NOMOGAIA
GUIDING BUSINESS IN HUMAN RIGHTS

1625 17TH ST.
DENVER, CO 80202
WWW.NOMOGAIA.ORG

Sandy Barblett
General Manager—Commercial

January 2, 2017

Equatorial Palm Oil plc
1 Berkeley Street, London, W1J 8DJ
United Kingdom

Re: Human Rights Risk Assessment, Palm Bay Plantation

Dear Sandy,

Thank you for your letters to Mark Wielga dated 22 October and 7 December 2016 and to Dr. Salcito dated 7 December. We appreciate the efforts that EPO has made to respond to our Human Rights Risk Assessment ("HRRA") of KLK and EPO's Palm Bay Estate. We also welcome your interest in our methodology and its potential to help your companies.

In your letters to us dated December 7, you observed challenges on EPO's side in understanding risks pertinent to underage labor, gaps in protective gear and overuse of subcontracted labor. We would like to ensure that communication is open on our end, so each of these will be directly addressed below.

First, however, it seems there is a fundamental disconnect in how EPO has understood our findings and how they are actually intended. The terminology in your 27 October letter refers to "corporate social responsibility" and "sustainability." Although those concepts are important, they are not central features of *human rights*, which are at the root of our analysis. Human Rights Risk Assessment (HRRA) uses the internationally recognized human rights as its basic analytic framework. The disjunction between the content of the HRRA and the responses by EPO appears to be caused by the fact that EPO is not engaged in human rights analysis. This is not intended to be a criticism of EPO's CSR initiatives or consultants. CSR21 has been engaged by EPO/KLK to deal with local community and land issues, general corporate social responsibility and drafting of sustainability reports, in line with their background and expertise. But, as was made clear in our conversations, they do not have, and do not claim to have, general human rights expertise.

Companies, including KLK and EPO, have a responsibility to respect human rights. As noted in the HRRA, KLK has internalized this responsibility within its 2015 Sustainability Policy. A part of this responsibility is to conduct human rights due diligence, which includes an examination, and, if necessary, remediation, of negative human right impacts. If EPO and KLK have not integrated a human rights analysis into its management in the past, we suggest that now would be a good time to begin, and the Palm Bay Estate would be an excellent starting point.

1625 17TH ST.
DENVER, CO 80202
WWW.NOMOGAIA.ORG

You have asked for additional information in your letters, and we have also asked for clarifications on certain points. Below is a summary of the information both sides have requested, to facilitate an exchange of data. Information not yet provided to us, which would contribute to a fuller analysis, is requested **in bold font** below. Information we are providing for clarification of EPO's questions is provided *in italic font* below. Information requested by EPO is consolidated in the first four points of the numbered list below, addressing child labor, subcontractors, personal protective equipment, and drinking water access.

INFORMATION

1. **Child Labor.** *We received repeated reports from credible sources that underage workers were currently in the subcontractor work force. Interview respondents expressed personal knowledge of and acquaintance with specific underage individuals. As stated in the HRRA, this could not be confirmed by us and we did not observe any workers that appeared to be, or admitted to be, underage during our visits. For this reason, the "Probability" component of the Risk was rated as "Uncertain," the lowest level in the HRRA. There are scenarios where such word-of-mouth comments would not merit an "Uncertain" rating, for example if the company in place had strong mechanisms for preventing underage labor, which could be verified through field observation (e.g. biometric systems for verifying worker identities). NomoGaia is not informed of any protocols in place at Palm Bay for reliably verifying subcontractor ages.*

   EPO has stated it has systems in place to prevent employment and subcontracting of underage workers. We ask that you provide us with a detailed description of the assurance mechanisms in place and the basis of your confidence that they are not being evaded. We would also request any documents EPO has retained of child labor inquires made by EPO and allegations received. Documentation of these allegations and EPO's responses could support EPO's position that it has identified and managed the issue.

