

# Social aspects of the Pilot Project for Jurisdictional Certification of the Ecuadorian Amazon: a preliminary review



Lourdes Barragán Alvarado

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**Author:** Lourdes Barragán Alvarado

**Acknowledgements:** The author wishes to extend gratitude to the people and organisations that contributed time for interviews and that provided information, including local community members in the study area and representatives of OISE, ONISE, ASOKIL, CONFENIAE and COICA indigenous organisations; as well as social and environmental organisations. Thanks also to PROAmazonía team members, staff of the Environment Ministry and the Ministry of Agriculture, and to private sector representatives. Special thanks to Tom Griffiths of FPP for his valuable insights and guidance before and during the study.

This report has been compiled with support from the Norwegian International Climate and Forest Initiative (NICFI) and NORAD. The opinions expressed in this report are the sole responsibility of FPP and do not necessarily reflect the views of the government of Norway.



**Photos:** Courtesy of Amazon Frontlines

**Front cover image:** Siekopai elder and shaman Delfín Piaguaje stands in the middle of a new road opened just behind his house in the San Pablo community, Sucumbíos, Ecuadorian Amazon. Photo Jerónimo Zuñiga / Amazon Frontlines

# I. Acronyms and abbreviations

<b>ANCUPA</b>	National Association of Oil Palm Growers
<b>CISPS</b>	Inter-institutional Steering Committee for Sustainable Palm Oil
<b>CJAE</b>	Jurisdictional Certification of the Ecuadorian Amazon
<b>COICA</b>	Coordinator of the Indigenous Organizations of the Amazon Basin
<b>CONAIE</b>	Confederation of the Indigenous Nationalities of Ecuador
<b>CONFENIAE</b>	Confederation of Indigenous Nationalities of the Ecuadorian Amazon
<b>ESIA</b>	Environmental and Social Impact Assessment
<b>FPIC</b>	Free, Prior and Informed Consent
<b>FPP</b>	Forest Peoples Programme
<b>GAD</b>	Autonomous Decentralised Government
<b>GHG</b>	Greenhouse Gases
<b>HCS</b>	High Carbon Stock
<b>HCV</b>	High Conservation Values
<b>IERAC</b>	Ecuadorian Agricultural and Colonisation Reform
<b>JE</b>	Jurisdictional Entity
<b>NI</b>	National Interpretation (RSPO)
<b>P&amp;C</b>	Principles and Criteria (RSPO)
<b>PC</b>	<i>Pudrición del Cogollo</i> (Spear Rot)
<b>PROAmazonía</b>	Integrated Amazon Programme for Forest Conservation and Sustainable Production
<b>Propalma</b>	National Palm Oil Supply Chain Federation
<b>REDD+</b>	Reducing Emissions from Deforestation and Forest Degradation
<b>RSPO</b>	Roundtable on Sustainable Palm Oil
<b>WWF</b>	World Wildlife Fund

# Prologue

The fieldwork for this study was completed in the final quarter of 2019. Subsequently, the Ecuadorian Amazon and the entire country have been hit by the COVID-19 pandemic, with serious consequences for indigenous peoples and local communities.<sup>1</sup>

With regard to the pilot project for the Jurisdictional Certification of the Ecuadorian Amazon (CJAE), some progress has been made in the first half of 2020. For example, there are indications that the first phase of the AVC-HCS assessment has been completed with risk maps, and that they have been approved by the now Ministry of Environment and Water. Progress has also been made in mapping producers in the field and drawing up a comprehensive survey that will provide a detailed diagnosis of their reality. However, other elements relating to the social and environmental aspects of the jurisdictional certification have not progressed: the legal analysis of the regulatory framework compared with the RSPO regulations is yet to commence; procedures for free, prior and informed consent have not yet been aligned with the RSPO standard; and internal discussions on a framework for independent audit and verification of compliance are ongoing. Meanwhile, the meetings and work of the Inter-institutional Steering Committee for Sustainable Palm Oil (CISPS) have slowed down in 2020 due to staffing changes. And, understandably, PROAmazonía field activities within the subnational jurisdiction have been suspended due to the pandemic, limiting its work in the territory.

At the national level, a law has been recently approved to promote industrialisation of the palm oil sector that faces strong opposition from social organisations, including the *Alianza Ecuatoriana por los Derechos Humanos* (Ecuador Alliance for Human Rights)<sup>2</sup>. These organisations support request for a veto made by the Ecuadorian Co-ordinating Body for Organisations for the Defence of Nature and the Environment (CEDENMA) submitted to the President of the Republic, as they believe that this law contains provisions that contravene constitutional norms and would put the health of ecosystems and local populations at risk.

The author wishes to reiterate that this study is therefore a preliminary assessment of an emerging initiative that has yet to define several core elements related to rights and environmental protection. It thus merits independent monitoring to ensure that lessons are documented while this pilot jurisdictional certification programme is developed in the Ecuadorian Amazon.

**Lourdes Barragán, June 2020**

1 Please see for example: <https://www.amazonfrontlines.org/chronicles/covid19-siekopai-secoya-amazon-ecuador/>; <https://news.mongabay.com/2020/06/triple-crisis-of-pipelines-pesticides-and-pandemic-is-an-existential-threat-to-ecuadors-indigenous-peoples-commentary/>

2 <https://ddhcuador.org/2020/06/25/documento/carta-abierta-al-presidente-de-la-republica-por-el-veto-la-ley-para-el>



Panoramic view of a Palmeras del Ecuador oil palm plantation, Sucumbíos, Ecuadorian Amazon.  
Photo: Mitch Anderson, Amazon Frontlines

## II. Executive summary

The aim of this report is to feed into the process to develop the Jurisdictional Certification of the Roundtable on Sustainable Palm Oil (RSPO) from a rights perspective, based on the case of the Ecuadorian Amazon. It presents an analysis of the approach and implementation of social aspects in the pilot project for the Jurisdictional Certification of the Ecuadorian Amazon (CJAE – Spanish acronym used in this study), with emphasis on the rights to land and resources, participation, Free, Prior and Informed Consent (FPIC), as well as the establishment of governance systems.

The findings and lessons presented in this research cover the two stages that have been identified in the pilot project's development to date: i) 2017-2018: start-up phase with concrete progress in establishing the institutional and strategic framework (mainly with the creation of the Inter-institutional Steering Committee for Sustainable Palm Oil (CISPS – official Spanish acronym) and the strategic planning with principles, objectives and an action plan); ii) 2019: the year of the plan's initial implementation, through the recruitment of consultants for different activities, and the first contact with stakeholders in the territory.

### Findings

In general, while the CISPS principles, objectives and action plan do include social aspects that are in balance with environmental and productive dimensions, this is not true for the development of this entity's structure. As expressed through concerns raised by several members during interviews (for this study), actions were prioritised to focus more on productive goals and, to a lesser extent, on environmental objectives rather than on social aspects during the implementation phase. These aspects are detailed below in relation to each of the subtopics explored in the report.

**Governance:** The highest governance body of the CJAE is the CISPS. Despite having a balanced representation of government, private sector and civil society, this body features gaps in social representation.

**Land tenure and access to resources:** There are two main problems in the territory: i) the accumulation of land in the hands of two companies in the provinces of Orellana and Sucumbíos; and ii) growing conflicts over land invasions and land trafficking within the jurisdiction, which are the result of pressures on indigenous territories from settlers and members of communities who sell their land to oil palm growers and then go on to invade new lands.

**Free, prior and informed consent (FPIC):** Ecuador has a National Consultation Guide for the Implementation of REDD+ Actions in Collective Lands or Territories, which defines the requirements and process to be followed in the case of implementation of REDD+ actions in indigenous territories. However, the adaptation and implementation of this Guide to specific actions related to the CJAE pilot have not yet been carried out. The Consultation Guide for REDD+ actions neglects communities that do not have property titles or legal recognition of their lands, which would directly affect their right to FPIC.

**Complaints Mechanism:** Within the framework of compliance with REDD+ safeguards, there is a technical proposal for a complaints mechanism that is currently still in its pilot phase. The mechanism aims to channel concerns from the main stakeholders in the REDD+ actions and citizens in general to the programme's decision makers in order to establish rapid response mechanisms and to reduce or prevent major conflicts arising from its implementation. Given that the CJAE pilot project is one of the actions included in PROAmazonía and REDD+ programme, the proposed mechanism would include all stakeholders in the oil palm value chain involved in the commodity certification process. Despite this, no particular analysis has been made in relation to the specific requirements under the standards of the RSPO.

**National Interpretation (NI):** By the time this report was finished, the NI process was yet to begin. The main task of this process will be to analyse agreements and dissonances between national legislation and the RSPO standard, and to agree on approaches to ensure the implementation of the higher standards, including the case of the FPIC standard.

## Recommendations

- It is recommended that the CISPS, as the highest governing body, integrates the Ombudsman's Office (*Defensoría del Pueblo*), NGOs, and collectives specialising in social (and socio-environmental) issues, organisations representing affected populations, indigenous and Afro-descendant peoples, and smallholder producers' unions. In addition, in order to realise its potential, within the CISPS framework – priority must be given to defining the form, function and the character of this body, the way in which it operates, and its relationship with the producers in the Jurisdictional Entity (JE).
- Forming a relationship with the REDD+ Working Group is recommended, as this is likely to become a citizen oversight body. An oversight working group for jurisdictional certification in the Amazon might be set up within the REDD+ space, especially to deal with matters such as FPIC and the Complaints Mechanism, among other matters.
- It is essential that the State guarantees the security of land tenure and prevents land encroachment by strengthening the processes and mechanisms for the legalisation, disencumbrance and demarcation of indigenous lands. Specifically, the CJAE project could support land and territory regularisation processes for indigenous communities in its area of influence, as has already been planned for smallholder producers.
- Defining the scope of the local communities subject to the FPIC processes is an urgent matter. This will guarantee the exercise of indigenous rights in areas of directly and indirectly influenced by oil palm plantations. In the same way, the FPIC procedure and scope must be established, as they are required for jurisdictional certification. Similarly, it is important to define the role of the JE, which is expected to be the stakeholder overseeing the certification, as well as the degree of representation included and procedures for affected small-scale producers and stakeholders who do not wish to be included in the certification. Establishing the necessary monitoring mechanism for the agreements reached is also important.
- Setting up a specific complaint mechanism for the CJAE in harmony with the REDD+ complaint mechanism is essential. This would involve creating a body separate from the JE in order to avoid conflicts of interest and to guarantee independence and define all basic aspects of operation, comprehensive security and response. Likewise, its correct and timely use will depend on the development of skills, knowledge of and access to information about the RSPO, CJAE and rights by the different stakeholders in the value chain, including indigenous peoples and indigenous nationalities, and citizens in general.
- The NI process must be inclusive and, from the outset, involve key stakeholders in the region and in the sphere of human, socio-environmental and gender rights. This will require a previous process of explanation with adequate material, sharing of the principles and criteria of the RSPO and the promotion of a territorial approach.
- In a context of increasing violence, attacks and harassment of environmental defenders in Latin America, the ratification of the Escazú Agreement, which is currently under analysis in the National Assembly, will be of great importance.

Siekopai Elder, Roberto Piaguaje, near the San Pablo Community, Sucumbíos, Ecuadorian Amazon. Photo: Jerónimo Zuñiga Amazon Frontlines

## III. Introduction

This document reports the main findings and lessons arising from the approach and implementation of social aspects in the pilot project for the Jurisdictional Certification of the Ecuadorian Amazon (CJAE). This review places an emphasis on the rights to land and resources; participation; Free, Prior and Informed Consent (FPIC); as well as the established governance systems, monitoring and verification.

This research focused on the CJAE case in Ecuador is part of a broader review process carried out by the Forest Peoples Programme (FPP) looking at pilot projects in Seruyan, Kalimantan province in Indonesia, and in Sabah in Malaysia, with the aim of making inputs to the construction of RSPO Jurisdictional Certification from a rights-based perspective.

The RSPO certification process in Ecuador formally began in 2017 with the signing of a memorandum of understanding between stakeholders in the public and private sectors and civil society. However, it was not until 2019, following a preparation process, that actions finally began to be implemented under the CJAE pilot process.

Given that this pilot initiative does not have a long history, this research has attempted to collect the lessons arising from the available plans and procedures. It complements this information with perceptions and points of view from various stakeholders regarding the project's process and operation. It must also be highlighted that many of the interviewees were unaware of this initiative, which is why this review has sought to gather information from them to shape the development of the pilot project. In view of the project's short trajectory, the conclusions, findings and preliminary analysis are based on these interviews and the little documentation available at the time when the report was due to be completed at the end of 2019 (to view an official summary of project progress up to November 2019, according to its Stepwise Approach, see [http://bit.ly/CJAE\\_Nov19](http://bit.ly/CJAE_Nov19)).

### A. Methodology

The document reflects mixed research that included: i) review and systematisation of secondary sources; ii) face-to-face and virtual interviews; and iii) a field visit to Sucumbíos and Orellana, the two provinces in the Ecuadorian Amazon that make up part of the jurisdiction covered by the RSPO certification pilot project. Also, an event was attended on the "Ecuador's readiness for a Jurisdictional Approach (JA) in RSPO" where presentations were given by representatives of the State, the private sector and specialists in the social and environmental fields.

In relation to the secondary sources, the following were analysed: working documents on the RSPO certification in Ecuador; information provided by technicians of the PROAmazonía Programme and the CISPS Secretary; articles and publications; legal standards and statistics on oil palm in the country; as well as key RSPO documents (see Section VI for the list of references).

To gain insights into the progress and functioning of the pilot project, primary research included 34 interviews (individual and group) with representatives of the PROAmazonía programme, the State, social organisations, indigenous peoples, palm growers' unions, NGOs, small and medium-sized oil palm producers, and specialists (see Section VII for the list of persons interviewed). These interviews took place in Quito, in Sucumbíos, in the city of Lago Agrio in Limoncocha with members of indigenous communities (Kichwa), and in San Pablo (Siekopai). In the parish of Nuevo Paraíso in Orellana province, talks were held with producers who attended a workshop organised by the National Association of Palm Growers (ANCUPA). The interviews with members of indigenous communities, local organisations and producers were initially aimed at getting to know these stakeholders' views on the pilot project and their level of involvement in it. Additionally, in some cases – such as that of the technical managers of PROAmazonía – talks were held more than once. We thank them for their time and contributions.<sup>3</sup>

The research was carried out between September and early December 2019.

