



# Terms of Reference

## Independent Investigation of the Complaint against Oleoflores S.A.S. Colombia

### 1.0 Background

Oleoflores S.A.S. (hereinafter referred to as "the Respondent") is an RSPO member and is therefore bound to comply with all applicable RSPO Key Documents. On 28 November 2024, a complaint (with the reference number RSPO/2024/18/HN) was lodged against the Respondent regarding its operations in the Montes de Maria region of Bolivar Department in Colombia. The summary of the allegations is as follows: -

- a) **Allegations on Land Conflicts:** The Complainant alleges that the Respondent owns and operates oil palm plantations on conflicted and contested rural lands in Montes de Maria;
- b) **Allegations on the issue of Free, Prior, and Informed Consent (FPIC):** The Complainant alleges that the Respondent has diminished legal, customary and user rights in the region of Montes de María, without the FPIC of local communities;
- c) **Allegations on failure to ensure transparency:** The Complainant alleges that the Respondent failed to fulfil its commitments to ensure transparency in providing the necessary information to interested parties;
- d) **Allegations on intimidation & failure to protect Human Rights Defenders (HRDs):** The Complainant alleges that the Respondent failed to fulfil its commitments to use peaceful dispute resolution mechanisms, not to instigate violence, to protect Human Rights Defenders and to prevent reprisals against them; and
- e) **Allegations on non-compliant land clearing and damage of HCV areas:** The Complainant alleges that the Respondent conducted non-compliant land clearing, which resulted in the damage of High Conservation Value (HCV) areas and freshwater ecosystems in the region.

For the purposes of determining this Complaint, the Complaints Panel has directed the Secretariat pursuant to section 7.1.4 of the RSPO 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.



## 2.0 Objectives

The objectives of the independent investigation are to: -

- a) Investigate the allegations listed under item (1) above and gather evidence for the independent Complaints Panel's determination;
- b) Investigate the allegations listed under item (1) above against the requirements of the provisions of the RSPO Key Documents (including but not limited to): -
  - i) **RSPO Code of Conduct for Members 2022:** -
    - **Section 2.3:** Members will commit to open and transparent engagement with interested parties, and actively seek resolution of conflict.
  - ii) **The RSPO Principles and Criteria 2018** (in accordance with the requirements for uncertified management units in Section 5.5.3 of the RSPO Certification system document (2020) for Principles & Criteria and RSPO Independent Smallholder Standard): -
    - **Criteria 2.1:** There is compliance with all applicable local, national, and ratified international laws and regulations.
    - **Criteria 4.4:** Use of the land for oil palm does not diminish the legal, customary or user rights of other users without their FPIC.
    - **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.
    - **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.
    - **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.
    - **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.
    - **Criteria 7.12:** Land clearing does not cause deforestation or damage any area required to protect or enhance High Conservation Values (HCVs) or High Carbon Stock (HCS) forest. HCVs and HCS forests in the managed area are identified and protected or enhanced.

Note: To refer to the **Colombia National Interpretation** of the RSPO Principles and Criteria 2018.



- iii) **RSPO Policy on the Protection of Human Rights Defenders, Whistleblowers, Complainants and Community Spokespersons 2018: -**
    - **Section 2.7:** Prevention
      - 2.7.2. RSPO Members are:
        - 2.7.2.1. Required to have an internal policy to prevent reprisals against HRDs and protect HRDs who submit a complaint in good faith.
        - 2.7.2.2. Required to have internal mechanisms to prevent and respond to complaints against any alleged threat or violence made against or by their affiliates.
  - iv) **RSPO New Planting Procedure (NPP) 2021:**
    - **Section 1.2:** When and how does the NPP Apply?

NPP must be implemented before a grower commences land preparation, including any associated development, for new oil palm plantings, from 1 January 2010 (except Independent Smallholders pursuing RSPO Independent Smallholder Standard).
  - v) **Remediation and Compensation Procedure (RaCP) 2015:**
    - **Section 3.1:** Disclosure of Non-Compliant Land Clearance.

All clearance without prior HCV assessment since November 2005 shall be disclosed.
- c) to prepare a report setting out the investigation's findings with a conclusion and recommendations (where applicable) for the independent Complaints Panel's consideration.

