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Specific Instance to the OECD National Contact Point of the Netherlands

Indigenous leaders of AIDESEP and FECONAU et al. vs. Louis Dreyfus Company B.V.

1 December 2022

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SPECIFIC INSTANCE TO THE NATIONAL CONTACT POINT OF THE NETHERLANDS

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BEFORE:

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December 1, 2022

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List of Abbreviations

Draft OECD-FAO Handbook	Draft OECD-FAO Handbook on Deforestation, Forest Degradation and Due Diligence in Agricultural Supply Chains
DRAU	Dirección Regional Sectorial Agricultura Ucayali / Sectorial Regional Directorate of Agriculture
Dutch NCP	National Contact Point of the Netherlands
ESG	Environmental, Social and Governance
FLD	Front Line Defenders
IACHR	Inter-American Commission on Human Rights
IACtHR	Inter-American Court of Human Rights
ILO	International Labour Organization
ISCC	International Sustainability & Carbon Certification
LDC or Respondent MNE	Louis Dreyfus Company B.V.
MINAGRI	Ministerio de Agricultura y Riego / Peruvian Ministry of Agriculture and Risk
MNE	Multinational Enterprise
NDPE	No Deforestation, No Peat and No Exploitation
Ocho Sur Group	Servicios Agrarios de Pucallpa SAC, Ocho Sur P SAC, and Ocho Sur U SAC
OECD	Organization for Economic Co-operation and Development
OECD Due Diligence Guidance	OECD Due Diligence Guidance for Responsible Business Conduct
OECD Guidelines	OECD Guidelines for Multinational Enterprises
OECD-FAO Guidance	OECD-FAO Guidance for Responsible Agricultural Supply Chains
OHCHR	Nations Office of the High Commissioner for Human Rights
OLAMSA	Oleaginosas Amazónicas SA
OSP	Ocho Sur P SAC
OSU	Ocho Sur U SAC
PdP	Plantaciones de Pucallpa SAC
PdU	Plantaciones de Ucayali SAC
PRODUCE	Ministerio de la Producción / Peruvian Ministry of Production
RSPO	Roundtable for Sustainable Palm Oil
SAP	Servicios Agrarios de Pucallpa SAC
UCPD	Unfair Commercial Practices Directive
UCPD Guidance	Guidance on the interpretation and application of the Unfair Commercial Practices Directive
UNGA	United Nations General Assembly
UNGP	UN Guiding Principles on Business and Human Rights

1. EXECUTIVE SUMMARY

The Respondent Multinational Enterprise **Louis Dreyfus Company B.V.** ("**LDC**", or "**Respondent MNE**")—a company based in The Netherlands and leader in the trading of agricultural commodities—is operating in breach of the OECD Guidelines for Multinational Enterprises ("OECD Guidelines") and related due diligence guidance through its decision to source and ongoing sourcing of palm oil in Peru from **Servicios Agrarios de Pucallpa SAC** ("**SAP**"), **Ocho Sur P SAC** ("**OSP**") and **Ocho Sur U SAC** ("**OSU**"), which together form the "**Ocho Sur Group**". The complainants are a diverse group of indigenous organizations and NGOs with extensive experience in addressing unlawful deforestation and climate change issues, the rights of indigenous peoples, and corporate accountability.

The Ocho Sur Group operates on lands that were unlawfully appropriated under national and international law and are part of the ancestral territory object of a claim for land titling from the **Indigenous Community of Santa Clara de Uchunya**, and through corruption schemes that are now subject of multiple criminal proceedings in Peru—including proceedings in which OSP is also under investigation. The plantations run by OSU and OSP, and from which SAP—the extraction plant of the Ocho Sur Group—sources 88% of the palm fruit for processing, led to of over 12,000 hectares of illegal deforestation. At no time did OSU and OSP, or their predecessors, carry out the *Estudio de Levantamiento de Suelos* (Soils Survey Study) to detect the presence of protected primary forest on the properties, an essential prerequisite under Peruvian law for requesting the *Autorización de Cambio de Uso de Suelo* (Land Use Change Authorization). In consequence, they did not receive the necessary environmental permits to clear the forest—as they did in practice without authorization—or to establish and operate the oil palm plantations, irregularities that continues to this day.

Despite abundant public information concerning the grave environmental and human rights impacts of this illegal deforestation, since 2020 LDC entered into and developed business relationships with SAP and the Ocho Sur Group to source crude palm oil from the Peruvian extraction plant through its Commercial office in Singapore. As such, LDC has failed to conduct adequate due diligence in its business operations and across its supply chain. By repeatedly purchasing Peruvian palm oil produced through unlawful deforestation and illicit maneuvers involving local public officials, LDC has contributed to the environmental and human rights violations committed by its palm oil trading partners operating in the Peruvian Amazon. The Respondent MNE has also failed to address or remediate the adverse impacts to which it has contributed. At an absolute minimum, it has failed to exercise due diligence to prevent and address those impacts, or to use its significant leverage to ensure responsible business conduct compliant with the OECD Guidelines in its business relationships. Instead, LDC published inaccurate and misleading statements in relation to the environmental sustainability of its operations.

Section 2 of this complaint addresses jurisdictional matters. It makes clear that this specific instance falls squarely within the competence of the National Contact Point of the Netherlands ("Dutch NCP"). The complaint concerns LDC, a major Dutch-based trader leader in the trading of agricultural commodities, and issues arising at least in part in the Netherlands, albeit with profound impacts in Peru and globally. The circumstances of this case—the conduct, capacity and influence of LDC, the diverse, well substantiated and serious adverse impacts on environment and human rights involved in this case and their close connection to effectiveness of the Guidelines—all underscore that the complaint fulfils

the relevant admissibility criteria and should be treated by the Dutch NCP as a matter of priority.

Section 3 sets out relevant facts relating to LDC's sourcing of palm oil from the Ocho Sur Group, and the environmental impacts, human rights violations and corruption associated with the production of palm oil in Peru by the Ocho Sur Group. It situates these impacts in the wider context of palm oil production in the Peruvian Amazon.

This section presents overwhelming evidence of unlawful land appropriation and deforestation of the Amazon, serious violations of human rights of indigenous peoples, climate change and corruption, involving partners in the supply chain of LDC. It shows that the facts related to these adverse impacts are matters of public notoriety, supported by the ample documentary evidence, satellite imagery and scientific analysis, publicly available reports from authoritative sources, and decisions of Peruvian authorities and international judicial and quasi-judicial bodies, provided in that section.

Despite this, LDC continues to act as a well-established trading partner of the Peruvian corporate actors described in this specific instance. As will be shown, **LDC indicates openly on its website that it buys Peruvian palm oil from the extraction plant SAP of the Ocho Sur Group**.

The **Ocho Sur Group** is well-known at the local and international level for the human rights and environmental violations carried out since the beginning of its activities, which were in turn the continuation of the illicit conduct by the previous owners of the plantations, **Plantaciones de Ucayali SAC** ("**PdU**", now known as **OSU**) and **Plantaciones de Pucallpa SAC** ("**PdP**", now known as **OSP**).

These violations began with the unlawful appropriation, supported by corruption of public officials, by PdU and PdP of more than 12,000 hectares, mostly part of the ancestral lands of the Indigenous Community of Santa Clara de Uchunya and the Shipibo-Konibo people, in order to develop the palm oil project. It continued with extensive illegal deforestation to establish the plantations that provide crude palm oil to LDC. The operations have always been, and are still to this day, conducted without the environmental authorizations required by law. The plantations and the palm oil extraction plant were built without the free, prior, and informed consent of the Santa Clara de Uchunya community and the Shipibo-Konibo people, which has suffered violations of their collective land, livelihood and self-government rights as indigenous peoples, as well as threats and intimidation in response to their tireless efforts to defend their rights, culture and ancestral lands.

The sources and evidence in Section 3 make clear that the wrongdoings and corruption schemes associated with the development of the oil palm plantations and the production of palm oil by the companies of Ocho Sur Group have been widely condemned for years. Peruvian public authorities, the Roundtable for Sustainable Palm Oil ("RSPO"), the Inter-American Commission on Human Rights ("IACHR"), the Inter-American Court of Human Rights ("IACtHR"), United Nations Human Rights Treaty bodies including the Committee on the Elimination of Racial Discrimination, the UN Special Rapporteurs on Human Rights Defenders and the Rights of Indigenous Peoples, national and international NGOs, among others, have all recurrently expressed their concerns about the environmental and human rights violations caused by those actors.

The evidence leaves no doubt that LDC knew—or should have known if it had done any meaningful due diligence as required by the OECD Guidelines and international legal

standards—that by purchasing palm oil from the Ocho Sur Group through SAP it was contributing to irreparable harm to the human rights of the indigenous community and to the Peruvian Amazon's ecosystem, with a severe impact on the ability of the Amazon rainforest to act as the largest terrestrial carbon sink.

Section 4 explains that LDC, through its operations and trading partnerships, has breached the OECD Guidelines, and acted inconsistently with other relevant national and international standards. It sets out legal standards, indicating the responsibility of LDC on four grounds:

i) LDC's **failure to meet applicable standards** on "**due diligence** to identify, prevent and mitigate adverse impacts" in its business operations and across its supply chain;

ii) LDC's **contribution to adverse environmental and human rights impacts** through its trading activities and relationships;

iii) LDC's **failure to exercise leverage over others** in respect of adverse impacts with which it is linked through its business relationships; and

iv) LDC's **failure to disclose, communicate, and consult** with interested stakeholders the accurate and appropriate information about their environmental and human rights performance.

This specific instance concerns serious violations of and disregard for the OECD Guidelines and international standards governing the protection of the environment, human rights and corruption (covered by Chapters II, IV, and VI of the OECD Guidelines). It also concerns illegal misleading claims by LDC, on its website and in other official publications, related to palm oil sustainability, its "green" credentials and the compatibility of its operations with human rights and environmental protection (covered by Chapters II, III, and VIII of the OECD Guidelines). LDC's commitments to conduct business operations free from deforestation—including at the suppliers' level—are contradicted by the facts, and LDC has thus failed to meet the expectations enshrined in the OECD standards in relation to disclosure, communication and consultation with the interested stakeholders.

In consequence, at an absolute minimum, LDC has failed to undertake appropriate due diligence to identify, prevent and mitigate actual and potential adverse impacts it has caused or contributed to through its activities and business relationship with SAP and its upstream Peruvian suppliers. It has not used its leverage and influence to prevent or mitigate those impacts, including by suspending its business relationship with SAP until such time as the environmental and human rights concerns are adequately addressed. By acting as a major trading partner in the fruits of unlawfulness, LDC facilitates, incentivizes, and thereby contributes to the environmental and human rights impacts committed by its palm oil trading partners operating in the Peruvian Amazon. It has also failed to take measures to remediate the adverse impacts to which it has contributed. It compounds its responsibility by providing interested stakeholders—such as consumers, shareholders, investors, etc.—inaccurate and misleading statements on sustainability.

Finally, **Section 5** of this complaint sets out the requests and remedies sought by the complainants. In line with the principles enshrined in the OECD Guidelines, essential remedies would include ceasing the conduct that is contributing to the adverse impacts, as well as the misleading statements, and exercising appropriate leverage over SAP and the Ocho Sur Group to address, mitigate and remediate the serious adverse impacts at issue in this specific instance.

As a result of the predominant role that LDC plays in the market of agricultural commodities around the world, an evaluation of the case by the Dutch NCP has the potential to promote effective compliance with the OECD Guidelines and with international and national sustainability standards, as well as the actual implementation of the several voluntary commitments undertaken by LDC in the wake of the UN Climate Change Conference of Parties held in Glasgow. Likewise, a decision by the Dutch NCP may also influence other transnational agri-commodity traders who participate in the supply chain of forest-risk commodities to put in place a sound environmental management system and carry out the appropriate due diligence. Therefore, the complainants request the NCP's good offices to address the urgent, serious and irreparable impact of corporate harm underway in the Peruvian Amazon and the impunity that surrounds and enables it.

2. ADMISSIBILITY, JURISDICTION & PRIORITIZATION

2.1. COMPETENCE OF THE DUTCH NCP

This matter falls squarely within the remit of the Dutch NCP, in accordance with the Procedural Guidance set out in the OECD Guidelines (the "Procedural Guidance").

i) **LDC** is incorporated and operates out of its **headquarters in the Netherlands** (as Section 3.2 describes below), although it has global subsidiaries and global reach.

ii) Although paragraph 23 of the Commentary to the Procedural Guidance notes the "*issues will be dealt with by the NCP of the country in which the issues have arisen,*" the NCP has often engaged, as it must, with complaints that concern global issues and impact. This specific instance concerns LDC's failure to identify, address and mitigate those adverse impacts arising from its business partnerships. The decisions regarding **governance, business partnerships, due diligence**, disclosure, safeguards and responses are taken at the headquarter level and, as such, the issues in question **arise principally in the Netherlands**, albeit many of the adverse impacts caused by the actions of LDC are experienced in Peru and have global environmental/human rights implications.

iii) There is **no reasonable prospect of resolving this issue in Peru**, and the ineffectiveness of legal action to date means there is little confidence in this issue being pursued by the Peruvian NCP.[1] It is clear from its latest decisions, its composition and headquarter that the Peruvian NCP is not accessible, impartial or equitable. The NCP is located in the State's private investment promotion agency (ProInversión).[2] The objective of ProInversión is to promote private investments[3] and its head of investor servicing approves acceptance of NCPs.[4] Furthermore, the Peruvian NCP does not formally involve diverse relevant government departments or diverse

[1] According to the Procedural Guidance, NCPs must have the confidence of stakeholders to function effectively: OECD, OECD Guidelines for Multinational Enterprises, 2011, p. 80. See also, NCP OF THE NETHERLANDS, Peruvian Indigenous Federations et al. vs. Pluspetrol, 11 March 2020, p. 17.
[2] OECD WATCH, NCP Peru.
[3] PROINVERSIÓN, About Us.
[4] OECD WATCH, NCP Peru.

independent experts in its work.[5] Finally, the Peruvian NCP has rejected all complaints filed by civil society organizations at the initial assessment phase.[6]

iv) Moreover, the UN Working Group on Business and Human Rights recommended that States: *"(a) Ensure that OECD national contact points are accessible, independent, impartial and competent to address land-related complaints. This includes knowledge of indigenous peoples' rights; (b) Require companies to conduct human rights due diligence to ensure respect for indigenous peoples and local communities' rights in their supply chains; (c) Require supply chain transparency; (d) Adopt and enforce regulations in relation to the human rights impacts overseas of companies domiciled in home States"*.[7] Given that the Dutch NCP has received and addressed—or is in the process of addressing—complaints in relation to violations of indigenous peoples' rights, including in Peru, it is considered that the Dutch NCP has the necessary expertise in this area. Furthermore, the Dutch government has a responsibility in relation to companies registered in its jurisdiction, with the OECD playing a central role in the execution of that responsibility.

2.2. THE COMPLAINT MERITS FURTHER EXAMINATION AND PRIORITIZATION

Commentary 25 to the Procedural Guidance outlines six criteria that the NCP should take into account in determining whether the issue merits further examination. All six criteria are satisfied here. The matter is therefore admissible and should be prioritized.

i) The NCP shall take into account the identity and interest of the Parties:

The Respondent MNE is a privately owned corporation incorporated in the Netherlands in 2004, and an indirect subsidiary of Louis Dreyfus Holding B.V., a Dutch company of the Louis Dreyfus Foundation.[8] LDC is also a direct subsidiary of Louis Dreyfus Company Netherlands Holding B.V., which is in turn a subsidiary of Louis Dreyfus Company Holding B.V.[9]

LDC is a major trader on the global stage, enhancing the significance and impact of its compliance with the OECD Guidelines, and the importance of accountability for breaches thereof. **LDC is one of the world's four largest agribusinesses, which together with Archer Daniels Midland-ADM, Bunge, Cargill are informally known as the "Big Four" or "ABCD"[10] and control over 70% of the global market of agricultural commodities.**[11] LDC's subsidiaries are currently present in more than 100 countries.[12] Since the LDC group's foundation in 1851, it has become a leading global merchant with a diverse portfolio that

[5] OECD WATCH, NCP Peru.
[6] OECD WATCH, Complaints Database.
[7] UN WORKING GROUP ON THE ISSUE OF HUMAN RIGHTS AND TRANSNATIONAL CORPORATIONS AND OTHER BUSINESS ENTERPRISES, Addressing the human rights impacts of agro-industrial operations on indigenous and local communities: State duties and responsibilities of business enterprises, UN Doc A/71/291, 4 August 2016, para. 115.
[8] LDC, Financial Report and Audited Consolidated Financial Statements, 2021, p. 28. The registered address of LDC is Westblaak 92, 3012 Rotterdam, the Netherlands.
[9] LDC, Financial Report and Audited Consolidated Financial Statements, 2021, p. 28. Moreover, Louis Dreyfus Company Holding B.V. is owned for 55% of its shares by LDH and for 45% of its shares by Abu Dhabi Development Holding Company, which purchased the stake in LDC in September 2021.
[10] Among those who refer to them as "Big Four" or "ABCD", see FINANCIAL TIMES, Bunge, Cargill, Dreyfus and ADM face new challenges, 18 September 2013; REUTERS, ABCD quartet of grain traders partner to digitize global trades, 25 October 2018; THE WASHINGTON POST, There's a New Agri-Giant Invading the U.S. Heartland, 26 January 2022.
[11] HEINRICH BÖLL STIFTUNG, Agrifood Atlas. Facts and figures about the corporations that control what we eat, 2017, p. 28.
[12] LDC, Who we are.

includes Carbon Solutions, Coffee, Cotton, Grains & Oilseeds, Juice, Rice, Sugar, Freight and Global Markets.[13] Today the group controls approximately 10% of global agricultural trade flows.[14] LDC's supply chain—and therefore the reach of its influence—spans from origination and production of commodities, to processing and refining, storing and transporting, researching and merchandising, and customizing and distributing for customers, including "*large multinationals to local manufacturers and retailers*".[15] In 2021, LDC financial performance, particularly in relation to Grains & Oilseeds products of which palm oil is a significant part, reached the highest level in history at US$5.4 billion.[16]

Since 2020, LDC has purchased and traded in its supply chain palm oil produced from the palm fruit bunches coming from the plantations of the Ocho Sur Group, an actor widely known—in Peru and internationally—due its role in the large-scale deforestation carried out in the Peruvian Amazon,[17] allegations of corruption involving local public officials and the human rights violations against the indigenous community of Santa Clara de Uchunya (see Section 3.4).

The complainants in this case are a diverse coalition of civil society organizations of international reputation with direct interest in the outcome of the specific instance. Some NGOs are integrated by indigenous communities and/or work closely with the affected peoples by the unlawful deforestation and rights violations at the heart of the claim. Others have as a primary focus ensuring corporate accountability, supported by evidence and rigorous analysis, including in relation to climate change and environmental protection:

- **Asociación Interétnica de Desarrollo de la Selva Peruana[18] (AIDESEP):** AIDESEP is the spokesperson organization for the indigenous peoples of the Peruvian Amazon that works for the defense and respect of their collective rights through actions to expose their problems and present alternative development proposals, according to their worldview and lifestyle. AIDESEP is led by a National Board of Directors elected every 5 years by its regional branches –9 decentralized organizations located in the north, center and south of the Peruvian jungle. Furthermore, 109 federations participate in the elections through the National Congresses. These represent 2,439 communities where more than 650,000 indigenous men and women live, grouped into 19 linguistic families.

- **Federación de Comunidades Nativas del Ucayali y Afluentes[19] (FECONAU):** Established in 1981, FECONAU is one of the oldest indigenous federations in the Peruvian Amazon, which participated in the constitution of the AIDESEP, the most representative Amazonian indigenous organization in Peru. FECONAU currently represents more than 30 native communities belonging to the Shipibo-Konibo, Asháninka, Isconahua and Awajun indigenous peoples, located in the districts of Callería, Nueva Requena and Yarinacocha. Its vision is to strengthen indigenous peoples with a clearly defined indigenous policy, with healthy and organized indigenous territories, with autonomy for the management and conservation of the

[13] LDC, Financial Report and Audited Consolidated Financial Statements, 2021, p. 28.
[14] LDC, Louis Dreyfus Company Reports Improved 2017 Financial Results, 21 March 2018.
[15] LDC, Who we are. Our value chain.
[16] LDC, Financial Report and Audited Consolidated Financial Statements, 2021, p. 6, 12, and 28. Highlights on financial achievements are available at LDC, Key Figures.
[17] See Sections 3.2, 3.3, 3.4 and 3.5 of this specific instance.
[18] For more information, see: Asociación Interétnica de Desarrollo de la Selva Peruana.
[19] For more information, see: Federación de Comunidades Nativas del Ucayali y Afluentes.

territory, with trained human resources who exercise self-determination, achieving the sustainable integral development of indigenous peoples.

- **Forest Peoples Programme[20] (FPP):** FPP is a human rights organization working with forest peoples across the globe to secure their rights to their lands and their livelihoods. FPP works alongside more than 60 partner organizations representing indigenous peoples and forest communities from across the globe.

- **Instituto de Defensa Legal[21] (IDL)**: IDL is a non-profit organization based in Lima, Peru. It was founded in 1984 with the purpose of strengthening human rights and democracy in the country and in Latin America. The institution has interdisciplinary work teams made up of lawyers, communications experts, and social scientists. This diversity enriches our work and enhances our advocacy capacity. IDL is made up of areas that closely monitor public policies on issues that we consider relevant for the country, such as human rights, the justice system, citizen security, the environment and indigenous peoples, as well as journalism. research.

- **Instituto de Estudios Forestales y Ambientales – Kené:[22]** Kené is a private non-profit organization registered in Peru. Its fundamental objective is to contribute to building Peru as a sustainable, equitable, fair and environmentally responsible country, as well as to the conservation of its tropical forests, its biodiversity and ecosystem services from the rights approach, comprehensive land use planning and management, governance and transparency.

- **Environmental Investigation Agency[23] (EIA):** EIA is an award-winning NGO that is internationally renowned for its use of innovative investigative techniques that expose environmental crimes and make sustainable management of the world's natural resources possible. For over three decades, EIA has confronted the world's most pressing environmental problems, instigated systematic changes in global markets, and promoted precautionary policies that protect the natural world from exploitation through undercover investigations, in-depth analysis of supply chains and trade data, and focused advocacy coupled with diplomacy. EIA has built strong networks of local and international partnerships and stands in solidarity with indigenous and other local communities in defending their environment and achieving positive, tangible, and enduring changes via improved environmental governance.

- **Center for Climate Crime Analysis[24] (CCCA):** CCCA is a non-profit organization founded by prosecutors and investigators. It supports and scales up enforcement actions, litigation and advocacy against illegal activities that are relevant to climate justice and human rights. CCCA comprises a diverse team of lawyers, anthropologists, and environmental, social and data scientists, with expertise ranging from work with indigenous communities, to domestic, transnational and international law enforcement, to geospatial imaging, to strategic human rights and climate litigation.

ii) The NCP shall take into account whether the issue is material and substantiated:

This specific instance entails serious violations of the applicable Dutch laws, the OECD Guidelines and related international standards, as set out at Sections 3 and 4 below. **The**

[20] For more information, see: Forest Peoples Programme.
[21] For more information, see: Instituto de Defensa Legal.
[22] For more information, see: Kené.
[23] For more information, see: Environmental Investigation Agency.
[24] For more information, see: Center for Climate Crime Analysis.

issues raised in this complaint cut across breaches of the General Policies, Human Rights, Environment, Disclosure, and Consumer Interests chapters of the OECD Guidelines by LDC and its upstream business partners and suppliers. Their impact is profound, both locally and globally. The significance of the palm oil industry as a source of deforestation, of Amazonian deforestation to the climate crisis, and of climate change to human rights, are well known. The human rights concerns involve fundamental rights of indigenous peoples, and the full array of civil, political, social, economic, and cultural rights linked to deforestation and its climate consequences. The role of LDC and its misleading claims as regards its environmental and human rights credentials further influences the significance of the complaint.

The allegations are supported by detailed evidence and analysis. The grave human rights and environmental problems are supported by a plethora of reports and findings—by local Peruvian administrative courts and bodies, by international courts and expert bodies, and by civil society groups—all of which are contained in Section 3. The fact that corporations with which LDC is engaging are themselves involved in pending criminal proceedings is just part of an abundant body of evidence of notorious breaches of environmental and human rights standards provided in support of this specific instance.

iii) The NCP shall take into account whether there seems to be a link between the enterprise's activities and the issue raised in the specific instance:

As a major commodities trader sourcing palm oil from plantations and businesses involved in unlawful deforestation and other violations described in Section 3, the activities of LDC facilitate, incentivize, and contribute to adverse impacts within the meaning of the OECD Guidelines; breach due diligence and other standards in relation to human rights, environmental protection, corruption risks in supply chains; and fail to comply with disclosure and consultation standards under the OECD Guidelines. The relationship between LDC and those engaged in the violations is set out in Section 3.2. The link between the acts and omissions of LDC in respect of its trading partners and those adverse impacts is supported throughout this claim.

iv) The NCP shall take into account the relevance of applicable law and procedures, including court rulings;

Section 3 sets out numerous administrative, judicial and quasi-judicial findings by the Peruvian national authorities confirming the extent and illegal nature of the activities which underpin the production and sale of palm oil to LDC; and Section 4 identifies a number of relevant international legal provisions and standards that are breached by LDC in this case.

v) The NCP shall take into account how similar issues have been, or are being, treated in other domestic or international proceedings;

Various complaints have been lodged before NCP of the Netherlands that contain some similar elements as the present specific instance. These include *Milieudefensie v. ING Bank*[25] and *Milieudefensie-Friends of the Earth Netherlands v. Rabobank*[26]—both about the adverse environmental and human rights impacts of palm oil plantations—as well as *Indigenous Federations v. Pluspetrol Resources Corporation B.V.,*[27] also concerning facts occurring in Peru in which the Dutch NCP is competent due to the company's registration

[25] NCP OF THE NETHERLANDS, Milieudefensie et al vs. ING, 5 July 2019.
[26] NCP OF THE NETHERLANDS, Friends of the Earth vs. Rabobank, 26 June 2014.
[27] NCP OF THE NETHERLANDS, Peruvian Indigenous Federations et al. vs. Pluspetrol, 11 March 2020.

in the Netherlands. However, there has been no case before the Dutch NCP addressing the role of a major palm oil trader, enhancing the importance of this specific instance.

In addition, a number of the underlying rights violations identified in this complaint have given rise to international human rights proceedings resulting in the grant of precautionary measures (at the Inter-American Commission on Human Rights), criminal charges against different actors (in domestic courts) and other forms of litigation against the State, as described at Section 3.3.2, 3.4.1, and 3.5. However, none of these proceedings address the same issues and Respondent MNE as this case before the NCP.

vi) *The NCP shall take into account whether the consideration of the specific issue would contribute to the purposes and effectiveness of the OECD Guidelines:*

This case aims squarely at giving effect to the stated purpose of the OECD Guidelines "*to promote positive contributions by enterprises to economic, environmental and social progress worldwide*".[28] This complaint concerns a serious case of deforestation of the Amazon. Deforestation is a major contributor to the climate emergency, as acknowledged in a June 2022 OECD report on Climate Change and Corporate Governance.[29] The OECD's work on Climate Change speaks to the urgency of addressing these issues within the OECD framework as a "core challenge".[30] Achieving net-zero deforestation in agricultural supply chains has been recognized by the Netherlands and many other countries as a goal, as reflected in the Amsterdam Declaration.[31] The importance of the matter was echoed in the Adaptation Communication submitted ahead of the Global Climate Governance in Glasgow, COP26.[32]

This specific instance also involves grave violations against vulnerable peoples, in a context where the perpetrators have enjoyed absolute impunity to date. **The unlawful deforestation, violations and corporate failure to assume the responsibilities in the OECD Guidelines are ongoing; and there is a substantial risk that if they are not addressed, they will be amplified in coming years given the projected growth of the palm oil industry and that impunity will be ratified with an incentive for more illegal deforestation (see Section 3.1).**[33]

The case further exemplifies the stark misinformation that misleads consumers and other interested stakeholders, enabling ongoing violations, and which breaches OECD standards governing disclosure, communication and consultation, crucial aspects of responsible business conduct in this field. The complaint also concerns a major global business with huge profits and extensive leverage power in the sector in question. **Addressing LDC's role is of particular significance for the purposes and effectiveness of the OECD Guidelines, and for the future conduct not only of the Respondent MNE in this case but many others.**

2.3. "PARALLEL" PROCEEDINGS AND THE COMPETENCE OF OECD

[28] OECD, OECD Guidelines for Multinational Enterprises, 2011, Foreword.
[29] OECD, Climate Change and Corporate Governance, 8 June 2022.
[30] OECD, Tackling the Climate Crisis Together.
[31] AMSTERDAM DECLARATION, Towards Eliminating Deforestation from Agricultural Commodity Chains, 7 December 2015.
[32] UNFCC, Adaptation Communication: The Netherlands' submission to the United Nations Framework Convention on Climate Change, 4 October 2021, p. 7.
[33] IUCN, Oil palm and biodiversity. A situation analysis by the IUCN Oil Palm Task Force, 2018, p. 70.