<sup>3</sup> However, it should be noted that there were representatives of NGOs and the private sector, as well as members of the CISPS who did not respond to interview requests.

## B. Background and context

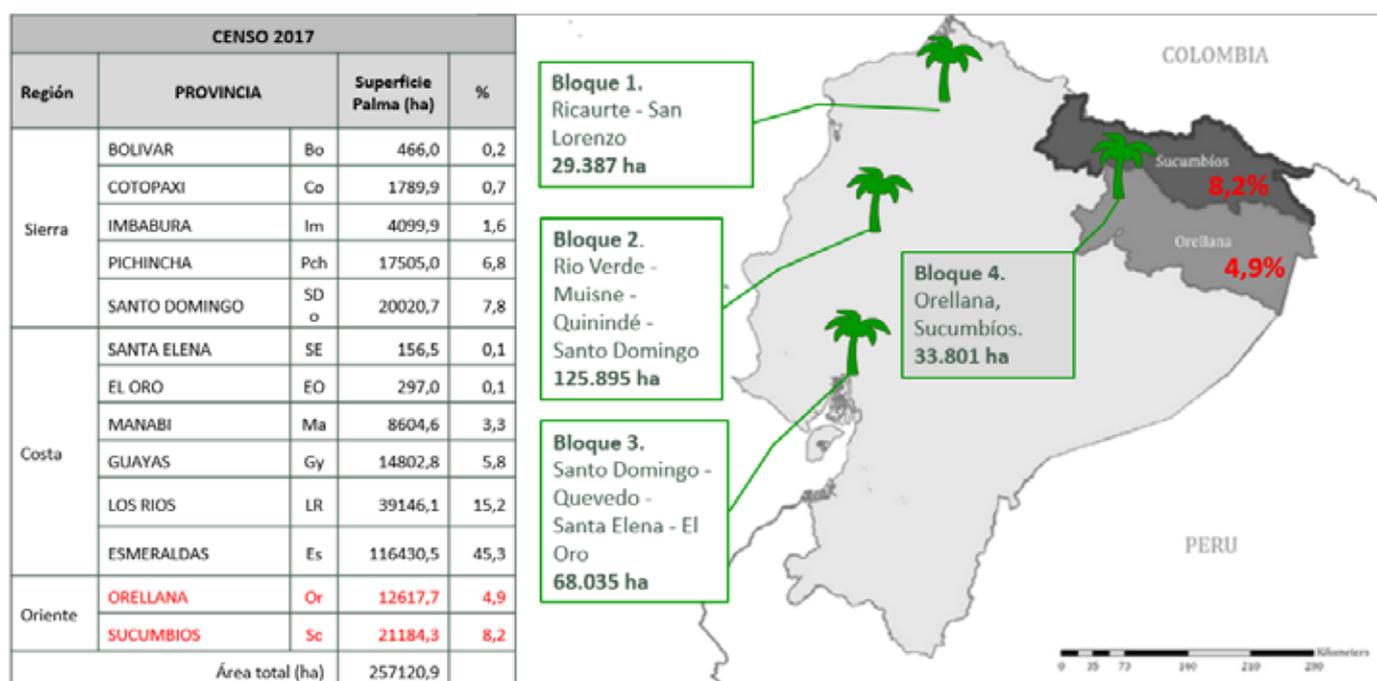
The history of oil palm cultivation began in the 1950s on the road to Santo Domingo de los Colorados in Pichincha province and in Quinindé in Esmeraldas province. Situated at altitudes less than 500 meters above sea level, they are both jungle areas with a tropical humid climate (Carrión and Cuvi, 1985). In the 1970s and 1980s, oil palm cultivation expanded dramatically in these areas, largely explained by the strong backing of successive governments via colonisation policies and the handing out of landholdings designated as baldías “empty lands”, as well as credit policies from the National Development Bank that granted notable advantages to producers.<sup>4</sup>

Similarly, in 1979, through the Ecuadorian Institute of Agrarian Reform and Colonisation (IERAC), the government adjudicated 20,000 hectares for oil palm cultivation to the Palmeras del Ecuador-Danec and Palmoriente companies (the latter today known as Palmar del Río-Epacem).<sup>5</sup> Each company was allocated an area of 10,000 hectares in the present-day provinces of Sucumbíos and Orellana in the Amazon region (Carrión and Cuvi, 1985). However, in those days, the policy of opening up the agricultural frontier was initially geared towards favouring those colonists and indigenous people dedicated to the production of goods for the market and required the clearance of at least 50 per cent of the forest cover to be eligible to obtain property rights in the land.

In the late 1990s, palm oil companies expanded to the north of Esmeraldas, especially to the San Lorenzo Canton, located in the biogeographical region of Chocó in the Pacific, where logging companies also operated. During this decade, thousands of hectares of forests with high biodiversity were irreversibly lost, both on the coast and in the Amazon, which affected the fundamental rights of indigenous and Afro-Ecuadorian peoples that traditionally inhabited these spaces. This occurred even though these peoples’ collective rights were already recognised in the 1998 Constitution. Numerous studies<sup>6</sup> and various interviews indicate that the State was negligent in terms of environmental damage and human rights’ violations yet was very diligent in responding to the interests of the elite who were shaping the oil palm agribusiness.<sup>7</sup> As one of the interviewees expressed: “Deforestation, loss of biodiversity, pollution and current land conflicts between companies and communities are a consequence of both state inaction and legal measures such as Executive Decree 2961, which led to the creation of a land market and that, to this day, 17 years after its enactment, continues to have impacts on the land tenure map of the area.”

Oil palm is a highly profitable crop, which explains its rapid growth in the country. In 2017, it covered an area of 257,120.9 hectares, mainly in Esmeraldas, followed by Los Ríos, Santo Domingo, and the Amazonian provinces of Orellana and Sucumbíos. According to information from the National Inventory of Oil Palm Plantations (better known as 2017 Palm Census or Censo Palmero), the last two provinces totalled 33,801 hectares in 2017.

Table 1. Palm area by provinces and blocks in Ecuador



Source: Author, based on information from the Censo Palmero 2017 (The Palm Census)<sup>8</sup>

4 For example, the formation of mixed economy companies in which the State contributed almost all of the resources and then transferred its shares to its private partners. Behind this state drive was the need to satisfy the growing demand for palm oil in the national market, as well as the decision to promote the development of Santo Domingo de los Colorados as the engine of the country’s socio-economic progress due to its strategic position as a distributor road centre (private sector interview).

5 In 2012, EPACEM acquired the company Palmar del Río with 4,500 hectares of hybrid palm crops and 2,000 hectares of teak forest plantation.

6 Carrión and Cuvi 1988; Buitrón 2001; Potter 2011; Moncada 2013; Lasso 2018.

7 Executive Decree 2961 of 8 August 2002, issued during the presidency of Gustavo Noboa, modified the Forest Heritage areas by converting, in agricultural areas, lands in which companies were operating illegally (Lasso, 2018).

8 The Palm Census was distributed in four blocks and zones to maintain a shared information relation with the 2005 census. The CJAE corresponds to Block 4 of the map.

## C. Jurisdictional Certification of the Ecuadorian Amazon (CJAE)

The process of the Jurisdictional Certification of the Ecuadorian Amazon (CJAE) is part of the central government's initiative to develop a public policy geared towards sustainable oil palm production that covers not only economic aspects, but also environmental and social aspects. This arose mainly in response to the growing criticism from global civil society organisations of oil palm cultivation and the destruction of important endangered species' habitats, and/or the expropriation of high conservation value areas (Albán, 2018), as well as human rights violations, as also occurred in Ecuador. Added to this was an increasing market demand for certified palm oil that guarantees respect for nature and human beings. At the same time, the CJAE process is part of measures to reduce greenhouse gas (GHG) emissions stemming from deforestation and forest degradation (REDD+), under the auspices of the Ministry of the Environment, which has directed climate finance to the sector.

Efforts to achieve sustainable oil palm production have been led by the Ministry of Agriculture and Livestock and the Ministry of the Environment, in coordination with other government stakeholders, the private sector and some international environmental NGOs who work in Ecuador. The process leading towards RSPO certification began in 2014. Its milestones are:<sup>9</sup>

- 2014: Competitive Improvement Plan of the Oil Palm Chain, which includes obtaining RSPO certification as one of its objectives (Ministry of Agriculture and Livestock).
- 2015: Agroecological Zoning Map, which determines the areas where palm could be planted sustainably in the country (Ministry of the Environment-Ministry of Agriculture and Livestock).
- 2016: Publication of the REDD+ Action Plan<sup>10</sup>, that includes actions targeting the oil palm sector and supply chain as part of transitional measures towards sustainable production, including the traceability and certification of products free from deforestation, such as the through the RSPO.
- 2017: Formal commitment to the implementation of RSPO certification in Ecuador with a view to national certification (March).

- 2017: Creation of two REDD+ Implementation Plans for Measures and Actions to establish Jurisdictional Certification for Sustainable Palm in the Amazon.<sup>11</sup>
- 2017: Creation of the Integrated Amazon Program for Forest Conservation and Sustainable Production – PROAmazonía, which covers the execution of the two implementation plans and supports CISPS management (May).
- 2017: National Inventory of oil palm plantations, funded by the private sector.
- 2018: Official creation of CISPS, via the Inter-ministerial Agreement 030. One of its objectives is to obtain jurisdictional certification in the Amazon under the RSPO standard (March).
- 2018: Creation of the Strategic Plan for CISPS activities (November).
- 2019: Start of implementation of the Strategic Plan via consultancies and a technical team in the territory, and an event is organised on “Ecuador’s readiness for a Jurisdictional Approach (JA) in RSPO” involving more than 100 people, including the authorities of the Ministries of Agriculture and the Environment.

In the Amazon, oil palm production is concentrated in Orellana and Sucumbíos, where the pilot for the Jurisdictional Certification of the region will be developed, with a view towards later obtaining certified production at the national level. Ecuador's natural forest reserve amounts to 12,514,340 hectares (Ministry of the Environment 2018a), 74 per cent of which is in the Ecuadorian Amazon. Orellana and Sucumbíos together cover 3,272,094 hectares and are home to 26 per cent of the country's forest reserves; however, they also account for 17 per cent of the 94,353 hectares of the nation's gross deforestation (Ministry of the Environment, 2017).

It is precisely in these two provinces where oil exploitation activities were set in motion in the late 1960s, led by the Texaco-Gulf consortium. This exploitation resulted in the construction of roads and infrastructure that made it one of the most attractive areas for colonisation<sup>12</sup>, which in turn facilitated oil palm production, “transforming the natural and cultural landscape throughout the entire subregion” (López 2013). Indigenous nationalities such as Siona, Sieokopai, Cofan, Waorani, Kichwa and Shuar, as well as the isolated Tagaeri and Taromenane people, were severely impacted by the loss of vast areas of their territories and the disruption of their livelihoods. Despite the pressures facing them, they still possess large areas of forest that are home to a high concentration of biodiversity and that have been partly overlapped with protected natural areas.<sup>13</sup>

9 For further details, download the official brochure on the “Jurisdictional Certification” here: <http://bit.ly/CartillaCJAE>

10 The REDD+ Action Plan contains a set of strategic guidelines that promote measures and actions to mitigate climate change which, with a territorial focus, aim to reconcile the country's environmental and productive development agendas.

11 See in References: Ministry of the Environment 2017 a) and b). The first document deals with the Jurisdictional Certification in Ecuador, and the second with the establishment of farm management plans with a focus on sustainable palm production.

12 Falconi (2006) estimates that in the period 1970-1990, deforestation due to the seismic activity of the Texaco-Gulf consortium was 30,900 ha and 1,200,000 ha due to road construction.

13 The two provinces add 1,582,000 hectares to the status of protected areas and share areas of the Sumaco Napo Galeras National Park, the Limoncocha Biological Reserve and the Cuyabeno Fauna Production Reserve, in addition to housing in the part of Orellana, the Yasuní National Park with the territory of the Tagaeri Taromenane intangible zone; and, on the Sucumbíos side, the Cayambe Coca National Park and the Cofán Bermejo Ecological Reserve (GADP - Autonomous Decentralised Provincial Government-Sucumbíos, 2015; GADP-Orellana, 2015).

The economic wealth generated by the extractive activities in these two border provinces<sup>14</sup> has not reverted to its inhabitants, who are plunged into situations of poverty and extreme poverty. Both Sucumbíos and Orellana are among the ten provinces with the highest poverty levels in the country (Sucumbíos 41.9 per cent, and Orellana 41.6 per cent, according to data from the National Institute of Statistics and Censuses).<sup>15</sup> Other problems include deforestation and land trafficking.

In addition to the historical conflicts described, the CJAE pilot project is being developed under particular circumstances, since the oil palm sector faces a crisis linked to two factors: i) the attack of bud rot disease (commonly referred to as pudrición del cogollo 'PC', or spear rot); and ii) the drop in international prices for crude palm oil.

PC disease has spread from the Amazon to the northern coast, the country's main production area. As of 2019, PC caused the loss of 60,000 hectares, out of a total of 257,121 hectares of cultivation, and it is estimated that an additional 20,000 hectares will be lost by the end of 2020.<sup>16</sup> This is likely to impact the sector in this region five to ten years from now.

