



FOREST STEWARDSHIP COUNCIL

An FSC Analysis of the Rainforest Foundation report, *“Trading in Credibility”*

This paper is an internal FSC document, issued by the Executive Director, to review and evaluate the report from Rainforest Foundation (RF), titled “Trading in Credibility”. It was not designed and is not intended as a public statement, but neither is it confidential. Please contact Carolina Hoyos (choyos@fscoax.org) at FSC International Center for further information.



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Introduction

This paper is an internal FSC document, issued by the Executive Director, to review and evaluate the report from Rainforest Foundation (RF), titled "Trading in Credibility". It was produced by the FSC Secretariat for our own guidance, to help us decide and react appropriately to the information contained in the RF report. It was not designed and is not intended as a public statement, but neither is it confidential. Many of the responses, decisions and actions suggested in this document will depend on further consultation with FSC members, FSC National Initiatives, FSC accredited certification bodies and external experts. Some of the responses, decisions and actions suggested in this document may therefore change over the coming months.

We are treating the RF report formally, seriously and with utmost concern, for two reasons:

First, it includes specific accusations and complaints of non-compliance and breaches of FSC decisions and rules by FSC staff, accredited certification bodies and certificate holders, through deliberate breaches of rules and through laxity in enforcement. The FSC systems for handling complaints require us to examine and check any such accusations, whether they come from FSC members or non-members. And if proven true, such breaches would certainly result in significant consequences for the FSC staff, accredited certification bodies and certificate holders involved.

Second, it includes a series of recommendations and suggestions from RF, which may contain useful and helpful ideas to feed into the ongoing debates about improvements to FSC systems and changes in FSC governance and structures. FSC staff has a responsibility to evaluate ideas and proposals, whether from members or non-members, for their relevance, and for their ability to improve systems and solve problems, their advantages and disadvantages, and their feasibility with available resources. Major changes as suggested by RF also require in-depth consultations and approval from the FSC board and/or members.

In addition, the RF report includes a large number of other comments about FSC which are not recommendations for improvements, nor are they accusations or evidence of breaches or rules. They are more in the nature of criticisms, expressions of concern, and negative conclusions. They are, in effect, comments and opinions on decisions, actions, systems or policies with which RF disagrees.

By studying these opinions, we hope to detect failures, errors of judgment, or weaknesses in our actions and communications. The RF opinions may be justified, when they are based on correct information and understanding. On the other hand, they may be unjustified and misleading, if they are based on incomplete or misunderstood information, or if presented in a distorted or generalized manner.

FSC staff and members are proud of what we have achieved, in a short time with limited resources. We also recognize our weaknesses and shortcomings, which are easy to identify and criticize. We intend to transparently discuss and address them.

The Rainforest Foundation promotes its own institutional position. We do not attempt to argue their specific position and individual criticisms in this paper, except where RF refers to non-compliance with our rules, or to recommended changes. However, FSC staff is ready to provide more information on any of their specific criticisms individually, on request.

Therefore, this FSC analysis has three sections:

1. detailed response to the complaints and evidence of breaches of rules,
2. detailed response to the recommendations and suggestions, and
3. detailed response to the individual case studies.

This FSC report does not cover or respond to the RF's criticisms of other parties (certification bodies, forest managers, donors, members, or other organizations) except for the complaints or allegations of breaches of FSC rules. We respect RF's right to comment freely and critically on any of these organizations, but it is not for FSC to react unless a criticism refers to a breach of FSC rules.

The FSC Executive Director and staff received a draft of the RF report in September, and have had the opportunity of discussing the final report with FSC members since then, especially during the 3rd General Assembly in November. As a result of these discussions, the FSC conclusions are as follows:

- Almost all the issues raised by RF as matters of concern were well known to the responsible FSC staff, who have been working on these issues, and receiving information about them from members and other forestry stakeholders, for many months or years.
- Monitoring, enforcements or quality control of forest management or certification decisions are not as timely, strict or consistent as we would like. Significant investments to revise the FSC systems for accreditation have been made recently, and several new measures have been added. But it is also clear that we need further systemic and institutional improvements.
- The issues raised by RF are mostly well known, and we have already examined them. We do not think they are intentional or incorrigible failures of certification. Deficiencies have already been address, or are in the process, through Corrective Action Requests. In some cases RF had been informed that issues had been resolved and settled satisfactorily.

- Where new issues are raised, they will be investigated. Some of them are in areas where clarification or new guidelines have been developed (such as ILO Conventions and HCVEs) to improve performance, and are not considered breaches of the rules or contracts. Others are still under study.

The RF report includes a summary with conclusions and recommendations (pages 5 - 7). These, like the report and case studies, blend together many kinds of complaints, criticisms and expressions of concern, with suggestions and opinions. Selected evidence is presented in support of the RF position, but the case studies do not pretend to be a complete or at least representative collection of favorable and unfavorable evidence. They cover less than 10 of the forest management certificates issued (i.e. less the 0.4 % of all certificates currently maintained by FSC).

1. Complaints and evidence of breaches of rules

This section covers the specific complaints raised in the RF report and case studies, where RF reports evidence or concerns about breaches in FSC rules, contracts or guidelines (pages 5 - 7 of the RF report). They are grouped here into similar kinds of complaints.

1.1 Complaints against certification bodies for issuing unjustified certificates

These complaints maintain that certification bodies have issued forest management certificates and Chain of Custody certificates, knowing them to be in serious breach of the FSC rules, the FSC Principles & Criteria and the certification bodies' own systems. The case studies give opinions of non-compliance in certified forest management enterprises in Brazil, Thailand, Indonesia, Ireland and, more generally, in Chain of Custody certification.

The RF report raises concerns about deliberate collusion and manipulations, especially between forest managers and certification bodies, to ensure easy and favorable results.

FSC accreditation staff monitors and assesses compliance by certification bodies, and take whatever steps are necessary to correct cases of non-compliance, and to prevent their occurrence or recurrence. As a result, all the issues identified by RF, and their concerns and complaints against individual certificates, were already known to FSC's staff, and to staff of the respective certification bodies. Relevant Corrective Action Requests (CARs) had been issued when required to certification bodies involved. Many of the issues were already public knowledge, and were made widely available because of the increased availability of information coming from certification consultations and reports.

