

Chiquita and the Myth of Corporate Social Responsibility

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Summary

Chiquita Brands International claims to put corporate social responsibility at the forefront of its business practices. The banana producer seeks to distance itself from its predecessor United Fruit Company by presenting a story of complete transformation from a corporation that was famous for its human rights violations and collusion with the State, to a 21st century company that is responsive to consumer demands for healthy fruit produced in conditions that are environmentally-conscious and respectful of labor and community rights.

This article examines Chiquita as the direct heir of the notorious United Fruit Company, debunking the company's claims that it has transformed from a corporate villain into a model corporate citizen. Current-day Chiquita is full of contradictions. The company's operations receive approvals from the Rainforest Alliance and Social Accountability International, and it is the only company in the industry that has agreed to a Latin American-wide collective bargaining agreement with the banana workers' union. Despite the sustainability and management certifications, human rights violations continue to be documented in farms that produce Chiquita fruits, particularly bananas. Examples of these violations are presented from Costa Rica, Guatemala, Honduras, and Colombia. Using its considerable political clout and public relations influence, Chiquita has followed the United Fruit Company's example by covering up its actions, which not only violate its own voluntary codes of conduct but are also illegal and unethical.

Chiquita's actions in Colombia, where it admitted to paying left-wing guerrillas and right-wing paramilitary organizations over a 15-year period, resulted in an indictment by the US Department of Justice that found Chiquita broke the law by financing a US-designated Foreign Terrorist Organization. Legal

actions are now underway in the US and in Colombia, aiming to hold Chiquita accountable and achieve redress for the victims of the paramilitaries that were funded by Chiquita. The indictment, and the National Security Archives' subsequent release of the Chiquita Papers provide an opportunity to examine the connections that resulted in a fine of USD \$25 million paid to the US government and an omission of criminal charges for the Chiquita executives involved in fueling the Colombian armed conflict. While its public relations machine convinces consumers that Chiquita is a good choice, the shared interests between the company and the US government allow Chiquita to continue disregarding human rights in impunity.

1. Introduction

I say "Chiquita" you say... banana! Think of bananas and you probably think of Chiquita and the famous blue label. For good reason! We were the 1st to brand the banana."

Chiquita Brands International is over 100 years old and headquartered in Charlotte, North Carolina. Most of our employees are based in Central America, where we own over 15,000 hectares of banana plantations.

- From Chiquita's Facebook Page

A visit through the web site of Chiquita Brands International (popularly known as Chiquita) shows a company whose public relations strategy has been to sanitize its operations through corporate social responsibility (CSR) programs along with environmental and labor rights certifications from Rainforest Alliance, Social Accountability International, and GlobalGAP. The official "Chiquita Story" states that "[a]lthough Chiquita's history includes storied moments in its past, the company now proudly focuses on extending labor rights, protecting our environment and investing in the communities in which we live and work." Indeed, an interview with the Dutch organization Fairfood on 26 January 2008 in *de Volkskrant* states that Chiquita is a good choice for the conscientious consumer: "Chiquita is also not a wrong [choice], as it now has the Rainforest Alliance hallmark seal."

The so-called storied moments that Chiquita refers to belong to its predecessor the United Fruit Company (UFC), which built a powerful empire by operating plantations in Latin America and innovating a transport system to provide consumers in the US with fresh fruit. The success of the UFC was tied to massacres of banana workers, expulsions of communities from their land, forced clearing of natural areas for banana plantations, and direct intervention with local governments that were obliged to protect the UFC's interests. The examples of human rights violations and collusion with corrupt governments can be found throughout the long trajectory from the UFC's founding in 1899 to its re-branding as Chiquita in 1990. Importantly, these maneuvers did not end with the unveiling of CSR programs that

claim to address environmental degradation, human rights violations, and corporate corruption. Chiquita has continued to make use of armed forces and private militias to terrorize workers and communities, and has continued to influence governments to ensure profitable conditions in its plantations. Evidence of these violations has not affected the sustainability and CSR certifications of Chiquita's operations. This is not a path towards banana-production that is environmentally-sensitive and respectful of workers' rights and community needs, nor is it a departure from the UFC story.

A stark example of modern Chiquita's disregard for human rights and the law comes from Colombia. Chiquita's actions in Colombia became a scandal in 2007 when the US Department of Justice announced that it was fining the corporation USD\$25 million for illegal payments to the paramilitary group United Self-Defense Forces (known for its Spanish acronym AUC) after they were designated a Foreign Terrorist Organization. The subsequent greenwashing, disowning of operations, and political maneuvering to escape the consequences of its illegal actions are also a direct continuation of the UFC's pioneering strategies: a mix of public relations smokescreens and deep political influence. This indictment, however, opened the door to a set of lawsuits filed by Chiquita shareholders and US organizations on behalf of Colombian citizens whose families were victims of violence perpetrated by the paramilitaries that received funds from the banana producer. These legal actions are on-going in 2013, and as momentum builds against Chiquita, it is crucial to counter Chiquita's public relations apparatus and unmask the corporation's lies.

2. The legacy of the United Fruit Company

In order to contextualize Chiquita's current actions and standing among US corporate giants, it is useful to review the legacy of the US-based United Fruit Company (UFC). Much has been written about the UFC as the embodiment of US capitalist colonialism in Latin America; what follows are some highlights of the company's history that will later echo in modern-day Chiquita.

The UFC emerged in 1899 as the largest banana company in the world, producing bananas in Latin America for sale in the US market. Created from the merger of the Boston Fruit Company and a railway construction company, the UFC owned plantations in Colombia, Costa Rica, Cuba, Jamaica, Nicaragua, Panama, and Santo Domingo. Throughout the 20th century, the UFC was known as *el pulpo* ('octopus' in Spanish) for its wide-reaching influence throughout Latin America.

In addition to taking over vast areas of land for their plantations, the UFC built and controlled key infrastructure in the producer countries. The company owned 112 miles of railroad linking plantations to ports as well as dozens of steamships. In 1901, the UFC had exclusive control of postal services from Guatemala to the US, and by 1904 it had built a wireless communication network from the United States to South America for its ships at sea to share information with in-land company locations. The UFC also built villages around their plantations to house workers and their families, and to process the harvest and make it ready for shipping. The Latin American countries became highly dependent on the UFC, resulting in the company's free reign in the territories and beneficial tax deals, such as exempting itself from paying taxes in Guatemala for 99 years. This led to the term 'Banana Republic', described in a January 2010 *Ethical Consumer* article as "a country heavily dependent on one type of plantation agriculture, controlled by a servile dictatorship and corrupt elite, chained to shady foreign powers with an iron grip over its economy."

Exertion of economic and political power was important in order to expand the UFC's territorial foothold in the producer countries. By the 1920s, for example, the UFC controlled almost a quarter of Honduras' arable land. In Guatemala, it owned the country's telephone and telegraph system as well as most of the railroads. As profitable banana production is dependent on cheap labor and the use of toxic pesticides, the UFC exerted its power to maintain degrading working conditions and prohibit worker organizing. To this end, the UFC often used the local military to provoke violent confrontations at the first sign of union activity.

The tight relationship between the UFC and the state, however, was not limited to the Latin American countries where it owned its plantations. The UFC has always been an important player in the United States, building political influence to ensure a friendly environment for its business. One example was the depth of connection with President Eisenhower's administration in the 1950s. Prior to becoming Secretary of State under President Eisenhower, John Foster Dulles negotiated land giveaways to the UFC in Guatemala and Honduras in the 1930s. His brother Allen Dulles, who would become the head of the CIA, also did legal work for the UFC and sat on its board of directors. The US ambassador to the United Nations, Henry Cabot Lodge, was a large UFC stockholder. And UFC public relations officer and chief lobbyist, Ed Whitman, was married to Eisenhower's personal secretary.