Crude palm oil prices have fallen in the past four years. In addition to PC, these factors have driven various companies to bankruptcy, causing unemployment, land sales or experimentation with other crop types by small and medium-size producers. According to recent data, the export volume dropped from 210,107 tonnes to 12,775 tonnes; in Quindé, more than 30,000 people were left unemployed, five extracting companies closed down, and around 1,000 of the 5,200 people who inhabited the area have migrated to the Amazon in search of work in the oil palm industry (Bonilla, 2019). This crisis scenario has opened and widened a fracture between small-scale producers (who are more vulnerable faced with these problems) and large companies. Despite the aforementioned problems, several members of the CISPS (but not all) expressed optimism about palm production in the Amazon – after approximately five years, it is expected to become the place of supply for national production, with growers having overcome PC disease by planting resistant varieties.<sup>17</sup>

Sector representatives have presented a bill to the National Assembly with a view to establishing parameters to obtain a fair price, together with other measures to achieve greater competitiveness in the market. They are also pressuring the State to receive preferential attention in terms of credit and to be able to replant palm.

## D. The Integrated Amazon Program for Forest Conservation and Sustainable Production (PROAmazonía)

PROAmazonía plays a central role: it provides economic and technical resources to achieve jurisdictional certification in the Amazon. This programme, with a budget of 53 million dollars, is an initiative of the Ministry of the Environment and Ministry of Agriculture and Livestock, funded by the UN Green Climate Fund (GCF), and managed by the United Nations Development Programme (UNDP). Its main role is to reduce deforestation and forest degradation in order to reduce GHGs, seeking the convergence of environmental and productive agendas with a landscape approach. It operates throughout the Amazon region and works on four interrelated components: i) Policies and Institutions; ii) Transition to Sustainable Production Systems; iii) Sustainable Forest Management, Conservation and Restoration; and iv) REDD+ and funding: cross-sectoral operational components.<sup>18</sup> The CJAE pilot project is part of component ii), which also includes livestock and the palm, cocoa and coffee commodity production chains.

The inclusion of the CJAE pilot project in this programme has various implications. On the one hand, the budget required for the process of CJAE readiness is secured. Without these resources, it would be very difficult for the country to get involved in this type of initiative. Despite this, the inclusion of the pilot project in PROAmazonía also involves being part of a much broader process in which a variety of institutions and agencies participate. This results in delays due to internal decision-making procedures and causes setbacks in hiring and meeting initially set goals, among other issues.

As well as providing funds, the programme constitutes the technical element of the pilot project. Two professionals, one with headquarters in Quito and the other in Sucumbíos, dedicate most of their time to working on the CJAE. In a complementary manner, and as requirements arise, the programme team is supported by the members of the other components. The PROAmazonía framework also holds a more integrated vision of the reality of the oil palm production chain. Issues such as financial sustainability, territorial planning, life plans, safeguards, studies on High Conservation Values (HCVs) and georeferenced information on deforestation, all provide needed inputs to the CJAE pilot. In addition to RSPO certification, the oil palm chain is addressed via other programme components, and pilot project efforts are interrelated with mechanisms and instruments of the Ministries of Environment and Agriculture.

Given the considerable financial and technical support that PROAmazonía provides for the CJAE pilot project, one of the great challenges to be resolved when the programme ends will undoubtedly be to find an institutional framework to house the initiative and provide funds for maintaining certification. Although two options are currently being considered, outlining a transition plan and roadmap to 2022 and allocating specific resources for this purpose is of vital importance.

14 The province of Orellana borders Peru and Sucumbíos province with Colombia.

15 <https://www.eluniverso.com/noticias/2019/11/06/nota/7591325/pobreza-ecuador-2019>

16 Information provided by ANCUPA representatives and the National Federation of the Palm Oil Production Chain (Propalma).

17 Average productivity in the Amazon is 14.33 metric tonnes, higher than the rest of the country, which is 12.19 tonnes (PROAmazonía interview). In any case, it is low in relation to that of other countries in the region. In the pilot project, working on improving the productivity of small holder palm cultivation has been proposed.

18 PROAmazonía covers issues such as implementation, monitoring and automation of the Safeguards Information System; the involvement of stakeholders, gender and interculturalism, and the operations and management of the REDD+ Working Group. Hence, this component works for Free, Prior and Informed Consultation (and Consent), Benefit Sharing, Complaints and Claims Mechanism, for example.

## IV. Findings

Before starting this section summarising the information gathered from documents and interviews, it is worth noting that there were important factors that limited the possibility of giving answers to each of the questions set out in the terms of reference:

- First, the pilot project is in its initial phase in which emphasis has been placed on planning issues and some aspects of governance, with very limited actions so far in the territory.
- Second, key documents that could have been used in the analysis of the project in Amazonía had not been finalised and so these inputs were unavailable. Also, the implementation of some pilot project activities had not been completed as the actions were awaiting finalisation of the official RSPO Jurisdictional Certification guidance document.
- Thirdly, most of the people interviewed – producers, and representatives of indigenous and social organisations – did not have knowledge about the CJAE process. For this reason, the investigation seeks to draw lessons from concrete experiences and the testimonies collected, without trying to speculate on issues that have yet to be resolved and decided.
- In addition to the above, for academia, NGOs and representatives of social movements interviewed, the issue of oil palm in the Amazon is not a major concern right now, nor is it a priority on their political agendas. In addition, several stakeholder representatives, as well as bibliographic sources reviewed, associate the RSPO Jurisdictional Certification of the Ecuadorian Amazon initiative with the interests of a very powerful group that has a history of environmental impacts and conflicts with communities, especially in Esmeraldas.

### A. Governance

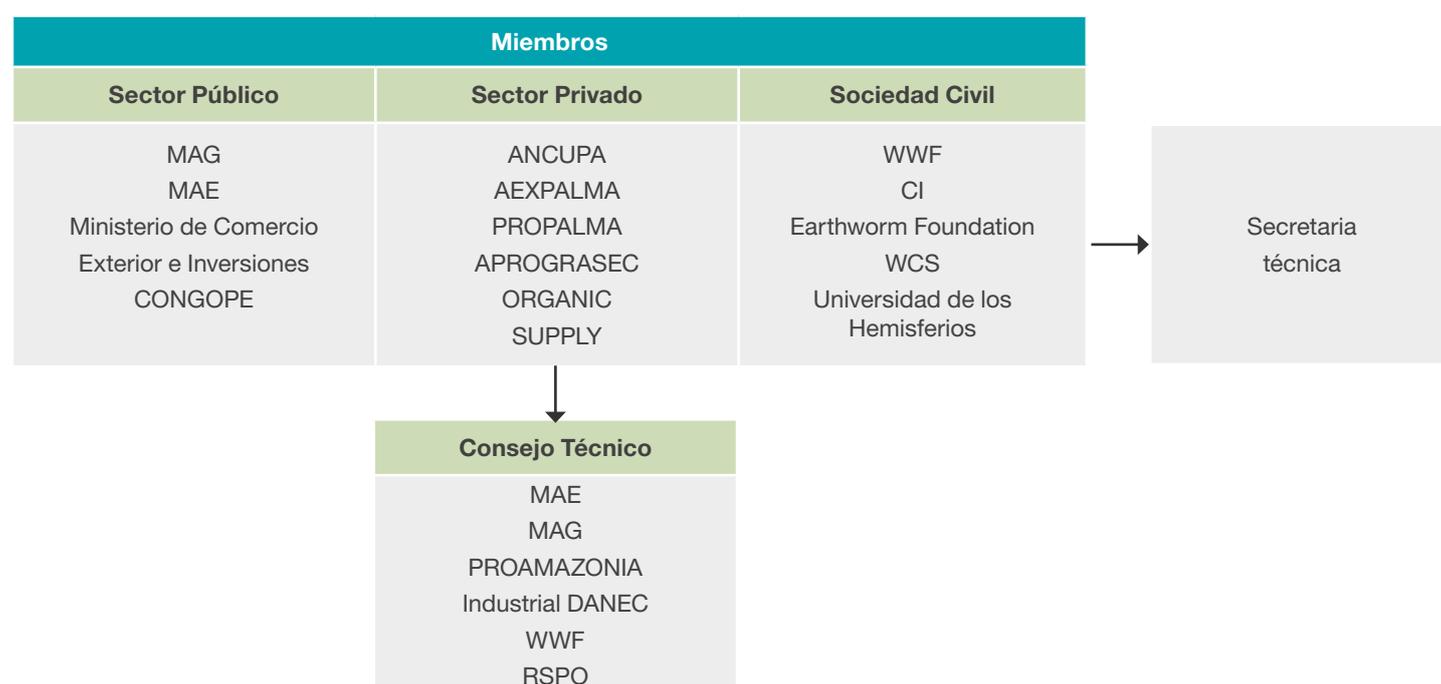
The **Inter-institutional Steering Committee for Sustainable Palm Oil (CISPS)** is the primary actor within the governance framework for sustainable oil palm production. The Committee was formed in 2018 by Ministerial Agreement, and is the body responsible for decision-making, monitoring and follow-up of sustainable oil palm production within the national policy framework. It is a public-private entity with the equal participation of representatives from the government, the palm chain and civil society (five for each sector).

In addition to CISPS, a characterisation and analysis of which is made below, it is worth highlighting the existence and relevance of the REDD+ Working Group, a space for dialogue and involvement with stakeholders related to forest sustainability under the national REDD+ approach. Operating since 2013, this Group is made up of national, regional and local representatives of the organisations representing indigenous peoples, Afro-Ecuadorians, social and environmental NGOs, as well as the private sector. PROAmazonía is currently responsible for its management and operations, and it has been mentioned that it will likely become a citizen's oversight body. Although the subject of Sustainable Palm Oil has been mentioned, the working group and participation space have not dealt specifically with the CJAE process. Its approach and involvement will be key, given that this initiative is also a REDD+ action.

#### Inter-institutional Steering Committee for Sustainable Palm Oil (CISPS)

On the government side, CISPS includes the Ministry of Agriculture and Livestock (which chairs it); the Ministry of the Environment; the Ministry of Production, Foreign Trade and Fisheries; and the Consortium of Provincial Autonomous Governments of Ecuador (CONGOPE). The private sector has palm chain representatives predominantly from the business sector; and civil society has four international environmental NGOs based in the country, as well as an academic representative.

Table 2. Structure of the Inter-institutional Committee for Sustainable Palm Oil (CIPS)



Source: Author, based on: Ministry of Agriculture and Ministry of the Environment, no date, CISPS Regulations 2018, Interviews.

Part of the Committee's structure is a Technical Council made up of a group of advisers – appointed by CISPS members – who provide inputs for defining strategies and making decisions. The Council comprises a PROAmazonía sustainable palm oil technician (for the duration of the project); an RSPO representative, two private-sector technicians, two from the government and one from civil society. Members participate in accordance with the provisions of the Internal Regulations for Operation and Functioning, which include a Code of Ethics to which all CISPS members must adhere.

CISPS members meet every three months and decisions are made by consensus. "Until now, we have focused on the roles of each member, and the declaration of principles; the commitment that these principles are also assumed by their respective companies or organisations; and, in building and fine-tuning the Action Plan" (CISPS member interview). As mentioned, sensitive issues that require further analysis are now being addressed. This will continue in the coming years and include deliberations on matters such as the operation, characteristics and functions that the Jurisdictional Entity (JE) would have - "with criteria that respond to the reality of the country, and we hope the RSPO includes them." The case of the Siekopai is another example of the sort of topics that have been addressed.

In the interviews, the majority of CISPS representatives believes one of the greatest achievements is having formed a public-private body "that provides strength", and equitably integrates all the stakeholders in the oil palm chain under the common interest of achieving sustainable and deforestation-free production.

**A closer analysis of the members' representation reveals the absence of representatives of key stakeholders involved in the chain.** At the government level, social perspectives are under-represented; in the private sector the absence of small-scale producers is felt; and in civil society, there are no social NGOs or indigenous or Afro-Ecuadorian peoples organisations. Certain interviewees agreed on the need to bridge this gap.

According to the testimonies collected, the Ministry of Labour should be included on the government side.<sup>19</sup> PROAmazonía technicians also pointed out that the incorporation of producers from the Amazon had indeed been contemplated, but that their inclusion in CISPS required a prior organisational strengthening process. Likewise, one member of the Committee believed that the participation of indigenous and Afro-descendant peoples is fundamental from a rights perspective, because of the impacts that have affected them, and also because some of these peoples are producers.<sup>20</sup>

The CISPS Secretary and the Technical Manager of PROAmazonía explained that the current composition of the Committee is the result of applications received in response to a wide public call made by the Ministry of Agriculture and Livestock. They also pointed out that the absence of both social NGOs and national NGOs dedicated to environmental issues is due to the fact that they did not submit applications, as stated in the CISPS Members Selection Act (Ministry of Agriculture, 2018).

For his part, a former leader of the territorial programme of the Confederation of the Indigenous Nationalities of the Ecuadorian Amazon (CONFENIAE) who is currently representative of the Coordinator of the Indigenous Organizations of the Amazon Basin (COICA), expressed the view that matters concerning oil palm had not been discussed within CONFENIAE, and that he was unaware of the pilot project for Jurisdictional Certification in the Amazon, despite the fact that this organisation has participated in the REDD+ Roundtable. CONFENIAE does not currently have a position regarding its involvement in CISPS.

### **Principles, objectives and planning**

In November 2018, a Strategic Planning Workshop was held to define the CISPS Objectives and Principles, the contents of which are in line with the RSPO Principles and Criteria (P&C) (2018). Based on these Principles and Objectives, the CISPS Action Plan was drawn up to achieve its central purpose: that the country's palm oil can compete in the international market, with high social and environmental standards. As the Technical Secretary states, "we are drawing an extensive and ambitious action plan, from the Committee's objective to transform the policy and strategies of Ecuador to achieve production with criteria and sustainability that go beyond obtaining the Jurisdictional Certification ... And there we have the support of the World Wildlife Fund (WWF), Conservation International, Earthworm; with all of them we built the Action Plan."

