

# **Public Summary of the Policy for Association Investigation**

## **– Jari Group –**

April 2019

### **Executive Summary**

This report presents the results concerning the investigation process conducted to verify the potential breach of the FSC Policy for Association (PfA) (FSC-POL-01-004-V2 EN) by the Jari Group (Jari) due to its potential involvement in 'Illegal logging or the trade in illegal wood or forest products' and in the 'violation of traditional and human rights' in Jari's forest management and timber trade operations in Brazil.

The FSC PfA investigation process was conducted by an independent panel of experts (investigation panel), composed of three members of FSC Brazil, representing the social, environmental and economic perspectives. The experts composing the investigation panel are technical specialists on the matter, with expertise and deep knowledge on the themes subject to investigation.

As background to the case, it should be noted that the Jari Group received its first FSC certificate in the year 2004.

The Jari Group owns and manages both forest management and timber trade operations. The majority of Jari's operations are located in the Amazon Biome, more specifically in the Jari Valley, north of Brazil, State of Pará.

During the time period when Jari held FSC certificates, several conflicts started arising in relation to the group. These conflicts – which pointed to a potential involvement by the group in activities considered as unacceptable under the FSC PfA – escalated with time and became more severe and led to formal complaints and serious allegations (many of which reached the public and media) against the company.

It should be noted that the PfA investigation conducted by the investigation panel, which results are presented in this document, was a proactive investigation. This implies that the investigation was not triggered by a formal PfA complaint filed against Jari with FSC International (as such formal PfA complaint did not exist), but rather was triggered by the various allegations against the company which pointed to the need for FSC to find clarity in relation to the matter, in order to protect the credibility and reputation of the FSC brand.

Given the lack of existence of a formal PfA complaint as such, a fundamental task by the investigation panel was to clearly define the scope of the investigation, as a first step in the investigation process.

The panel defined the following allegations to be the scope of the PfA investigation:

>>>**Allegation 1** – Involvement in ‘Illegal logging or the trade in illegal wood or forest products’

>>>**Allegation 2, 3 and 4** – Involvement in the ‘Violation of traditional and human rights in forestry operations’, due to the:

- **Allegation 2:** Organization’s failure to recognize the existence of traditional communities within its forest management area;
- **Allegation 3:** Organization’s failure to comply with terms of the agreements with communities concerning communities’ land tenure rights recognition (for those communities living in the organization’s forest management area);
- **Allegation 4:** Organization’s use of violence against community members in the process of claiming and defending its land tenure rights (involving the destruction of community residences, assets and crops).

The allegations aforementioned were made by concerned and affected stakeholders, among them, authorities as the State Public Prosecution Service, local associations, non-governmental organizations and inhabitants of the area surrounding Jari Group’s certified operations. The first stakeholder allegations against the company were raised in 2012, and since then (and particularly starting from 2015) various concerns were raised in the following years by stakeholders and community members regarding the social and environmental impacts of the company’s operations.

It is relevant to explain the methodology followed by the investigation panel in the evaluation of the above mentioned allegations about Jari Group. These allegations were evaluated based on: document analysis, observation during a field visit and stakeholder interviews (interviewees included local and national concerned and affected stakeholders, as well as relevant official authorities).

