainable” palm oil, produced in compliance with the environmental and fair labor standards of various certification agencies such as the Roundtable on Sustainable Palm Oil (RSPO), or those of major consumer products companies themselves. Fair labor standards, as called for by the certification agencies, included the prohibition of child labor and forced labor, full compliance with national labor legislation regarding wages and benefits, and freedom of association

and collective bargaining. Premiums of up to 10% of the free on board (FOB) value of Crude Palm Oil (CPO) were reportedly being paid for RSPO-certified palm oil given its relative scarcity in world markets.

3. Agricultural labor unions and Colombia's Labor Ministry were continuing to press for improved working conditions not only on the large plantations, where some moderate progress had been reported, but also on the over four thousand smallholder plantations where hiring practices were sometimes observed as failing to fully comply with the standards of no child labor, no forced labor, and Acceptable Conditions of Work (ACW)".
4. Declining world prices for CPO had reduced the profitability of oil palm production, especially for smallholder producers with lower yields per hectare (ha), making them reluctant to assume the higher costs of labor formalization and compliance with required minimum wages and benefits.

Fabio was proud of having achieved RSPO certification for the company's own plantations, though his greatest satisfaction was that labor peace had been restored following a period of turbulence, with management and workers joining as a team to seek gains in productivity. But while 100% of the palm fruit produced on the company's plantations was RSPO-certified, only a third of the fruit received by its extraction mill came from these plantations. The remainder was sourced from over three hundred associate producers, mostly smallholders with less than 50 ha, none of which was RSPO-certified. Thus, Palmas de Cesar could not meet the requirements for "sustainable" palm oil by a growing segment of the international market. It would need to help its associate producers to both improve their productivity and comply with Colombian labor law, which required contract formalization and payment of legally mandated wages and worker benefits, and prohibited child labor and illegal forms of adolescent labor. Compliance with these laws would also be required for RSPO certification.

To remedy this situation, the company had begun a pilot project to assist one hundred of these associate producers to improve their agricultural productivity and comply with environmental and labor standards. It was originally expected that most providers would have little difficulty meeting environmental standards since, unlike much of Southeast Asia's oil palm plantations, Colombian lands dedicated to palm were often converted from extensive cattle grazing pasture and did not involve deforestation. But they might encounter greater challenges in meeting the fair labor standards, where full compliance might entail additional costs and reporting requirements. Fabio hoped to maintain a similarly harmonious relationship with his associate producers as he had done with company employees.

As he reviewed the progress of the pilot project, he asked himself whether, given the low international prices and the considerable outlay of funds and effort to assist this first group of one hundred smallholders to obtain their own RSPO certification, he should extend the project to the rest of the associate producers, or whether there might be other ways to meet both his company's objectives and those of its associate producers.



The Global Palm Oil Industry



Vegetable oils are used not only for cooking and as a basic ingredient in processed foods. In many emerging economies, they form an essential part of the human diet. Palm oil accounted for 36% of total oil production and consumption globally, followed by 28% for soybean oil (see **Exhibit 1** for data on world and US vegetable oil consumption). CPO is extracted from the fibrous mesocarp of the palm fruit and subjected to series of refining stages. As shown in **Exhibits 2 and 3**, both the worldwide production and consumption of palm oil increased dramatically beginning in the late 1990s, from less than 20 million metric tons (tons) in 1999 to over 74 million by the 2018/19 crop year. The increase in palm oil production was largely driven by a steadily increasing demand for food use, and an accelerating demand for industrial use – primarily as a feedstock for biofuels. Palm oil production was concentrated in Indonesia and Malaysia together accounting for 62 million tons, or 84% of world production in 2018. Other major producers were Thailand with 2.9 million tons (4% of world production), Colombia with 1.6 million tons (2%), and Nigeria with 1 million tons (1%).ⁱⁱⁱ

The popularity of palm oil for cooking and food manufacture was based on its physical and economic attributes. Due to its relatively high level of saturated fats (approximately 50%), palm oil is semi-solid at room temperatures and resistant to oxidation at prolonged elevated temperatures. These qualities make it more desirable than other non-hydrogenated vegetable oils as an ingredient in baked goods, shortenings, and margarine, as well as for fried products such as french fries, doughnuts, or fried fast foods. Palm oil contains no trans fatty acids and is one of the richest sources of tocotrienols (an antioxidant). And, because oil palm plantations produce between 6 to 8 times more vegetable oil per unit of land than

soybeans, sunflower, or rapeseed,^{iv} the total production cost and the world price of palm oil were consistently lower than those of competing vegetable oils (**Exhibit 4**).

Feeling threatened by lower cost palm oil and coconut oil, the United States (US) soybean oil industry launched an aggressive campaign against “tropical fats”, alleging an association between palm oil’s high saturated fat content, high cholesterol, and heart disease. Bolstered by the popularity of low-fat diets to control weight, this campaign greatly reduced palm oil in the North American food supply. Instead, the US market relied more heavily on partially hydrogenated vegetable oils (PHOs) including soybean, sunflower, and canola (rapeseed) oil, which due to the hydrogenation process, contained most of the cooking attributes of palm oil. By the early 2000s, it had become clear that PHOs contained trans-fats and that trans-fats constituted a significant health risk. This, in turn, led to alternatives to hydrogenation as well as a rise in the use of palm oil. In the landmark 2015 decision by the United States Department of Agriculture (USDA), trans-fats and PHOs were banned from the US food system as of 2018. The reintroduction of palm oil into the US was further bolstered by research findings, which cast doubts on the benefits of the low-fat diet, emphasized the importance of fats in a balanced diet, and challenged the assumed association between fats, cholesterol, and heart disease.^v

By 2019, palm oil consumption in the U.S had risen from less than 200 tons per year in 2003 to 1.5 million tons, although it still accounted for only 9% of total US vegetable oil consumption. Soybean oil accounted for 65% and canola (rapeseed) oil accounted for 16% (refer to Exhibit 1).

The Rise of Biodiesel

Between 2006 and 2018, worldwide production of biodiesel increased from approximately 7 million tons to over 45 million tons, generally due to government policies to reduce the use of fossil fuels. Palm oil was used for 35% of all biodiesel produced worldwide in 2018. Although the US used very little palm oil to produce biodiesel, the use of palm oil for biodiesel accounted for 20% of worldwide palm oil consumption in 2018. Countries or regions using the highest proportions of their domestic palm oil consumption (i.e., excluding exports) for biodiesel in 2018 were the European Union (58%), Thailand (53%), Colombia (53%), Indonesia (43%), and Malaysia (30%).¹

However, the expansion of palm oil for biodiesel began to be seen as itself environmentally damaging. Concerns about deforestation and the destruction of wildlife habitats, mainly in Malaysia and Indonesia, led to widespread condemnation of the palm oil industry. Based partly on the argument that land used to produce palm oil for biodiesel required the other previously forested land to be converted so that it could be used for food production,^{vi} the European Commission set new criteria for the use of palm oil in biofuels leading to its gradual phase-out between 2023 and 2030.



¹ Figures calculated based on USDA/FAS Office of Global Analysis (September 2019), and Oil World Weekly, June 28, 2019.

The Creation of the Roundtable on Sustainable Palm Oil

In response to growing concerns about the environmental impact of palm oil production, in 2004 industry stakeholders created the RSPO, dedicated to the production and consumption of palm oil that was environmentally, socially, and economically sustainable. By 2019, RSPO included over 4,000 members from 92 countries and all segments of the value chain as well as financial institutions and social and environmental NGOs. RSPO's activities spanned the entire producer-to-consumer chain with standards for the certification of sustainable palm oil production and value chain certification to ensure traceability of origin, and the promotion of demand for sustainable palm oil in consumer countries. These standards, the "Principles and Criteria" (P&Cs), were first developed in 2005, with input from all segments of the RSPO membership and focused mainly on issues related to deforestation, the destruction of peat bogs, and the preservation of wildlife habitats; issues primarily related to the expansion of oil plantations in Southeast Asia. These P&Cs were reviewed and updated every five years, incorporating more stringent standards with every review involving not only environmental but also social and economic issues.

The 2018 review of the P&Cs focused on three impact areas (Prosperity, People, and Planet), and included 7 Principles and 41 Criteria, each with between two and eleven indicators. It paid increased attention to the impact goal of "People: Sustainable Livelihoods and Poverty Reduction," highlighting respect for community and human rights, delivering benefits, including small farmers and respecting worker rights and conditions.² **Appendix A** presents the criteria and indicators for Principle 6: Respect Workers' Rights and Conditions.

Producer certification was available to all oil palm producers, from smallholders to large integrated palm oil companies with their own plantations and contracts with independent suppliers. Certification was granted by independent agencies licensed by RSPO, which audited documentation and made site visits to verify compliance with the P&Cs. Producers had to renew their certification every five years and were subject to spot visits by the certification agency at any time. They were also required to submit an Annual Communication of Progress (ACOP) report with information including the total area under cultivation, total production, and sales of certified and "conventional" (non-certified) palm oil. In addition to this standard producer certification, RSPO had developed a separate Independent Smallholder (ISH) standard that it was circulating for comments prior to its finalization, expected in late 2019. The ISH draft standard included only four Principles and was explicitly tailored to be relevant to the needs of independent³ smallholder producers (with less than 50 ha in oil palm production). A key feature of the draft ISH standard was the requirement that smallholders establish a formal smallholder organization with a group manager whose responsibilities included running an internal control system.

² The full RSPO Principles and Criteria for the Production of Sustainable Palm Oil 2018 is available at <https://rspo.org/principles-and-criteria-review>.

³ "Independent" referred to a producer's ability to make his or her own decisions regarding land use, production practices, and marketing, rather than being bound to comply with production and marketing decisions made by third parties (such as a palm oil mill or large oil palm producer).



RSPO value chain certification was available to participants in the sector chain other than producers, including exporters, traders, refiners, and end-product manufacturers. It allowed them to certify that their products either used only 100% certified sustainable palm oil (Identity Preserved if the palm oil came from a single plantation or Segregated if it came from two or more plantations), or that at least that some of the palm oil in their products came from RSPO-certified plantations (Mass Balance certification). Certified sustainable palm oil producers unable to sell their products through certified supply chains were also able to sell “credits” through RSPO’s “Book and Claim” mechanism whereby end-product manufacturers (or others) could buy certified palm oil credits through an electronic credit auction system managed by RSPO. A purchaser of a credit could then publicize its support for sustainable palm oil. The current value of RSPO credits was available on the Book & Claim auction website and hovered around USD2.50 per ton in mid-2019.^{vii}

Twelve leading brands in the food and cosmetics industries—Carrefour, Unilever, Walmart, Nestlé, Kellogg’s, P&G, Starbucks, Mondelez International, Hershey’s, L’Oréal, Mars, and Ferrero^{viii}—had formally announced their intention to use 100% RSPO Identity Preserved or Segregated palm oil for their operations world-wide. One experienced palm oil trader in a major international commodity firm reported that some end-product manufacturers were willing to pay a premium of USD35 per ton for Identity Preserved and Segregated palm oil, and USD20 for Mass Balance.⁴

While RSPO certification had become the recognized standard in foods and cosmetics, European buyers of palm oil for biodiesel sought the International Sustainability & Carbon Certification (ISCC), a broader certification system applicable to a wide range of agricultural and manufactured products, primarily focused on deforestation and greenhouse gas emissions and recognized by the European Commission to demonstrate compliance with Europe’s Renewable Energy Directive. Similar to RSPO, ISCC offered a special ISH certification under the scope of a Central Office responsible for ISH administration and other tasks such as subcontractors or fund management.^{ix} The Rainforest Alliance farm certification was also requested by some buyers, primarily in the food sector. The Rainforest Alliance Sustainable Agriculture standard for farms and producer groups involved in crop and cattle production was based on the sustainability principles of biodiversity conservation, natural resource conservation, improved livelihoods and human well-being, and sustainable cattle production. The Rainforest certification was a more general farm certification, applicable to many different crops and livestock.^x

Due to the imbalance between the supply and demand for 100% RSPO-certified sustainable palm oil, some large international buyers were beginning to apply their own

⁴ Actual FOB prices paid by buyers for CPO, including premiums for certified sustainable palm oil, were not publicly available nor were they reported to or by the RSPO. While premiums up to approximately 8% to 10% of the FOB price were anecdotally reported, most industry observers concluded that as certified palm oil became more widely available, any premiums would disappear, and certification would become a baseline requirement for sales.



certification standards and inspections for trusted providers who had yet to obtain RSPO certification. Delays were generally due to bottlenecks in the processing of the required documentation rather than to their inability to comply with RSPO standards. Other less demanding buyers were content to purchase RSPO Mass Balance or non-certified palm oil. But industry sources concurred that, as greater volumes of certified palm oil became available, premiums would disappear and RSPO certification would become a baseline requirement of all major buyers.

Certification, whether by RSPO, ISCC, Rainforest Alliance, or even by individual buyers, did not guarantee full compliance with either labor or environmental standards. Violations due to poor auditing, intentional misrepresentations, or misunderstandings of certification criteria were possible and had been rumored to be especially prevalent in Southeast Asia, where very large multi-plantation palm oil companies may have been able to avoid strict compliance with all certification standards or where the lack of sufficient certification auditors may have led to cursory certification audits. Far more important than international certification, full compliance with both environmental and labor standards depended on host country governments' ability and political will to ensure compliance through adequate inspections, and on the palm oil companies themselves to understand that improved environmental and labor practices support their own long-term best interests. Full compliance with both environmental and labor standards depended on host country governments' ability and political will to ensure compliance through adequate inspections, and on the palm oil companies themselves to understand that improved environmental and labor practices support their own long-term best interests.



The Colombian Palm Oil Industry



Colombia's total production of CPO was 1.6 million tons in 2018, more than tripling its output since 2000 (for an overview of the Colombian palm oil value chain and industry, and the use of palm products and derivatives, see **Exhibit 5**). Its exports of CPO had also grown rapidly since 2010, increasing from 135,000 tons to 841,000. Over half of its exports were to the European Union, with the remainder to Mexico, Brazil and other countries including the US, which only imported 9,500 tons in 2018.^{xi}

Palm oil production began in Colombia in the mid-1950s at the initiative of the country's government as part of its import substitution policy, in collaboration with a small group of agribusiness investors who each planted a 500-hectare oil palm plantation. From these modest beginnings to 2019, the industry expanded to include over 530,000 ha of oil palm plantations and over 5,100 oil palm producers, of whom roughly 4,300 were smallholders with 1-50 ha, 675 had plantations of 51-500 ha and 160 were large operations of over 500 ha. Some of the latter were owned by integrated palm oil companies that possessed one or more of the country's 68 extractor mills.^{xii} Industry sources estimated that 30% of all palm fruit (referred to as "fresh fruit bunches" or FFB) processed by these extractor mills came from their own plantations; the other 70% was purchased from independent oil palm growers, many of them smallholders.

Oil Palm Productivity and Financial Returns

Oil palm productivity, measured in tons of FFB per hectare, varied widely due to such factors as the average age of the plantation, the use of fertilizer and irrigation, the soil, the palm



variety, rainfall, and disease such as bud rot, which had devastating effects in neighboring Ecuador. In Colombia, average productivity was 16.7 tons of FFB/ha in 2018. A second measure, CPO/ha, was determined by the extraction rate which in 2018 was 21.7%, (yielding 3.51 tons of CPO/ha, comparable to Malaysia and Indonesia (3.8 tons/ha).^{xiii} Among better-managed plantations, yields of between 25 and as high as 35 tons of FFB/ha were common for mature growths, while much lower yields during the first six years of new oil palm plantings reduced the national average. Returns to oil palm producers were affected by a wide variety of variables including agricultural yields (FFB/ha), production costs per ha which varied by zone and by the use of fertilizers and irrigation, and prices received by producers for their FFB. Annual cost of production studies conducted by Colombia's Federation of Oil Palm Growers (FEDEPALMA) based on costs and yields of oil palm producers "characterized by having adopted good technology for the production of palm fruit" indicated an average lifetime economic cost per ton of FFB of USD87.90.^{xiv,5} This cost included the initial cost of establishing a ha of oil palm, maintenance and harvesting costs throughout the average 30-year life of the palm tree, and the opportunity cost of the land.

The out-of-pocket costs of oil palm production would not include the initial cost of establishment nor the opportunity cost of the land and would vary by the age of the palm tree. For adult palm trees, annual costs per hectare were calculated at USD1618.50, which meant that the cost per ton of FFB at the national average yield for the cost of production study of 28.8 TM FFB/ha totalled USD56.20.^{xv}

Prices paid by extractors to independent producers averaged 17% of the Price Stabilization Fund's indicator price (see discussion of the Price Stabilization Fund in the following section). With indicator prices declining from over USD700/Metric Tons (MT) to just over USD500 per MT (see **Exhibit 6**), and the corresponding prices paid to producers declining from USD119.00 to USD85.00, average cash returns to growers employing good technology were in the range of USD28.80 per MT of FFB or USD829.50 per ha.^{xvi} These cash returns did

⁵ Based on an exchange rate of COP 3,000 to USD1.00. Please refer to Appendix B for a full discussion of oil palm production costs and returns based on the FEDEPALMA annual cost of production studies.

not, of course, include any payments required to amortize debts incurred for the purchase or establishment of the plantation or the installation of irrigation, or rent charged for land not owned by the producer.

