

Dr. Helmut Klein, **Bund für Umwelt und Naturschutz Deutschland (BUND)**

waldklein@t-online.de

Dr. Christoph Thies, **Greenpeace International**

cthies@greenpeace.de

László Maráz, **Pro REGENWALD**

laszlo@wald.org

Mike Brune, **Rainforest Action Network (RAN)**

mbrune@ran.org

Mr Heiko Liedeker

Executive Director

Forest Stewardship Council

Bonn

Germany

By email to: liedeker@fiscoax.org, fiscoax@fiscoax.org

7th April 2004

FORMAL DISPUTE REGARDING SGS CERTIFICATION OF PT DIAMOND RAYA (PTDR), INDONESIA (Certificate no. SGS-FM-0659)

Dear Mr Liedeker

We are writing to you to initiate a formal dispute over the issuing of a forest management certificate to PT Diamond Raya by SGS Qualifor (certificate no. SGS-FM-0659), in accordance with the FSC Interim Dispute Resolution Protocol, 27/1/98, Part 1. We wish to notify you that we are not satisfied with the response of the FSC Secretariat (dated May 17th 2002) to our previous complaint of March 29th 2002, nor are we satisfied by the outcome of the 2003 Accreditation Assessment of SGS which involved field inspection of the PTDR certification.

1. Compliance of this dispute with the requirements of the Interim Dispute Resolution Protocol (IDRP)

Note: references in square brackets [] below refer to the applicable paragraph in the IDRP.

1.1. The requirements of *Manual* part 2.3, para 6.1 (sic) [para. 14.1.1].

It is not at all clear what is meant by this clause in the IDRP, as there is no 2.3, para 6.1 in the IDRP itself, and no clear definition of what other FSC document might be referred to. Para 6.1 of 2.3 of the FSC Manual of Accreditation would not seem to be relevant to the procedures applicable for the submission of formal complaints where these are not submitted by certification bodies in respect of accreditation decisions.

1.2. Prior participation of Primary Complainants [para. 14.1.2]

The Primary Complainants, Greenpeace International, have participated as informal complainants, as per the informal complaint submitted on 23rd August 2001.

1.3. Written supporting materials [para. 14.1.3]

Follow below under section 2., 'Basis of the dispute'. The complaint does not exceed 50 pages. [para 5.1.3.1, (sic)] and fully elaborates our arguments [para. 5.1.3.2 (sic)]

1.4. Identification of other, non-documentary supporting evidence

Other principle sources of such evidence are:

- Visual inspection of the impact of PTDR's operations
- Verbal testimonies of members of local communities in the area of the PTDR concession
- Geo-referenced video recordings taken in the concession area shortly after the granting of the certificate.

1.5. Submission of a financial security for Primary Complainants [para. 14.1.5]

A pledge of US\$1,000 is guaranteed with this letter.

1.6. Challenges for Cause [para14.1.6]

The Primary Complainants are not able to issue any Challenge for Cause at this moment, as we are not aware of the composition of the reviewing body. We wish to reserve the right to issue a Challenge for Cause once we have been informed of the composition of the reviewing body.

1.7. Prior participation of secondary complainants [para. 14.2.1]

The Secondary Complainants, Pro REGENWALD, Rainforest Action Network and BUND, have participated as informal complainants, as per the informal complaint submitted on 29th August 2001.

1.8. Support for the complaint submitted by the Primary Complainants [para. 14 .2.2]

The secondary complainants support without exception the provisions of the Primary Complainant's complaint as contained herein.

1.9. Submission of financial security for the secondary complainants [para 14.2.3]

A pledge of \$US250 each is guaranteed with this complaint letter.

1.10. Challenges for Cause [para14.1.6]

The Secondary Complainants are not able to issue any Challenge for Cause at this moment, as we are not aware of the composition of the reviewing body. We wish to reserve the right to issue a Challenge for Cause once we have been informed of the composition of the reviewing body.

2. Basis for the dispute

2.1 Issuing of certificate for forestry operation not compliant with the FSC Principles and Criteria.

The primary basis for the dispute is that the certificate was issued without due regard for the Principles and Criteria of the Forest Stewardship Council. The specific nature of these failures are set out in the attached letter (**Annex 1**), which was sent by the Rainforest Foundation and WALHI to SGS on July 4th, 2001.

