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13 July 2018

Dear Sir,

## **Golden Veroleum (Liberia) Inc.'s appeal against the RSPO Complaints Panel's decision dated 13 February 2018**

The Appeals Panel was constituted on 2 May 2018 to take up the Appeal filed by Golden Veroleum (Liberia) Inc. (GVL) against the Complaints Panel's decision dated 13 February 2018. This decision is delivered within 45 working days in accordance with section 14.7.1 of the Complaints and Appeals Procedures 2017.

Having considered GVL's Notice of Appeal, the Complaints Record, the Complaints Panel's decision dated 13 February 2018 and further submissions received during the appeals proceedings, the Appeals Panel hereby finds:

### **(i) Double Jeopardy**

The Appeals Panel notes the contentions and arguments submitted by GVL for this ground of appeal and finds that there is no merit to this ground of appeal based on the following reasons:

(a) The Appeals Panel is of the view that the contention of double jeopardy does not arise because the second verification and subsequently the 2018 decision flows from the 2015 decision, which did not absolve GVL from the allegations but in fact, obligated GVL to provide quarterly progress reports. The Complaints Panel further reserved the right to proceed, if required, in accordance with paragraph 11 of the 2015 decision, which directed as follows: *"GVL is asked to continue to provide a quarterly progress report on all of the complaints for a period of 12 months. The Panel shall review the progress at the end of the 12 months and make further decisions as appropriate."*

(b) Thus, given that the 2018 decision is related to, and in furtherance of the earlier decision, the Appeals Panel is of the view that it was well within the Complaints Panel's purview to direct the second verification. The Appeals Panel thereby finds no irregularity and upholds the Complaints Panel's decision in directing the second verification and accordingly, the 2018 decision.

(c) Under the former complaints procedures, applicable at the time, there was no necessity for an appeal to be lodged for the Complaints Panel to direct the second verification. Further, even if an appeal had been lodged, the "appeal" that GVL is

alluding to would not be out of time because no time limit existed in the former complaints procedures in respect of filing of appeal.

(d) The crux of the matter is that there were systemic allegations against GVL emanating from its concession in Liberia which warranted continuous monitoring, particularly allegations related to FPIC. Given the nature of the allegations and the on-going/ iterative process of FPIC, challenging the 2018 decision on a procedural ground i.e. that the scope of the second verification should have been confined to ascertaining the progress (or the lack thereof) of the 2015 decision, would not serve fairness in the resolution of the grievance for all stakeholders involved, and possibly even call into question GVL's commitment to engage in good faith. Ultimately, the overarching aim of the RSPO complaints system is to address the conduct and behaviour of RSPO members vis-a-vis their respective obligations and commitment to RSPO Principles and Criteria, as well as other key documents.

## **(ii) Investigation, Findings and Conclusions in the Second Report**

The Appeals Panel notes the contentions and arguments submitted by GVL for this ground of appeal and finds that there is no merit to this ground of appeal based on the following reasons:

(a) From the Complaints Record, it is apparent to the Appeals Panel that GVL was consulted in the process leading to the second verification. GVL was given the opportunity to comment on the terms of reference (TOR) which set out the objectives, including terms of engagement of the second verification. The identities of the verifiers were known to GVL. They were engaged based on their expertise and more importantly, independent of RSPO and the parties. The specific questions that the verifiers were to answer had been set out at length in the TOR following full consultation with GVL. Having participated in this process, albeit with reservations on the extent of the objectives/scope, GVL cannot now reject the outcome of the second verification.

(b) Generally, methodology of independent verification is not subject to challenge unless there are reasons to believe that it may be fundamentally flawed or compromised and accordingly, affects the veracity of the evidence, findings and conclusions of the resulting verification report. This is important to safeguard the independence and impartiality of the resulting verification report which, to a large extent, would inform the Complaints Panel's deliberations and form the basis of the Complaints Panel's decision. In this case, the Appeals Panel finds no reason to question the methodology employed by the independent verifiers. The fact that GVL was not informed of the specific details of the independent verification alone is not sufficient basis to challenge the methodology of the second verification. Confidentiality was necessary to preserve the independence and integrity of the verification exercise and the resulting verification report.