FSC has already studied the problems highlighted in the RF report, and how the certification bodies addressed them. We do not share the RF opinion that the certificates were unjustified, but we have identified several areas that need further clarification, so that these and other similar problems can be better addressed in the future.

To help resolve the complaints raised by RF, our work includes the following:

- FSC has contributed to a study by the Rainforest Foundation and Indonesian NGOs, to identify how best to assess and identify the rights of communities and indigenous peoples in Indonesia, and how to carry out consultations in highly complex field situations.
- FSC is collaborating with ProForest to develop global and national tools for identifying and maintaining High Conservation Values (HCV), and managing HCV Forests, which will greatly increase the dependability of certification, especially in

natural forests (such as those in Indonesia and Brazil) and in many other systems.

- FSC has already published guidelines for applying all relevant ILO Conventions, which protect the rights of workers and indigenous communities. These guidelines will be revised in the light of practical experience (in Indonesia, Brazil, Thailand and elsewhere).
- FSC is drafting additional guidelines for certification of plantations (in Ireland, Brazil and elsewhere), and consultations are continuing.

In spite of in-depth research FSC staff was not able to substantiate RF's claims to deliberate manipulation and/or collusion between forest managers and certification bodies, to ensure easy and favorable results. FSC firmly believes that there have been no cases of deliberate manipulation and/or falsification of results or decisions. However, neither FSC nor the certification bodies pretend that the process is free of errors or weaknesses. Errors have occurred and been detected, especially when assessments move into new situations and face new problems and challenges.

Another source of errors arises when FSC rules (including the Principles & Criteria) lack the precision, clarity or detail needed to implement fair, consistent and correct decisions in all situations. These kinds of errors are inevitable in a program which is growing rapidly and still learning, faced with a global array of complex and conflicting situations, and where many of the assessment staff and forest managers are also new to the complexities of certification.

To improve the consistency of certification decisions, FSC has issued a steady flow of new policy interpretations and certification guidelines, which increase the precision and reliability of certification and accreditation decisions. In addition, FSC regularly issues Corrective Action Requests (CARs) to certification bodies, so that identified errors or weaknesses are corrected, and do not recur. The large number of CARs that are sometimes issued is an indication of the intensity of FSC scrutiny, and of the pace of learning from growing experience.

The combination of occasional differences in application of FSC rules, plus some ambiguity and uncertainty about their correct application may result in a situation, where observers such as RF may adopt a different conclusion regarding failures, mistakes and required action. FSC recognizes that this is an important source of confusion often compounded by the fact that observers lack the extensive training and experience of professional staff of FSC and/or accredited certification bodies.

1.2 Complaints against FSC, for supposedly 'permitting certification bodies to issue unjustified certificates'

The RF report suggests that FSC staff is neither able nor willing to monitor or enforce adequate compliance with the rules, or to develop disciplinary procedures, or to exercise the necessary sanctions, and has failed to take decisive action, or to enforce CARs

when problems were clearly identified. RF concludes that FSC is institutionally unwilling and unable to confront the errors and weaknesses of certification decisions because of a lack of clearly defined penalties, an absence of defined "major failures", a fear of legal actions, and a conscious weakening of FSC's policies and requirements in order to promote the rapid growth in the area of certified forests. RF noted that there was some confusion in the secretariat during 2001, compounded by the inadequate numbers of experienced staff, and that the situation has improved during 2002 (page 18).

FSC constantly aims at the highest standards of assessment and implementation, while feeling constrained by the numbers of staff, our financial resources, and the slow pace of developing new policies and guidelines. FSC would like to be able to monitor more closely the work and systems of accredited certification bodies, to meet and collaborate with them more often, and to work together to correct weaknesses, avoid errors, and speed up improvements, without imposing unacceptable extra costs on certification. In reality, problems of communication, occasional human errors, and misunderstandings can and will occur.

During the past year, all aspects of accreditation, standards and policy development and communication have improved, but much remains to be done. Many of the steps now under way are designed explicitly to improve the quality and speed of assessments and corrections. FSC rejects the suggestion that staff is unable or unwilling to monitor or enforce adequate compliance with the rules or to implement stricter levels of compliance and performance.

FSC also rejects any suggestion that staff are manipulating decisions and lowering standards, in order to promote fast growth. The RF report mentions correctly that the 1998 FSC Strategic Plan stated that there was "strong pressure" and a "widely held view" for aiming at fast growth and rapid expansion. However, the position of the FSC Board of Directors and FSC staff has been firmly and consistently that the context and limits to growth are set by FSC's mission and the Principles & Criteria. Rapid Growth must not occur at the expense of quality and/or credibility. FSC decisions were, are and will always be taken according to whether they will contribute to the FSC's mission, while fully complying with the FSC Principles & Criteria.

The policy for 'Percentage Based Claims' is a good example of this principle in action. It was made clear to FSC in the earliest days that certification and labeling would be largely irrelevant to paper, chip and fiber industries that obtain their raw materials from many hundreds or even thousands of suppliers, unless manufacturers could gain recognition for progress in increasing the percentage of certified raw materials in their respective products. The chances of achieving FSC's mission would be greatly reduced, if no incentives and recognition the efforts of such industries could be offered.

FSC-endorsed claims are therefore permitted, when products contain in addition to raw materials from FSC certified sources, a significant portion of non-certified raw materials, or recycled raw materials, with provisions that such materials exclude some defined controversial sources. This policy was not designed to promote "rapid growth" of certified forest areas, or numbers of labeled products, but to promote our mission by engaging the chip & fiber industries and their suppliers.

RF criticizes the institutional relationship between FSC and the accredited certification bodies, and concludes that faults are due to a lack of will, sanctions, penalties and enforcement disciplines.

FSC has developed over the years close collaboration and partnership with accredited certification bodies, rather than legalistic and punitive relations. It is FSC's belief that the mission is best achieved by collaborating to address specific weaknesses and errors of performance and to improve the system as a whole. This collaboration was built on the understanding that all parties have the capabilities, and are making an honest effort, to correctly implement FSC requirements and continuously improve their performance.

We believe that suspension or cancellation of contracts would be justified when a certification body lacks the will or the resources to follow their agreements. In addition, FSC has been mandated by the recent General Assembly to develop a catalogue of incentives and disincentives to further encourage collaboration between the FSC and accredited certification bodies to promote the FSC's mission.

