

SGS Response to the Formal Complaint by the FSC International Centre about the FSC certification of The New Forests Company (Uganda) Ltd via certificate SGS-FM/COC-006224, dated 21 October 2011.

Final Version



By: Felicity Henman-Weir
SGS Lead Auditor Forest Management
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1. SUMMARY OF SGS FINDINGS

An investigation was conducted on site in Uganda by Felicity Henman-Weir (SGS Lead Auditor) and Nelson Turyahabwe, a local Ugandan Forest Specialist during 14-17 November 2011. During this time a range of people were visited and interviewed and numerous documents were reviewed. The outcome of this investigation was that it was reiterated that the New Forests Company (NFC) were **not** in breach of Criteria 2.2, 2.3 and 4.5 as suggested by FSC, based on the Oxfam reports about “land grabs” that were recently sensationalized. The specific points of concern regarding compliance with the FSC P&C raised by the FSC are described in the report.

2. INTRODUCTION

The purpose of this report is to address the formal complaint, dated 21 October 2011, by the FSC International Centre about the FSC certification of The New Forests Company (Uganda) Ltd via certificate SGS-FM/COC-006224.

In 2005, the New Forests Company (NFC) was awarded a commercial tree planting license from the National Forestry Authority (NFA) for Namwasa (8104 ha) and Luwunga (8700 ha) **Central Forest Reserves** (CFR). The process of afforestation began and the Namwasa plantation was FSC certified by SGS on 25 May 2009. The Luwunga plantation is not certified yet, but the management of Luwunga is in the same spirit as Namwasa, since NFC needs to comply with the FSC Partial Certification Policy, as documented in the SGS report. The eviction issues surrounding Luwunga will therefore also be discussed even though Luwunga is not specifically part of the FSC complaint.

Since there is a plethora of documents pertaining to the evictions in both CFRs this report will only attempt to capture the main issues, but the key documents that need to be read are included as Appendices at the end of the report, or as separate attachments to the report.

Concerns and conclusions raised by SGS are also noted at the end of most chapters ("SGS Concern" / SGS Conclusion).

3. FSC COMPLAINT

The FSC's complaint was worded as follows:

"The FSC International Center would like to make a formal complaint to SGS about the FSC certification of The New Forests Company Ltd in Uganda (certificate SGS-FM/COC-006224). The New Forests Company (NFC) was awarded an FSC certificate by SGS despite what we believe were violent evictions of local communities from the Namwasa Forest Management Unit, ongoing land disputes and the lack of compensation to the affected communities. Thus, we believe that certification of NFC is likely in breach of the FSC Principles and Criteria and request that SGS evaluate these issues and take all the appropriate actions necessary."

Specific points of concern regarding compliance with the FSC P&C:

- The ongoing land disputes in Namwasa seem to be of substantial magnitude and involve a significant number of interests, which would constitute a breach of Criterion 2.3 of the FSC P&C.
- Evidence seems to indicate that communities living in Namwasa with legal and customary rights have been violently evicted from the land. We believe this would be a breach of Criterion 2.2.
- It is not clear how the forest management operation has maintained or enhanced the long-term social and economic well-being of local communities. On the contrary, there are indications that local communities with traditional and even legal rights to the land have lost their livelihoods. It seems that an appropriate mechanism was not employed to provide fair compensation for the damage and loss of livelihoods of local peoples. We believe that this would constitute a breach of Criterion 4.5.

These points will be discussed and evidence provided that the NFC were not in breach of the above as purported by the FSC.

The following Oxfam reports will be referred to as necessary:

- The New Forests Company and its Uganda Plantations – Matt Grainger and Kate Geary, Oxfam International, 22 September 2011. (referred to as NFC Oxfam report, 22/09/11)
- Land and Power. The growing scandal surrounding the new wave of investments in land. Oxfam, 22 September 2011. (referred to as Land and Power Oxfam report, 22/09/11)

SGS Concern:

The FSC has used the Oxfam report as the basis for their complaint without interrogating the integrity of the evidence or investigating any other viewpoint that may be contrary to the Oxfam report. The comments of SGS or NFC were not sought prior to the official complaint being launched. It is felt that this is not an equitable response, especially considering the fact that this Oxfam report enjoyed international publication and FSC's response was also made public without considering the view points or input of the other parties.

4. SGS ASSESSMENT METHODS

SGS conducted the following assessments of the New Forests Company (NFC) over the past 4 years:

Pre-assessment: 2-5 June 2008
Main Assessment: 9-13 March 2009 (144 stakeholders contacted and 47 stakeholders interviewed)
1st Surveillance visit: 9-12 February 2010 (27 stakeholders interviewed)
Clearance of Findings: 25 May 2010 (11 stakeholders interviewed)
2nd Surveillance visit: 11-14 April 2010 (30 stakeholders contacted and interviewed)
Current Investigation: 14-17 November 2011 (53 stakeholders interviewed)

The point here is that stakeholder consultation is vital to the certification process, and SGS have been very diligent about interviewing people representing economic, social and environmental interests. The issue of the evictions of people was a major aspect of the agenda, and SGS has a record of names of all interviewees over the past 4 years. The important fact is that SGS have been monitoring the situation over a period of 4 years, and have a documented account of methods used for their assessments and recommendations as well as peer review of their reports. A local Ugandan specialist has always been on the SGS team for every visit.