The complainants inform the NCP that various other forms of legal action are underway which are related to—but quite distinct from—this specific instance. As Sections 3.3, 3.4 and 3.5 note, criminal proceedings against a number of persons have been instituted in Peru by the prosecuting authority; however, these cases are directed at individual responsibility, and in any event their resolution is taking many years, while the consequences are still in place and are being aggravated over time. Litigation against the Peruvian government has also been initiated at the Superior Court of Lima[34] and internationally.[35] These cases revolve around the responsibility of the Peruvian government with regard to halting deforestation and therefore also concern different subject-matter than this specific instance.

Furthermore, as set out in Section 4.1, it is recognized that within LDC's internal grievance a complaint is pending in relation to deforestation and the role of OSP (part of the Ocho Sur Group). However, this procedure only concerns one of the two palm oil plantations involved in the illegal deforestation, does not address the human rights violations, and, above all, LDC's response to date shows no action has been taken to make amend for the harm caused. An internal grievance mechanism of this type cannot preclude the proper functioning, and potentially significant contribution, of the NCP on this important matter.

The NCP is reminded in any event that there is no rule precluding "parallel" proceedings before the NCP. In Commentary 26 to the Procedural Guidance, it is specified that:

> *"(w)hen assessing the significance for the specific instance procedure of other domestic or international proceedings addressing similar issues in parallel, NCPs should not decide that issues do not merit further consideration solely because parallel proceedings have been conducted, are under way or are available to the parties concerned. NCPs should evaluate whether an offer of good offices could make a positive contribution to the resolution of the issues raised and would not create serious prejudice for either of the parties involved in these other proceedings or cause a contempt of court situation."*

In addition, a consumer based legal action that exposes the misleading information provided by LDC and its impact on consumer rights and choices is being considered through the appropriate regulatory authorities. That action, which is focused on harm to consumers, serves different purposes and is different in nature than this claim. Parallel action does not therefore detract in any way from the relevance and importance of this complaint.

Finally, there is no prejudice caused to other proceedings by this action. The NCP's offer of good offices would make a positive contribution to the resolution of these crucial issues, addressing the key role of a leading corporate actor in contributing to the problems raised in the complaint.

2.4. Good Faith Engagement and Confidentiality

The complainants express their commitment to engage in the Dutch NCP specific instance procedure in good faith, with the goal of bringing LDC's practices and policies into line with the OECD Guidelines and securing appropriate reparation. The complainants

[34] Superior Court of Lima, Álvarez et al v. Perú, 16 December 2019.
[35] See Sections 4.1.1 of this specific instance.

understand and will respect the confidentiality of any mediation proceedings, namely that information exchanged during the NCP process will not be made public.

However, given that it is a known case of illegal deforestation related to palm oil, well reported by national and international organizations for over 10 years, the complainants do not consider that maintaining the confidentiality of the proceedings, or engaging in those proceedings in good faith, would prevent them from continuing to engage in their various roles—including advocacy and outreach without breaching confidentiality—informing communities and constituents about the nature of the complaint, their demands, and unfolding developments in relation to deforestation throughout the NCP's review process.

This is also the spirit of the OECD Guide for National Contact Points on Confidentiality and Campaigning that indicates "*a specific instance is often filed as a result of a longer history of issues related to* (Responsible Business Conduct) *or as part of an ongoing campaign towards a particular company. As a result a lot of information related to the issues may already be in the public domain and a public campaign may have already been ongoing for some time before the submission of a specific instance*".[36] The events surrounding the present specific instance falls squarely in this description. The following sections particularly show that the facts and claims brought in this specific instance are in the public domain in Peru and internationally, and have been object of intense advocacy campaigns since the early stages of development of the palm oil project in Peru. For this reason, continuing communications about "*the underlying facts or claims made by the submitter of the specific instance based on publicly available information*" or "*on facts or information about the issues raised in a specific instance that are publicly available, irrespective of the stage of the specific instance process*" is not considered to be inappropriate or a violation, in compliance with the OECD Guide for National Contact Points on Confidentiality and Campaigning when handling Specific Instances.[37]

Finally, in line with the commitment of good faith, the complainants of this specific instance would welcome the opportunity to discuss the terms relating to confidentiality and campaigning ahead of time through a transparent engagement with the NCP and the Respondent MNE.[38]

3. LDC'S SOURCING OF PALM OIL FROM PERU AND ASSOCIATED VIOLATIONS

Any assessment of LDC's breaches of the OECD Guidelines in relation to its sourcing of palm oil from SAP, the extraction plant processing palm fruits grown by the Ocho Sur Group in Peru, must be considered in light of:

- The context on palm oil production in the Peruvian Amazon (Section 3.1).
- The prominent position that LDC occupies in the global market of agricultural commodities and the evidence of its purchase of Peruvian palm oil produced by the Ocho Sur Group (Section 3.2).

[36] OECD, Guide for National Contact Points on Confidentiality and Campaigning when handling Specific Instances, 2019, p. 10.
[37] OECD, Guide for National Contact Points on Confidentiality and Campaigning when handling Specific Instances, 2019, p. 10 and 11.
[38] OECD, Guide for National Contact Points on Confidentiality and Campaigning when handling Specific Instances, 2019, p. 13.

- The evidence of the environmental (Section 3.3) and human rights impacts (Section 3.4) of the production of that palm oil by the Ocho Sur Group, and associated corruption (Section 3.5).

3.1. CONTEXT ON PALM OIL PRODUCTION IN THE PERUVIAN AMAZON

Peru is the third largest palm oil producer in Latin America after Colombia and Guatemala, having experienced a notable growth in the last decades, transitioning from being an importer to an exporter of this commodity since 2014.[39] The majority of palm oil production in the Amazon region is in Ucayali (46.96%), where the plantations operated by LDC's suppliers are located, and San Martin (36.19%).[40] Indeed, palm oil production doubled in Ucayali between 2006 and 2012, growing from 6,641 hectares of oil palm plantations to 17,000 hectares according to public information.[41] As global palm oil production is projected to reach 220 million tons by 2050, with an estimated annual growth of 3.6% per year,[42] there is a pressing need to limit its negative effects.

It is well known that the Amazon region is considered to be a potential tipping element in the Earth's climate system. While it used to be a large terrestrial carbon sink, key for biodiversity, the Amazon has recently turned into a carbon source as a result of the large-scale deforestation.[43] In this context, **Peru has been the country in the Amazon region that has experienced the greatest primary forest loss related to oil palm expansion**, which has deforested extensive blocks of land along the agricultural frontier,[44] reaching approximately 190,000 tons of palm oil production in 2020/21, with a growth of 140% over a ten-year period.[45] In fact, **of the commodities from larger producers, palm oil is the most important driver of deforestation.**[46] **Palm oil plantations were responsible for the deforestation of over 31,500 hectares of primary Peruvian forest in 2000-2018,**[47] and it is estimated that approximately 30% of the national palm oil production takes place on illegally deforested lands.[48] **One of the main affected areas is Ucayali, the site of the plantations owned by LDC's suppliers—SAP and the Ocho Sur Group**—whose violations are described in Section

[39] CLIMATE ADVISERS, A spotlight on exponential Peruvian palm oil growth, 2020, p. 4.
[40] Other significant production locations are Loreto (14.45%) and Huánuco (2.40%). See SPDE, Análisis de actores de la cadena de palma aceitera en el Perú para promover una palma sostenible, 2021, p. 11. These four regions account for a total of 19 extraction plants, see SPDE, CDP, Análisis situacional de los commodities peruanos con riesgos a la deforestación al 2020, 2020, p. 14.
[41] MINAM, Cuantificación y Análisis de la Deforestación en la Amazonía Peruana en el Periodo 2010-2014, 2015.
[42] IUCN, Oil palm and biodiversity. A situation analysis by the IUCN Oil Palm Task Force, 2018, p. 70.
[43] BOULTON *et al.*, Pronounced loss of Amazon rainforest resilience since the early 2000s, in *Nature Climate Change*, nº 12, 2022, p. 271–278. SPA, Amazon Assessment Report 2021, Cross Chapter 1, The Amazon Carbon Budget, 2021, p. 2. See also, THE GUARDIAN, The Amazon is now a net carbon producer, but there's still time to reverse the damage, 19 July 2021; GATTI ET AL., Amazonia as a carbon source linked to deforestation and climate change, in *Nature*, Vol. 595, 15 July 2021, p. 388-408.
[44] FURUMO, P. R. and MITCHELL AIDE, T., Characterizing commercial oil palm expansion in Latin America: land use change and trade, in *Environ. Res. Lett.* 12 024008, 2017.
[45] CLIMATE ADVISERS, Latin American Palm Oil Linked to Social Risks, Local Deforestation, 9 December 2021.
[46] SPDE, CDP, Análisis situacional de los commodities peruanos con riesgos a la deforestación al 2020, 2020, p. 16.
[47] MAAP, MAAP#95: Oil Pam Baseline for the Peruvian Amazon, 2018.
[48] Out of 101,993 hectares used for oil palm monoculture, 31,500 were illegally deforested. See, SPDE, CDP, Análisis situacional de los commodities peruanos con riesgos a la deforestación al 2020, 2020, p. 14, and MONITORING OF THE ANDEAN AMAZON PROJECT (MAAP), MAAP#95: Oil Pam Baseline for the Peruvian Amazon, 2018.

3.3 below.[49] By 2018, these two corporations owned approximately 12,200 hectares, representing 12% of the national production.[50]

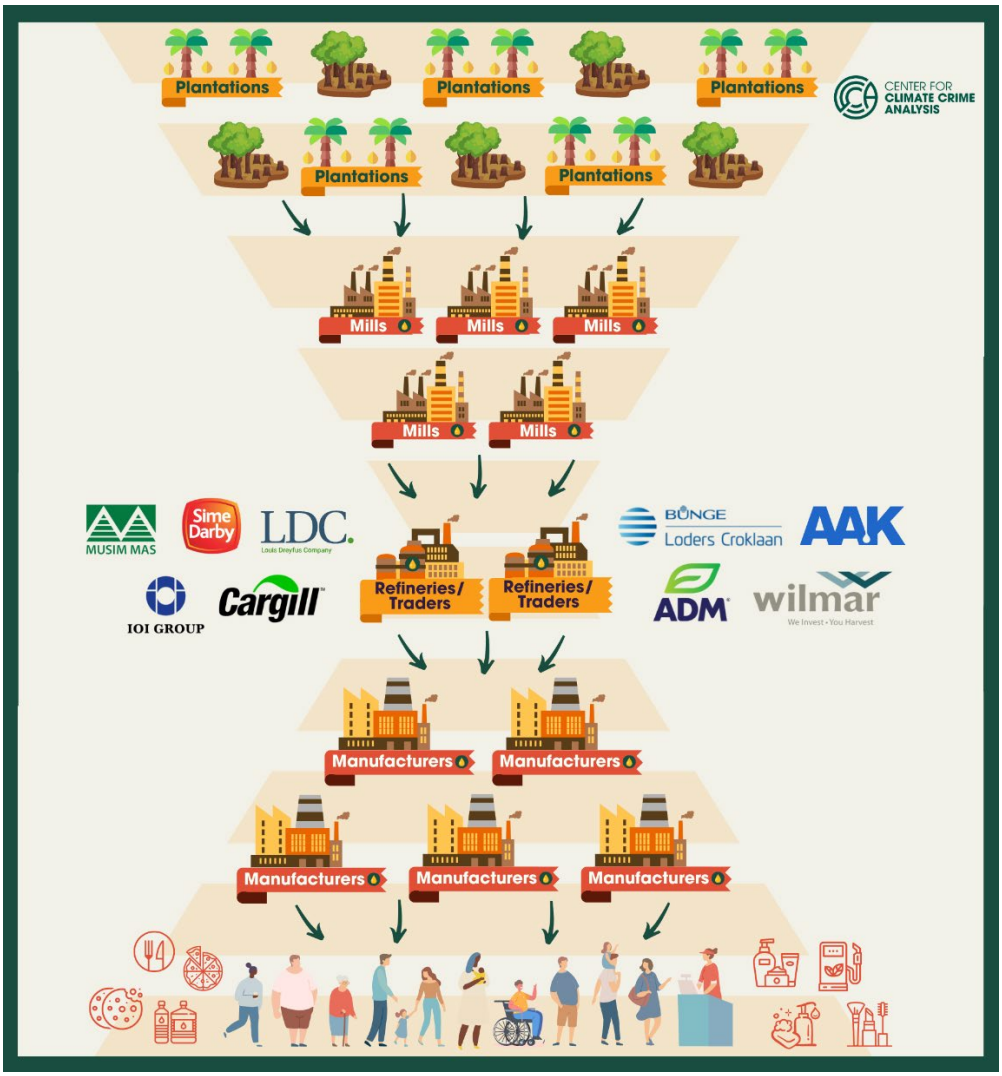
Addressing this impact is of particular concern given the potential future impact of palm oil expansion on the Amazon rainforest in Peru: **Peru has one of the largest reserves of forest suitable for palm oil globally[51] and, approximately 95% of palm oil plantations are located in its Amazon rainforest.[52]** Despite these negative consequences, big Peruvian producers are increasingly placing on the international market the crude palm oil extracted from palm fruit bunches originating from illegally deforested areas in the Amazon region.

3.2. LDC Sources Palm Oil from SAP and Ocho Sur Group's Plantations

3.2.1. LDC's Role in the Global Palm Oil Supply Chain

LDC is a major global palm oil trader and processor,[53] and is involved in approximately 11% of global oilseed flows, including palm oil, delivering oilseeds to over 40 major markets around the world.[54] Due to the characteristics of the palm oil supply chain, shown simply in the image below, just a small group of very large multinational companies refines, processes and trades palm oil from thousands of mills. It must be noted that refining and trading is the most concentrated part of the supply chain, where the palm oil produced sources a conspicuous number of consumer goods companies,[55] reaching a countless number of consumers.[56]

[49] DEFENSORÍA DEL PUEBLO, Deforestación por cultivos agroindustriales de palma aceitera y cacao Entre la ilegalidad y la ineficacia del Estado, 2017, p. 8.
[50] DEVIDA, Fortalecimiento de la cadena de valor de la palma aceitera en el desarrollo alternativo integral y sostenible, 2018, p. 20.
[51] For a total of 458,000 km^2; see, FURUMO, P. R. and MITCHELL AIDE, T., Characterizing commercial oil palm expansion in Latin America: land use change and trade, in *Environ. Res. Lett.* 12 024008, 2017.
[52] SPDE, CDP, Análisis situacional de los commodities peruanos con riesgos a la deforestación al 2020, 2020, p. 14.
[53] INTERNATIONAL INSTITUTE FOR SUSTAINABLE DEVELOPMENT, Global Market Report: Palm Oil, 2019, p. 5.
[54] LDC, Business Lines. Grains & Oilseeds.
[55] Among others, Mondelēz International, Kellogg's, Mars, Unilever, Nestlé. CHAIN REACTION RESEARCH (CRR), NDPE Policies Cover 83% of Palm Oil Refineries; Implementation at 78%, 28 April 2020.
[56] GREENPEACE, Moment of Truth, 2018. WWF, Palm oil scorecard; FOREST500, Company rankings.



Overview of palm oil supply chain (Source: CCCA)

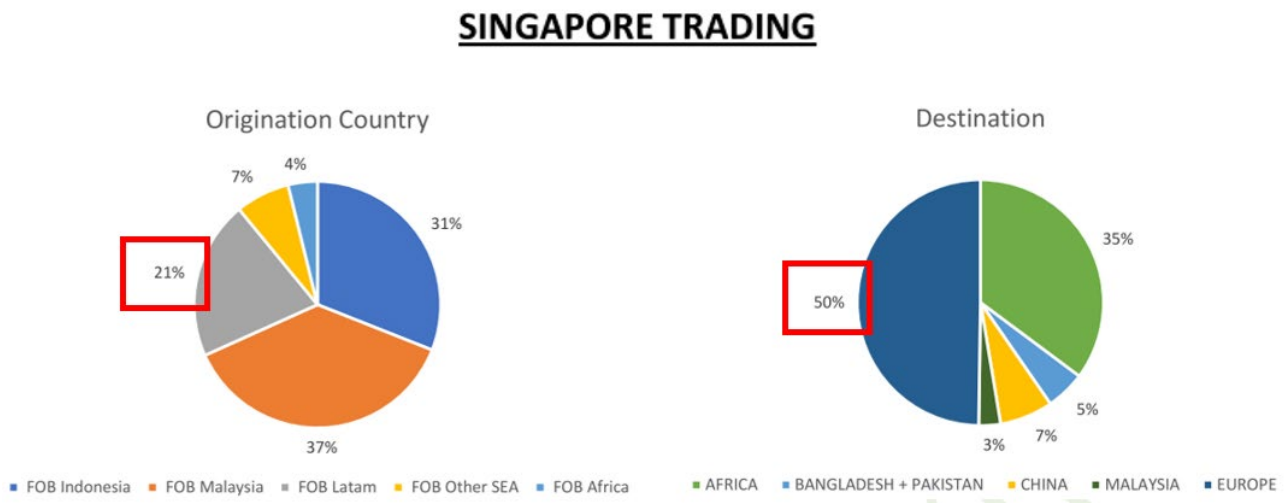
The market concentration illustrated above influences the power dynamic between refiners/traders and growers; refiners/traders depend on supplies received from third-party oil palm growers,[57] while **a major trader—such as LDC—has important leverage on growers and mills, including in respect of the adoption and enforcement of sustainability commitments**.[58] For this reason, the implementation by refiners/traders of policies (such as "No Deforestation, No Peat and No Exploitation" or "NDPE")[59] has the potential to influence growers too.[60] This happens especially when refiners/traders take measures to exert their influence, and suspend their business relationship with growers who do not comply with NDPE policies, exposing them to market access risks.[61]

LDC does not own plantations or mills, although it does own two palm oil refineries in Indonesia.[62] Mills supplying crude palm oil to LDC's refineries in Indonesia are considered

[57] Growers whose plantations are not owned or controlled by the refiners.
[58] CRR, NDPE Policies Cover 83% of Palm Oil Refineries; Implementation at 78%, 28 April 2020.
[59] Including Free, Prior and Informed Consent (FPIC) for indigenous and other local communities, zero burning, preventing poor working conditions, and preserving High Conservation Value (HCV) areas, High Carbon Stock (HCS) areas and peatlands. CRR, NDPE Policies Cover 83% of Palm Oil Refineries; Implementation at 78%, 28 April 2020.
[60] CRR, NDPE Policies Cover 83% of Palm Oil Refineries; Implementation at 78%, 28 April 2020.
[61] CRR, NDPE Policies Cover 83% of Palm Oil Refineries; Implementation at 78%, 28 April 2020.
[62] One is located in Lampung, Southern Sumatra, which has a processing capacity of 2,000 tons of palm oil per day, for refining and fractionation; and the other is integrated in the complex in Balikpapan, East Kalimantan,

"direct suppliers".[63] However, **LDC also receives palm oil supplies indirectly from trading partners,[64] managed by 80 LDC's Commercial offices globally**, including in Singapore, in Switzerland, and in several EU countries.[65] **In this case, the suppliers are considered "indirect".**[66] According to LDC's mill list, SAP is one such "indirect supplier".[67]

According to the latest data shared by LDC, the total volume of palm oil, palm kernel oil and related product sourced by LDC in the year 2021 is 1,866,416 tons.[68] This breaks down to 59.60% sourced by LDC Indonesian refineries, and **40.40% sourced by its Commercial office in Singapore.[69] Thus, this Commercial office is sourcing approximately 746,566 tons of palm oil.** Latin America is an important source of palm oil for the Singapore Commercial Office, accounting for 21% (approximately 156,778 tons of palm oil). **Since 50% of LDC's palm oil traded by its Singapore Commercial Office—sourced from indirect suppliers—goes to Europe,[70] this would represent approximately 373,283 tons of palm oil.**



Figures of LDC's Singapore Commercial office (Source: LDC)[71]

3.2.2. LDC'S PURCHASE OF PALM OIL FROM SAP AND THE OCHO SUR GROUP

As mentioned above, **LDC acknowledges buying crude palm oil through its Commercial office in Singapore from the Peruvian extraction plant SAP.**[72]

comprising a palm oil refinery, bulking terminal and a deep port. LDC also owns a biodiesel plant situated beside Lampung Refinery. Furthermore, LDC has a bulking station located in Panjang, Bandar Lampung, Southern Sumatra. The two refineries of Lampung and Balikpapan make LDC one of the 25 largest refiners in Indonesia and Malaysia, the region where most refineries are located. See: LDC, Palm Sustainability Progress Implementation Report, September 2022, p. 2; LDC, LDC in Indonesia; CRR, NDPE Policies Cover 83% of Palm Oil Refineries; Implementation at 78%, 28 April 2020.

[63] LDC, Palm Sustainability Progress Implementation Report, September 2022, p. 2.
[64] LDC, Palm Sustainability Progress Implementation Report, September 2022, p. 2.
[65] LDC, Who we are. Locations.
[66] LDC, Palm Sustainability Progress Implementation Report, September 2022, p. 2.
[67] LDC, H1 2020 Palm Traceability to Mill, Oct 2020, p. 16. LDC, H1 2021 Supply Chain Traceability, Dec 2021, p. 29.
[68] LDC, RSPO Annual Communication of Progress 2021, p. 3.
[69] LDC, Palm Sustainability Progress Implementation Report, October 2020, p. 2.
[70] LDC, H1 2021 Supply Chain Traceability, December 2021, p. 6.
[71] LDC, H1 2021 Supply Chain Traceability, December 2021, p. 6.
[72] LDC, H1 2020 Palm Traceability to Mill, Oct 2020, p. 16. LDC, H1 2021 Supply Chain Traceability, Dec 2021, p. 29.

LDC
Louis Dreyfus Company

H1 2020 Palm Traceability to Mill

The list identifies mills supplying LDC Indonesia Refineries and Singapore Commercial operations.
Mills supplying the LDC Indonesia refineries are considered direct.
Mills supplying Commercial Trading operations are indirect. A summary list of the trading partners is also below.
The data is based on self-declaration information or public dashboards, and is gathered bi-annually.
Best efforts are made to ensure accuracy.

Parent Company Name	Mill Name	Latitude	Longitude	Status
BORNEO SAMUDERA SDN BHD	SERUDUNG POM	4.411679	117.4927	indirect
SERVICIOS AGRARIOS DE PUCALLPA S.A.C	SERVICIOS AGRARIOS DE PUCALLPA S.A.C	8.38222	74.52972	indirect
SETIA KAWAN KILANG KELAPA SAWIT SDN BHD	SETIA KAWAN KILANG KELAPA SAWIT SDN BHD	5.441292	100.6274	indirect
BUDAYA POTENSI	SG RUKU OIL PALM PLANTATION SDN BHD	5.56367	117.9003	indirect

LDC H1 2020 palm traceability to mill (Source: LDC)[73]

LDC
Louis Dreyfus Company

H1 - 2021 Supply Chain Traceability

This report provides traceability information on LDC's global palm operations, for the first half of 2021. This includes LDC Indonesia refineries, Singapore commercial trading operations, LDC India and LDC packaging business.

Mills supplying the LDC Indonesia refineries are considered direct, given our direct sourcing relations with oil palm mills in producing countries. The rest are sourced through our trading partners and considered indirect.

NDPE IRF profiles of our two Indonesia refineries are disclosed. Lists of trading partners are also included.

The data is based on self-declaration information or public dashboards and is gathered bi-annually.

Best efforts are made to ensure accuracy.

Parent Company Name	Mill Name	Latitude	Longitude	UML
FGV Palm Industries Sdn Bhd	Serting	2.9004	102.4460	PO1000001899
FGV Palm Industries Sdn Bhd	Serting Hilir	2.9978	102.4781	PO1000006998
Servicios Agrarios de Pucallpa S.A.C	Servicios Agrarios de Pucallpa S.A.C	-8.3822	-74.5297	NA

LDC H1 2021 palm traceability to mill (Source: LDC)[74]

SAP, in turn, processes oil from palm fruits grown by two related companies: OSP and OSU. These three companies are part of the same holding, Peruvian Palm Holdings, and together constitute the "Ocho Sur Group".[75] The Ocho Sur Group is a Peruvian entity well-known at the local and international level for the human rights and environmental violations carried out since the beginning of its activities, which were in turn the continuation of the illicit conduct already put in place by the previous owners of the plantations, PdU (now OSU) and PdP (now OSP) (see Section 3 below). For the sake of clarity, in this **document will refer jointly to "PdU (now OSU)" and "PdP (now OSP)", based on the findings of Peruvian public authorities** that rejected recent requests for environmental certification by Ocho Sur Group entities **referring to** ***"the company OCHO SUR U S.A.C., then Plantaciones de Ucayali S.A.C."***,[76] and "***Ocho Sur P S.A.C., then Plantaciones de Pucallpa S.A.C."***.[77]

[73] LDC, H1 2020 Palm Traceability to Mill, October 2020, p. 16.
[74] LDC, H1 2021 Supply Chain Traceability, December 2021, p. 29.
[75] OCHO SUR, Acerca de nosotros.
[76] MINAGRI, Rejection PAMA certification of Ocho Sur U SAC, 15 October 2019.
[77] MINAGRI, Rejection PAMA certification of Ocho Sur P SAC, 23 January 2020.