The FSC Board of Directors and staff recognize that delays in annual assessments of certification bodies have occurred. Recent improvements can now ensure comprehensive and timely implementation of the accreditation program. Recent improvements in FSC funding and financial controls led to improved internal monitoring and dialogues with certification bodies. In 2002, FSC began serving 'Major CARs' to certification bodies that can lead to disciplinary measures unless addressed within the time frame given.

1.3 Complaints that FSC has breached its own rules for multi-stakeholder participation and decision-making

The RF report and case studies include many criticisms and unfavorable comments, where the authors disagree with opinions, actions, statements or policies of FSC and its staff. Some of these are explicit complaints that FSC rules, bylaws or decisions have been breached by FSC itself. These complaints are of serious concern, requiring explicit assessment. The particular complaints that fall into this category are as follows:

1. Breach of FSC requirements for composition of FSC National Working Groups.
2. Breach of FSC decisions on Mutual Recognition Agreements.
3. Failure to implement the decision to identify "major failures".
4. The systems for complaints and disputes are non-functioning and discriminatory.

1.3.1 Breach of FSC requirements for composition of FSC National Working Groups.

FSC has published detailed guidelines for establishing and managing national working groups, before they can be endorsed by and sign a contract with FSC. Almost all national working groups contain three chambers for decision making and voting purposes, much like FSC itself.

In rare cases, FSC has agreed to applications from national initiatives to endorse working groups with four chambers: For example, in Canada, the working group includes a separate chamber for indigenous peoples. In Ireland, it includes a separate chamber for "forest owners". In all cases, the overarching objective for the establishment of any national working group is to ensure equal and equitable balance of relevant interests and to prevent relevant interests from being marginalized in any decision making and/or voting. Balanced decision making and voting procedures are of central importance in any national working group and are usually detailed in the statutes of the national working group.

Furthermore, as in any membership organization, the statutes, relevant protocols and procedures are agreed by consensus amongst the balanced majority of the members. FSC affirms during the detailed evaluation of any applicant national working group seeking FSC endorsement that decision making and voting are balanced so that all relevant interest groups can participate and no relevant interests are marginalized.

The FSC Executive Director evaluates and recommends applicant working groups for formal endorsement by the FSC Board of Directors. Board endorsement as official FSC National Working Groups may be subject to pre-conditions, conditions and recommendations.

Until a national working group is formally endorsed and has entered into the respective contract with the FSC, FSC has no legal recourse and/or contractual links with the respective group, but may have an advisory relationship. FSC's influence on standards development, disputes, statutory arrangements, decision making or voting and balance of relevant interests within a working group is therefore limited prior to formal endorsement. FSC can point to possible deficiencies or potential problem areas and suggest possible solutions, but it is entirely in the domain of the national working group to adopt or reject such suggestions.

The RF case study 6 notes with approval the extra chamber for indigenous stakeholders in Canada. In other national FSC Working Groups, indigenous people are represented through the social chamber, even when they have substantial economic and environmental interests. FSC agrees that the results in Canada have been generally positive. It has helped FSC to continue to play a positive role in Canada, while the complex issues of indigenous peoples' rights and interests are gradually addressed. FSC would certainly be ready to consider any similar requests from countries with especially complex problems concerning the interests and rights of indigenous peoples and other critically important stakeholders groups.

The RF case study 7 and the main report, strongly criticize the extra “forest owners” chamber in Ireland, pointing out that it represents only economic interests. FSC agrees that the results in Ireland have not been satisfactory, for a large variety of reasons and that this chamber structure may have contributed to maintaining a history of distrust. FSC has visited with the national working group in Ireland on several occasions trying to suggest and facilitate a resolution of the disagreements. FSC’s influence in resolving the continued disagreements is limited.

1.3.2 Breach of FSC decisions on Mutual Recognition Agreements.

RF quotes a motion passed at the 1999 General Assembly, concerning (mutual) recognition agreements between FSC and other forest certification schemes, ruling that “It is the sense of the General Assembly that the FSC’s primary means of formal endorsement or recognition of consistency are within and through the FSC’s system of accreditation, standard-setting, certification, and labeling. Accordingly, the FSC should not formally “endorse” or otherwise officially “recognize” any other body or program in the absence of an approved FSC policy ensuring that the body or program is substantially equivalent in its relevant policies, standards and procedures to the FSC”.

In an effort to clarify the interpretation of this motion, FSC later made it clear that this motion does not prevent endorsement or recognition of FSC National Initiatives, national standards or certification bodies, following FSC protocols. Nor does it prohibit collaboration with candidate national initiatives, non-FSC members or other groups that share part of FSC’s mission. However, the motion is understood to prohibit any formal agreement that amounts to recognition of, for example, other (non-FSC-endorsed) certification bodies, certification systems, accreditation systems, standards or product labels. FSC has published in April 2002 a policy statement on recognition agreements in line with the above motion of the FSC General Assembly.

Subsequently, terms of reference were agreed for an FSC Technical Working Group on Mutual Recognition, and a group was appointed in early 2001. This group was not able to make progress on this complex issue. It was reconstituted in early 2002, with a revised mandate and a staff member acting as facilitator. It met for the first time in Atlanta in April 2002 and again for two days in Oaxaca in November 2002. The technical working group has recently submitted a final report with recommendations to the Executive Director and the FSC Board of Directors.

At the same time, FSC did its best to support and contribute to non-FSC national initiatives and working groups, with the aim of encouraging them to adopt FSC guidelines and develop FSC-compatible standards. In 2001 FSC was excited to see a national working group developing in Vietnam, starting to draft national standards. However, contrary to claims by RF, FSC had no intention of offering FSC endorsement until the usual protocols were fulfilled. Several of these national groups following due process later became endorsed as FSC National Initiatives.

The RF report takes particular exception to FSC’s work in Malaysia, which included collaboration by FSC members and staff with MTCC, and also in Ontario, Canada. The

report implies that this collaboration was “evidently” aimed at a Mutual Recognition agreement. In both instances, FSC never intended or implied directly or indirectly the intention to enter into recognition agreements without following its endorsed protocols and policies. On the contrary FSC has clearly stated in public that any collaboration must lead to full compliance with endorsed FSC protocols and policies. This complaint is without basis, whatever weaknesses and disappointments may have arisen as a result of meetings and discussions.