2. **Number of Subcontractors.** *EPO reported that 1058 people worked at Palm Bay in 2016. In correspondences with NomoGaia you state that 353 are employees and 29 are contractors. We take that to mean that the remainder (676) are subcontractors, the only remaining worker category. We were told by two knowledgeable sources about the matter that the subcontractors were "about two thirds" and "70%" of the work force. Dozens of workers themselves commented that the system leaves them vulnerable to abuses including arbitrary dismissals.*

   If those number are not correct, please provide us the number of employees, contractors and subcontracts at work at Palm Bay Estate presently and in April 2016. We recognize the sensitivity around providing personal employee data, but we request name-redacted

payroll records or other information from which we can verify stated workforce size and pay rates.

As for other large Liberian palm oil companies, GVL representatives stated that its subcontractor ratio was "less than 10%." For Sime Darby it was "5-10%, depending on the season." **Please let us know if those companies have provided other information to you indicating misalignment with our figures.** *You also asked about Firestone in Liberia. We do not have a ratio for that operation. Firestone is a rubber plantation and was not a part of our research.*[1]

3. **Personal Protective Equipment.** *Personal protective equipment ("PPE") use at Palm Bay was deemed deficient, based on direct observation and multiple personal accounts by workers who expressed resentment about its lack. This complaint was particularly noteworthy at Palm Bay, because workers at well-equipped operations usually make complaints to the opposite effect, resenting having to use PPE, which can be uncomfortable, particularly in a hot climate. Injured ex-employees also claimed that they did not have sufficient PPE, including one who blamed his loss of an eye on the lack of eye protection. While we could not independently confirm the source of the injury, he had, in fact, lost an eye and his account was credible. Visual inspection also showed gaps in the use of PPE and well as substandard PPE, particularly breathing protection for use by chemical sprayers. We also noted a lack of shin protection for those cutting at ground level.*

   We decline your request for photos demonstrating a lack of PPE, first because you do not need them (if PPE are readily available, your management can supply you photos to that effect, supplemented by purchase logs indicating regular and adequate replacement schedules for relevant gear), and, second, to protect those who consented to speak with us and be photographed.

   We request EPO and KLK's specific PPE standards for each of the major field tasks (including, at a minimum: slashing, planting, trimming, harvesting, fertilizer application, and pesticide/herbicide/insecticide spraying). We also request access to your lost time injury frequency rates (LTIFR) and serious injury reports for the Palm Bay Estate. For comparative purposes, it would be useful to have LTIFR and serious injury reports for the Butaw Estate and KLK's Malaysian plantations for a similar timeframe. These should include injuries of subcontractors.

4. **Living Wages.** *NomoGaia has not been provided salary scales for direct employees. EPO's collective bargaining agreement entitles employees to $5.48 per day in gross wages. We do*

[1] However, human rights (including labor rights) violations in Liberia's rubber sector have been extensively documented, most recently by Veritas in a September 2016 publication: https://www.verite.org/wp-content/uploads/2016/11/Research-on-Working-Conditions-in-the-Liberia-Rubber-Sector_9.16.pdf

1625 17TH ST.
DENVER, CO 80202
WWW.NOMOGAIA.ORG

not draw conclusions on whether this salary rate is livable, because the benefits provided to direct employees, in the form of paid holidays, housing, subsidized rice, sick leave and other conditions, complicate such calculations. Your 7 December letter indicates that we evaluated employee wage rates, which is mistaken.

NomoGaia did draw conclusions about the adequacy of wages for subcontractors, first because they receive wages that are a fraction of employees' wages, and second because they receive no employment benefits. EPO's subcontractors are paid indirectly by a third party, receiving $2 to $4.25 per day, depending on the contractor and the task.

