



**THE RAINFOREST FOUNDATION**



**EKSEKUTIF NASIONAL**

**WAHANA LINGKUNGAN HIDUP INDONESIA**

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4th July 2001

Dear Neil Judd

**COMPLAINT CONCERNING CERTIFICATION OF PT DIAMOND RAYA (SGS PROJECT NO. 6489 ID)**

With this letter, we wish to initiate complaint procedures in respect of SGS's recent certification of the PT Diamond Raya concession (PTDR), Riau Province, Sumatra. We wish that this complaint should be brought to the immediate attention of SGS's Certification Council.

It is our view that PTDR does not comply sufficiently with FSC's P&C to justify the awarding of a certificate. The basis for this view is set out below. Page numbers given below refer to SGS's Public Summary Information report of the certification.

**1. Non-compliance with Criteria 1.1.and 1.2**

Our own investigations immediately following the announcement of the certification of PTDR have revealed that the concession is subject to serious levels of illegal logging.

In 1995, members of a local community burned down one of PTDR's logging camps, because of the company's refusal to allow the Bantaian community to fell timber around its village. In response to this, PTDR agreed to allow local communities to fell timber not utilised by the company.

Up to 200 persons are now regularly involved in such felling, which is illegal, and takes place up to 22 km inside the concession. Our investigations indicate that up to 27 tonnes of timber are being removed illegally each day. Our information suggests that PTDR is well aware of these activities and indeed has sanctioned them; company infrastructure (particularly the

railway and locomotives) is rented to local community members for the purpose of illegal logging. We also believe that PTDR staff are actually involved in supervising and carrying out these activities. Two company employees were arrested as recently as April this year for illegal logging.

Furthermore, our investigations indicate that the company is logging outside its current permit area, and inside the permit area for 2002/2003 (using the rail infrastructure used for the 1999/2000 permit area).

We therefore believe that PTDR does not comply with FSC Criteria 1.1 and 1.2, and should not have been certified on these grounds alone.

## **2. Non-compliance with Principle 2**

### i. Use of part of the concession by charcoal burners

The usage of a part of the concession by charcoal producers is noted in the Public Summary Information (PSI) report. The doubts about the legal status of this ‘co-management’ of part of the concession area was sufficient for SGS to raise a Major ‘Corrective Action Request’ (CAR, #5) after the main assessment. This CAR was then replaced with another major CAR (#21) after the follow-up assessment, which also related to a similar tenure problem with the owner of a cigarette warehouse. CAR #21 has subsequently been closed out

However, we do not believe that the progress made in resolving the legal tenure/usage rights justify the closing out of this CAR. It is reported in the PSI report that PTDR has:

*“Set up a programme of research and monitoring to ensure that current levels of [charcoal] exploitation are within safe limits...At the legal level, PTDR have drawn up a Memorandum of Understanding with the charcoal makers to ensure that they abide by the findings of the research and follow the Principles of the FSC”. (p17)*

In the PSI report’s checklist for the closing out of CARs, the above is contradicted, and it is stated that the MoU has actually been made with the Riau head of Forestry Service (p41). There is no indication as to whether the charcoal makers have agreed to the MoU, or whether there is any legal basis for it, or likelihood in reality that they would actually comply with the FSC’s P&C. Legally, it therefore appears that the charcoal makers retain rights over part of the concession, which is therefore beyond the control of PTDR.

### ii. Disputes over concession boundaries

In addition to the inadequate treatment of the tenure issues recorded in the PSI report, our own investigations have found that there are also ongoing and serious disputes between PTDR and local communities, particularly in the west of the concession, which have not been identified or treated in SGS’s assessment.

At the time of the re-definition of the concession boundaries in 1996, it was agreed with local communities (notably Labuhantangga-besar) that the concession boundary would be set at 6 km from the main road. However, the actual boundary now used by PTDR is as little as 5.2

km from the road. Logging of this area is thus disputed. As the LEI-SGS Panel of Experts Report on PTDR dated October 23-28, 2000 notes;

*“Despite the participation of the local community and the government in the Boundary Agreement process, the actual practice of the agreement is not participatory. Furthermore, the involvement of the so-called community's representatives has no representative value whatsoever.”*

Moreover, part of the land excised from the concession in 1996 was reattributed to PT Sindora Seraya, a sister company to PTDR (with the same parent company), for the purpose of establishing a palm oil plantation. The local communities of both Labuhantangga-besar and Bantaian dispute that their agreement was ever given for the development of an oil palm plantation. PTDR has been threatened with legal action because of this, local communities have blockaded PT Sindora Seraya's removal of timber from forest clearance operations, and in November 2000, PT Sindora Seraya's camp was burned down in protest.