Whilst we wish all the potential issues of non-compliance to be taken into account in this complaint, we wish particularly to bring to your attention the points concerning non-compliance with Principle #2. You will see from the initial complaint letter that we believe SGS was well aware at the time of issuing the certificate in June 2001 of the existence of a major dispute over the boundaries of the concession. We attach as **Annex 2** a joint SGS-LEI 'Panel of Experts' report dated October 23-28th, 2000 in which the scale of these problems was identified and commented upon (see especially sections 1.3.3 and 3.1.2 of the report). With reference to FSC Criterion 2.3, which states that:

"Disputes of substantial magnitude [concerning tenure claims and use rights] involving a significant number of interests will normally disqualify an operation from being certified."

We believe that the above problem alone should have precluded the issuing of the certificate.

The basis of the complaint as set out in original informal complaint has been further substantiated by:

- the case study investigations carried out on behalf of WALHI and AMAN as a contribution towards the study of Principles 2 and 3 in Indonesia. The report of this investigation. 'Obstacles and Possibilities' is attached as **Annex 3** to this report.
- The statement dated October 2002 by the local communities from the PTDR concession area calling for revocation of both the certificate and the PTDR concession itself (**Annex 4**)

2.2 Handling of complaint by SGS

A secondary dispute concerns the handling of the complaint by SGS. In particular:

- As noted in the letter to you dated 29th March 2002 (see **Annex 5**), we believe that SGS has failed to properly address many of the substantive issues raised in the informal complaint. A tabulation of SGS's responses in relation to the original complaints is

attached as **Annex 6**. You will note that several key issues appear not to have been considered at any stage of SGS's follow-up to the informal complaint, and that promised follow-up has failed to materialise.

- In our letter of March 29th, we also noted that SGS's internal process had not been satisfactory. In your reply dated 17 May 2002, you agreed that there "seemed to have been an omission (sic) in the (SGS's Certification Council) process at the end of 2001". However, your letter offered no form of redress, nor any indication that this 'omission' was to be sanctioned by FSC. In practice, SGS's Certification Council did not respond to the July 4th, 2001, complaint until 25th April 2002. We believe that this is wholly inadequate.
- SGS's subsequent monitoring and treatment of the PTDR certification appears to have been in serious breach of the FSC's requirements. On particular, SGS's November 2001 surveillance visit to PTDR resulted in the issuing of two Major Corrective Action Requests, one concerning illegal logging, the other concerning payment of agreed subventions to local communities (see **Annex 7**). Both these CARs appear to have been 'held open' by SGS until at least March 2002, contrary to normal FSC requirements that certificates are not valid whilst Major CARs are outstanding.

2.3 Accreditation assessment/review of SGS by the FSC Accreditation Business Unit (ABU), particularly the outcome of the June-July Monitoring of PTDR

A further dispute concerns the handling by the FSC Secretariat-ABU of the informal complaint, and in particular the FSC's accreditation review of SGS in 2003, especially the outcome of the field assessment conducted in the certified PTDR area in June-July 2003. There are several aspects to this element of the dispute:

2.3.1 Length of time taken to deal with the complaint

As noted below (section 3), informal complaint procedures were initiated in July 2001. The informal complaint was brought before the FSC Secretariat in August 2001. The report of the FSC's field assessment of the PTDR certification was only made available in January 2004.

Whilst it is appreciated that the FSC was not, under the current FSC procedures, *obliged* to conduct an assessment of the PTDR certification at all, the fact remains that the Secretariat has been aware of the highly contentious nature of this certificate, which remains valid more than two and a half years after the initial informal complaint was filed. The fact that the June-July 2003 field assessment by the FSC-ABU indicates strongly that most, if not all of the original complaints were, indeed, legitimate, thus suggests that there are very serious inadequacies in the FSC's complaints process. The Secretariat's failure to deal appropriately with the original complaint has thus put us in the position that we are members of an organisation that has allowed an inappropriate certificate to remain valid for more than two years, and continues to do so. This is unacceptable.

2.3.2 Outcome of the June-July 2003 Accreditation Monitoring Assessment of PTDR; an inadequate response from the FSC

The complainants note the rigour with which the Monitoring Assessment was carried out and in particular the FSC's investigation into the complaints previously raised. The summary report

of the Assessment¹ is a clear and well-referenced document. The report clearly identifies a number of important failings both in the way the original assessment was carried out, and in terms of subsequent monitoring assessments by SGS. In effect, the report vindicates most, if not all, of the informal complainants underlying concerns.

