

RSPO Secretariat Sdn Bhd
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Email: ravin.krishnan@rspo.org , rspo@rspo.org

5th December 2015

Dear Sir,

SUBMISSION OF COMPLAINT

We, the authorities of the indigenous community of Santa Clara de Uchunya and supported by the Federation for native communities of the Ucayali region (FECONAU), the Institute for Legal Defense (IDL) and the Forest Peoples Programme (FPP) wish to lodge a complaint concerning the operations of Plantaciones de Pucallpa SAC, ordinary member of the RSPO.

This complaint is made on behalf of the Shipibo indigenous community of Santa Clara de Uchunya whose customary lands lie in the district of Nueva Requena in the region of Ucayali in the Peruvian Amazon. The community is being directly impacted by the rapid expansion of the oil palm plantations of Plantaciones de Pucallpa.

Correspondence with regard to the complaint should be addressed to the following focal point

Name: Robert Guimaraes Vasquez
Position: Chairman/ President
Organisation: Federación de Comunidades Nativas del Ucayali (FECONAU)
Address: Jiron Nueva Luz de Fatima 796 - Yarinacocha - Pucallpa
Telephone: 0051 (61) 961598323
Email: rgv_sh@yahoo.com

Please also copy to conrad@forestpeoples.org for purposes of translation and to facilitate communications.

Please find attached herewith detailed information regarding the complaint which includes:

- A. Plantaciones de Pucallpa SAC has been a member of the RSPO since 14th October 2013. (Membership No. 1-0144-13-000-00)

Plantaciones de Pucallpa SAC

Address: Antonio Espinoza Ruben
General Manager
Avenida San Martín N.º 200, Pucallpa, Peru
Website: www.palmasdelperu.com

B. Other actions taken to address these concerns

The community first discovered the forest clearance conducted by Plantaciones de Pucallpa taking place in their customary lands in 2014. These operations were being conducted without either their knowledge or consent. When community members demanded an explanation, company personnel denied that operations were being conducted within territory of the community and that they were operating in privately held lands that had been bought by the company. These responses were always delivered in an aggressive manner and, after further protests by the community, the company filed legal denunciations against community leaders for supposed coercion and attempted theft. Community members subsequently publicly denounced the deforestation at the office of the environmental prosecutor in Pucallpa in addition to the regional agrarian authority of Pucallpa, the agency responsible for governing and regulating agricultural developments and the Ministry of Agriculture in Lima. On at least 3 separate occasions, community delegations have accompanied the prosecutor and other environmental authorities during field investigations in addition to their own ongoing monitoring of the operations.

Additional efforts were made to alert the national and regional media and the community are also preparing a legal action to hold the local government to account for issuing customary lands to a private company without their FPIC¹.

¹ It should be noted that currently the community holds legal title to a 218 hectare area but that despite continued applications, their customary lands remain untitled. A substantial portion of these lands are overlapped by the area held by Plantaciones de Pucallpa SAC. A map compiled by the complainants indicating the impact area and affected community customary lands is attached (See attachment).

C. Other persons contacted about this situation

We have raised our concerns about these impacts directly with our local representative organisations, environmental and human rights NGOs, national parliamentarians and the Interior ministry responsible for domestic security issues.

D. Other relevant facts and materials.

Our main concerns are summarised in Annex 1. We also attach a dossier of information which substantiates our complaint including links to videos by national news channels which clearly demonstrates some of the principal impacts and our concerns.

We fully understand and agree that RSPO Secretariat will be looking into this complaint based on its standard Grievance & Dispute Settlement Handling Protocol.

On behalf of the community of Santa Clara de Uchunya we look forwards to a speedy response and urge that effective action is taken to remedy these serious problems.