For smallholder producers, the out-of-pocket costs for producing oil palm in an established, mature plantation would also not include establishment costs or the opportunity cost of the land. They also, in many cases included lower fertilizer costs due to lower levels of fertilization, which in turn may have led to lower levels of productivity. Given the significant differences between the national average yield of 16.7 MT FFB/ha and the yields recorded by the FEDEPALMA costs study among producers employing good technology, it may be assumed that many smallholder producers experienced yields equal to or below the national average.

Based on calculations and assumptions detailed in Appendix B, the combination of lower out-of-pocket costs and lower yields led to costs per MT of FFB varying between USD69.07 and USD99.64. With prices paid to independent producers falling to the range of USD.00/ MT FFB, only producers obtaining yields of 18 MT FFB/ha. or more were able to cover their out-of-pocket costs. With an average national yield of only 16.7 MT FFB/ha. and plantations employing good technology achieving far higher yields, it may be assumed that many small producers were unable to cover their out-of-pocket costs.



Figure 1. Palm plantation of the company Palmas del Cesar. The image shows a detail of the irrigation system in a sector of the plantation in which the palms are between 8 and 11 years old.



It should be noted that the cash production costs assume that all labor employed is paid labor (at legal minimum wages and including all required social benefits), and does not include unpaid labor which may be supplied by the smallholder producers themselves or by unpaid family members, including adolescents, and possibly children. Among smallholder producers, it was common for the plantation owner to personally participate in most cultivation activities and only hired paid labor to carry out harvesting or other specific tasks. In these cases, the cash returns to the producer were increased given the paid labor saved.

The Price Stabilization Fund

Prices received for CPO by Colombia's palm oil extractors were governed by two distinct markets—the domestic market and the export market—and by a mechanism designed to stabilize prices received by extractors regardless of the market served. Domestic prices for CPO were based on the Cost, Insurance and Freight (CIF) price (plus tariff) of imported CPO. Prices received for CPO exported to foreign markets were subject to world prices over which Colombia had little if any control given its small share of the world market and were considerably lower than those in the protected domestic market.

In order to equalize net payments to extractors (and, ultimately, to oil palm producers) regardless of the destination of their sales, a "Price Stabilization Fund" mechanism was implemented by the Colombian Government under which a portion of the receipts for domestic sales were transferred to compensate for the lower prices received for exported CPO. The actual amounts deducted from domestic sales and paid to exporters depended on the percentages of the country's total sales to each market. If most sales by the industry were to domestic buyers, the deduction per ton of CPO required to compensate exporters was minimal. But as exports increased as a percentage of total sales, the deduction per ton from domestic sales became greater to compensate a larger volume of export sales, and the compensation paid per ton exported became lower as the net prices received for sales to each market were equalized. The net prices received for domestic and export sales decreased as the percentage of low-price exports increased.^{xvii}

Given both the decline in international prices (refer to **Exhibit 4**) and the increasing portion of Colombia's total production exported (52% in 2018), the net prices received by the palm oil extractors had fallen from over USD700 per ton in January 2017 to slightly over USD500 per ton in April 2019. Only those producers with the highest productivity were able to cover their full costs. (**Exhibit 6** presents the Price Stabilization Fund's indicator prices between January 2017 and June 2019).

Prices paid by palm oil mills to independent producers for FFB were frequently a set percentage (usually 17%) of the Price Stabilization Fund's average indicator price for that month.⁶



⁶ Prices for purchased FFB set to 17% of the price for CPO was the product of an average extraction rate of 20% - 21% CPO per ton of FFB, minus the cost of the extraction process.

The Challenge of Implementing Fair Labor Standards

For certification of sustainable palm oil in Colombia, the environmental issues were less challenging than the fair labor issues. In contrast to Southeast Asia, where deforestation, and the destruction of peat bogs and wildlife habitats had aroused so much concern in consumer countries, a recent study showed that “91% of oil plantations evaluated between 2000 and 2014 were cultivated in areas that were previously intervened by pastures for extensive farming or biannual crops.”^{xviii} A study by Colombia’s Rural and Agriculture Planning Unit revealed that only 10% of the “highly suitable” area of oil palm cultivation were currently planted in oil palm.^{xix}

Labor formalization

Labor issues were of greater concern in Colombia. During much of the sector’s growth prior to 2011, many of the larger oil palm plantations made use of “Associated Work Cooperatives” (*Cooperativas de Trabajo Asociado*), or CTAs as an alternative to direct employment relationships with their workers.⁷ The use of CTAs was also common in other productive sectors at that time, such as sugar, where the industry association (ASOCAÑA) estimated that nearly 70 percent of cane cutters nationwide were members.^{xx} While understandable in some cases due to the seasonal nature of field labor requirements and a desire to avoid burdensome recruiting, hiring, and social benefits enrollment for short-term hires, these practices opened the door to non-compliance with provisions related to worker rights and benefits provided under Colombian labor law.

In 2004 Colombian government inspectors found irregularities or abuses with respect to 75 percent of the CTAs.^{xxi} Given these circumstances, beginning in 2006 the Colombian Government, via Decree 4588 of 2006 and Law 1233 of 2008, took measures to prohibit their use as labor intermediaries or as temporary service agencies, and to extend guarantees governing minimum wage and social benefits to CTA members. Nevertheless, and due partly to lax enforcement by the then Ministry of Social Protection, their usage continued to expand. As reported in the United States Department of Labor (USDOL), Bureau of International Labor Affairs’ (ILAB) Labor Rights report of 2011:⁸

“CTAs became a vehicle widely used by employers to end direct employment relationships with their workforces, while retaining the same or other workers through CTAs and continuing to act as their de facto employers, for example by engaging in prohibited practices to control the workers’ schedules, assign duties, determine terms and conditions of employment and make personnel decisions. As members of cooperatives, the workers are vulnerable

⁷ CTAs are groups of self-managed, autonomous, and self-governing associated workers that contract with business or the public sector to perform specific functions or tasks, created by Decree 4588 of 2006, Law 79 of 1988, and Law 1233 of 2008, with four key aspects: (1) they are meant to be not for profit; (2) they are formed with at least 10 individuals; (3) they can contract with third parties, but only under certain conditions; and (4) their members are joint owner-operators of the CTA, which they collectively self-govern, and are therefore not dependent workers who enjoy the provisions regarding rights and benefits provided to such workers by the Labor Code. See Article 59 of Law 79 of 1988 (and Article 10 of Decree 4588) on the latter stipulation. (Decree 4588: <http://www.suin-juriscol.gov.co/viewDocument.asp?ruta=Decretos/1547487> and Law 79 of 1988: https://www.redjurista.com/Documents/ley_79_de_1988_congreso_de_la_republica.aspx#/)

⁸ The US USDOL published overviews of labor rights in Colombia in response to the requirement of the United States’ Trade Act of 2002 that the President provide a “meaningful labor rights report” concerning each country with which a free trade agreement is under consideration.



to exploitation because CTA members are considered cooperative “owners,” rather than workers, and are thus excluded from many Labor Code protections. This status also denies workers the right to form unions and bargain with their de facto employers. The ILO has consistently asked the Government of Colombia to reform laws and improve enforcement in order to end misuse of CTAs to impede workers’ rights to associate and bargain collectively.”

XXII

In 2010, the Colombian Government enacted Law 1429, Article 63 (as amended to come into force with the passage of the Development Plan in 2011^{XXIII}), which prohibited the use of CTAs to perform “permanent mission activities,” or core functions, and prohibited the use of other contracting mechanisms when those methods affect constitutional rights and statutory labor rights. Article 63 also established, for the first time, significant fines for both employers and CTAs for violations (previous legislation had only included sanctions for the CTAs themselves but not for companies employing CTAs as an alternative to direct employment).^{XXIV}

Finding that CTAs were being misused also led to the inclusion of the palm oil sector—as well as the sugar, mining, port, and flower sectors—among those that required improved labor law enforcement under the Colombian Action Plan Related to Labor Rights (Labor Action Plan or LAP) negotiated between Colombia and the US as a precursor to the signing of the US – Colombia free trade agreement in 2012, announced by the presidents of both countries on April 7, 2011. Under the LAP, the Colombian Government agreed to undertake measures to strengthen and improve compliance with existing labor laws regarding labor contracting and workers’ rights to organize, violations about which Colombia’s two leading labor union federations had frequently complained.⁹ Among other areas of focus, the LAP specifically included commitments related to the establishment of a specialized Ministry of Labor—separate from the then Ministry of Social Protection—, a substantial increase in the number of labor inspectors to exclusively address cases involving cooperatives, and issuance of regulations for the implementation of Article 63 of Law 1429. Article 63 included a provision allowing companies found to have denied worker rights through the abuse of laws governing subcontracting figures to avoid fines by agreeing to create and maintain direct employment relationships with the affected workers. The LAP also committed Colombia to seek the support of the International Labor Organization (ILO) for help in the implementation of the measures outlined in the action plan.^{XXV}

Due to its aggressive actions in prosecution of violations of Law 1429, Colombia’s Ministry of Labor reported a dramatic reduction in the number of CTAs (in all sectors – not only palm oil)^{XXVI} between 2011 and 2014. Many companies employing CTAs for outsourcing purposes agreed to “formalization agreements” under which workers formerly employed under CTAs would be hired as direct employees (frequently under threat of significant fines). Others were reported to have turned to Union Contracts or Simplified Stock Companies in place of CTAs. As reported by the US USDOL in 2017, “The use of CTAs has decreased

⁹ This issue was raised by the ILO in its 2011 Report of the Committee of Experts on the Application of Conventions and Recommendations (CEACR). (https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_151556.pdf, pg. 516-520)



significantly since the adoption and enforcement of Law 1429 of 2010 and its regulatory Decree 2025 of 2011. Instead, some employers appear to have turned to other subcontracting arrangements, such as union contracts (*contratos sindicales*) and simplified stock companies (SASs or *sociedades por acciones simplificadas*), both of which may similarly undermine workers' right to form unions and bargain collectively."^{xxvii}

Estimates of the level of formality in the palm oil sector varied greatly depending on the source and the definition of formality. For purposes of labor statistics, the ILO has included in its description of informality that, "Employees are considered to have informal jobs if their employment relationship is, in law or in practice, not subject to national labor legislation, income taxation, social protection or entitlement to certain employment benefits." The ILO further notes that on an operational basis, countries may use criteria including lack of coverage by social security system, lack of entitlement to paid annual or sick leave, and lack of written employment contract.^{xxviii} The absence of a consensus around how formality and related concepts are defined leads to a divergence in estimates, even when evaluating the same dataset.

Direct hiring has been found to be a key aspect of labor formalization and the protection of workers in the Colombian palm oil industry. Under a USDOL-funded initiative implemented by the ILO, direct hiring through formalization agreements led to improved working conditions, access to benefits, and the ability to join a trade union for workers. Employers, notably including Palmas del Cesar, have found that increased formalization in their workforces has benefitted them by helping to generate labor peace and prevent fines for noncompliance.^{xxix}¹⁰

The term "direct workers" in the context of labor discussions most often refers to workers who have been employed directly by prime company producers themselves as opposed to being outsourced through third-party contractors (e.g., through CTAs and other mechanisms) where abuses have historically been widespread. Workers in the latter category are typically referred to as "indirect" workers.

In 2016, Colombia's Department of National Statistics (DANE) and FEDEPALMA implemented the First Survey on Direct Employment in the Colombian Oil Palm Sector. In analyzing findings from this, FEDEPALMA defined "formal employment" as employment relationships including "indefinite-term contracts, fixed-term contracts, service agreements, subcontracting, apprentices and interns, contributing family workers with a fixed remuneration, temporary agency contracts, and other schemes [SAS, CTAs, and union contracts]."^{xxxi} Based on this definition, FEDEPALMA reported that by 2016, 82.4% of workers directly employed in the palm oil sector were employed through formal contracting relationships.^{xxxi} This survey also estimated that 67,672 workers were employed in the sector directly (i.e., working in the production of palm oil at plantations, farms, and mills rather than indirectly in supporting industries), representing

¹⁰ The specific experience of Palmas del Cesar's Labor Formalization Agreement is detailed below.

¹¹ Simplified Stock Companies (*Sociedades de Acciones Simplificadas*) or SASs were not disaggregated in the DANE/FEDEPALMA survey. Their use, as an alternative to both the Associated Work Cooperatives (CTAs) and Union Contracts appeared to have increased in recent years, and how many workers employed through SASs or CTAs were included in the DANE/FEDEPALMA survey remained unclear, though the estimate for all workers employed through 'Other schemes' stood at 3.8% in the survey.



0.3% of national employment.^{xxxiii2} (**Exhibit 7** presents the full breakdown of employment relationships by category as reported in the DANE/FEDEPALMA employment survey.)

In reviewing the findings of this survey, other observers have claimed that FEDEPALMA has overstated the level of formality in the palm oil sector by using a very broad definition of “formal employment” and including categories such as CTAs in this figure, as well as failing to properly account for seasonality in its survey methodology.^{xxxiii} Mondiaal FNV, part of the Dutch national trade union confederation, noted that by restricting the definition of formal employment so as to include only workers hired through indefinite-term contracts, fixed-term contracts, apprenticeships and internships, and temporary service companies, the estimated level of formality drops to 50.8%.^{13 14} Mondiaal FNV argues that under the most rigorous definition of formality in which only workers with indefinite-term contracts are counted, only 20.7% of workers within the survey would be considered formal and all other workers would be non-standard or informal.^{xxxiv} Other sources have also estimated rates of direct employment in the sector, understanding this as personnel directly hired by the palm oil company rather than being outsourced or subcontracted. A report by the Escuela Nacional Sindical (ENS) estimated that only 40% of employment in the palm oil sector was direct and 60% was indirect.^{15 xxxv} Another observer noted that in comparison to the number of workers estimated in the sector by the DANE/FEDEPALMA survey, data from the Federation of Colombian Insurers (Fasecolda) shows only 8,559 workers as being affiliated to an Occupational Risk Administrator (ARL), indicating low levels of formality.^{xxxvi}

These ranges of estimates, many based on the same dataset, indicated the complex discussions around the concept of formality and it was difficult to arrive at a single definitive figure. Beyond the challenge of determining which employment relationships within the DANE/FEDEPALMA survey should be categorized as “formal” or “informal,” questions remained about the specifics within categories. There was little clarity as to the degree to which workers hired through temporary service agencies or other contracting forms (e.g., SAS) received legally mandated benefits,¹⁶ and the extent to which plantation workers employed through temporary service agencies or other contracting forms enjoyed freedom of association or collective bargaining to which they were entitled under Colombian law and international conventions which Colombia had ratified.

The DANE/FEDEPALMA survey also revealed that 69% of workers on smallholder plantations (under 50 ha) were hired under either piecework or service contracts, or as

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- 12 It is important to note the distinction between how FEDEPALMA and DANE use the word “direct” here in contrast to the usage described in the preceding paragraph and in labor discussions more generally. Usage here refers to involvement in production, whereas usage elsewhere refers to labor relationships.
 - 13 In its report, Mondiaal FNV erroneously presents this estimate as 62.5% based on an error in calculation.
 - 14 The Mondiaal FNV analysis notes that the “definition of formality is a very narrow one and basically comes down to the worker being in possession of a contract, of any kind. It does not take into account the nature of the contracts nor the presence of other decent work indicators such as access to social security, compensation for work related diseases or accidents, etc.”
 - 15 The ENS analysis clarifies that in Colombia, indirect work is understood as employment which is carried out through Temporary Service Companies (ESTs), Associated Work Cooperatives (CTAs) or Associative Work Companies (EATs). That is, the work that is executed through forms of labor intermediation.
 - 16 Workers hired through temporary service agencies are assumed to be legally contracted by the temporary service agency, which is responsible for payment of wages and benefits.



informal day laborers, with another 13% counted as owners, partners or family without fixed salaries (**Exhibit 8** presents the full breakdown of contracting forms by size of oil palm plantation as reported in the DANE/FEDEPALMA employment survey¹⁷). These smallholder plantations supplied an estimated 30% to 40% of all FFB processed by Colombia's 68 extractor mills under a variety of producer-processor arrangements, as shown in **Exhibit 9**.

While piecework and service contracts were not illegal *per se*, they did require the contractor to ensure that minimum wages were paid and that legally mandated contributions to the various workers' compensation and retirement programs be made.¹⁸ These contracting mechanisms do not provide coverage for holidays or vacation, nor contributions toward severance benefits, they can often lead to exploitation, and are one of the most common causes of excessive overtime making them a possible risk indicator for forced labor and child labor (i.e., if quotas are set too high, workers may be forced to work overtime or make children assist them). Although reliable data were not available, it was widely regarded by industry sources that a large portion of those workers hired under piecework or service contracts, as well as unpaid family members, were not covered by any of the required social security programs. Informal day laborers were not afforded any wage protection or social benefit coverage, seldom had written contracts, and these engagements were not a legal form of contracting.¹⁹

The presence of high levels of informal labor contracting methods among smallholders was not unique to oil palm producers but was common throughout the rural sector. Factors contributing to rural labor informality were the generally low levels of agricultural productivity, which made payment of higher wages and benefits impractical; and the fact that much of Colombia's labor legislation was designed for factory workers in the cities and did not take into account the labor requirements specific to agricultural work.