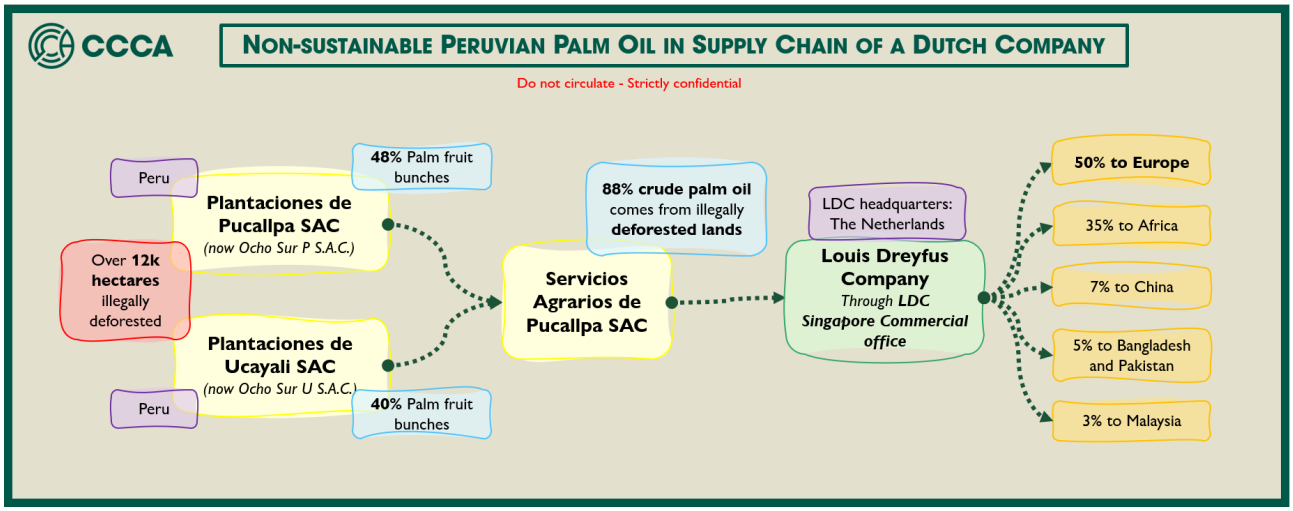
SAP owns and operates a palm oil extraction plant built in Peru on land originally acquired in 2012 by PdP[78] (now OSP), having started its operations in 2020.[79] **The vast majority of the palm fruit bunches that SAP processes come from two related companies that are also part of the Ocho Sur Group**: 48% of the extraction plant's total processing capacity comes from OSP (formerly PdP); and another 40% comes from OSU (formerly PdU).[80] **As a result, 88% of palm fruit bunches received by SAP is sourced from areas illegally deforested by the former PdP (now OSP) and the former PdU (now OSU).**

As will be demonstrated below (Section 3.3 and 3.4), **OSP** (former PdP) **and OSU** (former PdU) **operate without the necessary environmental certifications from the Peruvian government** due to the illegal deforestation and human rights violations in which they are involved.

Proveedores	Área de Cultivo	% de abastecimiento
OCHO SURA P S.A.C.	6 056,7 has	48,0%
OCHO SUR U S.A.C.	5 021,6 has	40,0%
Federación de Palmicultores del Programa Alianza Productiva Estratégica (FEDEPAPE) y terceros (agricultores que cuentan con sus campos de cultivo de palmas aceiteras)	1 500 aprox.	12,0%

Fuente: Folio 251 del Registro N° 51186-2018, Evap Servicios Agrarios de Pucallpa S.A.C.[29]

List of suppliers of palm fruit bunches to SAP (Source: DGAAMI)[81]



Non-sustainable Peruvian palm oil in LDC's supply chain (Source: CCCA)

In addition, according to LDC's public information, the company **Sol de Palma SA, appears as LDC's trading partner during 2020 and 2021.**[82] **Sol de Palma SA, in turn, has been identified by Peruvian civil society organizations as sourcing crude palm oil directly from SAP.**[83]

[78] SUNARP, Inscripción de sección especial de predios rurales, N° Partida 11043420, 18 May 2012, p. 4.
[79] OCHO SUR, Acerca de nosotros.
[80] DGAAMI, Informe técnico legal 489-2018-PRODUCEDVMYPE-IDGAAMI-DEAM, 19 June 2018, p. 14.
[81] DGAAMI, Informe técnico legal 489-2018-PRODUCEDVMYPE-IDGAAMI-DEAM, 19 June 2018, p. 14.
[82] LDC, H1 2020 Palm Traceability to Mill, October 2020, p. 38.
[83] SPDE, Análisis de actores de la cadena de palma aceitera en el Perú para promover una palma sostenible, 2021, Anexo 7.

TRADING PARTNERS
PT SINAR JAYA INTI MULYA
SIME DARBY OILS TRADING (LABUAN) LIMITED
SOL DE PALMA S.A
THIN OIL PRODUCTS, LLC

Trading Company Name
Pasternak Baum & Co
Reuse Trading
Sime Darby Oils Pasir Gudang Refinery Sdn Bhd
Sogescol
Sol De Palma S.A.

LDC H1 2020 palm traceability to mill and LDC H1 2021 palm traceability to mill (Source: LDC)[84]

Sol de Palma SA[85] **is one of the top Peruvian palm oil exporters.**[86] It is formed by a consortium of six crude palm oil processors. Among them is Oleaginosas Amazónicas SA ("OLAMSA"), which owns an extraction plant for the processing, industrialization and commercialization of crude palm oil in Ucayali.[87] In 2017, OLAMSA informed the *Ministerio de la Producción* ("PRODUCE") (Peruvian Ministry of Production) that OSP (former PdP) and OSU (former PdU) were listed among its suppliers of palm fruit bunches. Since the fresh fruit bunches of OSP and OSU are cultivated on illegally deforested areas, **the palm oil exported by the consortium Sol de Palma SA is also contaminated through the supply chain of OLAMSA.**[88]

Importantly, **Sol de Palma SA is also mentioned in the internal LDC grievance mechanism, establishing a link between Sol de Palma SA and the Ocho Sur Group.** This indicates that Sol de Palma SA also exports palm oil produced by the Ocho Sur Group to other international actors, including LDC.[89] According to data shared by the *Ministerio de Comercio Exterior y Turismo* – MINCETUR (Peruvian Ministry of Foreign Trade and Tourism), **Sol de Palma SA has exported over 132,164 tons of palm oil from 2013 to 2021, of which 13,000 tons were exported to the Netherlands between 2020 and 2021**, hence a decision by the Dutch NCP on this case is particularly significant given the close commercial ties of all the actors involved to the Netherlands.

3.3. PALM OIL PRODUCED BY THE OCHO SUR GROUP AND PROCESSED BY SAP COMES FROM ILLEGALLY DEFORESTED LANDS

The palm oil produced by the Ocho Sur Group—through the plantations operated by OSU (former PdU) and OSP (former PdP) and processed by the extraction plant SAP—**comes from land where over 12,000 hectares were cleared, 91% of it being primary forest.**[90] The illegality of the deforestation derives from the violation of Peruvian laws and regulations, such as the Political Constitution of Peru,[91] the Law of Sustainable Use of Natural

[84] LDC, H1 2020 Palm Traceability to Mill, October 2020, p. 38.
[85] JUNPALMA, Buenas Prácticas en la Industria de Producción de Aceite de Palma y Derivados, 2018, p. 41.
[86] SPDE, Análisis de actores de la cadena de palma aceitera en el Perú para promover una palma sostenible, 2021, p. 35.
[87] PRODUCE, Resolución Directoral 428-2017-PRODUCE/DVMYPE-I/DGAAMI, 31 October 2017. JUNPALMA, Productos.
[88] PRODUCE, REG 00133241-2017, Anexo 1-C, p. 162 PDF.
[89] For further information on the grievance mechanism, see Section 4.1 of this specific instance.
[90] On the definition of "primary forest", see footnote 105 of this complaint.
[91] *Constitución Política del Perú*, Articles 67 and 68.

Resources,[92] the General Law on the Environment,[93] the Law on the System of Evaluation of Environmental Impact and its Regulation,[94] the previous[95] and current Forestry and Wildlife Law,[96] as well as the Regulation on the Environmental Management of the Agrarian Sector,[97] among others. These laws provide that before carrying out any deforestation and starting any agricultural activities, the companies should complete the *Estudio de Levantamiento de Suelos* (Soils Survey Study).[98] When the *Estudio de Levantamiento de Suelos* concludes that the soil is classified as primary forest, **it is not possible to change the use of the land or its *capacidad de uso mayor* (increased land use capacity) from forest to agriculture, since primary forest is protected and needs be preserved under the Political Constitution of Peru**.

Neither PdU and PdP, nor OSU and OSP have ever completed the requisite *Estudio de Levantamiento de Suelos* (Soils Survey Study), which would have revealed the presence of primary forest where they developed their agricultural activity, as was later acknowledged by Peruvian public authorities. As a result, they have never received the authorization to change the *capacidad de uso mayor* (increased land use capacity), which is in turn an unavoidable prerequisite to obtain the environmental permits to carry out their business activity on those lands. Yet, extensive unlawful deforestation took place over the years in the complete disregard of the constitutional protection awarded to the primary forest by the Peruvian legal system. Even after the change in ownership of the plantations and to date, the Ocho Sur Group has done nothing to repair the immeasurable environmental harm caused to the Peruvian Amazon—only around 7% of OSU and OSP properties are still covered in forest, well below the 30% required by Peruvian law even for lands with agricultural use.[99]

The illegality of the deforestation is clear from the remote sensing technology evidence and the decisions of international and Peruvian authorities set out below. Indeed, in 2019 and 2020 the *Ministerio de Agricultura y Riego* ("MINAGRI") (Peruvian Ministry of Agriculture and Irrigation) twice refused to issue environmental certifications to OSU and OSP due to the deforestation and noncompliance with environmental laws. Despite this, PdU (former OSU) and PdP (former OSP) have persistently failed to comply with orders to suspend their operations due to these violations.

3.3.1. Remote Sensing Technology Demonstrates Scale of Deforestation

Complainants have analyzed information from different entities with extensive experience in remote sensing technologies. The data gathered demonstrates the

[92] *Ley Orgánica para el Aprovechamiento Sostenible de los Recursos Naturales*, N° 26821 of 1997, Articles 2 and 3.
[93] *Ley General del Ambiente*, N° 28611 of 2005, Articles 1, 9, 24, 25, 26, and 142.
[94] *Ley del Sistema Nacional de Evaluación de Impacto Ambiental* ("Ley del SEIA"), N° 27446 of 2001, Articles 3 and 12; *Reglamento de Ley del SEIA*, Decreto Supremo N° 019-2009-MINAM, Articles 1 and 3.
[95] *Ley Forestal y de Fauna Silvestre*, N° 27308 of 2002, Article 26.
[96] *Ley Forestal y de Fauna Silvestre*, N° 29763 of 2011, Articles 37 and 38; and its Regulation, *Reglamento de Gestión Forestal*, Decreto Supremo N° 018-2015-MINAGRI, Article 124 and 207.
[97] *Reglamento para la Gestión Ambiental del Sector Agrario ("RGASA")*, Decreto Supremo 019-2012-AG, Articles 40, 45, 46, and 48.
[98] If the study concludes that the soil could be used for agricultural purposes, it is necessary to apply for the change of the major use of the land (*capacidad de uso mayor*) before being allowed to start an agricultural activity.
[99] MINAGRI, Rejection PAMA certification of Ocho Sur P. SAC, 23 January 2020; MINAGRI, Rejection PAMA certification of Ocho Sur U SAC, 15 October 2019.

expansion over the time of the two large-scale palm oil projects operated by PdU (now OSU) and PdP (now OSP) in the department of Ucayali. According to the information collected, these projects began in late 2011 occupying nearly 12,200 hectares of land, of which over 12,000 hectares were illegally deforested.[100]

The images below show the location of the plantations in the Amazon region where the palm oil project has been operated by PdP (now OSP) and PdU (now OSU) since its inception (Image 1); the massive amount of deforestation that took place on the site of the plantations and surrounding areas since the purchase of the land by PdP (now OSP) and PdU (now OSU) up until 2022 (Image 2); and the evolution of the deforestation from 2010 to 2021, on both plantations. This shows that the deforestation in the area started with PdP and PdU and continued after OSP and OSU took over operation of the plantations, including the necessary infrastructure to facilitate the palm oil business (Image 3 and Image 4).

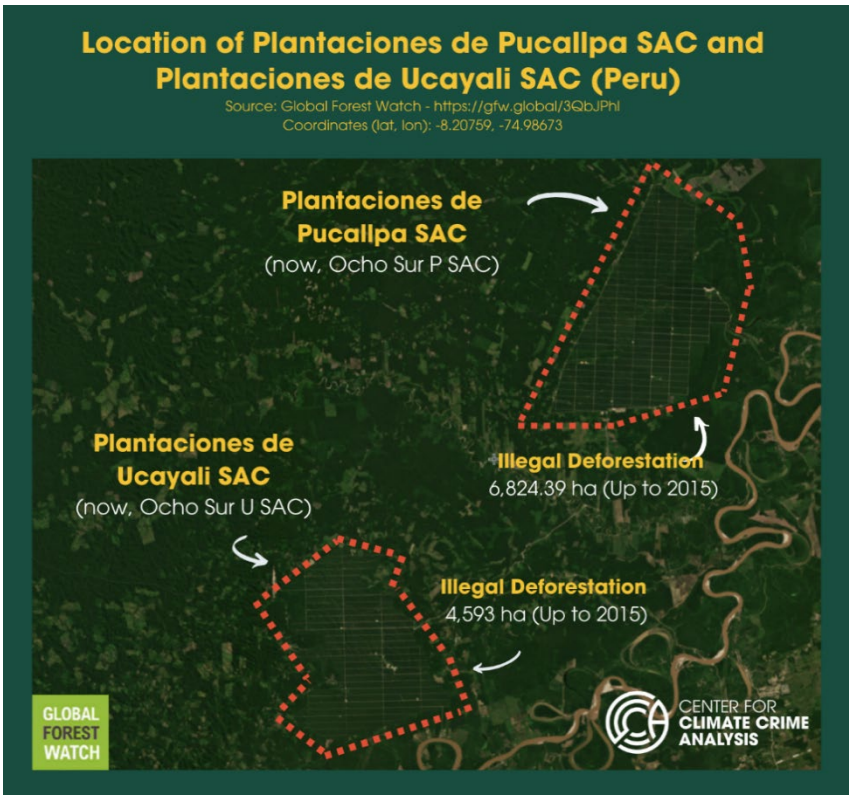


Image 1. Location of PdP and PdU (Source: CCCA, data from MINAGRI and Global Forest Watch)

[100] MAAP, MAAP#4: Plantaciones de palma aceitera a gran escala causan deforestación del bosque primario en la Amazonía Peruana (primera parte: Nueva Requena), 2015; MAAP, MAAP#41: Confirming large-scale oil palm deforestation in the Peruvian Amazon, 2016. Similarly, DEFENSORÍA DEL PUEBLO, Deforestación por cultivos agroindustriales de palma aceitera y cacao Entre la ilegalidad y la ineficacia del Estado, 2017, p. 8;

Image 2. Comparison of tree cover loss in the area of PdP and PdU (Source: CCCA, data from Global Forest Watch)[101]

[101] For more information on the methodology, see GLOBAL FOREST WATCH, Tree Cover Loss, 2022.

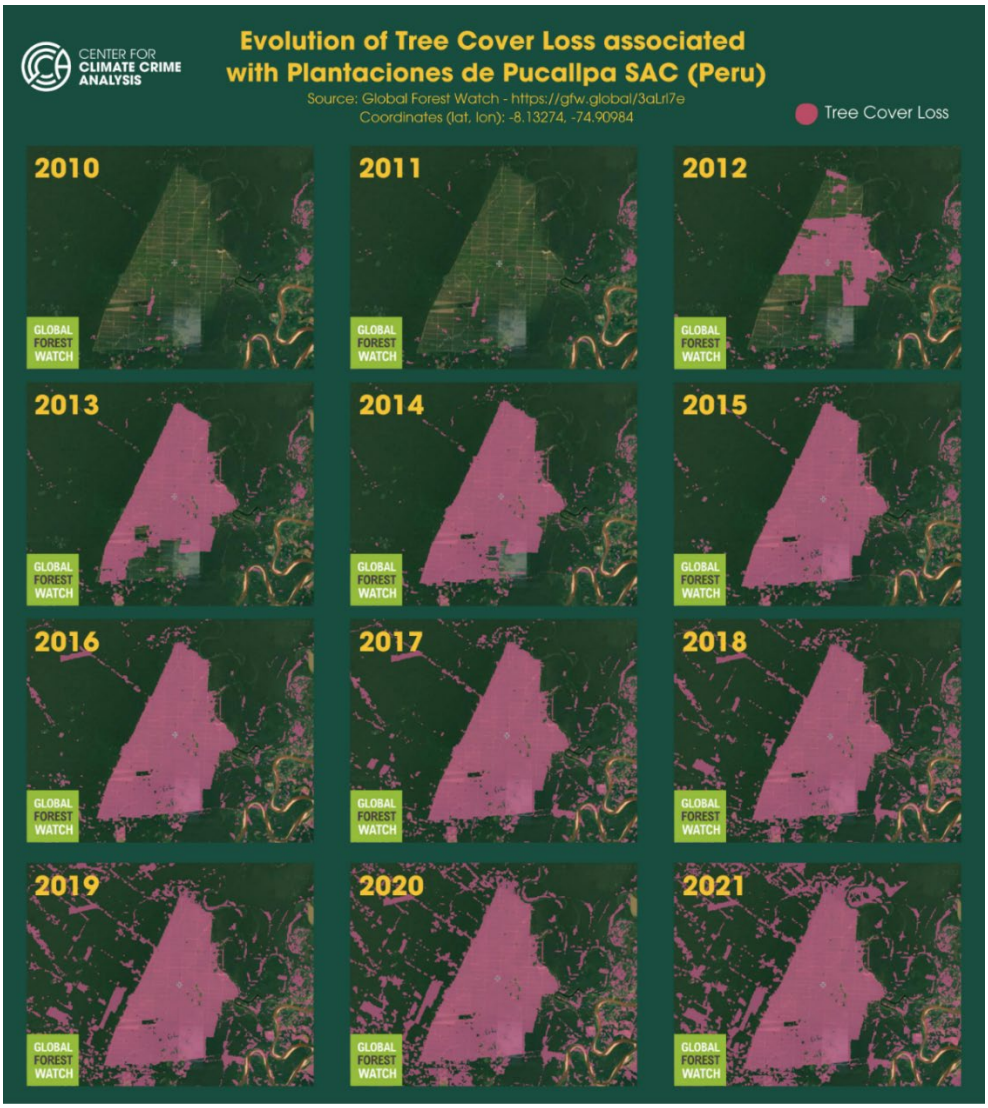


Image 3. Evolution of the tree cover loss associated with PdP (Source: CCCA, data from Global Forest Watch)[102]

[102] For more information on the methodology, see GLOBAL FOREST WATCH, Tree Cover Loss, 2022.

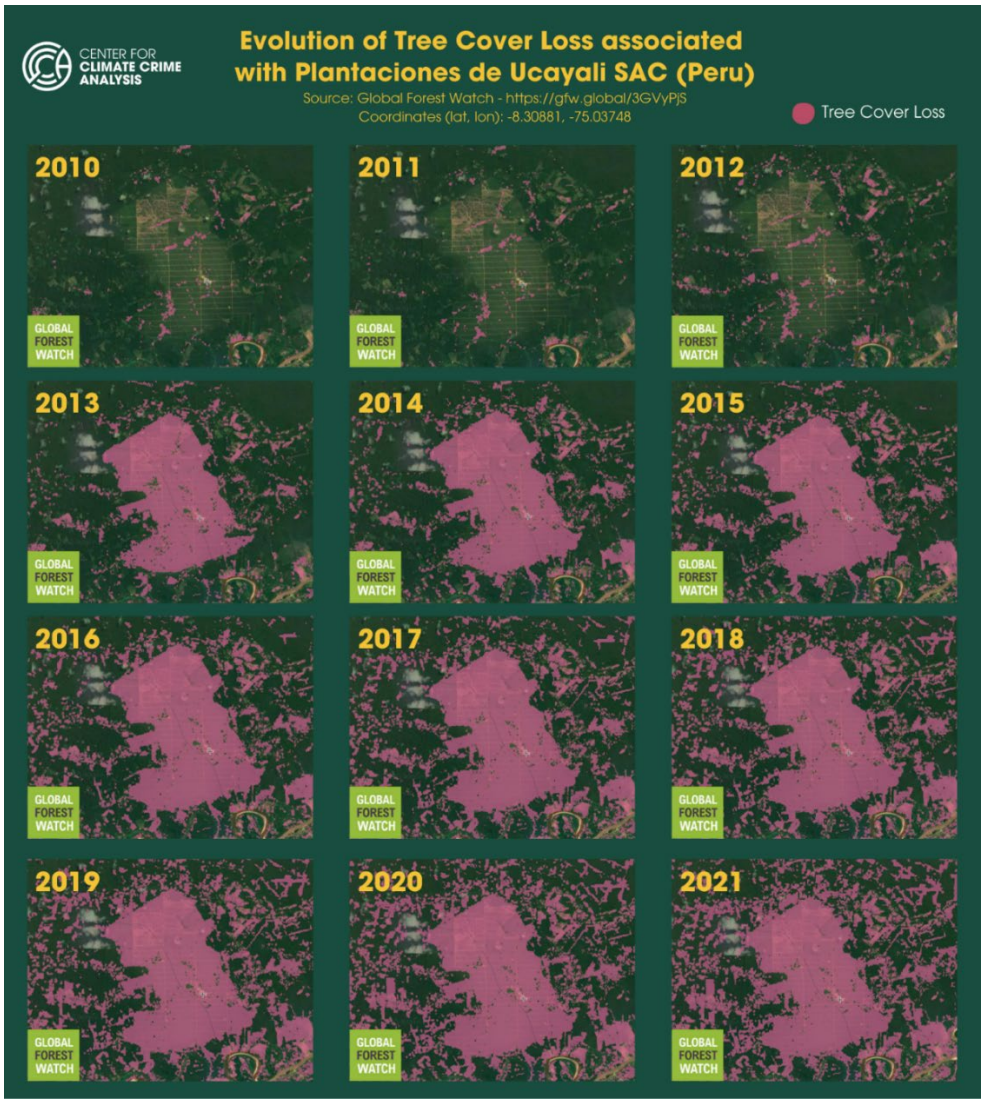


Image 4. Evolution of the tree cover loss associated with PdU (Source: CCCA, data from Global Forest Watch)[103]

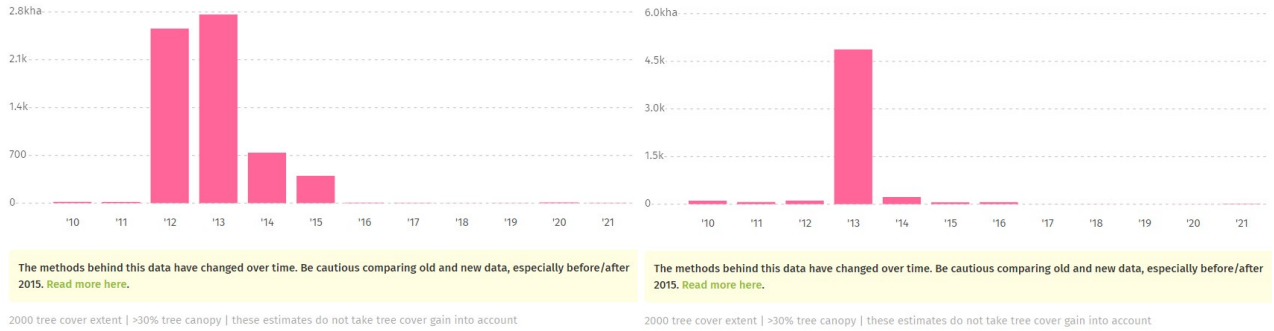
As outlined below, the large-scale deforestation detected over more than a decade has had a major impact on the area where the plantations were developed, with significant effects in terms of tree cover loss and greenhouse gas emissions.

i) Forest Loss from 2010 to 2021

From 2010 to 2021, in the area occupied by PdP (now OSP) the tree cover loss amounted to approximately 6,530 ha, of which 89% was humid primary forest—about 5,810 ha, with peaks in 2012 and 2013. For the same period, in the area occupied by PdU (now OSU) the tree cover loss represented approximately 5,520 ha, of which 93% was humid primary forest—about 5,140 ha with a peak in 2013. In both cases, deforestation includes the plantation itself, where the majority took place, and in immediately surrounding areas—such us infrastructure to support the plantation. Hence, to date scientific findings show collectively 12,050 hectares of deforestation, of which 10,950 hectares were "primary forest", defined as "mature natural humid tropical forest that has not been completely

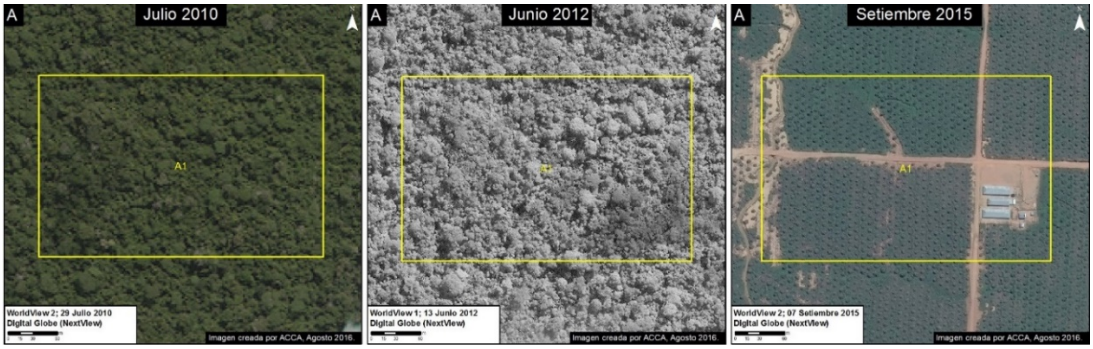
[103] For more information on the methodology, see GLOBAL FOREST WATCH, Tree Cover Loss, 2022.

cleared and regrown in recent history".[104] The loss of such primary forest has dramatic environmental impact given the consequent loss of biodiversity in the region and the approaching of the Amazon tipping point. Indeed, as noted above, **primary forest is protected and needs be preserved under the Political Constitution of Peru which provides that "the State is obliged to promote the conservation of biological diversity and protected natural areas".**[105]



Forest loss in PdP (6,530 ha) and PdU (5,520 ha) from 2010 to 2021 (Source: Global Forest Watch)

Satellite images below show the evolution of the deforestation of extensive areas of primary forests between July 2010 to September 2015 caused by the palm oil crops of **PdP.**[106]



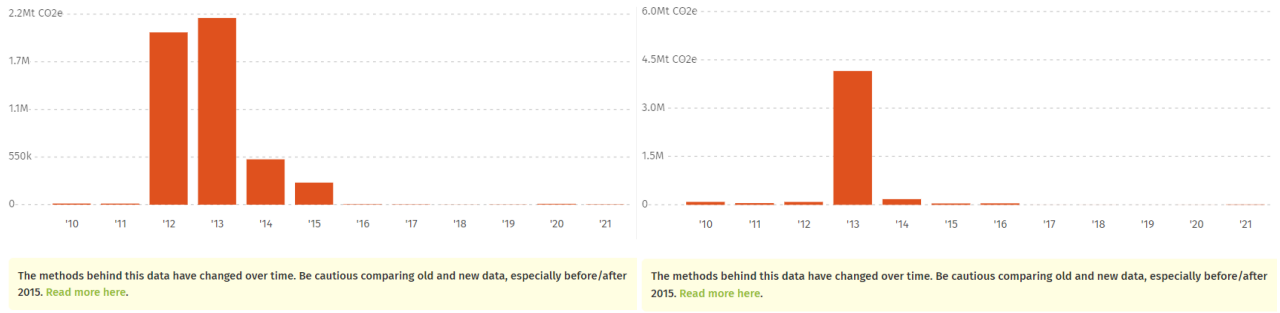
Replacement of primary forest by the oil palm plantation owned by PdP (Source: MAAP)[107]

ii) Forest-Related Greenhouse Gas Emissions from 2010 to 2021

Between 2010 and 2021, around 4.97Mt of CO_2e was emitted in this period as a result of the tree cover loss in the area occupied by PdP (now, OSP)—plantations and close surroundings. In the case of the area of PdU (now, OSU) around 4.67Mt of CO_2e was emitted

[104] On definition of "primary forest": WORLD RESEARCH INSTITUTE (WRI) INDONESIA, Global Forest Watch Technical Blog: Definition and Methodology of 2019 Forest Loss Data in Indonesia, 26 June 2020, referring to Turubanova et al., Ongoing primary forest loss in Brazil, Democratic Republic of the Congo, and Indonesia, in Environmental Research Letters, Volume 13, Number 7, 2018. On definition of "tree cover loss": GLOBAL FOREST WATCH, Tree Cover Loss, 2022.
[105] *Constitución Política del Perú*, Article 68.
[106] MAAP, MAAP#41: Confirming large-scale oil palm deforestation in the Peruvian Amazon, 2016.
[107] MAAP, MAAP#41: Confirming large-scale oil palm deforestation in the Peruvian Amazon, 2016.

from 2010 to 2021 as a result of tree cover loss, including plantations and close surroundings.[108]



Forest-Related Greenhouse Gas Emissions in the area of PdP and PdU from 2010 to 2021

3.3.2. ADMINISTRATIVE, JUDICIAL AND QUASI-JUDICIAL FINDINGS CONFIRM ILLEGAL DEFORESTATION AND VIOLATIONS OF PERUVIAN LAW

A range of findings by Peruvian administrative and judicial authorities have **confirmed the extent of the deforestation** by PdU (now OSU) and PdP (now OSP), and the fact that this tree cover loss was—and continues to be—in **violation of local environmental standards**. However, these companies have persistently failed to comply with orders to suspend their operations.