The nature of these outstanding disputes has been known to SGS, as they were recorded in the October 2000 LEI-SGS Panel of Experts Report referred to above. This noted that:

*“the local community, especially in the six western villages, has not recognized both the boundary and land usage granted to PT Sindora Seraya Plantation. Based on the recommendation from [LEI] Team 7, PT DIAMOND RAYA TIMBER, as the concession holder, must terminate all of its activities in the disputed territory. However, the company disregarded the recommendation and failed to settle the dispute. Instead, it has applied and subsequently obtained renewal of its logging permit from the government”*

The LEI-SGS report further notes that:

*“this conflict is potentially dangerous for the continuity of the Management Unit's efforts for sustainable forest management. This potential has more probability to explode by the advancement of a lawsuit over parts of the eastern Management Unit area by the people of Datuk Laksamana Raja Dilaut”.*

We therefore believe that CAR #21 should not have been closed out. As is stated under FSC Criterion 2.3:

*“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 PTDR's operation currently fails to comply with FSC's Criteria 2.2.and 2.3, and should, on these grounds alone, not have been certified. The fact that the problems over boundaries and tenure were known to SGS, but not recorded in the PSI report, suggests that this information has been deliberately excluded from the report.

### **3. Non-compliance with Principle 4.**

#### i. Non-payment of agreed Facility Funding Assistance (FMDH)

Our investigations have revealed that the company is in heavy arrears concerning agreed payments to local communities for development activities. In particular:

- Of the agreed donation of Rp. 40,000,000 payable to the village of Labuhantananggar-kecil during 1999/2000, only Rp. 16,000,000 has so far been paid.
- Concerning Rp. 240,000,000 worth of assistance payable by the company by March 2001 to certain villages (under the agreement made in 1996), only Rp. 145,000,000 has been paid to the village of Sungaisialang, the building of a school in the village of Bantaian has not yet been started, and the building of a mosque in the village of Labuhantananggar-besar was done at an unacceptably low standard.

#### ii. Employment of local people

The report notes that few local people are employed by the company, and attributes this to the alternative, more highly remunerated, economic activities available to local people. In fact, local people do feel that the wages paid by the company are inadequate. However, they also state that PTDR does not even inform them of job opportunities.

For the above two reasons, we believe that PTDR cannot be shown to have complied with Criteria 4.1 and 4.5, and therefore fails to satisfy Principle 4.

### **4. Inadequate basis for determination of compliance with Criteria 5.6**

It is clear from the PSI report that there is considerable doubt as to whether the current levels of timber harvesting within the concession are indeed within sustainable levels. Although this was raised as a Major Corrective Action Request (#13), and then 'closed out', it is not clear what could have been the basis of this closing out.

The only data presented (on page 6 of the PSI report) suggests that, using the most optimistic assumptions, the recruitment of trees into the harvestable size class would only just be equal to the amount of trees in that harvestable size class within unlogged forest (The assumption being that trees of 20cm d.b.h continue growth of 0.52 cm per year for 40 years in order to attain >40cm d.b.h). However, it is not clear whether the Permanent Sample Plot (PSP) data used to obtain the 0.52 cm/yr. figure is derived from comparable sites that take into account variation across the concession (which is acknowledged to be high). Also, because the PSP data has only been derived from a five year series, it is not clear whether this data can truly be extrapolated over a 40 year period, whereby the growth rates of a particular cohort of trees (>20 cm dbh and <40 cm dbh) may change significantly. Also, it is not clear whether the general increment figure derived from the PSPs takes account of the particular species being harvested, as there are no specific increment figures given for any of the main commercial species.

Normally, the assessment of harvest sustainability would be based upon a comparison of increment of volumes per unit area, against current volume harvesting rates. However, the PSI contains no such data, and it is not clear whether such data is actually maintained by PTDR or is otherwise available.

Moreover, the report is highly ambiguous about the effectiveness of efforts to encourage regeneration through enrichment replanting of trees. It is noted both that *“the effectiveness [of enrichment planting] is likely to be limited...”* and that *“the lack of previous systematic credible monitoring on the rates of mortality and survival [of enrichment planting] do mean there is little evidence for the current estimates”* (section 3.4, p 5). One replanting area visited (‘RKT’, p14) was reported to be *‘overgrown with ferns and vines’*.

