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# Assessing Human Rights Impacts at EPO's Liberian Operations: Executive Summary

TriponeL Consulting Ltd.

July 2017

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This is the executive summary of a report titled "*Assessing Human Rights Impacts at EPO's Liberian Operations*" delivered by Triponel Consulting Ltd to Equatorial Palm Oil plc on July 26, 2017.

Equatorial Palm Oil is eager to convey information on how it is seeking to meet its responsibility to respect human rights in Liberia and will be providing further updates on actions taken as this work moves forward.

Please contact Equatorial Palm Oil with any questions or comments, at [enquiries@epoil.co.uk](mailto:enquiries@epoil.co.uk)

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# Executive Summary

## Introduction

Equatorial Palm Oil (“EPO” or the “Company”) cultivates oil palms for the production of crude palm oil and associated products in Liberia. It has two estates:

- The **Palm Bay estate** in Grand Bassa County (District 4), close to Buchanan. The concession comprises 13,007 hectares of land and the expansion area comprises 20,234 hectares. 50% of the expansion area is set aside for outgrower programmes. It comprises 876 workers (including employees and contractors). The deep water port of Buchanan is 25 km from the estate; and
- The **Butaw estate** in Sinoe County (District 2), close to Greenville. This concession comprises 8,011 hectares of land and the expansion area comprises 46,539 hectares. 15,680 hectares of the expansion area is set aside for outgrower programmes. It comprises 365 workers (including employees and contractors). Greenville has deep water port facilities.

The Company operates in a challenging environment. Neighbouring communities and workers have suffered from two civil wars, an Ebola epidemic, a sharp decline in commodity prices and poverty. Liberia ranks 177th out of 188 on the Human Development Index compiled by the United Nations Development Programme (“UNDP”), which is the lowest category of human development available in the index.<sup>1</sup> The Company’s presence, and the related infrastructure and services it provides to communities on and surrounding its estates, represents the first time community members have had access to a job, health care, education facilities for their children and roads that enable them to bring their goods to the market for sale.

The Company is well aware of the need to respect human rights throughout its operations and has a sustainability policy which commits the Company to “respect[ing], support[ing] and uphold[ing] fundamental human rights” and “encourag[ing] the application of this Policy amongst [its] business partners including contractors, suppliers, trading and JV partners.”<sup>2</sup> Since it first received a complaint through the Roundtable on Sustainable Palm Oil (“RSPO”) in 2013, the Company has engaged in extensive dialogue with the relevant communities and revised a number of its internal procedures related to obtaining Free, Prior and Informed Consent (“FPIC”). As noted by a key community representative, the process that led to the signing of the 2016 Memorandum of Understanding (“MoU”) with members of the local Jogbahn clan conveyed a clear signal that the Company would seek to respect the customary rights of local communities to their land and respect their wishes to develop, or not to develop, the land, as the case may be.

Recently, the Company has received scrutiny from nonprofit research and policy organisation, Nomogaia. In particular, Nomogaia highlighted a range of issues at the Company’s

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<sup>1</sup> UNDP, Human Development Report 2016, [http://hdr.undp.org/sites/default/files/2016\\_human\\_development\\_report.pdf](http://hdr.undp.org/sites/default/files/2016_human_development_report.pdf).

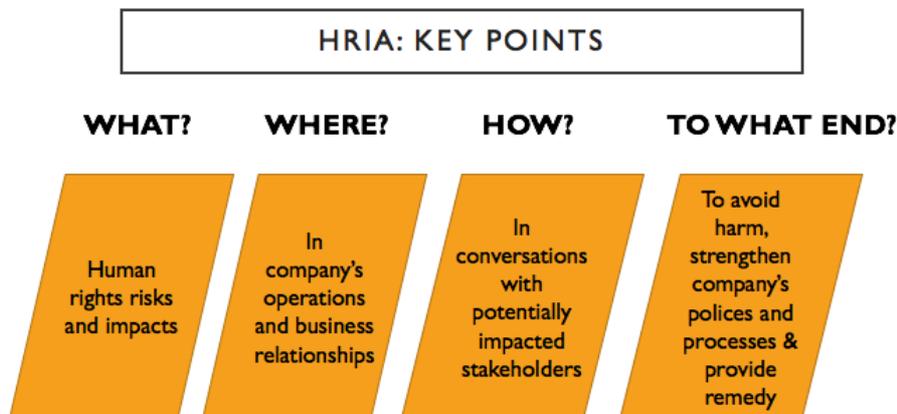
<sup>2</sup> EPO’s Sustainability Policy at ‘Scope of Policy’ and Section 3 ‘Drive Positive Socio-Economic Impact for People and Communities.’

Palm Bay estate, including issues related to just remuneration, safe working conditions and the right to collective bargaining.<sup>3</sup> In response, the Company was eager to expand its understanding of what a human rights impact assessment (“HRIA”) process entailed, the kinds of impacts such a process could uncover and the actions the Company could take to strengthen its approach to human rights. EPO asked business and human rights advisor, Anna Triponel, to act as assessor in this work.<sup>4</sup>

The resulting report captures the key findings from this HRIA work. It is not intended as a static assessment but rather serves to complement in-person conversations in Liberia to reach a shared understanding about what an HRIA process looks like for EPO, the human rights impacts that are the most important for the Company to address in light of their severity and likelihood, and the kinds of actions the Company can take to strengthen its policies and processes in these areas. These actions will be particularly important as the Company expands in Liberia, including its plans to increase the number of workers to 10,000, the construction of a new 60 metric tonnes per hour mill at Palm Bay and anticipated exports to crude palm oil buyers from the port of Buchanan by the second half of 2018.

## Overview of a human rights impact assessment process

A human rights impact assessment assists companies in meeting their responsibility to respect human rights under the UN Guiding Principles on Business and Human Rights (the “Guiding Principles”). An HRIA process seeks to identify where a company could negatively impact, or has already negatively impacted, human rights. This process enables companies to avoid harming people as they conduct their day-to-day business, as well as to minimise the likelihood that harm takes place in the future. The process typically results in a number of recommended actions, including changes to a company’s policies and processes as well as recommendations for remedy where there are impacts that a company may have caused or contributed to.



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<sup>3</sup> Nomogaia, Human Right Risk Assessment: Equatorial Palm Oil’s Palm Bay Plantation (2016), <http://nomogaia.org/wp-content/uploads///2016/10/EPO-HRRA-Final.pdf>.

<sup>4</sup> See Annex A for further information on Anna Triponel.