In 2014 and 2015, **the MINAGRI** (Peruvian Ministry of Agriculture and Risk) **determined that PdU (now OSU) and PdP (now OSP) had cleared approximately 11,400 hectares by August 2014 and had failed to secure the relevant forest clearance permits** and conduct the appropriate social and environmental impact assessments.[109] The Ministry consequently **ordered the suspension of the operations** and issued a fine.[110]

Relevant excerpts of the decision against PdU (now Ocho Sur U SAC):

> *"8.3.- (…) information is available in relation to the percentage of forest clearing with respect to the total area of the Fundo Zanja Seca of the Company **PLANTACIONES DE UCAYALI S.A.C.** (4,759.77 ha), showing that for the permanent installation of oil palm cultivation, clearing began with intensity at the end of July 2012, having as of August 22, 2014 a **clearing of approximately 4,593 hectares, which represents 96.50%** of the total area.*
>
> *(…) **Resolved**: Article 1°.- **To order, as a preventive measure, the company PLANTACIONES DE UCAYALI S.A.C. the cessation of their agricultural activities** (…) as long as it does not present to this General Directorate the Classification of Lands for its Major Use Capacity, corresponding to the area of the aforementioned property".*[111]

Relevant excerpts of the decision against PdP (now Ocho Sur P SAC):

[108] GLOBAL FOREST WATCH, *Forest-Related Greenhouse Gas Emissions from 2010 to 2021.*
[109] MINAGRI, Order to stop Plantaciones de Ucayali SAC's activities, 9 December 2014. See also, MINAGRI, Fine applied to PdU for not allowing an inspection, 15 October 2015.
[110] MINAGRI, Order to stop Plantaciones de Ucayali SAC's activities, 9 December 2014. MINAGRI, Order to stop PdP's activities, 4 September 2015. See also: MINAGRI, Fine applied to PdP for not allowing an inspection, 26 November 2015.
[111] MINAGRI, Order to stop Plantaciones de Ucayali SAC's activities, 9 December 2014 (translation by the complainants).

> ***9.3.-*** *(…) the company* ***PLANTACIONES DE PUCALLPA*** *has intensively started agricultural activity in 6,845.43 hectares to plant oil palm, (…) until August 25 of this year (2014) (two days before the inspection carried out by the DGAAA), the aforementioned company* ***had cleared almost all of the land it owned, reaching 99.69%, which means a total of 6824.39 hectares.***
>
> *(…)* ***Resolved****: Article 1°.-* ***To order, as a preventive measure, the company PLANTACIONES DE PUCALLPA S.A.C. the cessation of its intensive agricultural activities*** *(…) as long as it does not present the Classification of Lands by its Major Use Capacity approved by the competent authority, corresponding to said area.*[112]

In 2017, after several administrative decisions against the palm oil plantations, the ***Cuarto Juzgado de Investigación Preparatoria Nacional*** (Fourth National Preparatory Investigation Court) issued a **precautionary measure ordering the suspension of all the activities** carried out by PdP in the plantations, including those of logging and deforestation.[113] However, the judicial decision was never complied with by PdP.

In the same year, the ***Defensoría del Pueblo of Peru*** (Peruvian Ombudsman) **reported that large-scale cultivation of oil palm by PdU (now OSU) and PdP (now OSP) were responsible for extensive deforestation.** In particular, it mentioned that

> *"during the inspections carried out between the years 2014 - 2015, the following was observed:* ***Plantaciones de Pucallpa S.A.C., deforested an area of 6,824.39 ha*** *of the Caseríos Naranjal and Unión Progreso, located in the district of Nueva Requena, province of Coronel Portillo, department of Ucayali* (and) ***Plantaciones de Ucayali S.A.C. deforested an area of 4,593.00 ha*** *of the Fundo Zanja Seca, located in the district of Nueva Requena, province of Coronel Portillo, department of Ucayali",*[114]

On that occasion, the **Ombudsman also referred to the situation of the indigenous community of Santa Clara de Uchunya** and the impact to which it was exposed by such activities.[115]

Although the decisions identified the actors responsible for the illegal deforestation and other environmental violations, no enforcement actions were taken to stop these activities due to failure by some local officials to sanction the companies and halt their activities, which allowed PdU (now OSU) and PdP (now OSP) to continue engaging in their unlawful behavior. Peruvian authorities have since sanctioned public officials for their failures that enabled the ongoing unlicensed operations and environmental impact. In 2019, the Peruvian ***Contraloría General de la República*** (Peruvian Comptroller General of the Republic) **established the responsibility of several public officers for the failure to control and interrupt the palm oil activities carried out by PdU (now OSU) due to the company's lack of the necessary environmental certification.**[116] In particular, the Comptroller indicated that

> *"the* ***officials of the DGAAA of MINAGRI had sufficient, relevant, and timely information that the companies*** *Cacao del Perú Norte S.A.C. and* ***Plantaciones***

[112] MINAGRI, Order to stop PdP's activities, 4 September 2015 (translation by the complainants).
[113] CUARTO JUZGADO DE INVESTIGACIÓN PREPARATORIA NACIONAL DE PERÚ, Resolution N° 1, Expediente N° 00286-2017-1-5001-JR-PE-04, 15 December 2017.
[114] DEFENSORÍA DEL PUEBLO, Deforestación por cultivos agroindustriales de palma aceitera y cacao Entre la ilegalidad y la ineficacia del Estado, 2017, p. 8 (translation by the complainants).
[115] DEFENSORÍA DEL PUEBLO, Deforestación por cultivos agroindustriales de palma aceitera y cacao Entre la ilegalidad y la ineficacia del Estado, 2017, p. 8, 64 (translation by the complainants).
[116] CONTRALORÍA GENERAL DE LA REPÚBLICA, Subgerencia de Control del Sector Agricultura y Ambiente, Informe N° 691-2019-CG/AGR-AC, 2019. See also: Press release of the *Contraloría*.

> ***de Ucayali S.A.C. had started their operations after November 14, 2012, without having the corresponding Environmental Certification, violating the environmental regulations****; furthermore, said agricultural activities of intensive cultivation of cocoa and oil palm had been* ***causing significant negative impacts*** *that affected the environment and natural resources, due to the destruction of the primary forests that constitute the Forest Patrimony of the Nation".*[117]

Nonetheless, PdU (now OSU) has continued to operate in the area.

More recently, **Peruvian administrative authorities have confirmed that both OSP and OSU continue operating without the appropriate environmental authorizations.** Such licenses have been consistently denied due to the large-scale deforestation carried out on Ocho Sur Group's plantations by PdP and PdU, and the improper use of land classified as "forest" for its palm oil cultivation (*original: "tierras con capacidad de uso mayor forestal"*), which is prohibited by Peruvian law.[118]

Firstly, in 2019, the **MINAGRI** (Peruvian Ministry of Agriculture and Irrigation) **rejected a request from OSU to have the environmental certification** known as *Programa de Adecuación y Manejo Ambiental* - PAMA (Environmental Adaptation and Management Program), due to the large-scale deforestation that had taken place and the company's non-compliance with the Forestry and Wildlife Law.[119] In particular, the Ministry indicated that

> *"before the start of an agricultural activity, the beginning of large-scale deforestation is evident, in an area of 2,993 hectares that increased to 4,593 hectares in 2014. (…) In this sense,* ***the company OCHO SUR U S.A.C., then Plantaciones de Ucayali S.A.C., was obliged to demonstrate that at the time it carried out the clearing of the Fundo Zanja Seca, it already had a land use change authorization*** *(…)*
>
> *RESOLVED: Article 1.-* ***TO DENY the request for approval of the Program for the Adaptation and Environmental Management*** *of the Fundo "Zanja Seca" located in the districts of Nueva Requena and Curimaná, province of Coronel Portillo and department of Ucayali,* ***presented by the company OCHO SUR U S.A.C.,*** *by the grounds set forth in the consideration part of this Resolution, thus concluding this administrative procedure."*[120]

Secondly, in 2020, the **MINAGRI** (Peruvian Ministry of Agriculture and Irrigation) **rejected, once again, a request from OSP to have the environmental certification** known as *Programa de Adecuación y Manejo Ambiental* - PAMA (Environmental Adaptation and Management Program)[121] due to the large-scale deforestation carried out. The document concluded that the company did not comply with the Forestry and Wildlife Law. In particular the Ministry indicated that

> *"it is evident that a large-scale deforestation had begun (…) contrary to what is stated in article 26 of Law No. 27308, Forestry and Wild Fauna Law (in force in*

[117] CONTRALORÍA GENERAL DE LA REPÚBLICA, Informe N° 691-2019-CG/AGR-AC, 2019, and Press release (translation by the complainants).
[118] MINAGRI, Rejection PAMA certification of Ocho Sur P. SAC, 23 January 2020. MINAGRI, Resolución 0398-2019-MINAGRI-DVDIAR-DGAAA, 15 October 2019.
[119] MINAGRI, Rejection PAMA certification of Ocho Sur U SAC, 15 October 2019. This decision was confirmed in appeal; see, MINAGRI, Resolución 0013-2020-MINAGRI-DVDIAR, 9 November 2020.
[120] MINAGRI, Rejection PAMA certification of Ocho Sur U SAC, 15 October 2019 (translation by the complainants). This decision was confirmed in appeal; see, MINAGRI, Resolución 0013-2020-MINAGRI-DVDIAR, 9 November 2020 (translation by the complainants).
[121] This accreditation verifies that a specific company complies with a minimum environmental standard.

*2013) (…) **Ocho Sur P S.A.C., then Plantaciones de Pucallpa S.A.C., was obliged to demonstrate that at the time it cleared the forest in the Fundo "Tibecocha", it already had a land use change authorization** (…)*

*RESOLVED: Article 1.- **TO DENY the request for approval of the Program for the Adaptation and Environmental Management** of the Fundo "Tibecocha" located in the district of Nueva Requena, province of Coronel Portillo and department of Ucayali, **presented by the company Ocho Sur P S.A.C.,** on the grounds set forth in the consideration part of this Resolution, thus concluding this administrative procedure.*[122]

The deforestation committed by PdP (now OSP) has also fallen under the international spotlight and the thorough scrutiny of international bodies due to the significant environmental consequences caused by their agro-industrial activities on the Peruvian Amazon. In 2015, the **Shipibo indigenous community Santa Clara de Uchunya filed a complaint to the RSPO against PdP concerning clearing indigenous lands and destroying natural forests in violation of RSPO standards.**[123] In its interim decision, the RSPO prohibited PdP "*from carrying out any further land clearance and planting activities*" pending the resolution of the complaint.[124]

In 2017, the **RSPO concluded that PdP had deforested over 5,700 hectares without fulfilling the appropriate requirements:**

*"The RSPO Complaints Panel has found **Plantaciones de Pucallpa (PdP) (Peru) to be in breach of RSPO Code and Conduct and RSPO Principles and Criteria** (RSPO P & C) during its membership period from 14 October 2013 to 12 October 2016 (…) The following conclusions are drawn from the investigation report on Plantaciones de Pucallpa's Land Use Change Analysis (February 2017): 1) **Plantaciones de Pucallpa cleared approximately 4489 hectares prior to becoming an RSPO member.** Most of this area was forested (and most of the forest was primary forest). However, on 15 August 2014, Plantaciones de Pucallpa declared zero noncompliant land clearing. 2) Between 2014 – 2016, **Plantaciones de Pucallpa continued to clear at least 1237 hectares of land,** of which 423 hectares is considered primary forest, without submitting a New Planting Procedure".*[125]

The RPSO found that these violations "clearly contraven(ed)" the RSPO Principles and Criteria and the RSPO Code of Conduct, and that "there are (sic) clear evidence that compensation liability would have been incurred." However, **in October 2016—when the complaint was still pending—PdP resigned from the RSPO, and the decision therefore could not be enforced.**[126] It must be noted that, as will be developed in Section 4.3 of this specific instance, **LDC is a RSPO member**.

3.4. Other Associated Violations Linked with Ocho Sur Group's Palm Oil

The impact of the extensive and illegal deforestation goes beyond its environmental harm. This deforestation and conversion to monoculture plantation has also been carried out on the traditional lands of the indigenous community Santa Clara de Uchunya and the

[122] MINAGRI, Rejection PAMA certification of Ocho Sur P. SAC, 23 January 2020 (translation by the complainants).
[123] RSPO, The indigenous community of Santa Clara de Uchunya and supported by FECONAU, the IDL and FPP against PdP, Information on the RSPO proceeding available here.
[124] RSPO, Preliminary Decision - Forest Peoples Programme Complaint against Plantaciones de Pucallpa, Peru, 25 April 2016.
[125] RSPO, *RSPO Complaints Panel's Decision on Plantaciones de Pucallpa*, 6 April 2017, p. 1.
[126] RSPO, RSPO Complaints Panel's Decision on Plantaciones de Pucallpa, 6 April 2017.

Shipibo-Konibo people, without the free prior and informed consent of the communities, significantly and adversely impacting their rights and lives. Other illegalities related to the area where the oil palm project is developed stem from the fact that the plantations were established by seizing the ancestral territory despite the Santa Clara de Uchunya community's land claim. This maneuver involved a range of administrative mechanisms that have led to multiple investigations for corruption and charges brought against both local public officials and officers of PdP (now OSP) and PdU (now OSU). These impacts have further been amplified by the threats and intimidation that members of the community suffered as they have opposed the dispossession and deforestation of their lands and advocated for their rights.

3.4.1. HUMAN RIGHTS VIOLATIONS OF THE INDIGENOUS COMMUNITY OF SANTA CLARA DE UCHUNYA

The palm oil currently traded by LDC through SAP and the Ocho Sur Group has substantially impacted the rights, lives, and wellbeing of the indigenous community of Santa Clara de Uchunya that inhabits the Peruvian Amazon. Santa Clara de Uchunya is part of the Shipibo-Konibo people and lives on the banks of the Aguaytía River, a tributary of the Ucayali River.

From 2011, **the community of Santa Clara de Uchunya has been victim of the dispossession of their ancestral lands by PdP (now OSP), through the establishment of the large-scale palm oil plantation of more than 6,800 hectares, without any free, prior and informed consent from the indigenous people. The plantations were developed on** areas historically and currently claimed by this indigenous group, and with which they maintain a close relationship.[127]

The impact of the deforestation of these lands is profound and wide-reaching. **The community of Santa Clara de Uchunya has been deprived of their ancestral lands, of primary forests on which they depend, and of their cultural and spiritual spaces. The suffering resulting from the degradation of food and medicinal practices is causing serious problems for current and future generations of the community.**[128] Forest Peoples Programme,[129] Oxfam,[130] Deutsche Welle (DW),[131] and Instituto de Defensa Legal[132] have collected first-hand testimonies of community members about the deterioration of their living conditions and impact on future generations, who have reported the loss of access to their ancestral territory and resources; the destruction and loss of the community's means of livelihood and subsistence; the weakening of the community's food sovereignty resulting in forced economic displacement and migration; the weakening and loss of cultural traditions and customs rooted in the community's cultural values and ethnic identity; the deterioration of physical and mental health, liberty and personal security due to threats to their lives and physical integrity by third parties who entered the territory; the loss of access to more remote areas of the territory due to the specific location of the OSP plantation—

[127] OJO PÚBLICO, La solitaria lucha de una comunidad ante el avance del negocio de la palma aceitera, 26 September 2021.
[128] FPP, Defending lands, lives & livelihoods in the Peruvian Amazon, 21 July 2021.
[129] FPP, Uchunya: Where Will We Live?, 2016 (in English).
[130] OXFAM PERÚ, Palma aceitera en Ucayali: Testimonios desde Santa Clara de Uchunya, 2018 (in Spanish).
[131] Deutsche Welle (DW), The big sell-out - land deals in Peru, 2018 (English).
[132] IDL, Mi casa no es su casa - El caso de Santa Clara de Uchunya, 2016 (in Spanish).

between the community's titled lands (where they reside) and the ancestral territory, part of which is still object of a land titling claim.[133]

Furthermore, in recent years, the community has suffered increased pressure and intimidation by alleged company representatives which is making it harder and harder for its members to speak out. In July 2021, community rights defenders were threatened after having sent letters to Ocho Sur Group's investors alerting them about the situation and seeking an open discussion with them. In addition, the Ocho Sur Group allegedly uses material incentives in favor of selected community members to divide the people and obstruct efforts by other members who keep demanding respect for their rights. Outspoken community members report fears they will now either have to cease their protests or be forced to leave their homes in the community. The result is an increasingly oppressive environment for human rights defenders seeking to assert the rights of the indigenous communities.

In one recent expression of dissent towards the operations of the Ocho Sur Group, **AIDESEP—one of the indigenous organizations submitting this complaint—published an open letter denouncing the lack of respect for indigenous peoples' self-governance and land rights, the alarming deforestation carried out as a result of the companies' activity, reportedly of 17,000 hectares within the community's ancestral territory,**[134] **and the deterioration of food security in the area, where 13 indigenous organizations declared the state of emergency in light of increasing pressures for oil palm expansion.**[135] AIDESEP called for the State of Peru to recognize the right of the community not only to the land, but also to education, health, and livelihoods. It argued that by not ensuring those basic rights, the State is forcing the members of the community to bargain their survival with the Ocho Sur Group. Finally, the open letter addresses international actors, such as large palm oil buyers and the RSPO—including LDC—urging them to stop sourcing palm oil from the Ocho Sur Group.[136] While the Ocho Sur Group has responded to this letter rejecting all the accusations as false,[137] AIDESEP has published a second letter presenting **verifiable facts and evidence** supporting the statements already brought against the Peruvian corporate group.[138]

The risk to, and impact on, the human rights of the community has been recognized by the Inter-American regional human rights system. In 2020 the **IACHR granted precautionary measures for the indigenous community of Santa Clara de Uchunya,**

[133] FPP, FECONAU, IDL, Allegations Letter Related to the Ocho Sur P Palm Oil Plantation in Ucayali, Peru, 21 February 2022.

[134] AIDESEP, Carta abierta: AIDESEP exige acciones urgentes al Estado peruano, los compradores internacionales del aceite de palma, la RSPO y la sociedad civil internacional frente a las prácticas depredadoras y divisorias del Grupo Ocho Sur, 10 June 2022. For a translation in English, see also, FPP, Open letter: AIDESEP demands urgent action from the Peruvian state, international palm oil buyers, the RSPO and international civil society in response to the predatory and divisive practices of the Ocho Sur Group, 15 June 2022.

[135] FPP, Indigenous Organisations from across the Peruvian Amazon declare their territories in emergency and condemn divisive palm oil company tactics, 9 June 2022.

[136] AIDESEP, Carta abierta: AIDESEP exige acciones urgentes al Estado peruano, los compradores internacionales del aceite de palma, la RSPO y la sociedad civil internacional frente a las prácticas depredadoras y divisorias del Grupo Ocho Sur, 10 June 2022. For a translation in English, see also, FPP, Open letter: AIDESEP demands urgent action from the Peruvian state, international palm oil buyers, the RSPO and international civil society in response to the predatory and divisive practices of the Ocho Sur Group, 15 June 2022.

[137] AGROPERU, Ocho Sur: Carta Abierta dirigida a AIDESEP, 27 June 2022; BUSINESS AND HUMAN RIGHTS RESOURCE CENTRE, Ocho Sur response on alleged supply chain links to harmful palm oil, 4 October 2022.

[138] FPP, Open Letter: AIDESEP repudiates Ocho Sur palm oil group intimidation, demands buyers step up to protect human rights and forests, 7 July 2022.

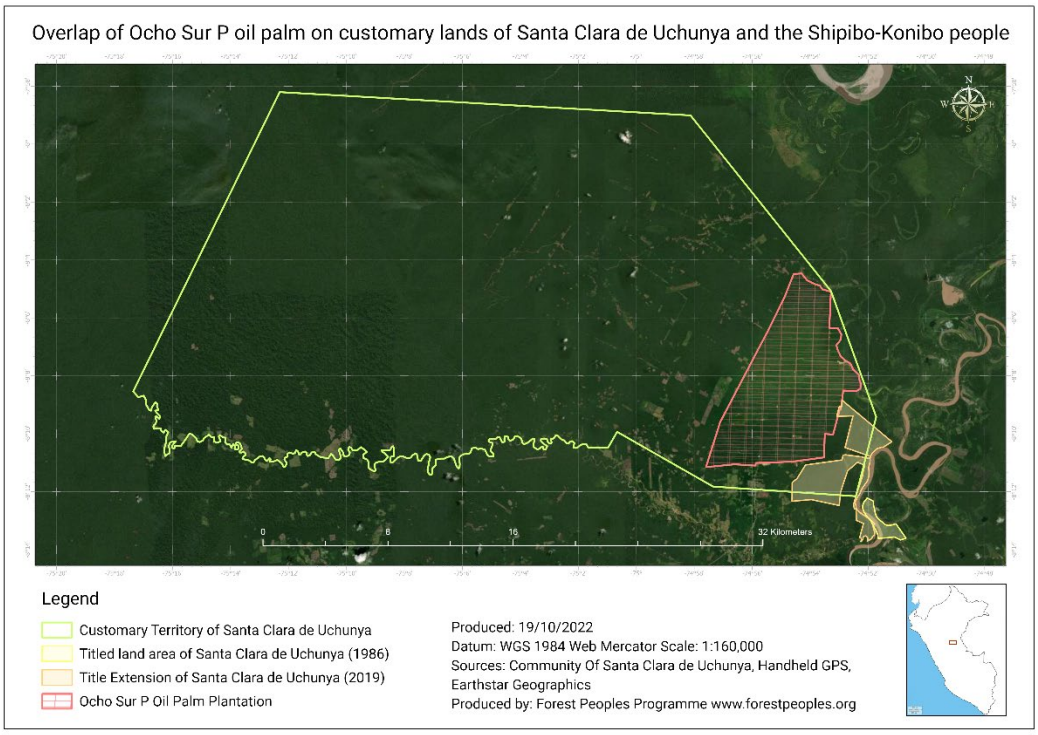
based on the threats and the deforestation activities carried out in their territories by PdP, now OSP.[139] In relation to the environmental allegations, when assessing the gravity of the situation, the IACHR indicated that

> "*the alleged facts are within a particular context that the Ucayali Region in Peru is experiencing. As indicated by the Ombudsman's Office* (Defensoría del Pueblo) *of Peru in 2017, in 2017, large-scale cultivation of oil palm and cocoa in regions, such as Ucayali, has been causing the loss of forest and wildlife heritage as a result of deforestation; environmental pollution due to improper handling of the chemical inputs used for the production of these crops; and, conflict situations around the ownership and property of private lands and indigenous territories. On that occasion, the Ombudsman's Office referred to the situation of the Santa Clara de Uchunya indigenous community and the impact to which it was exposed by such activities*".[140]

In addition to the impact of the deforestation and use of their lands in practice, the indigenous community was also formally dispossessed of a large portion of their lands by PdP (now OSP) through a scheme which has now led to criminal proceedings for corruption (see Section 3.5). The ***Dirección Regional Sectorial Agricultura Ucayali*** ("DRAU") (Sectorial Regional Directorate of Agriculture) **issued at least 222 certificates of possession in favor of PdP (now OSP), totaling 6845.23 hectares of the Santa Clara de Uchunya community's ancestral territory, despite the land claim of indigenous people.**[141]

After nearly ten years advocating for the recognition of their lands, the Santa Clara de Uchunya community is also progressively gaining recognition before the national authorities. In 2020, the same year LDC entered into relationship with the Ocho Sur group, the Government of Ucayali granted property titles over part of the land that had long been subject to historical land claims by the indigenous people.[142] In May 2022, the Santa Clara de Uchunya community received the title to 1544 hectares, which were registered before the *Superintendencia Nacional de los Registros Públicos* - SUNARP (National Superintendency of Public Registries) in Pucallpa. A second request for expansion, which covers the entire ancestral territory of the community, including the land occupied by PdP, is still pending before the DRAU.[143] These developments simply underscore the validity of the long-standing claims of the communities regarding land rights, the complete disregard for which in this case has had insidious implications for a host of human rights of indigenous peoples.

[139] IACHR, Resolution N° 81/2019, Medida cautelar N° 776-20, Integrantes de la Comunidad Nativa de Santa Clara de Uchunya y otro respecto de Perú, 18 August 2020.
[140] IACHR, Resolution N° 81/2019, Precautionary Measure N° 776-20, Members of the Indigenous Community of Santa Clara de Uchunya et al. regarding Perú, 18 August 2020, para. 26. See also: DEFENSORÍA DEL PUEBLO, Deforestación por cultivos agroindustriales de palma aceitera y cacao Entre la ilegalidad y la ineficacia del Estado, 2017, p. 8, 64.
[141] FPP, Amicus Curiae Brief in the Case of the Santa Clara Native Community of Uchunya v. Regional Government of Ucayali, PdP, and the Zonal Headquarters of the Registration Zone No. VI of the National Superintendency of Public Records, Case No: 03696-2017-AA/TC, 18 October 2018, para. 9.c).
[142] GOREU, GOREU y DRAU entregan título de propiedad a la comunidad nativa Santa Clara de Uchunya, 2020.
[143] FPP, Victoria histórica: Santa Clara de Uchunya inscribe su ampliación territorial en Registros Públicos, 14 May 2022.



Location of PdP (now, OSP) and lands of the Santa Clara de Uchunya community (Source: FPP)[144]

3.4.1.1. THREATS AND INTIMIDATION AGAINST MEMBERS OF THE INDIGENOUS COMMUNITY SANTA CLARA DE UCHUNYA

The situation of the Santa Clara de Uchunya community is rendered even more grave by the continued psychological and physical threats received by some of its members—including indigenous environmental and human rights defenders—as a result of their tireless struggle against illegal deforestation and to recover of their ancestral territories.

Some representative examples of these serious attacks, that have been publicly reported, are the cases of Miguel Guimaraes and Carlos Hoyos Soria.

- **Miguel Guimaraes, president of FECONAU and vice-president of AIDESEP—indigenous organizations claimants in this specific instance—has received numerous threats**, including multiple threats against his life, being followed by vans with tinted windows while going his home or work and visits by unidentified persons to his place; and armed robbery of property at his house and outside the FECONAU office.[145]
- **Carlos Hoyos Soria—an environmental and human rights defender and leader of the indigenous community of Santa Clara de Uchunya—faced several**

[144] FPP, Amicus Curiae Brief in the Case of the Santa Clara Native Community of Uchunya v. Regional Government of Ucayali, PdP, and the Zonal Headquarters of the Registration Zone No. VI of the National Superintendency of Public Records, Case No: 03696-2017-AA/TC, 18 October 2018, p.18.
[145] IACHR, Resolution N° 81/2019, Medida cautelar N° 776-20, Integrantes de la Comunidad Nativa de Santa Clara de Uchunya y otro respecto de Perú, 18 August 2020, para. 28. FLD, Death threats against environmental human rights defender Miguel Guimaraes and other Indigenous leaders in Ucayali, 22 October 2020.

threats, including an attempted killing by three unknown assailants who opened fire on him and his brother.[146]

FRONT LINE DEFENDERS ("FLD") has raised its concerns about these cases, given their occurrence in the context of a sustained series of attacks against the community Santa Clara de Uchunya.

