

# **Global Witness complaint against Dalhoff Larsen & Horneman (DLH)**

11 November 2014

## **Public Summary of the Complaints Panel Report**

**FSC shall disassociate from Dahlhoff Larsen & Horneman A/S and all its subsidiaries.**

Impartial Complaints Panel consisting of Bert van Hensbergen, Anna Jenkins and Hubert Kwisthout.

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## 1 The Complaints Panel and its mandate

FSC members Bert van Hensbergen – Economic Chamber, Anna Jenkins – Environmental Chamber (Chair of Complaints Panel) and Hubert Kwisthout – Social Chamber, were tasked by FSC to investigate the below complaint and make recommendations to the FSC Board of Directors using the FSC Procedure FSC-PRO-01-009 (V3- 0) EN.

## 2 The Complaint

The Global Witness complaint alleged that in 2012 DLH, one of the world's leading international timber and wood products wholesalers at the time, had purchased illegal timber worth \$304,870 harvested under Liberian Private Use Permits (PUPs), and that this timber was exported to Bangladesh, China and France. The complainant further pointed out that information was publicly available that should have alerted DLH to the serious risk that the concessions from which it was buying timber were illegal. If DLH had investigated whether the timber it intended to source had been legally harvested, including examination of the harvesting permits and verification of compliance with applicable laws and regulations in Liberia, DLH would have discovered that PUP timber was illegal or highly likely to be illegal. By purchasing PUP timber, DLH would therefore have involved itself in the illegal timber trade and violated FSC-POL-01-004 *Policy for the Association of Organizations with FSC*.

## 3 Evaluation of the complaint

### 3.1 Methodology and data collection

Key tasks were split between the Panel members with each Panel member producing reports and spread sheets and sharing these with the full Panel for discussion and addition.

Bert van Hensbergen looked at the evidence of PUPs illegality and when DLH could have concluded that there was a serious risk that the PUPs logs and timber were illegal. Anna Jenkins constructed a timeline of events, considered the role of SGS and DLH's perception of the LiberFor certification system in Liberia, looked in detail at DLH's response to the complaint and drew together and edited the Panel Report. Hubert Kwisthout looked at DLH's due diligence systems and considered whether they were they fit for purpose in addition to looking at counterevidence and counter arguments over and above those put forward by DLH itself. The Panel undertook the three key tasks to examine the evidence simultaneously.

The Panel collected and considered all documents provided by Global Witness in reference to the complaint. It also collected and considered all documents referenced and provided by DLH. In addition to publicly available documents DLH also provided the Panel with copies of confidential commercial documents such as orders, invoices, bills of lading, phytosanitary certificates, export permits, certificates of origin and a harvest permit. In addition the Panel collected numerous

ancillary documents about the situation in Liberia in relation to forest legality and forest governance. These included reports from the UN, NGOs and other entities. It also collected all available laws and regulations and codes of practice governing forest management in Liberia.

Over the period the Panel carried out the main stakeholder interviews together as a group. Individual Panel members undertook further brief stakeholder consultation. The main stakeholders interviewed were DLH and Global Witness representatives, current and past representatives of SGS LiberFor and a consultant working on forestry issues in Liberia at the time for the EU and UK Department for International Development (DFID). The Panel also consulted representatives of DLH's FSC chain of custody certification body and a European-based forest NGO. The Panel chose interviewees on the basis of the need to gain a greater perspective about key aspects of the case. These were usually stakeholders that had not otherwise published reports about their perspective of the situation.

The Panel met on two occasions at the beginning and near the end of the investigatory time period with regular contact calls throughout the period.

### **3.2 Clear and convincing evidence for disassociating with DLH**

DLH does not deny that it bought and sold illegal timber. It states it did so unknowingly and that the evidence that proved there was a problem was not available until December 2012.

The Panel believes that DLH did not intend to trade in illegally harvested timber. However the Panel considers that the company was negligent by failing to carry out an adequate due diligence process.

#### ***Context***

Liberia, by all accounts, can only be considered a high-risk country. In 2011 Liberia scored 3.2 out of 10 on Transparency International's Corruption Perception Index, rising to 41 out of 100 in 2012. While conditions were improving the risks involved in doing business in Liberia were nonetheless extremely high at that time.

#### ***Why PUPs are illegal***

Initially, PUPs were seen as a promising way to generate income from land owned by smallholders, enabling them to sell some of the timber. Even amongst the NGO community this was seen as a positive development initially because the areas involved were thought to be small. However, over time it became clear that the PUP mechanism had been hijacked by corrupt and commercial interests and was being used as a means to obtain logging permits for much larger areas.

PUPs were in fact issued and operated in contravention of a variety of laws; these include forest laws and their associated policies and regulations, land laws, administrative laws and criminal laws.

PUPs were issued and activated in cases where amongst others:

- 1) The PUP holder was not the landowner and did not have permission from the landowner.
- 2) The operators were not pre-qualified to carry out commercial forestry.
- 3) The operators had failed to pay royalties and taxes for other forestry operations over which they had control.
- 4) No management plan had been submitted.
- 5) No Environmental Impact Assessment (EIA) certificate had been issued by the Environmental Protection Agency (EPA).
- 6) No social agreement had been reached with affected communities.

The Forestry Development Authority (FDA) is required by the Forest Reform Law 2006 to develop regulations that specify the qualifications of anyone seeking to operate a PUP and in addition develop regulations for the issuance of PUPs. The FDA failed to promulgate either type of

regulation and as a result should not have been in a position to issue any PUPs until at least the required regulations were in effect.

In addition almost all of the PUPs issued (55 out of the 59 examined in detail by the Special Independent Investigating Body (SIIB) for the Liberian Government) are for some form of community forest and therefore they should not have been eligible for PUP licences.

