



## **COMPLAINT FOR ALLEGED CRIMINAL ORGANIZATION FOR DEFORESTATION – LIMA CASE**

December 04, 2024

### **1. PARTIES**

- a. Complainant: Washington Bolívar Díaz
- b. Defendant: Plantaciones de Pucallpa S.A.C.
- c. Aggrieved party: The State and the Native Community of Santa Clara de Uchunya
- d. Investigated: Serge Verhaer, Javier Trivelli, Ocho Sur P S.A.C. among other natural and legal persons

### **2. REPORTED FACTS AND INVESTIGATION ACTS BY THE PROSECUTOR 'S OFFICE OF UCAYALI**

On May 29, 2015, Mr. Washington Bolívar Díaz filed a complaint with the Prosecutor's Office Specialized for Environmental Matters (hereinafter "FEMA") stating that a foreign company (Plantaciones de Pucallpa S.A.C.) would be carrying out clearing works in the Tibecocha sector.

FEMA ordered the initiation of preliminary investigations against those responsible for the alleged commission of the crime against forests or forest formations, to the detriment of the State, ordering a series of proceedings to be carried out.

In the course of the preliminary investigation, FEMA incorporated Dennis Nicholas Melka, Plantaciones de Pucallpa S.A.C., and others individuals as defendants.

On August 7, 2017, FEMA ordered the formalization and continuation of the preparatory investigation against Dennis Nicholas Melka, Plantaciones de Pucallpa S.A.C., and other persons (NOT including Ocho Sur P who was acting as a witness until 2023), for the alleged crime against forests or forest formations (art. 310, 310-C of the C.P) and the alleged crime of illicit association to commit a crime (art. 317 of the C.P).

### **3. REFERRAL OF THE CASE AND INVESTIGATION ACTS CARRIED OUT AT THE PROSECUTOR 'S OFFICE OF LIMA**

- On November 27, 2017, the Corporate Supraprovincial Prosecutor's Office Specialized against Organized Crime of Lima (hereinafter "FECOR") took over the case in merit of an internal disposition of the Prosecutor's Office.
- On January 31, 2018, the FECOR amends the deadline for the preparatory investigation and establishes 36 months.
- On July 16, 2020, FECOR ordered the reinstatement of the deadline due to COVID-19 and established a new due date for December 7, 2020.
- On December 1, 2020, FECOR ordered the extension, clarification of criminal charges and extension of the preparatory investigation.
- On November 5, 2020, FECOR requested to expand the investigation and to include new individuals and legal entities as investigated, among them Ocho Sur P S.A.C.



- On September 29, 2023, Ocho Sur P was formally incorporated into the investigation, after 8 years without being able to make use of its right to defense, since it was a witness.
- On October 18, 2023, Ocho Sur P has filed a cassation appeal against the judicial decision to include it into the investigation, which is pending resolution by the Supreme Court.

Prosecutor Alvaro Rodas Farro's thesis is that Ocho Sur P S.A.C. is part of a criminal organization led by Mr. Denis Melka, whose objective is to deforest the Amazon. This criminal organization would have deforested more than 10,000 hectares of forest between the years 2012 and 2015.

#### **4. POSITION OF OCHO SUR**

The company has ratified that it has no participation in the facts denounced, as Ocho Sur has NOT carried out deforestation and that the facts denounced occurred even before the company existed, making the prosecutor's thesis impossible.

Ocho Sur P has clearly demonstrated that it has NO relationship with Mr. Melka or his companies and that it is not part of any criminal organization. This has been validated by firms such as KPMG, Ernst & Young and leading law firms in Peru.

Ocho Sur acquired the Tibecocha estate in 2016 in a public auction held by La Fiduciaria S.A., the largest and most recognized trust company in Peru, supervised by the Superintendency of Banking and Insurance (SBS). The Tibecocha estate was already fully planted with palm plantations when Ocho Sur P purchase it in 2016. The company took possession of the property and initiated the necessary paperwork and procedures to obtain the remaining permits.

According to the complaint, the facts under investigation allegedly occurred in 2015 and prior years, making it completely illogical to attribute any responsibility to Ocho Sur for actions carried out by another company.

Since taking possession of the Tibecocha estate, Ocho Sur has maintained, and continues to maintain a strict policy of protecting the forests and the environment. It has followed the procedures established by applicable law to obtain the corresponding permits and authorizations, and no conduct of Ocho Sur can be considered illegal.