FLD launched urgent appeals to protect environmental defenders of the Santa Clara de Uchunya community[147]

The gravity of the situation facing the community has been highlighted by several international bodies. The **IACHR** raised the plight of the of the Santa Clara de Uchunya community case in a 2019 report assessing the situation of human rights of the indigenous and tribal peoples of the Pan-Amazon region:

> *"A matter of serious concern to the IACHR is the plight of the Native Community of Santa Clara de Uchunya, where members of the community were allegedly attacked and threatened by workers and land traffickers pertaining to a palm growing enterprise. According to information received by the Commission, in September 2017, six farmers in the Bajo Rayal hamlet were allegedly tortured and murdered by land traffickers. The alleged motive was their refusal to give up their territory. Likewise, in December 2017, a group of 11 members of the community were allegedly shot in one of the deforested areas in the community. Another case, in July 2018, was that of Carlos Hoyos Soria, the head of the community, and his brother who were reportedly attacked by three hooded individuals, while they were demarcating the boundaries of their community. According to the information available, none of these cases is being investigated by police or judicial authorities".*[148]

[146] See also: FLD, Attempted killing of Carlos Hoyos Soria and his brother, Benjamín Hoyos Soria, 13 July 2018; Nota informativa de Feconau 002-2018-FECONAU in SERVINDI, Intentan asesinar al jefe de la comunidad Santa Clara de Uchunya, 12 July 2018; IACHR, Resolution N° 81/2019, Medida cautelar N° 776-20, Integrantes de la Comunidad Nativa de Santa Clara de Uchunya y otro respecto de Perú, 18 August 2020, para. 15.

[147] FLD, Attempted killing of Carlos Hoyos Soria and his brother, Benjamín Hoyos Soria, 13 July 2018; FLD, International Statement of Concern About Death Threats Against Indigenous Leaders of the Community of Santa Clara de Uchunya, 22 February 2018; FLD, Death threats against environmental human rights defender Miguel Guimaraes and other Indigenous leaders in Ucayali, 22 October 2020; FLD, Attack on Land Rights Defenders in Santa Clara de Uchunya.

[148] IACHR, Situation of Human Rights of the Indigenous and Tribal Peoples of the Pan-Amazon Region, 2019, para. 168 (footnotes omitted). On the murder of the six farmers in Bajo Rayal, see also JEFE ORI REGPOL UCAYALI, Levantamiento de Cadáveres a consecuencias de proyectil de arma de fuego (PAF) en el caserio Bajo Rayal,

As noted above, due to the risks that the community is facing, in November 2020, the **IACHR decided to grant precautionary measures for the indigenous people of Santa Clara de Uchunya** and the then president of FECONAU. In particular, it established that the **beneficiaries of the measures face a "*situation of grave and urgent risk (…) after being targets of threats and attacks for defending their territorial rights in the face of an expansion in oil palm monoculture and land trafficking in the Amazonian region of Ucayali*"**.[149] To reach that conclusion, the IACHR considered different sets of facts alleged by the applicants, including but limited to the following:

> *"i) tailing of members of the community by unknown persons, when they left the community or moved in the capital of the region; ii) insults and direct death threats aiming at making the members of the community leave the area, as well as at making them discontinue the 'self-demarcation' of lands that the community sought to have titled – and that were subsequently titled to the community; iii) the use of weapons such as shotguns, revolvers, knives or machetes, including chainsaws or heavy machinery, to carry out activities in the area, mainly on the outskirts of the community; iv) serious limitations on the movement of members of the community based on death threats; v) on certain occasions, blocking of local authorities to prevent them from properly carrying out their inspection and investigation activities in the area; and vi) aggressions against members of the community, such as house burning or shooting; among others".*

And in its 2021 Annual Report, the **IACHR** informed that it had received information from the State about "***serious incidents related to the investigations into the deaths*** *of Estela Casanto Mauricio, Yenes Ríos Bonsano, and Herasmo García Grau that particularly impacted the native Shankivironi, Puerto Nuevo y Sinchi Roca, and* ***Santa Clara de Uchunya communities***".[150]

Moreover, the former **United Nations Special Rapporteur on the Situation of Human Rights Defenders**, Michel Forst, highlighted the indigenous community Santa Clara of Uchunya as an example that illustrated his concern "*about the misuse of the justice system to harass and silence defenders in the country, particularly those working to defend the environment*". The Special Rapporteur noted that:

> *"(a)fter years of demanding their rights before administrative and judicial authorities, they managed to halt illegal logging in their ancestral lands, and the recognition of their title to parts of these territories. The affected communities and those defending their rights in this context are in dire need of protection and they also need access to appropriate remedy".*[151]

3.4.2. ALLEGATIONS OF FORCED LABOR IN CONTEXT OF COVID-19

In July 2020, **forced labor allegations and other grave violations were attributed to the palm oil plantations of OSP during Covid-19**.[152] During an on-site inspection, the

Nueva Requena, 2 September 2017, in KENÉ, Nota de Prensa 003-2017, p. 2-3; and FECONAU, Pronuciamiento, 7 September 2017. On the shooting against 11 members of the community, see also FRONT LINE DEFENDERS (FLD), Attack on Land Rights Defenders in Santa Clara de Uchunya, 18 December 2017.

[149] IACHR, Resolution N° 81/2019, Medida cautelar N° 776-20, Integrantes de la Comunidad Nativa de Santa Clara de Uchunya y otro respecto de Perú, 18 August 2020.

[150] IACHR, 2021 Annual Report, Chapter IV.A Human Rights Development in the Region, Section on Peru, 2021, para. 812.

[151] UNITED NATIONS SPECIAL RAPPORTEUR ON THE SITUATION OF HUMAN RIGHTS DEFENDERS, End of mission statement by Michel Forst, Visit to Peru, 21 January – 3 February 2020, 03 February 2020.

[152] DEFENSORÍA DEL PUEBLO, Oficio N° 0102-2020-DP/OD-UCAY, May 2020.

Ministerio Público Fiscal de la Nación (Peruvian Prosecutor's Office) found that the company forced employees to remain in the facilities despite presenting symptoms of the new coronavirus, undermining their conditions of safety and health at work and exposing workers to the spread of dangerous diseases such as COVID-19. They were also forced to stay in overcrowded camps, with small rooms for the number of workers and without a proper ventilation.[153] In particular, the Prosecutor's Office indicated that:

> *"the Peruvian government declared a state of emergency and mandatory social isolation throughout the national territory, ordering the suspension of most economic activities in order to avoid COVID-19 contagion. Thus, the company* ***Ocho Sur Perú S.A.C., ignoring the government's orders, continued to work*** *in a state of national emergency (…) the plaintiff Linda Carel Vigo Escalante (46) (lawyer of the Comisión de Derechos Humanos of Pucallpa and the Federación de Comunidades Nativas de Ucayali and Instituto de Defensa Legal from Lima) would have received* ***complaints from company workers (some from indigenous ethnic groups) stating that they had been experiencing pain, not being attended by the company in a timely manner****, until some began to faint at their place of work. Likewise,* ***some workers had expressed their desire to return to their homes to rest and visit their families, a request to which the company's directors did not agree****, forcing them to continue working,* ***remaining in the company's camps in conditions that were not appropriate for COVID-19, since they were in rooms that were too small for the number of workers****. Subsequently, on 05/06/2020, personnel from the Dirección Regional de Salud de Ucayali (Regional Health Directorate of Ucayali) carried out an intervention at the site,* ***testing 39 of them for COVID-19, obtaining positive results in 35 people****: 25 people with IgG, 01 person with IgM, and 09 people with IgM and IgM".*[154]

The *Superintendencia Nacional de Fiscalización Laboral* (National Superintendence of Labor Inspection) also appears to have found violations of health and safety norms on the part of both OSU and OSP.[155]

3.5. Corruption Schemes associated with the Palm Oil Plantations

In addition to the environmental and human rights impacts described above, **the establishment of the palm oil plantations of PdU (now OSU) and PdP (now OSP) have also been subject of numerous criminal investigations and proceedings by national authorities for corruption.** These investigations have led to criminal charges against over 30 officials, including senior staff in the management of PdP and PdU, as well as local and regional public officials. PdP and OSP as such have been included in the criminal proceedings in at least one of these cases.

Reports from civil society organizations suggest that, by 2014, PdU (now OSU) and PdP (now OSP) had obtained more than 13,000 hectares through three irregular land appropriation mechanisms backed by corrupt public officials in different regional entities.[156]

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[153] UN Committee on the Elimination of Racial Discrimination, CERD/EWUAP/99th session/Peru/JP/ks, 29 August 2019; CERD/EWUAP/103 rd session/2021/Peru/MJ/CS/ks, 30 April 2021.

[154] Fiscalía Provincial Penal Corporativa de Campo Verde (NCPP), Declaration of complex investigation, Case file 000358-2021-0-2406-JR-PE-01, 2 March 2022.

[155] Convoca, Ucayali: El 90% de los trabajadores de Ocho Sur testeados dieron positivo para el Covid-19, 9 June 2020. FPP, Ocho Sur: spreading COVID-19 while the indigenous community of Santa Clara de Uchunya awaits a ruling from the Constitutional Court, 10 July 2020.

[156] Proética, The business of deforestation, 2021, p. 5.; see also EIA, Deforestation by Definition, 2015; Convoca, Oxfam, Amazonía Arrasada, 2016.

The corruption included the corporations acquiring certificates of land ownership intended for individuals (*constancia de posesión*) through sham purchases by "figureheads" or "straw men" acting on behalf of PdP and PdU, and at meagre prices;[157] obtaining public lands abusing the rule of positive administrative silence;[158] and acquiring land in the name of associations of small farmers created *ad hoc* to facilitate the operations.[159]

These irregular land-grabbing maneuvers involved high-ranking officials of regional entities in charge of granting land titles. As a result, **several corruption criminal proceedings are currently taking place at the national level**, including former directors of the DRAU and former governors of Ucayali.[160] In particular, the **Cocha Anía case is a complex investigation that refers to a massive scandal on the illegal titling of properties involving senior DRAU officials in Ucayali** along with judges, public officers, businessmen, among others.[161] Huamán Pérez, an ex-director of the DRAU, was **arrested in 2018** on charges of being the head of a land-trafficking criminal organization, **including for granting permits to PdP (now OSP).** These investigations for land trafficking and money laundering also involve the current governor of Ucayali, Manuel Gambini Rupay, who had covered this institutional role while Huamán Pérez was directing the DRAU.[162]

In the Cocha Anía II case, the investigation also assesses the participation of **Dennis Nicholas Melka, the main architect behind PdU** (now OSU) **and PdP** (now OSP), **as indirect co-perpetrator.**[163] As set out below, **the Judge overseeing these proceedings recently ordered that OSP and PdP be included as subjects of the investigation.** Dennis Nicholas Melka—a Czech-American citizen and businessman—established a network of 25 companies between 2010 and 2013 in the departments of Loreto and Ucayali in Peru for the development of cacao and palm oil projects. Among them, **Melka established PdU (now OSU) and PdP (now OSP),**[164] and has thus been involved from the very inception of the palm oil corporations in Peru. **Melka was also one of the Directors**[165] **of the parent company of PdU and PdP—United Oil Company SEZC,**[166] registered in the Caiman

[157] PROÉTICA, The business of deforestation, 2021, p. 12: "*Convoca got access to this hundred contracts and found - after building a database - that Plantaciones de Ucayali bought directly between Feb and Oct 2013, more than 990 hectares for just over 900,000 soles. The lands acquired by Plantaciones de Ucayali ranged from one to 40 hectares in size and were located in the villages of Bajo Rayal and Zanja Seca*".

[158] PROÉTICA, The business of deforestation, 2021, p. 10. CONVOCA, OXFAM, Amazonía Arrasada, 2016, p. 2

[159] CONVOCA, OXFAM, Amazonía Arrasada, 2016, p. 31; PROÉTICA, Tráfico de tierras.

[160] Case file 193-2015 against an ex-director of the DRAU, Celia Prado Seijas. Case file 072-2013 against 14 people, including the regional ex-governor of Ucayali, Jorge Velásquez Portocarrero, an ex-director of the DRAU, Miguel Seijas Del Castillo, and a regional vice president, Carlos Henderson Lima. Cocha Anía case, against an ex-director of the DRAU, Huamán Pérez. See also: PROÉTICA, The business of deforestation, 2021, p. 12-13.

[161] PROÉTICA, The business of deforestation, 2021, p. 12-13. MONGABAY, Tráfico de tierras en Ucayali: funcionarios detenidos por pertenecer a mafia, 2018, and In Peru, a corrupt land-titling scheme sees forests sold off as farms, 2021. PROÉTICA, Caso Cocha Anía.

[162] See OJO PÚBLICO, Dos candidatos al Gobierno Regional de Ucayali son accionistas de empresas de palma aceitera, 31 August 2022; CONVOCA, Exautoridades investigadas por corrupción y otros delitos gobernarán regiones de la Amazonía, 13 October 2022.

[163] PROÉTICA, Caso Cocha Anía.

[164] PROÉTICA, The business of deforestation, 2021.

[165] THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT, IJK Palm LLC v. Anholt Services USA, Inc. et al., Case 20-3963, 6 May 2022, p. 6; UNITED CACAO, Admission Document, 2014, p. 89. See also EIA, Deforestation by Definition, 2015, p. 20 and 38 onwards; PROÉTICA, The business of deforestation, 2021, p. 7 onwards. Dennis Melka was the only person with a power of attorney with broad faculties to dispose of sums of money without limitation for both PdU and PdP. See: SUNARP, Inscripción de Sociedades Anónimas, PdP, p. 21. SUNARP, Inscripción de Sociedades Anónimas, Plantaciones de Ucayali SAC, p. 22.

[166] EIA, Deforestation by Definition, 2015, p. 37. See also, THE JAKARTA POST, Public Auction of Real Properties and Plantations in the provinces of Coronel Portillo and Padre Abad, Department of Ucayali, 23 June 2016; LEXLATIN, Hernández & Cía y H&K en adquisición de activos de United Oils Limited en Perú, 12 October 2016.

Islands.[167] In addition to having acted as legal representative of PdU and PdP with extended power of attorney[168]—after the change in ownership of the palm oil plantations to the Ocho Sur Group and up to 2019—**Melka was also one of the Directors of Peruvian Palm Holdings, the parent company of OSU and OSP**.[169]

The triangular relationship between Melka and the previous and current owners of the plantations, PdU (now OSU) and PdP (now OSP), is further demonstrated by a request from the Prosecutor Office Specialized in Organized Crime to include PdP and OSP in the criminal proceedings against Melka.[170] Based on this request, in March 2022 the Judge of the ***Cuarto Juzgado de Investigación Preparatoria Nacional*** **(Fourth National Preparatory Investigation Court), ordered that the companies PdP and OSP be included in the criminal proceeding against Dennis Nicholas Melka and 30 other accused** with charges regarding the commission of **environmental crimes, including crimes against forests or forest formations**, to the detriment of the Santa Clara de Uchunya community and the Peruvian State.[171] The forests affected were cleared in order to install oil palm cultivation and produce palm oil, causing deforestation of 6,824.39 hectares between the period of 2010 to 2015, but it also has continued to the present.[172] On the one hand, according to the Prosecution Office, **PdP is allegedly responsible for having destroyed, burned, damaged and cut down forests and other natural forest formations, by the hand of company workers, and the order of its legal representatives**. On the other hand, the Prosecutor further alleges responsibility of **OSP for facilitating the impunity of its legal representatives by changing corporate ownership and structure and thus diluting their responsibility.**[173]

4. LDC's Breaches of the OECD Guidelines

Overwhelming evidence collected by the complainants indicates that LDC, through its operations and trading partnerships, has breached the OECD Guidelines in several ways:

- LDC's failure to meet applicable standards on "due diligence to identify, prevent and mitigate adverse impacts" in its business operations and across its supply chain, in relation to the environment harm, human rights violations and corruption;
- LDC's "contribution" to adverse environmental and human rights impacts through its trading activities and relationships and failure to remediate;
- LDC's failure to exercise "leverage" over others in respect of adverse impacts with which it is linked through its business relationships;
- LDC's failure to "disclose", "communicate", and "consult" the accurate and appropriate information to interested stakeholders.

[167] Cayman Islands Gazette, Voluntary Liquidator and Creditor Notices, Extraordinary No. 60, 2016.
[168] SUNARP, Inscripción de Sociedades Anónimas Plantaciones de Pucallpa S.A.C., 2016; SUNARP, Inscripción de Sociedades Anonimas Plantaciones de Ucayali S.A.C., 2016.
[169] Convoca, Melka Case: The Financiers Behind the Oil Palm Business in Amazonian Deforested Areas, 2021.
[170] Justicia TV - Poder Judicial del Perú, #EnVivo | Audiencia de incorporación de personas jurídicas en la investigación de Dennis Nicholas Melka por delito ambiental y otros, 6 January 2022.
[171] IDL, Deforestación de la Comunidad Nativa Santa Clara de Uchunya: Juez Incorpora al Proceso Penal a las empresas PDP y OCHOSUR P SAC, 11 March 2022.
[172] IDL, Deforestación de la Comunidad Nativa Santa Clara de Uchunya: Juez Incorpora al Proceso Penal a las empresas PDP y OCHOSUR P SAC, 11 March 2022.
[173] IDL, Deforestación de la Comunidad Nativa Santa Clara de Uchunya: Juez Incorpora al Proceso Penal a las empresas PDP y OCHOSUR P SAC, 11 March 2022.

The following sections identify how the facts set out above demonstrate failure by LDC to comply with the relevant provisions of the Guidelines—under Chapter II on General Policies (including due diligence and contribution), Chapter IV and VI on Human Rights and the Environment, and Chapters III and VIII on Disclosure and Consumer interests—as interpreted in light of a fuller body of OECD Commentaries and other applicable international human rights and environmental standards.

4.1. LDC's Failure to Conduct Due Diligence

- LDC has failed to *"carry out risk-based due diligence, for example by incorporating it into (its (…)) enterprise risk management systems, to identify, prevent and mitigate actual and potential adverse impacts"* (OECD Guidelines, Chapter II, Section A, para. 10 – General Policies)

The OECD Guidelines, the OECD Due Diligence Guidance for Responsible Business Conduct ("OECD Due Diligence Guidance") and other relevant international standards make clear that Multinational Enterprises ("MNEs") operating or based in countries adhering to the OECD Guidelines are expected to exercise effective due diligence in respect of their supply chains, to prevent and address adverse human rights, social and environmental impacts, as well as corruption.

Due diligence applies first to the **identification and assessment** of risks and impacts across the MNE's supply chain. The OECD Due Diligence Guidance states that MNEs should *"Carry out a broad scoping exercise to identify all areas of the business, across its operations and relationships, including in its supply chains, where RBC* (Responsible Business Conduct) *risks are most likely to be present and most significant"*.[174] For *"downstream enterprises"* this includes "*not only identify*(ing) *risks in their own operations but also, to the best of their efforts, assess the risks faced by their suppliers. They can assess the latter by assessing the due diligence carried out by their suppliers or by directly assessing the operations of their suppliers, for instance by conducting farm visits."*[175]

The requirements to identify risks are fleshed out in the OECD-FAO Guidance for Responsible Agricultural Supply Chains ("OECD-FAO Guidance"), which provides a "*five-step framework for risk-based due diligence along agricultural supply chains*".[176] These include the requirement that MNEs should identify, assess and prioritize risks in the supply chain through "*mapping*" the supply chain, including *"the names of immediate suppliers and business partners and the sites of operations"*.[177] After mapping, the enterprise should "***identify the full extent of actual and potential adverse impacts in the supply chain*** *either caused or contributed to by the enterprise or directly linked to its operations, products or services by a business relationship. They should cover environmental, social and human rights impacts."*[178]

A critical dimension of exercising due diligence involves effective **environmental and human rights assessments**, as reflected in OECD standards, international environmental and human rights standards, and domestic laws across the globe, including Peru and the

[174] OECD, OECD Due Diligence Guidance for Responsible Business Conduct, 2018, p. 63.
[175] OECD, OECD Due Diligence Guidance for Responsible Business Conduct, 2018, p. 36.
[176] OECD-FAO, OECD-FAO Guidance for Responsible Agricultural Supply Chains, 2016, p. 31. See also: OECD-FAO, Draft OECD-FAO Handbook on Deforestation, Forest Degradation and Due Diligence in Agricultural Supply Chains, 29 June-29 July 2022.
OECD-FAO, OECD-FAO Guidance for Responsible Agricultural Supply Chains, 2016, p. 33.
[178] OECD-FAO, OECD-FAO Guidance for Responsible Agricultural Supply Chains, 2016, p. 34.

Netherlands. By contrast, the assessments required by law have been entirely by-passed by LDC's partners in the present case. Other concrete steps that may be needed to assess risks in supply chains, as reflected in standards, include "*audits, on-site investigations, and consultations with government authorities, civil society, members of the affected community, and workers' organizations at local, national and international level.*"[179] There are no indications of any such efforts having been engaged in either.

Due diligence standards confirm that once MNEs have identified risks and impacts, they must take necessary and sufficient steps **to address the risks and impacts,** and to communicate about how they have been tackled. For example, Commentary 45 to Chapter IV of the OECD Guidelines refers to "*assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses as well as communicating how impacts are addressed*".

What specifically is required to respond to identified risks depends on context, as due diligence is a dynamic concept, where "*the nature and extent of due diligence depend on the circumstances of a particular situation*".[180] However, steps must be meaningful and thorough, and appropriate to nature of the risks. In this context, the OECD-FAO Guidance "***model enterprise policy for responsible agricultural supply chains***"[181] refers to the adoption of preventive measures based on effective "*environmental and social management systems,* ***appropriate to the nature and scale of our operations and commensurate with the level of potential environmental and social risks and impacts***".[182]

Relevant guidance and standards indicate that **heightened due diligence** is required in certain circumstances, many of which arise in the present specific instance. The OECD Due Diligence Guidance suggests this is the case where the "***scale, scope and irremediable character***" or "*significance of an adverse impact*" demands prioritization.[183] This is the case in the present instance which relates to the deforestation of the Amazon and the well-recognized and devastating impact on the environment, climate change and human rights, which threatens irreparable harm.[184]

Likewise, the OECD Due Diligence Guidance makes clear **increased sector-specific risks or risks in particular geographic locations** may call for heightened due diligence.[185] In this case, **operating in an area of the Amazon notoriously subject to deforestation and land grabbing, in a biome and in relation to a sector—such as palm oil—that has caused intense international attention due to its serious adverse environmental impacts**, and in areas subject to indigenous land and heritage claims, clearly imposes such heightened due diligence requirements.

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[179] OECD-FAO, OECD-FAO Guidance for Responsible Agricultural Supply Chains, 2016, p. 38.
[180] OECD, OECD Guidelines for Multinational Enterprises, 2011, Chapter II, section A, para. 10.
[181] OECD-FAO, OECD-FAO Guidance for Responsible Agricultural Supply Chains, 2016, p. 25.
[182] OECD-FAO, OECD-FAO Guidance for Responsible Agricultural Supply Chains, Section 8, 2016, p. 28.
[183] OECD, OECD Due Diligence Guidance for Responsible Business Conduct, 2018, p. 42: "*The significance of an adverse impact is understood as a function of its likelihood and severity. Severity of impacts will be judged by their scale, scope and irremediable character. Scale refers to the gravity of the adverse impact. Scope concerns the reach of the impact, for example the number of individuals that are or will be affected or the extent of environmental damage. Irremediable character means any limits on the ability to restore the individuals or environment affected to a situation equivalent to their situation before the adverse impact*". See also p. 19.
[184] OECD, OECD Due Diligence Guidance for Responsible Business Conduct, 2018, p. 42.
[185] OECD, OECD Due Diligence Guidance for Responsible Business Conduct, 2018, p. 64.

The OECD-FAO Guidance also highlights the importance of risk assessments **identifying so-called "*red flags*"** which should in turn lead to the enterprise conducting enhanced due diligence; these include "*on-the-ground verification of qualitative circumstances for red flag locations, products, or business partners*".[186] Factors identified as constituting "red flags" are strikingly relevant in the current context. They include **locations affected by environmental degradation**; **commodities known to have adverse environmental**, social or **human rights impacts;** locations where violations of human rights or labor rights have been reported; and **business partners known to have sourced agricultural products from a red flag location** in the past 12 months.[187]

The OECD Due Diligence Guidance concedes that identifying risks may be difficult for some consumer-facing enterprises far downstream from the sites of agricultural production. However, a major trader such as **LDC has the resources and the capacity to promptly identify and assess risks in the supply chain and take necessary measures of prevention, mitigation, and remediation.**

The facts set out at Section 3 make clear LDC's breach of these standards in this specific instance. As set out above, since 2020, LDC has engaged in a business relationship with the Ocho Sur Group through SAP, from which LDC buys crude palm oil, despite it being well established that **SAP is a palm oil extraction plant built in Peru that primarily processes fruit from OSU and OSP's plantations linked with extensive and illegal deforestation and serious human rights abuses.**[188] Those plantations operate without the necessary environmental certifications from the Peruvian government; indeed, OSU and OSP have repeatedly been denied such certifications due to the illegal deforestation and human rights violations in which they are involved. Both the establishment, and the ongoing operation of these plantations, are causing ongoing environmental harm and violations of the rights of the Santa Clara de Uchunya community and the Shipibo-Konibo people to their lands, territories, resources, culture, health, food, livelihoods, free prior and informed consent, and life and personal integrity.

There can be no plausible doubt that LDC **knew or, at an absolute minimum, should have known** of the adverse impacts set out in this complaint. Given the facts set out above, and the **capacity of a corporation** such as LDC, any meaningful due diligence system or efforts could and should have mapped and identified the risks surrounding its trading partners' operations and responded to them in a timely way. Especially considering that the violations have been subject of significant media coverage and multiple legal actions on the domestic and international levels, the risks and adverse impacts in the present case would have been readily identifiable even from information in the public domain.

LDC's failure is **particularly inexcusable given the heightened due diligence required** when the activities are linked to the Amazon region—the principal area for palm oil production in Peru—as a result of its vulnerability to deforestation and critical importance in environmental and climate terms, and to the rights of indigenous people and the profound impact on their cultural and physical survival, and as a situation that demonstrations numerous red flags above which necessitate enhanced diligence and concerted action of prevention and response.

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[186] OECD-FAO, OECD-FAO Guidance for Responsible Agricultural Supply Chains, 2016, p. 34.
[187] OECD-FAO, OECD-FAO Guidance for Responsible Agricultural Supply Chains, 2016, p. 33. See also: OECD-FAO, Draft OECD-FAO Handbook on Deforestation, Forest Degradation and Due Diligence in Agricultural Supply Chains, 29 June-29 July 2022.
[188] DGAAMI, Informe técnico legal 489-2018-PRODUCEDVMYPE-IDGAAMI-DEAM, 19 June 2018, p. 14.

At an absolute minimum, LDC's due diligence and compliance mechanisms have proven to be woefully insufficient, or it has been willfully blind to the violations arising in its supply chain. LDC has failed to adopt measures to address these impacts and prevent risks materializing in the future.

