

TERMS OF REFERENCE

Independent Investigation of the Complaint against

NATURACEITES S.A.

GUATEMALA

I. Background

NATURACEITES S.A. (hereinafter referred to as “the Respondent”) is an RSPO member and is bound to comply with all its Key Documents. On 23 April 2024, a complaint (with reference RSPO/2024/06/MAM) was lodged against the Respondent on the following allegations: -

1. The Complainant alleges that the Respondent is affecting the compliance of the Act on corporate due diligence obligations for the prevention of human rights violations in the supply chains-LkSG.
2. The Respondent has abused the human rights of the indigenous population by carrying out an unlawful seizure of land and restricting access to water.
3. The Respondent has not complied with labour law by unjustifiably withholding appropriate wages.
4. Occupational health and safety regulations are not respected by the Respondent.
5. The Complainant alleges that the improper disposal of waste made by the Respondent is affecting the environment of the area where the community lives.

The geographic scope of this complaint is focused on the departments of Alta Verapaz, Izabal, and Petén with a special focus on Maya Q'eqchi communities and Izabal Region .

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):

Roundtable on Sustainable Palm Oil

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No. 3, Jln Bangsar Utama 1,
59000 Kuala Lumpur, Malaysia

Other RSPO Offices

Jakarta, Indonesia	London, United Kingdom
Beijing, China	Bogota, Colombia
Zoetermeer, Netherlands	New York, USA

- 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 2.1:** *There is compliance with all applicable local, national, and ratified international laws and regulations.*
- c) **RSPO Principle & Criteria 2018 (P&C) - Criteria 2.1.1:***The unit of certification complies with applicable legal requirements.*
- d) **RSPO Principle & Criteria 2018 (P&C) - Criteria 2.1.3:***Legal or authorised boundaries are clearly demarcated and visibly maintained, and there is no planting beyond these legal or authorised boundaries.*
- e) **RSPO Principle & Criteria 2018 (P&C) - Criteria 3.6:** *An occupational health and safety (H&S) plan is documented, effectively communicated and implemented.*
- f) **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 4.1.2:** *The unit of certification does not instigate violence or use any form of harassment, including the use of mercenaries and paramilitaries in their operations.*
- f) **RSPO Principle & Criteria 2018 (P&C) - Criteria 4.3:** *The unit of certification contributes to local sustainable development as agreed by local communities.*
- g)**RSPO Principle & Criteria 2018 (P&C) - Criteria 4.3.1:** *Contributions to community development that are based on the results of consultation with local communities are demonstrated.*
- h) **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.*
- i) **RSPO Principle & Criteria 2018 (P&C) - Criteria 4.4.1:** *Documents showing legal ownership or lease, or authorised use of customary landowners through a Free, Prior and Informed (FPIC) process. Documents related to the history of land tenure and the actual legal or customary use of the land are available.*
- j) **RSPO Principle & Criteria 2018 (P&C) - Criteria 4.7:***Where it can be demonstrated that local people 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.*
- k) **RSPO Principle & Criteria 2018 (P&C) - Criteria 4.7.1:** *A mutually agreed procedure for identifying people entitled to compensation is in place.*
- l) **RSPO Principle & Criteria 2018 (P&C) - Criteria 4.7.2:** *A mutually agreed procedure for calculating and distributing fair compensation (monetary or otherwise) is in place and documented and made available to affected parties.*
- m) **RSPO Principle & Criteria 2018 (P&C) - Criteria 4.7.3:***Communities that have lost access and rights to land for plantation expansion are given opportunities to benefit from plantation development.*

- n) **RSPO Principle & Criteria 2018 (P&C) - Criteria 6.2:** *Pay and conditions for staff and workers and for contract workers always meet at least legal or industry minimum standards and are sufficient to provide a living wage (LW).*
- o) **RSPO Principle & Criteria 2018 (P&C) - Criteria 6.2.3:** *There is evidence of legal compliance for regular working hours, deductions, overtime, sickness, holiday entitlement, maternity leave, reasons for dismissal, period of notice and other legal labour requirements.*
- p) **RSPO Principle & Criteria 2018 (P&C) - Criteria 6.3:** *The unit of certification respects the rights of all personnel to form and join trade unions of their choice and to bargain collectively. Where the right to freedom of association and collective bargaining are restricted under law, the employer facilitates parallel means of independent and free association and bargaining for all such personnel.*
- q) **RSPO Principle & Criteria 2018 (P&C) - Criteria 6.7:** *The unit of certification ensures that the working environment under its control is safe and without undue risk to health.*
- r) **RSPO Principle & Criteria 2018 (P&C) - Criteria 6.7.3:** *Workers use appropriate personal protective equipment (PPE), which is provided free of charge to all workers at the place of work to cover all potentially hazardous operations, such as pesticide application, machine operations, land preparation, and harvesting. Sanitation facilities for those applying pesticides are available, so that workers can change out of PPE, wash and put on their personal clothing.*
- s) **RSPO Principle & Criteria 2018 (P&C) - Criteria 6.7.4:** *All workers are provided with medical care and covered by accident insurance. Costs incurred from work-related incidents leading to injury or sickness are covered in accordance with national law or by the unit of certification where national law does not offer protection.*
- t) **RSPO Principle & Criteria 2018 (P&C) - Criteria 7.2:** *Pesticides are used in ways that do not endanger health of workers, families, communities or the environment.*
- u) **RSPO Principle & Criteria 2018 (P&C) - Criteria 7.3:** *Waste is reduced, recycled, reused and disposed of in an environmentally and socially responsible manner.*
- v) **RSPO Principle & Criteria 2018 (P&C) - Criteria 7.8:** *Practices maintain the quality and availability of surface and groundwater.*
- w) **RSPO Principle & Criteria 2018 (P&C) - Criteria 7.8.1:** *A water management plan is in place and implemented to promote more efficient use and continued availability of water sources and to avoid negative impacts on other users in the catchment. The plan addresses the following:*
- a) *The unit of certification does not restrict access to clean water or contribute to pollution of water used by communities.*
 - b) *Workers have adequate access to clean water.*
- x) **RSPO Principle & Criteria 2018 (P&C) - Criteria 7.8.2:** *Water courses and wetlands are protected, including maintaining and restoring appropriate riparian and other buffer*

zones in line with 'RSPO Manual on BMPs for the management and rehabilitation of riparian reserves' (April 2017).

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. All information that validates statements will be used as a source of information.
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.
4. Both parties will be informed by the independent investigator in a timely manner of the issues under investigation that require evidence from their side.

IV. Expected outcome

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 the English and Spanish languages.

V. Terms of Engagement

The terms of engagement are as follows:

- a. In line with sections 8.4.1 and 8.4.2 of the 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;
 - 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. This independent investigation must include both on site and desktop verifications;
 - 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, the Complainant, 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, human rights, Guatemalan labour law, regulations on property acquisition in Guatemala, environmental and water issues, land, and rural conflicts.
7. Has knowledge of occupational health and safety regulations in Guatemala.
8. Based in Latin America.
9. The team must include at least one person who works as a translator from Q'eqchi' to Spanish and the translator must not have a conflict of interest with the Respondent, the Complainant, or members of the RSPO Secretariat.

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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