In the 1950s, the UFC's propaganda campaign convinced Eisenhower's government of the communist threat in Guatemala. The real threat was a proposal for agrarian reform that would negatively affect the UFC's then ownership of 42% of the country's land. In 1954, the US government led the overthrow of Guatemala's democratically-elected president, Jacobo Arbenz. The coup placed Colonel Castillo Armas in power, who immediately gave land back to the UFC and banned the Banana Workers' Union. What followed in Guatemala was decades of brutal dictatorships with military leaders unleashing violence against peasants and indigenous communities in complete impunity. The CIA's involvement in the coup in Guatemala included the creation of a list of 70,000 'questionable individuals', which the new government made sure to follow up. This list kept re-emerging throughout Guatemala's armed conflict that continued through the 1990s.

The coup in Guatemala epitomizes the collusion between corporations and the State, described in a November 2001 *Fortune Magazine* article: "as its power in the region grew, United Fruit [Company] sought to control the workers it employed and the leaders of the republics in which it operated. 'Through bribery, fraud, chicanery, strong-arm tactics, extortion, tax evasion, and subversion [United Fruit Company] grew to be a swaggering behemoth,' writes Stephen Schlesinger, whose book Bitter Fruit

details the involvement of United Fruit [Company] and the U.S. government in the 1954 overthrow of Guatemala's democratically elected president. 'America smuggled guns on banana boats and trained an army of mercenaries on [United] Fruit Co. plantations,' writes Thomas McCann, a former vice president of public relations, in his book On the Inside. 'Companies like United Fruit [Company] ... became political instruments. The government got what it wanted through the use of the company, and the company got what it wanted as well.'"

While a key component of the UFC's power came from its influence on the State - through collusion or coercion - another pillar of power came from the UFC's propaganda machine and its ability to control the story surrounding the company. The UFC was a pioneer in public relations, presenting itself as the 'great benefactor' of Latin America, building its infrastructure and ensuring that its banana-villages had health clinics and schools for the children of UFC workers. As the company itself claims, they were the first to brand the banana and convince US consumers that it was different from other bananas. In 1944, the UFC created the famous 'Chiquita' banana cartoon character and its catchy jingle. According to Chiquita's web site, "[a]t its peak, the jingle was played 376 times a day on radio stations across the United States. It was one of the most successful commercial jingles of all time."

From its colonialist beginnings through to modern times, the UFC stayed true to its 'octopus' image - exerting control in politics and international relations, consumer demand and advertisement, and on the livelihoods of entire populations throughout Latin America. As a capitalist icon, the UFC was a true pioneer in the art of deception: painting itself as the benevolent employer while suppressing human rights. This was possible because of the collaboration from the State apparatus, both in the producer countries and in the US, as the interests of the State became intertwined with the interests of the UFC.

3. *Chiquita's modern operations*

In 1989, the company created the famous tag-line: "Chiquita. Quite possibly, the world's perfect food." And in 1990 the

company officially changed its name to Chiquita, according to its web site, "to take advantage of global brand name recognition." Perhaps as well, to distance itself from the notorious and questionable practices of the UFC. With the new corporate name came a new phase in Chiquita and the global banana industry. Two main factors challenging Chiquita's dominance of the banana market were: 1) shifts in the world market that brought new independent growers into the scene, and 2) growing consumer demand for sustainable bananas produced under decent working conditions. These trends increased competition for Chiquita. As it had done with the first branding of the Chiquita Banana, the company responded by re-branding itself as a responsible corporate citizen. The cornerstone of its voluntary corporate social responsibility (CSR) program is Chiquita's partnership with the Rainforest Alliance to market a "Better Banana".

3.1 Market trends

The banana business model was shifting from the Banana Republic where the UFC/Chiquita had full ownership of the entire supply chain (from the plantations, to the processing plants, to the transportation and marketing) to a new system of 'contract farming' through subsidiaries that manage operations in the different countries and take responsibility for diverse stages of supply chain. While the Big Three companies (Chiquita, Dole, and Del Monte) remain in control of the market, this development gave rise to national companies that could compete internationally, first as suppliers to the Big Three and then as independent marketers shipping their products direct to the US and European consumers. This new model of contract farming would later become an advantage for Chiquita as a strategy for distancing itself from inconvenient public relations issues surrounding conditions in specific farms.

The new independent companies received a boost from the European Union (EU) who established a quota system for the import of bananas in 1993. Chiquita claimed the quota system was unfair and compelled the US government to intervene on its behalf. As Nicholas Stein recounts in the November 2001 *Fortune Magazine* article, "the U.S. was reluctant to antagonize its European allies to protect a product that wasn't even produced in America. Internal memos from the US Trade Representative (USTR)

suggest that, in 1993, the banana issue was a low priority. Yet the following year, the USTR joined Chiquita in an all-out trade war with the EU. At first, the US battled cautiously within the courtrooms of the World Trade Organization. But in 1999, with the EU refusing to replace its quota system even after two separate WTO panels found it 'illegal,' the USTR went a step further, imposing prohibitive sanctions on select EU products, including coffeemakers and bath oils."

According to Chiquita, the EU quota system resulted in a loss of 50% of the company's sales in the region. Chiquita blamed its financial woes on their loss of the European market-share. As cited in *Fortune Magazine*, the company had lost more than USD \$700 million over a decade (1991 - 2000) and its stock price had fallen from USD \$50 in 1991 to a low of 48 cents. Stating it could no longer pay interest on its USD \$862 million debt, Chiquita filed for bankruptcy in 2001. However the company was back on its feet by 2003, reporting an annual revenue of USD \$2.6 billion, up from USD \$1.4 billion in 2002.

3.2 Consumer demand for ethical bananas

Another trend was growing criticism of the Big Three and the rise in consumer demand for ethical bananas - organic bananas free of chemical pesticides and fair trade bananas that guarantee local producers a fair wage. Chiquita has not been the only target of public scrutiny. Dole was the focus of the 2009 Swedish documentary *Bananas!** that followed a lawsuit in the US on behalf of Nicaraguan workers in a Dole plantation that were exposed to highly dangerous pesticides. Dole tried to censure the film by suing the filmmakers for defamation and threatening venues and distributors to stop its screening. Often, the Big Three have been jointly accused for human rights violations, such as the 2002 Human Rights Watch report on banana production in Ecuador, which found that "Chiquita, Del Monte, and Dole fail to use their financial influence to insist that their supplier plantations respect workers' rights."

In response to growing awareness of abuses taking place in banana production, 'fair trade' bananas were introduced in Europe in 1996. These are certified by Max Havelaar, Transfair, and the FairTrade Foundation, ensuring adherence to environmental and social criteria. Producers are independent farms and the bananas are imported by a fair trade company that is jointly owned by the producers and by the Dutch organization Solidaridad. Fair trade focuses on small producers and banana-growing cooperatives, that pay fair wages and invest in social programs but find it difficult to compete in the world market. However, Transfair USA gave Fair Trade certification to Dole bananas in 2009, because there was a shortage of fair trade bananas to meet the consumer demand. According to Transfair, the agreement is that Dole sources their fair trade bananas from a "balanced mix of small farmer associations or co-operatives and independently owned plantations that are unionized."

Chiquita was accustomed to competition from the other Big Three and had developed its branding as a strategy to differentiate itself from Del Monte and Dole. However, brand-recognition was no longer sufficient to win over concerned consumers demanding ethical bananas. Chiquita therefore had to find ways to distance itself from its bloody history and demonstrate that it cared about working conditions and the environmental impacts of banana production.

Chiquita's rebranding as a model corporate citizen was a costly endeavor of investing in social awards, public relations stunts, and advertisements about their 'good bananas'. They have been successful in gathering awards from unlikely sources, such as Walmart's "Environmental Supplier of the Year" in 2001. In 2004 Chiquita received the Corporate Citizen of the Americas Award from the Organization of American States (OAS) for the company's home-ownership project in Honduras, just one year after the same inter-governmental body implicated Chiquita in the illegal sale and transport of arms from Nicaragua to Colombia. (More on the OAS arms trade report below.)

Chiquita promotes itself as the healthy choice for athletes, children, and health-conscious consumers. It has responded to market demands with products for all consumers: pre-cut packaged

snacks as well as exotic bananas like minis, manzanos and red bananas. A popular 'exotic' banana showcased on Chiquita's web site is the organic banana: "Like all Chiquita bananas, Chiquita organic bananas are produced in a manner that helps promote a sustainable, healthy lifestyle and additionally meet the strict requirements of the U.S. Department of Agriculture (USDA) National Organic Program. As such they are independently certified as 100% organic by world-leading agencies recognized by the USDA."

