



The New Forests Company Response to Oxfam's continuing challenge to FSC certification of the Uganda Plantations

On December 12th Oxfam published a series of allegations directed at the Forest Stewardship Council's certification of NFC's plantations in Uganda. This was in response to the report published by the social audit firm SGS which found that NFC was NOT in breach of criteria FSC criteria 2.2, 2.3 and 4.5.

In relation to the relocation of people from the plantations, the report said that "there is widespread and adequate evidence and testimony from stakeholders that the eviction process was both extensively consultative and peaceful". The auditors also said those evicted did not have legal or customary rights to the land they were on and that they were there illegally; that the company mitigated the situation as best it could; and that NFC did try to offer compensation but the offer was rejected by Government.

NFC believes Oxfam's campaign is littered with insinuations, mistakes, untruths and, above all, a flawed understanding the laws of Uganda.

- In particular Oxfam seeks to claim that illegal settlers on the Central Forest Reserves have legal or customary rights. Under the constitution and the laws of Uganda this is impossible. More importantly, as the Government of Uganda has stated, this can only be settled in the courts of Uganda, not by foreign researchers.
- Oxfam suggests that because illegal settlers previously brought a case against the company, this is proof of a legal dispute over the land. This is spurious and tries to make the company guilty before a case has been heard. Oxfam also untruthfully suggests that there are two pending cases against the company. The truth is that one case was formally dismissed by the court 22 months ago and the other is moribund and due for dismissal imminently in the long backlog of cases in the Ugandan judicial system.
- Oxfam alleges that there is no official compensation mechanism in Uganda whilst in its own report conceding that the government has awarded compensation to several families. The truth is that there is a clear mechanism and due process laid out by government for compensation. Furthermore, the company has consistently offered to

underwrite any compensation allocated by the government process – a fact which has been several times accepted by Oxfam.

- Oxfam continues to attack the Government of Uganda's consultation process and alleges that no consultation took place. This denies substantial evidence of dozens of community meetings that have taken place and have been detailed to Oxfam by the National Forestry Authority; the Ministry of Water and Environment and the Prime Minister's Office.

It is appropriate to also consider in more detail the specific FSC criteria which Oxfam alleges NFC to be in breach of.

A. FSC Criterion 2.2 “Local communities with legal or customary tenure or use rights shall maintain control, to the extent necessary to protect rights or resources, over forest operations unless they delegate control with free and informed consent to other agencies”

Oxfam’s attempt to suggest that illegal settlers have legal or customary rights runs in the face of the law and is based on some untruthful assertions. Contrary to Oxfam’s assertion that the “Ugandan courts have not yet ruled” – the Ugandan courts have ruled several times on attempts by illegal settlers to establish legal rights on Central Forest Reserves and other government land held in trust by government under the constitution.

More importantly, and once again contrary to claims by Oxfam, the courts have ruled in NFC’s specific case and dismissed case 102 (a case upon which Oxfam relies very heavily to make its claims) almost two years ago in February 2010. A second case is currently in the queue for formal dismissal by the High Court.

Central Forest Reserves have been in government hands for 80 years – most recently held in trust by government under Uganda’s constitution and prior to that in colonial times, under the British Crown. There has never been one case which has successfully proven legal or customary rights by communities in Central Forest Reserves. All the case law and the constitution and other Acts of Parliament are clear about this (see NFC’s legal brief <http://www.newforests.net/index.php/news>).

Oxfam attempts to support its position by quoting a report by a small Ugandan legal NGO. It also suggests that some of the settlers have historic documentation that proves legal or customary rights. Even more remarkably Oxfam suggests that some people have bought and sold land inside a central forest reserve and have title deeds. Over seven years NFC has heard various claims about title deeds, including seeing both a forged deed of sale and a fake title deed. But we have never seen anything which could reasonably be seen to constitute a bona fide legally registered land title deed. If they exist, as Oxfam claim, this should be very easy to prove and we invite Oxfam to provide this documentary evidence and bring it before a court of law. We note however, the constitutional position outlined above, that all reserve land is owned by the Government of Uganda.