EPO is under the impression that health and education services it provides in the concession area make subcontractor wages livable. This is mistaken for two primary reasons:

(1) Wages are simply too low and comprise too large a portion of multidimensional poverty in Liberia to be effectively mitigated by improvements in health and education,[2] and

(2) Provision of health and education facilities is entirely dissociated from subcontractor compensation at EPO's Liberian operations. No health or education benefits are given to any subcontractor as a part of his or her compensation for work. The extent or degree to which subcontractors are beneficiaries of these services is unclear, as subcontractors include workers who live outside the concession area.

NomoGaia requests to know how many subcontractors and subcontractor dependents are using the clinic on a monthly basis, and how many subcontractors' children are enrolled in the school annually. Retrieving and understanding this data could be a preliminary, partial step in EPO's efforts to calculate a living wage.[3]

If EPO believes the wages paid to its subcontractors are sufficient to meet essential costs of living, we request the processes EPO employed to make that determination. EPO cannot currently demonstrate that its wages and contributions to health and education facilities are sufficient to meet human rights standards for an adequate standard of living among subcontractors and their families. To document any such human rights risk

---

[2] Multidimensional poverty in Liberia is, in majority (51.4%), reliant on wages and income. Grand Bassa County has higher poverty rates than the Liberian average, with 43% of residents subsisting on the lowest quintile of income, meaning that prevailing local wage rates, which are paid to subcontractors, are currently inadequate to meet living standards (http://hdr.undp.org/sites/all/themes/hdr_theme/country-notes/LBR.pdf). For more on this, see calculations in the HRRA, derived more broadly from extreme poverty rates in Liberia.

[3] If EPO (correctly) interpreted local conditions as deeply problematic, it is possible that the company came to believe that its presence would be an inherent improvement over the deprivations thoroughly documented in Grand Bassa County. This common assumption by companies is frequently incorrect, and the human rights lens is valuable in such circumstances, to identify where a company's impacts might interact with baseline conditions negatively, making a company complicit in the adverse conditions that create human rights risks and harms. By allowing subcontractors to pay wages at extremely low local levels, EPO is contributing to the area's high poverty rates.

1625 17TH ST.
DENVER, CO 80202
WWW.NOMOGAIA.ORG

management, key indicators would include access to household necessities, perinatal care for women, child nutrition, and educational attainment, among others.

5. **Water at Camps.** *When we visited in February 2016, the Yeoway camp had no working hand pumps. In April 2016, the Neo Camp had one pump, but its flow was too low to supply the needs of the camp inhabitants in a timely fashion. Several inhabitants said the flow rate was so low, and the line for water so long, that workers could not prepare for work without supplementing pumped water with water from the stream behind the camp.*

   Please provide us with the number of working pumps at the Yeoway, Neo and New Camps, and their pumping rates, with seasonal variations in flow rates if relevant. Please also send water quality data from these pumps. It is important that water quality data include human health parameters as well as the water quality reports EPO submitted or will submit to the Liberian Environmental Protection Agency covering any period of time in 2016. Surface water and ground water quality are both relevant for the purpose of HRRA. It is our understanding that EPA reporting is limited to surface water at three testing points, which is why we also request groundwater quality data.

6. **Two Families in Houses Built for One.** This was widely observed and bitterly complained about at Palm Bay. It was conceded as true repeatedly by EPO representatives.

   Please send us the census numbers on 1) the number of families and 2) the number of people living in each house in each of the worker camps. Also, please provide us with any firm plans or schedules you have to remediate this situation.

In addition to requesting information, EPO has also requested guidance on issues noted of concern. We would be happy to provide a full set of detailed recommendations after our next visit. In the meantime, here are some basic recommendations which we hope may be useful.

RECOMMENDATIONS

1. **Child labor.** Child labor is an issue directly manageable by EPO. The company should have systems in place to prevent underage labor in the employee, contactor and subcontractor workforces. The issue at Palm Bay is the policing of this in the subcontractor work force. EPO/KLK's responsibility on this is described in more detail in #2 above. The bottom line is the effectiveness of the effort EPO/KLK is making to ensure that no underage workers are working at the Palm Bay Estate.