While only a few Chiquita bananas are certified organic, and none are fair trade, Chiquita has been collecting other certifications, most famously the Rainforest Alliance sustainable green frog sticker. The Rainforest Alliance and Chiquita launched the "Better Banana Project" in Costa Rica in 1992, in response to a rapid loss in primary rainforest due to the expansion of banana plantations. By 1996 all Chiquita farms in Costa Rica received the seal of approval. Today, 100% of Chiquita's owned farms are Rainforest Alliance certified, and 87% of bananas sold under the Chiquita name are sourced from Rainforest Alliance certified farms. According to the Rainforest Alliance's web site, in order to become certified, banana producers "planted millions of trees and bushes on their farms to create natural buffers along public roads and waterways, and around housing and offices. The growers eliminated the use of the most dangerous pesticides and implemented rigorous rules - such as mandatory protective gear, showers at the end of the work day and closed off areas where pesticides have been applied for 24 to 48 hours - for the pesticides they continue to use."

Workers' rights issues in Chiquita's operations are also covered by Social Accountability International's Labor certification (SA8000). "SA8000 provides standards based on national laws, international human rights norms and the conventions of the International Labor Organization. Management system requirements ensure that these standards are consistently implemented over time, and independent audits and certification help measure progress and identify areas for improvement." According to the Chiquita web site, in 2004 they achieved 100% certification of owned farms.

In 2001, Chiquita also recognized labor unions and signed a collective bargaining agreement with the International Union of Foodworkers/COLSIBA. This agreement on freedom of association, minimum labor standards, and employment covers wages, benefits, and workplace safety issues for banana workers throughout Latin America. Chiquita is the only one of the Big Three banana producers to allow unions on its plantations, and according to the US Labor Education in the Americas Project (USLEAP) it has the "the highest quantity of workers with fair pay and benefits of any company in the industry."

By the beginning of the 21st century, Chiquita had successfully cleaned up its image: it has the Rainforest Alliance seal, it sells happy and healthy bananas, and it has the best working conditions for workers, covered under a union collective bargaining agreement. Chiquita's story of transformation is made more impressive with the open admissions about the UFC "storied" past. By covering their present operations under blankets of CSR and outsourced plantations, Chiquita has effectively converted itself into the "good choice" for banana-lovers.

4. Seeing through the CSR smokescreen

Despite Chiquita's effort to present itself as a responsible corporate citizen, the company's CSR programs are voluntary and without consequences if it breaches the conditions of the certifications. There have been numerous incidents in Chiquita-owned plantations and in farms that supply Chiquita that violate the environmental and human rights criteria for certification. At the same time, Chiquita also continues to exert its political power to skirt national laws and ensure propitious conditions for maximizing profits. Chiquita's propaganda machine has effectively created a smokescreen to control public opinion, squashing news items that question its practices and aggressively promoting its corporate image. However, multiple examples of misdeeds have been documented Costa Rica, Guatemala, and Honduras (among other countries.) These include violations

in regard to their voluntary certification and to the binding contract with the labor union.

USLEAP advocates in solidarity with the banana worker unions and supports workers denouncing violations to the collective bargaining agreement with Chiquita. The US-based organization has documented on-going conflicts between workers and Chiquita in Honduras and Costa Rica in 2006, 2007, and in early 2011. According to USLEAP's web-site: "Some of the union issues were subsequently addressed; some remain pending and periodically new conflicts emerge with Chiquita."

USLEAP also notes that the collective bargaining agreement "has not prevented Chiquita from closing plantations in Guatemala and Honduras, scaling back its direct-owned operations in Panama, or selling off its Colombian operations." This is particularly important as many violations to the environmental and working conditions guaranteed in the certifications have most often taken place in 'independent farms' that supply bananas and other fruits to Chiquita. Many of these farms produce solely for Chiquita, which raises the question of their independence. The company has successfully turned around the trend of independent producers as competitors into sub-contractors for whose actions Chiquita is no longer held responsible.

The Rainforest Alliance certifies banana plantations for Chiquita-owned farms as well as for the company's 'independent' suppliers. All of those bananas carry the famous Chiquita sticker and get the Rainforest Alliance's green frog seal. According to the Rainforest Alliance, when a practice that does not comply with the sustainability criteria is discovered, the certifier organization works with the producer to remedy the situation. It has never, however, revoked a certification from any farm, regardless of the gravity of the incident or the recurrence of violations.

In 2007, the French ActionAid affiliate Peuples Solidaires denounced human rights violations at the Coyol plantation managed by COBAL, Chiquita's subsidiary in Costa Rica. The

organization accused Chiquita of knowingly placing the health of its workers at risk and violating their basic rights to a workplace free of fear or intimidation. At concern was the continued use of toxic pesticides, to which the workers were exposed at severe risk to their health. Equally concerning was the intimidation of workers who complained about the exposure to pesticides. Peoples Solidaires denounced COBAL's use of private armed security personnel to forcibly dissuade the workers from presenting formal complaints. Many of the immigrant workers, who come from Nicaragua, were threatened with being turned over to immigration services. These actions were in violation of their Rainforest Alliance and SA8000 certifications. The company also failed to comply with the collective bargaining agreement, which provides for a 3-day response to any grievance presented. A year after the complaints were made, the workers were still waiting for a response.

Peoples Solidaires has also followed the situation of banana workers in Guatemala; in 2007 the ActionAid International affiliate released information that armed militias were intimidating, threatening, and torturing workers at one of the plantations that supplies bananas to Chiquita. *Ethical Consumer* reported "an escalation of violence against trade unionists in Guatemala in 2008, with trade unionists and their families becoming the targets of murder, intimidation, harassment, firearm attacks, assaults and abuse. On 2nd March [2008], a founding member of a banana workers union, Miguel Enríquez, was shot dead. He worked at a plantation that supplied Chiquita, and, prior to his death, is said to have been 'forced to resign from the union under strong pressure and threats from the company.' "

The 2008 events in Guatemala bring back memories from the UFC; the company's legacy in Honduras also finds an echo in current times. As mentioned earlier, in 1920 UFC owned almost a quarter of arable land in Honduras. In 1975, the US Securities and Exchange Commission (SEC) exposed a USD \$2.5 million bribe that the company had agreed to pay to Honduran President Oswaldo Lopez Arellano in return for reducing taxes on banana exports. Lopez Arellano was soon-after ousted in a military coup. In the late 1990s, the company was accused of skirting restrictions on land ownership in Honduras by purchasing farms in the names of Honduran citizens with close ties to Chiquita. Chiquita's

existing plantations were exempted from Honduran laws that prohibited ownership of more than 250 hectares of land, but its expansion efforts were thwarted by these limitations. Despite receiving information about these schemes, the Honduran government did not investigate the situation.

Shortly after the June 2009 coup in Honduras, writer and former 'economic hit-man' John Perkins visited Central America and reported that "[e]veryone I talked with there was convinced that the military coup that had overthrown the democratically-elected president of Honduras, Manuel Zelaya, had been engineered by two US companies, with CIA support. ... Earlier in the year Chiquita Brands International Inc. (formerly United Fruit) and Dole Food Co had severely criticized Zelaya for advocating an increase of 60% in Honduras's minimum wage, claiming that the policy would cut into corporate profits." While there is little clear evidence linking Chiquita to the 2009 coup, it is clear that the company was threatened by President Zelaya's policies and had a lot to gain from his departure.

The evidence of Chiquita's land-grabbing practices in Honduras in the 1990s were first reported in the *Cincinnati Enquirer* in May 1998. This 18-page exposé on Chiquita comprised 30 stories about the company including allegations of contracting private security to intimidate communities resisting the expansion of plantations in Honduras and the use of deadly pesticides in Costa Rica. Chiquita was also accused of bribing government authorities in Colombia and, according to the article, this was under investigation by the SEC. Another article in the series provided an account of how cocaine was smuggled into Europe using Chiquita-owned ships: "Authorities seized more than a ton of cocaine (worth up to \$33 million in its pure form) from seven Chiquita ships in 1997. Although the company was unaware and did not approve of the illegal shipments, problems were traced to lax security on its Colombian docks."