19 The Partners of America organisation is implementing a four-year project in Colombia and Ecuador with different actors in the oil palm value and supply chain to address labour aspects, with an emphasis on the prevention of child and adolescent labour. An agreement has been signed with the company DANEC, and work will be carried out with Propalma; they have coordinated with RSPO and PROAmazonía. It was noted that certifications such as the RSPO "have worked on environmental aspects, which is good, but has not focused much on enforcing labour protocols". The aim is that when the project concludes, Ecuador can show "the market in the United States that these products, apart from being certified, comply with labour standards, reduction of child labour, and prevention of adolescent labour in the oil palm value and supply chains" (Interview with the project's Deputy Director).

20 Additionally, it is already proposed in the Implementation Plan that indigenous peoples, as members of the Inter-Institutional Committee (CISPS), would have access to direct interaction with producers, which would lead to a substantial improvement in the terms of governance for the sector within the jurisdiction to be established (Ministry of the Environment, 2017: 45).

Table 3. CISPS Principles

Declaration of CISPS Principles		
Human Rights	Principle 1	Support and respect for the protection of basic rights, internationally renowned within its sphere of influence.
	Principle 2	They must ensure that they are not complicit in human rights violations.
Labour Relations	Principle 3	Support for labour rights, freedom of affiliation and the effective recognition of the right to collective bargaining.
	Principle 4	The elimination of all forms of forced or compulsory labour.
	Principle 5	The fight for eradication of the child labour.
	Principle 6	The abolition of discrimination practices in labour and occupation.
Environment	Principle 7	Maintain a preventive approach geared towards environmental protection and its commitment to zero deforestation.
	Principle 8	Adopt initiatives to promote greater environmental responsibility.
	Principle 9	Encourage the development and diffusion of technologies and good production practices that respect the environment.
Fight against Corruption	Principle 10	Fight against all form of corruption, including extortion and bribery, and demonstrate transparency in their activities.

Each objective contains lines of action, activities, those in charge, and an estimated budget for its completion, which together will contribute to achieving jurisdictional certification in the Amazon under the RSPO standard (see page 13 in "CISP Strategic Planning Workshop, <http://bit.ly/TallerCISPS>). "The Plan is permanently updated, but the objectives and strategic guidelines do not change," said PROAmazonía's manager for oil palm matters. This person points out that, for various reasons, the annual planning was not fully complied with, but progress has been made, the results of which will start to be seen mainly from 2020, when some of the contracted tasks will have been completed. This includes the mapping of HCV and High Carbon Stocks (HCS), the procedures for smallholders, the legal gap analysis, and proposals on the relationship with producers.

Table 4

Objectives of the CISPS	
1	Build a governance model for sustainable palm production.
2	Give visibility to the CISPS and the Sustainable Production of Oil Palm.
3	Guarantee the participation of producers and the integration of the GADs [Autonomous Decentralised Government] in the strategy.
4	Propose a financial sustainability model for the sustainable palm production activity and its governance.
5	Obtain the Amazon Jurisdictional Certification under the RSPO standard.
6	Guarantee the adequate environmental management of the sector.
7	Reduce and eliminate deforestation caused by palm in the Amazon by 2020 and at the national level by 2025, and ensure compliance with REDD+ Social and Environmental Safeguards.

### Structure and forms of management

The CISPS has already defined some of the important aspects of its role and operation, but there are pending challenges of paramount importance that are still the subject of analysis and negotiation processes, both within the CISPS and with the RSPO. Interviews revealed loose and emerging ideas, some of which are described below:

- The jurisdictional entity (JE) is made up of the CISPS, which would be the Supervisory Council (Platform, Technical Council, and Technical Secretariat). Its anchoring within the ministries of Agriculture and Environment would allow independence from the different actors in the production chain and enable the support of the state apparatus at different operational levels within the jurisdiction.
- The CISPS “will mainly play the role of generating policies, strategies, determining marketing issues, traceability; ensuring price transparency, and establishing a marketing platform ...”. In the future, the JE will have a manager and a small management team responsible for, above all, verifying certification in the jurisdiction.
- The system must be decentralised and handled by existing institutions, and not create new ones. The CISPS is a public-private entity, but it does not have a legal personality<sup>21</sup>, nor is it conceived as an operational organisation “that takes responsibility or makes commercial agreements, for example”.
- The (producer) associations with members in the jurisdiction; this means that a territorial producers' association will be the entity that the Sustainable Palm Oil Committee includes in the governance system. These associations would have the legal status for the certificates and would handle the certification. “They are the best equipped to maintain the system.”
- “You have to put together the entire management system; the entire internal control system. This requires a supervisory board, a technical secretariat, a group of internal auditors, a training system, a monitoring system. Plus, there are about 50 documents that must be drawn up to obtain the certification ...”; it was pointed out.
- The CISPS is the entity that will build the entire model for monitoring producers for compliance with sustainability parameters, so that there is no deforestation; we then want to strengthen it to prevent its collapse”.

The above suggests that **one of the key points to resolve is to define whether to opt for the creation of a new autonomous entity** independent of the State; **or whether mechanisms should be combined with the producer associations in the territory** that would handle the certification, as well as all the internal monitoring processes, complaint mechanisms, application of standards and internal audits.

“[And] where the support and verification role of the Supervisory Council (CISPS) would be located, relying on the support of the State system for different issues, and on civil society organisations.” It has been expressed that in order to have greater clarity on these aspects, it is essential to know about the RSPO's final decisions relating to its Smallholder Standard and Jurisdictional Certification; it is expected that the latter will include considerations regarding the specific reality of Ecuador and the CJAE.

Regarding audits, specific RSPO requirements (for JA systems) have not yet been set up. In any case, there are two types of audit: an internal one made within the same JE and another external one. With regard to the internal system, a few ideas have been put forward. For example, some suggest a structure with greater representation that might include producers, representatives of the government and civil society, all acting in accordance with current standards and regulations (annual or biannual, always with 100 per cent of audited producers). The objective is to constitute an intersectoral and interinstitutional system, with differentiated responsibilities according to the specific role of the stakeholders. So, for example, palm-growing companies and producer associations could participate in verifying compliance with the environmental standards, with the CISPS as overseer and as auditor. PROAmazonía technicians highlight that this structure would be subject to RSPO approval.

21 This aspect is found in consultations with legal experts.

### Funding and financial sustainability

The pilot project has a budget of US\$2 million covered by PROAmazonía until 2022. In the framework of this programme, a financial strategy is being developed in partnership with the public banking system (BanEcuador) for "green" credits, incentives and for its accreditation in the Global Climate Fund. It also aims to obtain resources through cooperation mechanisms at the international level and with palm oil consumer companies committed to sustainable development, to which the resources from the sale of RSPO credits would be added. "In the CISPS planning stage, formulating a financial sustainability strategy is envisaged, which will be designed when the RSPO standard is approved and concludes the design of the Internal Certification Control System".

The bill presented in the National Assembly by the producers' unions with the purpose of "achieving price regularisation with clear rules and strengthening the sector is part of this framework.<sup>22</sup> One of the people interviewed in Orellana expressed the hope that under this bill small and medium Amazon producers could obtain fairer prices for their products. However, the Ecuadorian Network for Alternatives to Oil Palm attended the Assembly to express its concern that the bill does not consider the populations in the vicinity of the plantations or the alternatives they propose.<sup>23</sup> In the interview with the representative of Acción Ecológica, it came to light that "provisions have not been included on the social and environmental aspects ... it has been prepared with the purpose of favouring a small number of companies that are those with the largest areas of oil palm in the country".

In reviewing possible models for the CJAE, two existing approaches were noted during interviews undertaken for this investigation. One might take an approach based on commodity certification programmes led by non-governmental organisations and bodies and without state involvement, like the FSC for example. Another approach is that of state-led forest protection initiatives such as the Socio Bosque Programme, which is run under the Ministry of the Environment. It has operated due to state funding, but in recent years it has encountered problems arising from budget reductions, which has often prevented it from complying with its commitments towards members of civil society and indigenous organisations that signed contracts to protect their forests for a 20-year period. Jurisdictional Certification requires a different model to the two mentioned, with the involvement of the State – where the management and oversight would need to extend beyond the government of the day. Matters relating to funding and the definition of governance merit an in-depth analysis as the forms adopted will mark the legitimacy of the scheme in the present and affect its sustainability in the future. Independence, transparency, inclusion and financial sustainability, among other aspects, must be guaranteed.

### B. Land tenure security

Rights to lands, territories and resources in relation to oil palm are presented in this section from a dual perspective. The first deals with land tenure and regularisation of smallholder growers. The second focuses on the collective territorial rights of communities, peoples and nationalities, based on a summary of testimonies collected in Sucumbíos. One case that stands out is that of the Siekopai nationality, also based on testimonies and secondary research. It is found that the CJAE project had held some meetings with representatives of the Siekopai nationality, but they have not continued. The focus of the CJAE pilot has mainly been on the rights of oil palm growers.

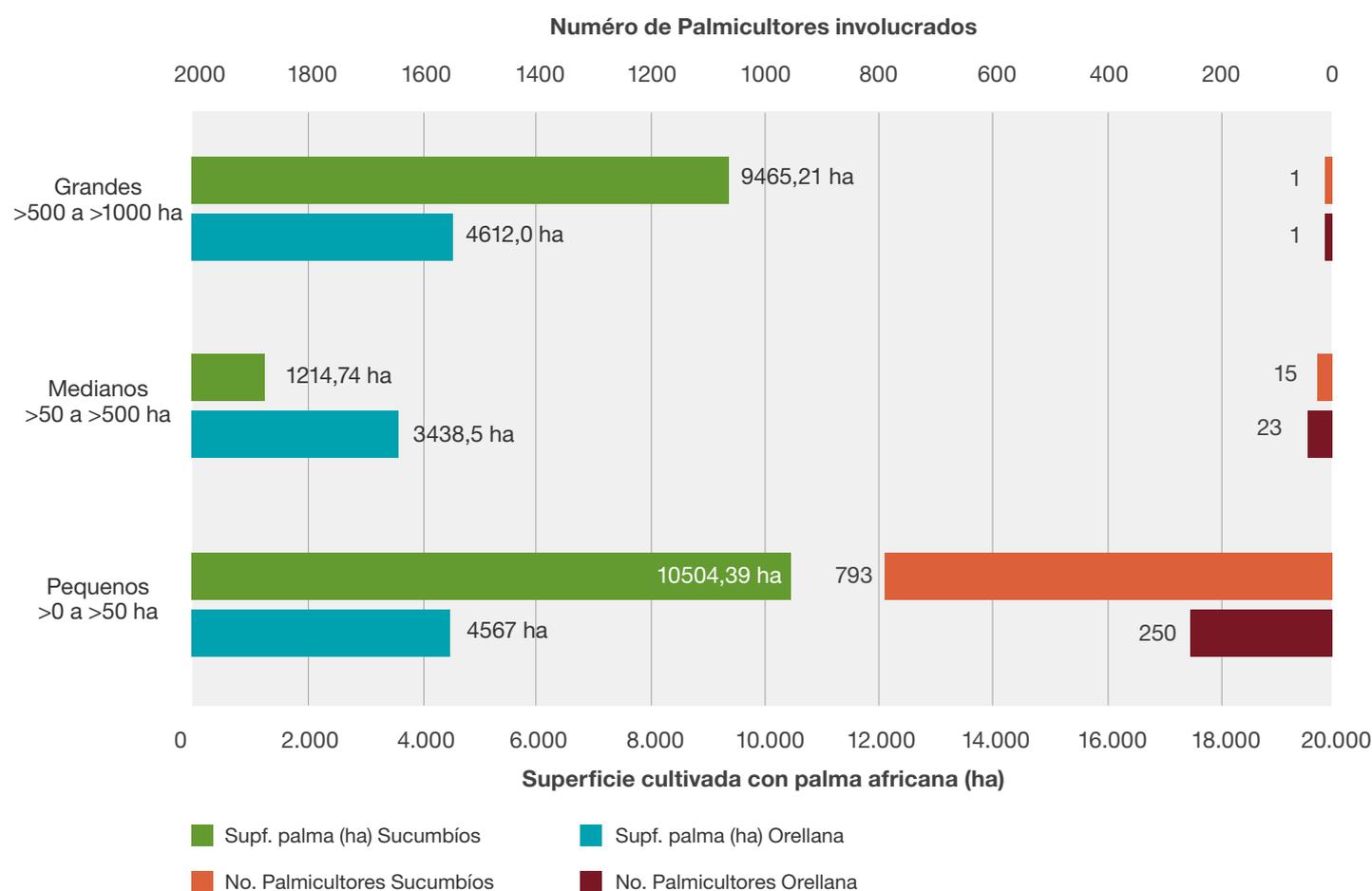
#### First perspective. Land tenure and regularisation of small-scale palm growers.

One of the characteristics of the palm-growing areas of the Orellana and Sucumbíos provinces is the concentration of land controlled by just two companies. Another is a large number of small properties with palm plantations. Table 5 shows the distribution of palm crops in the provinces of Orellana and Sucumbíos using a classification stratified according to the number of hectares. According to the Palm Census, if a palm grower works between >0 to 50 hectares, he is considered a smallholder; from >50 to 500 hectares, a medium-sized producer; and from >500 to >1000, a large-scale grower.<sup>24</sup> In Orellana province, it is evident that a single actor manages 4,612.0 hectares (37 per cent), while 91 per cent of producers classed as smallholders have 4,567.1 hectares (36 per cent) of palm. In Sucumbíos province, the contrast is even greater, since a single actor there manages 9,465.2 hectares (45 per cent), while 98 per cent of smallholders represent 10,504.4 hectares of palm (49 per cent).

22 <http://www.ancupa.com/2019/05/06/ley-de-la-palma/>

23 <http://agenciaecologista.info/2019/08/08/los-afectados-por-la-palma-aceitera-llegan-a-la-asamblea-nacional/>

24 The technical manager of sustainable palm in PROAmazonía stresses that it is important to identify those who can be really be considered small-scale producers, since between 69 per cent and 70 per cent own 0 to 20 hectares and they work on their land with family labour. The 22 per cent who cultivate between 21 and 75 hectares are also classified as small, but generally use labour outside their family groups.

**Table 5.** Provinces of Orellana and Sucumbíos: Number of hectares of oil palm stratified by holding area (large, medium and small).