The list of people interviewed for this current investigation during 14-17 November 2011 is included as **Appendix 1**, and all of these people are happy to be quoted and have their names mentioned. The report and conclusions of Nelson Turyahabwe, a local Ugandan Forest Specialist who assisted with the investigation is included as **Appendix 2**.

SGS Concern:

The Oxfam investigation, does not specify methods used. It would appear that the study is based on two visits, one in March 2011 and another visit in July 2011 (dates and researchers unspecified, but "notes" seem to suggest 27-29 July). The concern is that the Oxfam report was based on 2 visits in 2011, and the SGS conclusions were based on 4 years of monitoring as described above.

In addition, in the Oxfam report, all of the interviewees have had to remain anonymous which is not in the interests of transparency and makes their testimonials questionable. The interviewees of this SGS investigation, based on the FSC complaint were all happy to be named, as was confirmed after every interview. For this reason their names are appended to this report.

5. RELEVANT UGANDAN LEGISLATION

The majority of NFC's plantation land in Uganda is on Central Forest Reserves. Central Forest Reserves were gazetted by the colonial government in the 1930s and '40s to protect the natural forests that existed in Uganda and are under the protection of the Constitution and the Government of Uganda; thus, they cannot be de-gazetted unless by Parliament and replaced with other land of equal or greater size which has never happened in Uganda's history. Unfortunately they have not been very well managed and thus are often populated by illegal settlers who have degraded the forest and moved onto it for free, fertile soil.

Settling or carrying out any activities that are unlicensed by the Government in Uganda's central forest reserves is illegal according to the following legal frameworks:

- 1995 constitution of Uganda, providing for the protection of natural resources and for holding in trust and protection of Forest Reserves for the people of Uganda
- Land Act of 1998
- National Forestry and Tree Planting Act of 2003
- National Environment Management Statute
- Uganda Wildlife Statute

Particularly relevant is the Forestry and Tree Planting Act, Section 32 of which is reproduced below:

1. *No person shall, except, for forestry purposes and in accordance with a management plan, or in accordance with a license granted under this Act, in a forest reserve or community forest –*
 - a. *Cut, take, work or remove forest produce;*
 - b. *Clear, use or occupy any land for –*
 - i. *Grazing;*
 - ii. *Camping;*
 - iii. *Livestock farming;*
 - iv. *Planting or cultivation of crops;*
 - v. *Erecting of a building or enclosure; or*
 - vi. *Recreational, commercial, residential, industrial or hunting purposes;*
 - c. *Collect biotic and abiotic specimens; or*
 - d. *Construct or re-open a road, track, bridge, airstrip or landing site.*
2. *A person who contravenes this section commits an offence and is liable on conviction, to a fine not exceeding thirty currency points or to imprisonment for a term not exceeding three years, or both.*

The National Forestry Authority (NFA) defines illegal settlement as follows: "the entry of people with their activities into Central Forest Reserves without permission, in contravention of Section 32 of the National Forestry and Tree Planting Act of 2003. The entry can be deliberate or unknowingly for the purpose of grazing cattle, cultivation, settlement, construction or any other human activities."

According to Uganda's most recent National Population and Housing Census, 96% of Ugandans do not have access to electricity in their homes. The most common fuel source for cooking is wood and charcoal. While over 50% of the country was covered by forests at independence in 1962, it decreased to 26% by 1988, and currently, only 13% is remaining. (Source: National Forestry Authority). Illegal settlement is often considered the largest hindrance to tree planting and main cause of deforestation in Central Forest Reserves in Uganda.

SGS Conclusion:

The communities living in both Namwasa and Luwunga have **no** legal or customary tenure rights on gazetted Central Forest Reserves. Use rights to the forest have always been allowed such as the

collection of dead wood for firewood. The New Forests Company and the NFA are **not** in breach of Criterion 2.2.

6. NAMWASA EVICTION

In 2005 NFC was awarded a commercial tree planting license from National Forestry Authority for Namwasa (also referred to as the Mubende District). NFA also opened all the boundaries of the property so that the boundaries were clear to everyone. They found a small population of encroachers in Mpologoma and Kyamukasa trading centres, areas which had been voluntarily vacated in the past. NFA met with the encroachers and informed them on behalf of government that they had to leave by the end of 2005 because NFC had a license to plant and they could not go against this lawful license to plant trees and manage the forest. The people in the two communities agreed to leave by the end of 2005.

On 14th – 17th November 2008 there was a field visit by representatives of Senior Private Secretary in the Office of the President, National Forestry Authority, and Resident District Commissioner to the Mubende district. They met with some of the encroachers in Kyamukasa and estimated there to be about 500 families. A report from the SPS, Office of the President, to the President which came out of this visit confirmed that the number of people is regularly increasing, that many of the encroachers are illegal immigrants from Rwanda which pose a security threat, and that the encroachment is causing serious environmental damage.

On 14 September 2009, there was a Presidential Order (**Appendix 3**) asking the Minister of Water and Environment (MoW&E) to carry out the following: 1) Identify, register and evict all of the encroachers and indicate which people were on the reserve before 1992 (with a view for compensation), 2) ensure that no new encroachers settle within the CFR and 3) apprehend any culprits, officials, local leaders and individuals who are involved with fraudulent selling and allocation of land within the CFR.

In September 2009, the NFA registered 542 household heads that were living in Namwasa as encroachers (NFA letter dated 25 Nov 2009, ref NFA/E/02/09 **Appendix 4**), covering an area of about 2,000 ha.