On average, a 10-ha oil palm plantation managed by its owner required the services of two workers for one or two days every two weeks to harvest ripe FFB. Additional agricultural activities such as fertilization, weeding, and water management would be carried out by the producer-owner, or one additional worker on a full-time basis. Most workers employed under these conditions were hired as day laborers with no formal contract and no benefits such as accident insurance, retirement, vacations, or holidays. Even workers employed on a full-time basis were often not covered by the required social security and other related benefits. But legal forms of contracting were available for part-time and full-time workers on oil palm plantations, and recent

¹⁷ Although the DANE/FEDEPALMA survey provides generally useful information regarding the relative importance of the various contracting mechanisms, the precision of the survey's estimates may be questioned due to sample sizes, which led to coefficients of variation (CV) for many of the individual estimates which far exceed those generally accepted for reliable estimates. Detailed survey results, including coefficients of variation and confidence intervals may be found on the DANE/FEDEPALMA survey's website (<https://www.dane.gov.co/index.php/estadisticas-por-tema/agropecuario/encuesta-empleo-directo-sector-palmero>)

¹⁸ Some agricultural laborers working less than full-time were covered by Colombia's subsidized medical insurance and neither they nor their employers were required to contribute towards its cost. Full-time employees and their family members were covered by the contributive medical insurance program, paid for by employer and employee contributions. Family members and others working less than full-time also had access to additional non-contributive benefits including "periodic economic benefits" and "microinsurance."

¹⁹ A report published by Colombia's central bank found that 53.5% of all workers in rural areas were self-employed whereas only 21% were employed by either governmental or private entities, and that only 15% of workers in rural areas contributed to retirement programs, which constitute a measure of labor formalization. (Otero-Cortés, Andrea. *El mercado laboral rural en Colombia, 2010-2019*. Banco de la República. Bogotá, Colombia. 2019.)



changes in the law permitted social security coverage for 7, 14, or 21 days per month as well as full-time coverage, thus permitting small producers to provide insurance for workers employed less than full-time. Such coverage was costly—estimated at equal to 40% of a worker’s wages—and together with the relatively low levels of productivity on associated producers’ farms meant that most producers were reluctant to incur the costs of labor compliance – in many cases even for themselves or their family members who worked with or without pay on their small family farms (see **Appendix B** for smallholder oil palm productivity and financial returns).

Child labor

A second major area of concern—especially for the international market—was the use of child labor in palm oil production. Widespread use of child labor in various Southeast Asian countries had been reported and had led to increasing demands by both the private sector and governments of importing countries to take notice and demand that it be ended. In the US, the Bureau of ILAB of the USDOL maintains a “List of Goods Produced by Child Labor or Forced Labor” which is updated every two years. “ILAB maintains the List primarily to raise public awareness about forced labor and child labor around the world and to promote efforts to combat them; it is not intended to be punitive, but rather to serve as a catalyst for more strategic and focused coordination and collaboration among those working to address these problems.”^{xxxvii}

As reported in the 2018 List of Goods Produced by Child Labor or Forced Labor, palm oil was produced in Indonesia and Sierra Leone using child labor, and in Malaysia using both child labor and forced labor. No other country was identified as using either in the production of palm oil.^{xxxviii} The RSPO had taken an especially firm position regarding child labor, reflecting the demands of its downstream processors, food manufacturers and retailers, as well as the numerous nongovernmental organizations which were members. The 2018 Principles and Criteria included Criteria 6.4: “Children are not employed or exploited.”^{xxxix} (Appendix A includes four indicators with which RSPO-certified plantation had to comply.)

In Colombia, especially among small family-farmed oil palm plantations, children and adolescents were generally assumed to participate to some extent in farm-related activities, a common practice among farming families throughout the world. It was important, however, to distinguish between those activities permitted under Colombian law, which included non-hazardous work for adolescents that did not interfere with schooling; and those prohibited, which included any farm-related activities for children younger than 15, or hazardous work for adolescents.

As reported by Colombia’s National Statistics Directorate (DANE), 2.8% of children between 5 and 14, and 16.7% of adolescents between 15 and 17 were employed, at least on a part-time basis, during the fourth quarter of 2018. Of all children and adolescents employed, 42.6% were employed in the primary sector (agriculture, livestock, hunting, forestry, and fishing), although no breakdown by sub-sector was available.^{xl}



In Colombia's oil palm sector, while there was no firm evidence of child or adolescent labor nor had any oil palm plantations been sanctioned for the use of child labor, industry observers were aware of the risk of child labor, especially on small, family-farmed plantations.²⁰

Given the difficulty of policing the estimated 4,300 smallholder oil palm plantations, the establishment of social compliance systems that respect international labor standards as a fundamental operating principle by palm oil value chain participants beginning with the extractor mills and reaching back to independent providers in their supply base were generally thought by labor observers to be an important step towards reducing the use of child labor in the palm oil sector.

Forced labor

Forced labor was another topic of concern to the international community based on conditions in other parts of the world. The ILO defined forced labor as "work or service exacted from a person under threat or penalty, which includes penal sanctions and the loss of rights and privileges, where the person has not offered him/herself voluntarily."^{XLI} The RSPO defined (and prohibited for purposes of sustainable palm oil certification) forced labor in the context of the palm oil industry to include the following practices, which encompass (a) retention of identity documents or passports, (b) payment of recruitment fees, (c) contract substitution, (d) involuntary overtime, (e) lack of freedom of workers to resign, (f) penalty for termination of employment, (g) debt bondage, and (h) withholding of wages^{XLII}. (Please refer to Appendix A for the Criteria and Indicators for RSPO Principal 6: Workers' Rights and Conditions).

While there was no hard evidence of forced labor in the oil palm sector, the risk of forced labor, including indicators of "fraudulent recruitment; induced indebtedness; unsafe and unhealthy working and living conditions; discrimination; substandard or unpaid wages; and forced overtime"^{XLIII} had been noted by industry observers, including the USDOL, in South American agricultural operations. As in the case of child labor, social compliance systems established initially at the extractor level would help to reduce/eliminate instances of forced labor in the sector.

²⁰ The USDOL's ILAB, observed in its Funding Opportunity Announcement for Reducing Child Labor and Forced Labor in Palm Oil Supply Chains, that "Available information suggests that South America's palm oil sectors are at risk for unacceptable conditions of work, child labor, and forced labor. There have been reports of underage and hazardous child labor; fraudulent recruitment; induced indebtedness; unsafe and unhealthy working and living conditions; discrimination; substandard or unpaid wages; and forced overtime." (USDOL/ILAB Funding Opportunity FOA-ILAB-18-09.)





Palmas del Cesar and Labor Relations



Palmas del Cesar produced and sold CPO to the domestic market and some other countries in Latin America and Europe for further manufacture and use in the food and biodiesel industries. In 2018, it received 75 thousand tons of FFB from the company's plantations in the Cesar region of eastern Colombia, and 131 thousand tons from suppliers in surrounding plantations, from which it extracted 53,815 tons of CPO (see **Exhibit 10** for area cultivated, production, and average yields per ha).^{XLIV} Its sales of palm oil in that year amounted to USD28.5 million (133,334 million Colombian pesos^{XLV}). Palmas del Cesar projected that it would export 28% of its 2019 production of 57,672 tons of CPO^{XLVI}, principally to the European Union, Chile, and Mexico for use in the biodiesel and food industries. Major domestic buyers included Team Foods, a wholesaler with global operations, and a national petroleum company (for biodiesel). **Exhibit 11** presents selected financial data and **Exhibit 12** shows projected sales, by client, for 2019.

Company Origins

The company that was to become Palmas del Cesar dates back to the late 1950s when a local cattleman, Ramón Pinto, visited an agricultural fair and became enthused by an exotic African palm that had the potential for meeting the growing demand for vegetable oil. With financing from the Colombian government, which sought to promote oil palm, he established a 500-ha palm plantation on land that had previously been cleared for grazing cattle, and on March 15, 1960, he created the company then known as Palmas Oleaginosas Hipinto S.A. As the trees on the plantation began to bear fruit, he purchased a small extractor mill in Bogotá

for the production and sale of palm oil. In the mid-1970s, the company passed on to the next generation of the Pinto family. New company management expanded operations, acquiring a modern extractor mill that could process 15 tons of FFB per hour.

Labor Unrest and Change of Ownership

In the late 1970s, workers' grievances with abusive third-party subcontracting common in banana, sugar, and palm plantations, led to labor unrest and growing demands for fair wages, compliance with the benefits entitled them under the labor laws, and the right to organize. Workers in Hipinto, most of whom were subcontracted, formed a "base group" that affiliated with a newly constituted industry union, Sintraproaceites, that included other oil palm companies in the Cesar region (Indupalma, Palmeras de la Costa), and which grew to three thousand members.^{XLVII} Among the chief complaints of this incipient labor organization in Hipinto was that the third-party contractors were always late in paying wages (though the company paid the contractors punctually).

At this same time, the first signs of guerrilla activity by the M-19²¹ had begun to appear in the Cesar region, ideal for guerrilla operations because of its rich in agriculture surrounding mountains, and proximity to the Venezuelan border, affording easy access to food and refuge. Soon the armed conflict extended in the Cesar region to include guerrilla organizations, such as the ELN, FARC, and EPN, known to use kidnapping and assassination. Soon to follow were the paramilitary forces for self-defense, and open warfare erupted between the guerrillas and the paramilitaries, with the civilian population, including labor organizers, caught in the middle.^{XLVIII} The labor union in Hipinto sought to disassociate itself from the guerrillas and to maintain its focus on legitimate labor issues. Nevertheless, rumors of the labor unions' sympathies with the guerrilla were spread by some landowners, and may have contributed to the formation of paramilitary groups which cost the lives of many union leaders and members in the Cesar region.^{XLIX} The company was never directly attacked by guerrilla groups because it offered a source of employment to any workers who may also have been collaborating with the insurgents, but a company administrator was threatened with physical harm unless he falsified the timesheets to cover up the activities of employees who were leading a double life as plantation workers and guerrillas.^L

Under these circumstances, the Pinto family put the company up for sale. These were boom years for the palm oil industry in world markets, and the company was soon purchased by the Osorno family, headed by Hernán Osorno, a well-known businessman in the vegetable oil industry. The strike came to an end in April 1985, when the sale had been concluded and the new owners agreed to the direct hiring of most workers. The new owners changed the name of the company to Palmas del Cesar, S.A.



²¹ *Movimiento 19 de abril*, a movement that sprung up in 1974, initially to protest the 1970 Colombian presidential election results.

A Period of Calm

The 1985 strike was a baptism of fire for Fabio González, who had begun working at Palmas del Cesar as an agronomist just two years earlier, following his graduation as an agricultural engineer at Universidad Nacional de Colombia in Bogotá. The negative consequences, for both the workers and the company, of this first strike in the company's history, and the sight of fruit bunches rotting on the palm trees, reinforced his belief in labor peace, and strengthened his conviction that peace could only be achieved by listening to the workers and promoting mutual understanding between workers and management.

Recognizing Fabio's leadership potential, the new owners sponsored his continued studies in finance and general management courses at a local university. He also pursued his interest in philosophy, to gain a broader vision. They chose him to manage an 800-ha farm at another of the family's properties, and in August 1996, named him general manager of Palmas del Cesar. In this position, endorsed by the board of directors, he sought to infuse the company with core values: Palmas del Cesar, he believed, should have a culture that is friendly, viable, and sustainable. His vision was that the company be recognized as a responsible industry leader, and to this end, he instituted policies of worker-management collaboration and a "culture of equality."

In succeeding years, the company once again enjoyed labor peace, and beginning in 2000, the entire palm sector including Palmas del Cesar experienced rapid growth. With the increasing number of field workers required, there was concern among the palm oil companies that if all workers were given indefinite (permanent) contracts, productivity would decline to unsustainable levels, given the seasonal nature of the business.²² In 2006 Palmas del Cesar, like many agribusiness companies, turned into an option permitted under the Colombian labor code known as "associated work cooperatives" that provided personnel administrative services including the contracting of workers without direct contracts with the company (estimated at 30% of the work force).

Labor Tensions Erupt Again

In accordance with the LAP, the Colombian Ministry of Labor committed to prioritize labor inspections in the palm oil, sugar, mines, ports, and flower sectors for possible violations of Article 63 of Law 1429 of 2010. Through its inspections, the Ministry found that many companies in these sectors continued to use CTAs in violation of the law. The oil palm producers objected, reminding the ministry that the use of the associated work cooperatives for labor contracting had, prior to the passage of Law 1429, been encouraged by the previous administration.

²² Although palm fruit was harvested year-round, volumes of FFB harvested between February and May tended to be 25% to 30% higher on average than those harvested during the rest of the year.



The debate over the associated work cooperatives coincided with the four-year collective bargaining negotiations in Palmas del Cesar in 2011. Contained in the union proposal was a clause that read, “all workers in the company, hired under distinct forms of contracting, will have indefinite (permanent) contracts.” This clause was rejected by management, provoking a strong reaction among the workers, whose chief concern was labor stability. The union called a strike, demanding indefinite direct contracts for everyone, including those working under CTAs. The strike continued for sixty days, until both sides were worn down by mounting pressure: the workers would soon enter their third month without pay, and the company was being threatened with sanctions by the government and unharvested rotting palm fruit if the strike continued. A settlement was finally reached when the company agreed to maintain a 60/40 proportion between the number of workers with permanent and fixed-term (temporary) contracts, respectively; and to work together with the company union to find a mutually agreeable contracting mechanism for those without direct contracts with Palmas del Cesar.

Two years later, while Palmas del Cesar and its associated CTAs were under investigation by the Ministry of Labor for violations of law 1429, the company entered into a “union contract” (*contrato sindical*) with the labor association “INDUAGRO AT” and those employees formerly employed by the CTAs became members of INDUAGRO.²³ The term “union contract” was somewhat misleading because it bore no relationship to the company union. Defined as a contract between “one or more unions [and] one or more employers or employers’ associations for the provision of services or carrying out of a task through its affiliates,”²⁴ this mechanism was permitted under the Labor Code and thought by Palmas del Cesar to avoid the problems associated with the CTAs. However, union leaders suspected that the union contract, like the CTA, could be misused, and they insisted on formalizing direct labor contracts with Palmas del Cesar for all employees, eliminating all intermediaries and obtaining labor stability for those with fixed-term contracts.²⁵

The Ministry of Labor’s accusation against Palmas del Cesar and its nine associated CTAs resulted in one of the largest fines imposed to date for violation of law 1429. However, the fine was appealed by Palmas del Cesar and eventually suspended following Palmas del Cesar’s agreement in 2015 to directly hire the 225 workers previously contracted via the union contract (as described below).

As the 2015 collective bargaining date approached, discontent among labor leaders and both permanent and temporary workers increased. The most visible issue for field workers was the company’s incentive system, which equated productivity with heavier workloads, but underlying this was the issue of labor formalization for those employees without direct contracts. When the company continued to maintain both the current incentive system and the “union contract” hiring mechanism, the labor union once again called a strike. The striking workers occupied the installations and shouted insults at management but did not damage property and respected technicians who entered the plant to perform critical

²³ The union leaders’ suspicions were justified. In multiple cases, the International Labour Organization (ILO) concluded that the use of union contracts in Colombia had undermined fundamental rights to freedom of association and collective bargaining enshrined in Conventions 87 and 98. https://www.ilo.org/dyn/normlex/es/f?p=NORMLEXPUB:50002:0::NO::P50002_COMPLAINT_TEXT_ID:3964337.





Figure 2. Palm plantation of the company Palmas del Cesar. The image shows a sector of the plantation in which the palms are between 5 and 6 years old. Hence the stems are relatively thin.

maintenance functions. The strike would last 90 days, during which the workers became angrier and more desperate as the weeks went by and their debts mounted.

One turning point, recalled Fabio, was when management and labor were discussing their respective definitions of productivity. The management's position regarding labor productivity was that in order to maintain production levels after a wage increase, the target volume of FFB harvested would have to be increased to avoid the tendency of workers to cut fewer FFB for the same amount of money as before the wage increase. Workers countered that productivity did not mean simply working harder, but looking for ways to be more efficient, through innovation. By the end of negotiations, the management conceded the laborers' position, recognizing that increased productivity required the development and implementation of harvesting technologies which would increase labor productivity, rather than just asking workers to do more work in order to "earn" their wage increase. "We were wrong," said Fabio, "and we admitted it." Andrea Dagovett, Director of Human Resources and Social Responsibility recalled that "Productivity was the issue being discussed. But in all the negotiations, the real issue [labor formalization] was not mentioned until the very end."