Yours sincerely,

[See signatures in attached document]

Joel Nunta Valera
Presidente de la Comunidad
Comunidad Nativa Santa Clara de Uchunya
DNI: 46043909

Alex Soria Bardales
Agente Municipal
Comunidad Nativa Santa Clara de Uchunya
DNI : 42729285

Riter Lozano Soria
Teniente Gobernador
Comunidad Nativa Santa Clara de Uchunya

Washington Bolivar Diaz
Lider Indigena
Comunidad Nativa Santa Clara de Uchunya

DNI : 48518718

DNI : 06173007

Robert Guimaraes
Presidente FECONAU
DNI : 09668129

Juan Carlos Ruiz Molleda
Coordinador del Area de Pueblos Indigenas
Instituto de Defensa Legal
DNI : 07749253

Joji Cariño
Directora de FPP

Annex 1:

Summary of Concerns

This complaint concerns the operations of the company Plantaciones de Pucallpa

The company concerned has been clearing community lands and destroying natural forests without any reference to RSPO standards. Aerial imagery and official government reports shows that over 5200 hectares of mostly primary forest has been felled since January 2013². Fire is being used to burn cleared timber and other vegetation. Valuable timber resources have also being sold. Community testimony reveals that the company acquired rights to the respective area without any process of engagement or FPIC with the community. Furthermore, the company has been clearing extensive areas of forest without any engagement with the local communities, laying waste to large areas of forest which the communities use for hunting, fishing and gathering and as a source of medicinal plants and materials for construction, killing local wildlife and destroying their vital habitats. The area in question has been historically occupied by residents and their foreparents and includes the locations of numerous former settlements and farms that have since been left to become fallow. The operations have also extracted large volumes of important construction material from the river Aguaytia outside of the lands claimed by Plantaciones de Pucallpa and in the process used and degraded private tracks made by the community and exhausted the resources that the community depends on for their own constructions.

The operations have resulted in the destruction of at least one house owned by a community member and have blocking and despoiled the creeks and rivers which the community relies on for their fishing, bathing and drinking waters. Moreover, company personnel restrict access of community members to the area for hunting, fishing and gathering and other subsistence activities. Community testimony highlights that waste materials are being dumped into the water system and all the main streams in the affected lands are no longer fit for drinking and fishing. These include the rivers Sanuya, Sheringal and Churral amongst others. Official investigations conducted by the Ministry of Agriculture³ have determined that Plantaciones de Pucallpa has failed to secure the relevant permits required for forest clearance or to conduct the relevant social and environmental impact assessments. The Ministry has consequently ordered the suspension of the operations.

² https://drive.google.com/file/d/0Bw-OMuvfs9a4ZHp5WfNmWW03Q0U/view?usp=drive_web

³ *ibid.*

In addition, the community understands that the company hired large numbers of people specifically to occupy the area during the field investigations by local authorities in an attempt to deliberately frustrate these visits. This has resulted in an extremely tense and conflictive environment in which government representatives have even been threatened by company representatives. The extent of social and environmental devastation caused by these operations and the irregularities in permitting has meant these palm oil developments have become a major national controversy, as can be seen on:

https://www.youtube.com/watch?list=UUBiq92lt_ufNO-ktZigVXgg&t=1000&v=uVVuKaFiZx8

Despite the suspension order, the community affirms that the company has been promoting the incursion and invasion of third parties in forested areas in areas adjacent to the area cleared by Plantaciones de Pucallpa with the objective of subsequently acquiring these areas.

This has resulted in the national indigenous peoples' organisation (AIDSESEP) to call for the suspension of all oil palm operations in Peru until contradictions and loopholes in the legal framework are resolved⁴ and for the Congressional Commission of the Amazon and Ecology to establish a high level national taskforce to address the issue of large scale agribusiness and social conflict.

Although we in the community have been made aware that the company in question is part of a wider network of companies in Peru known locally as '*los Malaicos*' (the Malays), which are apparently owned by the same proprietors, it was only recently that we established that it was Plantaciones de Pucallpa that was operating in community lands. It has not been possible to identify the full ownership structure of the company and the exact nature of its links to Malaysian companies as many of these companies are registered in offshore tax havens which require limited disclosure of company information. Nevertheless, as a result of the company's own declarations to the RSPO⁵ as well as NGO investigations⁶ it appears that these companies are connected to Asian Plantations which in 2014 was bought by FELDA Global Ventures, a founder member of the RSPO⁷.