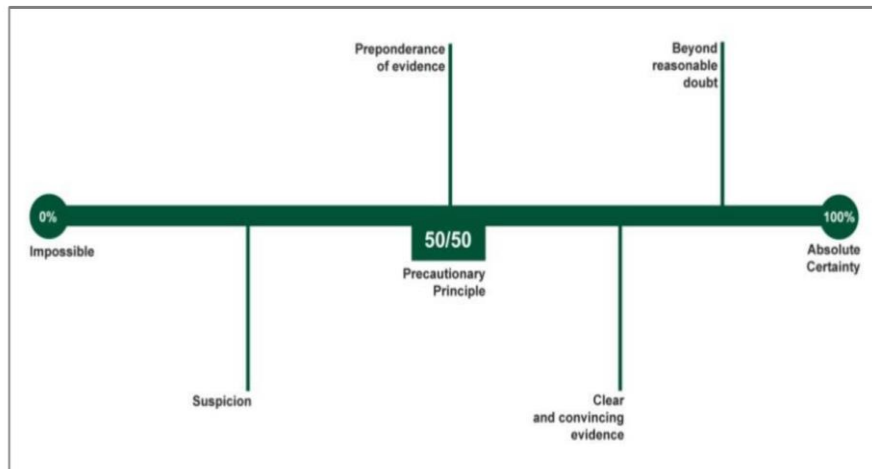
The investigation panel considered all the complexities of the situation and the diverging views of stakeholders during the investigation of the case. Based on concrete and objective evidences it was possible for the panel to develop a final recommendation on the case to the FSC International Board of Directors (BoD), as a result of the investigation.

The panel followed the ‘Standard of certainty’ provided by FSC (Annex 4 of FSC-PRO-01-009<sup>1</sup>) during the evaluation, for the determination of the probability that Jari Group had been involved in unacceptable activities in violation of the FSC PfA.

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<sup>1</sup>FSC Procedure ‘Processing Policy for Association Complaints in the FSC® Certification Scheme’ (FSC-PRO-01-009), 28 May 2014.

The level of probability that a violation of the PfA had taken place was measured following the below scale (as mandated in Annex 4 of the FSC-PRO-01-009):



**As a result of the PfA investigation of Jari Group, the investigation panel concluded there is evidence ‘beyond reasonable doubt’ that the organization is in breach of the FSC PfA due its involvement in the following unacceptable activities:**

**>>‘Illegal logging and trade of wood or forest products’;**

**>>‘Violation of traditional and human rights in forestry operations’** (due to the organization’s failure to consistently and formally recognize the existence of ‘Traditional’ communities within its forest management area).

The panel’s rationale behind this conclusion is presented below.

## **Conclusions**

The main conclusions by the panel as a result of their investigation are listed below.

**- Allegation #1: Involvement in ‘Illegal logging or the trade in illegal wood or forest products’**

→The panel classifies the probability that **Jari Group has been involved in ‘Illegal logging or the trade in illegal wood or forest products’** as ‘beyond reasonable doubt’.

The rationale on which this conclusion is based is provided below:

- **Results of the Federal Police and IBAMA investigations: fraudulent harvesting activities in Fazenda Esmeralda and Fazenda Sol Nascente**

-On the 4<sup>th</sup> of December 2015 an investigative operation held by the Federal Public Prosecution Service, Federal Police, Brazilian Environmental Institute (IBAMA) and the Federal Justice was initiated to investigate a scheme of illegal logging and fraud in forestry

systems by organizations in the State of Pará (Brazil). As a result of this Police investigation, the occurrence of crimes perpetrated by Jari's representatives was concluded.

-In addition, in July 2016 a Public Civil Action was filed by IBAMA against Jari Florestal S/A, alleging its involvement in environmental illegal activities, due to the submission of false information to the Forestry Products Control System of Brazil (SISFLORA) leading to the "virtual trade" (timber laundering) of 5,070,653 m<sup>3</sup> of undue forest credits.

-Jari Florestal S/A sourced standing wood from two different forest management areas which were the main target of IBAMA's investigation: Fazenda Esmeralda and Fazenda Sol Nascente. All legal and environmental liabilities were defined as being Jari Florestal S/A's responsibility.

-Jari's involvement in fraudulent activities due to its purchase of timber of dubious/fraudulent origin (in particular timber sourced from the Fazenda Esmeralda FMU) has also been confirmed in the Federal Police investigation report dated 2015.

-The panel estimated that the affected area considered as damaged by the logging activities directly linked to fraudulent activities from which Jari sourced covers 5.600 ha.

- **Overestimation of timber volumes and timber laundering**

-The Police report also concluded that timber volumes sourced from Fazenda Esmeralda for the time period investigated had been overestimated nearly 30%, mainly in the species Ipe, Macaranduba and Jatoba, resulting in exceeding credits and in the overexploitation of Ipe trees from other locations (leading to timber laundering practices).