However, given the nature of the issues raised in the January 2004 ‘Stakeholder Response Report’, we believe that the actions that are being taken by the FSC Secretariat (in particular, the Accreditation Business Unit) are seriously deficient. In particular, there are numerous instances whereby serious failures in SGS’s certification process are treated by the FSC only with ‘Minor CARs’ and ‘Recommendations’. These are, in our view, actually too numerous to cite comprehensively, but some examples are given below:

- For example, it is noted that SGS’s Generic Checklist “*did not fully address the wording and intent of FSC Criterion 2.2*” (p8 of the Stakeholder Response report). In effect, this is tantamount to acknowledging that, at the time of assessment, SGS did not have appropriate mechanisms in place to ensure proper respect for local and indigenous communities’ tenure claims. However, despite the severity of this failure, only a Minor CAR (CAR.SGS.FM 2003.01) is raised against SGS. Similarly, other inadequacies in SGS’s Generic Checklist are treated only with ‘Recommendations’.
- It is further noted (on p10 of the report) by FSC that “*SGS Qualifor has still not adapted its generic standard in line with the FSC requirements*”. This has been a persistent problem and the subject of several CARs against SGS over several years, and yet the problem is still only treated with a Minor CAR (CAR.SGS.FM 2003.02).
- The Stakeholder Response report notes that a “*a number of social impacts were observed that are not fully addressed in SGS Qualifor Reports*”. As the informal complainants have noted, there is clear documentary evidence that SGS were aware of potentially serious disputes in and around the concession, but that this was omitted from SGS’s Summary Certification report. In our view, such omissions are a serious breach of the FSC’s operational principle of ‘transparency’, and could amount to deliberate deception on the part of the certifier. We therefore do not believe that, again, the issuing of only a ‘Recommendation’ (REC.SGS.FM 2003.04) to address this problem is in any way adequate.
- It is rightly noted that there have been doubtful grounds for the closing out by SGS of the numerous Major CARs which were raised during the original certification assessment and first surveillance visit. This is again a very serious matter, because it potentially determines whether the certificate was properly maintained as valid by the certifier, or should have been suspended for non-correction of Major CARs. (In one case (p35 of the report), it is noted that “*The FSC team concluded that the close out justification of (SGS) Major CAR 06 regarding workers rights requires further clarification*”.)

Despite this serious systematic failure on the part of the certifier, again only a Minor CAR (CAR.SGS.FM 2003.06) has been issued against SGS by FSC.

¹ ‘Stakeholder Response Report Regarding the Certification by SGS Qualifor of PT Diamond Raya Timber’, FSC-ABU, January 2004.

- The Stakeholder Response report indicates that “*it is apparent that the certificate was issued at a time when some illegal logging within the concession was taking place*” (p23). It also notes that “*the FSC team concluded that the evidence of continued illegal logging at the June 2003 SGS Qualifor Surveillance [visit] 04 should have resulted in further corrective actions to DRT in June 2003*”, but that such corrective actions were not actually issued. Again, this is an extremely important finding, because it shows that SGS firstly failed to identify the problem of illegal logging, and then subsequently, having been alerted to the problem and observed it in later surveillance visits, had failed to take the appropriate action.

This casts doubts about the reliability of any SGS certificate where there is likelihood of illegal logging activities within the certified area. Despite this, the FSC Secretariat has only issued a Minor CAR (CAR.SGS.FM 2003.08) against SGS.

- The Stakeholder report makes several important observations concerning SGS’s handling of the questions of PTDR’s use and tenure rights. The report notes, for example that “*at the time of the certification the rights to manage the land into the future were less than one rotation length*” (p24). The report also notes that SGS’s original Main Assessment report had been mistaken in its analysis of local usage of forest products, and that there were several outstanding doubts about the content and status of the MoUs between the company and local communities (p26). Moreover, the report notes (p30) that “*the FSC team concluded that the reporting of boundary disputes by SGS Qualifor regarding DRT and surrounding issues should have been more comprehensive*”.

These failures are again highly significant, because they cast doubt over SGS’s ability in this and other cases to properly identify and treat problems related to land tenure and usage rights, or to report on them accurately. Despite this, FSC has in this case only issued SGS with a Minor CAR (CAR.SGS.FM 2003.09) and two non-binding ‘Recommendations’ (REC.SGS.FM 2003.08 and REC.SGS.FM 2003.09)

- The Stakeholder Report notes that there remain serious doubts about the basis for SGS’s assessment of the sustainability of PTDR’s production methods (p38). In particular, it is noted that “*The FSC team did not believe that it was appropriate [for SGS] to use [...] preliminary estimates as a justification for a demonstration of sustained yield...and that more statistically significant results should have been used*”. Again, despite this serious failure on the part of SGS, only a Minor CAR (CAR.SGS.FM 2003.10) has been issued

Taken together, along with other examples not detailed above, the problems rightly identified by the FSC ABU in its Accreditation Monitoring mission of June-July 2003 **cast doubt over the compliance of PTDR with no less than 6 of the 9 applicable FSC Principles** at the time of assessment as well as during subsequent monitoring missions by SGS. However, despite this, only ‘Minor CARs’ and ‘Recommendations’ have been issued, and many of the problems identified by FSC could thus, in theory, be allowed to persist.