(c) The Appeals Panel notes that GVL did not receive a detailed response to the letter dated 5 June 2017 from RSPO and/or the verifiers. Nevertheless, this cannot be a basis to reject the second verification report. GVL (and other stakeholders) were given the opportunity to comment on the draft second verification report and this was acknowledged in the final version of the said report as follows: *“The verification team would like to thank these organisation for their very useful comments that have been carefully reviewed and addressed in this final report.”* In the interest of independence and impartiality, the findings and conclusions in the second verification report are ultimately the verifiers’ own, and their ability to carry out their duties without interference should not be hampered in any way.

(d) Thus, the Appeals Panel cannot and does not agree with GVL on this ground of appeal and hereby upholds the second verification report and relatedly the 2018 decision.

### **(iii) Butaw**

#### **Allegations of the failure to negotiate with self-identified representatives (Points 1.1.1, 1.2)**

The Appeals Panel notes the contentions and arguments submitted by GVL for this ground of appeal and finds that there is no merit to this ground of appeal based on the following reasons:

(a) The Appeals Panel has considered GVL’s account of the circumstances that led to them engaging with BWDA, basically, stemming from A-Bloteh’s key members’ absence after the riots, in the signing of the MOU with the Butaw Community. Although the Appeals Panel notes that GVL may not have been able to engage A-Bloteh effectively in the process leading up to the signing of the MOU, the Appeals Panel is of the view that there nevertheless remains an obligation on the part of GVL to complete the FPIC process by including the original complainant A-Bloteh from as early as 2012, and continuing thereafter.

(b) The Appeals Panel further notes that despite signing of the MOU in February 2017, the second verification had found that, in general, the Butaw community had only limited knowledge of the contents and provisions of the MOU.

(c) In addition, the Appeals Panel also considered that the second verification had found that there was coercion in respect of the following:

- i. appointment of a new group that would act as representative of the community;
- ii. withdrawal of complaint;
- iii. signing of the MOU,

which was upheld and ruled upon in the 2018 decision.

(d) Given these circumstances, the Appeals Panel finds that the FPIC process in respect of the Butaw community remains incomplete to date. In moving this long-standing issue forward, the Appeals Panel is of the view that it is pertinent for GVL to acknowledge the gaps in the FPIC process conducted in respect of the Butaw community and work towards ensuring that FPIC as required by RSPO Principles and Criteria is fully complied with. In this regard, the Appeals Panel hereby upholds the 2018 decision on points 1.1.1 and 1.2.

(e) As for the stop-work order, the Appeals Panel notes the request from A-Bloteh to have the order lifted. Nevertheless, bearing in mind the circumstances set out in the preceding paragraphs and the lack of evidence from GVL to show that the conditions as set out in the 2018 decision have been met, the Appeals Panel finds no reason to lift the Stop-Work Order until the conditions set forth by the Complaints Panel are met in a verifiable manner.

#### **(iv) Tarjuowon**

##### **Allegations regarding signing the MOU prior to the completion of the participatory mapping (Points 2.1.1, 2.2.1)**

The Appeals Panel notes the contentions and arguments submitted by GVL for this ground of appeal and finds that there is no merit to this ground of appeal based on the following reasons:

(a) The Appeals Panel notes that GVL is essentially challenging the interpretation of “where applicable” in the context of participatory mapping and FPIC as envisaged by RSPO FPIC Guidelines 2008 and RSPO Principles and Criteria. No definition can be found in either document and the Appeals Panel would hesitate to define it other than to express the view that “where applicable” should be interpreted on a case-by-case basis considering the circumstances of each complaint and/or affected party.