As the strike progressed, the Ministry of Labor again became involved and argued that Palmas del Cesar's use of the union contract continued to be a violation of law 1429, and again threatened to impose a heavy fine if a labor formalization agreement was not reached. Intense negotiations involving Palmas del Cesar, the union and the Ministry continued until, at a meeting in Bogotá on May 15, 2015, Fabio González announced his decision to provide direct contracts for all employees, including those who had currently been hired under the "union contract," while maintaining the 60/40 balance between indefinite and fixed-term contracts that was essential for the company's survival. His commitment was finally formalized in a "Labor Formalization agreement between the Palmas del Cesar company and the Territory of Cesar Directorate of the Ministry of Labor," dated December 11, 2015.^{LIII}

Fabio stated that he made this decision not under union threats, but because of his conviction that labor peace was the most important consideration for the company, the employees, and the community. To Fabio, labor formalization was much more than a mere means of contracting:

Formalization is clearly an improvement. It is an overall improvement, that brings new challenges, of course, which need to be managed, but the first great outcome is social peace. It's being able to trust one another again. It's being able to respect one another again. It's being able to feel that we're in this together to build a future together. And that's a great improvement. Labor formalization advances step by step and we need to re-learn, how to learn from one another. But hand in hand through labor formalization there are great opportunities. And I'll say it again, if labor formalization allows us to feel that we're in this together, surely this will enable us to grow and to put behind us the difficulties of the past, which might have been painful, and turn the page to see the future with a lot more optimism.^{LIV}

The 2015 strike ended with the formalization of employees who were still working with third-party union contracts. Of the 240, 150 were given indefinite contracts and 90 received fixed term contracts. Workers who became direct hires as a result of this agreement recognized this achievement and the benefits it provided to them. José Guarín, a tree cutter and president of SINTRATERCERIZADOS²⁴, stated the following:

For me, direct hiring is a success. Since 2006, when I started to work, I had been hired through a cooperative and other forms of subcontracting that never gave me the opportunity to join a union, I was never able to discuss my job benefits. I couldn't talk about job security. I had no means of organizing in a way that would allow me to act in defence of my rights. Today I can say that I have joined a union and that, through the union, I can defend the rights of each and every worker.^{LIV}

²⁴ SINTRATERCERIZADOS is the union representing indirect workers.



Enrique Borda, Colombia's Vice-Minister of Labor, who participated in the negotiations commented the following:

We would like to replicate, this experience of Palmas del Cesar, and we are replicating it in that same palm oil sector, everywhere in Colombia where oil palm trees are grown and also in other sectors of the economy, like the ports and hydrocarbon sectors. So, this experience of labor formalization could be a good example of what we're aiming for in terms of social dialogue...^{LVI}

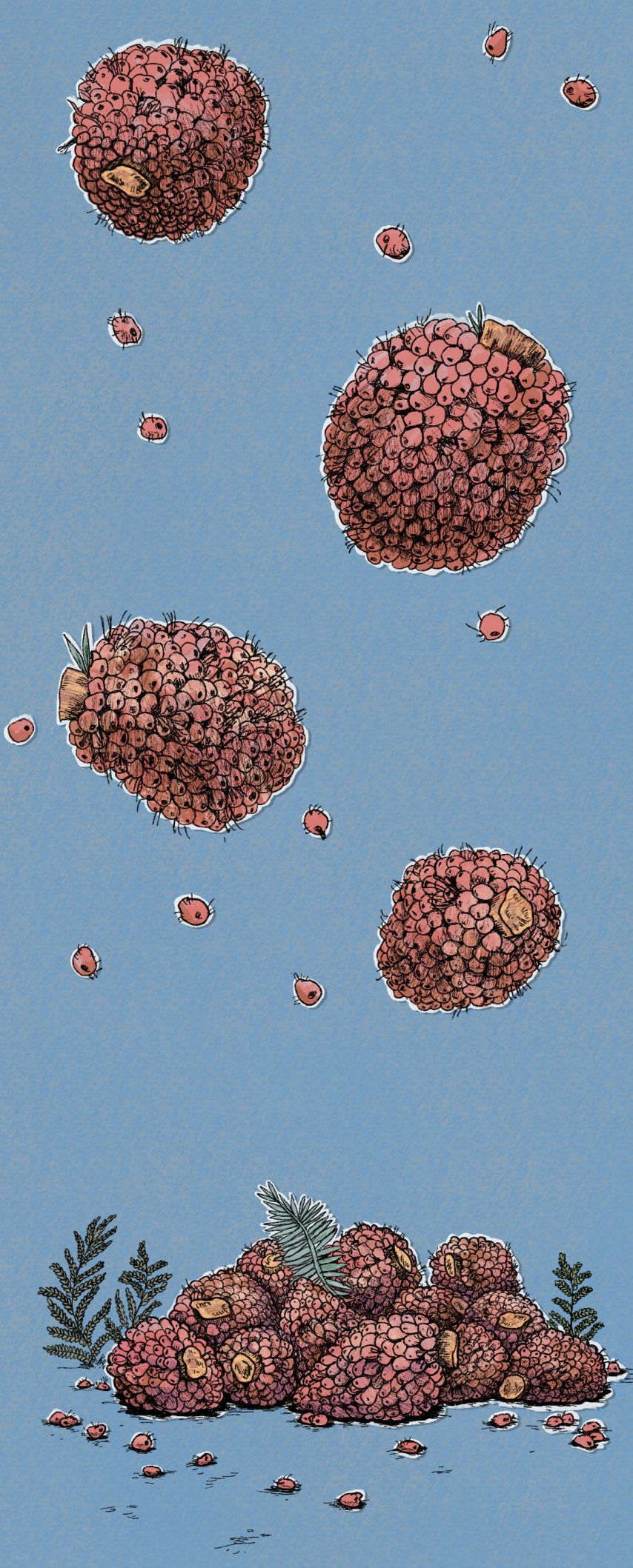
Rebuilding trust

Following the settlement, employees returned to work deeply resentful, indebted to the banks, and distrustful of the management. The bitterness and distrust remained through most of 2016, and it was not until December of that year that there was a change of attitude. This change was the result of a process that had begun sixteen months earlier, in August 2015, when Fabio González announced that "...the next negotiation process cannot be like this one. We have to learn the lessons from this experience and begin a process to regain the workers' confidence." Just one month later, management invited workers to join in rewriting the internal work procedures, which included clauses in such potentially conflictive areas as sanctions and causes for involuntary separation. "I thought they [the workers] were going to put up thousands of obstacles," recounted Carlos Fernández, Director of the company's Industrial Area, which included the extractor mill. "But no, they worked really well with us, and this was an important step..."

In September 2015, management and union leaders agreed to establish an "improvement and innovation committee," made up of six employees from different areas of the company, including three from among the union leaders. Mabel Vesga, plant technologist designated by management to coordinate the committee, explained that its purpose was "to open the doors to creativity and innovation, find the answers to the company's many necessities, and achieve greater productivity."

"There were many open wounds," recalled Jorge Mantilla, a member of the committee from the industrial area. "So, we agreed that the first thing we had to do was remove our T-shirts with their labels... to treat ourselves as equals, and work as a team." Working hand in hand, they developed a logo with intertwined palms, and the committee became known as "Palmas en Acción." Its common objective was to ensure that the company be sustainable over the long term, through the continuous improvement of productivity and through innovation. The Palmas en Acción team could soon point to some early victories that were a direct result of their promoting innovation throughout the company. Alexander Valenzuela, a union leader, cited the example of a simple change in the way that work was organized had a visible impact on the volume of FFB that could be loaded onto each wagon to be taken to the extractor mill.





Another innovation was the use of a digital fingerprint reader that greatly simplified such administrative procedures as keeping track of working hours and vacation time. One member of the team suggested that this same technology replace the use of paper vouchers for employees' meals in the company cafeteria, which were frequently lost or left in pants that went through the washer. This innovation saved time and eliminated errors. "Rather than resisting these innovations, as we had originally expected, the workers welcomed them," added Mabel. "We've since gotten them involved, and they have come up with many ideas." Rafael Velasco, President of the labor union and a member of Palmas en Acción, observed that "there has also been innovation in our relations with one another." Palmas en Acción made note of the lessons learned from past experience. Referring to the negotiation process of 2015, Jorge Mantilla commented: "We can achieve much more, for both the company and the workers... listening to each other's arguments and seeking solutions, rather than imposing..."^{LVII}

The most recent labor negotiation, in 2019, was in marked contrast to the conflict that had occurred four years earlier. Having reflected on the past, both parties to the negotiation recognized "...that it is better to understand one another, and to build rather than confront." As the talks commenced, the negotiators decided to give the process a name: "the negotiation of building," referring to both the future growth of the company and to the relationships among all stakeholders. With the issues of contracting and productivity having been satisfactorily resolved in 2015, there were no further areas of conflict.

Compliance with the Labor Formalization Agreement

The formalization agreements signed with Colombian companies in several economic sectors generated several lessons learned. The closing of this agreement between Palmas del Cesar and the Ministry of Labor in December 2015 presents evidence that must be analyzed to reach conclusions related to the viability and effectiveness of the formalization agreements to comply not only with the Colombian Labor Law but also with the international conventions ratified by Colombia.

As previously discussed, in May 2015, the Ministry of Labor, Palmas del Cesar, and the labor union announced the company's decision to provide direct contracts for all employees, including those under "union contracts," a decision that was reinforced through the formalization agreement in December 2015. Following this, Palmas del Cesar, under the supervision of the Ministry of Labor and in collaboration with the labor union, put in place several administrative and financial adjustments to comply with the agreement and its primary goal of formalization of employees hired under third-party union contracts within five years of signing the agreement.

The closing act of the agreement was signed between the Ministry of Labor, a representative of Palmas del Cesar and the President of the Minas Branch of Union Sintrainagro on February 4, 2021. This followed an online session in which the Ministry of Labor reviewed documents related to the formalized workers, with particular emphasis on the contracts signed by the workers, the affiliation records of those workers to social security and evidence of social security payments.

According to the Ministry of Labor's document verification and analysis, a total of 225 workers were formalized as follows: 135 workers with indefinite contracts; 30 workers with one-year, fixed-term contracts; 30 workers with nine-month, fixed-term contracts; and 30 workers with six-month, fixed-term contracts. The official conclusion regarding Palmas del Cesar's agreement was that upon verifying "the documents and the conditions of the agreement during the five (5) years of its duration, the Ministry of Labor confirmed the employer's [Palmas del Cesar] compliance with this Labor Formalization Agreement."

Apart from the Ministry's validation of the agreement, it is important to highlight the perceptions and assessment of workers regarding the implementation and closing of this agreement. In the closing act of the agreement, Mr. Rafael Velasco, President of the Minas Branch of the Union Sintrainagro, made two key statements. First, that "once the agreement between Palmas del Cesar and the Ministry of Labor had been concluded, the labor union, as a guarantor of the agreement, stated that the Company fulfilled its obligations and complied with the agreement." Second, the union requested an extra-agreement extending to 2023 and the participation of the Ministry of Labor to guarantee that worker rights would be respected in the future.

The representative of Palmas del Cesar, Mr. Gustavo Acosta, stated that "with this closing act the Company finishes a process but starts a new phase related to the extra-agreement with the labor union Sintrainagro to guarantee the continuation of the formalized workers until 2023." Palmas del Cesar also requested the participation of the Ministry of Labor to verify this "new phase" until 2023 (**Appendix C** contains the verification act of the Labor Formalization Agreement).



Palmas del Cesar and the Associate Palm Producers



Palmas del Cesar began encouraging small farmers in surrounding areas to cultivate oil palm soon after the Osorno family assumed ownership. “Those small farmers had nothing,” recalled Edgar Cepeda, Chief of the Suppliers’ Service Unit. “On a ten-ha plot of land, what could they have? Four or five cows, that they milked every day, and maybe got two or three liters of milk per cow, so at 400 pesos per liter, how could they feed their families? When they started to plant palm trees, their lives changed.”^{LVIII} By 2015, the company maintained long-term collaborative agreements with over 280 independent oil palm producers – a figure that would increase to 317 by 2019. Under these agreements, the company provided various forms of technical assistance and support to the producers who agreed to deliver their palm fruit exclusively to Palmas del Cesar’s extractor mill. Consistent with Fabio’s commitment to the oil palm sector’s role as a driver of social and economic development, he and his team also sought to develop a “palm culture” and a shared commitment to the future of the area under its influence.

During the periods that the workers were on strike, these associate producers (as they were known) delivered their fruit to other extractor mills in the region with whom Palmas del Cesar had previously authorized this type of operation. Their relationship with the company remained unbroken, because their FFB entered the neighboring plants as though it were being delivered to Palmas del Cesar, which paid them through a fiduciary mechanism which had been established by the company for such contingencies. “Our suppliers never felt the effect of the strikes,” explained Fabio González. “The company maintained the same payment terms and even reimbursed them for the difference in freight costs between the other extraction mills and ours.” Once the strikes ended, the neighboring mills proceeded to pay Palmas del Cesar for the fruit received.



The USP and its Services

Fabio Gonzalez, Palmas del Cesar's General Manager, explained the rationale for working with third party suppliers in the following terms:

The oil palm is a perennial crop that generates poles of development that benefit the populations in their areas of influence. Palmas del Cesar has promoted palm planting with third parties and its commitment is not only to ensure a dependable supply of fruit, but also to build a regional palm fabric upon which a powerful and sustainable palm culture is built. Our challenge is to ensure that those palm growers, the majority being small farmers, do well so that they are our best allies in generating more progress and regional development.

For this reason, we provide technical assistance, technology transfer, and support in their managerial tasks, encouraging them to engage in this palm culture with high standards in all its components: economic, labor, environmental, technological and social.^{LIX}

Palmas del Cesar offered a range of services to the associate producers through the Suppliers Service Unit (USP), created in 2008, following a period of rapid expansion in Palmas del Cesar as the company acquired adjoining land and invited neighboring farmers to sign collaboration contracts. The USP promoted the palm culture (*cultura palmera*) among producers, especially small farmers (see composition of suppliers, **Exhibit 13**). The USP began operations with Edgar Cepeda and one intern, and by 2019, it had grown to approximately 20, to cover the rapidly expanding area cultivated by the associate producers: from seven thousand ha in 2016 to over nine thousand in 2019. The USP was organized in technical, administrative, and commercial areas. The technical area was composed of five agricultural engineers, each assigned to one of the five zones, and in each zone, there was a team composed of the agricultural engineer, an agronomist, and an auxiliary in plant disease²⁵. The annual budget of the USP was estimated at USD500,000.

²⁵ Agricultural engineers completed a five-year university degree; agronomists or *tecnólogos agropecuarios* completed a three-year degree at an agricultural school; and auxiliaries in plant disease (*auxiliares sanitarios*) were

The collaborative agreements contained a set of commitments on the part of the company and on the part of the associate producers to ensure a relationship of trust and mutual benefit. The USP’s technical teams visited producers each month to provide technical assistance and facilitate the purchase of farm inputs and tools. They also provided continuous training and technology transfer, because as Edgar Cepeda explained, “it is the only way to create a palm culture.” The commercial team provided support to ensure compliance with details such as clarity in the invoices and the proper payment of workers. Other USP services included: assistance in crop diversification during the three-year period in which the palm trees did not yet bear fruit; and in phytosanitary management in cooperation with the three other palm oil companies in the southern Cesar region, since without close cooperation, a disease in one plantation could easily spread to another.

Implementing Certification among the Associates

Palmas del Cesar had received RSPO P&C Certification for its oil palm plantations, and Supply Chain Certification for its extractor mills in March 2017, but without P&C certification for the associate producers, the company could not sell 100% certified CPO. This had led Fabio and his team to launch the RSPO Project in 2016, whose goal was to secure RSPO certification for the associate producers, but of equal importance, to help them to implement improved labor practices, increase yields, control costs, plan future activities, and thus improve their household incomes. Project activities began with the selection of one hundred interested palm growers with the goal of certifying forty by 2020, another thirty in 2021, and the last thirty by 2023.

Initial efforts by USP technical advisors charged with implementing the project to force compliance with the RSPO norms were met with resistance by the producers. “One of the lessons we learned is that you have to put yourself in the shoes of the farmer,” reflected Edgar Cepeda. “They had come from a cattle culture, a culture of rice and corn, where they knew nothing about labor formalization, nothing about social security, nothing about paying workers a fair salary ...” Faced with this resistance, the USP team invited some of the producers to Peru, where they observed how RSPO certification was being implemented among small oil palm farmers in that country. This experience helped Palmas del Cesar’s associate producers to understand that it was not an obligation being forced upon them, but a necessity for the future sustainability of their businesses. They then returned to Colombia to replicate what they had seen “with a few improvements,” Edgar noted.

Management created a “RSPO unit” to focus exclusively on certification in 2018. It was led by Viviana Dueñas, an industrial microbiologist with ten years’ experience, and included three other members: two occupational health technicians, Paola Alarcón and Karen Quintero; and an oil palm technician, Gloria Duarte, all with at least eight years’ experience. With Viviana’s leadership, each of the three RSPO team members was responsible for visiting between 30 and 40 participating producers at least once a month (**Exhibit 14** provides a

professionals who had taken courses in plant diseases.



general description of the team members' field and home office activities). To show early results, the team chose to focus on RSPO Principle 3: "Optimize productivity, efficiency, positive impacts and resilience," with the support of USP technicians. They were guided by a "Manual of standard operating procedures for the implementation of improved sustainability practices" developed by FEDEPALMA, the Colombian oil palm producers' association, and its affiliate CENIPALMA, engaged in oil palm research. The manual covered all aspects from land preparation through harvesting and transportation of FFB to the extractor mill and was accompanied by a Field Register in which the producer, with the assistance of a member of the RSPO unit, recorded and periodically updated all aspects of his/her annual business plan. Most of the technical support for productive activities was supplied by the USP technicians.