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The Guiding Principles provide guidance on the key components of an HRIA process<sup>5</sup>:

- The scope of an HRIA is the company's own activities, as well as the activities of its business partners, where those activities are related to the company's operations, products or services;
- Actual or potential impacts during an HRIA process are viewed from the perspective of the person actually or potentially impacted. This explains why thoughtfully-structured in-person consultations, conversations and focus groups with rights-holders themselves are so important to an HRIA process.<sup>6</sup> Particular attention in an HRIA process is to be paid to groups who are already vulnerable and/or who may be made more vulnerable as a result of a company's presence, as well as those who may have little influence over a company;
- The reference point for HRIA work is the core internationally recognised human rights, namely, the human rights contained in the Universal Declaration of Human Rights; the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; and the principles concerning fundamental rights in the eight ILO core conventions set out in the Declaration on Fundamental Principles and Rights at Work. To help this assessment work, the Guiding Principles recommend that the process draw on internal and/or independent external human rights expertise; and
- HRIAs place particular importance on transparency as well as continuous dialogue and engagement with stakeholders. This explains why an increasing number of companies are publishing their HRIAs.<sup>7</sup>

Companies conduct HRIAs for a range of reasons. The primary reason is a desire to increase knowledge of human rights risks so that they can be better addressed. The process also helps strengthen cross-functional work in a company and build trust with a company's stakeholders, including workers and neighbouring communities. Preventing human rights impacts upfront can save companies a considerable amount of money and time by preventing worker strikes, community protests and negative media attention. Further, knowledge of where a company's human rights risks lie is increasingly expected by investors, purchasers and governments. Human rights experts have recently recommended, for instance, that HRIAs be performed systematically in Liberia before any expansions to existing plantations.<sup>8</sup> When operating in complex environments, HRIAs can help convey the kinds of challenges faced by the company, and help in the identification of holistic solutions with other stakeholders which seek to tackle the root cause.

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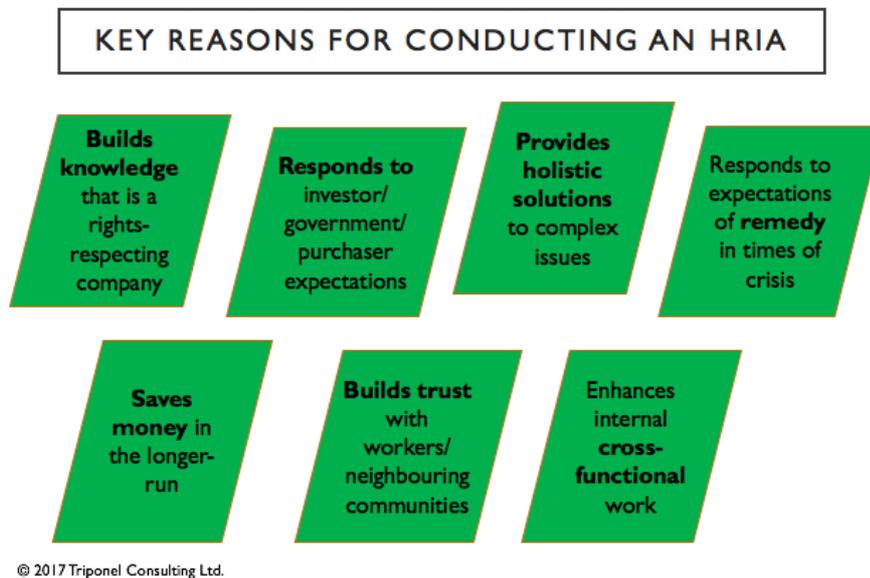
<sup>5</sup> See, in particular, Guiding Principles 17 and 18. UN Guiding Principles on Business and Human Rights, [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf).

<sup>6</sup> The importance of involvement of rights-holders explains the recent development of community-led HRIAs. See Oxfam, Community-Based Human Rights Impact Assessment Initiative, <https://policy-practice.oxfamamerica.org/work/private-sector-engagement/community-based-human-rights-impact-assessment-initiative/>. See, also, Columbia Centre on Sustainable Investment, Developing a Collaborative Approach to Human Rights Impact Assessments, <http://ccsi.columbia.edu/work/projects/chria/>.

<sup>7</sup> Examples of published HRIAs include those conducted by tourism company Kuoni in Kenya and India, dairy company Arla in Nigeria and Senegal and mining company Nevsun Resources in Eritrea.

<sup>8</sup> Allard K. Lowenstein International Human Rights Clinic at Yale Law School, Governance of Agricultural Concessions in Liberia: Analysis and Discussion of Possible Reforms (March 2017) at p. 30, [https://law.yale.edu/system/files/area/center/schell/document/liberia\\_final\\_2017.pdf](https://law.yale.edu/system/files/area/center/schell/document/liberia_final_2017.pdf). See, also, UN General Assembly, Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises (August 2016) at p. 27, [http://www.un.org/ga/search/view\\_doc.asp?symbol=A/71/291](http://www.un.org/ga/search/view_doc.asp?symbol=A/71/291) (where the UN Working Group on Business and Human Rights, which recently selected palm oil as a key area of focus, recommends that host States require companies to conduct due diligence, which includes conducting an assessment of human rights impacts).

Where there is an expectation of remedy from the company, an HRIA helps determine what that remedy should look like.



There are a number of reasons why palm oil companies in particular are increasingly paying attention to human rights. Companies recognise the limitations to RSPO certification and want to know whether their business is being conducted in a human rights-compatible way.<sup>9</sup> Governments, including the Governments of Liberia and the United Kingdom, have increased their expectations of palm oil companies, including with regard to human rights transparency.<sup>10</sup> The media and civil society have increased their scrutiny of the human rights conduct of palm oil companies.<sup>11</sup> Palm oil in Liberia is next on the radar. Financial institutions, such as banks and investors, have their own responsibility to respect human rights under the Guiding Principles and increasingly require evidence of human rights respect by palm oil companies.<sup>12</sup> Finally, consumers are increasingly aware that the products they purchase could have a detrimental effect on people

<sup>9</sup> See Hannah Koh, Has the conversation about palm oil moved from environment to people? (April 2017), <http://www.eco-business.com/news/has-the-conversation-about-palm-oil-moved-from-environment-to-people/> (providing statements from Wilmar International and Sime Darby explaining why their focus on human rights has increased in recent years); see also, Marks & Spencer, Palm Oil, <https://corporate.marksandspencer.com/plan-a/our-approach/food-and-household/product-standards/raw-materials-commodities-and-ingredients/palm-oil> (providing additional criteria to the RSPO standards to be met by its palm oil suppliers).

<sup>10</sup> See Tropical Forest Alliance 2020 Marrakesh Declaration for Sustainable Development of the Oil Palm Sector in Africa (November 2016), [http://www.proforest.net/en/files/tfa2020\\_marrakesh\\_declaration\\_post-embargoed\\_april.pdf](http://www.proforest.net/en/files/tfa2020_marrakesh_declaration_post-embargoed_april.pdf); see also Amsterdam declaration in support of a fully sustainable palm oil supply chain by 2020, [www.euandgvc.nl/documents/publications/2015/december/7/declarations-palm-oil](http://www.euandgvc.nl/documents/publications/2015/december/7/declarations-palm-oil) and The Companies, Partnerships and Groups (Accounts and Non-Financial Reporting) Regulations 2016, [http://www.legislation.gov.uk/ukksi/2016/1245/pdfs/ukksi\\_20161245\\_en.pdf](http://www.legislation.gov.uk/ukksi/2016/1245/pdfs/ukksi_20161245_en.pdf).