-The panel verified that the inventories of timber volumes for these two FMU reflected tree densities much beyond the densities estimated according to scientific literature. This also suggested that timber laundering activities were taking place in this FMU (for which the harvesting volumes would be overestimated).

- **Fraudulent development of the Forest Management Plan**

- It was also concluded by the Federal Police that the Sustainable Forest Management Plan for Fazenda Esmeralda (and the related timber volume inventories) was conducted in a fraudulent manner. This led to the fraudulent overestimation of volumes claimed to be sourced from this FMU by Jari.

- **Insufficient/ weak Due Diligence**

-The panel has identified serious weaknesses and deficiencies in the organization's management, control measures and due diligence in relation to contractual agreements (both

for employees and third-party business partners/ suppliers) which failed to prevent the organization's involvement in fraudulent timber trade cases.

-No evidence has been provided by the organization demonstrating that the company had implemented robust due diligence measures to avoid the over- estimation of timber volumes leading to illegal harvesting of timber (as concluded by the Federal Police) and the issuance of undue forest credits.

**- Allegation #2: Involvement in the 'Violation of traditional and human rights in forestry operations' due to the Organization's failure to recognize the existence of traditional communities within its forest management area**

→ The standard of certainty assigned by the panel to this specific violation of the FSC PfA is **beyond reasonable doubt ('violation of Traditional and Human Rights')** due the failure to grant and respect to the rights of 'traditional' communities.

The rationale on which this conclusion is based is provided below:

- **No consistent and formal recognition (and mapping) of 'traditional' communities by Jari**

Jari has in the past stated in specific company documentation the existence of 98 'traditional' communities within its forest management areas (E.g. Orsa Group Sustainable Management Plan 2012 and Jari Florestal Sustainable Forestry Management Plan 2014-2015).

Despite Jari referring in these documents to the communities as traditional, the 'traditional' status of communities and their rights has not been formally and consistently reflected across all company's corporate documentation and management plans throughout the years. In addition, as of today, Jari does not recognize the formal 'traditional' status of these 98 communities (being the statements in the 2012 and 2014 documents by the company therefore outdated). In addition the indication in the company's corporate documentation (dated 2012 and 2014) of the existence of these traditional communities was also not followed with the necessary mapping and characterization of such communities, nor with the necessary actions or measures to enable their full rights.

**Jari has therefore failed to formally and consistently recognize the existence of traditional communities and their rights within its operations along the years, and continues doing so.**

The panel concluded that by failing to formally recognize as 'traditional' these 150 communities located within its forest management area the company failed to fully recognize and respect the associated rights of the communities, particularly their right to freely access and extract

natural resources (such as Brazilian nuts, medicinal plants and other non-timber forest products) from within the forest management areas managed by the company. The panel concludes that the limited access of these communities to these natural resources (to which they had access to historically) imposed by the company is negatively impacting the wellbeing and subsistence of these communities.

- **Mismatch between the number of communities identified by Jari and the Public Prosecutor**

In August 2014 the Federal Public Prosecution Service formally identified 150 'traditional' communities within the company's forest management area. There is therefore a discrepancy in terms of the number of communities identified in Jari's forest management areas by the Prosecutor (150 communities) and by Jari itself (98 communities identified in 2012).

**- Allegation #3: Involvement in the '*Violation of traditional and human rights in forestry operations*', due to the Organization's failure to comply with terms of the agreements with communities concerning communities' land tenure rights recognition**

→ The panel classifies the probability for a PfA violation (**'*violation of Traditional and Human Rights*'**) to have occurred to be a '**Suspicion**', due to the lack of contrasted documented evidence demonstrating that the filing of land tenure claims by Jari is in breach of the commitments made with National Agrarian Ombudsman and ITERPA.