The meetings about the forests of Ontario were clearly aimed at promoting FSC certification. At the time, they presented an interesting potential opportunity.

The meetings in Malaysia were clearly aimed at promoting the development of a national FSC Working Group and FSC Standards. They were strongly supported by the few FSC members in Malaysia. To that effect a collaboration agreement with the Malaysian Timber Certification Council (MTCC) was signed in 1999. One conspicuous result of this collaboration was that the draft Malaysian Criteria & Indicators were revised in early 2002, to include the full wording of all the FSC Principles & Criteria, referencing, for the first time, recognition of the rights of communities and indigenous peoples. The collaboration agreement with the MTCC was concluded in late 2001. In late May 2002 FSC issued a public statement to its endorsed national initiatives again clarifying the relations to MTCC and pointing out that FSC has not recognized any working groups, standards, certification systems in Malaysia or any certificate issued by the MTCC in Malaysia.

1.3.3 Failure to define “major failures”.

RF quotes the introduction to the FSC Principles & Criteria, stating, “major failures in any individual principle will normally disqualify a candidate for certification...”. In context, this clearly implies that a minor failure (for example at the level of a criterion) does not necessarily disqualify a candidate for certification, although it must be corrected within a reasonable time frame, but a major failure in a principle does so disqualify. Defining “major failures” at the level of the principle offers a possibility to national standard setting processes to clearly identify in the context of national standards aspects critical to compliance with the FSC Principles & Criteria.

In 1997-98, FSC staff agreed that it would be helpful if all national forest stewardship standards included explicit instructions about what should be considered “major failures” of compliance, and for FSC to produce guidelines. Later it became clear that FSC Working Groups were successfully developing indicators and verifiers for positive compliance with the FSC Principles & Criteria, but found it difficult to provide clear guidance about “major failures”. During 2002, FSC has been developing detailed guidance on the definition and identification of “major failures” of national standards, which will be circulated for review and comment in 2003.

However, the main focus has now shifted from attempting to provide guidance on disqualifying certification applicant to providing much improved clarity, precision and guidance on how to satisfy the principles, criteria, indicators and verifiers. Over the

years, experience has shown that this shift in focus provides a more positive and enabling environment for forest operations applying for certification.

Contrary to the statements of RF, all certification bodies' accredited documented systems relating to decision-making procedures do include provisions for identifying major failures at principle level.

1.3.4 The systems for complaints and disputes are non-functioning and discriminatory.

The RF report accuses the FSC of having a "non-functioning" complaints system. FSC recognizes that its systems for the management of complaints and disputes are complex, and that responses and solutions are slower than would be desirable. The recent FSC General Assembly also recognized this and mandated the FSC Secretariat to conduct a comprehensive review of the various complaints and dispute resolution mechanisms and protocols.

The RF report itself is good evidence for the complexity of FSC's current complaints and dispute resolution protocols, since the authors are clearly confused about the systems, and misunderstand them. The RF report states, "The FSC does have a formal complaints procedure, the Interim Dispute Resolution Protocol". But the report does not take account of the routine procedures for handling complaints about FSC members, certified forests, and the decisions of certification bodies, FSC staff and directors and national initiatives, all of which are open to criticisms and complaints from any member or non-member. The FSC dispute resolution protocol is designed to come into effect only when FSC members conclude that a complaint has not been correctly resolved through these routine mechanisms.

The following is a brief summary of the FSC systems for resolving complaints and disputes:

Under our rules, the managers of certified forests must have a system for managing and responding to complaints, appropriate to size and complexity of their respective holding. Anyone may complain to any forest manager at any time. The certification body must satisfy itself that complaints are dealt with in a manner appropriate to the scale of the forest enterprise.

All accredited certification bodies must have a system for managing and responding to complaints about their own actions and programs and about the activities of their certified clients. Anyone may complain to any certification body at any time. If they receive a comprehensive complaint about a client, they are expected to provide a comprehensive response within a reasonable time frame. The time required for a full response obviously depends on the content and complexity of the complaint, the possible need for further research and/or field visits, the need for consultation with the forest manager, with other stakeholders and/or with the FSC accreditation and policy programs. FSC is responsible for monitoring the compliance of certification bodies with these requirements.

FSC-endorsed national working groups must also have systems for handling complaints about their own work. The existence of such systems is verified during the evaluation by the FSC accreditation program leading to endorsement by the FSC Board of Directors.

FSC itself has systems for managing and responding to complaints, and for resolving disputes. Anyone (member or non-member) may complain to the FSC at any time, about any aspect of FSC's work. FSC regularly receives communications that can be described as complaints, criticisms and requests for information, clarification or explanation (as well as enquiries, thanks and compliments). FSC attempts to acknowledge such communications promptly and reply to them all as soon as possible. It is obvious that not everyone seeking clarification is always satisfied with FSC's response. However, FSC is usually able to identify clearly areas of confusion, or the need for new policies and/or improved guidance. This intensive communication with members and other stakeholders is a continuous source of valuable input to improving FSC's policies and systems.

When the complaints refer to the actions of certification bodies or certified forests, FSC is required to investigate the issues. On some occasions, a complaint is due to misunderstandings and may be resolved directly by explaining the relevant FSC rules. On other occasions, FSC refers the complaint to the certification body concerned, and requests information about and an explanation of the issues referenced in the complaint. Clarifying the issues at minimum requires extensive exchange of information between the FSC accreditation program and the certification body. In complex cases additional research and communication with other stakeholders is required.

At least once a year, FSC accreditation staff evaluates the treatment of every complaint received by a certification body, whether or not FSC staff has already been involved. This evaluation is conducted during the FSC's annual monitoring visit to the certification bodies' office.

Complaints lead to a range of results:

- Most often, the problem is explained or resolved, and complainant is adequately satisfied.
- Sometimes, the complaint results in recognition that FSC's rules were adequately followed, but that the rules, guidelines or policies need changing or clarifying. This is the signal for a process of revision, drafting and consultation, taking whatever time may be needed.
- Sometimes, the result is recognition that FSC's rules were NOT followed appropriately, in the light of FSC's own official interpretation of the rules. This may be caused by someone's error, or by a misinterpretation of ambiguous rules. However, it is always addressed through issuing to the certification body involved Corrective Action Requests (CARs) to resolve the error and to avoid its recurrence, or for a clarification of our guidelines.