2. **Employee/Contractor status**. EPO/KLK have a responsibility to respect the human rights, including the labor rights, of the people who work for them. Direct employees, direct contractors and workers employed by contracting companies are entitled to the same basic

1625 17TH ST.
DENVER, CO 80202
WWW.NOMOGAIA.ORG

standards of adequacy. Corporations cannot outsource their human rights responsibilities to subcontractors. This is true in supply chains worldwide, and it is particularly pertinent within the boundaries of a company's direct operations, where it has direct control over human rights outcomes. EPO should seriously reconsider using subcontractor laborers, who work on a piecework basis to do standard, repeated fieldwork fundamental to the operating of the plantation. Strictly short-term, special-project work may be appropriate for a small force of subcontracted labor, but core plantation functions are not. If EPO does continue to use substantial subcontracted labor, it is responsible for conducting human rights due diligence to determine if worker rights are being violated. EPO should monitor the pay, working conditions, housing conditions and safety equipment of its subcontractors sufficiently to be confident that they satisfy human rights standards. Knowledge is the place to start. Once EPO has sufficient information on this workforce, the company can begin the process of system creation, redress and remediation.

3. **Health and Safety**

    a. Worker Safety. An audit by KLK of personal protective equipment purchasing and provision, quality and actual use as compared to the international corporate standards set by KLK would be a necessary and appropriate start. If the audit finds disparities between those standards and actual conditions at Palm Bay, those failures should be fully remedied.

    b. Health, Worker Camps. Beyond workplace health and safety risks, drinking water and crowded housing pose the most notable health risks directly pertinent to EPO at Palm Bay. Insufficient housing will take a significant effort to fix. Drinking water should first be monitored for quality and quantity. If this has not already been done, the quality should be tested for basic human health parameters and any unusual constituents which could enter the groundwater due to chemical applications by EPO. If monitoring identifies no problems, testing can be conducted with decreasing frequency. If monitoring identifies quality issues that have health implications, then emergency action should be taken to make sure the water is safe to drink and use.

    c. Community Health. Local community water sources, particularly hand pumps provided by the company, should be tested, in a manner similar to the worker camps described above.

4. **Living Wages.** EPO should determine if its wages for employees, contractors and subcontractor satisfy the human rights standard of "living wages." The World Bank has made available Living Standards Measurement Survey tools which can be tailored to local contexts to accurately estimate wage rates needed to support basic life expenses for households.

NOMOGAIA
GUIDING BUSINESS IN HUMAN RIGHTS

1625 17TH ST.
DENVER, CO 80202
WWW.NOMOGAIA.ORG

5. **Positive Impacts.** As NomoGaia has explained previously, benefits to community members are not taken into account in a Human Rights Risk Assessment. Human rights do not have offsets. Benefits in one area do not void violations in another. However, if EPO/KLK wishes to investigate Palm Bay's positive impacts, the company can do so as part of its responsibility to conduct human rights due diligence, by having a human rights impact assessment (HRIA) conducted at Palm Bay. HRIAs have the benefit of helping a company understand both how its operations positively affect human rights, as well as how its operations adversely affect rights. In contrast HRRA, such as the one conducted by NomoGaia, only identifies the most salient risks, not the potential benefits.

All the of the human rights expectations for companies discussed in this letter are spelled out in the United Nations Guiding Principles on Business and Human Rights themselves and in the related commentary and literature. We would be happy to send you further resources if you would find them helpful.

Mark would like to accept the gracious offer reiterated in your 7 December letter to come visit the Palm Bay Plantation in the first quarter of 2017. He looks forward to coordinating the dates with you.

Kind regards,

Mark Wielga
Director, NomoGaia

Dr. Kendyl Salcito
Executive Director, NomoGaia

Cc: Pak Sin and Pak Lim (by email)