The rationale on which this conclusion is based is provided below:

- **Land tenure conflicts and breach of agreement confirmed by the Prosecutor**

-The Federal Public Prosecution Service in the State of Pará issued a report in 2014 officially reporting the existence of land and tenure conflicts involving rural and traditional communities and the organizations Orsa Florestal S.A, Jari Celulose and Papel e Embalagens S.A. in the region.

- **Inconclusive land tenure rights**

-On the basis of 'clear and convincing evidence' the organization does not have ordinary formal land ownership regularity of its total management areas (since according to Clause 2 of the Commitment Agreement part of this land will be regularized and assigned to the communities), reason why the company needs to successively execute multiple Commitment Agreements to obtain "tenure consent" for the development of activities within its management area. This conclusion is based on the statement of the Public Prosecutor in 2006 concluded that Jari was not the owner of the FMU (Fazenda Saracura) and that the State of Para had

not yet made an official statement with regards to the validity of the documentation presented by the company claiming the rights to the land located in the Jari Valley. This situation continued unresolved in 2014.

- **No clear and convincing evidence of breach of the terms of the agreement**

-The Prosecutor also reported a breach of the terms of the agreement by Orsa in the year 2005. This breach would have been caused due to the request by the company to obtain land tenure rights to areas where nearly 150 traditional communities were located, with a population of over 10.000 people and overlapping sourcing areas for the communities (which would be in breach of Jari's commitment to respect the limits of occupation of the communities located with its operation). The representative of the Prosecutor interviewed in 2018 also reinforced this position.

-The panel recognizes that the claim for legal land tenure by Jari could be considered to be in contravention with the nature and logic of the commitments made in its last Commitment. However, the panel did not take the position by the Public Prosecutor as clear and convincing evidence that the terms of the Commitment Agreement had been breached by Jari, as no documented clear/contrasted proof (currently valid documentation) was provided by the Public Prosecutor to substantiate such position.

-The panel concludes that there is evidence suggesting that Jari breached the terms of the Commitment Agreement, and also has evidence that the community also breached the commitment, but does not consider the available evidence to be clear and convincing.

**- Allegation #4: Involvement in the 'Violation of traditional and human rights in forestry operations' due to the Organization's use of violence against community members in the process of claiming and defending its land tenure rights**

→ The panel concludes that **there is no clear and convincing evidence that the company has been in 'violation of traditional and human rights', due to the systematic involvement in the use of violence against community members, classifying the probability as 'Suspicion'.**

The rationale on which this conclusion is based is provided below:

-The events reported, some of which occurred years ago, cannot be considered as a systematic practice by the organization and therefore do not constitute clear and convincing evidence of a violation of the PfA.

-However, the panel also concludes that there is a need for the organization to establish more adequate procedures and policies to prevent the reoccurrence in the future of events as those reported and evaluated in this investigation. The organization's recent decision to implement internal procedures to regulate such situations is a demonstration of the organization's willingness to improve on this front.

- The panel also concludes that there is 'clear and convincing' evidence that the violent events reported indeed took place, but also concludes that there is clear and convincing evidence that such issues have been addressed and corrected by the company.

## **Recommendation to the FSC Board of Directors concerning the organization**

The panel recommends for FSC to disassociate from Jari Group based on the below:

(i) **Illegal logging or the trade in illegal wood.** We recommend the disassociation of the organization due to the classification of probability as *beyond reasonable doubt*.

(ii) **Failure to recognize the existence of traditional communities in the management unit by the organization.** We recommend, by the characterization of the probability as *beyond reasonable doubt* concerning the non-compliance of PfA in relation to the rights of the traditional communities, the disassociation of the organization.

(iii) **Failure in meeting agreements concerning the recognition of possession of the lands of the communities living in the management units of Jari Group.** Due to the probability of this PfA non-compliance being classified as *suspicion*, the disassociation of this organization based on this complaint is not recommended.

(iv) **Violence in the process and defense of land tenure measures, leading to destruction of residences, assets and production.**

Due to the probability of this PfA non-compliance being classified as *suspicion*, the disassociation of this organization based on this complaint is not recommended.