- Sometimes, the complainant may feel convinced that FSC's rules have been broken, while FSC staff responsible are satisfied with the measures taken, resulting in a disagreement between FSC staff and the complainant. At this stage, an unresolved complaint becomes a dispute between parties. Generally, FSC members and their elected members of the FSC Board of Directors have confidence in FSC's staff to make the correct judgments with a clear understanding of the correct application of FSC's rules. Therefore such disputes are rare occurrences.

The Dispute Resolution Protocol may be engaged when all other systems for managing complaints have failed to resolve the issue satisfactorily. It involves appealing to the FSC Board of Directors and/or to FSC's Dispute Resolution Committee to evaluate all the evidence related to the dispute.

The present protocol is complex, and based on formal steps and timelines. Only FSC members may initiate the dispute resolution process. Any appeal under the dispute resolution process must be supported by at least two FSC members. The resolution of a dispute could potentially proceed all the way to being presented to the FSC General Assembly for decision. It is obvious that proceedings under the dispute resolution protocol are very time and resource consuming for FSC.

It is therefore FSC's intention to resolve complaints before becoming a dispute appealed to the FSC Board of Directors and/or the FSC Dispute Resolution Committee. Over the past years FSC was able to resolve the vast majority of all complaints satisfactorily before they were appealed to the FSC Board of Directors and/or the FSC Dispute Resolution Committee. In addition it is FSC's intention to reserve the dispute resolution protocol for issues of utmost importance.

Dispute resolution proceedings may be compared to engaging the lawyers to bring the case in front of the "High Court" of the FSC, after all other internal investigations, negotiations and attempts to resolve the complaint have failed.

The different layers of systems for resolving complaints and disputes are complex and have caused confusion. However, as in any organization, whether public or private, it is essential to attempt to resolve misunderstandings and complaints at the earliest stage possible. It is also necessary to reserve the highest authorities of the organization (i.e. FSC Board of Directors, FSC Dispute Resolution Committee, FSC General Assembly) for the most important cases.

While FSC appreciates the legitimate concerns of members and non-members alike and will always do it's best to resolve complaints it also intends to prevent individuals and/or organizations from paralyzing the FSC operations with repeated complaints.

FSC agrees that a revised, more comprehensive set of protocols and documents for managing complaints is needed, at the levels of forests, certification bodies, national initiatives, FSC staff and FSC Board of Directors, and for resolving disputes in the event that complaints are not resolved.

2. Recommendations and Suggestions

The RF report includes several explicit recommendations, summarized on pages 5 - 7 of the RF report. FSC is evaluating and discussing these suggestions, to decide if and how they may support FSC's current program, FSC's mission, and recommendations from other sources (including proposals from FSC members).

It is too early to provide a conclusive response in all cases. However, some of the RF recommendations refer to issues that have been under discussion and development for some years. Below are comments by the FSC staff to each of the RF recommendations below:

2.1 RF recommends abandoning the model of FSC acting as an accreditation body. FSC should effectively work as a global certification body, assessing and monitoring forest operations directly, accepting fees from forest managers, and hiring and maintaining a worldwide network of certification assessors

FSC position: FSC currently works as an accreditation body, and also in effect as a standards organization. Some FSC members have proposed that FSC should "outsource" the work of accreditation, but there is no immediate prospect of FSC undertaking certification.

FSC has chosen to operate as an accreditation organization for reasons of efficiency and to avoid having to set up international certification logistics, while other international organizations already possess such capabilities. In order to offer and administer a global certification program itself FSC would need to establish enormous logistical and administrative capacities. Operating as a global certification body would greatly increase the certification cost to forest managers. In addition, it is highly doubtful, whether operating as a certification body would indeed improve certification decisions. Several reasons point to the contrary:

Firstly, the great majority (over 95%) of all FSC certification decisions are uncontroversial and are never contested. The current system actually works rather well.

Secondly, FSC has not been able to substantiate RF's hypothesis that commercial relations (certification contracts) between accredited certification bodies and forest managers lead to deterioration of standards and manipulation of certification decisions to ensure favorable certification results. On the contrary, substantial evidence suggests that accredited certification bodies view the quality of standards and compliance as a critical attribute to FSC's continued success of the FSC and are therefore maintaining the highest possible levels of performance.

Thirdly, in addition commercial relations between certification bodies and applicants for certification are common practice in certification, auditing and quality assurance worldwide. And while occasional problems are publicized widely, the entire system of accreditation and independent third party verification is recognized for its integrity throughout the corporate sector, civil society and public administrations.

The recent FSC General Assembly has mandated the FSC staff to review the current provisions of FSC's accreditation program and implement safeguards to maintain the highest level of compliance with FSC Principles & Criteria, standards, policies, protocols and rules.

2.2 "Certification assessments should not be undertaken in countries lacking a properly constituted National Working Group and endorsed National/Regional Standards"

FSC position: There are currently FSC endorsed certificates in 66 countries worldwide. FSC National Initiatives are endorsed in only 30 countries, whilst to date 13 standards are endorsed covering forest management aspects in 9 countries. If RF's proposal were to be implemented FSC would need to abandon on-going certification efforts in over 50 countries worldwide. Implementing the RF proposal would effectively discriminate against forest managers for reasons beyond their individual control (i.e. whether a national initiative is formed and whether it agrees on a national standard). Contrary to the assumptions of RF, certification in parallel to the development of national standards has on many occasions proven to provide valuable experience and input to standards development processes.

A relevant policy motion was approved by the FSC membership at the 3rd FSC General Assembly in November 2003. The conclusion was to better harmonize the use of certification bodies' interim or generic standards, and provide more detailed guidance for standards development at the national/regional level. The secretariat will be working on this during 2003.

2.3 Periodic (annual) evaluation of the Secretariat's certification decisions should be conducted by independent evaluators

FSC position: It has been one of FSC's principle ways of working that certification decisions are taken independently by accredited certification bodies. In turn FSC verifies accredited certification bodies for their compliance with FSC requirements and standards. It is our experience that this two step process provides for increased scrutiny and independence in decision making.