<sup>11</sup> See, for example, Finnwatch, The Law of the Jungle – Corporate responsibility of Finnish palm oil purchases (September 2014), <https://www.finnwatch.org/images/palmoil.pdf>; Amnesty International, The great palm oil scandal: Labour abuses behind big brand names (November 2016), <https://www.amnesty.org/en/documents/asa21/5243/2016/en/>; SOMO, Palming off responsibility, Labour rights violations in the Indonesian palm oil sector (June 2017), <https://www.somo.nl/wp-content/uploads/2017/06/CNV-report-Palming-Off-Responsibility.pdf>; Benjamin Skinner, Indonesia's Palm Oil Industry Rife With Human-Rights Abuses (July 2013), <https://www.bloomberg.com/news/articles/2013-07-18/indonesias-palm-oil-industry-rife-with-human-rights-abuses>; and Wall Street Journal, Palm-Oil Migrant Workers Tell of Abuses on Malaysian Plantations (July 2015), <https://www.wsj.com/articles/palm-oil-migrant-workers-tell-of-abuses-on-malaysian-plantations-1437933321>.

<sup>12</sup> See Norges Bank Investment Management - Government Pension Fund Global, Annual Report 2016 at p. 79, <https://www.nbim.no/contentassets/2c3377d07c5a4c4fbd442b345e7cfd67/government-pension-fund-global---responsible-investment-2016.pdf> (stating that it has divested from 29 palm oil companies between 2012 and 2015 because they “were considered to produce palm oil unsustainably”); see also Banktrack, Human Rights Impact Briefing No. 1, Labour Standards Violations in IOI Corporation’s Malaysian Plantations (February 2016), [https://www.banktrack.org/download/ioi\\_corporation\\_human\\_rights\\_impact\\_briefing\\_160216\\_pdf/ioi\\_corporation\\_human\\_rights\\_impact\\_briefing\\_160216\\_final.pdf](https://www.banktrack.org/download/ioi_corporation_human_rights_impact_briefing_160216_pdf/ioi_corporation_human_rights_impact_briefing_160216_final.pdf).

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or the planet and are starting to demand evidence of human rights respect from companies that use palm oil in their products.<sup>13</sup>

## Positive impacts

By its very nature, an HRIA process focuses on risks to people resulting from a company's business. It is not intended to capture a company's positive impacts. The primary reason is so that companies are not tempted to view their positive impacts as 'cancelling out' their negative impacts. This being said, a company's positive impacts can provide relevant contextual information for an HRIA. This is particularly true in the case of EPO where the communities on and in close proximity to the estates depend on the Company for the majority of their basic services.

Important positive aspects relevant to EPO's presence in Liberia are the following:

- **The Company benefits from an in-country senior team of highly committed individuals.** The many actions taken to date demonstrate the strong willingness from the Company's senior management to respect the human rights of its workers as well as of neighbouring communities. There was a high level of ownership of the HRIA process during the assessor's week on the ground, including a number of high quality suggestions of mitigation measures coming from the executives themselves. This stands the Company in excellent stead to make good progress on its human rights work.
- **The Company's recent approach to land development is commendable.** It responded to complaints received by NGOs and communities by seeking to engage in dialogue. It halted land development, pending a satisfactory mapping process resulting in an MoU in 2016. The Company sought to repair past land injustices by evaluating the harm by the predecessor company related to land grabbing and providing reparation in 2012. Based on its experiences, it has adopted a new approach to land development: the Company is seeking to assess the communities' views on their willingness to have their land developed for sustainable oil palm plantation, before applying for a concession with the Liberian government.
- **The Company's provision of infrastructure such as culverts, roads and bridges has significantly assisted neighbouring communities.** The majority of the roads in and surrounding the estates are in extremely poor condition, especially during rainy season, which makes transportation of food crops to the market centers difficult, lengthy and expensive. A number of community members remarked on the positive difference the Company's provision of culverts, roads and bridges had made. Locals are more connected and are increasingly able to bring their goods to the market for sale. For instance, rather than walking 10-15 hours down the

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<sup>13</sup> See Leon Kaye, NGO Attacks Pepsi's Palm Oil Sourcing and Links to Deforestation, Human Rights Abuses (May 2017), <http://www.triplepundit.com/2017/05/ngo-attacks-pepsis-palm-oil-sourcing-links-deforestation-human-rights-abuses/>; see, also, Amnesty International, Human Rights Abuses in your Shopping Basket (November 2016), <https://www.amnesty.org/en/latest/news/2016/11/sustainable-palm-oil-abuse-exposed/>. See, also, The Guardian, From rainforest to your cupboard: the real story of palm oil - interactive (November 2014), <https://www.theguardian.com/sustainable-business/ng-interactive/2014/nov/10/palm-oil-rainforest-cupboard-interactive>.

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beach from Butaw to Tasoe, individuals can now reach their village in under an hour thanks to a road built by the Company.

- **The Company provides communities access to drinking water as well as education and health services.** Community members remarked on the provision of hand pumps to villages, including neighbouring villages outside of the Company's estates. This enables community members to drink water from a well, rather than from a swamp or creek. Community members appreciate the schools and the clinics, especially since the clinics are open to all community members. The education facilities have proven particularly popular, and the Company has recently had to extend its classroom facilities to accommodate an increase in the enrolment of children.

- **The Company remained in-country during the Ebola outbreak, maintaining employment and providing valuable health-related support to the neighbouring communities.** The Company decided to stay in the country during the Ebola outbreak and provided continued employment. It also conducted health outreach programmes in local villages to ensure that community members understood the necessary procedures to prevent infection. The Company donated a wide range of supplies and equipment relating to sanitation, and distributed these to communities on a daily basis. In parallel, the Company joined the Ebola Private Sector Mobilisation Group, a group established to facilitate a mobilised and coordinated private sector response to the Ebola virus.

- **The Company supported the establishment of trade unions in the Palm Bay and Butaw estates, and took measures to support the introduction of the new national minimum wage.** When trade unions were new to the employees, the Company provided much-needed support, including through guidance on the drafting of a relevant constitution and the organisation needed to run a trade union. With regard to the Liberian minimum wage for employees, the Company was already close to paying 5.50 USD per day at the time when the law was passed. Although some other companies were paying less and there were discussions to reduce the national minimum wage, the Company stood firm in its commitment to meet the minimum wage.

- **The Company has committed to extensive transparency in its work.** It put together an inaugural sustainability report in 2015 which details not only the work conducted as part of its CSR programmes but also challenges faced and lessons learned. The Company, with support from CSR21, interviewed a range of stakeholders and published their views unedited in the sustainability report as well as its update in 2016. The Company and CSR21 have created a dedicated website to increase the transparency of the Company's CSR work as well as its discussions with local communities. Finally, the Company has committed to publishing the executive summary of this HRIA work as well as updates regarding actions taken.