This same study established that a total of 18 of these households had occupied the CFR by 1992, making them eligible for compensation by the government (by relocation) as per Presidential Order described above. The RDC, however later recommended 31 families for compensation as bona fide pre-1992 occupants of the land, due to the fact that some of the areas had not been accessed.

At this point, SGS, at their first surveillance visit raised **Major CAR M09** on 12 February 2010 in order to ensure resolution of this issue, since the 542 households were still there and a resolution was necessary or a redefining of the FMU boundaries to exclude this area.

Over October, November and December 2009 and January 2010 there were numerous meetings to sensitise the people to the fact that the President was ordering them to leave the reserve. This process was overseen by an inter-ministerial team coordinated by the 3rd deputy Prime Minister / Minister of Internal Affairs together with the District Security committee and LC3 Chairpersons. The meeting agreed that the people would be given up to the 28 Feb. 2010 to voluntarily vacate the land. The process of this voluntary vacation is described in the close out details of Major CAR 09 in the publicly available SGS report. This process was verified by SGS to be peaceful and non-violent with people having adequate time to harvest their crops and remove their possessions. SGS visited the site and interviewed 8 former encroachers; the chairperson of LC1 and 2 NFA representatives (Law enforcement and land management). In addition, the NFA went back to the site (Kyato) after the evictions and reported that the evictions had been successful and that the seasonal crops had been harvested (NFA report dated 3 March 2010, **Appendix 5**). Recommendations were also made about destroying the rest of the perennial crops and temporary mud buildings, to discourage people returning.

Of the 542 households that were evicted, 31 families were recommended for compensation. These families were however not immediately compensated, despite the promises from the government and the letters from the RDC to the government. This resulted in 31 families returning to the Kyato area (from which they were evicted) in December 2010. These 31 encroachers (and their families) are still living on the northern border Kyato area of the Namwasa Central Forest Reserve occupying an area of approximately 20 ha. Of these 31 encroachers, only 4 are bona fide claimants from the original list of 31 identified. This was evident from an NFA report dated 7 June 2011 (see **Appendix 6**).

This is the current situation. The NFC has been instructed by the NFA not to undertake activities on the 20 ha occupied by the 31 families as the government works on their relocation (see **Appendix 7**). The NFC has the choice to excise this 20 ha from their FSC certified scope or wait for the Government to resolve the issue.

Throughout the process the company has offered to pay compensation, either directly or indirectly through government agencies, and this has been acknowledged in writing by the National Forestry Authority, the Ugandan Investment Authority and directly by the Minister of Water and Environment. However, the government has made it clear that no foreign company has any right to adjudicate or settle any land claims on government land and that there is clear government procedure for doing so.

The Minister of Water and Environment held a press conference on 14 November 2011 and released a public statement (**Appendix 10**) that confirmed that the evictions were peaceful and that the NFC were not involved in evicting people, and that NFC were strictly forbidden to offer any compensation to the encroachers. She stated that "For the record it is important to state that all evictions, where they are necessary have always and will continue to be the responsibility of the NFA which may call upon other support organs of Government. An investor is not allowed to undertake evictions, and that the Government of Uganda has never violated any court orders in the case of Namwasa and Luwunga CFRs. It is not true therefore to insinuate that NFC was responsible for the evictions which are the ongoing legal obligations of the Government."

In terms of the compensation issue, the minister also stated (p8, **Appendix 10**) that "It is therefore not correct to insinuate that NFC is responsible for the issue of compensation to former encroachers. Compensation is the sole preserve of the Government. Indeed, Government has on several occasions forbidden NFC from attempting to effect compensation."

SGS Conclusion:

There is adequate evidence of peaceful evictions, as confirmed through interviews and numerous reports (Appendices 2-10). In addition, there were no cases of violence or harassment reported to the police, the district authorities or to independent non-governmental bodies such as the Human Rights Commission. It is a concern that the Oxfam researchers did not interview the Human Rights Commission to check for any cases lodged.

NFC was not involved in evicting people and was forbidden to offer compensation to the encroachers. The NFC is therefore **not** in breach of Indicators 2.3 and 4.5.

7. LUWUNGA EVICTION

In Luwunga CFR (Kibogo District) there were no encroachers prior to 1992 and in 2005/6 7000 encroachers were registered (Letter from NFA dated 21 September 2011, **Appendix 9**). The Minister of Water and Environment states that "The NFA registered 936 families (6242 people) as settled on Luwunga CFR in 2005 (Appendix 10, P7), which is fairly consistent with the NFA letter quoted. The minister further states that the Government is firmly of the opinion that none of these families qualify for

compensation (**Appendix 10**, P8). The Minister called upon Oxfam to provide data on individuals who, in their opinion qualify for compensation.

NFC acquired the licence for Luwunga in 2005, but did not begin planting until September 2007. Prior to this the NFA had started the community engagement process which involved meetings, consultations and setting deadlines for vacation of the area. The RDC was leading the process together with the DISO (District Internal Security Officer) and the DPC (District Police Commander) and the Kiboga District Local Government. The only involvement of the NFC was to assist with the education and sensitizing of communities and mobilisation of communities to attend meetings.

