

TERMS OF REFERENCE

Independent Investigation of the Complaint against Energy & Palma S.A. (a subsidiary of HOLDING LA FABRIL S.A.) Ecuador

I. Background

Energy & Palma S.A., a subsidiary of HOLDING LA FABRIL S.A. (hereinafter referred to as “the Respondent”) is an RSPO member and is bound to comply with all its Key Documents. On 9 January 2023, a community represented by their lawyer and supported by local NGO (“the Complainants”) filed a complaint against the Respondent on the allegations as follows: -

1. Allegations made against the Respondent are in relation to the modification of property deeds to remove areas identified by the government as commune and collective lands and environmental protection zones.
2. Lawsuit against commune owners to intimidate the local people.
3. Company's activities have a negative impact on the natural environment and lead to degradation and deforestation.

For the purposes of determining this Complaint, the Complaints Panel has directed the Secretariat pursuant to section 7.1.4 of the Complaints and Appeals Procedures 2017 to engage an independent investigator/expert to conduct an independent investigation for the purposes of determining if the above-mentioned allegations are true or otherwise.

II. Objectives

The objectives of the investigation are to:

1. Investigate the allegations listed in item (I) above and gather evidence from both the Complainant and the Respondent.
2. Determine if there is a breach of the following provisions of the RSPO Key Documents (including but not limited to):
 - a) **RSPO Code of Conduct for Members-item 2.3:** *Members will commit to open and transparent engagement with interested parties, and actively seek resolution of conflict.*
 - b) **RSPO Principle & Criteria 2018 (P&C) - Criteria 1.2:** *The unit of certification commits to ethical conduct in all business operations and transactions.*
 - c) **RSPO Principle & Criteria 2018 (P&C) - Criteria 2.1:** *There is compliance with all applicable local, national, and ratified international laws and regulations.*

- d) **RSPO Principle & Criteria 2018 (P&C) - Criteria 4.1:** *The unit of certification respects human rights, which includes respecting the rights of Human Rights Defenders.*
- e) **RSPO Principle & Criteria 2018 (P&C) - Criteria 4.3:** *The unit of certification contributes to local sustainable development as agreed by local communities.*
- f) **RSPO Principle & Criteria 2018 (P&C) - Criteria 4.4:** *Use of the land for oil palm does not diminish the legal, customary or user rights of other users without their Free, Prior and Informed Consent.*
- g) **RSPO Principle & Criteria 2018 (P&C) - Criteria 4.5:** *No new plantings are established on local peoples' land where it can be demonstrated that there are legal, customary or user rights, without their FPIC. This is dealt with through a documented system that enables these and other stakeholders to express their views through their own representative institutions.*
- h) **RSPO Principle & Criteria 2018 (P&C) - Criteria 4.6:** *Any negotiations concerning compensation for loss of legal, customary or user rights are dealt with through a documented system that enables indigenous peoples, local communities, and other stakeholders to express their views through their own representative institutions.*
- i) **RSPO Principle & Criteria 2018 (P&C) - Criteria 4.7:** *Where it can be demonstrated that local peoples have legal, customary or user rights, they are compensated for any agreed land acquisitions and relinquishment of rights, subject to their FPIC and negotiated agreements.*
- j) **RSPO Principle & Criteria 2018 (P&C) - Criteria 4.8:** *The right to use the land is demonstrated and is not legitimately contested by local people who can demonstrate that they have legal, customary, or user rights.*
- k) **RSPO Principle & Criteria 2018 (P&C) - Criteria 7.8:** *Practices maintain the quality and availability of surface and groundwater.*
- l) **RSPO Principle & Criteria 2018 (P&C) - Criteria 7.10:** *Plans to reduce pollution and emissions, including greenhouse gases (GHG), are developed, implemented and monitored and new developments are designed to minimise GHG emissions.*

III. Methodology

The primary methodology for this independent review is onsite and desk research. It is designed to meet the above objectives.

The review will ensure that: -

1. The evidence gathered from both Complainant and Respondent as well as any other relevant information from the relevant stakeholder(s) and publicly available information from third parties on each of the allegations raised are reviewed.

2. At each allegation, an analysis and evaluation regarding the extent of compliance with the applicable provisions of the RSPO Key Documents (as set out in item (II) above) will be conducted; and
3. If breaches are identified, recommendations will be provided to address the gaps in the Respondent's operational conduct in accordance with the requirements of the RSPO Key documents.

IV. Expected outcomes

Expected outcome of this exercise is a report from the independent investigator/expert addressing all the elements listed under the objectives. The report is to be submitted in both the English and Spanish languages.

V. Terms of Engagement

The terms of engagement are as follows:

- a. The Independent Investigator/Expert is expected to execute a Non-Disclosure Agreement and shall at all times adhere to the highest level of professionalism during the investigation process. This includes: -
 - i. Timeliness and adherence to the schedule and deadlines;
 - ii. Carrying out an independent investigation in an impartial manner, including being neutral and objective during the process;
 - iii. Ensuring all findings and analysis are supported with evidence gathered;
 - iv. Timely reporting to the Grievance Unit within the RSPO Secretariat;and,
 - v. Maintaining the confidentiality of all information and supporting documents received and reviewed throughout this exercise.
- b. RSPO Secretariat will: -
 - i. Share all relevant information pertaining to the Complaint including but not limited to the RSPO Key Documents and supporting documents relied on during this Complaint;and,
 - ii. Facilitate additional meetings to clarify instructions and direction of the review where and when required.

VI. Independent Investigator/Expert

RSPO proposes that the investigation is carried out by individuals/teams of strong investigative background. The Investigator should meet the following minimum criteria: -

1. Proven track record in doing similar study in the palm oil sector and/or agriculture industry.
2. Fluent in English and Spanish - both written and spoken.
3. Does not have a conflict of interest with the Respondent, Energy & Palma S.A. (a subsidiary of HOLDING LA FABRIL S.A.), the Complainants, individuals and organisations supporting the Complainant (if any) or members of the RSPO Secretariat.
4. Has sufficient knowledge of interpreting the RSPO Key Documents.
5. Able to carry out an independent analysis of the data captured to meet the objectives in item (II) above.
6. Has knowledge of stakeholder engagement, regulations on property acquisition in Ecuador, environmental and water issues, land, and rural conflicts.
7. Has knowledge of Ecuadorian law.
8. Based in South America.

VII. Schedule

The timeline for this exercise is dependent on the availability of the independent investigator/expert. Parties to the Complaint will be updated on the agreed timeline of the investigation exercise upon consultation between the Secretariat and the independent investigator/expert and upon approval of the timeline by the Complaints Panel.

VIII. Estimated Cost

The RSPO has allocated a budget for this exercise. It will meet the reasonable cost of the independent investigator/expert.

For parties interested to undertake the above investigation, kindly submit your fee proposal along with the Curriculum Vitae to complaints@rspo.org

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