## Methodology

In an HRIA, company activities are assessed against internationally recognised human rights (as described above). In addition, a number of guidance documents exist which elaborate on what is expected when it comes to oil palm growers. These include the Free and Fair Labor in Palm Oil Production Principles and its Implementation Guidance (the “Free and Fair Labor Principles”), the verification indicators developed by the Palm Oil Innovation Group and human rights criteria elaborated for RSPO NEXT.<sup>14</sup> A range of other documents are relevant, in particular when it comes to community rights.<sup>15</sup> Accordingly, the HRIA report describes the relevant human rights for each identified impact as well as applicable guidance from these guidance documents.

Free and Fair Labor Principles	The Palm Oil Innovation Group Guidance	RSPO NEXT
<p>A coalition of non-governmental organisations, trade unions, socially responsible investor groups and foundations from Indonesia, Malaysia, Liberia, the United States and Europe developed the Free and Fair Labor Principles in 2015. These principles describe what is expected of palm oil companies when it comes to labour rights. Building on the Guiding Principles, they provide guidance on relevant policies and processes for palm oil companies to put in place.</p>	<p>The Palm Oil Innovation Group, a multi-stakeholder initiative founded in 2013, “strives to achieve the adoption of responsible palm oil production practices by key players in the supply chain through developing and sharing a credible and verifiable benchmark that builds upon the RSPO, and creating and promoting innovations.” Its members include Agropalma, DAABON and Musim Mas Group and its verification indicators include expectations of palm oil companies related to partnerships with communities.</p>	<p>RSPO NEXT was launched in 2016 as a voluntary add-on to the existing Principles &amp; Criteria of the RSPO. In particular, RSPO NEXT provides criteria for palm oil production related to respect for human rights. These cover such areas as fair treatment of smallholders, preventing conflict and responding to complaints, land use that is free of conflict and fair labour.</p>

A focus on potentially impacted stakeholders lies at the very heart of an HRIA process. Impacts on people are best identified by the people themselves. Therefore, an HRIA process should seek to engage with as many rights-holders of the company as feasible, in a thoughtful and rights-compatible manner (e.g., open and honest dialogue, inclusion of voices of those harder to reach and more vulnerable to impacts) and with a recognition of the limitations to the approach taken (e.g., perceived lack of independence of the assessor from the company, possible fear of retaliation for speaking up).

<sup>14</sup> Free and Fair Labor in Palm Oil Production: Principles and Implementation Guidance (March 2015), [http://www.humanityunited.org/wp-content/uploads/2015/03/PalmOilPrinciples\\_031215.pdf](http://www.humanityunited.org/wp-content/uploads/2015/03/PalmOilPrinciples_031215.pdf); Palm Oil Innovation Group, Palm Oil Innovation Group Verification Indicators (March 2016), [http://poig.org/wp-content/uploads/2016/09/POIG-Indicators\\_FINAL.pdf](http://poig.org/wp-content/uploads/2016/09/POIG-Indicators_FINAL.pdf); and RSPO, RSPO NEXT Guidance Document (November 2016), <http://www.rspo.org/key-documents/certification/rspo-next#>.

<sup>15</sup> See UN General Assembly, Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises (August 2016), [http://www.un.org/ga/search/view\\_doc.asp?symbol=A/71/291](http://www.un.org/ga/search/view_doc.asp?symbol=A/71/291); RSPO, Free, Prior and Informed Consent Guide for RSPO Members (2015), <http://www.rspo.org/news-and-events/announcements/free-prior-and-informed-consent-guide-for-rspo-members-2015-endorsed>; The Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security and The 2012 Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security.

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It is helpful for these conversations to be semi-structured, which enables individuals interviewed to express all of the issues on their minds, while ensuring that important issues in light of the context are covered in the conversations. To achieve this, it is imperative for the assessor to have in-depth knowledge of the company's business and forward-looking business plans, the human rights-related context in which the company is operating, human rights challenges faced by other companies in the sector as well as relevant actions taken by peer companies.

Finally, in order for an HRIA process to provide the most value over the longer-term, the business functions who will be taking the resulting actions need to be involved and engaged and ultimately possess ownership over the process. To do this, it is particularly helpful for the various business functions to build on their understanding of the Guiding Principles as well as to play an active role in the determination of the mitigation measures that they will be leading.

The HRIA process for EPO took place from April to July 2017. It started with a conversation with Company board directors to discuss the process and the specificities of a human rights impact assessment. The assessor then conducted a comprehensive desktop review of relevant materials, followed by one week in Liberia in June (split between the Palm Bay and Butaw estates and with stays in Buchanan and Greenville). The process then concluded with follow-up telephonic conversations with individuals based in Liberia and the drafting of the resulting report.

The desktop review included:

- Materials related to human rights impacts in the palm oil sector and materials describing actions taken by other palm oil companies to respect human rights on their estates;
- Materials related to Liberia and the human rights context, as well as human rights challenges faced by other companies (beyond the palm oil sector) in the country;
- EPO's public information, including its 2015 and 2016 sustainability reports, its CSR microsite maintained by CSR21 and information on the Company's website; and
- EPO's internal documents, including investor materials, relevant Standard Operating Procedures ("SOPs"), worker contracts and wage slips, health and safety risk assessments, injury reports, environmental and social impact assessments, grievance records, chemical stock lists and water testing results.

Once on the ground in Liberia, the assessor facilitated semi-structured interviews and focus groups. In-person conversations took place with:

- Members of consenting and non-consenting communities at Palm Bay and Butaw estates (including community members as well as chiefs, town elders, women representatives and youth representatives);
- Trade union representatives at Palm Bay and Butaw estates covering the functions of President, Secretary General and Grievance Chairman;
- Workers and contractors at Palm Bay and Butaw;
- Executives and staff at Palm Bay and Butaw; and

- 
- Heads of contractor firms at Palm Bay.

Other conversations, including on the phone, took place with:

- Relevant government officials;
- World Bank officials from the Smallholder Tree Crop Revitalization Support Project;
- Sustainable Development Institute (“SDI”);
- Former SDI official leading the 2016 MoU process on behalf of communities; and
- Nomogaia.

Site visits encompassed the estates, housing, mill construction site, chemical and PPE site, muster site, nursery, offices, schools, clinics and neighbouring villages.

The Company played an important role throughout the HRIA process:

- Individual conversations took place with the relevant functions (country head, general manager, plantation managers, compliance and sustainability, human resources, legal, health and safety) as well as with the Company’s mill manager overseeing the construction of the new mill at Palm Bay and those supervising the Company’s clinics and schools.
- A workshop with senior management at Palm Bay estate (on 5 June) and a focus group with senior management at Butaw estate (on 7 June) resulted in a shared understanding of the Guiding Principles’ expectations as well as an initial view of the kinds of impacts that could arise based on the Company’s business.
- A second workshop with senior management at Palm Bay (on 9 June) resulted in a shared understanding of the kinds of issues raised by rights-holders as well as of the possible mitigation measures the Company could take.