After working with the participating producers in meeting the criteria for Principle 3, the RSPO unit moved on to address environmental sustainability and fair labor practice issues, assisting the producers in collecting the many documents required for P&C certification (see **Appendix D** for a full list of the required documents). The final set of activities which the RSPO unit was preparing to undertake with the producers involved the formalization of labor contracts and compliance with applicable labor legislation, including participation in Colombia's social security system. Compliance with Colombian labor legislation and RSPO certification criteria implied significantly increased labor costs and paperwork that most of Palmas del Cesar's associate producers were ill-equipped to handle, beginning with the eighteen steps required to formalize a labor contract, as presented in the FEDEPALMA "Manual of standard operating procedures" (see **Appendix E**).

Looking to the future



Fabio understood that improved labor practices among his 300+ associate producers were necessary not only to enable Palmas del Cesar to export RSPO-certified palm oil, but also, and more importantly, as part of an integrated approach to improve rural incomes and the sustainability of smallholder oil palm production in Palmas del Cesar's area of influence. Given the history of conflict in many parts of rural Colombia, lasting peace and social stability could only be obtained through improved and stable incomes for both smallholder producers and rural labor. In the oil palm sector, this meant significantly improved productivity and implementation of improved labor practices including full compliance with existing labor legislation.

Fabio also understood that Palmas del Cesar would need to deepen and broaden its program to help all its associate producers to improve their productivity and labor practices. And he also believed that Palmas del Cesar's approach could serve as a model for other palm oil companies to work with their own smallholder providers.

But he questioned the current focus on RSPO certification, with its emphasis on extensive, costly, and time-consuming research and reporting of environmental compliance which was less an issue in Latin America—where palm had generally been planted on lands previously used for grazing cattle—than in the extensive palm plantations of Southeast Asia, where RSPO had been created, largely in response to the clear-cutting of jungles with disastrous environmental consequences. The initial experience of Palmas del Cesar's RSPO unit made it clear that the company, not the ISH, would have to shoulder the complex administrative burden of obtaining and maintaining RSPO certification for its suppliers. (Please see the "Executed by RSPO Project for producer groups" column in Appendix D.) And even under RSPO's recently proposed "ISH Standard," Palmas del Cesar would still have to assume significant responsibilities for coordination, management, and record-keeping on behalf of the independent small producers.

Might there be another approach? Could Palmas del Cesar meet both its own needs and those of its associate producers without the burdensome research and reporting required for RSPO certification in those areas where it was less relevant to the realities of the South American smallholder? Would another approach help Palmas del Cesar to meet future global market expectations for both labor and environmental sustainability?

Fabio strongly believed that the future of his company and of those mostly small producers who currently provided over two thirds of the fruit used to produce Palmas del Cesar’s palm oil were inseparable. Whichever path forward he would finally choose would have to contribute to the sustainable well-being of all. Fabio had often said that he believed that “a better world is the best world for business.”

Palmas del Cesar had recently been invited to participate in a project funded by the USDOL to design and implement socially compliant management practices (i.e., management practices that promote acceptable working conditions and that reduce/eliminate child labor and forced labor) in the Colombian oil palm supply chain. While initially focused on management practices in integrated palm oil producers and extractors such as Palmas del Cesar, the intent of this project is to extend the practice of socially compliant management practices throughout the palm oil value chain including independent smallholders who provided so much of the fruit to the extractor mills.

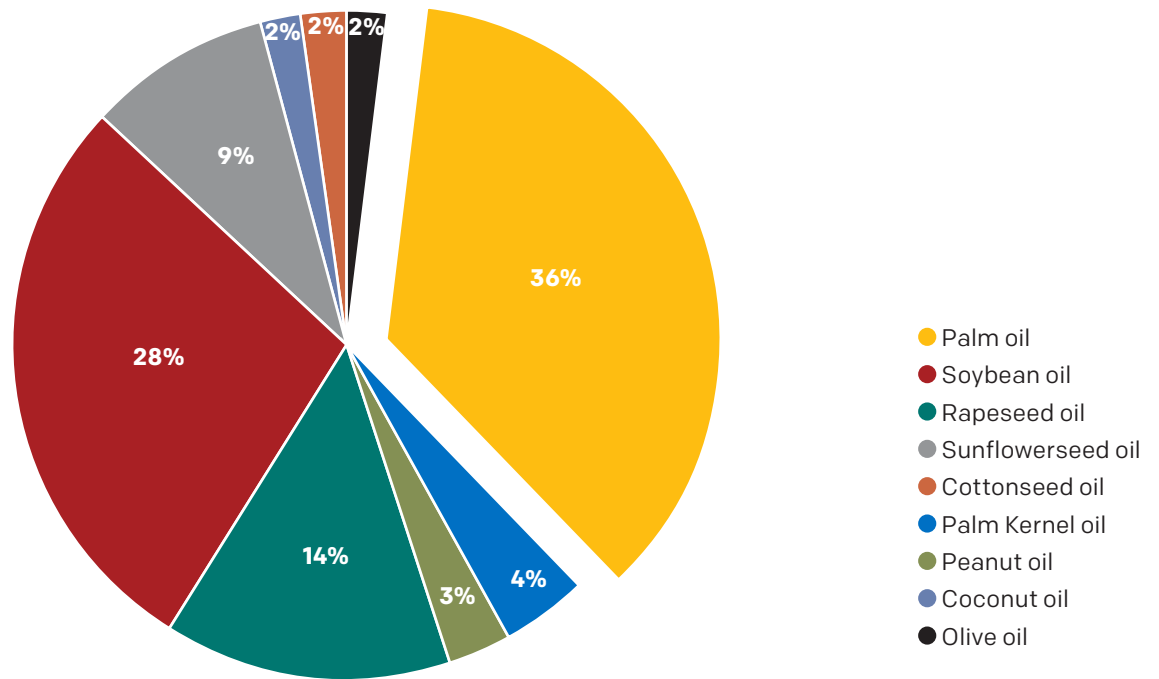
Given these many developments in the company’s environment, Fabio felt that it was time to review Palmas del Cesar’s objectives in working with its smallholder providers, and to explore a range of initiatives that the company might undertake to meet those objectives.



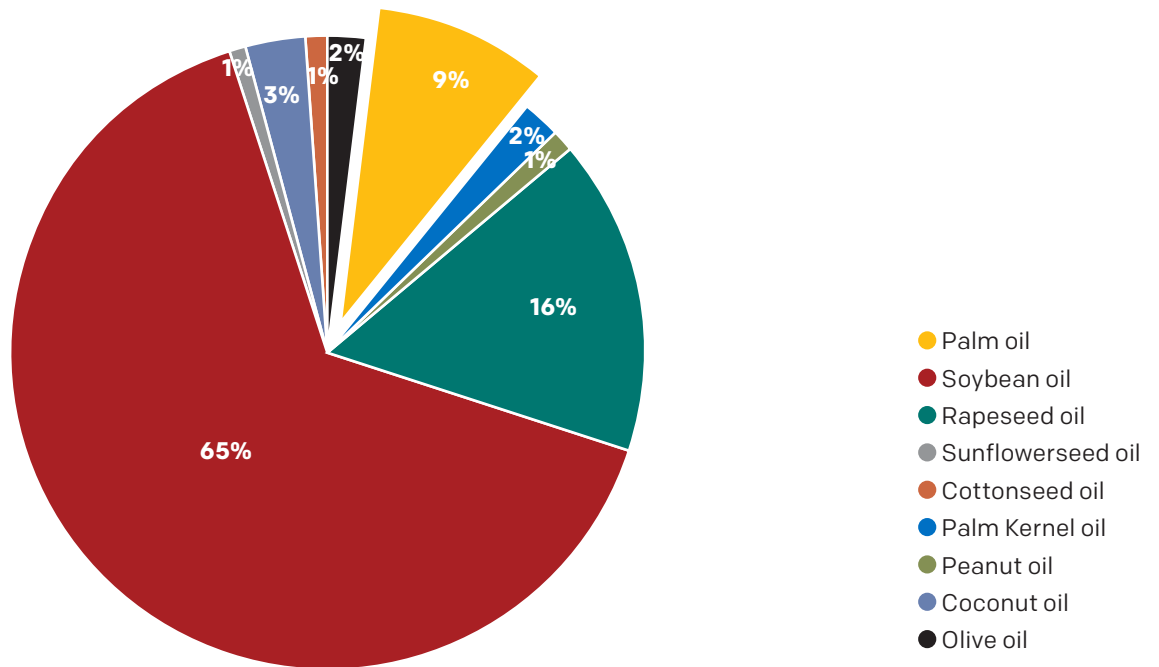
Exhibits and appendixes



Exhibit 1: World and US Vegetable Oil Consumption 2019



Description: Panel 1 of exhibit 1 shows the distribution of total vegetable oil consumption in 2019 according to the different types of oil. In total, 205.9 million metric tons were consumed in the world, of which 36% were palm oil, 28% soybean oil, 14% rapeseed oil, 9% sunflower seed oil, 4% palm kernel oil, 3% peanut oil, followed by olive oil, cotton oil and coconut oil each with a 2% share.



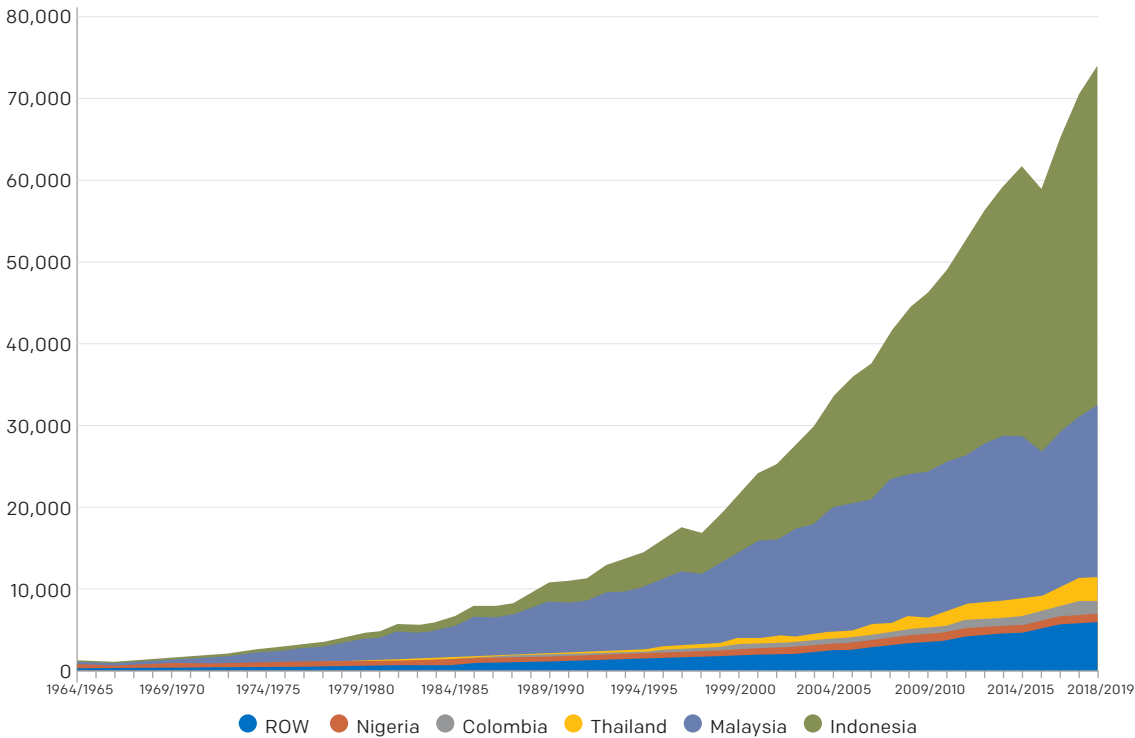
Description: Panel 2 of exhibit 1 shows the distribution of vegetable oil consumption in the US in 2019 according to the different types of oil. In total, 16.5 million metric tons were consumed, of which 65% were soybean oil, 16% rapeseed oil, 9% palm oil, 3% coconut oil, 2% oil palm kernel oil, 2% olive oil, followed by peanut oil and cotton oil each with 1% share.

Source: USDA, Foreign Agriculture Service: Production, Supply and Distribution (<https://apps.fas.usda.gov/psdonline/app/index.html#/app/home>), accessed July 15, 2019.



Exhibit 2: World Palm Oil Production 1965/65 – 2018/19

('000 metric tons)



Description: Table 2 shows the worldwide increase in palm oil production. The graph goes from levels of 1.2 million metric tons produced worldwide in 1964/1965, to a total of 74.1 million metric tons in 2018/2019. Indonesia is responsible of 56% of the current production, 28.3% is produced in Malaysia, 3.9% in Thailand, 2.2% in Colombia, 1.4% in Nigeria and 8.2% in other countries.

Source: USDA, *ibid*.

Exhibit 3: World Palm Oil Use 1999/2000 – 2018/2019

('000 metric tons and % of total use)

	1999/2000	2004/2005	2009/2010	2014/2015	2018/2019
Food use	16,589	24,519	33,575	43,386	49,546
	85%	80%	77%	75%	70%
Industrial use*	2,895	6,238	10,064	14,127	21,243
	15%	20%	23%	25%	30%
Total use	19,484	30,757	43,639	57,513	70,789

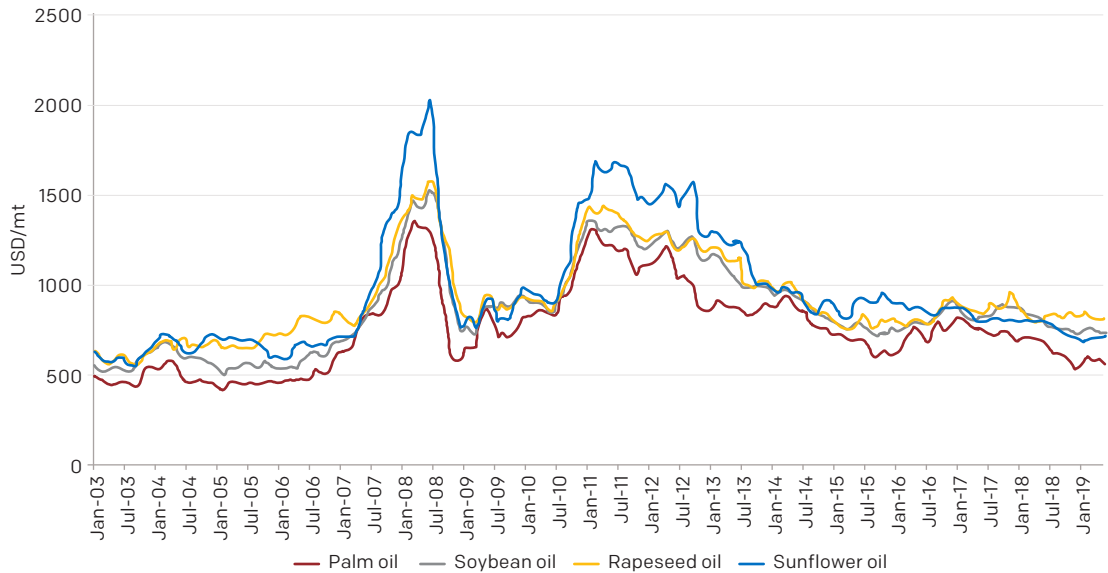
*Primarily biodiesel

Description: Table 3 is a table showing the distribution of palm oil use between "industrial use" and "food use". In the 1999/2000 period, of the 19.5 million metric tons used, 85% (16.6 million) were used for food and 15% (2.9 million) were used for industry. In the 2004/2005 period, of the 30.8 million metric tons used, 80% (24.5 million) were used for food and 20% (6.2 million) were used for industry. In the 2009/2010 period, of the 43.6 million metric tons used, 77% (33.6 million) were used for food and 23% (10.1 million) were used for industry. In the 2014/2015 period, of the 57.5 million metric tons used, 75% (43.4 million) were used for food and 25% (14.1 million) were used for industry. Finally, in the 2018/2019 period of the 70.8 million metric tons used, 70% (49.5 million) were used for food and 30% (21.2 million) were used for industry.

Source: United States Department of Agriculture, *ibid*.