## **Conditions for Ending the Disassociation**

### **❖ Allegation 1: Conditions concerning the allegations of Illegal logging or the trade in illegal wood**

The panel also recommends the below **conditions for ending the disassociation** (concerning the unacceptable activity of 'Illegal logging or the trade in illegal wood or forest products'):



**a)** The organization shall develop and implement a robust **due diligence system (and procedures)**, applicable across the entirety of its timber trade and forestry operations, which shall be used for the evaluation and mitigation of risks prior to any association by the organization with external business partners (and employees).

These **systems and procedures shall** particularly emphasize and address the existing risks related to illegal harvesting and illegal timber trade, as well as fraud and corruption, and **at least cover the below criteria:**

- Include Anticorruption and Integrity Policies and Procedures applicable to all the organization's employees and third parties (E.g. individuals or contractual partners developing functions on behalf of the organization);
- Include legal due diligence analysis of any third party and business partners (before any association or contractual agreement is put in place);
- Systems/ Policies/ Procedures comply with the standards and criteria internationally accepted in compliance policies, like Lacey Act or EUTR;
- The Systems/ Policies/ Procedures put in place minimize the risk of engaging in business with any individual and/or organization that has been charged or convicted for crimes related to corruption, environmental crimes or violation of human rights.

**b)** The organization shall develop and **implement a timber traceability system** (including a procedure for monitoring the forest exploration activities, with the full transparency and oversight of the operations conducted, as well as the preparation of an environmental and social impact evaluation report prior to the initiation to the harvesting activities). Records shall be permanently kept.

**c)** The **organization shall compensate for environmental damage**, including but not limited to the damage identified in IBAMA inspection procedure and ratified in the investigation held by the Federal Police, in the records of the Public Civil Action. Compensation shall bring objective positive environmental impacts that are not limited to financial compensation;

**Compensation for environmental damage** that occurred in areas managed by third parties shall include that the organization develops in their own areas of natural forest management a **social and environmental project that fulfills the requirements listed below:**

- Has minimum duration of 5 years;
- Aims to keep the integrity of the natural forest and its resources at long term. In order to comply with such objective, it must have clear, precise and annual evaluation indicators, which shall be annually evaluated and audited by a non-governmental environmental organization with national credibility throughout the period;

- Aims to stimulate and develop better environmental harvesting techniques, processing practices and selling of forestry products, which enhance improvements in the economic and social development in the area of influence of the Forest Management Unit owned by Jari. Look for better forest management and more social benefits from their FMU. The scope shall be limited to traditional communities that use resources existing in the organization's management unit. In order to comply with such a goal, the project must have clear, precise and annual evaluation indicators, which shall be evaluated and audited by a nongovernmental environmental organization with national credibility throughout the minimum period set for the project;

- Is developed through a process of Free Prior and Informed Consent and ensuring an adequate Stakeholder Engagement Process, including diligent, transparent and inclusive consultation with stakeholders (including traditional communities);

- The organization shall include in the development of the project those traditional communities that live from Brazilian nuts extraction and live and develop activities within the organization management unit, after identifying and featuring them;

- Has the support and validation of nongovernmental environmental and social organizations with national credibility;

- Has enough human and financial resources for maintenance and implementation during the minimum five years of the project.

d) The organization shall prove the definitive resolution of administrative and legal procedures concerning the illegal exploration of wood. All environmental lawsuits and other legal processes against the company need to be concluded.

**❖ Allegation 2: Conditions concerning the Violation of traditional and human rights: Organization's failure to recognize the existence of traditional communities within its forest management area**

The panel further recommends the following conditions for ending disassociation, in relation to this allegation:

Jari Group shall:

>>>Inform traditional and local communities about the management practices adopted by the organization. Information shall be shared in a transparent and continuous manner. As part of this stakeholder engagement exercise Jari shall also consult with the interested stakeholders and affected communities in a transparent and inclusive manner regarding potential social

and/ or environmental impacts that their operations may have, and duly address the feedback/ concerns received, for the improvement of their systems and processes.