Inherent limitations to a company-commissioned HRIA process which covers two estates and which is conducted in a short period of time were discussed in advance between the assessor and the Company. Measures were put in place to seek to respond to these limitations, including:

- Holding meetings independently from the Company. For community focus groups where communities were eager to understand the Company’s position on this work, the Company was present for the first ten minutes to introduce the work, invite candid and open views and convey that the Company wished to learn from this process;
- Traveling during early hours to Butaw so as to extend the time available for conversations;
- Identifying community members who could play a role translating where needed during focus groups;
- Complementing views held by chiefs and community representatives where possible with other viewpoints; and
- Reaching a common understanding with the Company’s executives of the non-static nature of this work and placing a strong focus in the recommended actions on strengthening processes for ongoing assessment of impacts.

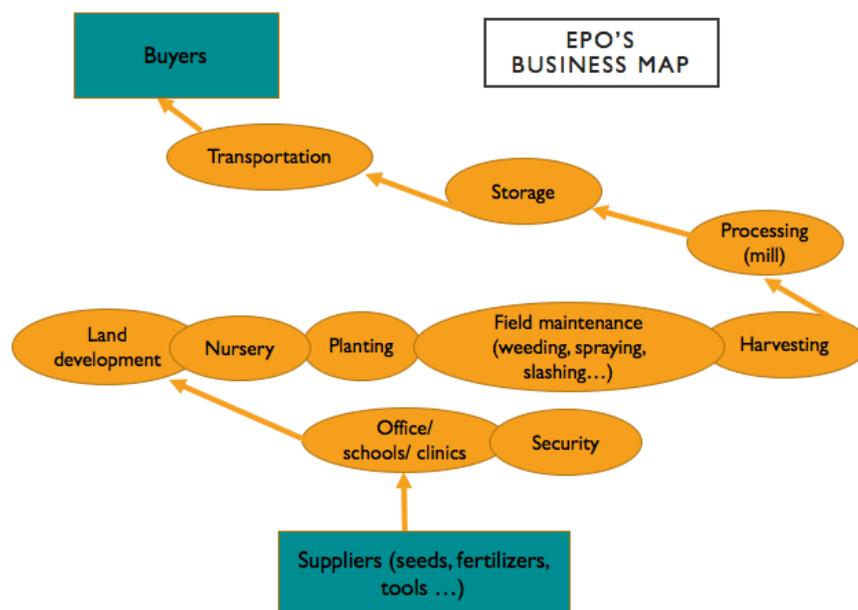
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## Process

This HRIA process followed a **6-step process**.

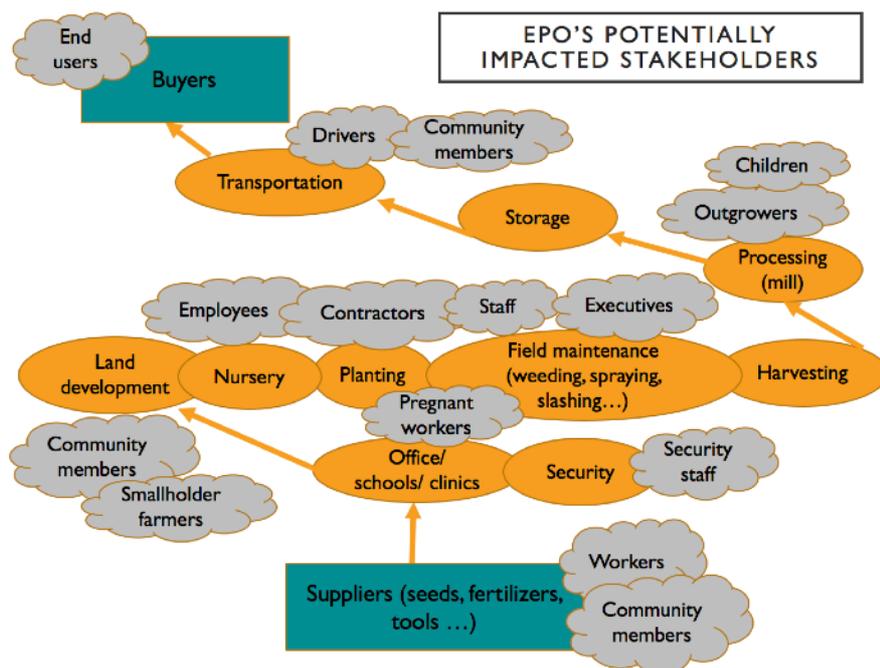
### **Step 1 — What EPO does, including through its business partners**

The scope of an HRIA includes both a company's own operations as well as impacts directly linked to its operations, products and services through its business relationships. Accordingly, in this exercise, we are looking at the full array of business relationships the Company relies upon for its palm oil business. In addition, we are also looking at where the business is going — any activities the Company will be undertaking in the near future and business partners the Company anticipates having. This step of the process resulted in a business mapping for EPO's Liberian operations.



### **Step 2 — Rights-holders to consider in EPO's HRIA process**

An HRIA process assesses impacts from the individual's perspective, i.e., from the perspective of the person who could be harmed. A wide range of individuals could potentially be harmed by EPO's activities as well as by the activities of the business partners EPO relies upon for its business. Particular attention is to be paid to groups who are already vulnerable and/or who may be made more vulnerable as a result of the Company's presence. This step of the process resulted in a mapping of people who have been or could be harmed by EPO's business.



### **Step 3 — Identification of human rights impacts**

An HRIA process assesses negative impacts on human rights that may have occurred as well as those that may occur in the future, i.e., it looks at both actual and potential human rights impacts. Perception that a human rights impact is occurring is given importance in an HRIA. This part of the report describes (i) how impacts were perceived by relevant stakeholders, (ii) relevant information from the Company and its existing processes and (iii) applicable human rights and human rights-related guidelines to consider for the impact in question.

