



Noble Savages HSBC's Noble Intentions

How Noble Group's Destructive Plantations Violate HSBC's Environmental and Social Safeguard Policies

Environmental Investigation Agency (EIA)

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Noble Group as an HSBC Customer

On April 5 and 6, 2016 Reuters and other sources reported that Noble Group had mandated HSBC, among other banks, as a Lead Arranger for a \$1 billion unsecured revolving credit facility that Noble is seeking to refinance its debts.ⁱ

HSBC has provided financial services and/or products to Noble Group in the past.

In 2009, HSBC was listed by Noble as one of various banks involved as Lead Arrangers in a \$2.4 billion Syndicated Loan to Noble.ⁱⁱ The following year, Noble purchased the palm oil concessions PT HIP and PT PAL, outlined below.

HSBC was also the Lead Arranger for an \$80 million two-year loan facility Noble was able to take advantage of in 2008.ⁱⁱⁱ

It is, however, HSBC's involvement in the proposed arrangement of the one-year \$1 billion unsecured credit facility Noble is seeking for 2016 that EIA seeks to ensure does not threaten HSBC's implementation of policies on forests, forestry and agricultural commodities production.

Noble Group Non-Compliance with HSBC Policies:

HSBC's Palm Oil Policy

HSBC's March 2014 Agricultural Commodities Policy^{iv} stipulates milestones and

deadlines for compliance by customers of the bank, which for palm oil are largely predicated on time-bound commitments to certification under the Round Table on Sustainable Palm Oil (RSPO).

The policy requires palm oil growers and mills to be certified under the RSPO “according to the table below:”

Growers and Mills	By
A Member of RSPO (parent company or relevant subsidiaries) or applied.	30 June 2014
B <ol style="list-style-type: none"> 1. At least one management unit certified under RSPO 2. A time-bound plan for 100% certification by 31 December 2018 	31 December 2014
C 100% certification of management units.	31 December 2018

The Policy states that “customers not already compliant must: (i) meet Commitment A; (ii) have no track record of unacceptable impacts; and (iii) have a time-bound plan to achieve B and C within 12 months and 4 years respectively. Condition (iii) applies to existing customers who, for example, acquire new business.”

Palm Oil Non-Compliances by Noble Group

Noble Group will not and cannot meet HSBC’s proscribed milestones and deadlines. Assuming Noble is compliant with “Commitment A” (this is uncertain, see below) it cannot meet either of Commitments B or C.

Non-Compliance with Commitment B1: In its RSPO Annual Communication of Progress (ACOP) filing for 2014, v Noble Group laid out a plan that will not achieve certification in their first Management Unit – PT Henrison Inti Persada (PT HIP) in West Papua province of Indonesia – until 2016, at least a year later than HSBC’s December 2014 deadline for Commitment B1. This is despite having owned the concession since mid-2010.

Non-Compliance with Commitment B2 & C: Noble’s 2014 ACOP also makes clear its Time Bound Plan for 100 per cent RSPO certification is 2020 – by which time Noble plans to get RSPO certified at its second Management Unit – PT Pusaka Agro Lestari (PT PAL), in Indonesia’s Papua province. This violates Commitments B2 and sets the path for non-compliance with Commitment C.

In short, after the deadline for the first management unit being certified, or having a plan to become 100 per cent certified by 2018, Noble announced it would not achieve certification of its first plantation before the December 2014 deadline, nor was planning to, and that it did not plan to achieve 100 per cent RSPO certification by HSBC’s required 2018 deadline. This violates Commitments B and C in their entirety.

Compliance with Commitment A?: Noble Group’s compliance with Commitment A of palm oil relevant sections of HSBC’s Agricultural Commodities

Policy is also in some doubt. Noble Plantations Pte Ltd has been an RSPO member since October 2011, and was established to house the two palm oil concession companies Noble owns in Papua and West Papua. However, in 2015 and 2016, Noble sold its entire stake in Noble Agri Limited (NAL) – its agribusiness division – to an IFC-backed COFCO-led consortium of Chinese commodity and investment houses.

While the Papua plantations – PT HIP and PT PAL – would normally have been part of COFCO’s purchase of NAL, EIA understands that COFCO explicitly stipulated Noble’s palm oil operations be excluded from the deal. This may be due to the International Finance Corporation’s (IFC) involvement as co-investors in the deal, and the IFC Project Description explicitly states “*Noble’s palm oil plantations and a palm oil crushing facility in Indonesia are not included in the acquisition*”.^{vi}

As such, both Papua concessions remain owned and are classified as “held for sale” by Noble Group, while the rest of NAL is now owned by COFCO.^{vii}

Due to opaque reporting by Noble with regard to its company structure, EIA has not been able to confirm if Noble Plantations Pte Ltd – the only RSPO member conferring RSPO obligations on the two Papua concessions – remains a company owned and controlled by Noble Group.