#### **5. CURRENT STATUS**

- On December 1, 2023, after 9 years of investigation, the investigation period established by the FECOR expired.
- In the absence of any pronouncement from FECOR, Ocho Sur informed the competent Judge of this situation, so on 04APR2024 the Court ordered FECOR to issue a pronouncement within a maximum period of 30 days.
- On May 21, 2024, the Court URGED FECOR to comply with the order issued on 04APR2024.
- FECOR continues to ignore the Court's order, as 244 days (8 months) have passed to date without complying with the order.
- Furthermore, from 01DEC2023 to date, more than TWELVE MONTHS have elapsed, without FECOR issuing any pronouncement, failing to comply with the procedural deadlines established by law, violating the fundamental rights of the subjects incorporated as investigated.

- Prosecutor Rodas Farro is expected to indict the company, due to pressure from NGOs including the Legal Defense Institute (IDL). The company has publicly denounced the legal persecution of Prosecutor Rodas Farro and certain bad NGOs.
- The company, which is always respectful of the law and the authorities, trusts that due process will be followed in this investigation and that its outcome, like that of many other false accusations, will be resolved favorably by the judiciary.
- The company has implemented a series of legal actions against the Prosecutor Rodas Farro for the flagrant abuses committed by him during the 9 years of investigation. Below is the list of actions filed:

<b>List of legal actions against the arbitrary acts of Prosecutor Álvaro Rodas Farro</b>				
<b>N°</b>	<b>Action</b>	<b>Date</b>	<b>Arguments</b>	<b>Decision / Result</b>
<b>1</b>	Notarial letter to Prosecutor Geraldly Peña Chumbes requesting her to rectify and declare the nullity of the Official Letter addressed to the Regional Government of Ucayali.	May 6, 2021	The Letter N° 86-2021 sent by the Prosecutor's Office to the Regional Government of Ucayali was totally improper, since its decisions were classified as illegal. Likewise, without having the competence to do so, the Prosecutor required issuing no new pronouncements of that nature.	Disposicion Fiscal No. 35: The Prosecutor's Office decided that no correction would be made to the request contained in Official Letter No. 86-2021.  Date: May 13, 2021
<b>2</b>	Amparo against Prosecutors Álvaro Rodas Farro and Geraldly Peña Chumbes.	May 17, 2022	It is based on judicial persecution and abuses committed during the investigation, in flagrant violation of the right to due process and the presumption of innocence.	It is before the Constitutional Court
<b>3</b>	Request for exclusion against Prosecutor Álvaro Rodas.	September 14, 2022	Prosecutor Rodas failed to fulfill his duties by violating the principle of confidentiality of the fiscal file; furthermore, he committed other irregularities in the performance of his role through Official Letter No. 86-2021.	Disposicion Superior No. 02: The Superior Prosecutor's Office declared the request for exclusion to be unfounded.  Date: October 21, 2022
<b>4</b>	Request for deadline control.	March 1, 2024	The investigation period had expired, but the Prosecutor's Office had not yet concluded the investigation.	Resolution No. 03: The judge declared our request for deadline control to be well-founded and ordered the Prosecutor's Office to issue its final decision within a maximum period of 30 days.

				Date: April 4, 2024
5	First request to the Prosecutor's Office to issue its final decision.	May 14, 2024	The Prosecutor's Office was required to issue its decision because the deadline granted by the judicial authority had expired.	Providencia No. 479: We were asked to abide by the decision of the Judge regarding their request for an extension of the deadline to issue a decision.  Date: May 21, 2024
6	Second request to the Prosecutor's Office to issue its final decision.	May 16, 2024	The Prosecutor's Office was required to issue its decision because the deadline granted by the judicial authority had expired.	
7	Request for "sobreseimiento" due to preclusion.	August 29, 2024	As the Prosecutor's Office failed to issue a decision within the maximum timeframe granted by the judicial authority, the opportunity to render a definitive ruling lapsed, and the Prosecutor's Office lost the ability to file charges or dismiss the case.	An "sobreseimiento" was requested due to preclusion. On January 17, 2025, we urged the judge to issue a ruling on our request.
8	Third request for the Prosecutor's Office to issue its final decision.	September 6, 2024	The Prosecutor's Office was required to issue its decision, as the deadline granted by the judicial body had expired. Furthermore, the Court denied its request for an extension due to the lack of legal grounds.	Providencia No. 490: The Prosecutor's Office ordered that these requests be taken into consideration when issuing the final decision.  Date: September 27, 2024
9	Fourth request for the Prosecutor's Office to issue its final decision.	September 18, 2024	The Prosecutor's Office was required to issue its decision, as the deadline granted by the judicial body had expired.	
10	Fifth request for the Prosecutor's Office to issue its final decision.	September 27, 2024	The Prosecutor's Office was required to issue its decision, as the deadline set by the judicial body had expired.	They responded in the same manner as in previous requests. The Prosecutor's Office ordered that the request be taken into consideration when issuing the final decision.
11	Sixth request for the Prosecutor's Office to issue its final decision.	November 5, 2024	The Prosecutor's Office was required to issue its decision, as the deadline set by the judicial body had expired.	They responded in the same manner as in previous requests. The Prosecutor's Office ordered that the request be taken into consideration when issuing the final decision.