We believe this a wholly inadequate response, which indicates that, even where the FSC itself identifies critical problems with certified operations, it is unwilling to take decisive action to deal with the certifiers responsible for such problems.

2.3.3 'Systems-based' accreditation assessment

In responding to questions from Simon Counsell of the Rainforest Foundation about the weakness of the FSC's response on PTDR, we understand that the Acting Head of the ABU noted that the FSC is not able to suspend particular certificates, and that it can only assess whether the certifiers' *systems* are appropriate to deal with the problems identified. We believe this is fundamentally inconsistent with FSC's basis of a 'performance-based' certification system. Certified forestry operations are supposed to demonstrate compliance with the agreed performance standards at the time of certification. Similarly, certifiers should be assessed according to their actual performance at the time of accreditation assessment by the FSC.

In our view, not only has SGS signally failed to demonstrate such compliance, but also the FSC ABU has failed to properly uphold the 'performance standards' as set out in the Accreditation Manual, the Certifiers' Guidelines, and the Main Contract between the FSC and certifiers.

3. Summary of proceedings to date

An informal complaint concerning the certification, in the name of the Rainforest Foundation and WALHI, was raised with SGS-Qualifor on July 4th 2001 (**Annex 1**).

A preliminary statement in response to the complaint was issued by SGS on July 10th, 2001 (**Annex 8**), and a more detailed response on August 7th, 2001 (**Annex 9**).

An informal complaint was submitted to the FSC Secretariat on August 29th 2001 (**Annex 10**). A response to this complaint was received from the FSC Secretariat on October 10th, 2001.

An appeal to the FSC Secretariat was made by the informal complainants on March 29th, 2002 (**Annex 5**), to which a response (dated 17 May 2002) was received on 28th August 2002 (**Annex 11**).

4. Potential parties to the dispute

The potential parties, in addition to the present complainants, are SGS-Qualifor and PT Diamond Raya.

5. Solution

The complainants believe that the appropriate solutions to the present dispute would be as follows:

1. SGS should immediately suspend the certificate for PT Diamond Raya forest management as long as the identified 'major failures' (as per issues outlined **Annex 1**) have not been resolved.
2. The FSC ABU should urgently reconsider their recommendations from their 2003 FSC Accreditation Monitoring of SGS Qualifor. Forest Management Site Audit to PT Diamond Raya Timber and on whether the certificate (SGS-FM/CoC-0659) should be suspended.

3. The FSC Board should assess the findings of the ABU monitoring of SGS Qualifor at PTDR and take appropriate action to ensure SGS's compliance with the Accreditation Manual, the Guidelines for Certifiers and the Main Contract with FSC, including and in particular addressing:
 - the omissions within SGS Public Summary Reports on reporting fully on how stakeholder concerns raised were addressed (GA 1999 Motion 26b);
 - omissions of (known) critical information concerning disputes over land tenure;
 - decision-making procedures that allow 'major failures' to be downgraded to minor corrective action requests;
 - the issuing of new Major Corrective Action Requests without suspension of the certificate;
 - poor quality of consultation procedures with local communities.

Taking into account the numerous serious failures and inadequacies of SGS's certification and monitoring of PTDR, as identified in the FSC Stakeholder Report of January 2004, we believe that SGS's Accreditation by the FSC should be suspended until such a review has been completed.

4. The procedures, guidelines and operational practices of the ABU should be thoroughly reviewed and revised to ensure that the requirements of the Accreditation Manual, the Guidelines for Certifiers and the Main Contract between the FSC and certification bodies are rigorously upheld. In particular, the timeliness requirements for responding and addressing complaints, and required procedures and consequential actions when a certification body is found to be in major non-compliance with its accreditation requirements.

5. The Interim Dispute Resolution Protocol, 27/1/98, Part I, section 4, should be revised so as to place an obligation of timeliness (a period of 30 days is suggested) on the independent Certification Committee of the certifiers to rule on informal complaints. Alternatively the section on Dispute Resolution Procedures in the Accreditation Manual can be modified with the addition of the above timeliness requirements.

Yours sincerely

Dr. Helmut Klein
Waldpolitischer Sprecher
Bund für Umwelt und Naturschutz Deutschland (BUND)

Dr. Christoph Thies
Greenpeace International

László Maráz
Pro REGENWALD

Mike Brune
Rainforest Action Network (RAN)