The existence of an internal grievance opened by LDC does little to mitigate concerns, and may provide further illustration of the MNE's negligence, as well as of the inadequacy of the internal remedy. That grievance concerning land clearing activity—limited to the role of OSP and not including the environmental violations committed by OSU—was opened after almost two years of trading relationship with the Ocho Sur Group and does not appear to take into account key facts, such as the public decisions issued by national and international authorities on environmental and human rights violations related to the plantations. There is nothing to indicate that it has led to a meaningful assessment—still less recognition—of impact or risk. To the contrary, LDC's limited engagement amounts to a defensive statement that "*the alleged cases mentioned in the report* (by FPP) *are from the previous owner of the mill,"* PdP.[189] Yet it is not reasonable to suggest that ongoing violations are of historical significance only, nor to ignore the implications of LDC's decision to benefit from plantations that were established through massive unlawful deforestation. If **LDC were allowed to evade the need for due diligence to assess, address and prevent ongoing adverse impacts based on a change of corporate identity, structure or ownership (as both LDC and the Ocho Sur Group imply[190]), this would seriously undermine the value and effectiveness of the OECD Guidelines, as recognized under the OECD Due Diligence Guidance where it is stated that *"Enterprises are expected to address adverse impacts that are inherited from a predecessor but which the enterprise continues to contribute to".*** [191] LDC should have used the OECD Due Diligence Guidance as a practical guide for the interpretation and implementation of the OECD Guidelines. However, there is no evidence of meaningful assessment of the impact of its continuing business with the Ocho Sur Group, despite evident and serious danger the Group's activities pose to the environment and human rights. LDC has not removed SAP from suppliers, at odds with the requirements set out in its own policy.[192]

To date, LDC does not appear to have taken any action as a result of the grievance, and it has not responded to the serious risks exposed by the facts of this case. Its inaction is further confirmed by its recent statement in response to the letter by AIDESEP, mentioned above, where LDC once again refers to its grievance mechanism as the only measure taken so far to address the issues.[193] Indeed, LDC's response indicates that rather than an objective examination of the facts and material regarding the violations from all sources, it has only sought information from Ocho Sur (mediated by its direct supplier) without

[189] LDC, Grievances Master list - Ongoing; Last updated 31 August 2022, last accessed: 02/10/2022.
[190] As noted above, one of the few statements that LDC has made regarding the internal grievance procedure is to state that "*the alleged cases mentioned in the report are from the previous owner of the mill*" (LDC, Grievances Master list - Ongoing; Last updated 31 August 2022, last accessed: 02/10/2022). Ocho Sur similarly claims that their assets were purchased in 2016, see AGROPERU, Ocho Sur: Carta Abierta dirigida a AIDESEP, 27 June 2022.
[191] OECD, OECD Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector, 2017.
[192] LDC would remove suppliers from approved supplier list "*when conditions are not met (e.g. **stop work order + compliance to policy**, etc.)*". See, LDC, Palm Sustainability Progress Implementation Report, September 2022, p. 7.
[193] BUSINESS AND HUMAN RIGHTS RESOURCE CENTRE, Louis Dreyfus' response on alleged supply chain links to harmful palm oil, 4 October 2022. LDC does also claim that it is planning a site visit, though this has not yet taken place and the nature and content of that visit is unclear.

contacting other relevant stakeholders (for example, the RSPO which has established the environmental violations of PdP, now OSP; or other local or international NGOs). LDC should not be able to use an internal grievance procedure to shield itself from its responsibility for failing to meet the requirements of due diligence.

As set out in the sections that follow, **LDC has failed to conduct due diligence in a timely manner to identify, prevent and mitigate actual and potential adverse impacts on three dimensions covered and required by the OECD Guidelines:**

- Failure to conduct due diligence on, and address, the **environmental impacts** on the Peruvian Amazon of its sourcing of palm oil from SAP and the Ocho Sur Group.
- Failure to conduct due diligence on, and address, the **human rights impacts** of its sourcing of palm oil from SAP and the Ocho Sur Group.
- Failure to conduct due diligence on, and address, the **risks of corruption** of its sourcing of palm oil from SAP and the Ocho Sur Group.

4.1.1. LDC's Failure to Conduct Due Diligence and Address Environmental Impacts in its Palm Oil Supply Chain

- LDC has failed to establish *"a system of environmental management (…) including (a) collection and evaluation of adequate and timely information regarding the environmental, health, and safety impacts of (its (…)) activities (and (…)) (c) regular monitoring and verification of progress toward environmental, health, and safety objectives or targets"* (OECD Guidelines, Chapter VI, para. 1).
- LDC has failed to *"(c)ontinually seek to improve corporate environmental performance, at the level of the enterprise and, where appropriate, of its supply chain, by (…) development and provision of products or services that have no undue environmental impacts"* (OECD Guidelines, Chapter VI, para. 6).

Chapter VI and related commentary of the OECD Guidelines make clear that MNEs have a responsibility to support efforts to protect the environment in accordance with national and international legal standards and policies. Among the adverse impacts in respect of which the OECD Due Diligence Guidance makes clear MNEs should exercise due diligence is "(e)*cosystem degradation through land degradation, water resource depletion, and/or destruction of pristine forests and biodiversity.*"[194]

Chapter VI of the OECD Guidelines urges enterprises to establish and maintain a system of environmental management, including collection and evaluation of adequate information regarding the environmental impacts of their activities.[195] The establishment of a system of environmental management is not sufficient *per se,* as "*sound environmental management*" requires a continual improvement of such system, with a view to controlling the range of direct and indirect environmental impacts of enterprise activities over the long-term, and involving both pollution control and resource management elements.[196]

The Commentary to the OECD Guidelines highlights the particular significance of **appropriate environmental impact assessments,** which should be forward-looking in relation to the "*the potential impacts of an enterprise's activities and of activities of sub-*

[194] OECD, OECD Due Diligence Guidance for Responsible Business Conduct, 2018, p. 39.
[195] OECD, OECD Guidelines for Multinational Enterprises, 2011, chapter VI, para. 1.
[196] OECD, OECD Guidelines for Multinational Enterprises, 2011, chapter VI, commentaries 61 and 63.

contractors and ***suppliers****, addressing relevant impacts and examining alternatives and mitigation measures to avoid or redress adverse impacts*".[197]

Enterprises should also establish measurable targets regarding their environmental performance consistent with national policies and international environmental commitments.[198]

LDC has clearly failed to meet the above-mentioned standards, set in the OECD Guidelines and other international standards, by purchasing and trading palm oil coming from illegally deforested lands, and relying on SAP and the Ocho Sur Group as trading partners in its palm oil business activities uninterruptedly since 2020.

Palm oil plantations in Ucayali (Source: Rainforest Rescue/Mathias Rittgerott and Forest Peoples Programme)

First, **Section 3 provides extensive evidence of the extent of the deforestation and its acute environmental impact.** This evidence includes the remote sensing technologies that have widely documented the illegal deforestation conducted at the expense of extensive areas of primary forest where Ocho Sur Group carries out its palm oil production (see Section 3.3.1). This information, like the numerous public reports from civil society organizations and decisions of public bodies referred to in Section 3, were publicly accessible. There is no doubt that **LDC knew or should have known, had it conducted any meaningful due diligence, that palm oil from the Ocho Sur Group was causing irreparable harm to the Peruvian Amazon's ecosystem**, with severe impact on the aptitude for the Amazon rainforest to act as the largest terrestrial carbon sink.

Second, the illegal nature of the deforestation, and the failure of PdU (now OSU) and PdP (now OSP) to obtain the necessary environmental permits and certifications, has been repeatedly adjudicated by Peruvian judicial and administrative authorities (see Section 3.3.2, above). Amongst such findings, the **MINAGRI** (Peruvian Ministry of Agriculture and Irrigation) **has confirmed massive unlawful deforestation by PdP (now OSP), that by 2015 corresponded to an area of at least 6,824.39 hectares—99.69% of its total land owned.**[199] The MINAGRI further found that the company started its commercial activities **without having the environmental permits approved by the competent authority**, and thus rejected the company's request to issue an environmental certification in its favor.[200] Similar conclusions were reached by the **RSPO, which found that PdP (now OSP) was involved in environmental violations, including deforestation of over 5,700 hectares**, in contravention of the RSPO Principles and Criteria and the RSPO Code of Conduct.[201] As described in

[197] OECD, OECD Guidelines for Multinational Enterprises, 2011, chapter VI, commentary 67.
[198] OECD, OECD Guidelines for Multinational Enterprises, 2011, chapter VI, commentary 42.
[199] DEFENSORÍA DEL PUEBLO, Deforestación por cultivos agroindustriales de palma aceitera y cacao Entre la ilegalidad y la ineficacia del Estado, 2017, p. 8. MINAGRI, *Order to stop PdP's activities*, 4 September 2015.
[200] MINAGRI, Resolución 0057-2020-MINAGRI-DVDIAR-DGAA, 23 January 2020. This decision was confirmed in appeal; see, MINAGRI, Resolución 0008-2021-MIDAGRI-DVDAFIR, 22 February 2021.
[201] RSPO, RSPO Complaints Panel's Decision on Plantaciones de Pucallpa, 6 April 2017.

Section 3.3, the same pattern of illicit activities, and findings by the Peruvian authorities, can be seen in relation to **PdU (now OSU) which, up to 2015, illegally deforested an area of at least 4,593.00 hectares—96.5% of its total extension.**[202]

However, those companies consistently failed to comply with orders to stop their activities, and ignored administrative and judicial decisions condemning the operation of agro-industrial activities without the environmental authorizations and imposing sanctions for the large-scale deforestation caused. **Both OSU (former PdU) and OSP (former PdP) are still operating without the necessary environmental permits**[203] (see Section 3.3.2).

Despite this, LDC chose to provide a sizeable market for the fruits of massive ongoing deforestation and the continuing circumvention of Peruvian legal requirements. At a minimum, LDC failed to exercise due diligence to ensure that basic requirements—such as to environmental impact assessments in the OECD guidelines and authorizations required by law—were met. Its failure stands in stark contrast to its own public commitments. The failure of LDC is amplified by the fact that it **began sourcing palm oil from SAP and the Ocho Sur Group shortly after the upgrade of LDC's Palm Oil Sustainability Policy with NDPE principles in 2019.**[204] It has continued since, despite other major environmental commitments undertaken recently by LDC—not least to achieve Zero Deforestation in its supply chain by the end of 2025 and having set as a target for the current year (2022) "*100% of direct & indirect sourcing volumes has commitment to NDPE / agreement to LDC sustainability policy/certified volume*".[205] The partnerships at the heart of this complaint are not some legacy commercial relationship that took some time to be identified as inconsistent with new standards. It concerns a relationship entered into after LDC had made these commitments, and which continues to develop, alongside inconsistent assertions by the Respondent MNE as to the sustainability of its policies and practice. As such, it raises substantial questions about how seriously LDC takes such commitments and undermines their credibility.

The facts of this specific instance are also out of step with the adoption and implementation of policies and soft law standards regionally and internationally, reflecting the importance of the impact of deforestation driven by supply chains on the environment. At the regional level, the European Commission proposal for a Regulation to curb EU-driven deforestation and forest degradation will be adopted as part of the EU Forest Law Enforcement Governance and Trade Action Plan.[206] Furthermore, international soft law standards such as **Amsterdam Declaration** focus specifically on deforestation given, *inter alia*, its contribution to the continued increase in atmospheric greenhouse gas levels, as

[202] DEFENSORÍA DEL PUEBLO, Deforestación por cultivos agroindustriales de palma aceitera y cacao Entre la ilegalidad y la ineficacia del Estado, 2017. MINAGRI, *Order to stop Plantaciones de Ucayali SAC's activities*, 9 December 2014; MINAGRI, Resolución 0398-2019-MINAGRI-DVDIAR-DGAAA, 15 October 2019. This decision was confirmed in appeal; see, MINAGRI, Resolución 0013-2020-MINAGRI-DVDIAR, 9 November 2020; CONTRALORÍA GENERAL DE LA REPÚBLICA, Informe N° 691-2019-CG/AGR-AC, 2019 and Press release; EIA calculated a total of 4,870.40 deforested hectares, using a different methodology. See, EIA, Deforestation by Definition, 2015, p. 73.

[203] MINAGRI, Resolución 0057-2020-MINAGRI-DVDIAR-DGAA, 23 January 2020. This decision was confirmed in appeal; see, MINAGRI, Resolución 0008-2021-MIDAGRI-DVDAFIR, 22 February 2021. MINAGRI, Resolución 0398-2019-MINAGRI-DVDIAR-DGAAA, 15 October 2019. This decision was confirmed in appeal; see, MINAGRI, Resolución 0013-2020-MINAGRI-DVDIAR, 9 November 2020. .

[204] LDC, RSPO Annual Communication of Progress, 2019, p. 4.

[205] LDC, LDC Commits to Zero Deforestation & Native Vegetation Conversion in Its Supply Chains by End 2025, 22 February 2022; LDC, Palm Sustainability Progress Implementation Report, October 2020, p. 10. Target for the current year (2022) has not been achieved, see LDC, Palm Sustainability Progress Implementation Report, September 2022.

[206] European Commission, Proposal for a Regulation on deforestation-free products.

forests acts as major sinks of carbon dioxide.[207] **The Netherlands is among the States that have committed itself to the goal of a fully sustainable palm oil chain, and to eliminate deforestation from agricultural supply chains.**[208]

Particularly in the last few years, environmental and climate change jurisprudence has developed significantly under domestic law and international human rights law, promoting a systemic interpretation of due diligence standards incumbent on States and corporate actors, in light of evolving climate targets under the Paris Climate Agreement and evolving scientific evidence of steps needed to avoid catastrophic climate change. Notable cases decided in the Netherlands on compliance with the net-zero goals and reduction of greenhouse gas emissions, for instance, include *Urgenda Foundation v. The State of The Netherlands*[209] and *Milieudefensie et al. v. Royal Dutch Shell plc*,[210] where the courts established that both the State of The Netherlands (in the first case) and the company Shell (in the second) have duties of care requiring heightened due diligence and concerted action to reduce greenhouse gas emissions.

These developments are not only relevant to Europe, but also to the Amazon region, where courts have not only acknowledged the link between deforestation and the human rights of present and future generations,[211] but also recognized the Amazon itself as a subject of rights.[212]

Therefore, **by not meeting internationally recognized due diligence standards in relation to the environment and climate change, LDC failed to "give appropriate attention to environmental issues" and to exercise environmental due diligence** as set out in Chapter VI of the OECD Guidelines.[213]

4.1.2. LDC's Failure to Conduct Due Diligence and Address Human Rights Impacts in its Palm Oil Supply Chain

- LDC has failed to *"(r)espect human rights, which means (it (...)) should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved"* (OECD Guidelines, Chapter IV, para. 1).

[207] Amsterdam Declarations Partnership, Statement of Ambition 2025, 2021.
[208] Amsterdam Declarations Partnership, Statement of Ambition 2025, 2021.
[209] Supreme Court of the Netherlands, *Urgenda Foundation v. The State of The Netherlands*, 20 December 2019. In this case, the Supreme Court of the Netherlands stated that the Netherlands must take steps to reduce carbon emissions consistent with limiting global warming to an average of 1.5°C, in compliance with the Paris Agreement, and based its ruling on articles 2 and 8 of the European Convention on Human Rights.
[210] The Hague District Court, *Milieudefensie et al. v. Royal Dutch Shell plc*, 26 May 2021. In this case, Royal Dutch Shell was ordered to reduce its carbon dioxide emissions by 45% by the end of 2030 with a landmark decision that included the reduction of Scope 3 emissions by a specific amount.
[211] Superior Court of Lima, Álvarez et al v. Perú. Filing date: 16 December 2019, decision is still pending; Federal Supreme Court of Brazil, *PSB et al. v. Brazil*, Case No. ADPF 760, 30 November 2020. Another environmental case concerning the improper management of the Amazon Fund is also being heard by the Court, see Federal Supreme Court of Brazil, *PSB et al. v. Brazil*, Case No. ADO 59/DF, June 2020; while another case was recently decided, where it was found that the government has a constitutional duty to allocate funds to mitigate climate change, stressing that environmental law treaties such as the Paris Agreement constitute a human rights treaty with "supranational" status, see Federal Supreme Court of Brazil, *PSB et al. v. Brazil (on Climate Fund)*, Case No. ADPF 708, 30 June 2022.
[212] Colombian Superior Court of Justice, *Future Generations v. Ministry of the Environment and Others*, Case No. 11001-22-03-000-2018-00319-00, 5 April 2018.
[213] OECD, OECD Guidelines for Multinational Enterprises, 2011, chapter VI, commentary 61.

- LDC has failed to "*(c)arry out human rights due diligence as appropriate to* (its (…)) *size, the nature and context of operations and the severity of the risks of adverse human rights impacts"* (OECD Guidelines, Chapter IV, para. 5).

Section 3.4.1 of this specific instance makes clear that **the palm oil currently traded by LDC with SAP and the Ocho Sur Group has substantially and negatively impacted the rights, life, and wellbeing of the indigenous community Santa Clara de Uchunya and the Shipibo-Konibo people**. Yet there is no indication that LDC has identified or assessed these impacts as part of its due diligence, let alone taken any steps to prevent, mitigate, or remediate those impacts as required. On the contrary, all indications are that it entered into and continued business as usual with Ocho Sur Group regardless of those impacts.

Chapter IV of the OECD Guidelines urges enterprises to respect human rights, meaning that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.[214] As noted above, the OECD Guidelines may be—and in this case have been—breached through an MNE's contribution, lack of adequate due diligence and/or its failure to leverage influence with supply chains. In each of these ways, LDC has breached the General Policies in Chapter II of the OECD Guidelines, as well as Chapters IV and VI in relation to Human Rights and the Environment which reflect those standards.

The *chapeau* to the Chapter IV specifies that human rights are to be understood within the framework of International Human Rights Law and national laws. The Commentary to the OECD Guidelines makes clear that this, at a minimum, refers to basic human rights sources such as the Universal Declaration on Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights.[215] It notes heightened attention may be due to specific groups or populations at particular risk, which would include in this case indigenous peoples and specific instruments applicable to them—such as the United Nations Declaration on the Rights of Indigenous Peoples and the International Labour Organization ("ILO") Convention N° 169 on Indigenous and Tribal People's Rights.[216] In addition, regional standards from the Inter-American system are binding in Peru. In the present case, it is relevant to note that despite problems with giving effect to the law in Peru, the domestic legal framework enshrines a broad range of basic human rights provisions, ranging from the Political Constitution of Peru to primary and secondary laws.[217]

The **Inter-American Court of Human Rights ("IACtHR")** has noted the importance of the UN Guiding Principles ("UNGP") on Business and Human Rights, stipulating that *"businesses must respect the human rights of members of specific groups or populations,*

[214] OECD, OECD Guidelines for Multinational Enterprises, 2011, chapter IV, para. 1.
[215] OECD, OECD Guidelines for Multinational Enterprises, 2011, para. 39.
[216] OECD, OECD Guidelines for Multinational Enterprises, 2011, para. 40. In this regard, see also Initial Assessment by NCP the Netherlands in Pluspetrol.
[217] *Ley General de Comunidades Campesinas*, N° 24656 of 1987 and its Regulation of 1991; *Ley de Comunidades Nativas y de Desarrollo Agrario de la Selva y de Ceja de Selva*, Decreto Supremo N° 22175 of 1978 and its Regulation of 1979; *Ley para la Protección de Pueblos Indígenas u Originarios en Situación de Aislamiento y Situación de Contacto Inicial*, N° 28736 of 2006 and its Regulation of 2007; *Ley del Derecho a la Consulta Previa a los Pueblos Indígenas u Originarios*, N° 29785 of 2011) and its Regulation of 2012; *Ley que establece el Régimen de Protección de los Conocimientos Colectivos de los Pueblos Indígenas Vinculados a los Recursos Biológicos*, N° 27811 of 2002. Peruvian laws and regulations on the environment and natural resources further provide protection to indigenous lands and land's rights.

including indigenous and tribal peoples, and pay special attention when such rights are violated".[218]

Addressing the link between indigenous peoples' rights and environmental and social impact assessments ("ESIAs"), the IACtHR established that ESIAs must "*respect the indigenous peoples' traditions and culture, and be completed before the concession is granted*" in order to guarantee the rights of the indigenous people to be informed about all proposed projects on their territory and to effective participation in the process of granting concessions. The impact assessments must address the social, spiritual and cultural impact that the planned development activities might have and be implemented in accordance with the Court's case law and relevant international standards.[219]

Likewise, the duties of **meaningful consultation** with indigenous communities, and their **right to participate** in decision-making that affects their rights, have repeatedly been affirmed at UN level. The UN Human Rights Committee has instructed Peru that if projects could substantially compromise or interfere with the culturally significant economic activities and livelihoods of an indigenous community, their participation in the decision-making process must be effective, which requires not mere consultation but the free, prior and informed consent.[220]

Finally, the UN Working Group on Business and Human Rights has addressed the relevance of these precedents for companies sourcing from the palm oil sector with operations in or near indigenous peoples' territories. It has highlighted that they should assume that risks related to land acquisitions are severe and often accompanied land rights violations and violence, implying that human rights due diligence should be prioritized and that impact assessments should "*systematically identify impacts on the land and tenure rights*". As result, meaningful consultation with, and consent of, indigenous peoples is necessary to address these impacts and ensure the legitimacy and effectiveness of the due diligence process. The Working Group therefore called on companies, irrespective of national legislative frameworks, to respect the rights of indigenous peoples "*to be consulted and to give or withhold free, prior and informed consent, in all their operations, and* (to) *protect these rights in the conduct of due diligence*".[221]

As noted above, part of the Ocho Sur plantations were established on the lands traditionally owned by the indigenous community of Santa Clara de Uchunya and the Shipibo-Konibo people, that were acquired via **certificates of land possession issued in violation of the affected community's right to free, prior and informed consent** and through **corruption schemes currently under investigation** (see Section 3.5).[222] This situation has also raised the attention of the UN Committee on the Elimination of Racial Discrimination

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[218] IACtHR, *Case of the Saramaka People v. Suriname,* Judgment of November 28, 2007, para. 134. IACtHR, *Case of the Kaliña and Lokono peoples v. Suriname*, Judgment of November 25, 2015, para. 225

[219] IACtHR, *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador* , Judgment of June 27, 2012, paras 206, 207.

[220] UN Human Rights Committee, Poma Poma v Peru, CCPR/C/95/D/1457/2006, 24 April 2009, para. 7.6.

[221] UN Working Group on Business and Human Rights, Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises: "Addressing the human rights impacts of agro-industrial operations on indigenous and local communities: State duties and responsibilities of business enterprises", A/71/291, 4 August 2016, paras 44, 48, and 72.

[222] FPP, Amicus Curiae Brief in the Case of the Santa Clara Native Community of Uchunya v. Regional Government of Ucayali, PdP, and the Zonal Headquarters of the Registration Zone No. VI of the National Superintendency of Public Records, Case No: 03696-2017-AA/TC, 18 October 2018, para. 9.b); and IACHR, Situation of Human Rights of the Indigenous and Tribal Peoples of the Pan-Amazon Region, 2019, para. 67-69. See also, IACtHR, Case of the Kichwa Indigenous People of Sarayaku V. Ecuador, Judgment of June 27. ILO, Indigenous and Tribal Peoples Convention, 1989 (No. 169), arts. 6, 15, 17.

who expressed its concerns to the State of Peru on the situation of land titling "*over the traditional territory of Santa Clara de Uchunya indigenous community*" and risk of violation of their free, prior and informed consent.[223]

The violation of Santa Clara de Uchunya community and the Shipibo-Konibo people's right to free, prior and informed consent and to control and ownership over their lands, territories and resources has precipitated associated violations of their rights to a healthy environment, food, water, and culture. Similar facts and violations were recently addressed by the **IACtHR,** which has ruled over the first contentious **case on the rights to a healthy environment, to adequate food, to water and to take part in cultural life** based on Article 26 of the American Convention, **as well as their impact and particularities in the case of indigenous peoples.**[224] In particular, the case concerned the lack of delimitation, demarcation, and title of the ancestral lands of indigenous communities; the occupation by external residents promoting illegal logging activities; the building of infrastructure without prior consultation to the indigenous groups; and the decrease of forest resources and biodiversity resulting from those illegal activities, and how that affected indigenous communities traditional access to food and water.[225] The IACtHR found that **the State** "***violated to the detriment of the indigenous communities victims in this case their interrelated rights to take part in cultural life in relation to cultural identity, and to a healthy environment, adequate food, and water***".[226] While that case involved the responsibility of the State, it is clear that this type of activity involves precisely the sort of human rights impacts that due diligence must identify and address.

The legal framework also enshrines the right to a healthy environment, recognized on the international and regional levels, which is seriously impacted by the environmental harm at the heart of this case and linked to the enjoyment of indigenous peoples rights.[227] Access to a clean, healthy and sustainable environment was declared a universal human right in Resolution A/RES/76/300 of the United Nations General Assembly ("UNGA").[228] The **IACtHR** in Advisory Opinion 23/17 of 2018,[229] also noted the link with indigenous peoples' rights:

> "*in cases concerning the* ***territorial rights of indigenous and tribal peoples****, the Court has referred to the* ***relationship between a healthy environment and the protection of human rights,*** *considering that these peoples' right to collective ownership is linked to the protection of, and access to, the resources to be found in their territories, because* ***those natural resources are necessary for the very survival, development and continuity of their way of life****. The Court has also recognized the close links that exist between the right to a dignified life and the protection of ancestral territory and natural resources.* (…) *The Court has also emphasized that the lack of access to the corresponding territories and natural*

[223] IACHR, 2021 Annual Report, Chapter IV.A Human Rights Development in the Region, Section on Peru, 2021, para. 812.
[224] IACtHR, *Indigenous Communities Members of the Lhaka Honhat Association vs. Argentina*, Judgement on Merits, Reparations and Costs, 6 February 2020, para. 201.
[225] IACtHR, *Indigenous Communities Members of the Lhaka Honhat Association vs. Argentina*, Judgement on Merits, Reparations and Costs, 6 February 2020, paras 46-88.
[226] IACtHR, *Indigenous Communities Members of the Lhaka Honhat Association vs. Argentina*, Judgement on Merits, Reparations and Costs, 6 February 2020, para. 289.
[227] See also: IACtHR, Case of the Yakye Axa Indigenous Community v. Paraguay, Judgment of June 17, 2005, para. 147 and 167. See also: Case of the Xákmok Kásek Indigenous Community v. Paraguay, Judgment of August 24, 2010, para. 282. Committee on Economic, Social and Cultural Rights, CESCR General Comment No. 12: The Right to Adequate Food (Art. 11), U.N. Doc. E/C.12/1999/5, para. 13.; etc.
[228] UNGA, A/RES/76/300, The human right to a clean, healthy and sustainable environment, 28 July 2022.
[229] IACtHR, *The Environment and Human Rights*, Advisory Opinion OC-23/17, 2018.