The NFA had begun opening boundaries and there was a gradual movement of the people out of the Forest Reserve. Only the people of the Seeta village and surrounding area remained behind. This was largely due to the fact that the people had been led to believe by local politicians (LC5 Chairperson at the time) that they might be able to stay due to the potential excision of that area from the Forest Reserve. This position was cleared by the government and the Seeta people began to vacate the area in 2009 and were gone by 2010. Currently there are no more encroachers in Seeta.

The only controversial area is the Kasubi area where there is a dispute about the boundary, and there are still people living there. The NFA is in the process of clarifying and opening the boundary. This is the current situation.

In support of the NFC, the communities around the Luwunga CFR sent a petition to the Government on 29 October 2011, petitioning the economic sabotage of NFC by Oxfam. This petition is included as **Appendix 8** and applauds NFC for their building of schools, teacher's houses, wells, health units and roads in their community. They state that Oxfam have been visiting the villages secretly and have offered money to evicted encroachers and make them "utter ridiculous statements against NFC and government". This petition also states the following: "The Government is aware of over 300 000 encroachers in CFRs, but halted evictions to explore the humane alternatives. Where is the brutality? Oxfam would have benefitted from facts from NFA to balance and add value to a report seemingly based on opportunistic and biased research findings." This petition is signed with the names of the people and their locality. There is no secrecy in hiding their names. These people are prepared to be named and stand behind their statements.

SGS Conclusion:

There is widespread and adequate evidence and testimony from stakeholders that the eviction process was both extensively consultative and peaceful and that the encroachers always knew they would have to leave the CFR after consistent government sensitisation and boundary demarcation. All of this has been confirmed by SGS through many interviews and numerous reports over several years.

Furthermore, there were no cases of violence or harassment reported to the police, the district authorities, the company or independent bodies like the Human Rights Commission.

SGS is not in a position to forensically investigate every claim. However, SGS has specifically focused on this issue since 2008 and four audits, including an audit in 2010 witnessed by ASI, have independently reviewed the encroachment issue; visited encroacher communities and interviewed a wide range of stakeholders including encroachers and former encroachers. The number of interviews held with encroachers by SGS to support previous audit findings is far more than the number provided as evidence by Oxfam. We are confident that the eviction process was overwhelmingly peaceful; done after dozens of meetings between government and the communities; and that almost all the encroachers left the reserve voluntarily and after having had more than enough time to harvest their crops.

NFC was not involved in evicting people and were forbidden to offer compensation to the encroachers. The NFC is therefore **not** in breach of Indicators 2.3 and 4.5.

SGS Concern:

The Oxfam report has grossly exaggerated the number of people that were evicted from the Luwunga FR. The Oxfam report states 20 000 and 22 500 (lack of consistency?) and their sources are not accurate or scientifically based. The last accurate report was the registration of 7000 in 2005/6. There is no objective evidence of actual numbers of people evicted other than the 2005/6 actual registration.

8. COMMENTS ON SOME OXFAM EVIDENCE

Oxfam provided evidence to the FSC, which was in turn provided to SGS. Most of this evidence revolved around court cases brought against NFC. An explanation of these court cases is discussed, followed by some of the other evidence involving testimonials.

Court Cases against NFC:

Since NFC began its tree planting operations, three court cases have been brought against the company, two in Namwasa and one in Luwunga as described below. In all instances it was demonstrated that the plaintiffs illegally used CFR land, with no rights to do so and with no legal land title. In addition, NFC cannot be sued since it is not a land owner and has no legal authority to remove individuals from CFRs. All court cases should be brought against the appropriate government body .

Namwasa Court Cases: These cases are both moribund, as the prosecution has effectively dropped further pursuit of their hearing in a court of law. One case has been formally dismissed by the courts and the second is currently in the process of being dismissed. Both cases are discussed:

Case I: H.C.C.S No. 409 of 2008

In 2008, three individuals, including a former minister, filed a suit against NFC, alleging that NFC was trespassing on their private land holdings, requesting USD 285 000.00 in damages as well as the eviction of NFC from the premises. The matter was referred to the NFA which deployed a survey team, whose findings were that the suit land indeed was in a gazetted forest reserve. NFC reported to court on this matter and invited the plaintiff's to withdraw the suit against the company, since if tried in a court of law, the plaintiffs could be fined or imprisoned for their infraction of Section 43 of the National Forestry and Tree Planting Act – as any land title they claimed to hold would have to be a forgery and illegal. The matter was adjourned *sin die* (indefinitely) and a hearing date for the same has not been fixed. The government has also come out strongly and has condemned all those who are holding titles for land in forest reserves. As it turns out, none of the 3 plaintiffs who brought the case against NFC was identified as a long term (pre-1992) resident (not included in the 31 identified families).

Case II: H.C.C.S No. 164 of 2009

Lawyers representing 1489 plaintiffs alleged that NFC was in contravention of an Executive Order issued by President Museveni in 2006 during a referendum campaign and reads as follows:

“Whereas it is in the public interests that evictions of occupants of Forest Reserves and Wetlands in Uganda be forthwith stopped: Now, therefore, in exercise of powers conferred upon the President by clause (1) of Article 99 of the Constitution, it is hereby ordered that any eviction of occupants of forest reserves and wetlands be and are hereby halted, pending orders to the contrary.”

The clear legal opinion is that the Executive Order has no legal legitimacy since it violates the Constitution and the National Forestry and Tree Planting Act, 8/2003. And, in any event, has been subsequently rescinded by the Presidential Directive of September 14, 2009 (Appendix 3). Also in the

absence of any evidence by the plaintiffs that the suit land was degazetted, they are trespassers on Namwasa Central Forest Reserve. The Plaintiffs occupation of the Central Forest Reserve would therefore be illegal.