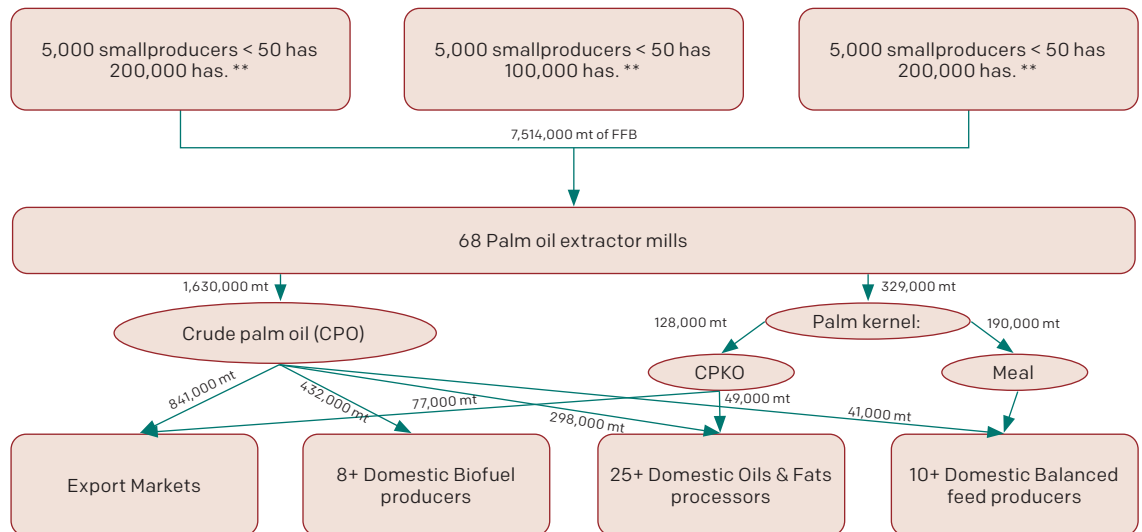
Exhibit 4: International Prices of Vegetable Oils



Description: A line graph is presented showing peaks in the prices of vegetable oils for the year 2008, the year in which palm oil reached a price of USD 1,377.22 per metric ton. For the year 2019, the prices of vegetable oils downward with a price of 582 dollars per metric ton of palm oil.

Source: World Bank

Exhibit 5: Colombian Palm Oil Value Chain (2018)*



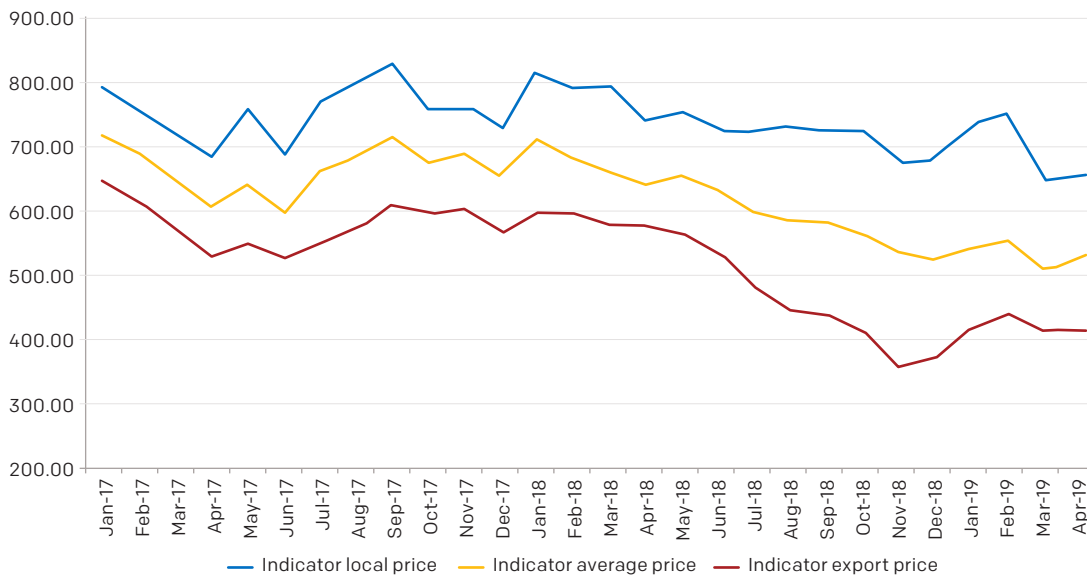
* Unless otherwise noted, all figures from FEDEPALMA, Statistical Yearbook 2019

** Estimated by authors based on distribution of plantation workers among small, medium and large plantations, as reported in "Encuesta de empleo directo sector palmero", Dane, 2016

Description: A diagram is presented the palm oil value chain in Colombia. The sector is made up of 5 thousand small producers (less than 50 ha) that concentrate about 200.000 ha; a total of 675 medium-sized producers with farms between 50 and 500 ha that concentrate close to 100,000 ha; and a total of 160 large producers with farms of more than 500 ha that concentrate about 200,000 ha. The total production of Fresh Fruit Bunch (FFB) reaches 7,514,000 metric tons that go to 68 CPO extractors. At one end, the fruit is transformed into 1.630.000 metric tons of CPO of which: 841 thousand metric tons are exported, 432 thousand go to biodiesel producers; 298,000 go to domestic oil fats processors and 41,000 go to domestic balanced food producers. The fruit is also transformed into 329 thousand metric tons of palm kernels, of which 128 thousand come in the form of oil destined for export (77 thousand metric tons) and domestic processors of oil fats (49 thousand metric tons); and 190 thousand metric tons go out in the form of flour that goes to domestic producers of balanced foods.



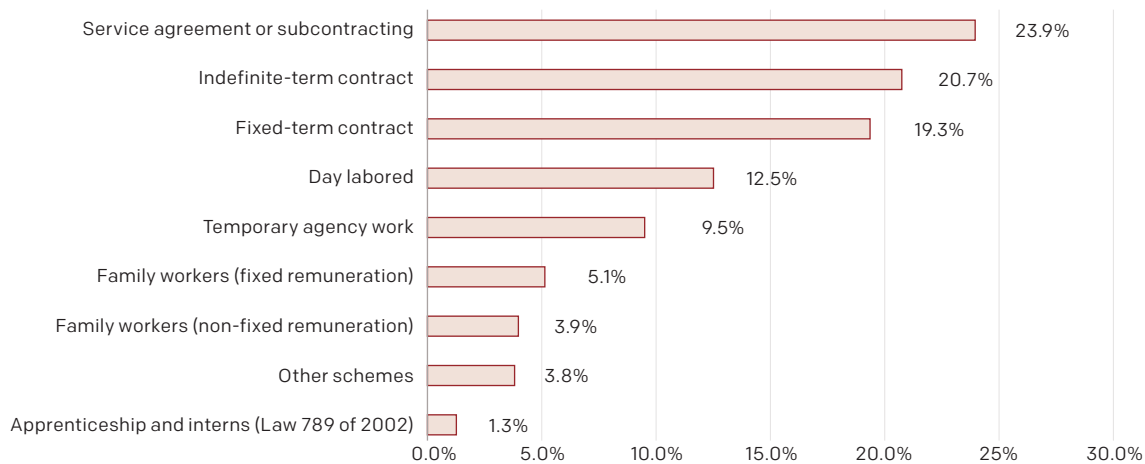
Exhibit 6: Colombia Price Stabilization Fund indicator prices



Description: The graph shows the trend of the indicative prices of the Price Stabilization Fund in Colombia with a line graph that illustrates the local price indicator, the export price indicator and the indicator that averages the first two. For the 2018-2019 period, the indicative prices decreased from more than USD700 / MT to just over USD500 per MT. As of May 2019, the prices trend changed positively and for December 2019 (last cut of the graph) they averaged USD755 per metric ton.

Source: Derived by authors from Price Stabilization Fund working documents

Exhibit 7: DANE/FEDEPALMA Palm Oil Sector Survey – Employment Relationships



Description: The graph shows the distribution of labor relations in the palm sector. 24% of the workers are hired by service agreement or subcontracting; 21% are on an indefinite term contract; 19% are linked by a fixed-term contract; 13% is linked as a day laborer; 10% for temporary agency work; 5% are family workers with fixed remuneration; 4% are family workers with variable remuneration; 4% work under other schemes; and 1% is linked in the modality of internship or practice according to Law 789 of 2002.

Source: DANE/FEDEPALMA



Exhibit 8: DANE/FEDEPALMA Palm Oil Sector Survey - Plantation Workers²⁶

Survey of Direct Employment in the Oil Palm Sector - Plantation Workers								
Type of contract	Small		Medium		Large		Total	
	1 - 49.9 has		50 - 499.9 has		> 500 has		#	%
	#	%	#	%	#	%		
Owners, partners and family without fixed salaries (IFORMAL)	3.186	13,6%	259	2,2%	19	0,1%	3.464	5,8%
Owners, partners and family with fixed salaries	2.058	8,8%	359	3,0%	216	0,9%	2.633	4,4%
Indefinite term contracts	1.223	5,2%	2.973	25,0%	7.252	29,2%	11.448	19,0%
Fixed term contracts	479	2,0%	3.400	28,6%	7.068	28,4%	10.947	18,2%
Temporary contracts through temporary service agencies	208	0,9%	528	4,4%	5.351	21,5%	6.087	10,1%
Piece work or service contracts	9.246	39,4%	2.826	23,8%	2.735	11,0%	14.807	24,6%
Day laborers (INFORMAL)	6.958	29,7%	466	3,9%	109	0,4%	7.533	12,5%
Other contracting forms (Associated Work Cooperatives, union contracts, etc.)	95	0,4%	862	7,3%	1.622	6,5%	2.579	4,3%
Apprentices and interns	0	0,0%	199	1,7%	487	2,0%	686	1,1%
TOTAL	23.453	100,0%	11.872	100,0%	24.859	100,0%	60.184	100,0%

Description: Table 8 shows the breakdown of palm employment by type of contract. In the aggregate, of the 60,184 jobs reported in the sector:

- 5.8% are owners, partners, and family members (without fixed remuneration)
- 4.4% are owners, partners, and relatives (with fixed remuneration)
- 19% report an indefinite term contract
- 18.2% report a fixed term contract
- 10.1% temporary hired through temporary service companies
- 24.6% are for work or service provision
- 12.5% are day laborers
- 4.3% are hired under other forms (associated work cooperatives - AWC, union contract, etc.).
- 1.1% are apprentices and interns

The distribution varies by farm size. For small farms, of the 23,453 jobs reported

- 13.6% are owners, partners, and family members (without fixed remuneration)
- 8.8% are owners, partners, and relatives (with fixed remuneration)
- 5.2% report an indefinite term contract
- 2.0% report a fixed term contract
- 0.9% temporary hired through temporary service companies
- 39.4% are for work or service provision
- 29.7% are day laborers
- 0.4% are linked under other forms (associated work cooperatives - AWC, union contract, etc.).
- 0.0% are apprentices and interns

For medium-sized farms, of the 11,872 jobs reported

- 2.2% are owners, partners, and family members (without fixed remuneration)
- 3.0% are owners, partners, and relatives (with fixed remuneration)
- 25.0% report an indefinite term contract
- 28.6% report a fixed term contract
- 4.4% temporary hired through temporary service companies
- 23.8% are for work or service provision
- 3.9% are day laborers
- 7.3% are linked under other forms (associated work cooperatives - AWC, union contract, etc.).
- 1.7% are apprentices and interns

For large farms, of the 2,489 jobs reported

- 0.1% are owners, partners, and family members (without fixed remuneration)
- 0.9% are owners, partners, and relatives (with fixed remuneration)
- 29.2% report an indefinite term contract
- 28.4% report a fixed term contract
- 21.5% temporary hired through temporary service companies
- 11.0% are for work or service provision
- 0.4% are day laborers
- 6.5% are linked under other forms (associated work cooperatives - AWC, union contract, etc.).
- 2.0% are apprentices and interns

Source: DANE/FEDEPALMA, Encuesta de Empleo Directo Sector Palmero, Personal total ocupado por tipo de contrato laboral, 2016.



²⁶ The values in the preceding exhibit (Exhibit 7) include both plantation workers and palm oil mill workers, while Exhibit 8 focuses only on the subset of plantation workers. Because of this, the values vary slightly across the two exhibits.

Exhibit 9: Common Producer-Processor Contracting Forms

Long-term contracts under which large palm oil companies resettled rural families on parcels of land (generally 10 to 20 ha), provided them with long term loans to purchase and develop the land for oil palm cultivation, and since most had no experience with oil palm, the sponsoring companies financed, supervised, and controlled all aspects oil palm production, harvesting, and delivery to the extraction plant. Many of these contractual schemes were developed with the support of Colombia's Productive Alliances (*Alianzas Productivas*) program, to assist families displaced by years of armed struggle between guerrilla groups and government forces, by creating sources of income.

Collaborative agreements, under which established farmers who may or may not have had oil palm experience, entered into medium or long-term agreements with palm oil extractors to receive technical assistance and support in exchange for the delivery of their fruit exclusively to the extractor mill at a price per ton of FFB as a set percentage of the monthly price of CPO established by the Price Stabilization Fund. This differed from the long-term contracts in that these producers, often referred to as "associate producers," were relatively independent and made their own production decisions but had long-term commitments to the extractor.

Short-term contracts and spot purchases. While it was generally in the interest of both the oil palm producer and the extraction plant to arrange long-term contracts which provided each party with the assurance of stable supplies and markets, some producers preferred to contract on a season-to-season basis, and receive offers from competing extractor mills. This might occur where mills were willing to pay premium prices in order to utilize their excess milling capacity (spot purchases) or in the case of larger, independent producers who were less reliant on the technical assistance and support provided by an extraction plant under a long-term contract. These producers might enter into one-year contracts after negotiating prices, transportation and other terms, individually with the extractor.

Spot sales. Small independent producers (or even small associated producers who chose not to honor their commitments to deliver to a given extractor mill) might "play the market" and deliver FFB on a spot sales basis to an extractor offering the best deal, or to a trader (called *mochilero* in local jargon) who received the fruit at the small producer's farm, paid in cash, and delivered to a mill in need of extra supplies of fresh fruit. Understandably, the prices received by the small farmer selling under these circumstances were significantly lower than under the other arrangements.

Source: Authors based on interviews in Bogota, Bucaramanga and Las Minas, July 15-24, 2019.

Exhibit 10: Production of FFB, Palmas del Cesar and Suppliers' Plantations

Year	2016		2017		2018		2019 (est.)	
	No.	%	No.	%	No.	%	No.	%
Company plantation								
Hectares under cultivation	3,580	32.9%	3,580	31.3%	3,580	28.2%	3,580	27.5%
FFP delivered (tons)	66,818	41.0%	90,117	42.8%	75,289	36.6%	91,167	38.5%
Productivity (tons/ha.)	18.7		25.2		21.0		25.5	
Associate producers								
Number of producers	259		287		312		317	
Hectares under cultivation	7286	67.1%	7872	68.7%	9132	71.8%	9432	72.5%
FFP delivered (mt's)	96,140	59.0%	120,410	57.2%	130,650	63.4%	145,692	61.5%
Productivity (mt's/ha.)	13.2		15.3		14.3		15.4	
Total, Palmas del Cesar + producers								
Hectares under cultivation	10,866	100.0%	11,452	100.0%	12,712	100.0%	13,012	100.0%
FFP delivered (mt's)	162,958	100.0%	210,527	100.0%	205,939	100.0%	236,859	100.0%
Crude palm oil (mt's)	34,214		50,584		53,815		57,672	

Description. The table shows the production of FFB by the Palmas del Cesar plantations and their suppliers. By 2016, Palmas del Cesar had 10,866 ha of cultivation and a delivered FFB of 162,958 metric tons, for a production of CPO of 32,214 metric tons. In 2019 the company had 13,012 ha of cultivation, a delivered FFB of 236,859 metric tons and a production of CPO of 57,672 metric tons.

Source: Derived by authors from "Palmas del Cesar: A Company facing the competitive challenge." Presentation to the Palma Futuro project of the USDOL, Bogotá, May 6, 2019.



Exhibit 11: Palmas del Cesar: Selected Financial Data, 2018 – 19 (est.)

(in millions of USD)

	2018	2019 (est)
Sales	44.44	47.49
Cost of goods sold	39.13	39.84
Gross profit	5.32	7.65
Operational expenses*	7.15	8.70
Operational profit	(1.83)	(1.05)

Exchange rate:	3000	3000
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*Operational expenses include:

Administration	1.26	1.26
Sales	4.88	6.31
General	0.15	0.15

Indicators:		
Gross margin	12.0%	16.1%
Net margin	(4.1%)	(2.2%)

Description: The evolution of the financial indicators of Palmas del Cesar is shown:

- Sales: go from 44.44 million dollars in 2018 to 47.49 million in 2019
- Cost of goods sold: goes from 39.13 million dollars in 2018 to 39.84 million in 2019
- Gross margin: goes from 5.32 million dollars in 2018 to 7.65 million in 2019
- Operating expenses: went from 7.15 million dollars in 2018 to 8.70 million in 2019
- Operating profit: goes from -1.83 million dollars in 2018 to -1.05 million in 2019

The calculations were made with an exchange rate of 3,000 Colombian pesos.

Source: Company records**Exhibit 12: Palmas del Cesar: CPO Deliveries by Client, 2019 (est.)**

2019 (est.)	Domestic	Export
Ecodiesel	17,747	
Team Foods		24,040
Other domestic clients		
Discorp		
Solla	4,513	
Italcol		
International buyers / traders		
Acepalma		
Biocosta		11,372
Cargill		
Total	41,524	16,148

Descripción: El Cuadro 12 muestra las ventas proyectadas, por cliente, para 2019 distribuidas así:

Ciudadanos Nacionales:

- Ecodiesel: 17747
- Teamfoods: 24040
- Discorp, Solla e Italco: 4513 en total
- Acepalma

Ciudadanos Internacionales:

- Acepalma, Biocosta y Carguill: 11372

Source: Company records

Exhibit 13: Palmas del Cesar: Composition of Associate Producers, 2019.