### **Step 4 — Prioritisation of human rights impacts for action**

An HRIA process prioritises the findings for action based on where the harm to people is, or could be, the highest. The likelihood of an impact occurring counts, but less than the assessment of severity. This part of the report assesses the severity of each identified impact (i.e., how many people does this finding affect, are vulnerable groups involved, how could people be harmed and can the harm be remediated) and the likelihood of the impact occurring (i.e., reviewing the impact in light of the Liberian context as well as the Company's past experience, business partners and existing processes). The following human rights impacts, and their prioritisation, were identified through the process:

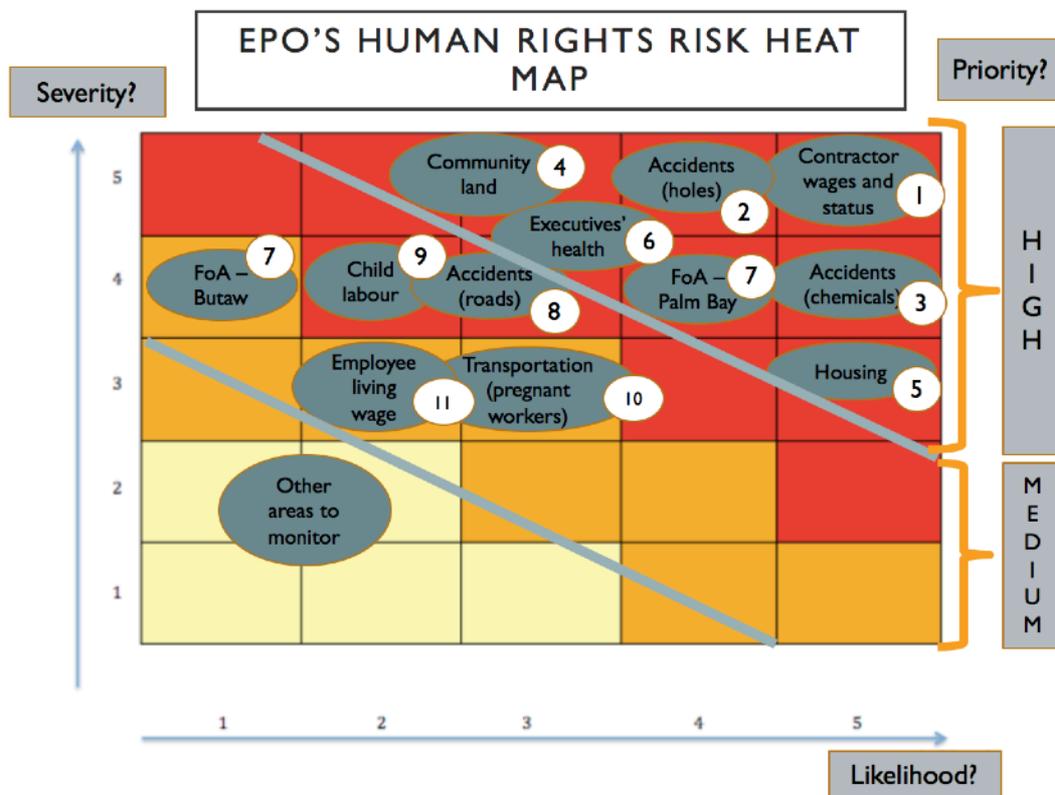
Priority	Finding
<b>High-priority impacts</b>	1) Contractor wages and employment status 2) Accidents on the estates due to holes on the ground 3) Accidents on the estates due to chemical usage 4) Impact of use of land on communities 5) Employee housing conditions 6) Health and wellbeing of executives 7) Exercising the right to freedom of association
<b>Medium-priority impacts</b>	8) Transportation accidents 9) Child labour 10) Transportation of pregnant workers 11) Employee living wage
<b>Other areas to monitor</b>	Security Feasibility of tasks Human rights defenders Water pollution Labour migration flows Discrimination Suppliers

These findings are further described in the next section, ‘Summary of findings.’

An HRIA process is not intended to be static. Assessments of severity and likelihood can change over time as further views are gathered from people, and the likelihood (and, at times, the severity) of impacts should change over time as the Company takes action. Nonetheless, human rights risk heat maps can provide a helpful way of depicting the prioritisation of impacts at a particular point in time.

A completed human rights risk heat map for EPO, using as a basis the heat map developed by Shift and the CEO Water Mandate, an initiative of the UN Secretary-General and the UN Global Compact,<sup>16</sup> is as follows:

<sup>16</sup> UN Global Compact, The CEO Water Mandate, <http://ceowatermandate.org/humanrights/about/>. The human rights risk heat map is available at Respect in Practice, 3. Prioritize Impacts for Attention, <http://ceowatermandate.org/humanrights/respect-in-practice/assessing-impacts/b/three/>. It is subject to copyright of the UN Global Compact.



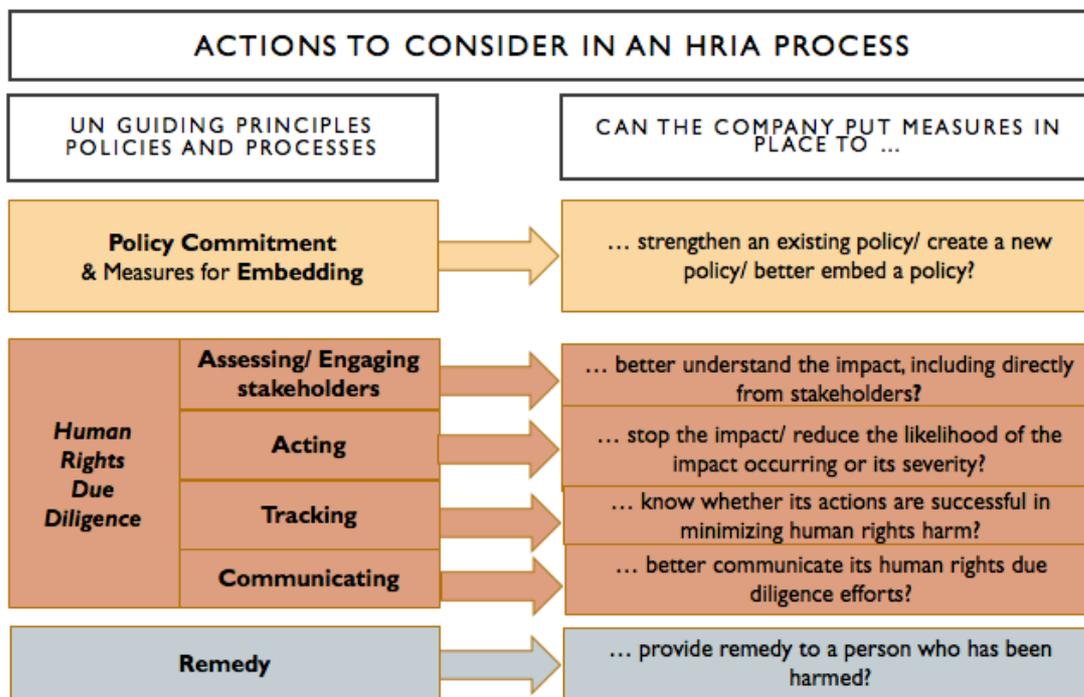
### Step 5 — Recommended actions

An HRIA process seeks to identify actions a company can take to stop harming people and to avoid harming people in the future. This part of the report provides a table of recommended actions for each identified human rights impact.

The recommended actions seek to:

- Address actual impacts that have occurred, prevent human rights impacts from occurring and strengthen the Company’s processes to anticipate and address impacts moving forward;
- Build on the Company’s existing policies and processes as well as those provided for in the Guiding Principles;
- Build on mitigation measures identified in conversations by potentially impacted stakeholders as well as Company executives;
- Build on good practice in this area from other companies in the sector as well as other companies implementing the Guiding Principles;
- Consider the different actions expected of the Company depending on whether it could be seen to have caused or contributed to an impact, or whether the impact is directly linked to it through its operations, products or services;

- Consider other stakeholders the Company can involve in the mitigation measures so as to increase its leverage over the impact in question;
- Provide guidance on the timeframes for each recommended action by specifying whether the action should be taken in the short-term, medium-term or the longer-term; and
- Provide guidance on the functions that would own each action.