If Noble Plantations Pte Ltd is no longer part of Noble Group, then Noble Group is no longer an RSPO member in any way, while retaining ownership and management control over the two concessions in Papua. While COFCO is an RSPO member itself already, they do not own the Papuan concessions, Noble Group does.

This would mean Noble Group is no longer compliant with Commitment A of HSBC’s policy, further compounding the more substantive structural non-compliances established above. At any rate, as Noble is seeking to sell the concessions, its commitment to the palm sector, and thus the RSPO P&C, is clearly in doubt, and may not be something HSBC can rely on in a substantive way.

Simultaneously, Noble may struggle to find buyers for concessions already rejected by COFCO and IFC, and which have been subject to both an RSPO Grievance and divestment by the Norwegian Government Pension Fund Global (See below). Ensuring Noble’s new corporate structures does indeed still confer RSPO obligations onto PT HIP and PT PAL will need to be the focus of due diligence for HSBC.

Noble’s Non-Compliance with HSBC’s Forestry Policy

HSBC’s Forestry Policy also requires the closure of any commercial relationship between HSBC and Noble Group.

The Forestry Policy defines “prohibited businesses” and states: “*HSBC will not knowingly provide financial services to customers involved directly, or indirectly via the supply chain, in: illegal logging; wood logged in violation of traditional and civil rights; wood logged in forests where high conservation values are threatened by industry; or forests being converted to plantation or to non-forest use (deforestation).*”^{viii}

Clearly, PT HIP and PT PAL are part of the supply chain for “forests being converted to plantations or to non-forest use”. Their palm oil concession permits require 55,000 hectares of forest clearance, which in turn necessitates the issuance of a commensurate volume of IPK permits (Timber Utilization Permits).

In this way, PT HIP has been producing large volumes of timber from conversion of forests to non-forest oil palm plantation for many years. PT PAL has only relatively recently started clearing its concession, and will produce millions of dollars of timber in the coming years as forest conversion continues apace.

Noble Group subsidiaries are therefore the originators of the timber supply in the timber supply chains it creates around their operations as they develop. No better definition of a “prohibited business” in HSBC’s Forestry Policy could be imagined, and arguments that timber is not the focus of its operations would be mere semantics.

The Forestry Policy also requires all timber production to be FSC or PEFC certified by December 2014. No timber coming out of the concessions Noble is developing is certified to these standards.

HSBC’s Compliance Policy

HSBC has stated of its Forestry and Agricultural Commodities Policies that “*Rigorous implementation is essential if our policies are to have the impact we want.*”^{ix}

HSBC’s Agricultural Commodity Policy includes stipulations on Policy Compliance, which state: “Global Businesses must **close** relationships, as soon as possible, with **Non-Compliant** customers, including: ... Customers not on a credible path to meeting HSBC’s policy deadlines”.

EIA cannot see how Noble Group could be considered to be on a credible path to meeting HSBC’s policy deadlines.

Similarly, HSBC’s Forestry Policy effectively categorizes Noble Group as prohibited business that “HSBC will not knowingly provide financial services to...”

In this light, EIA concludes that HSBC’s policies and its stated intent to rigorously implement them obliges HSBC to close relationships with Noble Group “as soon as possible”, nor knowingly provide financial services to them.

EIA concludes that this means HSBC cannot offer Noble Group financial services as Lead Arranger of credit facilities – including the one year \$1 billion facility currently under negotiation - until Noble is demonstrably compliant with HSBC's policies.

Concerns Regarding RSPO Compliance in Noble Group subsidiaries

Biased & Limited RSPO HCV Assessments in Noble Group Concessions

The Norwegian Government Pension Fund Global (GPF) has been at the forefront of developing forest and rights-related policies to guide its financial activities, particularly since 2012.

In 2013, the Council on Ethics to the GPF submitted a "[Recommendation on the exclusion of Noble Group Limited from the Government Pension Fund Global's investment universe](#)", to the Norwegian Finance Ministry and the Fund's managers – Norges Bank Investment Management (NBIM). While Norway's Finance Ministry has not made a decision on the Council's Recommendation, NBIM accepted the advice, and in mid-2013 sold its \$49 million stake in the Noble Group. The Recommendation was subsequently published in 2015 as part of the Council's 2014 annual report.

The Council's Recommendation summarizes its conclusions on the likely environmental impacts of the Noble Group's plantations, based on the quality of the information available in High Conservation Value (HCV) assessments and mitigation documents submitted to the RSPO as an obligation under the New Planting Procedure (NPP). The Council's report found that:

- HCV surveys informing conservation efforts in the plantations displayed "*sampling bias*" focused on areas already protected under Indonesian law.
- The vast majority of the concessions were not visited by surveyors, or subsequently protected.
- Of the combined 68,000 hectares licensed to the two companies, only 13,000 hectares were to be set aside following RSPO HCV surveys.