Source: Compiled by the author based on information from the 2017 Palm Census.

This land tenure distribution has historical roots. On the one hand, most small-scale producers accessed their lands as peasant-settlers, primarily as a consequence of colonisation policies initiated since the 1964 Agrarian Reform and Colonisation Law. Under this law, settlers received an average of 50 hectares per family after demonstrating that at least 50 per cent of their land holding was destined for production. Since then, the extension of land holdings has shrunk due to familial growth and the internal division of land parcels. On the other hand, with regard to large producers, in the late 1970s, the IERAC awarded 20,000 hectares to the two companies that occupy the area until today. This concentration of land has thus been maintained since that time. It is even evident in other aspects of the production chain, since there are only three palm oil mills in the area (small-scale producers depend on them to access markets), and two of these mills have their own plantations. One of these mills and its associated plantations, belonging to Danec, obtained RSPO certification in 2018. The other mill is EPACEM, which is experiencing serious economic problems according to producers interviewed for the pilot project.

According to PROAmazonía staff, the central focus of the CJAE pilot programme is to support small-scale producers so that they obtain certification, although in the process it also expects to work with medium and large actors, as well as with the mills within the oil palm jurisdiction in both provinces. CJAE also intends to work with Autonomous Decentralised Governments (GADs). In terms of small-scale producers, the CJAE pilot project is primarily responding to the crisis that they are living through. While the majority have regularised lands, they face financial and productive difficulties (see Section IV B.). These small-scale producers combine palm growing with other products<sup>25</sup> for local sale, and their future focus will continue to be on cultivating oil palm, according to producers interviewed. This is because despite all the problems, it offers the best possibilities: "we have already tried other (products) and they haven't worked."<sup>26</sup>

According to the results of the 2017 Palm Census, almost 100 per cent of the producers in the CJAE area have land title deeds. According to PROAmazonía officials, no conflicts in this regard have been detected in the Amazon (apart from two producers in Sucumbíos, who have not provided clear information on the status of their land tenure). Neither have plantations been found within protected areas.

25 According to data from the palm census, palm covers 44 per cent of the properties of producers in the range of 0 to 20 hectares (PROAmazonía Interview).

26 Potter, 2011, on the other hand, points out that in his research in the country's coastal region, several of the palm producers considered as 'small' were found in fact to own much larger areas of land for the cultivation of other products for the market.

Table 6. Palm producers' land tenure

Province	Tenure Type	Producers	%	Area	%
Orellana	Possession law	10	2.9%	83.8	0.7%
	Deeds	336	97.1%	12,533.85	99.3%
Sucumbíos	Rent	4	0.43%	68.4	0.3%
	Possession law	67	7.24%	400	1.9%
	Deeds	853	92.12%	20,700.94	97.7%
	Other	1	0.11%	11	0.1%
	No response	1	0.11%	4	0.02%

Source: Compiled by the author, based on the 2017 Palm Census and data provided by PROAmazonía.

In order to update the 2017 Census, it is expected that producer mapping and direct access to information on land tenure and conflicts will be enabled under the framework of the pilot project. "Based on these data, the regularisation of land holdings with problems will be supported, and other types of conflicts will be analysed as soon as they are detected" (interview in PROAmazonía). Producer mapping will be carried out from December 2019 to July 2020, within the framework of a broader consultancy called "Design and Implementation of a Programme for Strengthening Capacities and Technical Assistance in Good Sustainable Agricultural Practices and Responsible Oil Palm Planting for producers in the provinces of Orellana and Sucumbíos", which will run for 16 months. In the revised terms of reference, there is an emphasis on productive aspects and the involvement of stakeholders, with a gender perspective, but issues concerning rights or other social aspects are not mentioned. In a conversation with one representative of producer groups that support this process, he expressed a concern about how the process would address social issues and indicated that he considers it is necessary to include "social sciences professionals, because new findings may be presented, but we don't know yet ...".



## Second Perspective. Collective rights of communities, peoples and nationalities

The pilot project does not provide for actions regarding the situation of communities, peoples and nationalities in relation to the cultivation of oil palm. This is because, in the current scenario, no oil palm related land or resource conflicts have been detected in the Amazon; this will be verified in the aforementioned producer mapping exercise. According to PROAmazonía sustainable oil palm technicians, land grabbing issues will not be tracked because legal norms protect community rights. The legal security of indigenous and Afro-ecuadorian lands and territories is effectively considered to be guaranteed under the country's legislation.

However, this does not mean that the area of the CJAE pilot project is free from problems related to land and resources. Territorial and normative dynamics are discussed below, mostly based on testimonies that were collected during field work.

### Relevant norms and regulations

The fourth section of the Ecuadorian Constitution on the rights of The fourth Chapter of the Ecuadorian Constitution on the rights of communities, peoples and nationalities, recognises and guarantees the following collective land rights (Art. 57):

- To hold imprescriptible ownership of their community lands, which shall be inalienable, indefeasible, immune from seizure and indivisible. These lands shall be exempt from paying fees or taxes.
- To maintain possession of ancestral lands and territories and obtain their adjudication free of charge.
- To participate in the use, usufruct, administration and conservation of natural renewable resources located on their lands.
- To not be displaced from their ancestral lands.

Recent regulations on Land and the Environment<sup>27</sup> also regulate aspects of collective rights over ancestral lands recognised in the Constitution. New environmental legislation also recognises, for the first time, the property rights of ancestral lands and territories within the National System of Protected Areas and National Forest Heritage (Arts 66 and 70).

This regulatory body is of particular importance in the context of the Ecuadorian Amazon. Of the 12,753,387 hectares of native forests in the country, an estimated 6,000,000 are within indigenous territories (IT), and 64 per cent of these are in the Amazon (Ministry of the Environment 2016).<sup>28</sup> All policies and interventions in this region should therefore consider the nationalities and indigenous peoples as central participants in policy dialogues and processes. Specifically, where CJAE actions are focused in the provinces of Orellana and Sucumbíos, there is a concentration of activities conducted by oil-hydrocarbon companies as well as oil palm plantation companies, while the forests in this area of the country are almost entirely located in indigenous territories and protected areas.<sup>29</sup>

In this context, the legalisation, titling recognition and demarcation of lands is one of the objectives included in CONFENIAE's Implementation Plan (2018), which is presented as a key variable to reduce deforestation. In 2019, it began with an inventory of land conflicts and a strategy to solve them; a five-year timeframe is envisaged in order to resolve at least half of the inventoried conflicts.

In other words, possible territorial conflicts or unfinished territorial processes are already identified. The territorial lead in CONFENIAE states that a primary concern of the organisation is to obtain titling of collective territories, which is why she has asked the presidents of the organisations of indigenous nationalities within CONFENIAE for information on what land they have titled and how much remains to be legalised.

"All of the nationalities in the Amazon region still need to legalise more than 50 per cent ... including Sionas, Siekopai, all 11 nationalities and 23 organisations in the Amazon region. Only Kichwa in Pastaza have almost 100 per cent legalised. It is very complex; if it is legalised, they must all be legalised, not just a few. It is a complete document that I want to get from the 11 nationalities".

27 For example: The Rural Lands and Ancestral Territories Law (2016) and Regulations (2017). The Environmental Code (in force since 2018); and related 2019 Regulations.

28 Ministry of the Environment. 2016. REDD+ Action Plan. Bosques para el Buen Vivir. (Forests for a good life) 2016-2025.

29 As mentioned in the background section, the Siona, Siekopai, Kofan, Waorani, Kichwa and Shuar nationalities live there, as well as isolated indigenous peoples, who live in areas of high biodiversity such as the Yasuni National Park.

## Testimonies

In order to provide more evidence of these (land tenure) concerns, observations on the issue of territory in the province of Sucumbíos are highlighted below, based on the testimonies collected. Three main concerns emerged: i) Land invasions and pressures on land and resources; ii) “sale” of communal lands; and iii) financial expectations (note that in all citations provided, the emphasis is the author’s own).

In general, the testimonies show that a high risk comes from secondary land markets, which are gradually placing pressure on indigenous territories and protected areas. In other words, the presence of oil palm companies brings a strong economic incentive for settler farmers to sell their land (whether legal property or not) and invade indigenous ancestral lands to replace it. It can even create incentives for members of indigenous communities to sell lands that are actually collectively owned. The economic incentive for selling or trafficking land is reinforced by the fact that communities do not see a way to access the opportunities and economic benefits of palm cultivation.

**1. Land invasions and pressures on land and resources.** In the area of Limoncocha, where the Kichwa population lives, members of the Santa Elena Community stated:

“There was no problem before, but now there is. The danger is that the **community borders people next to Palmeras del Ecuador, and lately they have begun to sell their farms so that the company can increase their land for cultivation**, and they are beginning to get closer and closer to our communities. **There are threats of invasion because they sell, they run out of land, and then they invade communal land.**”<sup>30</sup>

“The company does not buy directly, **it is the ones who live next to the company. They sell their land because Palmeras is expanding its business, and since they are left without land, they invade communal lands.**”

“We’re just at start of the invasions, and it’s not just about palm. **There are the land traffickers.** A few months ago, a group invaded community land and we evicted them. We are going to create a settlement there. We stand to win because we have deeds.”

“We are neighbours, but in 20 years we have not seen our lands expropriated to this extent. Even more so in Orellana because they are in an area where a company called Palmeras del Oriente operates.”

“Many communities **filed complaints two or three years ago, and until now justice is conspicuous by its absence.** Law enforcement is not able to remove the invaders. The authorities do not sanction the invaders, they just threaten them.”

**2. “Sale” of lands.** Interviewees at the Ministry of Agriculture and Livestock in Sucumbíos pointed out:

“The sale of communal lands is a permanent problem. **The indigenous sell land with purchase agreements and then they themselves file a complaint.**”

“**Most land conflicts over the palm issue are in the Yamanunka Commune in Shushufindi.**<sup>31</sup> Colombians came to work here and **to be close to the company they bought plots of land with purchase agreements, and they were told they would be given the deed later. The Colombians built their houses there.** Then the leaders of the Commune came, presented the invasion document, and asked us to evict them.”

“In this part of Yamanunka or Limoncocha, Colombians have come to rent land and have married Shuar women or men to get land there. The conflict is that they continue to lease land to plant taro and to do that, they cut down forest, and in certain parts they are sanctioning them, but not much.”

“Once again we have sent circulars to notaries so that they do not draw up purchase agreements within communal lands.”

“**But the biggest problem in Sucumbíos is with the tenant farmers.** People think that because they have possession, they already own the land and they fall into land trafficking because they say: *This is my land, I sell it to you*, and it’s sold, but it does not have property deeds. **Not having deeds means that illegal land is being trafficked**, those little things that come from ignorance have ultimately resulted in the problems we have.”

**3. Economic expectations.** Palm cultivation is becoming a desirable option for some community members, such as in Limoncocha. Testimonies illustrate this desire. They also show that the Socio Bosque Programme has been slowing down possible deforestation processes:

“[The company] **has vast amounts of land, and we’re not entitled to anything.** We’ve been around looking at what they have... what they plant. They change every few years and we’ve seen that they fell palms that are ageing and renew them with young palms. And there’s not even any advice telling us ‘plant this, we’ll buy it from you,’ **nothing for our communities, not a single benefit, nobody has given anything to us.** They haven’t come here, but it appears that they have on the other side.”

“**If they told us to plant palm we would do so, because outside of the Socio Bosque Programme we have some 2,000 hectares to cultivate, and every family can work on ten, and this is authorised.** I even got excited about those ten hectares. We have not asked women, but they most likely want to, providing it is properly managed. Each family has 50 to 60 hectares so this way we would not remove all of it (the forest), and so there would be about 40 hectares for our children.”

“The other day, the leaders said ‘well, we have looked after our land for a long time, and actually we have benefited very little because we’re in the Socio Bosque Programme, but we said that **we use the lands and manage the crops (or cattle) well** (or the livestock) ... **We had thought about something like that; if our communities had another type of income,** we would have a little less to worry about on the economic front.”

“We’ve spoken to a lot of people about improving agricultural matters because we do want to work. **We’re not (commercial) farmers by culture, but if we can work in this area a little, and if we could get a helping hand from an institution** – from the government agriculture sector or from wherever – so that we’re given the chance to improve, then **working on the land would be the best option for us.**”

<sup>30</sup> Despite the fact that during the investigation, several attempts were made to interview the person in charge of these issues in the company that owns the plantation, it was not possible to secure an appointment.

<sup>31</sup> It should be emphasised that efforts by the author to investigate this case further did not yield results. Lessons from this particular case may be taken from the work that CONFENIAE will do with PROAmazonía to support the development of the Life Plan for this community (as part of another component of the PROAmazonia programme).

## The case of the Siekopai people

To illustrate this theme and the possible tension surrounding palm cultivation, some details about the Siekopai nationality are outlined below.