### 3.0 Methodology

The primary methodology for this independent investigation comprises an on-site review and desk research to meet the above-mentioned objectives. The on-site review shall include interviews with communities within the area subject to this Complaint (including community members referenced in the allegations), as well as other relevant stakeholders or third parties, where applicable.

The independent investigation will ensure that: -

- a) The evidence gathered (including testimonial evidence) from both the Complainant and Respondent, as well as any other relevant stakeholders and publicly available information from third parties, is independently reviewed and verified in relation to each of the allegations raised;
- b) Each allegation is analysed to meet the objectives as set out in item (2) above; and
- c) Safeguards are in place to protect the identities of human rights defenders, whistleblowers, complainants, and community spokespersons, with the aim of reducing the risk of potential reprisals against individuals or communities involved in the investigation.



## 4.0 Expected outcomes

The 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 English and Spanish.

The draft report prepared by the Independent Investigator/Expert will be shared with the Complaints Panel for their review. Further clarification (if necessary) is to be provided by the Independent Investigator/Expert to the Complaints Panel before the report is finalised.

A copy of the draft report will be provided to the Parties to this Complaint for the sole purpose of factual verification, subject to compliance by Parties to any requirements made by the Independent Investigator/Expert (if applicable).

## 5.0 Terms of Engagement

The terms of engagement are as follows:

- a) In line with sections 8.4.1 and 8.4.2 of the RSPO Complaints and Appeals Procedures 2017 (CAP 2017), the Independent Investigator/Expert must sign and 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. The Independent Investigator/Expert shall provide a clear work plan and an indicative timeframe for the independent investigation;
  - ii) Carrying out an independent investigation in an impartial and objective manner during the process. This independent investigation must include both on-site and desktop verifications;
  - 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 information pertaining to the Complaint (subject to confidentiality, where applicable), including but not limited to the RSPO Key Documents and supporting documents relied on in the course of this complaint; and
  - ii) Facilitate meetings to clarify instruction and direction of the investigation as applicable.



## 6.0 Independent Investigator/Expert

RSPO proposes that the investigation be conducted by individuals or teams with a strong investigative background. The Independent Investigator/Expert should meet the following minimum criteria: -

- a) **Regional expertise:** Based in Latin America, preferably with specific experience working in Colombia.
- b) **Relevant sector experience:** Proven track record in conducting similar investigations or studies within the palm oil sector and/or the agriculture industry;
- c) **Language proficiency:** Fluent in English and Spanish - both written and spoken;
- d) **Independence and impartiality:** Does not have a conflict of interest with the Respondent (Oleoflores S A S), the Complainant, any entities or individuals listed in the Complaint, or members of the RSPO Secretariat;
- e) **RSPO knowledge:** Has sufficient knowledge in interpreting the RSPO Key Documents;
- f) **Legal expertise and social context:** Has knowledge of Colombian laws and regulatory frameworks relevant to: -
  - i) Land tenure (including customary land rights);
  - ii) Land acquisition and restitution processes;
  - iii) Land dispossession, armed conflicts, and Socio-environmental conflicts;
  - iv) Rights of displaced populations, rural, peasant and afro-descendent communities; and
  - v) Environmental protection and natural resource (i.e., water) management.
- g) **Human Rights & FPIC competency:** Has a strong understanding of the principles and implementation of Free, Prior, and Informed Consent (FPIC), and other applicable human rights standards in relation to customary land rights, rural conflicts, and the protection of Indigenous and local communities, including human rights defenders.
- h) **Social & environmental impact knowledge:** Has knowledge in assessing social and environmental impacts, particularly with respect to High Conservation Value (HCV) areas and freshwater ecosystems; and
- i) **Analytical & reporting competency:** Has the capacity to independently analyse multidisciplinary data from various sources (e.g., communities' interviews, legal documents, environmental assessments, maps, geo-referenced data, etc.) and produce comprehensive findings in line with the investigation objectives set out in item (2) above.

## 7.0 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 independent Complaints Panel.



## 8.0 Estimated Cost

The RSPO has allocated a budget for this exercise. It will meet the reasonable cost of the Independent Investigator/Expert.

Parties who meet the requirements of this ToR are invited to submit a copy of your curriculum vitae and a fee proposal to [complaints@rspo.org](mailto:complaints@rspo.org)

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