FSC has been working for several years at forming part of an international network of accreditation bodies, such as IAF, the International Accreditation Forum. It operates a system of annual evaluations of all national accreditation bodies. If FSC cannot join IAF, the alternative is to operate a similar system through the International Social and Environmental Accreditation and Labeling organization, ISEAL.

**2.4 *"The "fast growth" strategy should be formally abandoned...."*
*"Specific organizational objectives should be defined....."***

FSC position: The FSC Secretariat is currently being reorganized into separate operational Units. Each of these units will have its own targets within FSC's overall strategic objectives. To achieve our mission, FSC hopes to see "fast growth" as an organization (i.e. its members, staff and resources, regional offices and national initiatives, the numbers of national standards, accredited certification bodies, certified forests and labeled products), but always within the framework of the FSC rules and Principles & Criteria. None of our current operating documents mention or refer to a "fast growth strategy", but they aim at timely measures in support of FSC's mission.

2.5 *The RF also recommends studies or reviews of (1) the potential for expansion of FSC in major timber producing countries, (2) our relationship with demand and trade networks*

FSC position: FSC is already and will continue to consider these suggestions, in relation to its strategic development. It is obvious that trade networks, their public endorsement of the FSC and their respective demand for products certified under the FSC system have been of immense support to FSC and a critical asset for FSC's continued success. FSC will therefore continue to review its relations with the corporate sector including demand and trade networks to provide the basis for close collaboration.

2.6 *"The Percentage Based Claims policy should be abandoned...."*

FSC position: This policy has been developed over a period of years based on wide consultation with FSC members and several discussions at FSC General Assemblies. The policy is currently undergoing an in-depth review, but it is unlikely to be abandoned.

2.7 *"The FSC GA motion of 1999 concerning Mutual Recognition Agreements should be fully complied with"*

FSC position: Agreed. It was always complied with and will remain in effect until a detailed policy on Mutual Recognition is developed by the respective FSC technical working group and adopted by the FSC Board of Directors.

2.8 *"Through a thorough consultation with environmental and social stakeholders, definition and guidance on "major failings" should be incorporated directly into the P&C, at the level of each individual criterion and principle". RF makes the same recommendation for national and regional standards*

FSC position: Consultations on this issue are ongoing and will continue. FSC's current position is that "major failures" should be defined in national standards by national stakeholders, and then be identified in the forest management unit by

certification bodies. The FSC does not think that it is technically appropriate or socially just to impose this level of detailed requirement at the international level. During 2003, the FSC will be providing additional guidance and examples of solutions for consideration by certification bodies and national standards groups.

2.9 “The requirements for Chain of Custody” certification should be extended to all parts of the trade chain, from forest to retailer”

FSC position: This proposal is already under study. Consultations will continue, especially on how to efficiently monitor the use of the FSC trademarks for publicity by traders and retailers who currently are not required to have their own CoC certificates.

2.10 “The FSC should establish credible procedures for monitoring legality of non-certified wood....”

FSC position: This issue was already under study prior to the production of the RF report. FSC is collaborating with other organizations that are working on the issue to design systems for verification of legal compliance.

2.11 “The FSC should immediately abolish the non-exclusive Chain of Custody certification option in trade chains that have been found to either falsely label uncertified but legal wood as certified, launder illegal wood into the legal chain, or falsely label illegal wood as certified”

FSC position: These provisions are already covered by existing rules, as noted in Case Study 5 which states “If contaminated products become falsely labeled as certified, it is a violation of the CoC certification agreement and would be grounds for suspension of the certificate”. These provisions are also within the scope of the ongoing study of certification of legal compliance. However, a chain would be eligible for certification if it complies with the rules, and would not usually be prohibited because of any past non-compliance.

2.12 “Systems should be developed to allow public access to information about all links in certified Chains of Custody”

FSC position: The name and contact details of all CoC certificate holders are already publicly available. However, FSC does not consider it practical to set up a system to provide information about all the linkages between different CoC certificates. Apart from the issue of confidential commercial information, the links between companies change over time as companies move from one supplier to another. Some companies receive wood from hundreds of suppliers. It is questionable whether CoC certificate holders would agree to publication of their respective suppliers and supply chains. In addition, the bureaucratic effort required to maintain such a system up to date and accurate would be immense while the potential benefits would be marginal at best.

2.13 *The draft social strategy should be modified so as to take account of the conclusions and reforms detailed herein*

FSC position: The draft social strategy will consider the RF recommendations, as well as those of FSC members and other consultations.

2.14 *"A policy and working culture of "presumption of disclosure" of information should be established....."*

FSC position: FSC currently operates a policy of presumption of disclosure. Except for few commercially, technically and legally sensitive documents, FSC discloses all information. In addition all our guidelines are currently being revised, including the detailed rules on what information should be included in certification and accreditation reports and in other FSC reports.

2.15 *"The complaints procedures should be streamlined and made more accessible to marginalized stakeholders"*

FSC position: Agreed. It is essential to design and maintain a dedicated system to address, manage and resolve complaints and disputes involving FSC, FSC members, national initiatives, certification bodies, certificate holders and anyone else. Already, FSC is an extremely open and transparent organization, as is shown by the fact that much of the information in the RF report comes directly from the public reports of certificates. The issue of transparency was debated at length at the 2nd FSC General Assembly in 1999, when a motion was approved as the basis for FSC's current policy.

2.16 *"Clear policies should be developed on the relationship between FSC and potential major sources of "informal influence", including major commercial clients and donor agencies"*

FSC position: FSC's general position is to require a high level of transparency in all activities, and to encourage open debate among the membership. It is believed that this is the best protection against the kinds of influences which concern the RF, whether from donors, pressure groups or any other source. Following the statutes, the bylaws and other policies to facilitate transparency the FSC Board of Directors invited the RF in September 2002 to present their findings and recommendations to the FSC membership and to seek an open debate and democratic decision at the upcoming General Assembly in November 2002.

3. Notes on the Case studies

Case study 1: Certified forests in Pará, Brazil.

These two certified forests in Brazil were the subjects of an unpublished report by the author of this case study, prepared in October 2000. She reports that "FSC seemed to have ignored the denunciations being made, thus dismissing the role of members and other stakeholders as an active part of FSC's certification processes". She draws attention to weaknesses in protecting workers rights and in disease control in the area.