The Council stated: "*as regards the 55,000 ha of forest that are to be converted into plantations, no information is available on the state of the forest, diversity of species, or the condition of the ecosystem in general.*"

The Council also judged that the actual conservation measures subsequently proposed to the RSPO by Noble Group's plantation companies, and accepted by RSPO auditors, did "*not seem to strengthen biodiversity to any greater extent than already required by national legislation.*"

It concluded that "*membership in the RSPO does not in and of itself guarantee that HCVs will be identified, protected and managed in such a way that biodiversity is protected.*"

EIA included the case in a November 2015 report – [Who Watches the Watchmen?](#)^x - on serious and widespread failings in RSPO certification and auditing systems, published in November 2015, which contributed to the passage of RSPO Resolution 6h^{xi} on auditing quality and oversight.

Even if the companies are RSPO certified, HSBC cannot be confident the RSPO's Principles and Criteria have been delivered in the concessions.

EIA RSPO Grievance Against PT HIP

While NBIM was considering the sale of Noble Group shares, EIA was in the process of submitting a grievance against Noble Plantations Pte Ltd with regard to PT HIP. EIA submitted the grievance because no information had been published regarding the company's RSPO NPP process, and Noble Group had been utterly obstructive in information sharing, explicitly urging EIA to submit a compliant to access any information.

EIA's concerns partly related to a Memorandum of Understanding (MoU) signed by PT HIP and the Commander of the Cenderawasih Regional Military Command at a ceremony hosted at the main regional command headquarters in Sorong, West Papua, in 2013.

The MoU – a copy of which is now held by EIA - stipulates that PT HIP will develop, free of charge, 1,000 hectares of oil palm plantations for a military "cooperative". This 1,000 ha will be situated on land outside of PT HIP's concession area, and is to be supplied by the military cooperative, which will procure the land from local landowners, resulting in the transfer of formal land titles to the Military cooperative.

EIA argued that this arrangement presents fundamentally insurmountable barriers to credible Free and Prior Informed Consent – a core requirement of both HSBC and RSPO policies. The region has for decades seen on-going tensions between local Papuan indigenous landowners and the Indonesian state, particularly the military and wider security apparatus, as well as private sector actors permitted to operate there. The situation remains tense. It is not possible that landowners will feel free to reject requests for land from the military or entities connected to it.

Incredibly, the RPSO Complaints Panel ruled that as the plantation would be for the military cooperative, rather than the military itself, separation was sufficient to comply with the RSPO. Such a position displays wilful naivety in the extreme.

If the terms of the MoU are realized, PT HIP will for its foreseeable future be obliged to process at its mill FFBS produced on land secured by the military from vulnerable and dis-empowered indigenous landowners, under a process not beholden to RSPO standards on FPIC or environmental management.

Conclusions

EIA believes HSBC has or is currently negotiating potential financial service provision to Noble Group, and that Noble Group is structurally non-compliant with various policies established by HSBC. These non-compliances include:

1. HSBC's Agricultural Commodities Policy relating to Palm Oil: Noble may not be compliant with Palm Oil Commitment A, has not and will not comply with Commitment B1, has not and will not comply with Commitment B2, and has not and will not comply with Commitment C.
2. HSBC's Forestry Policy: Noble Group's principle activities require and generate large volumes of timber production in what can only be seen as high-risk logging sites created by their palm concessions. This places Noble Group at the apex of an entire timber supply chain of its own making. None of the logging was PEFC or FSC certified by the December 31, 2014 deadline set by HSBC's Forestry Policy, and there is no intention for either certification scheme to be implemented in the concessions concerned. Additionally, because Noble Group subsidiaries are directly involved in the timber supply chain as originators, and as that timber supply chain is entirely predicated on "forests being converted to plantation or to non-forest use (deforestation)" these business are classified as "prohibited business" in HSBC's Forestry Policy – entities into which HSBC has committed to "not knowingly provide financial services to".

These non-compliances are structural, and EIA considers that they confer on HSBC an obligation to close, as soon as possible, any relationship HSBC currently has or is currently negotiating with Noble Group. EIA concludes that HSBC could not, for example, provide lead arranger services for the one year \$1billion unsecured revolving credit facility Noble is currently negotiating, while simultaneously maintaining any credible claim that it is upholding HSBC policies.

EIA has requested confirmation from HSBC that it will uphold its policies with regard to Noble Group, and similarly urged HSBC to publically communicate any action taken to implement its policies with regard to Noble Group.

References:

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 - ⁱⁱ <http://www.thisisnoble.com/in-the-press2016/276-best-syndicated-loan-noble-groups-us24-billion-three-tranche-revolving-credit-facilities.html>
 - ⁱⁱⁱ <http://www.thisisnoble.com/in-the-press2016/193-a-noble-beginning.html>
 - ^{iv} HSBC's Agricultural Commodities Policy is available at this link: <http://www.hsbc.com/our-approach/sustainability/finance>

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viii HSBC's Forestry Policy is available at this link: [http://www.hsbc.com/our-
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ix [http://www.hsbc.com/our-approach/sustainability/finance/forestry-and-
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