



6th June 2022

## Re: Continued concerns over Strategic Lawsuit Against Public Participation by Energy & Palma

As members of the Zero Tolerance Initiative, we are writing to follow up on serious ongoing human rights violations connected with palm oil company Energy & Palma's operations in Ecuador.

On 5<sup>th</sup> November 2021 a [letter was sent to Nestlé](#) raising concerns about the criminalisation of human rights defenders in the Afro-descendent community of Barranquilla de San Javier in Esmeraldas Province, Ecuador. Four Afro-descendant land rights defenders were ordered to pay fines amounting to US\$151,000 following a civil lawsuit brought by Energy & Palma – part of La Fabril group – who has a direct business relationship with Nestlé. The criminalisation of these human rights defenders followed their peaceful resistance to Energy and Palma's illegal occupation of 251 hectares of community titled ancestral territory. At the end of 2019, peaceful protests held by community members against the occupation of their land, pollution of local water sources, and clearance of tropical Chocó Forest, had been violently repressed.

We would like to bring to your attention important updates on this case, since measures suggested by Nestlé were not effective in halting ongoing criminalisation of human rights and environmental defenders. Several irregularities were reported by community members during the attempted implementation of a mediated dialogue process suggested by Nestlé.

- In February, the Barranquilla de San Javier community was approached by Earthworm Foundation. The community reported a lack of transparency where Earthworm Foundation did not make its close links to Nestlé, La Fabril and Energy & Palma known, instead implying that they were independent and wanted to support the community in their dispute.
- The community has expressed an openness to dialogue with Energy & Palma, however this mediation has not been possible as the community has been led to believe that Energy & Palma will not enter mediation unless the community renounce any future legal claim to their territory. Given the context of the dispute, this precondition to dialogue is unacceptable and extremely concerning. The collective rights over the territory are inalienable and indefeasible according to the Constitution of Ecuador, ILO Convention 169 and related international human rights instruments ratified by Ecuador.
- Community leaders reported that Earthworm held meetings with other local actors which do not represent the community, and fear that these meetings are being manipulated to feign community consent and dialogue. Engagement should be held by freely chosen representatives according to the self-governance systems and institutions of the afro-descendent communities in full compliance with the core standards for effective and good faith processes to respect the right to free, prior and informed consent (FPIC).
- Energy & Palma continues to occupy the territory of the Barranquilla commune and has not modified its productive practices, resulting in the ongoing contamination of the rivers, land and air.

For these reasons the mediated dialogue process has not advanced, while the company's legal process against the defenders continues. On 10 April 2022, the human rights defenders were due to appear in court (online) after appealing the decision, but the hearing was cancelled 30 minutes after it began. They are now due to appear in court (online) on **8 June at 10:30 (Ecuadorian time)**. The platform is open to external observation.

During this period, tensions have also arisen between the company and its workers, as Energy & Palma was accused by its workers of not distributing the profits generated to the labour force as required by Ecuadorian labour legislation. For this reason, some workers went on strike for 3 days. Although the strike ended with the company's commitment not to initiate any retaliation, the company's position was to persecute union leaders and file a complaint against the workers with the Ministry of Labour, known in Ecuador as "Visto Bueno", which could mean the termination of the employment relationship for those accused. The affected workers defended themselves and won this administrative process. However, the company has not complied with the ruling and did not reinstate them in their jobs. During the hearings of this administrative process, the company accused the workers of causing losses of more than US\$300,000 and threatened to initiate further legal proceedings. In the context of criminalisation, these threats are worrying because there could be new prosecutions and persecution against the company's workers.

The community and national and international organisations have denounced the lawsuit brought by Energy & Palma as an act of intimidation aimed at blocking the work of the targeted human rights defenders and intimidating other leaders striving to protect their human rights, including rights to their lands, territories, and resources, as well as their right to a healthy and sustainable environment. The defendants maintain their innocence, having demonstrated in the trial that Energy & Palma had at least four alternative ways to remove the palm fruit from its plantation during the 2019 peaceful protests. We remain deeply concerned that, if the ruling is confirmed, it would set a worrying precedent for human rights defenders and communities, deterring leaders and others from speaking out against human rights abuses in the agribusiness and extractive sectors.

Nestlé has responsibilities to ensure that fundamental human rights are respected and protected throughout its supply chain, in accordance with international frameworks including the UN Guiding Principles for Business and Human Rights and OECD Guidelines for Multinational Enterprises. Given the serious negative human rights impacts and environmental harms and risks connected with Energy & Palma's operations we urge Nestlé to:

- immediately suspend sourcing from Energy & Palma and use its leverage to urge the company to drop all charges against human rights defenders;
- ensure that senior Nestlé staff responsible for sustainable palm oil supply chains and human rights due diligence observe the next hearing which is scheduled for 8th June together with other international organisations and international human rights bodies to follow next steps of this case and support the necessary measures to avoid human rights violations linked to Nestlé's supply chain;
- abide by the findings of the 2017 Multitemporal Study of land tenure in communal territories in the province of Esmeraldas, undertaken by the Ministry of Agriculture of Ecuador, which establishes the illegal acquisition of lands of the commune of Barranquilla de San Javier, to address the damage to human rights, nature and allow measures and initiatives to return and restore these lands to the community as part of Nestlé's due diligence.
- articulate and adopt a clear set of policies and procedures to require La Fabril Group and all suppliers to ensure zero tolerance for violence, intimidation, and criminalisation of environmental human rights defenders, as well as solid frameworks to uphold community land and resource rights, and related procedural rights to FPIC.

#### ***Signatory organisations:***

1. Ação dos Jovens Indígenas de Dourados (AJI), Brazil
2. Alianza de Organizaciones de Derechos Humanos Ecuador
3. Amazon Watch
4. Amigos de la Tierra El Salvador
5. Comisión Intereclesial de Justicia y Paz (CIJP), Colombia
6. Federación para la Autodeterminación de los Pueblos Indígenas (FAPI), Paraguay
7. Forest Peoples Programme, UK
8. Friends of the Earth US
9. Front Line Defenders, Ireland
10. Indigenous Peoples Rights International (IPRI)
11. Land is Life, USA
12. Lawyers' Association for Human Rights of Nepalese Indigenous Peoples (LAHURNIP), Nepal
13. Salva la Selva, Germany
14. Sin Olvido, Colombia
15. Sin Olvido Tierra, Colombia
16. Universidad de Paz, Colombia