Once again the correct place to decide matters of legal rights on land is in the Ugandan courts. Neither Oxfam nor the FSC should seek to subvert the sovereignty of the laws and judicial system of Uganda.. Oxfam has spent have spent millions of dollars in their campaign against the Ugandan government. This has included hiring a British lawyer and full-time employee of Oxfam working alongside an expatriate National Director in Uganda taking

affidavits and studying Ugandan law. If Oxfam has the strength of its convictions it would do better to sponsor a legal case in Uganda rather than campaigning amongst international organisations like the FSC who do not have the right to determine legality and land rights in Uganda. The issues of land rights and illegal settlements in Uganda should be solved by Ugandans with expertise and familiarity in these issues.

B. FSC Criterion 4.5 [Requires appropriate mechanisms] for providing fair compensation in the case of loss or damage affecting the legal or customary rights, property, resources or livelihoods of local peoples”

Oxfam alleges that the compensation process conducted by government under the third deputy prime minister was flawed. However, there is clear proof of a lengthy due process carried out by government as evidenced by the many letters and documents quoted by Oxfam – so this does not support Oxfam’s conclusion that “there has been no mechanism provided for fair compensation”.

NFC is ready and willing to underwrite the government allocation of compensation and has formally offered this several times to various government authorities as Oxfam is aware. The Government’s policy is not to allow private foreign companies or individuals to be involved in compensation. NFC’s history in this regard has been formally acknowledged in writing by the National Forestry Authority and the Uganda Investment Authority and by the Minister of Water and Environment and Oxfam has been given proof of this on several occasions.

Unable to pay compensation, the company has devoted substantial financial resources now amounting to more than \$1.1m - and currently running at a rate of around \$300,000-350,000 per annum – to its social investment programme which seeks to uplift neighbouring communities and alleviate rural poverty. This is in addition to a conscious policy at the company to encourage employment of the local population in a workforce which at peak last year reached 2,200 people. In addition, the company directly supports an ambitious tree out growers community programme which now comprises an additional 1,700 community neighbours.

For a company which has yet to make a profit and does not expect to reach cash break even until 2014, this is a significant commitment and NFC’s community programme has been widely praised. In the future, the company’s policy is to allocate a certain percentage of profits to the community and to annually increase community spend.

In the circumstances in Uganda, and given that we, unlike Oxfam, must respect the laws of Uganda and the policies of its democratically elected government, we have more than done our best to seek to mitigate any harm done by our activities. We may have made some mistakes and our CSR programme can always benefit from continuous improvement. And we

welcome Oxfam's advice on this. *But the company is overwhelmingly a force for good in terms of economic enhancement and poverty alleviation of our neighbouring communities.* This has been echoed not only by National and District government officials hosting our plantation operations, but also by community leaders, community members, former encroachers, local teachers, tree out-growers, religious leaders and neighbours.

The extensive nature of our social responsibility programme as mitigation was also recognised by the IFC's own internal social scientist last year during a due diligence site visit who accepted that the company was unable to pay compensation in the circumstances but had done its best to meet best international practices.

It would be wrong if FSC ruled that Criterion 4.5 was black and white and could only be complied with by paying compensation – an act that would bring all forestry companies into conflict with the government of Uganda. If FSC accepts this argument then it must rule consistently for other FSC certified companies in Uganda that have had similar or worse issues with encroachment and have, like NFC, been told by government not to get involved in compensation.

C. FSC Criterion 2.3: “Disputes of substantial magnitude involving significant number of interests will normally disqualify an operation from being certified”

As we have already argued above, previous failed legal claims and or cases cannot be taken as evidence of a dispute of substantial magnitude. In other words Oxfam's claim that previous cases “raise a presumption that disputes existed” is wrong.