NFC attended the High Court on the 18th March 2010 for the Plaintiffs application for temporary injunction restraining the Company, its agents/ workmen's from interrupting the use and employment of the suit land. Neither the Plaintiffs nor their attorney were in court and NFC had the application dismissed on account of their non appearance. In any event, as in Case I, NFC cannot be sued over trespass, land access and rights issues, which must be brought against the land owner, the Government.

Luwunga Court Case I: H.C.C.S No. 102 of 2009

Similar to the above Namwasa Case II, two plaintiffs tried to sue the NFC, Attorney General, NFA and Kiboga District for the violation of the 2006 Executive Order and that NFC was trespassing on their land. NFC's defence was that:

- a) the company is a holder of a valid license issued by the National Forest Authority which is the competent authority mandated by the laws of Uganda to regulate activities in Forest Reserves;
- b) the alleged Executive Order issued by the President of the Republic of Uganda if any, is unconstitutional and of no effect in law.
- c) the Plaintiffs' is *res judicata* as the matter in dispute or controversy amongst the parties was previously determined by a competent court in Uganda which held that the plaintiffs' predecessors in Kikoloto and Kambuzi village were encroachers on the Luwunga Central Forest Reserve and their activities thereon were illegal. By granting the prayers sought by the plaintiffs, the court would be sanctioning an illegality.

As it did with the Namwasa CFR, the NFA performed a survey of all families settled in the reserve, and no households could demonstrate long term residence (pre-1992).

This case also was dropped by the plaintiffs and NFC is currently having the case formally dismissed by the court.

Testimonials of Witnesses presented by Oxfam:

Oxfam witness "Lokudu Losil" (not his real name) stated that he acquired 30 acres of land in Kiboga in 1973. "Mary Nantale" stated that she moved into a village in the Luwunga CFR in 1976. This could not be possible since there were no pre-1992 encroachers identified in Kiboga, and aerial photographs would be able to prove this.

In the Mubende District, Namwasa CFR, Augustin Allen, Ms Apanabang and Maria Peimong, whose real names could be matched from testimonials supplied by FSC are all quoted with their stories in the Oxfam report, but none of these encroachers were identified as pre-1992, so are making false claims as to their long-term tenure.

It was alleged that NFC took over a school inside Luwunga FR after the area had been voluntarily vacated. But Oxfam failed to describe the situation accurately through (deliberate?) omissions. NFC took over a rundown former school building from the Anglican diocese which had inadvertently been built illegally on government land and in return rebuilt a much better and enlarged school outside the reserve in collaboration with the Diocese of Mityana as confirmed by the following statement: "NFC did buy the old school and built us a new, beautiful secondary school outside the plantation. St. Paul's Kasoolo Secondary School is built where many of the former encroachers moved; so many children will benefit. In less than a year, we have almost 200 children." - Bishop Stephen Kaziimba, Church of Uganda, Mityana Diocese, 2011

9. CONCLUSION

Appendix 9 provides excellent clarification of the vacation of encroachers from Namwasa and Luwunga CFR, and effectively summarises the processes described for the two CFRs licensed by NFC. This report confirms the following:

- The forest encroachers are illegal occupants of the CFRs.
- The consultation process and peaceful nature of the evictions, as well as the NFA responsibility for the evictions.
- The NFC role in the whole process by promoting stakeholder involvement and prompting meetings
- The fact that NFC offered to provide compensation to the former encroachers via the NFA, but the offer was denied by Government.

The Uganda Human Rights Commission interviewed, confirmed that there were no reports of any eviction or harassment by New Forests Company. They confirmed that Oxfam had not contacted them concerning eviction and human rights abuse by either NFA or New Forests Company.

From this investigation 14-17 November 2011, SGS makes the following conclusions:

1. The communities living in both Namwasa and Luwunga have **no** legal or customary tenure rights on gazetted Central Forest Reserves. Use rights to the forest have always been allowed such as the collection of dead wood for firewood. The New Forests Company and the NFA are **not** in breach of Criterion 2.2.
2. There was adequate evidence of peaceful evictions, as confirmed through interviews and numerous reports. There were no cases of violence or harassment reported to any authority.. There are no outstanding disputes of substantial magnitude. The NFC is therefore **not** in breach of Indicator 2.3.
3. NFC was not involved in evicting people and was forbidden to offer compensation to the encroachers. The NFC is therefore **not** in breach of Indicator 4.5.

APPENDIX 1

List of Stakeholders interviewed by SGS 14-16 November 2011

Table 1: List of stakeholders interviewed by SGS 14-16 November 2011.