Chiquita did not respond to any of the allegations published by the *Cincinnati Enquirer*. When two months later one of the reporters confessed to having illegally obtained voicemail messages from Chiquita's offices, the newspaper retracted the exposé and settled out of court with Chiquita for an undisclosed

sum that sources place between USD \$10 million and USD \$50 million.

While the majority of the information in the exposé was dismissed as tainted by the reporter's actions - including the use of Chiquita ships for trafficking drugs into Europe and the Honduras land-grabbing scheme, a 17 July 1998 article in the *New York Times* lamented the loss of valuable evidence against Chiquita but stated that not all the accusations against Chiquita would go away: an SEC source asserted that investigations regarding Chiquita's involvement in a bribery scheme in Colombia would continue. The article quotes "[a] lawyer briefed on the [SEC's] inquiries to the company [who] said the investigation was not slowed by the disclosure that the voicemail was stolen." In 2001, Chiquita was fined USD \$100,000 by the SEC for improper payments to government officials in Colombia, in violation of the Foreign Corrupt Practices Act, as initially reported in the *Cincinnati Enquirer*.

In the past 20 years, Chiquita has continued to exert its political and economic influence to exploit workers and the environment, contradicting its own CSR policies as well as violating the law. The company succeeded in squashing the *Cincinnati Enquirer* exposé and distancing itself from events ranging from the intimidation of workers to the implementation of a military coup. While the events in Costa Rica, Guatemala, and Honduras continue in impunity, Chiquita's actions in Colombia took an unexpected turn with a scandal that has led to a US-government indictment and on-going civil legal actions to hold Chiquita accountable.

5. Chiquita in Colombia

Nowhere is Chiquita's true nature more evident than in Colombia, where Chiquita has admitted to funding left-wing guerrillas and right-wing paramilitaries from 1989 until 2004. The armed conflict in Colombia has been raging since the 1960s and involve

left-wing and right-wing armed organizations, as well as the Colombian military and the government, with the support of the United States through Plan Colombia. In 2003, Chiquita informed the SEC that it had been making payments to left-wing guerrillas and to right-wing paramilitaries in Colombia, and that it had recently learned that the payments were illegal under US anti-terrorism laws. The Chiquita disclosure led to a 2007 indictment by the US Department of Justice (DOJ) that resulted in a USD \$25 million fine. By calling on politically-connected friends, Chiquita was able to prevent criminal charges against its executives and directors once the illegal funding scheme came to light. The DOJ materials, along with the 2011 release of the Chiquita Papers by the National Security Archive, allow for a closer reading of Chiquita's actions that fueled the armed conflict in Colombia. While Chiquita formally sold its Colombian operations as a result of the DOJ indictment, the company continues to sell bananas sourced from its successor, Banacol; banana production in the country continues to be mired in controversy and human rights violations.

5.1 Context of armed conflict in Colombia and in banana growing regions

The armed conflict in Colombia began in the 1960s with the emergence of the left-wing Revolutionary Armed Forces of Colombia (known for its Spanish acronym FARC) and the National Liberation Army (known for its Spanish acronym ELN) that waged an armed struggle for peasant rights and agrarian reform. By the 1980s, the FARC and ELN controlled territories in the country and were linked to the drug trade. In 1997 the US government declared the guerrillas foreign terrorist organizations.

Right-wing paramilitary groups built up increasing power in the 1990s, linked both to the military and to the drug trade. The United Self-Defense Forces of Colombia (known for its Spanish acronym AUC) was created in 1997 as a coalition of paramilitary groups to clear the FARC from territories. The banana-growing regions of Urabá and Santa Marta were controlled by the FARC until there was a strong counter-offensive by the AUC starting in 1997, when the paramilitaries took control of the territories, defending corporate interests by threatening and

intimidating workers and communities. Curiously, as described below, Chiquita made regular payments to FARC and ELN from 1989 until 1997, and then switched sides and starting paying the AUC, right as the counter-offensive took off.

The Colombian portal *Verdad Abierta* describes the Banana Block of the AUC: "In essence, the banana block was responsible for security in the agro-industrial zone, where it received contributions from sectors related to banana [production] and other groups. The consolidation of the paramilitary project in Urabá brought with it the penetration of the paramilitary into diverse social sectors, in particular the corporate sector. The nature of the Banana Block is not reduced to providing security in the agro-industrial zone. On the contrary, to the extent that the banana ports were in their jurisdiction, this served equally to get drugs out [of the country] and bring in arms."

The AUC functioned in coordination with "Convivir", a program started in 1994 and described by Michael Evans in a 16 April 2007 article in *The Nation* (quoting the DOJ) as "a network of hundreds of private security cooperatives licensed by the government to patrol rural areas and gather intelligence under the direction of local military commanders. From the start, US military officials had said that the program would 'degenerate into uncontrolled paramilitary groups.' Indeed, the Convivir were linked to the most brutal massacres of the AUC offensive."

The armed conflict resulted in more than 4,000 deaths from 2000 until 2007, in addition to forced displacements of primarily Afro-Colombian and indigenous communities from the Urabá and Santa Marta regions. In a 22 June 2011 blog post on Z-Net, Ben Norris describes the growth of the paramilitaries: "Between 1997 and 2001, the size of the AUC had at least tripled, mainly due to the group's heavy involvement in the drug trade, according to the Center for Defense Information. The group is responsible for the largest amount of killings in Colombia, and it targets left-wing groups such as the FARC, the National Liberation Army, political activists, judges, and political officials. In 2001, when Chiquita was still doing business with the AUC, the group killed an estimated 1,015 civilians. The number dwarfs the 197 civilians killed by the FARC forces."

The AUC's growth is in part due to the payments it received from Chiquita; from 1997 until 2004 Chiquita paid USD \$1.7 million to the AUC, in direct payments and through the Convivir network. Michael Evans states in *The Nation* article that "[p]aramilitary killings rose dramatically while the payments continued. The AUC quickly gained a reputation for the shocking brutality of its crimes, and [AUC leader Carlos] Castaño openly boasted about many of them. The slaughter left a trail of mangled corpses across the country, from the banana farms of Urabá to the coca fields of Putumayo. An overwhelming majority of the victims were civilians."

The United States designated the AUC a foreign terrorist organization in September 2001, making transactions with the organization illegal. Notwithstanding this fact, the AUC received a large shipment of arms in November 2001. According to a report released by the Organization of American States (OAS) in January 2003, a shipment of 3,000 AK-47's and 5 million 5,62 mm cartridges arrived in Colombia from Nicaragua on 5 November 2001. This shipment was received in the ports owned by Chiquita subsidiary Banadex and was loaded onto 14 trucks and sent on its way to paramilitary organizations in the regions of Cordoba and Urabá. A October 2011 article in *The Progressive* quotes "an interview with Colombia's newspaper *El Tiempo*, [where] "AUC founder Carlos Castaño called the procurement 'the greatest achievement by the AUC so far,' and claimed there had actually been five shipments totaling 13,000 rifles." The arms sale to the Colombian paramilitaries bears a notable echo to the Guatemalan coup in 1954, where arms for mercenaries were transported on banana boats, and where the US government and intelligence apparatus was deeply involved. The arming of paramilitaries in 2001 coincides with the existence of Plan Colombia, a program through which the US government provided billions of US Dollars in military aid to Colombia to counter the drug trade. Although the OAS report implicated Chiquita in directly arming the paramilitaries, the company has yet to be investigated for this incident.

Negotiations for the demobilization of the paramilitaries began in 2003 and an estimated 17,000 AUC fighters (out of a force of 20,000) had surrendered their weapons by the end of 2005. The demobilization included a Reparation and Reconciliation Commission, where former fighters could confess to their crimes in exchange for reduced sentences. Several paramilitary leaders

were subsequently extradited to the United States to stand trial in relation to their drug trafficking activities.