⁴ <http://www.aidesep.org.pe/los-pueblos-indigenas-declaran-en-emergencia-normativa-la-palma-aceitera-en-el-peru/>

⁵ <http://www.rspo.org/members/2172/Plantaciones-de-Pucallpa-S.A.C>

⁶ http://eia-global.org/images/uploads/EIA_Peru_Palm_Report_APRIL_7.pdf

⁷ <http://www.agrimoney.com/news/palm-oil-companies-face-consolidation-wave--1945.html>

Having now reviewed, the standards which Plantaciones de Pucallpa should be observing as an RSPO member we note the following serious violations.

- **New Planting Procedure:** The company has conducted their operations without filing any prior notifications with the RSPO, large swathes of primary forest have been cleared and no prior HCV or SEIA assessments have been conducted.
- **Principle 1.** Information about the company's plans and operations have never been shared with the community
- **Principle 2.** The company has acquired lands customarily owned and used by the community of Santa Clara de Uchunya without their free, prior and informed consent. The company has not provided mechanisms to resolve any of the problems being caused. The company has failed to comply with national laws prohibiting the conversion of primary forest for agricultural purposes, conversion of forest without the corresponding soil studies, environmental permits or relevant environmental and social impact assessments⁸. The company has violated the property rights of indigenous peoples to their customary lands, their right to the natural resources that guarantee their subsistence, their right to processes of prior consultation and consent, their right to determine their own development paths in addition to many other fundamental rights of indigenous peoples which are obligatory in Peru.⁹
- **Principle 4.** Company operations have destroyed and diverted water courses as well as blocked community access to vital water supplies for fishing and drinking.
- **Principle 5.** No EIA or HCV assessments have been carried out to ensure the protection of the environment, wildlife and the social values of natural ecosystems and mitigate damage. Lands are being cleared with the use of fire.

⁸ All these violations of applicable laws are detailed in the Ministry of Agriculture official report referred to in footnote 2 and 3.

⁹ These obligations flow from ILO Convention 169 and the jurisprudence of the Inter-American Court of human rights the provisions of which constitute binding obligations for Peru.

- Principle 6. No participatory SIAs have been carried out. There has been no proper consultation with Santa Clara de Uchunya. Dispute resolution mechanisms are absent. Customary rights have been ignored.
- Principle 7. New plantings are being established without ESIA's and HCV assessments, without recognising customary rights and without the communities' and indigenous peoples' free, prior and informed consent.

We here only note the most obvious violations. A more detailed perusal of the RSPO Principles and Criteria shows that there have been multiple violations of many of the Criteria and Indicators associated with the Principles noted above.

We would like you to note that FECONAU is not a member of the RSPO and that to date the company has refused to acknowledge that it is operating on community lands and has responded aggressively to community requests for withdrawal.

We demand the following:

- All destruction, burning of forests, land clearing and plantation development by the company must be halted immediately
- The company should vacate all lands owned, occupied or used by the community and withdraw all equipment, machinery and personnel.
- An Urgent Action Plan is developed by Plantaciones de Pucallpa to bring its operations in Ucayali into compliance with the RSPO standards. This plan must be approved by RSPO only after consultation with Santa Clara de Uchunya and other affected communities.
- This Plan must include mechanisms to remedy and compensate communities for lost lands and for damages caused and must restore ecosystems destroyed without adequate environmental planning.
- RSPO must sanction Plantaciones de Pucallpa for the way it has gone about its operations in Ucayali without due diligence or proper engagement with local communities and other stakeholders.

- Detailed information should be provided about all the companies owned and controlled as part of the so called *Malayo* network¹⁰ as well as detailed information about the ownership structure of parent companies in offshore tax havens including the parent company of Plantaciones de Pucallpa, United Oils Ltd as well as the full nature of the relationship with Malaysian companies including Asian Plantations and FELDA Global Ventures.
- We also recommend that RSPO investigate the operations of those companies connected with Plantaciones de Pucallpa operating in Peru and develop clear standards for RSPO members which require full disclosure of company ownership structures.

¹⁰ See pages 36-37 of the following investigative report for a summary. http://eia-global.org/images/uploads/EIA_Peru_Palm_Report_APRIL_7.pdf