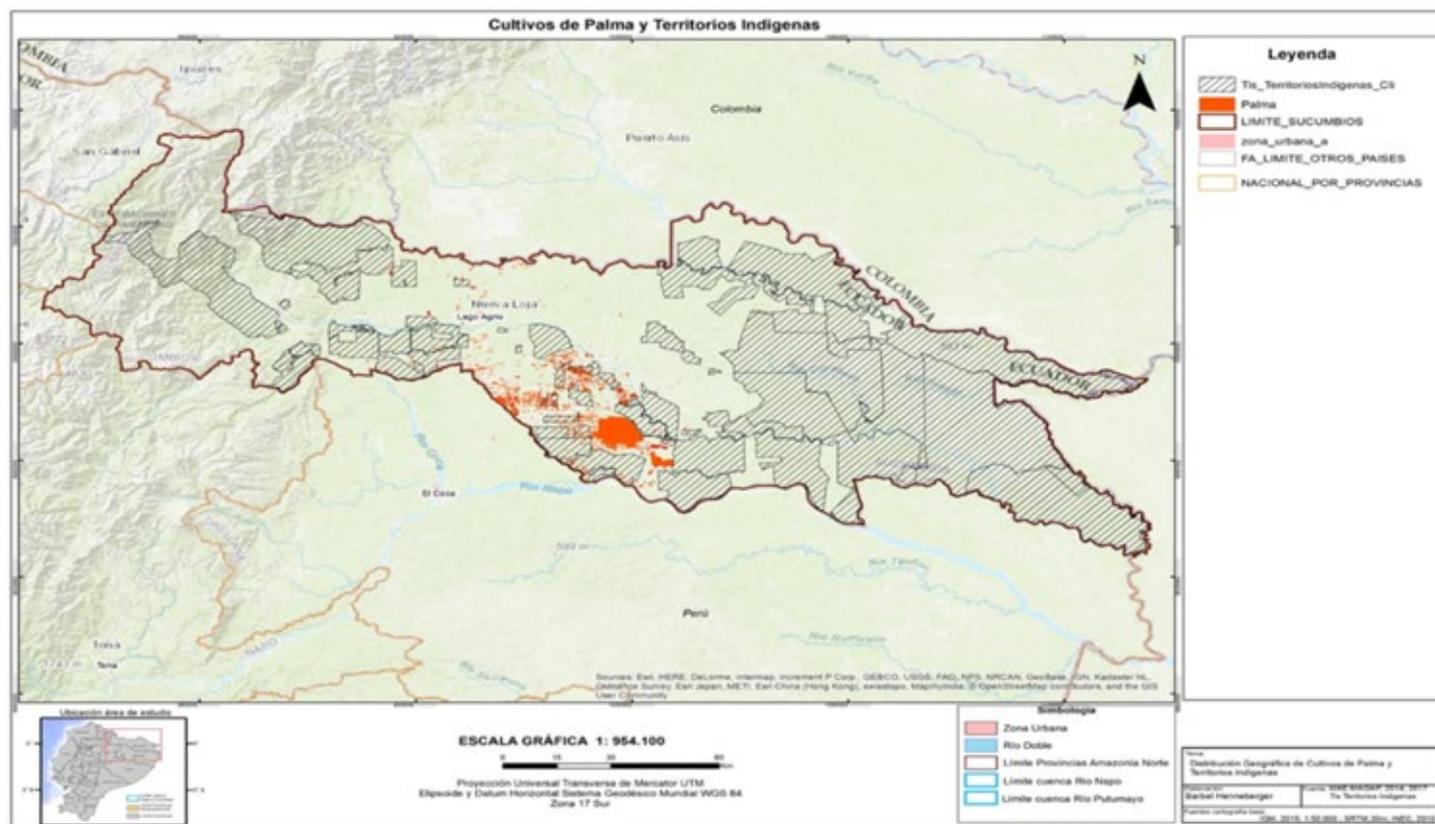
The territory of the Siekopai (previously known as Secoya) people, directly adjoins the Palmeras del Ecuador oil palm company (Figure 1), whose (plantation) lands were adjudicated on the ancestral territory of this indigenous people. Based on the testimony of the President of this indigenous nationality, it is reported that plans to cultivate African palm on their territory began in 1998, with the support of one Siekopai leader. The intention to cultivate (oil palm) was repeatedly rejected in annual assemblies, until it was finally accepted and approved in 2006 under a Palmeras de Ecuador company project, which was, "... according to the company, an inclusive crop project ... (and) with that project they convinced 20 families." Following the project's approval, the company secured a loan from the National Financial Corporation (CFN), and some Siekopai felled trees covering approximately 170 hectares in order to start cultivation. However, in 2011, the Ministry of the Environment sanctioned this logging, and imposed a fine of US\$ 375,000, which would have to be assumed by the entire nationality, even though only a few families were involved. The Siekopai President describes a significant impact. Although the fine has not been paid, and many families in the community are in debt, his people's interest in this crop has increased. He states there are now 50 families interested (equivalent to a total area of 500 hectares), and that the Ministry of the Environment has not authorised this action, as it would affect the forests.

"Families want to plant due to lack of economic alternatives," the President assures. One of the people interviewed (who prefers to remain anonymous here) pointed out: **"Even though there is approximately 9,000 hectares of deforestation a year in Sucumbíos, only the Secoya people have been fined ... it is the only time in the country that a fine has been imposed for deforestation"**. Articles analysing this case (Bayon, 2013) highlight the paradox of the situation. In interviews, it was also highlighted that both CFN and Palmeras del Ecuador should have known the legal regulations and therefore should have alerted the indigenous people about the implications that logging would have for their crops.

The CJAE pilot project could, in theory, create a space to solve this type of dynamic. Indeed, meetings were held between Siekopai representatives and PROAmazonia officials to coordinate activities. However, these discussions did not continue because the demands of nationality, by their nature<sup>32</sup>, were outside the formal scope of the programme (PROAmazonía Interview).

32 i) The return of their ancestral territory, awarded to another nationality; ii) Solution to the fine for the land clearance over 170 hectares for planting palm because they consider the fine to be unfair; and iii) Permission to develop agricultural projects (coffee, cacao, livestock and fish farming) on their territory, as stated in their life plan.

Figure 1. Oil palm cultivation in Sucumbíos province



### C. Free, Prior and Informed Consent

The PROAmazonía Programme – which deals with the technical aspects of the CJAE pilot project – uses an instrument known as the National Consultation Guide for the Implementation of REDD+ Actions on Collective Lands or Territories).<sup>33</sup> The Guide is aimed at obtaining consent of indigenous communities, peoples and nationalities, Afro-Ecuadorian peoples, Montubio peoples and communes, and owners or holders of lands and territories in relation to the implementation of REDD+ measures and actions. It is based on rights established under the Constitution of the Republic concerning prior consultation,<sup>34</sup> and on rights enshrined in the United Nations Declaration on the Rights of Indigenous Peoples in relation FPIC and other related collective rights.<sup>35</sup>

This consultation guideline was created during the REDD+ implementation phase, reviewed in workshops in which the country's indigenous organisations participated, and started to be applied under a pilot programme with communities. The box below presents in a summary overview of the elements relating to the REDD+ National Consultation Guide.

33 Ecuador Ministry of the Environment, 2016, pp. 204-221

34 See mainly the provisions of the Fourth Chapter of the Constitution where collective rights are recognised. [https://www.oas.org/juridico/mla/sp/ecu/sp\\_ecu-int-text-const.pdf](https://www.oas.org/juridico/mla/sp/ecu/sp_ecu-int-text-const.pdf)

35 "States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources."

**Table 7.** Some elements of the National Consultation Guide for the implementation of REDD+ actions on Collective Lands or Territories

Objective	Characteristics	Steps	Role of state	Application
Establish a dialogue process to inform and enquire about the design and implementation of REDD+ actions in lands or territories of indigenous communities, peoples and nationalities, Afro-Ecuadorian people, Montubio people, communes and other groups that depend on forest resources for their livelihoods, in order to obtain their consent.	<ul style="list-style-type: none"> <li>• Obligatory</li> <li>• Prior</li> <li>• Free</li> <li>• Informed</li> <li>• Participatory</li> <li>• With equality and equity</li> <li>• (men and women)</li> <li>• In the territory of the collective</li> </ul>	<ol style="list-style-type: none"> <li>1. Identification of the collective and its characteristics</li> <li>2. Provision of information to the collective and the compilation of contributions and suggestions</li> <li>3. Discussion and decision-making by the collective</li> <li>4. Agreement or Consent Agreement</li> </ol>	<ol style="list-style-type: none"> <li><b>1. Consulting body</b> When the REDD+ actions implementer is a state institution (at the central or local level).</li> <li><b>2. Rights Guarantor</b> When the implementer is a private stakeholder (NGO or company), the Guardianship Consultation is applied, in which the State acts as a guarantor of rights</li> </ol>	In the implementation of REDD+ actions

The following elements of the National Guide in Ecuador are highlighted:

- It is applied to peoples and nationalities in Ecuador who have collective rights and **not** any other type of stakeholder.
- While the title of the guide is *Consulta*, a **consultation**, the main purpose of its application is to obtain **consent** prior to REDD+ actions.
- It is a process organised into phases or steps.
- It has a legal basis and is compulsory.
- The State acts as the consulting body or implementer in some cases, or as a supervisory body (*tutela*) where the consulting body is a third party.
- The steps leading to obtaining or denying consent must be in line with the procedures and internal timelines and rhythms of the communities, their language and specific characteristics of the collectives, and should be conducted within their territories.

In addition, the Guide specifies important aspects relating to:

#### **Land Ownership**

The requirement is that the collective must have the property deed or document acknowledging rights of the land or territory where they live, understood, for example, as agrarian possession or ancestral possession.

#### **Representation**

The Guide establishes that the consultation will be carried out with the organisations that legitimately represent the collective and that the proper forms and mechanisms to solve problems or resolve controversies will be respected. They must be carried out with the participation and involvement of all members of the communities, including the application of the principle of gender equality and equity.

This instrument has been used under the CONFENIAE framework agreement to implement consultation processes for the land restoration activities of this organisation. Consultation, according to the specialist on the subject of safeguards at PROAmazonía:

“...is understood as a *process* and it has been very useful to establish a dialogue with the communities and with CONFENIAE ... the areas where the restoration will be carried out were identified and defined together and we will work on that basis. The process has taken longer than we expected due to administrative reasons around grant funding, which so far has made it impossible to reach signing of the Consent Agreement.”

On the other hand, it was noted in the interview that the Guide has started to be used under the CJAE pilot as a tool with stakeholders who do not hold collective rights. Consultation processes have begun with palm grower associations (as part of the project) in order to publicise the CJAE initiative for the signing of the Sustainable Production free from Deforestation Agreements. The content, benefits and commitments required by the producers have been explained; meetings have been held with association leaders and with grower assemblies. In these spaces, the meaning of the jurisdictional certification and the requirements that must be met have been explained. “Social aspects have been explained in a very general way”, and it is stressed that participation is voluntary. This information is then analysed in assemblies to reach a decision on whether to continue the process. These actions led to the presentation of a Declaration of Interest that subsequently gave way to granting the **consent** of the associations by signing an Association Agreement with the Ministries of Agriculture and Livestock for sustainable production free from deforestation. The interviewee stated: “With this first step, it will be possible to work with them to improve productivity and monitor compliance with the various commitments. The Consultation would continue in each stage of the process, for example, the delimitation of farms through participatory processes.”

Those responsible for the technical management of the pilot project at PROAmazonía have stated that jurisdictional FPIC will be developed based on the procedures of the RSPO standard, which sets a higher bar than the regulations in Ecuador. “We will make a change that will be reflected in the jurisdiction’s internal management system. An internal rule, a control system, and rules of the game that must be followed by everyone. It does not need to be carried out via an agreement because it will be linked to the internal control system and that system is audited. That is the role of the certifiers ... the guarantee would come from the internal audit that comes from the same Jurisdictional Entity.” They hope to have the support of specialists in the field for their development.

So far, in addition to the above, a very general review of the RSPO requirements has been carried out. However, there is still no precise vision about the modalities and scope of the development and the application of FPIC according to the RSPO standard in Ecuador.

The FPIC procedure must be applied (retroactively) to existing plantations seeking certification and linked to the conflict resolution standard, as well as to all proposals for new plantations by palm growers according to the rules of the RSPO Procedure for New Plantations (PNP). HCV and HCS assessments should also be conducted as part of forest protection in new plantings (Griffiths, 2019). In this sense, several fundamental aspects regarding the application of FPIC in the country remain to be clarified. For example:

- Does FPIC confine itself only to local communities around the areas of influence of the plantations when suffering direct impacts, or will its radius cover communities that could potentially see their resources affected?
- Who will sign the consent agreements with the communities and which bodies would verify such agreements?
- How would the process proceed with those communities that do not have property deeds or legal recognition of their ancestral possession?
- Will it be the representatives of the producer associations or each grower (that would give or withhold consent)?
- What would be the role of the JE?
- How will the process proceed both with smallholders that affected land or resources before 2005,<sup>36</sup> and with growers who do not wish to be included in the certification?
- How will the monitoring of the consent agreements reached be carried out?

The FPIC procedure must be agreed at three levels: (i) In the NI process (RSPO P&C of 2018); (ii) at the jurisdictional level – with social organisations and different stakeholders; and (iii) with the affected local communities and users during the execution phase (Griffiths, 2019). These three levels indicate, among other aspects, that the FPIC procedure must be agreed and applied in a spectrum broader than those nearby locally affected communities; and there is a need to have the definition and scope of FPIC procedures clarified across the set of actions required for Jurisdictional Certification.

Finally, it should be noted that the Impact Evaluation of the PROAmazonía Programme was recently started, and HCV and HCS evaluations HCV and HCS have been underway for several months, both with national coverage. Participatory processes are expected to be carried out in 2020.<sup>37</sup>

**In the interviews, FPIC was not mentioned as a key aspect of these (HCV-HCS) evaluations.** One of the members of the CISPS highlighted the importance of including this issue in the evaluations. At the same time, Indigenous representatives advised that they were unaware of these evaluations. Unfortunately, the author did not have access to further information on these evaluations.

<sup>36</sup> At the time of interview, a field technician responsible for the oil palm matters advised that he intended to participate in a training workshop on the RSPO Certification Standard for smallholders in December 2019, after which, in 2020, a special course will be held to specifically explain the aspects that each producer must meet to achieve certification (Interview). Presumably then this workshop will provide key inputs on the issues concerning FPIC.

<sup>37</sup> (PROAmazonía Interview).

## D. Monitoring and Verification

At present, there is no specific internal Monitoring and Verification System for comprehensive compliance with the requirements of the RSPO standard in the scope of the CJAE pilot project. In addition to conducting external audits, the technicians interviewed for this study shared other possible elements to be considered in the future. These include the use of platforms such as Global Forest Watch (WRI) and Terra-i, combined with community monitoring systems, which are focused solely on detecting deforestation and alerting authorities to it.