The lack of adequate forest management information is clearly acknowledged in the PSI report. For example, it is noted that:

*“A major problem is that at such an early stage it is only possible to produce baseline data in a range of areas and it will not be until there is a full time series that clear information will be available to the management”*.

Whilst it is acknowledged in the report that efforts have been made by PTDR to collaborate with various research institutions and use the available data, it is still noted that *“it is incumbent [on PTDR] to demonstrate how the information they have can justify the current cutting cycle”* (page 6).

In our view, it is therefore difficult or impossible to determine from the information referred to in the PSI report whether the timber harvesting levels are sustainable in relation to tree regeneration and growth increment, and there are good grounds for suspecting that they may not be. This high level of doubt should not have allowed for the closing out of Major CAR #13, and should in itself have been grounds for not granting the certificate

## **5. Non-compliance with Principle 6**

The report reveals a clear lack of a basis to determine PTDR’s compliance with Principle 6.

It is acknowledged that the area contains species of global conservation significance, including one of the rarest creatures on the planet, the Sumatran Tiger, and yet there are no specific measures identified whatsoever by which PTDR intends to protect this wildlife. It is stated that the company keeps a copy of the relevant environmental protection legislation at its camp office, but does not confirm that they comply with them.

The report notes that:

- *“there is no instruction or procedures to perform [environmental] impact assessment before operations: (p36)*
- *there is no fully comprehensive list of species in the area. There is no baseline data on the numbers of bears, tigers or arboreal spp.” (p36)*
- *“the flora of the area is not fully documented and the species mix not fully mapped” (p9)*
- *“the lack of information on forest sub-types...is a cause for concern” (p10)*

- “currently, [PTDR] has not identified areas where exploitation will not take place” (p10).
- “the level of information needed to ensure the relationship between all different aspects of the forest are fully linked will take time...” (p22)

The first two of the above points were evidently the basis for the raising of Minor Corrective Action Requests #11 and #12. However, it is clear that, in the absence of any data or measures for environmental protection (other than the setting aside of a few small areas totalling only 820 hectares), the company should have failed Criteria 6.1, 6.2, 6.3, 6.4. This should have been sufficient grounds for the raising of a Major CAR, not two minor CARs.

We note that the two Minor CARs, #11 and #12, have not been closed out. We therefore believe that a Major CAR for general non-compliance with Principle 6 would also not have been closed out, serving to prevent the issuing of a certificate.

## **6. Non-compliance with Principle 7**

SGS’s original assessment noted that PTDR’s existing management plans, whilst compliant with TPTI requirements were “*very weak and not operationally useful at the field level*”. It was also noted that “*the annual plans produced in order to renew licences amounted to little more than harvesting schedules*” (p25). A Major Corrective Action Request (# 17) was duly raised.

The principal response to CAR #17 appears to have been that a twenty-year operational plan has been developed by PTDR. However, there is no indication that the company has produced adequate 1- and 5- year plans, which are usually the main basis for planning of field operations. We therefore believe that an adequate operational planning basis for the company does not currently exist.

Therefore, Major CAR #17 should not have been closed out, the company is in breach of Principle 7, and should not have been awarded a certificate for this reason also.

## **7. Consultation processes.**

We believe that the local consultation process carried out by SGS was inadequate for several reasons:

- In the village of Labuhantangga-kecil, the assessment team met only with a member of the local Village Consultative Forum (Forum Musyawarah Desa). This forum has been created by PTDR to facilitate consultations between the company and local communities, is financially supported by the company, and therefore cannot be considered as independent from them.
- In the village of Labuhantangga-besar, the assessment team met only with the village ‘master’.
- The assessment team failed to visit the villages of Sungaisialang and Bantaian, despite, in the case of the former, having notified the village chief that they would so.

- The chief of one of the villages visited has said he did speak with the assessment team, but did not understand the purpose of visit and had no knowledge about the subject of certification.

Clearly, the failure to visit Bantaian was most serious, as this is one of the communities that has been most in dispute with the company in previous years, and is now one of the most engaged in illegal logging.

For the above reasons, we believe that the assessment of PTDR was seriously flawed, and that the certificate should be withdrawn immediately.

We thank you for taking the time to consider this complaint. We ask you to confirm receipt of this letter, and to inform us as to what will be the process for SGS to resolve it.

Yours sincerely

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