As a result all PUPs howsoever issued can be considered illegal.

By failing to establish proper social benefit streams for forest dependent and forest owning communities the PUPs were defrauding and depriving these communities of both the short term and long term benefits from the forest that they should have received. This was theft on a grand scale that would have deprived these peoples of their forest related birthright.

According to the UN Panel of Experts the failures to administer forest resources properly were a significant factor contributing to the Liberian civil war and that similar failures could in future rekindle these tensions.

The Complaints Panel therefore views the illegality associated with PUPs as being of the most serious kind. This is because the illegal logging had actual and potential consequences leading to activities highlighted by the FSC Policy for Association in addition to illegal logging and its trade, namely violation of traditional and human rights and the destruction of high conservation values. Given the highly risky situation that Liberia presented the Panel found that extreme care and very careful due diligence should have been implemented however this did not take place in this case (see below).

DLH and its subsidiaries bought illegally harvested timber repeatedly during 2012.

### ***The role of SGS and DLH's perception of the LiberFor system***

DLH predominantly relied upon both the LiberFor system and the opinion of the SGS staff members to reassure it that the timber it was purchasing was legal. In part DLH relied upon SGS so heavily because it did not have dialogue with other stakeholders in the region.

DLH staff however had a fundamental misunderstanding about what the LiberFor system actually certified. On-the-ground DLH staff covering Liberia relied upon the system as a verification of legality when in fact it was only at best a verification of origin and tax payment despite SGS's own description of it being a verification of 'Legal Origin' system. The understanding of what was legal in Liberia therefore was not helped by the somewhat mixed message sent out by SGS/LiberFor with regard to what actually constituted 'Legal Origin'.

### ***DLH's due diligence systems***

Although the most recent version of DLH's Good Supplier Programme (GSP) – found to be EUTR compliant by the Danish Competent Authority – was developed around the period under consideration, it has transpired that this was not used in Liberia during 2012. The 2006 GSP used in Liberia at the time is very unlikely to be EUTR compliant although the Panel did not carry out an analysis to that end.

While DLH through the development of its new GSP, was taking steps towards creating a responsible buying policy, there are no indications that it took such precautions on the ground in its dealings in Liberia.

From the documentary evidence the Panel received from DLH it is unclear whether all aspects of its 2006 GSP were carried out or carried out in a sufficiently thorough manner. Documentary evidence was largely not produced at the time and what does exist is minimal and incomplete. Purchasing decisions were made at the local level by the procurement manager for Liberia (based in Cote d'Ivoire) and did not require sign off by the CSR department for final approval or other

support. DLH was unable to provide the Panel with documented evidence that it had followed its due diligence procedure for any supplier in Liberia.

The Panel considers that it was a high-risk strategy to leave the decision in the hands of a single person given the context of an extremely risky country such as Liberia. The CSR department had little contact with its procurement manager regarding Liberia for several months of the year (there was little contact between April and September 2012). There is evidence that the procurement manager could not countenance that anything could go wrong with the LiberFor system in place and were unable to accept that there were problems even after the publication of the September 2012 Global Witness report detailing the issues. The conduct of the procurement manager for Liberia, in terms of applying the GSP and company environmental policy, was discovered to be of great concern in September 2012 by DLH itself and it appears he eventually lost his job over it.

The company therefore failed on several accounts: lack of clear adequate standards, lack of robust procedures, lack of on-the ground implementation of what procedures that were in place and lack of oversight.

***When could DLH have concluded that there was a serious risk that the timber it was buying was illegal?***

The Panel finds that there was sufficient publicly available evidence to warrant ceasing trade with Liberia in late April 2012 with another opportunity at the June/July Chatham House illegal logging meeting that year in London, a meeting regularly attended by DLH.

As 2012 progressed the case for ceasing trading under the precautionary principle grew under the weight of the growing evidence publicly presented by different sources.

The Panel found little evidence that DLH studied many relevant reports at the time. While certain news reports and at least one report were studied most of the most relevant NGO reports and other key reports were only sent to the DLH CSR Vice-President for the first time in September 2012 in the wake of the Global Witness report published at that time.

In awaiting the publication of the official investigation into PUPs that published its report in December 2012 before acting DLH was at best not exercising sufficient due diligence, not adhering to the precautionary principle and at worst negligent. Given this the Panel found that it was appropriate that DLH should face consequences under the FSC Policy for Association in the form of disassociation from FSC until such a time as FSC can be assured that both DLH's on paper policies and in practice procedures are sufficient to ensure that the timber it purchases meets the Policy for Association and have been independently verified as such.

## **4 Recommendation to the FSC Board of Directors**

### **FSC shall disassociate from Dahloff Larsen & Horneman A/S (DLH) and all its subsidiaries**

The standard of certainty for this decision is clear and convincing evidence.

Re-association shall take place once thorough third party verified evidence is received by FSC that confirms that DLH's due diligence systems are sufficiently robust as to be capable of meeting FSC's Policy for Association. The third party verified evidence shall show that the due diligence systems are both sufficiently robust on paper and demonstrably proven to be working in practice, on-the-ground, across a range of different operating locations (a minimum of three locations in high risk areas). The Panel recommends that re-association with FSC may take place at any time after any Board decision to disassociate; no waiting or penalty period is recommended.

The Panel suggests that ASI conducts the verification.

The Panel draws the Board's attention to the fact that it has not looked at whether the current 2012 DLH GSP due diligence system is sufficient to meet FSC's Policy for Association requirements. The Panel does not consider that compliance with EUTR automatically confers compliance with the FSC Policy for Association for the simple reason that the EUTR is only concerned with timber legality and not the other additional aspects of the Policy for Association.

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