> *resources may expose indigenous communities to precarious and subhuman living conditions and increased vulnerability to disease and epidemics, and subject them to situations of extreme neglect that may result in various violations of their human rights in addition to* ***causing them suffering and undermining the preservation of their way of life, customs and language***".[230]

In the same Advisory Opinion, the IACtHR recalls that the Peruvian Constitution establishes the right to a healthy environment under Article 2.[231] Likewise, in 2018, the UN Committee on the Elimination of Racial Discrimination recommended that Peru

> "*ensure the protection of indigenous peoples' right to own, use, develop and exercise full control over their lands, territories and resources* (and (…)) "*step up its efforts to conduct timely and appropriate social and environmental impact assessments of natural resource development projects sited in indigenous peoples' territories with a view to protecting those peoples' traditional means of subsistence*".[232]

In addition, as noted in Section 3.4.1.1, members of **the Santa Clara de Uchunya community and the Shipibo-Konibo people have been victims of constant psychological and physical threats resulting from their fight against illegal deforestation and quest to recover their ancestral territories.** In this context, the gravity of the situation has been highlighted by several international bodies as being in contravention of international standards on Human Rights Defenders[233] and the rights to liberty and security, freedom from arbitrary or unlawful interference with privacy, family and home, among many others. The importance of the protection of the rights of those who defend the rights of others has been expressed as a priority international concern in recent years.[234]

It is further concerning to note that specific violations of labor rights, of the rights to liberty, freedom from forced labor, health and freedom from ill-treatment, arise in relation to particular conditions in which workers were held during COVID pandemic, notably at a time when LDC recorded record profits in the relevant sector.[235]

Finally, Section 3 made clear the broader link between Amazonian deforestation and climate change, which is recognized across international courts and bodies as posing an urgent and fundamental threat to the human rights of many (or indeed all) around the globe. The UN Human Rights Council has recognized that climate change "*has already had an adverse impact on the full and effective enjoyment of human rights enshrined in the Universal Declaration of Human Rights and other international human rights treaties*".[236] The Human Rights Committee has recognized the implications for the right to life, in for example General Comment N° 36 of 2019, which identifies climate change as among "*the most*

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[230] IACtHR, *The Environment and Human Rights*, Advisory Opinion OC-23/17, 2018, para. 48.
[231] IACtHR, *The Environment and Human Rights*, Advisory Opinion OC-23/17, 2018, para. 59, fn. 88. On the content of the right to a healthy environment in Peru, see: CONSTITUTIONAL TRIBUNAL OF PERU, Case No. 0964-2002-AA/TC, 17 March 2003; CONSTITUTIONAL TRIBUNAL OF PERU, Case No. 0048-2004-PI/TC, 1 April 2005; CONSTITUTIONAL TRIBUNAL OF PERU, Case No. 03343-2007-PA/TC, 19 February 2009.
[232] UN COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION, Concluding observations on the combined twenty-second and twenty-third periodic reports of Peru, CERD/C/PER/CO/22-23, 23 May 2018, para. 18.
[233] See also: CEJIL, ESPERANZA PROTOCOL, *An effective response to threats against human rights defenders*, 2021.
[234] UN GENERAL ASSEMBLY, *Special Rapporteur on the situation of human rights defenders*, Situation of human rights defenders, A/75/165, 16 July 2020. UNECE, World's first Special Rapporteur on environmental defenders elected under the Aarhus Convention, press release, 24 June 2022. In relation to Peru, see UN SPECIAL RAPPORTEUR ON HUMAN RIGHTS DEFENDERS, Press Release – Peru: Criminalisation of environmental human rights defenders must stop says UN expert, 18 May 2021.
[235] See Section 3.4.2 of this specific instance.
[236] UN HUMAN RIGHTS COUNCIL, Human Rights and Climate Change, A/HRC/RES/41/21, 23 July 2019, p. 2.

pressing and serious threats to (…) the right to life."[237] The Office of the UN High Commissioner for Human Rights, among others, has underscored the impact of "*global warming (…) for the full range of human rights*"[238] that protecting the environment is a precondition to the enjoyment of all other human rights.[239] Recently the UN High Commissioner warned that "*the world has never seen a threat to human rights of this scope; this is not a situation where any country, any institution, any policy-maker can stand on the sidelines.*"[240]

This reality is reflected in the positive legal obligations of States to regulate MNEs based on their territories or within their control,[241] including those that undertake activities transnationally, to ensure the MNEs "*respect internationally recognized human rights and prevent and mitigate human rights abuses throughout their business activities and relationships.*"[242] To this end, States must require businesses to undertake human rights due diligence and "*ensure effective national procedures to ensure compliance and provide for adequate penalties for businesses failing to comply.*"[243] The NCP procedure is one way for States to do so, among others.

In conclusion, the case concerns serious human rights impacts and threats, which require heightened due diligence on the part of LDC. The human rights violations suffered by the members of the Santa Clara de Uchunya community are grave, according to well-established and internationally recognized standards that constitute the framework in light of which the OECD Guidelines need to be read. The violations are notorious, reflected in the extensive number of authoritative reports published by national and international civil society organizations on the situation of the communities, and the decision taken on the matter by the IACtHR. **At the time LDC started its business relationship with the Ocho Sur Group, in 2020, there can therefore be no doubt that LDC knew or should have known of the human rights violations of the indigenous community. Even a cursory desk review would have alerted LDC to the serious human rights implications of engaging with these**

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[237] UN HUMAN RIGHTS COMMITTEE, General Comment No. 36, CCPR/C/GC/36, para. 62. See also older cases such as *E.H.P. et al. v Canada*, Communication No. 67/1980, CCPR/C/OP/1, 27 October 1982, para. 20, *Vaihere Bordes and John Temeharo v. France*, Communication No. 645/1995, CCPR/C/57/D/645/1995, 22 July 1996; and *Lubicon Lake Band v. Canada*, Communication No. 167/1984, CCPR/C/38/D/167/1984, 26 March 1990, recognising that environmental pollution can threaten the right to life of present and future generations, and the livelihood of indigenous communities. More recently, UN HUMAN RIGHTS COMMITTEE, *Teitiota v. New Zealand*, Views adopted by the Committee under Article 5(4) of the Optional Protocol, concerning Communication No. 2728/2016, CCPR/C/127/D/2728/2016, 23 September 2020,) para. 9.11.

[238] HUMAN RIGHTS COUNCIL, Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human right, A/HRC/10/61, 15 January 2009, para. 20.

[239] HUMAN RIGHTS COUNCIL, Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human right, A/HRC/10/61, 15 January 2009, paras 16–19.

[240] UN HIGH COMMISSIONER FOR HUMAN RIGHTS, Global update at the 42nd session of the Human Rights Council Opening Statement by UN High Commissioner for Human Rights Michelle Bachelet Office of the High Commissioner for Human Rights, 9 September 2019.

[241] OPEN-ENDED INTERGOVERNMENTAL WORKING GROUP ("OEIGWG"), Third revised draft legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises, 17 August 2021, Article 6(1) and 6(2).

[242] OPEN-ENDED INTERGOVERNMENTAL WORKING GROUP ("OEIGWG"), Third revised draft legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises, 17 August 2021, Article 6(2).

[243] OPEN-ENDED INTERGOVERNMENTAL WORKING GROUP ("OEIGWG"), Third revised draft legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises, 17 August 2021, Article 6.6. Article 6.4. makes clear some of what is entailed in due diligence, including identifying, assessing and publishing any actual or potential human rights abuse; appropriate measures to avoid, prevent and mitigate harm it is directly linked to through its business relationships; monitor the effectiveness of measures to prevent and mitigate; and communicating their measures and policies to stakeholders.

partners in its supply chain. There can equally be no doubt that it knew or should have known of the unlawful deforestation associated with its partners, the failure to conduct necessary assessments, and the real risk that Amazonian deforestation poses to climate change and associated human rights. The fact that LDC has belatedly opened a grievance proceeding after prompting from civil society does not address its failure at the outset to conduct due diligence before entering the commercial relationship with Ocho Sur. And the scant information available regarding that review—highlighting a formal change of ownership structure over engaging with the substance of the environmental and human rights impacts, and indicating that it has sought and considered information only from the supplier that committed those violations—does not suggest a serious and substantive effort.

At best, LDC failed to exercise basic due diligence to identify and assess the risks, or it willfully ignored the serious adverse human rights impacts caused by its new business partner. Having decided to enter into that business relationship, LDC had a responsibility to address the ongoing adverse impacts with which they were involved, including violations of the rights to a free, prior and informed consent of indigenous peoples and to their traditional lands, territories, and resources. It has similarly failed to exercise due diligence to prevent or mitigate the serious threats to human rights that arise from deforestation and its contribution to the climate crisis.

4.1.3. LDC's Failure to Conduct Due Diligence and Address Risk of Corruption in its Palm Oil Supply Chain

- LDC has failed to *"carry out risk-based due diligence, for example by incorporating it into (its (…)) enterprise risk management systems, to identify, prevent and mitigate actual and potential adverse impacts"* (OECD Guidelines, Chapter II, Section A, para. 10 – General Policies).

The OECD Guidelines make clear that MNEs are expected to include risks associated with corruption in their due diligence. Particularly in the agricultural sector, such risk typically arises when enterprises "*have to offer undue advantages to obtain access to large land areas to the detriment of local communities holding customary land rights*".[244] This risk has evidently materialized in Peru, where the extensive area currently covered in plantations owned by the Ocho Sur Group was subject to unlawful "landgrab", made possible through deceitful maneuvers at the expenses of the indigenous community of Santa Clara de Uchunya and Shipibo-Konibo people's customary rights over those lands.

Of particular relevance in this specific instance is the OECD-FAO Guidance which provides complementary guidance "*to help enterprises observe existing standards for RBC* (Responsible Business Conduct) *along agricultural supply chains*"[245] and may assist in the interpretation and application of the OECD Guidelines. In identifying, assessing and prioritizing deforestation risks in the supply chain, the OECD- FAO Guidance provides that the enterprise maps the supply chain. This process "*involves establishing the sources of all the commodities and products covered by the enterprise's policy on forest, in order to establish the risks associated with their production*",[246] including sources related to "(I)*egal frameworks for the production of commodities and products purchased by the*

[244] OECD-FAO, OECD-FAO Guidance for Responsible Agricultural Supply Chains, 2016, p. 67.
[245] OECD-FAO, Guidance for Responsible Agricultural Supply Chains, 2016, p. 15-16.
[246] OECD-FAO, Guidance for Responsible Agricultural Supply Chains, 2016, p. 29.

company and for forest conversion in the countries of production, levels of governance and law enforcement, legality compliance and corruption".[247]

While LDC purports in its Palm Oil Sustainability Policy to comply with all applicable laws and regulations, as well as to uphold business ethics, including "*local, national and international laws and regulations related to environmental, social and corporate governance, including anti-bribery, corruption and money laundering*",[248] its engagement with the Ocho Sur Group reveals a different story.

As noted in Section 3.5, several **corruption case files** are currently under investigation at the national level. As consistently reported by local and international civil society organizations,[249] those **revolve around local public officers having facilitated PdU (now OSU) and PdP (now OSP) in the irregular appropriation of land.** Indeed, the facts of the corruption cases relate to the same period in which PdU (now OSU) and PdP (now OSP) began their operations and obtained more than 13,000 hectares through three land appropriation mechanisms.

The corruption schemes involved not only prominent public officials covering senior roles in the administration of the Ucayali region, but also **private actors directly linked to the oil palm plantations in question: notably Dennis Nicholas Melka, one of the directors of Peruvian Palm Holdings Ltd[250] (parent company of the OSU and OSP) and United Oil Company SEZC[251] (parent company of PdU and PdP). The Judge recently included both OSP and PdP in the investigation, at the request of the Prosecutor.**[252]

Articles 22 and 23 of the United Nations Convention against Corruption (UNCAC), referred to under Commentary 79 to Chapter VII of the OECD Guidelines, and mutually supporting and complementary to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (the "Anti-Bribery Convention"), provides that both bribery and embezzlement amount a criminal offence when committed intentionally by "*any person who directs or works, in any capacity, **for a private sector entity***".

The **existence of several criminal proceedings in Peru and numerous civil society reports** related to corruption, publicly known for years, not least the criminal proceedings involving legal representatives of the Ocho Sur Group—a direct trading partner of LDC—**are clear indicators of a serious risk of corruption that LDC should have thoroughly assessed. By entering into a business relationship with SAP and the Ocho Sur Group, LDC has disregarded and neglected that risk in the production of commodities that entered its supply chain. This indicates that LDC failed to adequately address the risk at the commencement of its commercial relationship with SAP and has repeatedly failed to address it over the course of the business relationship.**

[247] OECD-FAO, Guidance for Responsible Agricultural Supply Chains, 2016, p. 31.
[248] LDC, Palm Sustainability Policy, 2022, p. 2.
[249] PROÉTICA, The business of deforestation, 2021, p. 12-13. MONGABAY, Tráfico de tierras en Ucayali: funcionarios detenidos por pertenecer a mafia, 2018, and In Peru, a corrupt land-titling scheme sees forests sold off as farms, 2021. PROÉTICA, Caso Cocha Anía. CONVOCA, OXFAM, Amazonía Arrasada, 2016, p. 31; PROÉTICA, Tráfico de tierras.
[250] CONVOCA, Melka Case: The Financiers Behind the Oil Palm Business in Amazonian Deforested Areas, 2021.
[251] EIA, Deforestation by Definition, 2015, p. 37. See also, THE JAKARTA POST, Public Auction of Real Properties and Plantations in the provinces of Coronel Portillo and Padre Abad, Department of Ucayali, 23 June 2016; LEXLATIN, Hernández & Cía y H&K en adquisición de activos de United Oils Limited en Perú, 12 October 2016.
[252] JUSTICIA TV - PODER JUDICIAL DEL PERÚ, #EnVivo | Audiencia de incorporación de personas jurídicas en la investigación de Dennis Nicholas Melka por delito ambiental y otros, 6 January 2022.

4.2. LDC's Contribution to Adverse Impacts

- LDC has failed to *"avoid causing or contributing to adverse impacts on matters covered by the Guidelines, through (its (...)) own activities, and address such impacts when they occur."* (OECD Guidelines, Chapter II, Section A, para. 11).
- LDC has failed to *"within the context of (its (...)) own activities, avoid causing or contributing to adverse human rights impacts and address such impacts when they occur."* (OECD Guidelines, Chapter IV, para. 2).
- LDC has failed to *"provide for or co-operate through legitimate processes in the remediation of adverse human rights impacts where (it (...)) identif(ies) that they have caused or contributed to these impacts"* (OECD Guidelines, Chapter IV, para. 6).

Through its trading policies, practices and relationships, LDC has contributed to the adverse impacts related to environment, human rights violations and corrupt practices described in Section 3.3, 3.4 and 3.5. As a result, **LDC must "address" the harms it has contributed to, cease its business activity with SAP and provide or cooperate in the "remediation".**

The most stringent responsibilities under the OECD Guidelines arise where the MNE is itself causing or contributing to an adverse impact. OECD Due Diligence Guidance interprets the term "contribution" in a way that leaves little doubt that in this case **LDC has contributed to adverse impact within the meaning of the Guidelines.**

Commentary 42 to the OECD Guidelines explains that an enterprise may cause or contribute to adverse human rights impacts through "***both actions and omissions***." Likewise, the OECD Due Diligence Guidance explains that "*(c)ontribution can occur in the context of activity related to an enterprise's own operations or through a business relationship*".[253] The contribution must be substantial, not minor or trivial. However, it is also clear that it includes "facilitating" or "incentivizing" which both arise through the relationships with a major trader, as is the case for LDC. Chapter II of the OECD Guidelines clarifies as follows:

> *(f)or the purposes of this recommendation,* ***'contributing to'*** *an adverse impact should be interpreted as a substantial contribution, meaning an activity that causes,* ***facilitates or incentivizes*** *another entity to cause an adverse impact and does not include minor or trivial contributions."*[254]

The OECD Due Diligence Guidance contains a non-exhaustive list of factors that can be taken into account in assessing if there has been a substantial contribution, whether through causing, facilitating, or incentivizing adverse impacts. They include various factors present in this case, such as:

> *1. "The extent to which an enterprise may encourage or motivate an adverse impact by another entity, i.e. the degree to which the activity increased the risk of the impact occurring. 2. The extent to which an enterprise could or should have known about the adverse impact or potential for adverse impact, i.e. the degree of foreseeability. 3. The degree to which any of the enterprise's activities actually mitigated the adverse impact or decreased the risk of the impact occurring".*[255]

[253] OECD, OECD Due Diligence Guidance for Responsible Business Conduct, 2018, p. 70.
[254] OECD, OECD Guidelines for Multinational Enterprises, 2011, chapter II, commentary 14.
[255] OECD, OECD Due Diligence Guidance for Responsible Business Conduct, 2018, p. 70.

The United Nations Office of the High Commissioner for Human Rights ("OHCHR") exemplifies the form that facilitation may take in business relationships when it suggests that:

> *"a bank may facilitate a client or other entity to cause harm, if it knows or should have known that there is human rights risk associated with a particular client or project, but it omits to take any action to require, encourage or support the client to prevent or mitigate these risks. The bank's failure to act upon information that was or should have been available to it may create a facilitating environment for a client to more easily take actions that result in abuses".*[256]

The same logic applies where a major trader knew or should have known of risks from within its own supply chains, yet it fails to act upon that information but continues to provide the market for the fruits of the violations. The Draft OECD-FAO Handbook on Deforestation, Forest Degradation and Due Diligence in Agricultural Supply Chains ("**Draft OECD-FAO Handbook**") **deals explicitly with the contribution of traders to deforestation** or the risk of deforestation, and provides the following example when defining "contribution"

> *"a **trader that insists on sourcing cocoa beans from a local producer that it knows, or should know, is farming cocoa illegally from a protected area of forest contributes to deforestation**".*[257]

The example is directly applicable to this specific instance. As set out above (Section 3.2), LDC sources approximately 40% (746,566 tons) of its overall palm oil stock from indirect suppliers through its Commercial office in Singapore;[258] and itself indicates on its website that one of the suppliers from which that Commercial office buys crude palm oil is the Peruvian extraction plant SAP. As indicated, SAP sources 88% of its palm fruit bunches from plantations operated on illegally deforested lands by companies of the same corporate group (Ocho Sur Group).[259]

The adverse impacts explained in this specific instance are being significantly facilitated and incentivized by LDC through its business relationships and its purchases of crude palm oil from SAP and the Ocho Sur Group, who process oil palm fruit bunches from the areas where serious environmental and human rights violations are occurring. As a recipient of—and trader in—palm oil obtained through these violations, LDC has contributed within the sense of the Guidelines to the adverse impacts.

The nature of the adverse impacts in this case has been established in Sections 3 and 4.1. Those sections make clear the illegal deforestation and irregular appropriation of land belonging to the indigenous groups and its devastating implications for indigenous people's rights, including to survival, self-determination, culture, land, natural resources, autonomy, participation and adequate prior consultation, among others. In granting urgent precautionary measures the IACHR concluded there were prima facie indications of a "*grave and urgent*" risk of "*irreparable*" damage to human rights of the indigenous community of Santa Clara de Uchunya. Multiple courts and bodies have clearly established that illegal deforestation has and continues to contribute to the rise in greenhouse gas emissions and to climate change and has had a profound impact already on the full array of human rights violations, civil, political, economic and cultural rights. Continuing to support

[256] OHCHR, OHCHR response to request from BankTrack for advice regarding the application of the UN Guiding Principles on Business and Human Rights in the context of the banking sector, 12 June 2017, p. 8.
[257] OECD-FAO, Handbook on Deforestation, Forest Degradation and Due Diligence in Agricultural Supply Chains, 2022, p. 16.
[258] LDC, Palm Sustainability Progress Implementation Report, October 2020, p. 2.
[259] LDC, H1 2020 Palm Traceability to Mill, Oct 2020, p. 16. LDC, H1 2021 Supply Chain Traceability, Dec 2021, p. 29.

unlawful deforestation given its dramatic consequences that remain to this day is irreconcilable with International Human Rights and Environmental Law.

The remote sensing data, documentary evidence and findings from administrative, judicial and quasi-judicial bodies demonstrate the illegal deforestation, the serious violations of indigenous rights people and the corruption maneuvers associated with PdP (now OSP) and PdU (now OSU), as well as the risks embedded in engaging in a business relationship with the Ocho Sur Group. LDC as a commodity trader knew or should have known about the notorious deforestation and illegality that was the subject of multiple legal actions, expert reports and public criticism at the international level, as set out in this complaint.

By continuing its business relationship with SAP, LDC created a lucrative market for the fruits of the wrongs. Far from addressing the problems, it has facilitated, incentivized, and strengthened the impunity and profitability that create the enabling environments within which violating entities operate and thrive. It has failed to take the necessary measures to cease and to remediate violations, and to prevent their recurrence in the future.

4.3. LDC's Failure to Exercise Leverage in its Business Relationships

- LDC has failed to *"(s)eek to prevent or mitigate an adverse impact where (it has (…)) not contributed to that impact, when the impact is nevertheless directly linked to (its (…)) operations, products or services by a business relationship"* (OECD Guidelines, Chapter II, Section A, para. 12).
- LDC has failed to "*encourage, where practicable, business partners, including suppliers and sub-contractors, to apply principles of responsible business conduct compatible with the Guidelines.*" (OECD Guidelines, Chapter II, Section A, para. 13).
- LDC has failed to *"(s)eek ways to prevent or mitigate adverse human rights impacts that are directly linked to* (its (…)) *business operations, products or services by a business relationship, even if* (it does (…)) *not contribute to those impacts* (OECD Guidelines, Chapter IV, para. 3).

LDC has also failed to exercise its leverage to prevent and mitigate adverse impacts. The expectation that MNEs will use their leverage to prevent and mitigate adverse impacts is closely related to, and inherent in, the due diligence standards noted above. It is also enshrined in Chapter II and Chapter IV of the OECD Guidelines, which entails "*us(ing) its leverage to influence the entity causing the adverse human rights impact to prevent or mitigate that impact.*"[260]

The expectation to use the leverage the MNE has applies **whether or not the enterprise has itself contributed to the impact,** as the key is the link to the enterprise and its capacity of to exert influence via its business relationships. Those "business relationship" are defined as including "*relationships with business partners, entities in the supply chain and any other non-State or State entities directly linked to its business operations, products or services.*"[261] Chapter IV of the OECD Guidelines therefore recommends that enterprises *"seek ways to prevent or mitigate adverse human rights impacts that are directly linked to their business operations, products or services by a business relationship, even if they do not*

[260] OECD, OECD Guidelines for Multinational Enterprises, 2011, Chapter IV, Commentary 42; in line with Chapter II, para. 12, and Chapter IV, para. 3, of the OECD Guidelines.
[261] OECD, OECD Guidelines for Multinational Enterprises, 2011, Commentary 14.

contribute to those impacts".[262] Likewise, where an enterprise does contribute to wrongs, the OECD Commentary states the MNE *"should take the necessary steps to cease or prevent its contribution and use its leverage to mitigate any remaining impact to the greatest extent possible"*.[263]

The requirement to exercise leverage includes the prevention and mitigation of adverse human rights and environmental impacts, at the heart of this case, but may even go further to embrace responsible business conduct more broadly. Chapter II of the OECD Guidelines notes that *"(i)n addition to addressing adverse impacts in relation to matters covered by the Guidelines,* (MNEs should) *encourage, where practicable, business partners, including suppliers and sub-contractors, to apply principles of responsible business conduct compatible with the Guidelines."*[264] The expectation that MNEs use the leverage they have in respect of their business relationships and supply chains is also outlined in the OECD Due Diligence Guidance, in particular in its Section 3.1.[265]

It is recognized that "*leverage is considered to exist where the enterprise has the ability to effect change in the practices of an entity that cause adverse human rights impacts.*"[266] What this entails, will necessarily depend on all the circumstances. The Commentary on the OECD Guidelines states for example that:

> "*Meeting the expectation in paragraph 3 would entail an enterprise,* ***acting alone or in co-operation with other entities, as appropriate, to use its leverage to influence*** *the entity causing the adverse human rights impact to prevent or mitigate that impact."*[267]

The UNGP, Principle 19, which also enshrines the "leverage" standard, makes clear that the expectations of an MNE will depend, among other things, on "*the extent of its leverage in addressing the adverse impact*" as well as the nature and seriousness of those impacts.[268] The Commentary to UNGP states that:

> "***if the business enterprise has leverage to prevent or mitigate the adverse impact, it should exercise it****. If it lacks leverage there may be ways for the enterprise* ***to increase it.*** *Leverage may be increased by, for example, offering capacity-building or other incentives to the related entity, or collaborating with other actors."*

Ultimately, the UNGP Commentary makes clear that if the MNE lacks leverage and is unable to increase it, "*the enterprise should consider* ***ending the relationship****, taking into account credible assessments of potential adverse human rights impacts of doing so."*[269] It concludes that, even in complex circumstances where potential adverse human rights impacts preclude prompt cessation of the relationship (which are not present in this case), *"for as long as the abuse continues and the enterprise remains in the relationship,* ***it should be able to demonstrate its own ongoing efforts to mitigate the impact and be prepared***

[262] OECD, OECD Guidelines for Multinational Enterprises, 2011, Chapter IV, para. 3.
[263] OECD, OECD Guidelines for Multinational Enterprises, 2011, Chapter IV, commentaries 42 and 43.
[264] OECD, OECD Guidelines for Multinational Enterprises, 2011, Chapter IV, para. 13.
[265] OECD, OECD Due Diligence Guidance for Responsible Business Conduct, 2018.
[266] OECD, OECD Guidelines for Multinational Enterprises, 2011, Chapter II, commentary 19; Chapter IV, commentary 42.
[267] OECD, OECD Guidelines for Multinational Enterprises, 2011, Chapter IV, commentary 43.
[268] OHCHR, UN Guiding Principles on Business and Human Rights, Principle 19 and Commentary.
[269] OHCHR, UN Guiding Principles on Business and Human Rights, Principle 19 and Commentary.

to accept any consequences – reputational, financial or legal – of the continuing connection."[270]

In this instance, LDC had significant leverage as a major commodity trader in respect of its supply chain and associates. **A major trader such as LDC, exercising leverage could have had a powerful dissuasive effect, helping to redirect potential harmful activities and/or suspend the trade with plantations and mills that do not comply with NDPE policies.** However, available facts suggest that LDC **has starkly failed to use its powerful leverage over those to whose notorious activities** it is linked, and from whose activities it profits, through its business relationships, in breach of the OECD Guidelines and related standards. It has also failed to take measures to protect the rights of vulnerable communities, and of the global population as a whole whose rights are increasingly impacted in irrevocable ways by widespread deforestation. **Far from positively influencing its partners, or ending the relationship should such influence prove impossible, it appears to have dismissed the violations, in preference for business as usual.**

Finally, it should be noted that this case represents the **emblematic importance of focusing attention on the intermediaries of palm oil supply chains associated with illegal deforestation and human rights violations carried out by large agro-industrial actors in Peru.** A mediation procedure before the Dutch NCP in this matter has the potential not only to promote accountability among those companies directly involved, but to convey a powerful message to all the intermediaries of palm oil supply chains that may counter widespread current assumptions (based on practice to date) that large-scale deforestation can and will continue with impunity.

4.4. LDC's Breaches on Disclosure, Communication and Consultation with Interested Stakeholders

- LDC has failed to *"(e)ngage with relevant stakeholders in order to provide meaningful opportunities for their views to be taken into account in relation to planning and decision making for projects or other activities that may significantly impact local communities"* (OECD Guidelines, Chapter II, Section A, para. 14).
- LDC has failed to *"ensure that timely and accurate information is disclosed on all material matters regarding their activities, structure, financial situation, performance, ownership and governance"* (OECD Guidelines, Chapter III, para. 1).
- LDC has failed to *"(p)rovide accurate, verifiable and clear information that is sufficient to enable consumers to make informed decisions, including information on the prices and, where appropriate, content, safe use, environmental attributes, maintenance, storage and disposal of goods and services. Where feasible this information should be provided in a manner that facilitates consumers' ability to compare products"*. (OECD Guidelines, Chapter VIII, para. 2).
- LDC has failed to *"(c)ontinually seek to improve corporate environmental performance, at the level of the enterprise and, where appropriate, of its supply chain, by (…) promoting higher levels of awareness among customers of the environmental implications of using the products and services of the enterprise, including, by providing accurate information on their products (for example, on greenhouse gas emissions, biodiversity, resource efficiency, or other environmental issues)*. (OECD Guidelines, Chapter VI, para. 6).

[270] OHCHR, UN Guiding Principles on Business and Human Rights, Principle 19 and Commentary.