No	Name	Organization	Position	Tel/Email Contact
1	Sarar Nakayima	Namunyuka LC	LC3 Vice Chairperson/ Encroacher	
2	Meliserina Nakintu	Kikwatanbogo village	LCI Vice Chairperson and Encroacher	+256772352973
3	Robinson Kabuye	Ntwetwe Sub-county Local Government	LC3 Chairperson	+256777149498
4	Wilson Kkonde	Kyankwanzi District Local Government	District Speaker (LC5)	+256772884542
5	Denis Kigozi	Kibiga Subcounty	LC3 Chairperson	+256772886224
6	Edward Byamugisha	Wabitosi Village	LCI Vice Chairperson	+25675344374/+25678434 4374
7	J. Kyambadde	Kiyini Village	Evicted encroacher	
8	Oliva Kaitesi	Bamusuta Village	Evicted Encroacher	+256778211565
9	Paul Ssendikadiwa	Kinyikibi Village	LCI Chairperson	+256789518462
11	Fred Ssemusu	Kikajjo West A Village	LCI Chairperson	+256772012215
12	John Nsengiyunva	Kiboga Trading Centre	Teacher, Encroacher	+256777851721
13	Ronad Byaruhanga	Bamusuta LC 1	Evicted Encroacher	+256753228575/+2567925 49866
14	Dickson Twinomujuni	NFC-Luwunga	Supervisor, Tree Nursery	+256774905175
15	Paul Sanya	NFC-Luwunga	Senior Community Development Officer	+256776774455
16	Francis Muganzi	District Security Office, Kiboga District Local Government	District Security Officer	+25672821320
17	Tom Kabusu	NFA	Boundary Survey Specialist	+256782901028
18	Sam Tumwebingye Behena	Mubende District Local Government	District Security Officer	+256772446112, email: sambehena@yahoo.com
19	Ruth Ssekindi	Uganda Human Rights Commission	Director Complaints, investigations and legal Services	+256414348006
20	Wilfred Asiimwe	Uganda Human Rights Commission	Regional Human Rights Officer, Central Region Office	+256414232190
21	Abdul Ssewanyana	Kassanda Sub-county Local Government, Mubende District	Gombolora Internal Security Officer (GISO)	+256782489600/+2567512 489600
22	Anthony Mugerwa	Madudu subcounty Local Government, Mubende District	Councillor, Madudu Sub county	+256782378041
23	Hajat Aisha Nanfuka Kalema	Kassanda Sub-county Local Government	LC3 Chairperson	+256772905139
23	Julias Okumu	Kassanda Sub-county Local Government	Heath Inspector	+256712557274
24	Ronald Lotet	Kalwana Sub county Local Government Mubende District	Assistant Forestry Officer/ Environmental Focal Person	+256793083756
25	John Bosco Kensero	Madudu Subcounty Local Government	Gombora Security Officer (GISO)	+256782912849
26	Asraf Kasujja	Kalwana Sub county Local Government Mubende District	LC3 Councillor	+256782262023
27	Wison Elizimasi Kakoza	Kiryajjobwe Village	Former worker on Forestry Boundary with Forest Department	
28	Patrick Ssekabira	Kikandwa Town Centre, Kikandwa Mubende	Driver	+256782566476
29	Ali Busungwe	Kikandwa Town	LCI Chairperson and Former	+256777897381

No	Name	Organization	Position	Tel/Email Contact
		Centre, Kikandwa Mubende	encroacher	
30	Hussein Mukaala	Kalwana Sub county Local Government Mubende District	LC3 Chairperson/Encroacher	+256752599856
31	Saad Kawooya	Kalwana Sub county Local Government Mubende District	Chairperson SACCO Microfinance/Encroacher	+256791517268
32	Betty Kobusingye	Kabulamuliro-Madudu Sub county	LC2 Chairperson	+256782246599/+256754564850
33	John Patrick Kyambadde	Madudu Sub county Local Government	LC3 Chairperson	+256772938367
34	Moses Baagala	Makokoto Sub county Local Government, Mubende District	Council Speaker	+256753222552/+256773222552
35	Scovia Ndagire	Kitumbi Sub county Local Government, Mubende District	LC3 Vice Chairperon	+256753958165
36	Francis Kityo	Kitumbi Sub county Local Government, Mubende District	Gombolora Security Officer (GISO)	+256752102399
37	Jane Najjengo	Makokoto Village	Vice Chairperson	+256751643539
38	Goddfrey Sserubogo	Kalwana Sub county Local Government	Former encroacher	+256752514874
39	Hassan Muwonge		Boundary Opener with NFA	
40	Banasi Bukunya	Kitumbi Sub county Local Government	LC5 Councillor	+256782845368
41	Edward Kasozi	Makokoto Subcounty	Gombolora Security Officer (GISO)	+256773282988
42	Cathy Gwokyalya	Bukuya Kasozi Village	Speaker	+256775322921
43	Jenifer Nakagulire	Bukuya Village Mubende	Secretary for Education Health	+256775639586
44	Joseph Balikudembe	Bukuya Subcounty local government	Gombolora Security Officer (GISO)	+256782402284
45	Patrick Matema	Kitumbi, Bukuya and Makokoto Subcounty Local Governments	Forest Ranger	+256772072607/+256752072607
46	Asansio Ggayi	Bukuya Subcounty Local Government	LC3 Chairperson	+256785108244
47	Edward Mpanye	Makokoto Subcounty Local Government	LC5 Councilor	+256754192770
49	Mr Gershom Onyanga	NFA	Director	
50	Mr Jimmy Ouna	NFA	Encroachment Eviction Specialist	
51	Mr Levi Utwuda	NFA	Coordinator of Natural Forest Management	
52	Mr Francis Muganzi	DISO	District Internal Security Officer	
53	Mr Stephen Kakeefo	DEO	District Education Officer	