The reported "denunciations" refer to the situation before certification. The two certificates were issued 6 and 7 months later, in April and May 2001, after fulfilling several pre-conditions set by the certification body, when the base-line thresholds were achieved. Many more conditions were added, for fulfillment afterwards.

FSC has no indication that the certification body was unaware of the weaknesses highlighted in this case study, or ignored them. The large number of pre-conditions and conditions suggest that sufficient improvements were made to achieve the baseline for certification, and many other improvements were required to maintain the certificate subsequently.

This new report will be screened for new information, to be used in the FSC monitoring of the certification body concerned.

Case study 2: Forest Industry Organization (FIO), Thailand.

This study raises concerns about the certification of two areas of plantations, managed by the FIO, Thailand. It describes the previous record of the FIO in logging operations in natural forests, considered unacceptable, and now terminated. FIO now concentrates more on plantations. Parts of the FIO land were certified in 2001, including plantations established between 1967 and 1984.

This case study is highly critical of the past record of FIO. FSC can make no comment on these criticisms. Certification decisions are based on current management and not on past records. The study is also critical of FIO for using certification to improve their image; however, certification is based on the current quality of forest management practices and planning. FSC does not object to improvements in image, as long as the claims about management are valid and do not mislead the public. Many forest operations worldwide have made substantial improvements to achieve certification under FSC and deserve to be recognized for their achievements rather than be criticized for their history. FSC also has a policy on "partial" certification to control against "green-washing" and to evaluate forest managers' long term commitments to the FSC Principles & Criteria.

The certification body set a long list of conditions to be closed by FIO. These indicate that the certification body was well aware of some weaknesses and had highlighted actions required by FIO to address them.

The authors suggest that the audit and consultations were seriously deficient, because some organizations and individuals were not consulted. However, consultation during the certification assessment is not intended to provide a platform for all stakeholders to discuss the respective certification, but as a support for the certification body to identify the main strengths and weaknesses of the forest management. Therefore FSC judges the quality of a consultation by whether the auditors consulted enough to correctly identify the main strengths and weaknesses of management, not by whether they talked to all stakeholders. The detail of pre-conditions and conditions, and the comments of this case study, suggest that most management issues had been identified by the auditors.

FSC has recently (January 2003) conducted a comprehensive accreditation monitoring of the certification body with regards to the certification of FIO in Thailand. FSC has screened this case study for new information, and has paid particular attention to the weaknesses highlighted, and to compliance with recent FSC guidelines on plantation certification and on ILO Conventions that were circulated since the certificates were issued. The FSC team also met with a number of the local organizations and individuals who contributed to the case study and discussed their concerns. FSC will take any necessary corrective actions with regards to the certification body and respond further to stakeholders concerns. FSC will also develop clearer guidelines on "conditional certification", as in this case, recognizing that certain improvements in long term operations such as forest management require significant time.

Case Study 3: *Perum Perhutani, Indonesia.*

This case study summarizes the many concerns raised about plantation management in Pt. Perhutani, and about their history of certification over the past ten years. FSC staff first inspected some of the certified areas and consulted NGOs eight years ago. FSC was well aware of problems, and insisted that the certification body concerned re-evaluate each of the areas covered by certificates. These certificates have been among the most controversial in the world. With the exception of one area (not evaluated in the RF report), all certificates had been withdrawn by the certification body more than a year before the RF report was published. At the end of 2002, the last remaining Pt. Perhutani certificate was withdrawn.

Some may have hoped that "the certification might leverage improvements", but unfortunately any improvements were smaller and less stable than had been hoped, and some of the earliest warnings were well founded. FSC accepts the main thrust of this case study (while not agreeing with all details). The experience prompted FSC to develop detailed guidelines for complying with ILO Conventions, and to contribute to an in depth study of how to identify and protect community and indigenous peoples' rights in Indonesia. Both of these measures will help to improve the dependability of future certification decisions in Pt. Perhutani and elsewhere.

Case study 4. *Precious Woods and Gethal, Amazonia.*

This study covers forests certified in 1997 and 2000. These areas have obtained recognition as perhaps the best examples of tropical forest management in the Brazilian Amazon, but the authors describe a large number of concerns, based on their own fieldwork and the reports published by the certification body. Broadly, they focus on issues of environmental and biodiversity impacts, and on the rights of local communities and workers. FSC also attaches a high priority to such issues. FSC has noted the large number of conditions attached by the certification body, showing that their assessors identified many areas needing improvement. It is not clear that any of the weaknesses identified until now should have disqualified the areas from certification. However, FSC will examine the certification decisions in light of any new information provided.

The confidence of these certification decisions will be greatly improved when we have full implementation of FSC guidelines on the ILO conventions protecting rights of workers and indigenous communities (adopted by FSC in 2002), and the HCVF Toolkit (under development in 2002).

It is also clear that the authors oppose the legitimacy of commercial logging and certification in previously un-logged tropical rainforest. This represents a difference in opinion between the authors and FSC. Among the stakeholders who collaborate with FSC national initiatives, the debate centers round the indicators that must be in place and the national processes for identifying High Conservation Values. This discussion is ongoing, and is helping to define the circumstances and conditions under which harvesting can proceed in primary forests and HCVFs of any kind.

Case study 5: *Chain of Custody certification.*

This study is a critique of weaknesses in the implementation and rules for Chain of Custody certification. The author provides no new data or cases, but questions several aspects of FSC policies and practices.

One concern is that a manufacturer or dealer may intentionally and fraudulently label products or raw materials that are not eligible for labeling. So far, such cases are very rare, but FSC realizes that they require constant vigilance and firm action.

A more difficult case is as follows: FSC prohibits certain "controversial" categories of wood from entering into the Chain of Custody together with certified materials. These categories include, for example, wood from illegal sources and wood from GMOs. All companies are required to have a system for evaluating their sources and excluding the controversial categories. The certification body checks the quality of the system, but neither FSC nor the certification bodies are required to carry out field audits of the uncertified raw materials. This makes it difficult to provide a complete guarantee against inclusion of unacceptable raw material, particularly illegal wood.

Very few cases of error or abuse have emerged, but FSC has been aware of this potential problem for years. At present, the most promising solution appears to be a

system for verification of legal compliance, which has been under study since early 2002.