	Number of producers*	%	Hectares	%	Avg size
Small	281	90.4%	4230	53.3%	15
Medium	26	8.4%	2637	33.2%	101
Med.Lg.	4	1.3%	1066	13.4%	267
Large	1	0.3%	1199	15.1%	1199
Total	311	100.0%	7933	100.0%	

*The number of producers had increased to 317 by July 2019

Description: Palmas del Cesar has a total of 311 producers with a total of 7,933 ha. Of these, 281 producers (90%) are small producers with an average size of 15 ha, concentrating in total 4,230 ha (53.3% of the total ha); 26 are medium producers (8.4%), with an average size of 101 ha concentrating 2,637 ha (33.2% of the total ha); 4 are large producers (1.3%), with an average size of 267 ha and concentrating 1,066 ha (13.4%); and one producer is large (0.3%), with a size of 1,199 ha, concentrating 15.1% of the total ha.

Source: Company records

Exhibit 14: Palmas del Cesar: Work Descriptions of the RSPO Unit

General description of field work	Follow-up visits for implementation of RSPO principles and criteria, collection of physical information, monitoring of good agronomic practices, programming of hazardous waste collection, support for adequacy of infrastructure signage, support for the production of information boards, training of supplier personnel, training logistics, studies, meetings, support for field book completion, socialization of standard operating procedures.
General description of office work	Creation of documents, document management, database generation for monitoring indicators, visit schedules, generation of social security forms, consultation through the system on timely social security payments, preparation of training materials, meetings or studies, training on labor formalization, social security surveillance, updating of field books, preparation of material for socialization of standard operating procedures, meetings on project progress and compliance goals.

Source: Company records



Appendix A.

Criteria and Indicators for RSPO Principal 6: Workers' Rights and Conditions

CRITERIA	INDICATORS
Impact Goal: People: Sustainable Livelihoods and Poverty Reduction	
Principle 6: Respect Workers' Rights and Conditions	
6.1 Any form of discrimination is prohibited.	<p>6.1.1 (C) A publicly available non-discrimination, and equal opportunity policy is implemented to prevent discrimination based on ethnic origin, caste, national origin, religion, disability, gender, sexual orientation, gender identity, union membership, political affiliation, or age.</p> <p>6.1.2. (C) Evidence is provided that workers and groups including local communities, women, and migrant workers have not been discriminated against. Evidence includes migrant workers' nonpayment of recruitment fees.</p> <p>6.1.3 The certification unit demonstrates that recruitment selection, hiring, access to training and promotion are based on skills, capabilities, qualities, and medical fitness necessary for the jobs available.</p> <p>6.1.4 Pregnancy testing is not conducted as a discriminatory measure and is only permissible when it is legally mandated. Alternative equivalent employment is offered for pregnant women.</p> <p>6.1.5 (C) A gender committee is in place specifically to raise awareness, identify and address issues of concern, as well as opportunities and improvements for women.</p> <p>6.1.6 There is evidence of equal pay for the same work scope.</p>
6.2 Pay and conditions for staff and workers and for contract workers always meet at least legal or industry minimum standards and are sufficient to provide decent living wages (DLW).	<p>6.2.1 (C) Applicable labor laws, union and/or other collective agreements and documentation of pay and conditions are available to the workers in national languages and explained to them in a language they understand.</p> <p>6.2.2 (C) Employment contracts and related documents detailing payments and conditions of employment (e.g., regular working hours, deductions, overtime, sick leave, holiday entitlement, maternity leave, reasons for dismissal, period of notice, etc. in compliance with national legal requirements) and payroll documents give accurate information on compensation for all work performed, including work done by family members.</p> <p>6.2.3 (C) There is evidence of legal compliance for regular working hours, deductions, overtime, sickness, holiday entitlement, maternity leave, reasons for dismissal, period of notice and other legal labor requirements.</p> <p>6.2.4 (C) The certification unit provides adequate housing, sanitation facilities, water supplies, medical, educational and welfare amenities to national standards or above, where no such public facilities are available or accessible. National laws, or in their absence, the ILO Guidance on Workers' Housing Recommendation No. 115, are used. In the case of acquisitions of non-certified units, a plan is developed detailing the infrastructure upgrade, allowing a reasonable time (5 years) for this to be completed.</p> <p>6.2.5 The certification unit makes efforts to improve workers' access to adequate, sufficient, and affordable food.</p> <p>6.2.6 A DLW is paid to all workers, including those on piece rate/quotas, for whom the calculation is based on achievable quotas during regular work hours.</p> <p>PROCEDURAL NOTE: The RSPO Labor Task Force will prepare guidance on the DLW implementation, including details on how to calculate a DLW, expected for 2019. The RSPO Secretariat will endeavor to carry out DLW country benchmarks for palm oil producing countries in which RSPO members operate and for which no Global Living Wage Coalition (GLWC) benchmarks exist.</p> <p>6.2.7 Permanent, full-time employment is used for all core work performed by the certification unit. Casual, temporary, and day labor is limited to jobs that are temporary or seasonal.</p>

(...)



(...)

<p>6.3 The certification unit respects the rights of all personnel to form and join trade unions of their choice and to bargain collectively. Where the right to freedom of association and collective bargaining are restricted under law, the employer facilitates parallel means of independent and free association and bargaining for all such personnel.</p>	<p>6.3.1 (C) A published statement recognizing freedom of association and right to collective bargaining in national languages is available, is explained to all workers in languages that they understand, and is demonstrably implemented.</p> <p>6.3.2 Minutes of meetings between the certification unit with trade unions or workers representatives, who are freely elected, are documented in national languages and made available upon request.</p> <p>6.3.3 Management does not interfere with the formation or operation of registered unions/ labor organisations or associations, or other freely elected representatives for all workers including migrant and contract workers.</p>
<p>6.4 Children are not employed or exploited.</p>	<p>6.4.1 A formal policy for the protection of children, including prohibition of child labor and remediation is in place, and included into service contracts and supplier agreements.</p> <p>6.4.2 (C) There is evidence that minimum age requirements are met. Personnel files show that all workers are above the national minimum age or above company policy minimum age, whichever is higher. There is a documented age screening verification procedure.</p> <p>6.4.3 (C) Young persons may be employed only for non-hazardous work, with protective restrictions in place for that work.</p> <p>6.4.4 The certification unit shown proof of its communication about its 'no child labor' policy and the negative effects of child labor, and promotes child protection to supervisors and other key staff, smallholders, FFB suppliers, and communities where workers live</p>
<p>6.5 There is no harassment or abuse in the workplace, and reproductive rights are protected.</p>	<p>6.5.1 (C) A policy to prevent sexual and all other forms of harassment and violence is implemented and communicated to all levels of the workforce.</p> <p>6.5.2 (C) A policy to protect the reproductive rights of all, especially of women, is implemented and communicated to all levels of the workforce.</p> <p>6.5.3 Management has assessed the needs of new mothers, in consultation with the new mothers, and actions are taken to address the needs that have been identified.</p> <p>6.5.4 A grievance mechanism, which respects anonymity and protects complainants where requested, is established, implemented, and communicated to all levels of the workforce.</p>
<p>6.6 No forms of forced or trafficked labor are used.</p>	<p>6.6.1 (C) All work is voluntary and the following are prohibited:</p> <ul style="list-style-type: none">• Retention of identity documents or passports• Payment of recruitment fees• Contract substitution• Involuntary overtime• Lack of freedom of workers to resign• Penalty for termination of employment• Debt bondage• Withholding of wages <p>6.6.2 (C) Where temporary or migrant workers are employed, a specific labor policy and procedures are established and implemented.</p>

(...)



(...)

6.7 The certification unit ensures that the working environment under its control is safe and with no undue risks to health.

6.7.1 (C) The person(s) responsible for H&S is identified. There are records of regular meetings between the responsible person(s) and workers. Concerns of all parties about health, safety and welfare are discussed at these meetings, and any issues raised are recorded.

6.7.2 Accident and emergency procedures are in place and instructions are clearly understood by all workers. Accident procedures are available in the workforce's language. Assigned operatives trained in first aid are present in both field and other operations, and first aid equipment is available at worksites. Records of all accidents are kept and periodically reviewed.

6.7.3 (C) Workers use appropriate personal protective equipment (PPE), which is provided free of charge to all workers at the place of work to cover all potentially hazardous operations, such as pesticide application, machine operations, land preparation, and harvesting. Sanitation facilities for those applying pesticides are available, so that workers can change out of PPE, wash, and put their personal clothing back on.

6.7.4 All workers are provided with medical care and covered by accident insurance. Costs incurred from work-related incidents leading to injury or sickness are covered in accordance with national law or by the certification unit where national law does not offer protection.

6.7.5 Occupational injuries are recorded using Lost Time Accident (LTA) metrics.

Source: RSPO: Principles and Criteria for the Production of Sustainable Palm Oil, 2018. (<https://www.rspo.org/resources>) Accessed July 10, 2019.



Appendix B.

Smallholder Oil Palm Productivity and Financial Returns

Calculation of financial returns to smallholder oil palm production are subject to significant variations in three critical variables:

- Agricultural productivity, or the amount harvested per unit of land – in the oil palm sector, Fresh Fruit Bunches (FFB) of the fruit of the oil palm per hectare (FFB MT/ha.)
- Production costs per hectare
- Price received per metric ton of FFB

This appendix will summarize observed ranges for smallholder oil palm producers for each of these three variables and concludes with a discussion of the combinations under which a smallholder producer may be expected to achieve a positive financial outcome.

Agricultural productivity: Oil palm productivity is affected by numerous factors including the average age of the plantation, rainfall, irrigation, the proper use of fertilizers and agricultural chemicals, the presence of disease such as bud rot, and general agronomic practices such as weed control. In the absence of survey data on smallholder yields, published yield ranges by region and plantation age must be used with the assumption that, in general, lower yields are frequently associated with lower levels of technology including proper establishment, harvest, and fertilization practices.^{LX} A further assumption that must be considered is that smallholder producers are often less likely to have access to technological inputs, frequently due to a lack of access to credit. Important caveats to these assumptions include the effect of bud rot disease and adverse rainfall which may result in low yields even in the presence of optimal technology.

As reported by FEDEPALMA, the average FFB yield per ha in 2018 was 16.17 tons with regional variations from 10.87 in the Southwest (and area heavily affected by the bud rot disease and new plantations which have not reached maturity) to 16.69 in the Eastern region.^{LXI} A study of the production costs in 2018 based on surveys of oil palm companies with “good levels of technology adoption” representing 12% of Colombia’s total area to oil palm,^{LXII} reported average yields for palms according to their age as follows:

	2017	2018
Year 3	5.0	5.1
Year 4	10.6	10.6
Year 5	16.4	16.1
Year 6	21.4	20.8
Years 7-30 (adult)	25.9	25.8



The study “Technological factors associated with oil palm yield gaps in Colombia’s central region” reported that yields of mature oil palms (6 years or older) from 33 independent producers supplying fruit to the same oil palm extractor in the central region were distributed between 42% with yields greater than 33 MT/ha., 45% with yields between 21 and 33 MT/ha., and only 12% with yields below 21 MT/ha.^{LXIII}

A further set of data points shows that Palmas del Cesar, a palm oil company with operations in the south of Cesar department, reported average yields from its 300+ independent suppliers ranging from 13.2 MT/ha to 15.4 MT/ha between 2016 and 2019 (est.).^{LXIV} The lowest yield, 13.2, was in 2016, an especially bad year due to a lack of rainfall. (Unlike the cost of production studies cited above, these average yields include those of immature oil palms at the early stages of their productive cycle.)

The significant discrepancy between the all-Colombia yields reported by FEDEPALMA, averaging 16.17 MT/ha. in 2018 and Palmas del Cesar’s independent producers’ yields between 2016 and 2019, and those reported in the various production costs and related studies may be explained by the relatively young age of many oil palm plantations throughout the country, the presence of bud rot in the Southwest region, and the presence of plantations with significantly lower productivity than those surveyed which employed “good levels of technology adoption.”

Based on the results of the available surveys, a range of between 14 and 24 MT/ha will be used to represent yields experienced by smallholder producers. As Ruiz et al. reported that lower yields were frequently accompanied by lower levels of technology including proper establishment, harvest, and fertilization practices, the costs per ha will be adjusted down when paired with the lower yields.

Production costs per ha: The results of the 2017 and 2018 FEDEPALMA production costs study reported for 2018:

Initial costs/ha. to establish and maintain an	
oil palm plantation during years 1-3:	USD7,394 ²⁷
Costa/ha. during development stage (Years 4-6):	USD5,265
Annual costs per hectare years 7-30:	USD2,018

Based on these costs per ha and amortizing the initial costs over the 30-year life of an oil palm, the economic production costs study authors estimated the full economic costs per ton of FFB, including an imputed opportunity cost of land and assuming a lifetime average yield of 23.0 MT/ha. at USD8790.^{LXV}

While this study calculated the full economic production costs, smallholder producers would be more interested in the annual cash flows from a plantation, both during its early



²⁷ Survey costs were originally expressed in Colombian pesos and have been converted at an average rate of USD1.00 = COP 3,000.

years and later, once the palms reach maturity. Furthermore, for smallholder producers who own their own land, the imputed opportunity cost of land does not represent a cash outflow.

Based on these considerations, we will adjust the economic cost per ha by:

- a) Eliminating the amortization of the initial costs to establish and maintain an oil palm plantation (5%)
- b) Eliminating the imputed opportunity cost of land (14%)

We will also reduce varying percentages of the cost of fertilization (reported as 26% of the total cost in the economic cost of production study) for different yield levels under the assumption that lower yields may be an indication of lower levels of fertilization.

The recalculated cash costs per ha for mature plantations, adjusted by productivity level, are shown in the following table:

	14 MT/ha	16 MT/ha	18 MT/ha	20 MT/ha	22 MT/ha	24 MT/ha
Economic cost/MT FFB*	\$144.41	\$126.38	\$112.32	\$101.09	\$91.9	\$84.24
LESS amortization of establishment costs (4%)	\$5.78	\$5.05	\$4.49	\$4.04	\$3.68	\$3.37
LESS opportunity cost of land (14%)	\$20.22	\$17.69	\$15.72	\$14.15	\$12.87	\$11.79
Fertilizer (26%)	LESS 50%	LESS 40%	LESS 30%	LESS 20%	LESS 10%	LESS 0%
\$18.77	\$8.76	\$5.26	\$2.39	\$0.00		
\$13.14						
NET cash costs/MT FFB	\$99.64	\$90.47	\$83.34	\$77.63	\$72.96	\$69.07

*Values in USD

Prices received per ton of FFB: Prices paid by oil palm extractor mills to independent producers are generally 17% of the current Price Stabilization Fund indicator price (a weighted average of the indicator prices for CPO sold to domestic buyers and for export). This percentage (17%) is based on an average extraction of 20% to 22% CPO per ton of FFB, plus processing costs, minus the value of the palm oil kernel. Recent FEP prices have declined from a high of USD700/MT of CPO in 2017, to close to USD500/MT in late 2018. This implies that prices paid to independent oil palm producers fell from a high of USD119.00 to a low of nearly USD85/MT of FFB.

Cash returns to independent oil palm producers: Based on both the range of cash costs per ton of FFB and the range of prices paid by extractor mills to independent oil palm producers per ton of FFB, the following table illustrates the yield and price combinations under which an independent oil palm producer may be expected to recover his/her cash



expenses:

	MT FFB/ha	14	16	18	22	22	24
	Cost per MT FFB	99.64	90.47	83.34	77.63	72.96	69.07
FEP indicator price/MT CPO	17% of FEP indicator price	Cash return per MT of FFB (USD)					
400	68.00	(31.64)	(22.47)	(15.34)	(9.63)	(4.96)	(1.07)
450	76.50	(23.14)	(13.97)	(6.84)	(1.13)	3.54	7.43
500	85.00	(14.64)	(5.47)	1.66	7.37	12.04	15.93
550	93.50	(6.14)	3.03	10.16	15.87	20.54	24.43
600	102.00	2.36	11.53	18.66	24.37	29.04	32.93
650	110.50	10.86	20.03	27.16	32.87	37.54	41.43
700	119.00	19.36	28.53	35.66	41.37	46.04	49.93


As is evident from the table above, at an FEP indicator price of USD500 or less, independent producers with lower levels of productivity will be unable to recover their annual cash outlays, let alone begin to amortize their initial investment in the establishment of their plantations. However, with FEP indicator prices above USD500, the cash returns to independent oil palm producers become positive and increase rapidly as yields increase, showing a positive return to the use of fertilizers.

(It should be noted that the cash production costs assume that all labor employed is paid labor and does not include unpaid labor which may be supplied by the smallholder producers themselves or by unpaid family members. Among smallholder producers, it is common for the plantation owner to personally participate in most cultivation activities and only hire paid labor to help with harvesting or other specific tasks. In this case, the cash returns to the producer are increased by the paid labor saved.)