Table 2: Summary of categories of people interviewed

	Category	Number
1	Local Councillors/Leaders	22
2	Government Departments (District/Sub-county Security Services, Health and Education)	09
3	Former Encroachers*	10
4	National Forest Authority (NFA)	05
5	District Forestry Services	02
6	Uganda Human Rights Commission	02
7	NFC staff	02
	Grand Total	53

* About half of these currently serve as local leaders in the area

APPENDIX 2

Report and Conclusions of Nelson Turyahabwe

Table 3: Record of Stakeholder comments and Interviews about whether eviction of encroachers from Namwasa and Luwunga Central Forest Reserves was violent

Nr	Comments
01	<p>Local councillors (LCs)/Local leaders from Villages and sub-counties adjacent to Namwasa and Luwunga Forest Plantations</p> <p>These acknowledge that the area where encroachers were evicted was a Forest Reserve. They noted that people started occupying and cultivating crops in the Luwunga and Namwasa Forest Reserves in the mid 1970s after the then President Idi Amin Dada declared an economic war to double agricultural production and announced that every Ugandan was free to settle in any part of the country. This statement was interpreted by many people to mean permission to clear forest land for agricultural production. Many public lands including forest reserves were haphazardly encroached on and cleared. This process of encroachment continued on small scale with pockets of the forests being used for illegal cultivation of crops, timber cutting and charcoal burning but without structures like houses. Some local leaders acknowledge to have also been illegally growing crops in the reserves. Agricultural activities continued in the 1990s and intensified after 2000 because agricultural production had become profitable. The situation worsened when some army veterans encroached the area as a way of earning a living after retiring from armed forces who eventually started selling forest land to migrants from Rwanda and other areas of Uganda as Bibanja (Genuine land). The migrants not only cultivated crops but also built structures and formally settled in the reserves.</p> <p>Around 2004, information started flowing that the areas occupied and used for crop production was a Forest Reserve and all the people that had settled were illegally and that people should prepare to leave the areas cultivated and occupied.</p> <p>All this went on through 2008 to 2010. Radio announcements were also made to inform the illegal occupants of the pending eviction and to prepare and remove their property. They acknowledge that meetings were held between the NFC, Local Administration and the affected people and were given a time line for the encroachers to harvest their crops and remove structures they had erected in the forest reserve. All the people left, except the Army Veterans who also left after intervention of the Police, but also without any violent clash.</p>
02	<p>Encroachers that were evicted:</p> <p>They acknowledge that the area was a Forest Reserve and only cultivated crops to earn a living given that forest land was fertile. They noted that the native residents mainly Baganda knew that the area was a forest reserve and only sold it to the migrants from Rwanda and other areas of Uganda who bought the land without knowing that it was a forest reserve. The migrants were conned by the native Baganda since they did not know the land tenure system in the area. The native Baganda did not stay on the forest reserves and had not constructed buildings. They only used the forest for cultivation of crops. The migrants on the other established structures/houses because they thought they had bought land.</p> <p>On the eviction process, they noted that it was not NFC that did eviction but it was NFA working with District Security Officers (Police, RDC, and GISOs). They acknowledge to have had meetings with NFA, local leaders and notices given to them to leave the land because it was a forest reserve, although some claim that the notice given was too short to enable them leave the disputed area. Interviews revealed that they were given ample time from 2008-2009 and finally 2010 to enable them harvest their crops and remove their houses. Most of the native Baganda stopped cultivation of crops after the deadline of 2010 while the migrants who had unknowingly bought the land from the native Baganda resisted and had to leave after the intervention of RDC, NFA and the Police. They noted that much as there was presence of the security organs, nobody was hurt, or lost property. It was a well organised and supervised process. However, the migrants could not be happy by losing land which they had paid their money unknowingly and because they were not be compensated for the land which is a Forest reserve.</p>