In this regard, it was mentioned that because measures targeting palm oil supply chain are part of Ecuador's REDD+ actions, their impact would also be monitored, reported and verified within the framework of the country's REDD+ Action Plan Systems, which are currently in an automation phase in the Ministry of the Environment. In particular, monitoring (of the oil palm sector and CJAE pilot) should be a focus for attention under Safeguards Information Systems in articulation with the Ministry of Agriculture's information platform. But **beyond this, in the CJAE pilot project, efforts should be made in terms of the jurisdiction's landscape or ecosystems to establish correlations between social information and the same REDD+ social and environmental safeguard indicators, including in relation to indigenous peoples' lands and territories, properties registered under the Socio Bosque programme, as well as in connection with State policies.** The studies carried out by RAISG for the Amazon region of the nine countries in the Basin are illustrative in this regard.<sup>38</sup>

## E. Complaints Mechanism

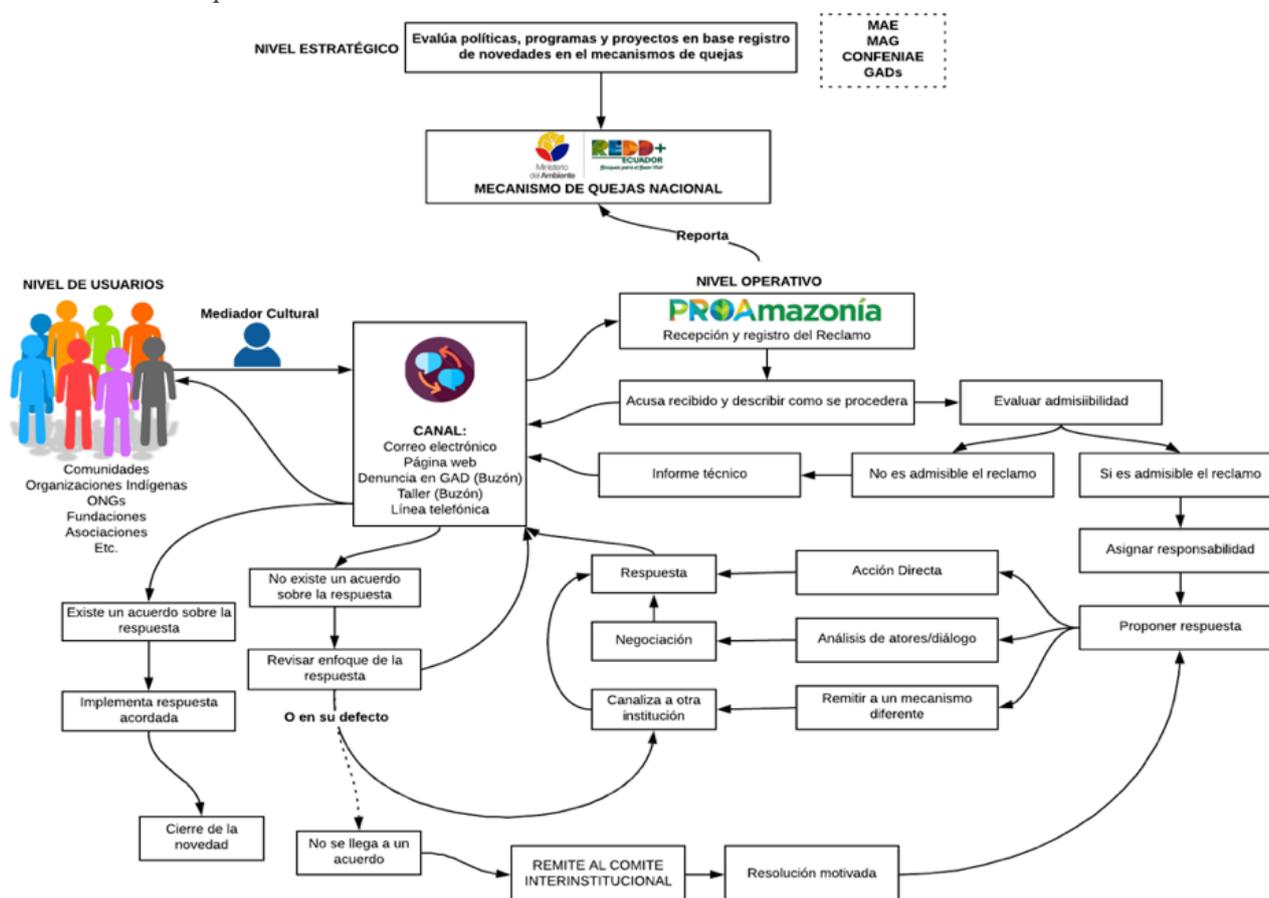
In 2019, within the framework of REDD+ Safeguard compliance, a technical proposal for a Complaints Mechanism was prepared (within the broader framework of PROAmazonía at the regional-Amazonian level) and is now in its test phase.<sup>39</sup> In developing this instrument, a review was completed of existing formal conflict resolution mechanisms in the country both at the central government level (including the Ministry of the Environment and the Ministry of Agriculture and Livestock), and at the local level, such as under the GADs. Other frameworks that could contribute to the procedure were also identified, such as internal mechanisms operated by peoples and nationalities in the Amazon; as well as spaces for dialogue and follow-up such as the REDD+ Working Group, where a range of representatives of civil society and indigenous peoples participate at the local, regional and national levels.

The (REDD+) complaints mechanism has several objectives that, in short, aim to channel concerns to the programme's decision makers from the main stakeholders involved in REDD+ actions as well as from citizens in general; to establish rapid response mechanisms; and to reduce or prevent major conflicts arising from the programme's implementation.

The mechanism is:

- **multi-stakeholder** and includes both the programme implementers and the beneficiaries and others involved in its actions.
- **decentralised** with different information collection points, from the local to the national and with case resolution in ascending order.
- **multi-level:** i) **user:** people and organisations that communicate the complaint from the affected populations; ii) **operational:** technical team that registers, documents and channels complaints; and iii) **committee:** body that makes MAE and MAGAP decisions and solves reported problems.

Figure 2. PROAmazonía Complaint mechanism levels



38 For example, see the analysis presented in "Amazonía Bajo Presión" (Amazon under pressure) (López, Espíndola, Calles, & Ulloa, 2013).

39 The information synthesis presented here was made based on a PPT on the Mechanism and interviews in PROAmazonía.

As the national REDD+ authority, the Ministry of the Environment will be responsible for the safekeeping and administration of the information (database). The mechanism will use different media for channelling complaints (telephone line, social networks, websites, email, mailboxes, etc.), as well as training activities for users and implementers.

As mentioned in the introduction, the CJAE pilot project is one of the actions included in the PROAmazonía programme (in addition to being one of the REDD+ activities). In this sense, the proposed mechanism would include all the stakeholders in the oil palm chain involved in the certification process. However, in the interviews it was pointed out that a particular analysis of the mechanism based on what is required in the procedures of the RSPO standard has not yet been set in train. Undoubtedly, this analysis constitutes an activity that should be started as soon as possible, since the challenge is not only to try to insert the mechanism into the existing framework, but to generate a specific one for the CJAE. For example, the creation of a mechanism and process separate from the JE would be key to avoid conflicts of interest and guarantee independence. Other aspects that must also be considered include: the specific levels at which the mechanism would be used; how to document complaints; and guides on how to proceed in cases such as compensation claims, labour complaints, and purchases of non-certified products that are sold as such, amongst others.

The CJAE Complaints Mechanism will have to guarantee transparency and comply with all RSPO<sup>40</sup> principles. While not perfect, experts have pointed out that the RSPO complaints procedure, can sometimes be a valuable non-judicial tool for communities.<sup>41</sup> On the other hand, the literature reviewed shows how the treatment and resolution of complaint cases in other continents and in neighbouring countries such as Colombia and Peru have affected the credibility of this organisation's complaints mechanism, putting the same certification into question.<sup>42</sup> In Ecuador, questions have been raised against the RSPO due to the fact that companies have been granted certification even though they were in the middle of conflicts with communities or have been involved in cases of corruption with the State.<sup>43</sup>

## F. National Interpretation

The CISPS strategic planning for 2019 included plans to update the National Interpretation (NI) in accordance with the Principles and Criteria adopted by the RSPO in 2018. The formation of a Technical Team (ETIN) to lead this process has also been proposed. According to those in charge of the issue in the CJAE project, this activity has not yet started, but an initial workshop was scheduled to be held in December (2019) with the support of the representative of the RSPO. It was pointed out that the country has the advantage of a solid legal framework in terms of labour, the environment and rights, and that, according to the NI 2018, the main task is to analyse the relationship with recent regulations and laws enacted since 2016 that introduce new agrarian and environmental legislation. In addition, progress has been made with the legal gap analysis conducted within the framework of the PROAmazonía Programme, in relation to the issue of REDD+ safeguards in Ecuador.

In a research document on the RSPO NI process launched in 2012 (Johnson, 2019), various factors were highlighted that prevented the NI from being a truly participatory process. This was due to problems that arose from difficulties in understanding the content of the Principles and Criteria for sustainable production; the use of concepts that were alien to the reality of the country as well as the absence of key stakeholders, including smallholder representatives, workers, and affected populations such as indigenous and Afro-Ecuadorian peoples, without making an effort either to include them.

The RSPO has set out guidelines and requirements for the development of NI processes worldwide (RSPO, 2017), which therefore have to be implemented and followed in Ecuador. The jurisdictional certification initiative entails a challenge in this regard, because in addition to being inclusive, the NI process must specify how its management and future implementation will consider and address particular regulatory aspects in the selected jurisdiction in the Amazon as part of the whole. The NI should identify where Ecuadorian standards are not aligned with the RSPO standard, and establish a plan to overcome the gaps, including the possibility of changes even at the legal level (Griffiths, pers comm). Also, procedures such as FPIC should be agreed in the NI process. Additionally, the involvement of stakeholders from the region in the NI process is a further key aspect that merits inclusion in its planning and implementation.

## G. Rights Defenders

In September 2018, the RSPO adopted a new Policy on the Protection of "Human Rights Defenders, Informants, Whistleblowers and Community Spokespersons",<sup>44</sup> which must be complied with in RSPO members' activities. This policy includes the provision of a platform and an operational guide for coordination, management and response to reported threats.

According to the members of the CJAE pilot initiative, although this issue (of human rights defenders) has not yet been analysed within the project, it is an aspect that will be addressed. The Escazú Agreement comes under this framework. Signed by Ecuador, its ratification is being discussed in the National Assembly. This Agreement is a pioneering legal instrument in Latin America as it includes the first binding provision on human rights defenders and environmental matters. This is of fundamental importance for our region, where there are numerous cases of rights defenders who have been criminalised and killed. The Agreement complements the CISPS and RSPO principles, such as access to information, public participation, transparency and accountability. The International Research Centre on the Environment and Territory of the Universidad de los Hemisferios, which is a member of the CISPS, has promoted the ratification of this Agreement and could contribute to this issue with ideas regarding the construction of the complaints mechanism.

40 La República 2018.

41 Lomax 2015.

42 See for example Servindi (2016) and Griffiths (2018).

43 Interview, representative of Acción Ecológica; Pérez 2019 (<https://milhojas.is/612544-pagina.html>)

44 [https://rspo.org/library/lib\\_files/preview/511](https://rspo.org/library/lib_files/preview/511)



## V. Conclusions and Recommendations

This document seeks to draw lessons from the CJAE pilot, which, as mentioned, is only in its initial stages. The conclusions presented below are therefore based both on the analysis of the official planning and regulatory documents and material available on the pilot project, and on the testimonies and observations gathered from key stakeholders involved in the process. In this regard, an analysis of the brief experience so far in Ecuador is offered, as well as an initial identification of possible problems and opportunities for future action, especially in relation to approaches to rights, land titling and social standards. Significant opportunities to continue the analysis and oversight to contribute to the process while it is underway are also highlighted.

In general, while the principles, objectives, and action plan of the CISPS include social aspects that are balanced with the environmental and productive dimensions, this is not true for the development of this entity's structure. As expressed through concerns raised by several of its members during the interviews, during implementation, actions were prioritised to focus more on productive goals rather than on social aspects. Matters related to each of the sub-topics explored in the report are described below.

### Governance

The highest governing body of the CJAE pilot is the CISPS, which, despite having a balanced representation of government, private sector and civil society, has under-representation of social, labour and rights interests. Currently, **there are no governmental sector spokespersons in the CISPS related to the issue of work and rights; there is no**

**representation of smallholders** from the private sector; and **there are no social NGOs or stakeholders holding rights** that are directly or indirectly affected at the territorial level in the case of civil society membership.

In order to guarantee the representation of stakeholders and sectors that currently do not have a voice in the CISPS, with regard to State representation, it is recommended **that the Ombudsman's Office be involved**, an institution whose function is to promote, protect and safeguard the human rights of individuals, nationalities and peoples, as well as other groups in the country, and the rights of nature. This institution has the capacity to contribute to and address the diversity of rights that must be respected in the oil palm sector, from an integral perspective. As for the representation of **civil society**, it is important to include NGOs or groups specialised in social issues, which contribute from this dimension to the achievement of the objectives and principles of the CISPS; the inclusion of organisations representing the affected **indigenous and Afro populations** is a priority. The Confederation of the Indigenous Nationalities of Ecuador (CONAIE) or CONFENIAE could be interlocutors for indigenous peoples and nationalities. As a first step, discussing the subject with the CONFENIAE is recommended, within the framework of the project signed with PROAmazonía, the programme to which the CJAE pilot project belongs. In relation to the **private sector**, the scarce or non-existent representation of small-scale producers' guilds might be resolved during the way ahead, by addressing capacity-building and organisational actions in planning, for the subsequent inclusion of this stakeholder group.