5.2 Chiquita in Colombia

While this article examines Chiquita's actions in Colombia in relation to the armed conflict since the 1990s, the company has a much longer history in this country. The United Fruit Company had been operating in Colombia since its founding, driving the same model throughout Latin America of clearing forests to make way for its plantations, maintaining sub-standard working conditions, and building strong relationships with local governments in order to protect its empire.

One notorious example of the collusion between the UFC and the State took place in 1928 in Colombia, where a mass strike by UFC workers was met with unprecedented violence from the military. Thousands of workers, along with their families and supporters were killed when the army opened fire on the strikers in the Caribbean City of Ciénaga.

In the 1960s, Chiquita created its subsidiary Banadex, which ran its Colombian operations. Throughout the armed conflict, Chiquita's operations were under attack - both by the FARC and ELN, and later by the AUC. In 1982 Chiquita sold its holdings in the violence-filled Urabá region, returning in 1989 to the FARC-controlled territory lured by the promise of a growing market.

Chiquita was the most important banana producer in Colombia, and in turn, its Colombian operation was one of its most lucrative. In 2003, Chiquita declared \$2.6 billion in revenue, and Banadex as its most profitable subsidiary. This is particularly noteworthy as Chiquita had recently come out of bankruptcy. As stated in a 2007 note for the US Chamber of Commerce by Chiquita CEO Fernando Aguirre, "[t]he company generated close to 12,500 direct and indirect jobs, contributing almost [USD] \$70 million annually to the Colombian economy in the form of capital

expenditures, payroll, taxes, social security, pensions, and local purchases of goods and services.”

5.3 The Chiquita Scandal

It would seem that Chiquita was a valued contributor to the Colombian economy, and that the company was an innocent bystander in the country’s armed conflict, bravely creating jobs and producing bananas under difficult conditions. However, in 2007 the US Department of Justice (DOJ) announced that Chiquita had been indicted for making payments to AUC, which was a designated foreign terrorist organization (FTO). Chiquita was fined USD \$25 million and it ended up selling its Colombian operations in 2004. The charge brought against the company: “Engaging in Transactions with a Specially-Designated Global Terrorist.” No criminal charges were brought against any of the executives who approved the payments.

According to the DOJ indictment, Chiquita came forward in 2003 and admitted that it had been making payments to organizations in Colombia’s armed conflict, first to the FARC and ELN - from 1989 until 1997 - and then to the AUC, starting in 1997. These payments, Chiquita claimed, were made under extortion as the organizations threatened to kill Chiquita workers if the company did not pay. Chiquita had recently (in early 2003) learned that the AUC had received an FTO designation, although the designation had first been publicized in September 2001. The initial meeting with the SEC and the DOJ did not result in Chiquita stopping the illegal payments. In fact, the company continued making payments to the AUC until 2004, when Chiquita sold Banadex (and with it all of its Colombian operations) to Banacol. Of specific relevance to the indictment, Chiquita paid the AUC at least USD \$825,000 in the period after the initial FTO designation until 2004.

The earlier payments to the FARC and the ELN were not of concern to the DOJ, as they ended prior to the organizations being added to the FTO list in 1997. As the payments were considered to be

extortion from guerrilla groups, they were also considered legal under Colombian law.

In all its communications regarding the payments, Chiquita has insisted that the company was a victim of extortion and that its workers were under constant threat of violence. Chiquita's 2007-2008 CSR Report (incidentally, the last CSR report available on Chiquita's web site as of July 2013) explains that "during the 1990s, it became increasingly difficult to protect our Colombian workers, and our company had been forced to make protection payments to safeguard our workforce. Among hundreds of documented attacks by left- and right- wing groups were the 1995 massacre of 28 innocent Chiquita employees who were ambushed on a bus on their way to work, and the 1998 assassination of two of our workers on a farm while their colleagues were forced to watch." According to Chiquita, the "protection payments" were to prevent violence against the workforce, and not payments for actual security services rendered.

The DOJ indictment provides many details about Chiquita's payments to the AUC, how they started in 1997 after a meeting between officials from Banadex and a top paramilitary leader, Carlos Castaño. According to the DOJ Sentencing Memorandum, "At the meeting Castaño informed the General Manager [of Banadex] that the AUC was about to drive the FARC out of Urabá. Castaño also instructed the General Manager that defendant Chiquita's subsidiary had to make payments to an intermediary known as a Convivir." Subsequent confessions by the paramilitary leaders confirmed this account. The portal *Verdad Abierta* gathers information about the armed conflict in Colombia and transcribed testimony that "at the end of 1997, the paramilitary leader Raúl Hasbún arrived at an agreement with several banana companies in the Urabá region, among them Chiquita Brands that paid to the AUC one cent (USD) per exported box. This payment went to the Convivir Papagayo, and was destined in three parts: to Carlos Castaño, to social projects, and a third part to corrupt police officers."

The DOJ documented that Chiquita made more than 100 separate payments to the AUC from 1997 until 2004. It was in this period that the AUC took control of the territories through violent confrontations. Nineteen of these payments were made after the DOJ told Chiquita that "payments to the AUC were illegal and

could not continue." The indictment also states that the payments "were reviewed and approved by senior executives of the corporation," who knew by no later than September 2000 "that the AUC was a violent, paramilitary organization led by Carlos Castaño."

Chiquita provided funds to the AUC in direct cash payments as well as channeling funds through Convivir groups that acted as "intermediaries". The Convivir networks were described earlier as state-licensed private security and intelligence organizations. According to the DOJ indictment, the AUC used these groups "as fronts to collect money from businesses for use to support its illegal activities."

The investigation by the DOJ concluded that Chiquita had been a victim of extortion, and that although the company's payments to the AUC were illegal, the ten Chiquita executives and directors named in the indictment would not be subject to criminal prosecution under US law. The negotiations between the DOJ and Chiquita, which started in March 2003, culminated in the 2007 plea bargain agreement in which Chiquita admitted its guilt and accepted the USD \$25 million fine, payable over five years.

5.4 The Chiquita Papers

Chiquita's official story, taken at face value by the DOJ, is that Chiquita employees were at risk of violence if the company did not make regular payments to the AUC. "The payments made by the company were always motivated by our good faith concern for the safety of our employees," stated Chiquita CEO Fernando Aguirre in a 2007 statement published in the *Chicago Tribune*.

The extortion defense is dependent on Chiquita not receiving any benefits or services in return for the payments. When the DOJ indictment was announced, it was the only version of the story that was made public and it was tightly controlled by Chiquita. However, the National Security Archive was successful in a Freedom Of Information Act (FOIA) request regarding the DOJ's investigation of Chiquita, and obtained more than 5,500 pages of

the company's internal documents that had been submitted to the DOJ. The National Security Archive's Chiquita Papers contrast Chiquita's official story with the internal discussion regarding cover up for the illegal payments and how to build a credible extortion defense. The following excerpt of the National Security Archive's April 2011 Chiquita Papers release summarizes some of the key information uncovered in the company's documents.

"Confidential internal memos from Chiquita Brands International reveal that the banana giant benefited from its payments to Colombian paramilitary and guerrilla groups, contradicting the company's 2007 plea bargain agreement with U.S. prosecutors, which claimed that the company had never received 'any actual security services or actual security equipment in exchange for the payments.' Chiquita had characterized the payments as 'extortion.'

"... The documents provide evidence of mutually-beneficial 'transactions' between Chiquita's Colombian subsidiaries and several illegal armed groups in Colombia and shed light on more than a decade of security-related payments to guerrillas, paramilitaries, Colombian security forces, and government-sponsored Convivir militia groups. The collection also details the company's efforts to conceal the so-called 'sensitive payments' in the expense accounts of company managers and through other accounting tricks. The Justice Department investigation concluded that many of Chiquita's payments to the AUC (also referred to as 'Autodefensas' in many of the documents) were made through legal Convivir organizations ostensibly overseen by the Colombian army.

"... The company's effort to conceal indications that it benefited from the payments is evident in a pair of legal memos from January 1994. The first of these indicates that leftist guerrillas provided security at some of Chiquita's plantations. The general manager of Chiquita operations in Turbó told company attorneys that guerrillas were 'used to supply security personnel at the various farms.' A handwritten annotation on a subsequent draft of the document asks, 'Why is this relevant?' and, 'Why is this being written?' Throughout the document,

lawyers have crossed out the word 'transactions'--suggestive of a quid pro quo arrangement--and replaced it with the more neutral term 'payments.' Company accountants characterized the expenditures as 'guerrilla extortion payments' but recorded them in the books as 'citizen security,' according to these memos.