Nr	Comments
03	<p>Kiboga District Security Office</p> <p>They noted that local people were aware that the area they had occupied was a Central Forest Reserve where no settlement and agricultural production are illegal activities. Most of the illegal occupants were migrants from South Western Districts of Uganda (Kabale, Rukungiri and Kisoro), Busoga Region in Eastern Uganda (Jinja, Iganga and Kamuli Districts) with high population pressure and inadequate land and come to illegally occupy gazetted areas while some were from the Republic of Rwanda and parts of Eastern DRC who have infiltrated the area after escaping from the Refugee camps. The other category of encroachers is the war Veterans (retired soldiers from armed forces and some local residents who take advantage of the political situation in the country to use forest reserves for personal gains.</p> <p>They noted that lack of clear boundary to be the current cause of stand off between the company and local people. The boundary map with District Land Office does not match with boundary map with NFA. While the map by NFA shows that some people in the Kasubi area is within the Forest Reserve, the map by Kiboga District Local Government shows an area of about 2 square miles is outside the Reserve.</p> <p>NFC worked closely with NFA, District and Sub county Local Governments and the Resident District Commissioner and all Security organs of the District to sensitize local people. Meetings were held with encroachers and ample time was given to enable them harvest their crops and to remove structures they had erected in the forest reserve.</p> <p>According to the Security Officer who witnessed the eviction, nobody was beaten, there was no physical injury to the people, and there was no use of force. The only tool used was mobilisation and sensitisation of the encroachers. The process started in 2008 and was finally affected in 2010, and indicator that ample time was given to encroachers. He noted that NFA took the lead in the process and was supported by the Local Leaders and Police.</p>
04	<p>Mubende District Security Office</p> <p>Encroachers voluntarily left the area after several meetings with District local leaders, NFA and the company officials. A deadline was struck during the meetings and local people adhered to it.</p> <p>Later about 31 families that had left on promise that they would be compensated by the Ministry of Water and Environment and came back. Document available dated 7th June 2011 shows that only 4 out of 31 were genuine, while other had been again smuggled in. They are occupying an area of 20 ha and the NFA is working closely with Ministry of Water and Environment to find alternative place for them. The area is not yet planted and local people are still using it but NFC is planning to excise it from the scope of the area under certification.</p>
05	<p>NFA Officials (Boundary survey and opening Unit)</p> <p>The officials were familiar with the boundary issues in Luwunga Forest Reserve and had embarked on the process of boundary opening and surveying but the process was halted by the Resident District Commissioner and District Officials. He noted that NFA is a Statutory organisation and uses Statutory Data when opening its forest reserve boundaries. Local people claiming to have land titles from District Lands Office and this a common practice for people with political connections to have fake land titles especially for already gazetted areas like forests and fragile areas like wetlands in Uganda.</p> <p>He noted that the process of acquiring land titles involves the District asking for mutation forms from applicants signed by people neighbouring the area to be given the title and the District never asked for the forms from NFA. Since the process did not go through the right channels, then the titles are considered fake. Furthermore, NFA has not been taken court by those who claim to have land titles because they know that their titles are fake.</p> <p>They noted that eviction of encroachers from Namwasa and Luwunga Forest Reserves was carried out by NFA as the land lord not NFC. There was no case of abuse of migrant rights during the eviction process as encroachers were given ample time to harvest their crops and remove their structures.</p>
06	<p>Uganda Human Rights Commission</p> <p>They noted that the issue of eviction of people was heard from listening to news from Aljazeera TV station. Nobody from Namwasa in Mubende and Luwunga in Kiboga had reported any case of neither eviction, nor harassment from New Forests Company. Even Oxfam had not contacted them concerning eviction and human rights abuse by either NFA or New Forests Company.</p>

Nr	Comments
07	<p>District Forestry Office, Mubende District</p> <p>Was part of the team that sensitized encroachers about the tenure status of Namwasa Forest Reserve. During sensitization encroachers were told that the area was a forest reserve and their occupation and activities were illegal under the National Forestry and Tree Planting Act, 2003. Noted that the native Baganda conned the migrants by selling them forest land as genuine land. The native Baganda immediately vacated the areas they were cultivating before the set deadline while the migrants bought time before they left hoping to be compensated. The eviction was peaceful conducted by NFA and District Security Office. No case of people being beaten or assaulted because Police was present to keep law and order.</p>

Conclusion:

None of the people evicted had the legal ownership of the land their activities and occupation of the Luwunga and Namwasa forest reserves was illegal. Most of the encroachers were migrants from Rwanda, DRC, Kigezi Region in South Western Uganda (Kabale and Kisoro Districts), Busoga Region (Jinja, Kamuli and Iganga Districts) and other parts of Uganda in search for vacant land in the late 1990s and in early to mid 2000s. All the stakeholders interviewed acknowledged that the areas where encroachers were evicted were gazetted Forest Reserves. According to Section 32, subsections 1 and 2 of the National Forestry Tree Planting Act, 2003 states that no person shall, except for forestry purposes and in accordance with a management plan, or in accordance with a licence granted under this Act, in a forest reserve or community forest: Clear; use or occupy any forest for grazing; livestock farming; planting or cultivation of crops; erecting of a building or enclosure; or residential and commercial purposes. Any person who contravenes this section commits an offence and is liable on conviction, to a fine or imprisonment.

Furthermore, the claim of titles by some of the encroachers evicted is also not true. The land in Luwunga Forest where local people claim titles is on Cadastre Sheets T_11_35/36. This is in line with Declaration of Forest Reserves Statutory Instrument Number 176 of 1968 (available at NFA Headquarters in Kampala). The main body of the area is on sheet T_11_35, whose lines extend to form a residual part of T_11_36 to complete the Cartographic Integrity (lines and their bearings forming the then Block 1463 which is current Luwunga Forest Reserve. Interviews with NFA revealed that for a reserve to be mutated there will be legislation in favour of degazettement or excision which the body (NFA) mandated to manage Forest Reserves must have received a copy of which it never received. Thus all the activities conducted within the Luwunga and Namwasa were illegal and not allowed under this Act.

The process of eviction was carried out with due consideration of the affected people. Interviews with various stakeholders (local people, encroachers, District and Sub-county officials) revealed that before the eviction exercise, meetings were held between the NFA, NFC, local leaders and the encroachers and time was given to allow encroachers harvest all their crops and all structures that they had erected within the Forest Reserves. Local people mainly the natives to the area adhered to the set deadlines and moved out voluntarily before the set deadline. A few Veterans (retired army personnel) who had used the forest to enrich themselves and some migrants who had bought fake titles from veterans and native Baganda, had to be moved out when the set deadline approached. This was carried out by NFA (Land Lord) in presence of the security organs in the area (Police, Gombolora Security Officers) and the Resident District Commissioners (RDCs) who represents the president in the area. There was no violent eviction because nobody was beaten or suffered any physical injury. No case of loss of property or injury was reported and recorded at any of the police stations in the areas adjacent to the two Forest Reserves. Furthermore, no case of human rights abuse was reported to the Uganda Human Rights Commission.