LDC has breached various aspects of the OECD framework in relation to engagement with stakeholders through consultation, communication and disclosure. For the purpose of this specific instance, interested stakeholders are "*variety of users ranging from shareholders and the financial community to other constituencies such as workers, local communities, special interest groups, governments and society at large*" as defined under Commentary 28 to Chapter III of the OECD Guidelines. It seems clear that the claims made by LDC—or even the lack thereof exhibiting a lack of transparency—would have had an impact on shareholders, stakeholders and consumers led to believe in the sustainable imprint of LDC's business operations. The following sections refer first and more generally to the **failure of LDC to consult and communicate with interested stakeholders in Peru, and then address the misleading claims towards shareholders, consumers and other potential interested stakeholders,**[271] **thus LDC's failure to provide them with accurate, verifiable and clear information.**

4.4.1. LDC'S FAILURE OF DISCLOSURE AND CONSULTATION WITH STAKEHOLDERS

Chapter III of the OECD Guidelines specifies that "*(e)nterprises should ensure that timely and accurate information is disclosed on all material matters regarding their activities, structure, financial situation, performance, ownership and governance.*"[272] Material information includes corporate policies on key areas of OECD concern and their effective implementation, such as regulations on the conduct of due diligence.

The OECD Guidelines call for companies to "*engage with relevant stakeholders in order to provide meaningful opportunities for their views to be taken into account in relation to planning and decision making for projects or other activities that may significantly impact local communities.*'[273] They likewise refer to "*engag(ing) in or support(ing), where appropriate, private or multi-stakeholder initiatives and social dialogue on responsible supply chain management while ensuring that these initiatives take due account of their social and economic effects on developing countries and of existing internationally recognized standards.*"[274] According to the Commentary on Chapter II of the OECD Guidelines "*effective stakeholder engagement*" involves "*two-way communication and depends on the good faith of the participants on both sides. This engagement can be particularly helpful in the planning and decision-making concerning projects or other activities involving, for example, the intensive use of land or water, which could significantly affect local communities.*"[275]

The requirements of due diligence—set out in Section 4.1 of this specific instance—also require ongoing communication as part of the due diligence process itself.[276] **An enterprise should account for how it identifies and addresses actual or potential adverse impacts.**

[271] It is not yet clearly identified, but there is a high probability that it has occurred, how other interested stakeholders have been and will be impacted in the future by this misconduct—for instance, by accepting shares of the company as employment benefits or investing in LDC based on its sustainability commitments.
[272] OECD, OECD Guidelines for Multinational Enterprises, 2011, Chapter III, para. 1. It also mention that this "*information should be disclosed for the enterprise as a whole, and, where appropriate, along business lines or geographic areas. Disclosure policies of enterprises should be tailored to the nature, size and location of the enterprise, with due regard taken of costs, business confidentiality and other competitive concerns (…)*".
[273] OECD, OECD Guidelines for Multinational Enterprises, 2011, chapter II, section A, para. 14.
[274] OECD, OECD Guidelines for Multinational Enterprises, 2011, chapter II, section B, para. 2.
[275] OECD, OECD Guidelines for Multinational Enterprises, 2011, chapter II, commentary 25.
[276] OECD, OECD Due Diligence Guidance for Responsible Business Conduct, 2018.

The information should be accessible to a range of its intended audiences which may include stakeholders, investors, consumers, civil society and others and be sufficient to demonstrate the adequacy of an enterprise's response to impacts. The information related to the supply chain should be shared in a transparent manner and in active consultation "*with stakeholders such as employees, customers, suppliers, contractors, local communities and with the public-at-large so as to promote a climate of long-term trust and understanding on environmental issues of mutual interest*".[277]

Despite the overwhelming evidence in the public domain, LDC has exclusively engaged in consultation with the Ocho Sur Group, disregarding other interested stakeholders and rights holders, such as public authorities, the civil society organizations quoted in LDC's grievance, and indigenous communities and their representative indigenous organizations, who could have extensively informed LDC on the adverse impacts caused by its trading partner, and to which LDC has contributed by entering into, and continuing, this business relationship. While LDC recently claimed, in October 2022, that it planned to schedule an onsite visit, there is no indication that this will be used to extend consultation beyond the Ocho Sur Group, and it does not excuse the previous failures to consult. **Hence, LDC has failed to engage with relevant stakeholders in order to provide meaningful opportunities for their views to be taken into account. This has consequently led to a failure to disclose appropriate information in relation to LDC's performance on sustainability.**

4.4.2. LDC'S FAILURE TO PROVIDE ACCURATE INFORMATION TO CONSUMERS AND OTHER INTERESTED STAKEHOLDERS

With regard to consumers, Chapter VIII of the OECD Guidelines makes clear that MNEs are expected to "*provide accurate, verifiable and clear information*" for consumers to enable them to make informed decisions, including on the "environmental attributes" of goods and services.[278] They should "*not make representations or omissions, nor engage in any other practices, that are deceptive, misleading, fraudulent or unfair*".[279] The OECD Commentary on Chapter VI also stresses the importance of the relationships of the enterprises with their suppliers, and associated environmental impacts, as "*an important vehicle for building confidence with the* ***public***".[280] Furthermore, these practices represent clear violations of the EU's Unfair Commercial Practices Directive ("UPCD") and Misleading Advertising Directive,[281] both of which have been implemented into Dutch law and are binding on LDC. These requirements could be met in various ways, including through the provision of accurate and sufficient information on LDC's products, with voluntary labelling and certification schemes.[282]

[277] OECD, OECD Guidelines for Multinational Enterprises, 2011, chapter VI, commentary 65.
[278] OECD, OECD Guidelines for Multinational Enterprises, 2011, Chapter VIII, para. 2.
[279] OECD, OECD Guidelines for Multinational Enterprises, 2011, Chapter VIII, para. 4.
[280] OECD, OECD Guidelines for Multinational Enterprises, 2011, chapter VI, commentary 65.
[281] EUROPEAN PARLIAMENT AND COUNCIL, Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market, UCPD, 11 May 2005, and its amendments, Directive (EU) 2019/2161, 27 November 2019; and EUROPEAN PARLIAMENT AND COUNCIL, Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising, 27 December 2006.
[282] OECD, OECD Guidelines for Multinational Enterprises, 2011, chapter VI, commentary 66.

However, the facts indicate that LDC misleads consumers as to its role in serious environmental harm. LDC promotes its operations as "*fair and sustainable*"[283] and as ensuring "*the respect of protected areas such as rainforests that are essential to the Earth's wellbeing.*"[284] Meanwhile, as this complaint demonstrates, it continues to contribute to deforestation and adverse environmental and human rights impacts.

The OECD Guidelines reflect relevant international standards under International Human Rights Law and Environmental Law which require consultation, access to information on issues that affect human rights, and increasingly the right to public participation.

At the EU level, the European Commission adopted in 2021 a new Commission Notice – Guidance ("UCPD Guidance")[285] on the interpretation and application of the UCPD. The UCPD contains provisions on "Misleading actions" (art. 6) and "Misleading omissions" (art. 7) and Section 4.1.1. of the **UCPD Guidance** extends those terms to "environmental claims" or "green claims", defined as "***the practice of suggesting or otherwise creating the impression (in a commercial communication, marketing or advertising) that a good or a service has a positive or no impact on the environment*** *or is less damaging to the environment than competing goods or services.*" The UCPD Guidance further indicates that the "*standard of professional diligence in the area of environmental claims may include principles derived from national and international standards and codes of conduct*".[286]

The UCPD Guidance clarifies that "***an environmental claim can be misleading if it 'contains false information and is therefore untruthful'*** *in relation to one of the elements listed in Article 6(1)(a) to (g)*" or "*deceives or is likely to deceive the average consumer, even if the information is factually correct*", **including in instances where a product is presented as sustainable, but its composition is in reality a mixed with non-sustainable products.**[287] **Environmental claims** must be assessed in light of the "*the product's main environmental impacts over its lifecycle,* ***including its supply chain***".[288] This requires that traders

> "*should not distort claims about the composition of the product (including raw materials), or its use, manufacturing process, transport or end-of-life impacts, for example by unduly emphasizing the importance of positive aspects, which are in reality only marginal or whereas the overall environmental impact resulting from the product's life cycle is negative*".[289]

The UCPD Guidance also highlights the **need to substantiate the environmental claims,** which would otherwise "*likely to be misleading if they consist of vague and general statements of environmental benefits*".[290] This implies that a claim about a product generally labelled as "sustainable" without further clarification is misleading.

[283] LDC, What We Do, last accessed: 14/06/2022.
[284] LDC, Protecting the Environment, last accessed: 14/06/2022..
[285] EU COMMISSION, Commission Notice – Guidance on the interpretation and application of Directive 2005/29/EC of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices in the internal market (Text with EEA relevance), 29 December 2021.
[286] EUROPEAN PARLIAMENT AND COUNCIL, UCPD, Section 4.1.1.2.
[287] EUROPEAN PARLIAMENT AND COUNCIL, UCPD, Section 4.1.1.3. See Example "tableware containing sustainable bamboo".
[288] EUROPEAN PARLIAMENT AND COUNCIL, UCPD, Section 4.1.1.3.
[289] EUROPEAN PARLIAMENT AND COUNCIL, UCPD, Section 4.1.1.3.
[290] EUROPEAN PARLIAMENT AND COUNCIL, UCPD, Section 4.1.1.3.

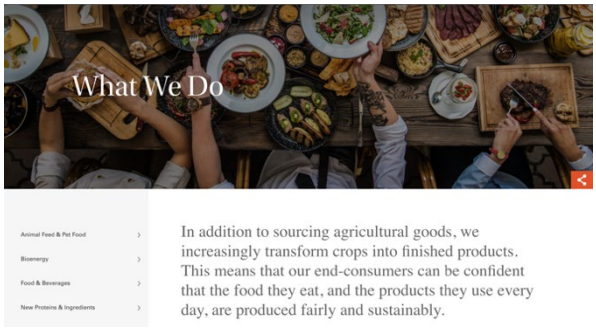
The UCPD Guidance also considers the impact of voluntary commitments related to environmental protection or green behavior.[291] In particular, the UCPD Guidance sets out that

> *"an average consumer would expect such code signatories to sell products which comply with that code. A trader who has announced to be bound but does not comply with such a code may be considered to be misleading if the claimed adherence to the code affects or is likely to affect the consumers' transactional decision. This situation is covered by Article 6(2)(b) UCPD"*.[292]

According to the definition of "code of conduct" provided for under Article 2(f) UCPD, those **voluntary commitments concerning the palm oil sector can arise, for instance, from membership to the RSPO and the International Sustainability & Carbon Certification ("ISCC"), but also the standards enshrined by OECD Guidelines—as mentioned by LDC itself.**[293]

The standards set out above conflict sharply with **LDC's claims related specifically to palm oil sustainability on its website, as well as in other official publications,** and in reports to the RSPO related to its ordinary membership as "Palm Oil Processors and/or Traders".[294]

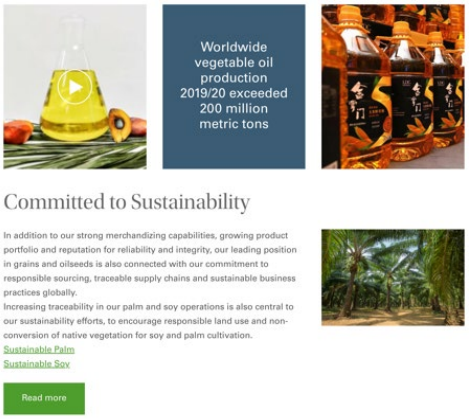
The following public claims by LDC are considered particularly relevant when analyzing its involvement in the palm oil supply chain of SAP which, as noted above, processes 88% of palm fruit bunches from illegally deforested lands and is associated with multiple forms of serious environmental harm and human rights violations.



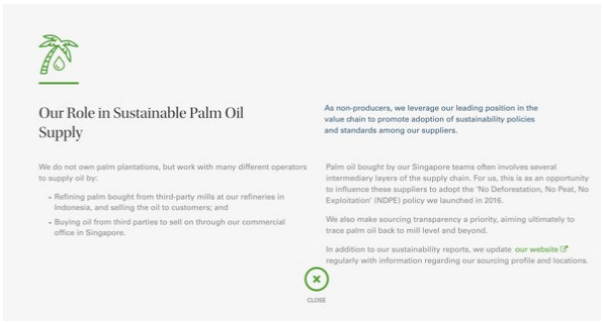
"*In addition to sourcing agricultural goods, we increasingly transform crops into finished products.* ***This means that end-consumers can be confident that the food they eat, and the products they use every day, are produced fairly and sustainably***".[295]

"*In addition to our strong merchandising capabilities, growing product portfolio and reputation for reliability and integrity, our leading position in grains and oilseeds* (including palm oil) *is also connected with* ***our commitment to responsible sourcing, traceable supply chains and sustainable business practices globally.***

Increasing traceability in our palm *and soy operations* ***is also central to our sustainability efforts,*** *to encourage responsible land use* ***and non-conversion of native vegetation*** *for soy and* ***palm cultivation***".[296]



[291] EUROPEAN PARLIAMENT AND COUNCIL, UCPD, Section 4.1.1.3.
[292] EUROPEAN PARLIAMENT AND COUNCIL, UCPD, Section 4.1.1.3.
[293] LDC, Sustainable Palm Oil, 2021, last accessed: 14/06/2022.
[294] See, RSPO, Louis Dreyfus Company B.V., last accessed: 14/06/2022.
[295] LDC, What We Do, last accessed: 14/06/2022.
[296] LDC, What We Do, last accessed: 14/06/2022.



"*Palm oil bought by our Singapore teams often involves several intermediary layers of the supply chain. For us, this is as an opportunity to influence these suppliers to adopt the 'No Deforestation, No Peat, No Exploitation' (NDPE) policy we launched in 2016*".[297]

"*Our Palm Sustainability Policy affirms LDC's commitment to:*

- *Safeguard all high conservation value (HCV) lands and/or high carbon stock (HCS) areas*
- *Leave all peat untouched, regardless of depth*
- *Uphold the rights of local communities and/or indigenous people*
- *Comply with International Labour Organization conventions on forced labor and discrimination*
- *Abide by rigorous anti-bribery and corruption standards*".[298]

Those statements are encapsulated in the documents outlining the Environmental, Social and Governance ("ESG") of the Respondent MNE. In particular, this last claim is also included in LDC's Palm Sustainability Policy, recently updated "*to reflect refreshed commitments, principles and expectations*", where **LDC sets out specific sustainability principles, aims and ambitions for all palm oil-related activities and commits "*to a transparent and sustainable palm supply chain*"**.[299] In the same document, **LDC also claims to "*(c)onduct environmental and social risk assessments prior to new development in ecologically and socially sensitive regions, to protect valuable forests, habitats, ecosystems and biological diversity*"**.[300]

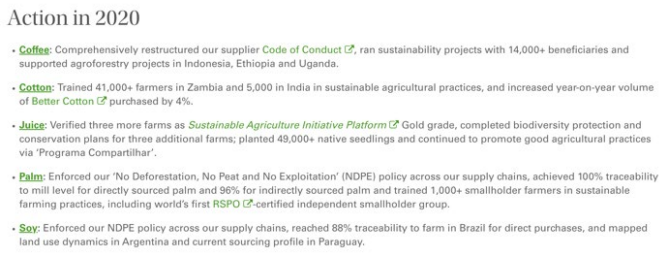
These commitments contrast starkly to the facts of this case, and the multiple violations associated with LDC's business relationships set out in Sections 3.3, 3.4 and 3.5 above. **Despite the commitment to a "*transparent and sustainable palm supply chain*", in 2020, LDC has introduced into its supply chain, the SAP extraction plant whose supplies come from illegally deforested areas** in the Peruvian Amazon region. As mentioned, the illegal deforestation, human rights violations and corruption cases have been extensively documented not only by national and international NGOs, but also Peruvian national authorities. If **LDC had conducted any meaningful environmental and social risk assessments, it should have known about the environmental damage associated with the production of the crude palm oil manufactured by SAP. Equally, had LDC complied with its claim of being committed to a "*transparent and sustainable palm supply chain*", it would have refrained from including the crude palm oil manufactured by SAP in its**

[297] LDC, Palm, Our Role in Sustainable Palm Oil Supply, last accessed: 14/06/2022.
[298] LDC, Palm, Palm Sustainability Policy, last accessed: 14/06/2022.
[299] LDC, Palm Sustainability Policy, 2022, p. 1-2.
[300] LDC, Palm Sustainability Policy, 2022, p. 2.

supply chain. As a result, the claims communicated by LDC up to the present, particularly in relation to the palm oil supply chain, are incorrect and deeply misleading.[301]

The UPCD Guidance highlights "*the need to substantiate the environmental claims*". In contrast, many of LDC's claims set out above are vague and general, referring to a broad "sustainable" approach to the business of palm oil without informing about the product's concrete sustainability benefits or characteristics. LDC, in those instances, does not demonstrate that the palm oil it uses has a substantially smaller impact on human rights and the environment than "regular" palm oil. The failure to disclose more tangible information does not allow the relevant stakeholders, such as consumers, to assess whether LDC's palm oil is effectively more sustainable than palm oil from competitors.

LDC further states that it contributes to the UN Sustainable Development Goals.[302] In this respect it is also notable that, as part of the actions taken to contribute to the UN Sustainable Development Goals, LDC indicates that it enforced LDC's NDPE policy across its supply chains:


Action in 2020

- **Coffee**: Comprehensively restructured our supplier Code of Conduct, ran sustainability projects with 14,000+ beneficiaries and supported agroforestry projects in Indonesia, Ethiopia and Uganda.
- **Cotton**: Trained 41,000+ farmers in Zambia and 5,000 in India in sustainable agricultural practices, and increased year-on-year volume of Better Cotton purchased by 4%.
- **Juice**: Verified three more farms as *Sustainable Agriculture Initiative Platform* Gold grade, completed biodiversity protection and conservation plans for three additional farms; planted 49,000+ native seedlings and continued to promote good agricultural practices via 'Programa Compartilhar'.
- **Palm**: Enforced our 'No Deforestation, No Peat and No Exploitation' (NDPE) policy across our supply chains, achieved 100% traceability to mill level for directly sourced palm and 96% for indirectly sourced palm and trained 1,000+ smallholder farmers in sustainable farming practices, including world's first RSPO-certified independent smallholder group.
- **Soy**: Enforced our NDPE policy across our supply chains, reached 88% traceability to farm in Brazil for direct purchases, and mapped land use dynamics in Argentina and current sourcing profile in Paraguay.

"***Palm: Enforced our 'No Deforestation, No Peat and No Exploitation' (NDPE) policy across our supply chains**, achieved 100% traceability to mill level for directly sourced palm and 96% for indirectly sourced palm and trained 1,000+ smallholder farmers in sustainable farming practices, including world's first RSPO-certified independent smallholder group*".[303]

But even "traceability to mill" does not equate to sustainability in the palm oil supply chain. As explained in Section 3.2.2, in relation to indirect sourcing—traded by its Singapore Commercial office—**LDC claims to have a 97% traceability to mill, but only an average of nearly 58% traceability to plantation in 2020 and 2021.[304] This means that LDC is not ensuring traceability to plantation of nearly half of the palm oil traded by the Singapore Commercial office, where the crude palm oil manufactured by SAP enters its supply chain. Translated into numbers, given that the Singapore Commercial office trades the 40,40% of LDC's total volume of palm oil,[305] the non-traceable palm oil from that Commercial office would equate to approximately 316,693 tons, representing at least 17% of the whole palm oil trade flow of LDC.[306]**

Also, as noted above, LDC has committed to achieve Zero Deforestation in its supply chain by the end of 2025 and set as a target for the current year (2022) that "*100% of direct*

[301] Similar claims can be found in the latest annual report published by LDC; see, LDC, Financial Report and Audited Consolidated Financial Statements 2021, 2022.
[302] LDC, Palm, Palm Sustainability Policy, last accessed: 14/06/2022.
[303] LDC, Deforestation, Conversion & Biodiversity, last accessed: 14/06/2022; LDC, Goals that Guide Us – Sustainability Report, last accessed: 14/06/2022.
[304] LDC, Sustainability Report – Palm, Transparency, Traceability and Monitoring, last accessed: 14/06/2022; LDC, Palm Sustainability Progress Implementation Report, September 2022, p. 3 and 4.
[305] The same document states: "*Singapore Commercial refers to sourcing made via 3rd party refineries (considered 'indirect' sourcing) as opposed to via the 2 LDC refineries ('direct' sourcing)*": LDC, Palm Sustainability Progress Implementation Report, September 2022, p. 2.
[306] According to the RSPO Annual Communication of Progress 2020, in 2020, the whole LDC's production of palm oil was of 1,846,680 tons. The 40,40% traded by Singapore would then amount to 746,058 tons, of which the 51% is not traceable to the plantation level. Regarding non-traceable estimates, this calculation only considers figures from the Singapore Commercial office and not information from other commercial offices.

& indirect sourcing volumes has commitment to NDPE / agreement to LDC sustainability policy/certified volume",[307] which LDC has already failed to achieve.[308] As a result, LDC cannot substantiate with facts those claims on sustainability and it is reasonable to assume that the Respondent MNE cannot guarantee a 100% NDPE commitment of the sourcing volume, particularly in respect of indirect sourcing.

Moreover, despite the overwhelming information described in previous sections, the Respondent MNE is not in fact ensuring that its Peruvian suppliers and/or intermediaries in the palm oil supply chain have in place or have enforced NDPE policies. LDC's claims that suggest that are misleading.

In conclusion, LDC's website extols the "green" attributes of its operations and business relationships. Yet publicly available facts, set out in full in this complaint, make **clear that the situation on the ground is quite the opposite of the sustainable, environmentally and human rights friendly picture painted by LDC's propaganda.** Moreover, when traceability happens only up to the mill level, this does not equate to sustainable palm oil since it cannot be guaranteed that the palm oil sourced from sustainable plantations has not been contaminated with non-sustainable palm oil at the time it was processed in the extraction plant. In various ways, LDC is therefore providing misleading information to the public at large, its shareholders, stakeholders and to consumers, on the nature and impact of its business operations, in violation of the OECD Guidelines.

5. Request of LDC and Remedies Sought

In filing this specific instance with the Dutch NCP, the complainants expect that facilitated dialogue will result[309] in the following:

- LDC's acknowledgement of responsibility for the adverse impacts on the environment—in particular, the Amazon region—and on the human rights of the indigenous community of Santa Clara de Uchunya and the Shipibo-Konibo people.
- LDC's immediate halting of its contribution to the ongoing harms mentioned in this complaint and exercising its leverage to prevent future adverse impacts from its business relationship with the Ocho Sur Group, including by publicly committing to suspend sourcing of palm oil from the Ocho Sur Group until the latter has resolved problems concerning the legality and sustainability of its operations and remediated the harms it has caused.
- Public disclosure of the concrete due diligence procedures and steps that LDC has taken to date to identify, prevent and mitigate the adverse impacts caused by its business relationship with the Ocho Sur Group. This should include LDC's assessment of what the impact of its due diligence on preventing and mitigating adverse impacts has been. This should also include specific information about the number of meetings

[307] LDC, LDC Commits to Zero Deforestation & Native Vegetation Conversion in Its Supply Chains by End 2025, 22 February 2022; LDC, Palm Sustainability Progress Implementation Report, October 2020, p. 10.
[308] LDC, Palm Sustainability Progress Implementation Report, September 2022, p. 10.
[309] According to the OECD Guidelines that state that "(e)*nterprises should provide for or co-operate through legitimate processes in the remediation of adverse human rights impacts where they have caused or contributed to these impacts*" (OECD, OECD Guidelines for Multinational Enterprises, 2011, Chapter IV, para. 6); and the OECD Due Diligence Guidance that indicates that MNEs should "(p)*rovide for or cooperate in remediation when remediation is required to address impacts an enterprise has caused or contributed to*" (OECD, OECD Due Diligence Guidance for Responsible Business Conduct, 2018).

that LDC has had with the Ocho Sur Group and who was present at those meetings, as well as details on if and how LDC has intervened through the RSPO to address the problems with the Ocho Sur Group.

- A review of the concerns raised by the members of the Santa Clara de Uchunya indigenous community and the Shipibo-Konibo people, such as violations of their right to own, develop, control and use their ancestral territory and the lack of free, prior and informed consent for the establishment of the plantations and the construction of the extraction plant, and discussion of the desired and appropriate remediation with the rightsholders.
- Adoption of all measures within LDC's capacity and leverage to ensure the human right to effective remedy, including the rehabilitation of the ancestral territory of the community of Santa Clara de Uchunya, the provision of adequate individual and/or collective reparation, and full remediation of adverse human rights impacts, in line with international standards and good practice.
- Adoption of all measures within LDC's capacity and leverage to ensure access to justice for victims of any acts of violence or other form of harassment, and to prevent attacks against human rights defenders.
- Development and publication of a new and effective group-wide cross-commodity NDPE and Palm Sustainability Policy, including the rights of indigenous peoples in compliance with international standards such as the UN Declaration on the Rights of Indigenous People and the ILO Convention No. 169. Cases of adverse impacts caused in this case such as deforestation and loss of biodiversity, and social conflicts due to corruption, failure to respect the rights of indigenous peoples, land appropriation, and lack of free, prior and informed consent should be all considered in order to correctly implement those policies. In particular, the development of new policies should take into account input from indigenous peoples at the international level and credible external experts as well as senior management support. Likewise, the implementation of the new policies would need to cover both internal (staff competence and authority and high-level management oversight) and external (consultation and independent verification) dimensions. Policy implementation should be carried out in cooperation and consultation with indigenous peoples and should also be subject to independent verification through a process considered acceptable to the concerned peoples.
- Development and publication of a new and effective group-wide Palm Grievance Protocol, in compliance with Principle 31 of the UNGP, and to the effect of recognizing that companies can inherit adverse impacts and that, when starting a new business relationship where adverse impacts already exist, the company should decide either not to engage at all in the relationship or to bear the responsibility of providing or cooperating in providing remedy. The new Palm Grievance Protocol should include, among others: development, operation and oversight in conjunction with indigenous peoples; free, prior, and informed consent-based agreements giving rise to contractual obligations to address indigenous rights violations; tools to address all grievances irrespective of the means through which they are submitted; provision of agreed channels for escalation and adjudication of disputes in a timely manner; effective consultation on existing judicial and non-judicial mechanisms and no

obstruction in accessing to these mechanisms; transparency and trusted independent third party monitoring.

- Development and publication of due diligence methods that guarantee credible and timely information, including through use of local information sources and supply chain transparency and accountability. Traders rely on data mainly based on annual reports, questionnaires, and a media scan. As a result, local and "real-time" information is absent, and risks in complex supply chains are not meaningfully analyzed. We call on LDC to develop improved data collection procedures that improve its awareness of harms caused by or linked to its suppliers.
- Amendment or replacement of existing public statements on LDC's websites and in briefings, annual reports and other documents that make misleading, incorrect or incomplete claims about the LDC's sustainability; replace such statements with corrected information.
- Provision to the public, customers and affected communities of a clear statement about the potential and actual environmental and human rights impacts of LDC's supply chain.

LDC should thus cease its contribution to the adverse impacts in Peru and ensure that it no longer partners with businesses that resort to illegal appropriation of land, unlawful deforestation, rights violations, breaches of international human rights and environmental standards, and corrupt practices to meet profitability requirements. LDC should use its leverage over SAP to bring the violations to an end and to address, mitigate, and remediate the adverse impacts to date.

6. Conclusion

Through LDC's conduct, continuing business relationship with notorious trading partners and upstream suppliers, and misleading statements, it has contributed to and shares responsibility for, the adverse effects on the environment and human rights set out in this specific instance. The Respondent MNE has failed to exercise due diligence to prevent and respond to the breaches in relation to environment, human rights and corruption, and breached the OECD Guidelines on disclosure and consumer interests. It is now required to take urgent remedial steps and ensure effective prevention for the future. The complainants would like to engage in good faith with LDC in order to ensure that its conduct and procedures effectively identify and prevent future adverse impacts in compliance with the expectations provided by the OECD Guidelines in light of a fuller body of OECD instruments and other applicable standards.