"Another document shows that Chiquita also paid right-wing paramilitary forces for security services--including intelligence on guerrilla operations--after the AUC wrested control of the region from guerrillas in the mid-1990s. The March 2000 memo, written by Chiquita Senior Counsel Robert Thomas and based on a conversation with managers from Chiquita's wholly-owned subsidiary, Banadex, indicate that Santa Marta-based paramilitaries formed a front company, Inversiones Manglar, to disguise 'the real purpose of providing security.'

"Ostensibly an agricultural export business, Inversiones Manglar actually produced 'info on guerrilla movements,' according to the memo. Banadex officials told Thomas that 'all other banana companies are contributing in Santa Marta' and that Chiquita 'should continue making the payments' as they 'can't get the same level of support from the military.'

"The Chiquita Papers also highlight the role of the Colombian military in pressuring the company to finance the AUC through the Convivir groups and in facilitating the illegal payments.

"One indication of this is found in another document written by Thomas in September 2000 describing the 1997 meeting where notorious AUC leader Carlos Castaño first suggested to Banadex managers that they support a newly-established Convivir called La Tagua del Darien. According to the memo, the Banadex officials said that they had 'no choice but to attend the meeting' as 'refusing to meet would antagonize the Colombia military, local and state government officials, and Autodefensas.'

"... Later that year, an August 1997 legal memo written on Chiquita letterhead says that the company was 'member[s] of an organization called CONVIVIR Puntepiedra, S.A.,' which the author characterizes as 'a legal entity in which we participate with other banana exporting companies in the Turbó region.' The memo says that the 'sole function' of the Convivir was 'to provide information on guerrilla movements.'

"The company had been making sensitive security payments for years--first in the form of direct payoffs to military officers and guerrilla groups, then through local trade organizations and the Convivir militias. For 1991, some \$15,000 worth of 'sensitive payments' to various units of the Colombian military are listed alongside a more than \$31,000 disbursement to 'Guerrilla.' A different version of the same document omits the names of the payment recipients but includes a handwritten annotation next to the 'Guerrilla' entry that says, 'Extortion Payment.' Another annotation reads, 'Mainly not illegal payments -- these are legal -- pay gasoline, army, police, politicians -- payment doesn't provide anything or benefits.'

"Accounting records from 1997-1998 also point to the role of Colombian security forces in encouraging the company's illegal paramilitary payments. Beginning in the second quarter of 1997 and continuing through the second quarter of 1998, sensitive payment schedules for Banadex record large payments to 'Convivir' as 'Donation to citizen reconnaissance group made at request of Army.' Similar records from 2002 and 2003 list Convivir payments alongside disbursements to 'Military and Police Officials' for 'Facilitating payments for security services.'

As summarized here, and analyzed extensively by the National Security Archive, Chiquita's extortion defense was fabricated to cover up what the company knew were illegal payments to organizations that used extreme violence to ensure a high-profit environment. This was a business arrangement among many parties: the government, the military, Chiquita, and the paramilitaries. Contrary to the DOJ conclusion that Chiquita was a victim of extortion, the Chiquita Papers show the intricate webs of this defense strategy.

5.5 The current lawsuits

The 2007 indictment by the DOJ opened the door to several lawsuits filed in the United States on behalf of Chiquita shareholders as well as on behalf of Colombian citizens victims of paramilitary violence that was funded by Chiquita. Four legal actions on behalf of Colombian citizens were bundled into one lawsuit that is currently being heard in West Palm Beach, Florida. The case has survived two motions to dismiss filed by Chiquita, one in 2008 and another in 2010.

EarthRights International filed one of the original lawsuits in July 2007, representing family members of the trade unionists, banana workers, political organizers, activists and others killed by the AUC in a lawsuit arguing that Chiquita struck a business deal with paramilitaries and other armed groups. According to Earthrights International, the paramilitaries suppressed labor organization through both random and targeted violence in exchange for financial assistance and access to Chiquita's private port for arms and drug smuggling. *The Progressive* article quotes the claims in the lawsuit that "Chiquita also used the AUC to resolve complaints and problems with banana workers and labor unions. Among other things, when individual banana workers became 'security problems,' Chiquita notified the AUC, which responded to the company's instructions by executing the individual. According to AUC leaders, a large number of people were executed on Chiquita's instructions in the Santa Marta region."

In 2011, a United States federal district court judge in Florida ruled that the claims against Chiquita may continue for torture, extrajudicial killing, war crimes, and crimes against humanity. The most recent development in the lawsuit is the April 2013 rejection by the SEC of Chiquita's appeal to block its financial information from Freedom of Information Act requests. According to *The Progressive*, "[i]f the civil lawsuit now proceeding in Florida were to succeed, it would vastly eclipse that criminal fine. Plaintiffs' lawyers are not specifying how much they might seek. But if jurors were to award just \$5 million per client—which would be at the low end of the spectrum of U.S. jury awards for wrongful death cases nowadays—damages would exceed \$20 billion."

The EarthRights International lawsuit also picks up the allegation of Chiquita's involvement in the illegal shipment of arms from Nicaragua to the AUC, which was documented by the OAS in its January 2003 report but not part of the DOJ investigation. Colombia's attorney general has also been looking into Chiquita's connection with the arms shipment. As mentioned earlier, an OAS report regarding the illegal sale of arms to AUC implicated Chiquita's Banadex subsidiary. A 2 August 2007 article in the *Washington Post* reported that "a Chiquita spokesman responded to the OAS report saying 'there is no information that would lead us to believe that Banadex did anything improper.' Colombia's chief prosecutor's office isn't so sure. For one thing, it noted that the four people already convicted in the arms smuggling scheme included Banadex's legal representative, Giovanni Hurtado Torres."

The investigations in Colombia regarding the illegality of Chiquita's actions under Colombian law have included the possibility of an extradition request for Chiquita officials identified in the DOJ case as having knowingly approved the payments. These investigations have been caught up in the prosecution of paramilitary commanders. So far there has been no resolution, although in 2012, related investigations to the role of paramilitaries in the drug trade precluded investigation of Chiquita executives. In its 2013 argument that the SEC should exempt Chiquita's documents from a FOIA request, the company stated that as it is "under criminal investigation in Colombia," its sensitive documents must be protected.

The lawsuits in the US and the investigations in Colombia have given voice to other actors in this conflict, namely the victims - family members of those terrorized and killed by the paramilitaries and communities that were forcibly displaced from their lands, to the benefit of Chiquita. The testimonies of massacres, threats, and targeted killings demonstrate the brutality with which the AUC did Chiquita's bidding. *The Palm Beach Post* coverage of the trial on 8 June 2011 states that "[b]efore the AUC went on a campaign to 'depopulate' the banana-producing Urabá and Santa Marta regions, by eliminating union leaders and agitators, the unstable regions weren't profitable. But the Chiquita pact with the AUC both stabilized the regions and made them profitable, [the plaintiffs' lawyers] have said."

Another voice that has emerged in the proceedings is that of the paramilitary commanders who have confessed to their crimes and whose accounts coincide with those of the victims, namely that Chiquita knowingly supported their efforts. An *Al Jazeera* People and Power investigation from June 2009 focuses on the banana murders in "Chiquita: Between Life and Law." The exposé presents details of how the "AUC death squads killed thousands of civilians as well as intimidating and murdering banana workers and their union leaders." It features an interview with Ever Velóz García, who was the Paramilitary Commander of the Banana Block in the AUC and who confessed to over 3,000 killings, including the assassinations of 70 union leaders in 1995 alone.

The testimony of Velóz García states: "We arrived there in the middle of violence to lift the burden on the banana companies. They didn't give us money to kill specific individuals but with the money we were given we bought rifles and ammunition." He was ordered by AUC to target trade union members. Contrary to Chiquita's claims that the payments were to protect workers, the paramilitaries began killing them. "So the way it was we went to the fields and explained that there was a new law, the law of Carlos Castaño ... Strikes that harmed the banana industry's economy were totally forbidden. In a short time, using violence and the power of the rifle, we took away the rights that they had fought hard for. That was one of the benefits for the banana companies."