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*In addition to being contained in the report, the recommended actions as well as their suggested timeframes and owners are in an accompanying excel spreadsheet titled “EPO’s HRIA Action Plan.” This excel spreadsheet is a living document which belongs to the Company. It is intended as a management tool that enables the Company to make changes to the actions, the timeframes and owners of actions over time to track progress made in addressing the HRIA findings.*

### **Step 6 — Further engagement and communication**

Transparency and continuous stakeholder engagement are paramount to an HRIA process. The Company has a strong approach to transparency to build on, including its preparation of two detailed sustainability reports and its development of a microsite dedicated to CSR. It is commendable that the Company has committed to publishing the executive summary of this HRIA report. The assessor recommends a number of actions to further engage in dialogue on the Company’s human rights work. These are in addition to the recommendations related to stakeholder engagement for specific impacts.

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These actions are as follows:

1. Find ways to communicate publicly and engage stakeholders on the Company's human rights work. This can include posting the executive summary of the HRIA report on the Business and Human Rights Resource Centre's website as well as sending it to a range of the Company's stakeholders, including its trade unions, relevant non-governmental organisations and investors. This also includes continuing dialogue with Nomogaia as well as initiating dialogue with non-governmental organisations, such as Amnesty International, with regard to research on the impacts of palm oil production on workers;
2. Update the Company's website with a summary of its human rights work and linking to the Company's sustainability policy;
3. Prepare a human rights briefing paper which uses the overarching questions of the UN Guiding Principles Reporting Framework<sup>17</sup> — the reference for companies when it comes to human rights disclosure — as a way of further communicating the Company's approach to human rights. This human rights briefing paper can be short, approximately 6 - 10 pages, and can be included in the Company's upcoming sustainability report as well as referenced on the Company's website;
4. Prepare a public update on the measures taken in response to the HRIA report six months from the publication of the executive summary, and every six months thereafter. In line with recent trends on human rights disclosure, this information should be candid and convey both successes as well as challenges and lessons learned in this area; and
5. Find opportunities to further engage on this work. This could include for instance discussing insights from the Company's human rights work on platforms such as The Guardian events related to palm oil and creating opportunities to share lessons learned with other palm oil companies operating in Liberia.

## Summary of findings

### *High-priority impacts*

The following impacts have been prioritised as high-priority findings for the Company to act upon based on their severity to people and the likelihood of their occurrence. (This assessment as well as the human rights potentially/ actually impacted upon is further described in the report).

#### **1 — Contractor wages and employment status**

The number of contractors at Palm Bay and Butaw is high, with the April 2017 figures providing an estimate of 46.5% of contractors (577 contractors to 664 employees). There is a disparity in remuneration and benefits between contractor workers and employees: wages received by contractor workers are considerably lower than those received by employees, and contractor workers do not benefit from subsidised rice, housing, priority access to schooling for

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<sup>17</sup> UN Guiding Principles Reporting Framework, <http://www.ungpreporting.org>.

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their children, or a dedicated channel to voice concerns to the Company. Examples of recommended actions include implementing a process to monitor the number of contractor workers and the wages they receive on an ongoing basis, devising and implementing criteria for converting contractor workers to employees so that contractors are maintained for jobs that are truly temporary or seasonal, increasing the amount paid per task to contractors, and considering extending certain employee benefits and grievance channels to contractor workers.

## **2 — Accidents on the estates due to holes on the ground**

Workers at both Palm Bay and Butaw reported a number of accidents on the estates due to falling in holes while conducting their daily duties. This has reportedly resulted in a range of injuries, ranging from bruises and sprained ankles to sprained backs. Some of these accidents have been reported in the monthly injury reports for the estates. It is unclear whether these holes were caused by the removal of old palm trees by the Company. Examples of recommended actions include taking specific actions to investigate the existence of the holes on the estates and to develop and implement preventive actions to mitigate the likelihood of accidents reoccurring, monitoring the occurrence of accidents linked to falling in the holes, and taking a human rights approach to remedy for injured workers.

## **3 — Accidents on the estates due to chemical usage**

Several employees reported that personal protective equipment (“PPE”) is not systematically worn. Contractors remarked that, with the exception of spraying, it is up to the contractor firms to purchase and provide PPE to their workers. Employees and contractor workers have generally refused health checks provided by the clinics and were generally unaware of the kinds of health risks that could be associated with the chemicals used. The Company has a number of measures in place related to PPE, including the creation of health and safety committees in both Palm Bay and Butaw, a robust Hazard Identification Risk Assessment and Controls process and a wide range of measures taken to create a safety culture. Therefore, the recommended actions seek to build on the Company’s policies and processes to help ensure that PPE is (i) provided, (ii) suitable for the risks involved and (iii) worn by workers, including contractor workers. They also seek to strengthen the safety culture, including raising awareness of the possible health side effects of the chemicals used and ensuring regular health checks can take place.

## **4 — Impact of use of land on communities**

The Company has a range of strong policies and processes in place to seek FPIC for its land development work and has placed a strong emphasis on its work with communities, in particular since the signing of the 2016 Memorandum of Understanding with members of the local Jogbahn clan. At the same time, conversations with community members and the Company highlighted a number of risks in this area, namely related to ensuring continuous sustained engagement,

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guaranteeing the ongoing transparency of the process, providing longer-term benefits to communities once crop compensation money has been used up, ensuring an FPIC process which respects the “no” and ensuring an FPIC process which balances respect for hierarchy with community-based engagement. Examples of recommended actions include enhancing the support provided to the compliance manager and his team, systematising the disclosure provided to communities (keeping in mind the needs of an illiterate audience), further supporting community members who have provided land over the long-run and ensuring that the FPIC process is seen as respecting a “no” as well as the timeframe required for a community to make a decision.

## **5 — Employee housing conditions**

The Company provides housing for its employees at Palm Bay. The quality of the housing provided differs, depending on whether the housing is in a new or older housing unit. The housing generally entails two rooms with a small bathroom and kitchen unit. Since the workers live with their families, two large families share a small space. Issues of privacy were raised by trade union leaders and workers. In addition, the apartments provided are not electrified, as provided for in the relevant Collective Bargaining Agreement. The Company is aware of worker concerns related to housing. Since the Company is not yet producing and the new 60 mt/hr mill is under construction, the Company faces logistical difficulties with expanding the housing units as well as electrifying them. Examples of recommended actions include taking actions to expedite the building of additional housing and the provision of electrified apartments, communicating to workers a clear timeframe with the next steps related to housing improvements, communicating the water testing results to those living in the neighbouring housing and considering compensation for the non-electrified and shared housing.