12	Request for exclusion against Prosecutor Álvaro Rodas.	November 11, 2024	Prosecutor Rodas breached the duty of objectivity by expressing his opinion on the case prematurely; furthermore, he is committing serious violations of his duties as a prosecutor by unreasonably delaying the issuance of a decision.	<p>Disposicion Superior No. 02: The Superior Prosecutor's Office declared the request for exclusion to be unfounded.</p> <p>A judicial amparo remedy will be filed against this decision.</p> <p>Date: January 3, 2025</p>
13	Seventh request for the Prosecutor's Office to issue its final decision.	November 13, 2024	The Prosecutor's Office was required to issue its decision, as the deadline set by the judicial body had expired.	They responded in the same manner as in previous requests. The Prosecutor's Office ordered that the request be taken into consideration when issuing the final decision.
14	Eighth request for the Prosecutor's Office to issue its final decision.	November 22, 2024	The Prosecutor's Office was required to issue its decision, as the deadline set by the judicial body had expired.	They responded in the same manner as in previous requests. The Prosecutor's Office ordered that the request be taken into consideration when issuing the final decision.
15	Ninth request for the Prosecutor's Office to issue its final decision.	November 28, 2024	The Prosecutor's Office was required to issue its decision, as the deadline set by the judicial body had expired.	They responded in the same manner as in previous requests. The Prosecutor's Office ordered that the request be taken into consideration when issuing the final decision.
16	Complaint against Prosecutor Álvaro Bernardo Rodas Farro before the National Oversight Authority of the Public Ministry, named "Autoridad Nacional de	January 17, 2025	The conduct exhibited by the accused prosecutor constitutes a serious and very serious offense under the Prosecutorial Career Law. Specifically, the prosecutor has engaged in the following irregularities: (i) commenting, through any means of communication, on procedural or substantive aspects of an ongoing investigation or	A ruling from the institutional body overseeing the actions of the Prosecutor's Office is expected in the coming weeks.

	Control (ANC)" (Business Insider).		proceeding, and (ii) facilitating or disclosing confidential information that, due to their position or role as a prosecutor, they are privy to.	
17	Complaint requesting the destitution of Prosecutor Álvaro Bernardo Rodas Farro before the National Board of Justice, named "Junta Nacional de Justicia" (Business Insider).	January 17, 2025	The conduct exhibited by the accused prosecutor constitutes a serious and very serious offense under the Prosecutorial Career Law. Specifically, the prosecutor has engaged in the following irregularities: (i) commenting, through any means of communication, on procedural or substantive aspects of an ongoing investigation or proceeding, and (ii) facilitating or disclosing confidential information that, due to their position or role as a prosecutor, they are privy to.	We are awaiting a ruling from the Junta Nacional de Justicia.
18	Request for exclusion against Prosecutor Álvaro Bernardo Rodas Farro before the Public Ministry.	January 16, 2025	Prosecutor Rodas Farro is not properly fulfilling his duties, as he is failing to comply with the duty to "maintain the necessary confidentiality," as outlined in paragraph 12 of Article 33 of the Prosecutor's Career Law (Law No. 30483). He has violated the prohibition of "expressing an opinion on matters they are or should be aware of," as stated in paragraph 13 of Article 39 of the Prosecutor's Career Law, and has committed a serious offense by "commenting, through any means of communication, on procedural or substantive aspects of an ongoing investigation or proceeding," as outlined in paragraph 19 of Article 46 of the same Law.	We are awaiting a ruling from the Superior Prosecutor's Office.