A landmark interview with UAC co-founder Raúl Hasbún published in March 2012 in the Colombian magazine *La Semana* demystifies the notion that the paramilitaries were extorting the banana companies. Hasbún agreed to the interview shortly after Colombia's decision to exempt banana executives from the drug trade investigation, while he was already serving an 18-year sentence for his role in a massacre in San José de Apartadó, in the Urabá region. Hasbún states that he was an entrepreneur involved in the cattle and banana sector prior to his involvement with the paramilitaries, and that the UAC was created by the businessmen to protect their businesses from the guerrilla presence in the area. Hasbún goes on further to say that as a business leader, he was involved in organizing voluntary payments for the self-defense forces. Hasbún also

confirms the UAC's connections with the Colombian army, public prosecutors, police, and secret services. "All of the information came to us, we would create one report and send it out to everyone. The vast majority of the operations in Urabá were conducted jointly."

A compelling reason for the lawsuits to go forward in the US, and for investigations to continue in Colombia, is that the USD \$25 million fine was paid to the US government, not to the victims of the armed conflict that Chiquita fueled. In its communication with the DOJ regarding the investigation in Colombia, the Colombian attorney general made a formal request for the funds received by the DOJ to be transferred to the Colombian Reparation and Reconciliation Commission, but this has not been granted. So far, Chiquita has only been found guilty of violating US law by not informing the DOJ of the transactions with the AUC after the paramilitaries were formally designated a foreign terrorist organization.

5.6 Bananas in Colombia after the Chiquita sale

While the lawsuits investigate Chiquita's actions up until 2004, banana production in Colombia continues to be a violent enterprise. Chiquita's successor, Banacol, is linked to the paramilitaries, and banana workers and communities continue bearing the brunt of the violence. Although Chiquita formally sold its operations in Colombia in 2004, questions continue to emerge regarding the company's presence in the country and its close ties to its successors.

In June 2004, Chiquita sold its subsidiary Banadex to Banacol, a Colombia-based producer and exporter of bananas and other fruit products. According to Chiquita, "because of the untenable conflict Chiquita faced in Colombia between protecting the lives of its Colombian workers and a possible violation of US law, Chiquita sold all of its Colombian farms at a substantial financial loss."

The sale agreement included an eight-year contract for Chiquita to purchase approximately 11 million boxes of Colombian bananas from Banacol. At that time, Chiquita was producing approximately 11 million boxes of bananas a year. Banacol also agreed to respect the collective bargaining agreement between the Colombian operations and the union, and to maintain the social and environmental certifications, specifically the SAI8000 and Rainforest Alliance certifications.

According to Banacol's web site, the purchase of the Chiquita operations turned Banacol into the number one banana production company in Colombia, by increasing its production capacity three-fold. Additionally it became the primary logistics operator from the Urabá port. The Rainforest Alliance web site confirm that the Banacol operations continue to receive the green frog seal.

The Colombian attorney general was not as convinced that the Chiquita - Banacol transaction resulted in the departure of Chiquita from Colombia. A 2009 news article in Colombian paper *El Espectador* cites an investigation by the attorney general to determine the financial relations between Chiquita and Banacol's parent company, Invesmar, which is based in the British Virgin Islands. Among its concerns, the attorney general had found that Invesmar had continued making payments to the Convivir organizations between 2004 and 2007, effectively continuing in Chiquita's footsteps.

Communities in the banana-growing region of Urabá have stated that Chiquita simply left their operations in the hands of the paramilitaries. Indeed, in the 2012 *Semana* interview, Raúl Hasbún described a close relationship with Banacol's CEO, Victor Enríquez: "How could he not know me, when his sister was married to my brother? ... He was president of [the banana producers' association] Augura... There wasn't a month that I didn't meet with these men."

A 2011 profile of Banacol published by the Dutch Association for Research on Multinational Corporations (known for its Dutch acronym SOMO) confirms the allegations that Banacol continued making payments to the AUC, and that the sister of Banacol's CEO

is married to a Hasbún family member. SOMO's profile also describes other controversies, citing a news article that reported on "hundreds of private contractors of a multinational banana corporation illegally invaded and occupied Afro-Colombian peace communities in the Curvaradó river basin [in the region of Urabá] in December 2010 with the intent to clear the land and actualize banana production for Banacol Inc. Their actions have been supported and assisted by local paramilitaries, army soldiers and municipal governments."

In addition to the land-grabbing and violation of Afro-Colombian rights, violence against banana workers after the Banacol takeover has been continually documented. The 2006 *Annual Survey of Violations of Trade Union Rights* by the International Confederation of Free Trade Unions labeled Colombia the 'worst labor rights violator in the Americas,' with 70 unionists killed for their trade union activities in 2005 alone. Discussing this report, Phillip Hough describes how "paramilitaries linked to the country's banana planter association forcibly entered the home of unionist Medardo Cuesta, distributing pamphlets threatening his life and the Sintrainagro banana union leader Oswaldo Cuadrado's life if they did not back down from involvement in a planned strike. This type of paramilitaristic repression is just the most recent in a longer history of political violence in Colombia's banana enclaves."

Chiquita sold its Colombia operations to Banacol, a company run by people with family ties to the paramilitaries and which continues to violate the human rights of workers and communities. Banacol, in turn, provides Chiquita with the same amount of bananas as Chiquita used to produce in Colombia, and continues to put both the Chiquita and Rainforest Alliance seal on the bananas.

6. A closer look at the plea bargain agreement

Meanwhile, Chiquita executives seem to have escaped criminal prosecution in both the US and Colombia, and the USD \$25 million fine is an expense line added to the company's budget, to be paid over a period of five years. By having a quick look at the players involved in the exchanges between Chiquita and the US government, it becomes clear that a conversation among friends with shared interests would never lead to jail time.

One matter is the fine, which seems particularly low for a company with USD \$2.6 billion annual revenue. Although Chiquita provided financial support to the armed organizations in Colombia over a period of 15 years, the DOJ calculated the fine based on the time Chiquita broke US law once the AUC was designated a foreign terrorist organization - less than 3 of those 15 years. The other important question is: how did the Chiquita executives and directors escape criminal prosecution?

The DOJ sentencing memorandum provides great detail about the payments that Chiquita made to the paramilitaries, evidence that these payments were approved by company executives (and therefore it was not Banadex as a subsidiary functioning on its own), and evidence that company executives and directors discussed the legality of the payments and whether it was best to stop making them. There were ten individuals singled out in the indictment: five "high-ranking officers of defendant Chiquita", one "member of the Board of Directors of defendant Chiquita", two "employees of defendant Chiquita", one "high-ranking officer of Banadex", and one "employee of Banadex." The sentencing memorandum emphasizes that it is "particularly important to make clear that the conduct that lead to the company's guilty plea was not the act of a rogue employee or mid-level manager." Meaning, it was known at the highest levels within the company. Despite this, in relation to criminal charges against individuals, "the United States [DOJ] has decided not to do so" out of an exercise of prosecutorial discretion.

In an effort to map how it came to be that the Chiquita executives and directors avoided criminal prosecution, it is useful to remember the UFC legacy and the interrelation between the company and the state. The players in 2003 echo the players

in 1953 before the coup in Guatemala, in the revolving door between the State and the private sector that leaves everyone connected. Similar to the Dulles brothers, who had worked for the UFC before becoming Secretary of State and head of the CIA under Eisenhower, the people representing Chiquita had deep ties with the government agencies negotiating the plea bargain.

A key player is the Covington and Burling legal firm that is a large recipient of lobbying fees from Chiquita (in the period of 2007-2009, Chiquita paid the firm USD \$70,000 in lobbying fees). In 2009, John Negroponte would become Vice Chairman of Covington and Burling. Negroponte is well-known for his appointments under the George W Bush administration as US Ambassador to the United Nations (2001-04), US Ambassador to Iraq (2004-2005) and Director of National Intelligence (2005-07). Negroponte had also served as US Ambassador to Honduras in the 1980s, and during that period collaborated with the CIA to support the Contras in Nicaragua while maintaining silence about the human rights violations taking place in Honduras at the bidding of Chiquita.