At the same time, there is also **weak involvement of local government GADs** in the CISPS and limited participation in the implementation process for the pilot project. The GADs play a fundamental role in development planning and land-use management on the provincial, cantonal and parish levels. Therefore, their decisions have a direct impact on the socio-economic dynamics and trends with respect to deforestation, productivity, and the environment at the national level. Despite the fact that they have national representation in the CISPS, their degree of participation and articulation with the GADs of the territory to be covered by the jurisdictional certification has been low, both in the Committee and in pilot project actions. In this context, promotion of the **involvement of the GADs as a strategic actor is recommended; as well as the Secretariat of Territorial Circumscription in the Amazon**, the latter being an entity whose duties include the territorial planning of all provinces in the Amazon region.

Beyond the formation of the CISPS, **other key issues must be resolved to guide the processes of the CJAE. The character, form of operation, and relationship with the producers of the JE have not yet been defined.** Although there is an initial governance structure, within the framework of the CJAE pilot project, two options are under discussion: **the creation of a new body that is autonomous and independent of the State; or the combination of mechanisms with producers' associations in the territory.** These pending critical issues will define internal processes of monitoring, verification and audits, and funding, among other matters.

In addition to the specific efforts related to the CISPS, its formation and operation, it is recommended that **a relationship be established with the REDD+ Working Group**, which has representatives at the national, regional, and local levels from organisations representing Indigenous Peoples, Afro-Ecuadorians, social and environmental NGOs and the private sector. This group has been operating since 2013 and it is likely that it will become a citizen oversight body. **An oversight working group for jurisdictional certification in the Amazon might be set up within the REDD+ space, especially to deal with matters such as FPIC and complaint mechanisms, among others.**

Finally, on this point, it is worth mentioning that **there are no prospects for sustainable funding for the CJAE after 2022.** The funding of the pilot project is secured until 2022 and **defining a strategy for economic sustainability post-2022 is urgent.** This pending issue will be addressed after obtaining access to the final RSPO Standard for Jurisdictional Certification. In this area, the situation of the palm oil sector in the country and the prices on the international market are also of concern, as is the deep economic crisis facing the Ecuadorian State. At present, there are no sources of funding that would help support the CJAE and the large investment made by PROAmazonía, while also supporting the sustainability of the actions and efforts undertaken. Along with post-2022 funding, the transition of the PROAmazonía pilot CJAE to another institutional framework should be addressed, for which an institutional transition plan should be built and implemented as soon as possible.

## Land tenure security and access to resources

The Ecuadorian Constitution and legislation provide a legal framework that protects the rights of indigenous peoples and nature. Technicians from the pilot project report that at present there are no land problems in the jurisdiction. However, in the provinces covered by the CJAE there are conflicts over land invasions and trafficking.

When analysing the reality in the territory, two problems stand out: i) the **concentration of land in the hands of two companies in the provinces of Orellana and Sucumbíos** (each with approximately 40 per cent of the hectares planted with oil palm in each province), together with the large presence of small properties planted with palm; and ii) the **growing pressure on the adjacent indigenous territories by settlers and members of communities** who sell their lands to palm companies and then invade indigenous territories. There are also cases where indigenous people "sell" or lease their communal lands, without being permitted under the law. These pressures on land and resources intersect with other crops as well. For example, the case of the Siekopai nationality, who reconverted an area of forest to cultivate palm; or the Kichwa communities, where some of their members are longing to work with this crop.

In this context of insecurity, potential conflict and invasions, it is essential that the State guarantees the security of land tenure and prevents land encroachment **by strengthening the processes and mechanisms of legalisation, disencumbrance and demarcation of indigenous lands.** According to the CONFENIAE leadership, 50 per cent of the collective indigenous territories of the Amazonian nationalities have yet to be legalised. At the same time, having deeds or legal recognition of land ownership has been defined as a basic requirement for applying Free, Prior and Informed Consultation, according to the *National Consultation Guidelines for the Implementation of REDD+ Actions on Collective Lands or Territories*, which will be addressed below.

The pilot project plans to support land regularisation of those minority of small-scale palm producers who do not have their property deeds. **It is recommended that the project focus its efforts on supporting a similar process for indigenous communities in the area of influence.** At the same time, in the development process for technical studies concerning issues of land tenure and regularisation in the region, and particularly **in relation to the two provinces, the participation of indigenous peoples is recommended in the analysis of indigenous lands and territories that could potentially be affected by the oil palm supply chain.**

As a complementary effort, indigenous communities in areas at risk from land invasions need to organise, map and monitor their territories; and they could use technologies to document violations of their territorial rights and use such evidence to take appropriate action.

## Prior, Free and Informed Consultation

Under the PROAmazonía programme, Ecuador has a National Consultation Guide for the Implementation of REDD+ Actions in Collective Lands or Territories, which defines the requirements and process to be followed in the case of implementation of REDD+ actions in collective and indigenous territories. However, the Guide's adaptation and implementation of specific actions related to the CJAE pilot have not yet been carried out.

Under the guidelines, consultation is oriented towards obtaining the prior consent of indigenous communities, peoples and nationalities, Afro-Ecuadorian peoples, Montubio peoples and communes, and owners or holders of lands and territories for the implementation of REDD+ measures and actions that may affect them.

In relation to the CJAE pilot, the Guide is being used by palm grower associations to socialise the initiative to sign the Agreement on Sustainable and Deforestation-Free Production, despite the fact that the stakeholders do not have collective rights. Despite this, jurisdictional FPIC has not yet been developed, nor is there a precise vision about the modalities and scope of the development and application of FPIC according to the RSPO standard in Ecuador. "There is recognition that the (RSPO) norm has a higher standard than regulations in Ecuador, so changes should be applied to the internal management system of the Jurisdiction and its management manual" (interview with PROAmazonía technicians).

The FPIC procedure of the RSPO should be applied (retroactively) to existing plantations seeking certification and linked to the conflict resolution standard, also to all proposals for new plantations by palm growers according to the rules of the RSPO's New Planting Procedure (NPP), as well as in any HCV or HCS evaluation (Griffiths, 2019).

Several fundamental aspects about the application (of the guidelines) in the country still need to be clarified to ensure indigenous rights are fully guaranteed. Amongst others, **the scope of the local communities to be consulted** needs to be defined, since there is no clarity on the inclusion – or not – of the local communities that could be affected by oil palm production, beyond those in the plantations' direct area of influence. In the same way, it is necessary to **establish the FPIC procedure and its scope, which are required for Jurisdictional Certification** (e.g. in relation to Environmental and Social Impact Assessment (ESIA), HCV and HCS). It should also be added that, as mentioned in the section on land tenure above, **the Consultation Guide for REDD+ actions leaves out communities that do not have legal recognition and formal title to their lands**, which would directly affect their right to FPIC (in relation to their untitled customary lands and resources). In terms of roles and attributions, it is fundamental to define the JE's **role, representativeness in the case of producers' associations, and the procedure to be followed with smallholders** whose land or resources were expropriated before 2005; and how those who do not wish to be included in the certification will be addressed, as well as the mechanism(s) for monitoring agreements reached. The pilot project has planned to include the analysis of FPIC in the RSPO NI process. Internalising elements in the RSPO Guide for the application of the FPIC procedure should be a priority for the CJAE pilot project managers before the NI process starts.

## Complaints mechanism and Rights Defenders

The technical proposal for a REDD+ Complaint Mechanism was developed in 2019 within the framework of compliance with the REDD+ safeguards (within the broader framework of PROAmazonía, at the regional-Amazon level), and is currently in the trial phase. This mechanism seeks to enable the main stakeholders involved in the REDD+ actions and citizens in general to present concerns to the REDD+ programme's decision makers, so that rapid and efficient response mechanisms can be established, and major conflicts arising from its implementation can be reduced or prevented.

The Complaints Mechanism is multi-stakeholder, decentralised, and multi-level (at the user, technical, and managerial levels). Related information (database) is under the safekeeping and administration of the Ministry of the Environment and the National REDD+ Authority. The CJAE pilot project is one of the actions included in PROAmazonía (as well as being one of the REDD+ actions), so the proposed mechanism would cover all the stakeholders of the palm oil chain involved in the certification process.

Although the PROAmazonía Complaints Mechanism exists, no particular analysis has been generated in relation to the requirements of the RSPO standard. This analysis should be initiated as soon as possible, not only to insert the mechanism into the existing framework, but also **to create a specific one for the CJAE**. In this framework, the **creation of a mechanism separate from the JE body will be essential for avoiding conflict of interest and to guarantee independence**. Consideration should also be given to aspects such as the **specific levels at which it would be used; how to document complaints; guidelines on how to proceed in cases such as compensation claims, labour complaints, purchases of non-certified products sold as 'certified'**.

The actions aimed at designing and implementing the CJAE's Complaints Mechanism **should guarantee the integral security of the stakeholders** who generate complaints and denunciations, especially human **rights and environmental defenders**. This need arises from the growing violence and attacks to which social defenders and leaders are currently subjected in Latin America, and the persecution by powerful interests that some are experiencing for defending their resources and territories. In this regard, the **ratification of the Escazú Agreement**, currently under consideration by the National Assembly, will be key.

Finally, the appropriate and timely use of the Complaints Mechanism will depend on whether different stakeholders in the palm oil chain, indigenous peoples and nationalities, and citizens in general, possess adequate information, capacities and knowledge related to the CJAE, the RSPO standard, its foundations and impacts, as well as their individual and collective rights.

## National Interpretation (NI)

At the time this study was being completed, the CJAE project was planning the NI process, but it had not yet started in December (2019). The main task will be to analyse conformity and dissonance between national legislation and the RSPO standard (2018), and to agree on approaches to ensure the implementation of the higher standards. In addition, as we have highlighted, it is anticipated that **procedures such as FPIC will be agreed in the NI process**. One of the central themes of the review will be the relation with recent regulations and laws enacted since 2016 that introduce new agrarian and environmental legislation. Research on the previous NI processes carried out in the country (Johnson, 2019) shows that **the process was not inclusive**, as it did not incorporate stakeholders representing indigenous peoples, Afro-Ecuadorians, populations displaced by palm cultivation, small-scale producers and workers in the supply chain. The jurisdictional certification initiative poses a challenge in this process, because in addition to being inclusive, the NI process will have to be specific in relation to how it addresses and plans to implement the regulatory aspects when considering the selected jurisdiction in the Amazon as a whole. Additionally, the involvement of stakeholders from the region in the NI process constitutes another key aspect that merits inclusion into the planning and implementation of this process. **Taking the NI process to the territory is recommended, and should specifically involve, in addition to the aforementioned stakeholders, the GADs of the two provinces, NGOs, human rights groups and women's organisations**. Additionally, in order to achieve effective participation, **a prior process of explanation, with adequate material on the RSPO P&C should be foreseen in NI planning**.

## Additional point

The CJAE pilot project is part of the PROAmazonía Programme which has a solid team working on the cross-sectoral areas of (social and environmental) safeguards, gender, organisational strengthening and communication for the entire programme, which includes a wide range of activities. **The complexity of the RSPO certification process requires someone with training in anthropology or social sciences who can specifically contribute to the coordination and monitoring of the social aspects of this process.**

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## VII. List of interviewees

Organisation	Name	Position
ANCUPA (CISPS)	Wilfredo Acosta	Director
Acción Ecológica	Nathalia Bonilla	Coordinator of a campaign in defence of forests
COICA/CONFENIAE	Tuntiak Katan	Vice-President/Ex Territorial Leader
CONFENIAE	Sandra Tukup	Territorial Leader
Community of Santa Elena Limoncocha/ ASOKIL (Kichwa Association of Limoncocha)	Franklin Grefa	President
	Sucre Cerda	Ex-President
	Sindi Tanguila	Member
CONGOPE (Consortium of Provincial Autonomous Governments of Ecuador)	Jessica López	Climate Change Manager
EarthWorm Foundation (CISPS)	Sebastián Cárdenas	Project Manager
EPACEM	Diego Naranjo	Ex-Member of the Board of Directors
Womens' Federation of Sucumbíos	Alicia Garcés	Advisor
Frente de Defensa de la Amazonía	Ermel Chavez	President
Forest Stewardship Council	Martha Núñez	Member of the Board of Directors of FSC Internacional Sur Social
ECOLEX	Manolo Morales	Director
Ministry of Agriculture (CISPS)	Angela Álvarez	CISPS Secretary
Ministry of Agriculture	Franklin Dávila	Sucumbíos District Manager
Sucumbíos Ministry of the Environment	Juan Pablo Fajardo	Director
Organisation of the Siekopai Nationality of Ecuador (OISE) (OISE)	Justino Piaguaje	President
Community of San Pablo (Siekopai)	Leonel Piaguaje	President
Organisation of the Siona Indigenous Nationality of Ecuador - ONISE	Juan Yiyocuro	President
PROAmazonía	Oscar Guañuna	Sustainable palm field technician
	Soledad Quintana	Technical Specialist in Gender and Interculturalism
	Santiago Rosero	Technical Specialist in Sustainable Palm
	Patricia Serrano	REDD+ Coordinator and Funding
	Rodrigo Torres	Technical Specialist in safeguards
	María Amparo Albán	Sustainable Palm Consultant
Palm Producers/ANCUPA	Mary Diebold	Producer (150 hectares) and Senior Director of the Zona San Lorenzo-Oriente area
	Rosa Cando	Producer (20 hectares)
	Alex	Labourer on small-scale plantation
	William Saltos	Small-scale producers (40 hectares)
	Anonymous	Small-scale producers (5 hectares)
Propalma (CISPS)	Oscar Calahorrano	Executive President
Palma Futuro Project - Ecuador Office at Partners of the Americas	Alexis Naranjo	Deputy Director
RSPO	Francisco Naranjo	Director for Latin America

## Forest Peoples Programme

1c Fosseyway Business Centre, Stratford Road, Moreton-in-Marsh GL56 9NQ, UK

Tel: +44 (0)1608 652893 | [info@forestpeoples.org](mailto:info@forestpeoples.org) | [www.forestpeoples.org](http://www.forestpeoples.org)

Forest Peoples Programme is a company limited by guarantee (England & Wales) reg. no. 3868836, reg. office as above.

UK-registered charity number 1082158. It is also registered as a non-profit Stichting in the Netherlands.



This work is supported by funding from  
Norway's International Climate and Forest Initiative