(b) The Appeals Panel recognizes GVL’s due diligence in mapping areas, bordering and further away, from the concession area. Generally, the focus of participatory mapping would be the towns within the concession area given that these towns would be the ones directly affected by the actions of GVL. Nonetheless, the Appeals Panel is of the view that the requirement of “where applicable” would have necessitated GVL to undertake an exercise of determining whether bordering/neighbouring towns need to be included in the participatory mapping process and thereafter, the signing of the MOU. GVL should have completed participatory mapping with all intended signatories (i.e. affected towns) before signing the Tarjuowon MOU. Any failure to consider towns beyond the concession area would in itself be a non-compliance of RSPO Principles and Criteria. The Appeals Panel therefore cannot agree with GVL that the consideration of bordering or further away towns is not mandatory. Hence, any statement of “No Claim” submitted prior to the completion of the participatory mapping should be excluded and is of no effect.

**Allegations of the failure to engage with self-identified representatives (Points 2.1.2, 2.2.2)**

The Appeals Panel notes the contentions and arguments submitted by GVL for this ground of appeal and finds that there is no merit to this ground of appeal based on the following reasons:

(a) The Appeals Panel's reading of points 2.1.2 and 2.2.2 of the 2018 decision in essence focused on the Blogbo community. However, GVL's arguments in support of this ground centres upon their engagement with TUDA and KUDA, including GVL's inability to engage with Blogbo-Teh which was only formed later in 2014. The Appeals Panel is of the view that GVL appears to have misconstrued the aforementioned points of the 2018 decision. The non-compliance that the Complaints Panel addresses in points 2.1.2 and 2.2.2 of the 2018 decision is in respect of the non-inclusion of the Blogbo community, who was and still is affected by GVL's concession, in the FPIC process, and not the failure of GVL in engaging Blogbo-Teh.

(b) Based on this, the Appeals Panel hereby affirms points 2.1.2 and 2.2.2 of the 2018 decision and holds that GVL must engage with the Blogbo community to ensure that FPIC process is duly carried out and in compliance with Indicators 2.3.1 and 2.3.4 of RSPO Principles and Criteria.

**Allegations of GVL developing on disputed land (Points 2.2.3, 2.3)**

The Appeals Panel notes the contentions and arguments submitted by GVL for this ground of appeal and finds that there is no merit to this ground of appeal based on the following reasons:

(a) The Appeal Panel recognizes that GVL had taken efforts to engage Blogbo-Teh in relation to the disputed lands and GVL is correct in doing so as GVL has an obligation under RSPO Principles & Criteria to carry out FPIC process with the Blogbo community represented by Blogbo-Teh. Thus, the Appeals Panel does not see GVL's point of contention in this respect.

(b) However, the Appeals Panel is of the view that even though the Blogbo claim was made after participatory mapping and the signing of the MOU, GVL is still obligated as per RSPO Principles and Criteria to carry out FPIC process in dealing with the Blogbo claim as the said community are affected by GVL's development in the concession area. It therefore follows that GVL cannot then develop these disputed lands until and unless the outstanding claim is resolved.

(c) Relatedly, the Appeals Panel further notes the letter from TNC/TAPA/UPTA dated 8 June 2018. While TNC/TAPA/UPTA may be considered stakeholders in the context of Tarjuowon, the Appeals Panel is of the view that this submission is immaterial to this Appeal as ultimately, the allegation is that GVL had developed on Blogbo community land and the fact that the larger Tarjuowon community supports GVL's development in

Tarjuowon has no direct relevance to the resolution of the allegation before the Appeals Panel.

(d) With that in mind, the Appeals Panel hereby affirms and upholds points 2.2.3 and 2.3 of the 2018 decision including the Stop-Work Order imposed on all land development disputed by the Blogbo community.

Based on the aforesaid, **GVL's appeal is hereby dismissed**. As per section 14.7.4 of the RSPO Complaints and Appeals Procedure 2017, the above decision of the Appeals Panel is **final**.

Thank you.



**Melizel Asuncion**

Interim Chair, RSPO Appeals Panel