## **6 — Health and wellbeing of executives**

The Company has a small number of executives based in Buchanan and Greenville that have long working hours, shared housing with colleagues, and limited social interaction with external parties. All of these executives remained in Liberia during the Ebola outbreak and risked their health to continue Company operations and stand with the communities. A number of these executives have suffered from serious illnesses linked to their presence in-country, which have entailed numerous hospital stays as well as returns home for recuperation. The Company is already taking a number of actions to address the health of executives. Therefore, the recommended actions focus on other components, including gathering feedback regarding working conditions, supporting staffing needs and learning from leading company practices when it comes to the treatment of expatriates in countries that are more complex to operate in.

## **7 — Exercising the right to freedom of association**

All of the employees at EPO are unionised and a specified number of trade union executives are able to engage in full time union activities in Palm Bay and in Butaw. Both trade unions have

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negotiated collective bargain agreements (“CBAs”) which cover a range of labour-related matters and provide for a grievance process. Employees noted that the presence of shop stewards as the “eyes and ears” of the trade unions on the ground is valuable, particularly in their role facilitating the lodging of grievances with supervisors. In Butaw, there was a general sense that the CBA was being respected by the Company, and trade union representatives appreciated efforts made by the Company to go beyond the CBA where possible. In contrast, there was a sense of frustration in Palm Bay, with a certain difficulty of accessing senior management to discuss and resolve grievances, combined with non-respect of a number of components in the CBA. Recommended actions include measures to strengthen the worker-management dialogue in Palm Bay, measures related to the renewal of the CBA and tracking progress through direct engagement with trade union representatives. Furthermore, taking actions to respond to concerns related to housing, transportation and safety, as detailed further in other findings, would go a long way in helping to strengthen worker-management dialogue in Palm Bay.

### *Medium-priority impacts*

The following impacts have been prioritised as medium-priority findings for the Company to act upon, based on an assessment of their severity and likelihood.

#### **8 — Transportation accidents**

The Company relies upon drivers for a number of tasks (e.g. transportation of workers; transportation of executives and visitors, including at night), and will increase its reliance on drivers as production starts (e.g., transportation of the fresh fruit bunches from the estates to the mill, transportation of the palm oil onwards to the port). A number of factors increase the chances of road accidents in the Company’s business, some of which could be fatal. The recommended actions include centralising the reporting of accidents, including near misses, and learning therefrom; preparing a transportation policy and finding ways to reinforce the messages in this policy; and providing targeted training to drivers.

#### **9 — Child labour**

To date, the Company has not found instances of child labour. The Company has clear policies related to the prohibition of child labour on its estates, and its supervisors are assigned the responsibility to ensure that children are not helping their parents on the oil palm estates. At the same time, child labour is a possibility in poorer countries, such as Liberia, and palm oil has been identified by the US Department of Labor as a commodity which is at particular risk of child labour. Recommended actions include coordinating with the EPO schools with regards to children withdrawn from school; strengthening the responsibility of supervisors, shop stewards and contractor firms in this area; learning from findings in this area; as well as taking actions to prevent the use of child labour by smallholder farmers that will be sending fresh fruit bunches to the Company for processing in the future. More generally, the Company is asked to play a role in

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tackling the root cause that leads to child labour. This entails for instance paying workers a living wage so that they do not need to rely on their children and paying attention to business targets that can provide an incentive for parents to bring their children to work.

## **10 — Transportation of pregnant workers**

Workers at both the Butaw and Palm Bay estates voiced concerns regarding the mode of transportation to and from work. They noted that transportation by tractors was uncomfortable due to the lack of suspension, and there was a particular concern for pregnant workers. Recommended actions include regularly communicating the list of pregnant women workers to the plantation managers and taking specific measures that reduce the need for pregnant workers to take the tractor to their place of work.

## **11 — Employee Living Wage**

Unskilled employees are paid the minimum wage of 5.50 USD per day as provided for under the Decent Work Act of 2016. They are also provided subsidised rice, housing, school and health services. The Anker methodology, used by companies in the Palm Oil Innovation Group, makes clear that the cost of a basic but decent life is estimated using food, housing, and other essential needs, and takes into account the reference family size to be supported by a living wage. The recommended actions relate to better understanding (i) the living wage in Liberia (with other stakeholders following the Anker methodology) and how the wages and in-kind benefits provided by the Company compare to this living wage, (ii) the concrete impact of the rainy day policy on employees' wages on a monthly basis and (iii) and whether goods are more expensive in the areas surrounding the estates, linked to the Company's presence.

## **Conclusion**

The Company has made considerable progress on its community-related human rights impacts since a RSPO complaint was first lodged against it in 2013. Community members and non-governmental organisations welcome the Company's approach to seeking FPIC from all neighbouring communities moving forward. At the same time, the Company faces a number of human rights risks and impacts, the most salient of which lie in its workforce. Taking robust steps to address these risks will minimise harm, strengthen relationships with workers and communities and convey a positive message to the Company's stakeholders, including its investors and non-governmental organisations. A number of these steps can be implemented immediately by the Company and require little additional financial resources. Taking these steps will also place the Company at a competitive advantage. An increasing number of palm oil buyers are now seeking assurances from the palm oil companies they source from that human rights are being respected, in addition to compliance with the RSPO Principles and Criteria. Where there are particular challenges in taking certain actions, the Company could benefit from an industry-wide approach in Liberia so that the journey of human rights respect takes place more broadly.

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## Annex A: About the assessor, Anna Triponel

**Anna Triponel** is a business and human rights advisor and a (non-practicing) lawyer qualified in New York, England and Wales and France.

- ❖ As principal consultant at Triponel Consulting Ltd., she advises a range of companies on drafting and embedding relevant policies, designing human rights due diligence processes and structuring remedy. She also works with investors and lawyers to enhance their ability to consider human rights in their daily work.
- ❖ As legal consultant with the Harvard Kennedy School of Government, she provided input into the work of UN Secretary General's Special Representative on business and human rights, John Ruggie, to develop the UN Guiding Principles on Business and Human Rights – the global authoritative standard of how states and businesses should uphold human rights, subsequently endorsed by the UN Human Rights Council.
- ❖ As advisor with Shift, the leading centre of expertise on the UN Guiding Principles, she played a key role in the development of the UN Guiding Principles Reporting Framework and advised a wide range of companies on implementation of the Guiding Principles.
- ❖ As senior counsel at the Public International Law & Policy Group – a global pro bono law firm nominated for the Nobel Peace Prize – she lived in East Africa and advised on human rights, transitional justice and constitutional reform in Côte d'Ivoire, Egypt, Kenya, Libya, Myanmar, Somaliland, Tunisia, Uganda and Zimbabwe.
- ❖ As corporate associate at the law firm of Jones Day in New York, she advised multinational companies on cross-border business transactions, joint venture, private equity and risk management. She founded and led the firm's International Law Pro Bono Group advising clients on international law and human rights.

For further information, see <https://triponelconsulting.com>