Appendix C.

Verification act of the Labor Formalization Agreement

	PROCESO INSPECCIÓN, VIGILANCIA Y CONTROL FORMATO ACTA VISITA DE VERIFICACIÓN ACUERDO DE FORMALIZACIÓN LABORAL	Código: IVC-I-02-F-04
		Versión: 1.0
		Fecha: Noviembre 06 de 2019
		Página 1 de 5

ACTA DE VISITA FINAL DE VERIFICACION DEL ACUERDO DE FORMALIZACION SUSCRITO EL 11 DE DICIEMBRE DEL 2015 ENTRE PALMAS DEL CESAR Y LA DIRECCIÓN TERRITORIAL DE CESAR DEL MINISTERIO DE TRABAJO

En Aguachica Cesar, a los cuatro (04) días del mes de febrero de 2021, siendo las 2:53 p.m., la suscrita Inspectora de Trabajo y Seguridad Social, **PAOLA CAROLINA QUIÑONES LAZZO**, adscrito(a) al Grupo de Prevención, Inspección, Vigilancia y Control de la Dirección Territorial de Cesar del Ministerio del Trabajo, comisionada mediante Auto N° 037 del 01 de febrero de 2021; procede a dar a inicio a la diligencia de seguimiento, verificación final y cierre del acuerdo de Formalización laboral, suscrito el 11 de diciembre del 2015 entre palmas del cesar y la dirección territorial de cesar del ministerio de trabajo, la cual se realizará de manera virtual utilizando el aplicativo TEAMS, de conformidad con el artículo 3 Literal D) de la Resolución No 1294 del 14 de julio de 2020.

Dentro del trámite administrativo ordenado en el artículo 2, numeral 3 de la Resolución 321 de 2013, la DIRECCIÓN TERRITORIAL CESAR, procede a efectuar visita final de verificación del cumplimiento del AFL, con el fin de constatar las condiciones de contratación y permanencia de los beneficiarios, siendo atendida la visita por **Dr. GUAYAVO ACOSTA BELTRAN** identificado(a) con la cédula de ciudadanía No. 1.098.696.045 con T.P 268390 del C.S. J., en calidad de coordinador jurídico de la empresa PALMAS DEL CESAR, como consta en Autorización suscrita por el Representante Legal de la empresa y el señor **RAFAEL VELASCO PIÑA**, identificado(a) con la cédula de ciudadanía No. 12.457.238, expedida en san Alberto Cesar, en calidad de presidente de la organización sindical SINTRAINAGRO SECCIONAL MINAS.

La suscrita funcionaria solicita al representante del EMPLEADOR la documentación de los trabajadores formalizados, así:

1. Los contratos de trabajo debidamente firmados
2. Afiliación a la Seguridad Social Integral (Salud, Pensión, ARL) y Caja de Compensación Familiar
3. Pago de aportes al sistema de seguridad social integral.

Una vez analizado el acuerdo de formalización y conforme a las verificación realizadas durante los cinco (5) años de vigencia del acuerdo, se formalizaron en total doscientos veinticinco (225) trabajadores, los cuales se vincularon de la siguiente manera: 135 trabajadores con contrato a término indefinido, a término fijo de un año, se vincularon treinta (30) trabajadores, a término fijo a nueve meses se vincularon treinta (30) trabajadores y a término fijo a seis meses se vincularon (30) trabajadores, a la fecha se encuentran vinculados con contrato a término indefinido ciento treinta y tres (133) trabajadores y con contratos a término fijo de un año, están vinculados ochenta y cinco (85) trabajadores.

Es de anotar que, en el transcurso de la vigencia del acuerdo de formalización, se presentaron siete (7) novedades de trabajadores vinculados en el acuerdo, los cuales se detallaran más adelante.


Sede Administrativa
Dirección: Carrera 14 No. 99-33
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La suscrita funcionaria revisa cada contratación, constatando que:

COMPROMISOS DEL AFL	SI <input checked="" type="checkbox"/> / NO <input checked="" type="checkbox"/>	¿Por qué No?	Anexos
1. Actualmente EL EMPLEADOR cuenta con el total de contratos de trabajo formalizados, según se estableció en el AFL	NO	No se encuentra el total de trabajadores vinculados, debido a las siete novedades que se presentaron y de las cuales se detallara más adelante	Se anexan contratos en PDF y los soportes de cada una de las novedades presentadas
2. Los contratos laborales formalizados y vigentes a la fecha de la visita, corresponden a las mismas personas que se enuncian en el AFL	SI		
3. Cada uno de los trabajadores formalizados cuenta con la afiliación a la seguridad social integral en salud, pensión, riesgos laborales y Caja de Compensación Familiar.	SI		Afiliación a la Seguridad Social Integral (Salud, Pensión, ARL) y Caja de Compensación Familiar
4. Se han realizado los pagos de aportes a cada uno de los sistemas de seguridad social	SI		copia de los aportes al Sistema de Seguridad Social Integral de los meses de noviembre y diciembre
5. Los beneficiarios del AFL cuentan con todos los derechos, beneficios y garantías			pago de nómina de los


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prestacionales y salariales, legales y extralegales.	SI		meses noviembre, diciembre y enero pago de la prima de servicios de diciembre
6. NO se ha vuelto a incurrir en formas de intermediación y tercerización laboral ilegal que violen los derechos de los trabajadores, y demás conductas prohibidas por la Ley 1429 de 2010 y los Decretos que la reglamenten; compromiso que contempla la restricción a cualquier tipo de intermediación laboral ilegal a través de cualquier figura	NO		
7. NO se ha vinculado trabajadores mediante tercerización con Cooperativas y Precooperativas de Trabajo Asociado para desempeñar actividades misionales de carácter permanente	NO		

A la fecha de la visita:

Se presentan novedades con los trabajadores formalizados, las cuales consisten en:

- El señor BENJAMIN PIAÑO PATIÑO quien había sido vinculado a través de contrato a término fijo de seis meses, obtuvo pensión de invalidez, reconocida el día 12 de junio de 2016 por el fondo de pensiones PORVENIR.
- El señor CRISTO MANUEL PACHECO BUENDIA quien tenía suscrito contrato a término indefinido con la empresa y falleció en accidente de tránsito.
- El señor ALVARO VARGAS LOPEZ quien tenía contrato a término fijo de nueve (9) meses, quien falleció por envenenamiento no laboral.


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- El señor SILFREDO CALDERON MORENO, quien tenía contrato a término fijo de seis meses y a quien se le había prorrogado el mismo por el termino fijo de un año el día 15 de diciembre de 2019, y a quien se le da terminación de contrato por justa causa, previo agotamiento de proceso disciplinario.
- El señor WILFREDYS SAUCEDO FRANCO, quien tenía contrato a término fijo de nueve meses y a quien se le había prorrogado el mismo por el termino fijo de un año el día 07 de diciembre de 2019, y a quien se le da terminación de contrato por justa causa, previo agotamiento de proceso disciplinario.
- El señor WILLIAM LEONARDY GUTIERREZ JIMENEZ, quien renunció voluntariamente el día 18 de julio de 2019, alegando motivos personales, tal como consta en carta que reposa en la carpeta de hoja de vida del ex trabajador.
- El señor ARCINIEGAS ARCINIEGAS GEOVANNY, trabajador vinculado a través de contrato a término indefinido y quien falleció el 1 de enero de 2020

Anexos que harán parte integral de la presente Acta de Visita:

1. Los enunciados en el cuadro de compromisos
2. Cuadro relacionando los trabajadores formalizados.

La documentación es entregada por EL EMPLEADOR, conforme a la relación que se anexa a la presente acta, para que la misma repose en la DIRECCIÓN TERRITORIAL.

Una vez verificada la documentación y la verificación realizada al acuerdo de formalización laboral, durante los cinco (5) años de vigencia del mismo, se evidencia cumplimiento del Acuerdo de Formalización Laboral por parte del EMPLEADOR.

En este estado de la diligencia, se solicita el uso de la palabra por parte del señor RAFAEL VELASCO, en calidad de presidente de la organización sindical SINTRAINAGRO SECCIONAL MINAS quien manifiesta:

"primero darle las gracias al Ministerio de trabajo y quiero manifestar dos cosas: la primera es que terminado el acuerdo de formalización entre la empresa PALMAS DEL CESAR y el MINISTERIO DEL TRABAJO, y la organización sindical como garante, manifestar que la empresa cumplió y no tuvimos tropiezos durante la vigencia del acuerdo de estos cinco años. La segunda cosa es pertinente solicitarle al MINISTERIO DEL TRABAJO, que, finalizado el acuerdo de formalización en diciembre de 2020, inicia un acuerdo extra convencional, donde en acta se dejó establecido que los mismos trabajadores vinculados en el acuerdo seguirán vinculados a la empresa hasta diciembre del año 2023, por tanto, la solicitud al MINISTERIO es para que nos siga acompañando en la garantía de esos procesos".


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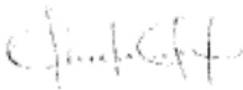


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Así mismo se solicita el uso de la palabra por parte del DR. GUSTAVO ACOSTA, en calidad de representante del EMPLEADOR, quien manifiesta:

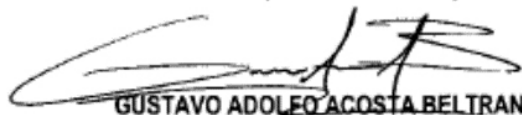
"PALMAS DEL CESAR desde el 11 de diciembre de 2015, ha dado cumplimiento al artículo 13 y siguientes de la Ley 1610 de 2013, prueba de ello, son los diferentes actas de verificación efectuadas por el MINISTERIO DEL TRABAJO, donde se constató el cumplimiento de las obligaciones sobrevenientes del acuerdo de formalización suscrito entre las partes, es así como hoy damos cierre al acuerdo de formalización e iniciamos con una nueva etapa, donde por medio de un acuerdo extra convencional con la organización sindical SINTRAINAGRO, se garantiza la continuidad de los trabajadores formalizados hasta el año 2023, muestra esto, el compromiso que ha tenido Palmas del Cesar de acatar y cumplir la normativa legal vigente, de esta manera agradecemos también, la labor realizada por el Ministerio del Trabajo y la organización sindical, los cuales han fungido como garantes y veedores del acuerdo de formalización laboral".

No siendo otro el objeto de la presente diligencia se firma por los que en ella intervinieron, una vez leída y aprobada, a los cuatro (04) días del mes de febrero de 2021, siendo las 3:37 p.m.



PAOLA CAROLINA QUIÑONES LAZZO
 Inspectora de Trabajo y Seguridad Social
 Inspección de Aguachica
 Ministerio del Trabajo

Representante del Empleador



GUSTAVO ADOLFO ACOSTA BELTRAN
 C.C. 1.098.696.045 con T.P 268390 del C.S. J

Por la Organización Sindical SINTRAINAGRO



RAFAEL VELAZCO PINA
 C.C. 12.457.238
 Presidente de la Organización Sindical SINTRAINAGRO – MINAS

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Appendix D.

Documents Required for RSPO Certification

	Obligatory for small producers (<50 has.)	Obligatory for large producers (>50 has.)	Executed by RSPO Project for producer groups
External documents			
1		X	
2	X	X	
3	X	X	X
4	X	X	X
5	X	X	X
6	X	X	X
7	X	X	X
8	X	X	X
Internal Documents			
9	X	X	X
10	X	X	X
11	X	X	X
12		X	
13	X	X	X
14		X	X
15	X	X	X
16	X	X	X
17	X	X	X
18		X	X
28	X	X	X
29	X	X	X
30	X	X	X
31	X	X	X
32		X	X
33		X	
34		X	X
35	X	X	X
36		X	X
37	X	X	X
38		X	X
39	X	X	X
40		X	
41		X	X
42		X	X
43		X	X



44	Creation of the Internal Audit Procedure:		X	X
45	Creation of Continuous Improvement Plan	X	X	X
46	Formation of Occupational Health and Safety Committee (COPASST) or monitoring according to the size of the organization		X	
47	Emergency brigades	X	X	X
48	Emergency drills	X	X	X
Trainings				
49	60-hour training for personnel handling agrochemicals (decree 1843 of 1991 in article 172)	X	X	X
50	Certificate of Tradition and Freedom	X	X	X
51	Property tax payments	X	X	X
52	Workers Resume	X	X	X
53	Entrance exams		X	X
54	Social security payment forms	X	X	X
55	Contracts	X	X	X
56	Delivery of personal protective clothing and equipment	X	X	X
57	Workers liquidation		X	X

Source: Provided by Palmas del Cesar RSPD Unit, private communication, August 8, 2018; translated from the original Spanish by authors



Appendix E.

FEDEPALMA Manual - Steps Required to Formalize a Labor Contract

Labor formalization

Description: hiring, permanence and termination of personnel complying with current labor legislation.

Scope: begins with the definition of the type of contract until the end of the relationship with the worker.

Criteria: during the employee's permanence, a respectful relationship must be established, and all labor obligations must be fulfilled in a timely manner.

The hiring can be under the dependent or independent modality. In the dependent modality it must meet the following requirements: the activity is carried out personally, there is subordination, instructions are followed and there is a remuneration and / or payment for the activity that is carried out.

The most commonly used types of employment contracts are: 1. Indefinite term: the start date is agreed but not the end date. 2. Fixed term: less than 1 year and not more than 3 years. 3. Piece work or defined task: ends when the work or service has been completed or delivered. 4. By days: Hired for less than 21 days per month. In the independent modality: contracted services may be used as an option, if so, the contractor is responsible for paying its social security and professional risks insurance.

WORK DEVELOPMENT STEP BY STEP

1. Define the tasks that require personnel support (field / administrative work).
2. Determine the type of contract or contracts to be used depending on the work carried out by the farmer (dependent or independent modality).
3. Perform initial and periodic occupational medical exams as well as at the time of the worker's termination.
4. For dependent workers sign the contract, keeping a copy of it and also the following steps:
5. Prior to the start of work, affiliate the employee with the health promoting entity (EPS), labor risk administrator (ARL), pension administrator and family compensation fund (CCF).



6. Give the employee a copy of the contract and social security and parafiscal affiliations. Leave evidence of your delivery.
7. Employee information, salary, dates of entry, among others, must be uploaded via internet in the PILA form that automatically calculates the amounts to be paid. If you need advice, contact the company you choose to make payments.
8. Create a work history registry for each employee, containing: resume, photocopy of identification card, certificate of affiliation to health pension, employment contracts (Initial and subsequent), affiliations to EPS, ARL, pension, CCF, registration of provision of work clothing, personal protection elements (EPP) and a copy of all communications that the company requires must be kept (certifications, memos, request your vacation approval, payroll payments, among others).
9. Provide orientation to the worker with details of the work to be done, the risks associated with it, and the use and maintenance of PPE. Provide evidence of this orientation and keep it in the work history registry.
10. Provide training and reorientations that might be managed through the ARL and CFF. Certify work skills with SENA.
11. Calculate and pay the social benefits every year as follows: premium for legal service (June 30 and December 20), severance payments (payment to the severance fund before February 14), severance interest (January with the payroll of the worker), vacations (employee must take them once a year), and work clothing (pants, shirt and shoes April 30, August 31 and December 20).
12. Implement the Occupational Health and Safety Management System (SG-SST), which applies to every employer.
13. Pay transportation assistance for employees who earn up to two minimum wages. This can be replaced by a free service offered by the company.
14. Prepare and publish the internal labor regulations, when there are more than 2 workers.
15. Apply the legal models of termination of the employment contract under the following grounds: death of the worker, mutual agreement between the parties, expiration of the agreed term, termination of the work or work contracted, liquidation or closing of the company or suspension of activities by the employer, court order or abandonment of the worker once the causes of suspension of the employment contract have ended. It may also be the decision of the company or the worker to terminate it (with or without just cause).
16. Make the final liquidation, recognizing the salaries, social benefits and vacations due



to that date.

17. Comply with the SENA apprentices quota (companies with 15 workers are required to hire a SENA apprentice and for every 20 more workers an additional apprentice must be provided), otherwise the entity must pay the equivalent value or may be sanctioned in accordance with the law.
18. For independent workers, define the type of work to be hired, in addition to the following steps:
 - a) Sign a contract for the provision of services that establish the type of work, its duration and value to be paid.
 - b) Ask the contractor for certifications of pension affiliations, EPS (health) and ARL.
 - c) The contract ends with the completion of the work.

Frequency: when a new employee is hired until retirement

Responsible: farmer or human talent manager.

Source: FEDEPALMA, *Manual de procedimientos operativos estándar para la implementación de mejores prácticas de sostenibilidad*. Bogota, Colombia. 2018. Page 61. (Translated by authors from Spanish original.)





Endnotes

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- XXII** US Department of Labor, Bureau of International Labor Affairs. Labor Rights Report 2011 – Colombia. <https://www.dol.gov/agencies/ilab/country/ilab-colombia>
- XXIII** Article 63 of Law 1429 was effectively put into effect by Article 76, Law 1450 of the Development Plan legislation.
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PALMA FUTURO COLLECTION
PALMAS DEL CESAR. CASE STUDY
2021