Most important, as a partner in Covington and Burling, Eric Holder was the chief attorney that defended Chiquita in the Colombia scandal, negotiating the plea bargain with the Department of Justice. Prior to joining Covington and Burling, Holder was Deputy Attorney General under Bill Clinton; he later went on to become US Attorney General under Barack Obama.

Then, there is Roderick M. Hills, who joined Chiquita's Board of Directors in 2002. Hills was legal advisor to President Ford in 1975 and was Chair of the Securities and Exchange Commission from 1975 to 1977. As SEC chair, Hills oversaw the creation of a program to address the problem of corporations' paying bribes overseas. This program encouraged companies to investigate themselves when they learned that "questionable payments" had been made to foreign officials.

A 16 August 2007 *New York Times* article referring to the Chiquita scandal focused on Hills: "After operating for several decades at the highest levels of the intersection of Washington

and the corporate world, Roderick M. Hills was someone whose advice was eagerly sought by companies under fire from federal authorities." It was Hills who first approached the SEC in April 2003 on behalf of Chiquita, and he is quoted as stating to the Chiquita Board that "we appear to be committing a felony." The *New York Times* quotes Hills' lawyer: "Rod Hills led Chiquita's prompt and voluntary disclosure of these payments to the Department of Justice and had a reasonable basis to believe that Chiquita could maintain the status quo while the department considered the complicated issues at stake." The paper also interviewed a DOJ spokesman who declined to comment on the Chiquita case, but said, "If the only way that a company can conduct business in a particular location is to do so illegally, then the company probably shouldn't be doing business there."

The April 2003 meeting between Chiquita and the US government included representatives from the SEC, DOJ, and FBI. Representing the DOJ was Michael Chertoff, Assistant Attorney General and head of the Justice Department's criminal division. Representing Chiquita was Roderick Hills. Hills and Chertoff had been colleagues at the Latham and Watkins law firm in the early 1980s. Chertoff later served as Secretary of Homeland Security under Bush starting 2005, and joined as Senior of Counsel at Covington and Burling in 2009, when President Obama took office.

A 2012 case study on "Chiquita and the Department of Justice" produced by the Business Roundtable Institute for Corporate Ethics provides detail about the initial meeting between Chiquita and the US government. It includes this description of the exchange between Hills and Chertoff:

"Chiquita's management, Hills explained, had told him and his fellow directors that the failure to make any payment (a fixed amount at 4 U.S. cents per box of bananas sold) would certainly cause one or more of Chiquita's employees to be killed by AUC. Hills acknowledged that the payments were illegal but stated that, because of that threat, Chiquita would continue to make such payments so long as the company remained in Colombia. Chiquita was prepared to sell its property in Colombia and leave the country, Hills added, but asked that Chertoff consider several policy issues that could affect how and when Chiquita

should leave. Specifically, Hills noted the following three unique complicating factors:

- "Hills told the group that shortly before the April meeting, the U.S. State Department had announced a grant of \$200 million to assist the Colombian government's efforts to disarm the AUC. He asked if Chiquita should inform the State Department of its decision to leave the country and/or coordinate the decision with the State Department's activities.

- "Secondly, Hills noted that Chiquita's management was certain that most, if not all, banana producers with operations in Colombia were also making extortion payments to AUC. He asked whether the DOJ wished to notify these other companies of the issue and to explain to the Colombian government that one and perhaps more U.S. companies would be forced to leave the country.

- "Finally, given Chiquita's major presence in Colombia and its prominent position as operator of a critical port, Hills asked whether the department would like to place one or more persons in an undercover operation on Chiquita's property to secure a better idea of how AUC operated."

As stated in the DOJ's sentencing memorandum, at that April 2003 meeting "Department of Justice officials told [Chiquita representatives] that Chiquita's payments to the AUC were illegal and could not continue." Additionally, outside counsel advised Chiquita in September 2003 that "[Department of Justice] officials have been unwilling to give assurances or guarantees of non-prosecution; in fact officials have repeatedly stated that they view the circumstances presented as a technical violation and cannot endorse current or future payments."

According to Chiquita, the US government's position was not clear, since during the initial meeting, "DOJ officials

acknowledged that the issue of continued payments was complicated." The summary of the meeting, as well as the DOJ's ambiguity regarding future payments by Chiquita to the AUC, raises pertinent questions about the relationship between Chiquita and the State: Did the State have an interest in having Chiquita remain in Colombia? Was there a relationship between Chiquita and the US intelligence apparatus? Was the US government already getting intelligence through Chiquita and its Colombian partners? It is established that the paramilitary's Convivir were gathering intelligence, did Chiquita have access to this intelligence and was in turn feeding it to the US government?

It is uncertain what the conclusions were of these discussions regarding Chiquita's staying or leaving Colombia. All that is certain is that Chiquita formally sold its operations but continues having a murky relationship with its successors.

6. Conclusion

To recap this story: Chiquita's public relations apparatus would have consumers believe that it has disowned its predecessors at the United Fruit Company and that the 'new' company is now committed to social and environmental responsibility. It has collected sustainability and other certifications, which are not as trustworthy as they would appear at a glance. Chiquita's attempt to hide the payments to the AUC by fudging its accounting calls to question the Social Accountability International's certification on good management practices and transparency, which are cornerstones of corporate social responsibility and ethical conduct.

The situation in Colombia is presented as unique because of the armed conflict, and Chiquita's official story is that they were paying the guerrillas and the paramilitaries so that they would not kill banana workers - not to terrorize and kill them. However, the documentation of the use of armed security in Costa

Rica and militias in Guatemala to intimidate and threaten workers shows the true story of a company that, despite its labor certifications, continues in the path of the UFC to exploit a vulnerable workforce and control territory at any cost.

The documented incidents of violence against banana workers, continued use of dangerous pesticides, and intimidation of workers to prevent them from speaking out casts serious doubts on the certification schemes of Rainforest Alliance and the other third-party groups. The certifying organizations are supposed to verify that conditions in the plantations continually meet the sustainability criteria, yet the reality on the ground is that these are not "better bananas." The Rainforest Alliance, at best, simply takes Chiquita's story at face-value, placing more importance on the relationship with the company than on its responsibility to hold the producer accountable.

In the case of Colombia, the DOJ also chose to take Chiquita's version of events at face-value, relying on the network of connections between the State and the company to build the story together. While the DOJ chose to go along with Chiquita's extortion defense, the Chiquita Papers released by the National Security Archive show a company whose leadership was fully aware of the illegality of the payments, if not also their unethical nature. The company executives were presented with different options for hiding the payments and were briefed on what constituted "extortion" versus voluntary security payments. It is also difficult to believe that the leading US-based banana producer in Colombia, with active dealings with the AUC, would simply be unaware - for over a year - that the US government had given the AUC a foreign terrorist organization designation.

A lingering question is: why did Chiquita come forward in March 2003? It had been making payments in impunity since 1989, and there was a good scheme for concealing the payments and preparing an extortion defense if it would be needed. Perhaps the OAS January 2003 report that implicated Chiquita in the illegal arms trade constituted an important threat to Chiquita. It is interesting that the DOJ did not take up this matter.

It is also interesting that not only did Chiquita continue the payments to the AUC even after it admitted to knowing about the foreign terrorist designation, it went into the initial meeting with the DOJ and SEC fully expecting to continue the payments. As quoted earlier, Hills "had a reasonable basis to believe that Chiquita could maintain the status quo."

The "prosecutorial discretion" exercised by the DOJ in rejecting criminal charges against the individuals involved in the Chiquita Scandal, and the straight-forward acceptance of the extortion defense re-affirm the importance of the Freedom of Information Act and the need for the public to have access to first-hand information that is not interpreted by the government, whose interest in protecting its corporate allies is not always transparent.

This story could have been written 100 years ago. In the end, the fruit doesn't fall far from the tree. Perhaps, because of the courage of the Colombia victims who are moving forward with the legal actions, this time around the cycle of impunity might be broken.

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