The author also notes the well-known problem of retail companies that do not manufacture, package or label any products, and therefore are not obliged to have Chain of Custody certificates. However, these retailers may use the FSC trademarks for publicity and promotion when they stock FSC labeled products. Under present rules, the staff of FSC national initiatives is responsible for approving and monitoring the correct use of the trademarks. FSC is currently researching alternatives to involve accredited certification bodies in approving and monitoring use of the FSC trademarks by retail companies.

The author makes many specific recommendations, based on work with one of the certification bodies. All these will be examined carefully, to clarify if and how they can be used to improve current rules and guidelines.

Case study 6: *British Columbia and Ontario.*

The author compares and contrasts some of the experiences in British Columbia and Ontario, Canada.

The Canadian FSC national initiative was one of the earliest. The writer comments approvingly on the process of standards development in BC, especially on the allocation of a separate chamber to indigenous interests and the systematic approach to language and drafting. He likely underestimates the amount of disagreement that still remains. FSC shares his welcome for the progress made, and is optimistic for the future development of certification in BC.

In Ontario, the author notes the promising early progress with developing standards for temperate and boreal forests. He is strongly critical of what he calls the great Ontario "surprise", which took place in March 2001. Meetings were held in Oaxaca between the FSC Executive Director, the director of FSC-Canada, and the Ontario Minister for Natural Resources and other officials. The Minister wished to seek FSC-certification for all crown forests in Ontario, and the FSC Executive Director agreed to collaborate in all the necessary studies. The resulting public statements caused some controversy, with suspicions that the agreement would be based on compromising FSC standards, some form of mutual recognition or mere legal compliance. In reality, no-one made any attempt to short-cut any FSC requirements.

The interest of the minister was a major opportunity to identify and promote the changes in forestry necessary for compliance with the FSC Principles & Criteria and certification in Ontario. If this opportunity had been taken forward, national stakeholders and FSC staff would have contributed to identifying the key elements and standards necessary for compliance, adding security and credibility to the work of the certification bodies.

Case study 7: *Ireland.*

This study is a lengthy and detailed criticism of the management and progress of the national working group endorsed by FSC, and of the certification of the Coillte Teoranta plantations. These two elements are linked. State-supported plantations have dominated the past 50 years of forest management in Ireland, and the development of the national standard has been heavily focused on the management of those lands.

The plantations of exotic conifers in Ireland have generated much controversy and polarization, reflected in the controversies surrounding the certification in 2001 and in the national working group. FSC greatly regrets that forestry in Ireland has built up such a history of conflict and distrust, and that the working group has not yet been able to resolve the issues. It is FSC's sincere hope that national stakeholders will voluntarily continue to play their part in consultations and meetings, as they do in many other countries, rich and poor, north and south.

The certification body has closely monitored compliance with the CARs set for Coillte, including those that involve long-term planning and implementation. In 2002, FSC inspected the work of the certification body in Ireland, and has identified elements that need tightening and improvement. FSC is confident that the past weaknesses in plantation management, in operations and in long-term plans, are being addressed, but also recognizes that Coillte has a long way to go to correct a legacy of controversy and mistrust.

Case study 8: *Malaysia.*

This study is critical of the work of the Malaysian Timber Certification Council (MTCC), of the Malaysian Criteria & Indicators (MC&I) and of FSC involvements with either of them. FSC's efforts in Malaysia have been difficult and controversial for nearly ten years.

As early as 1994, the government of Malaysia made it clear that it wanted to set the framework for a Malaysian certification system, independent of the FSC. Without the collaboration of Malaysian NGOs as FSC members, there was little hope of establishing an FSC working group for developing national standards for Malaysia. The first significant opportunity came in 1999, when MTCC and the Minister for Primary Industries called for collaboration with FSC to draft the MC&I in a form fully compliant with FSC requirements.

As a result, consultations extended to a wider range of stakeholders, and the drafting of the MC&I is now in the hands of a multi-stakeholder National Steering Committee (NSC). However, progress was slow, and some NGOs withdrew from the NSC, and ceased their participation. FSC has kept itself informed of the developments, by correspondence and by attending meetings (e.g. three at Sahabat Alam Malaysia, 1996, 1999 and 2002 and one in London with the author of this study).

Early in 2002, the draft MC&I were revised to include the complete FSC Principles & Criteria. This was a significant step forward, which greatly increases the recognition of

social and indigenous rights in certification. However, there is still no working group, or standard, or certification system ready for FSC endorsement in Malaysia.

Case study 9: *Diamond Raya, Indonesia.*

This case study presents a detailed critique of most aspects of the certificate awarded in 2001 to Pt. Diamond Raya in Sumatra, Indonesia.

Some of these criticisms arise because the authors misunderstand certain elements of certification, including the role of consultations and the status of CARs that are issued after certification. The certification body was well informed about the controversies and conflicts affecting Diamond Raya, even though, inevitably, some concerned stakeholders were not directly involved in the consultations.

FSC understands the authors' objections to certification in the absence of an approved national standard. However, certification has been operating worldwide on the basis of the accredited certification systems and their own generic standards, designed to implement the FSC Principles & Criteria. The development of national standards proceeds slowly, especially in countries where there are extremely few active FSC members (as in Indonesia and Malaysia).

Diamond Raya is understood to be one of the most progressive concessions in Indonesia, but there is no pretence that it is perfect. Rainforest Foundation concludes that the weaknesses should have prevented certification, while the certification assessors concluded that the certificate was justifiable. However, the assessment also highlighted the particular difficulties of making a fair and consistent assessment of the rights of communities and indigenous people in the particularly confused legal situation prevailing in parts of Indonesia, where the fair interpretation of the FSC Principles & Criteria may be ambiguous. The current uncertainties may raise the risk of different and conflictive interpretations, unless there are clearer guidelines.

For this reason, FSC has approved guidelines for application of ILO Conventions, and has contributed to a study of legal and social rights in forestry, in relation to communities and indigenous people. This study will help FSC to develop better guidelines for Indonesia and similar situations. FSC will also continue to scrutinize certificates issued in Indonesia and will conduct a monitoring visit to inspect the work of the certification body with regards to Diamond Raya in June 2003. This visit will investigate the issues raised in the case study in addition to any issues raised by further consultations with other local stakeholders.

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