>>>Conduct stakeholder mapping (for which feedback received from stakeholders shall be duly considered), to assess and verify the existence and location of traditional communities within their management operations and neighboring areas. Transparent and inclusive stakeholder consultation shall be conducted in the identification and mapping of traditional communities. Results of this community mapping and stakeholder consultation shall be made publically available.

>>>Conduct an Environmental and Social Impact Assessment of the organization's activities (including but not limited to harvesting, construction or maintenance of roads). Prevention and mitigation measures shall be implemented following the risks and impacts identified in such assessment. These assessments shall be made publically available.

>>>To develop and implement a Stakeholder Engagement Protocol (following the Free Prior and Informed Consent principles established by FSC), and the necessary internal procedures and policies to ensure a transparent and constructive dialogue and engagement between the company and the communities. The company shall keep records of the engagement efforts with the communities and dialogues for the next 5 years.

**❖ Allegation 3: Conditions concerning the Violation of traditional and human rights: Organization's failure to comply with terms of the agreements with communities concerning communities' land tenure rights recognition**

As the level of probability of violation found for this allegation is classified as "suspicion" this aspect of the investigation, by itself, would not lead to the recommendation to disassociate from the organization.

However, due to the repercussion of this allegation and the involvement of multiple public levels (including governmental bodies) in the processing of this allegation, the panel considers appropriate to make some suggestions of conditions which could be requested to the company in the event of a disassociation in relation to this allegation:

- Jari develops mapping for the identification of the areas covered by the various agreements set by the company in collaboration with the various governmental bodies.
- Jari defines and implements a work plan independent from formal processes with public bodies, in order to define and determine the location and perimeters of the areas occupied by community members (to the level of family group) for which the community members are the legitimate holders of the land rights, leading to a peaceful and uncontested agreements of the

land tenure. These communities will then be the beneficiaries of the formal legal procedures by the authorities in the longer term;

- Following stakeholder engagement and consultation processes (in line with FSC's principles of Free Prior and Informed Consent), Jari will set a clear communication mechanism with the affected stakeholders, in which the organization provides clear information, including when intending to file legal transactions/ processes related to the land tenure;
- The organization puts agreements/ contracts/ instruments in place concerning the areas where the land tenure is proven legitimate and valid. Being aware that it is a legal requirement that the documents and instruments must be public, a procedure which assures the delivery of the land duly signed to the community stakeholders;
- Record all the agreements, terms and contracts made between the organization and the community stakeholders for at least 5 years;
- Ensure enforcement of the agreements reached with ITERPA, particularly those in relation to community land tenure rights;
- Make the information related to Clause 2 of the Commitment Agreement (tenure regularization and mapping of polygons) publicly available.

**Allegation 4: Conditions concerning the Violation of traditional and human rights: Organization's use of violence against community members in the process of claiming and defending its land tenure rights**

Considering the classification of probability as 'Suspicion' these findings by the panel do not support, on their own, the recommendation to disassociate from the Jari Group.

However, in order for the organization to improve on this front and prevent the reoccurrence of similar events in the future, the panel suggests the following:

- (i) All records of agreements with community members and other stakeholders are kept by the organization and are accessible and available for verification and shall be developed in writing (and be developed in a process that enables a fair and transparent negotiation).
- (ii) The organization develops a new procedure to regulate and govern its relationship with authorities (including the local police);
- (iii) All land tenure claim processes are based on the corresponding legal decision, providing a detailed report of the occurrence encompassing the adequate documents, identification of the stakeholders, areas and others, as well as observing the commitment made concerning the non-promotion of possession reclaimer of areas already occupied by the communities;

- (iv) The organization has a specific guideline describing its principles for its engagement and relationship with communities included as part of its internal procedures and conducts training to its employees regarding these principles (with special focus on safety issues).
- (v) The organization aligns in its procedures with the *UN Guiding Principles for Business and Human Rights*.