Oxfam claims that “Neither civil suit no 164 nor Civil Suit no 102 have been substantively nor finally determined by the Ugandan High Court.” This is incorrect. Civil Suit 102 was determined by the Ugandan High Courts and dismissed by Hon Lady Justice Faith Mwendha on February 5th 2010 – almost two years ago. Civil Suit 164 is currently due for dismissal in the long backlog of cases at the High Court.

Oxfam also alleges erroneously that interim injunctions previously granted by the court when NFC was not present were only lifted because community members arrived late in court. This is a distortion of the truth. Community members do not need to attend court but may do so if they wish. It is only required that one representative or one lawyer attend on behalf of plaintiffs. No one needed to travel from Mubende to present arguments.

Oxfam is therefore wrong to allege these cases have not been determined by the High Court and that this is evidence of a breach of Criterion 2.3. We call on Oxfam to publically withdraw this allegation and apologise to NFC and SGS and FSC for erroneously making this allegation. Again, if Oxfam believe they have a case to make, they should press it in the courts of Uganda.

The allegation concerning the destruction of schools

Oxfam deliberately misrepresented the events at the school in Luwunga by suggesting that NFC had destroyed the school and occupied the buildings.

The truth, as Oxfam knows, is that the Diocese of Mityana and the Bishop of Mityana accepted that the school was built illegally on government land and accepted to move the school to a new location off the Central Forest Reserve. NFC fully funded the building of a new school. The new school was bigger and much better equipped than the previous school and NFC received widespread praise from the Bishop and the surrounding community for the sensitive and generous manner in which we dealt with this matter.

We call on Oxfam to publicly apologise for their damaging and wrongful allegation against the company in this matter.

So far, instead of apologising and accepting their mistakes, Oxfam has tried to push this aside by making further untruthful allegations about schools. Oxfam alleges that “several schools “ were “closed down or destroyed”. This is untruthful and we call on Oxfam to withdraw this allegation.

There was one mud building that was used as an informal classroom at Kyamulkasa which was abandoned when the illegal settlers vacated the land. NFC made several attempts to reach out to this community and build a new school but as Oxfam knows, many of the people were illegal settlers on Namwasa, they were not local and moved back to their homes far from the plantation.

NFC takes financing education for the community very seriously. We have built two schools and provided double classroom blocs, water catchment systems and desks to another 18 schools in our neighbouring communities. We now hope to fund a further 4 new schools each year with direct financial assistance and new classrooms.

Oxfam also alleges emotionally that former illegal settlers cannot afford to pay school fees. This demonstrates once again Oxfam’s weak understanding of Uganda. Primary school education in Uganda is universally free. It is illegal for primary schools to charge parents fees. NFC supports dozens of government primary schools and has built a high school from scratch. The directors of the company routinely devote their board fees to our educational investment programme and we also have a large scholarship programme for free secondary school places at Forest High School..

Oxfam has yet to invest one penny into poverty alleviation amongst the communities they claim to represent and we call on them to join us in poverty alleviation and investment in educational facilities.

Involvement of NFC workers

Oxfam alleges that it has evidence/testimony about the involvement of NFC workers and security guards in the evictions. We call on Oxfam to provide this evidence immediately because the law states that all evictions should be carried out by government agencies.

NFC at its height last year had a workforce of 2,200 people. We have a very rigorous internal disciplinary system and we have dismissed several workers for wrong doing in the past 7 years. Workers in Uganda are very well protected by labour laws and people can only be dismissed with due process and evidence. In order to mount a disciplinary case against a worker we need tangible evidence such as the name of the individual, details of the allegation, where and when it took place. Why has Oxfam failed to produce this evidence in four months?

Oxfam knows that we did for a short while employ a private contracted security force. They were dismissed by the company after a complaint from a community member and for poor discipline. Whenever there are complaints against anyone in the employ of NFC we take the matter extremely seriously – but we must follow proper due process and we must have tangible evidence for dismissal. Our HR system is robust and we have only faced one labour case for unfair dismissal in 7 years – from an individual now in the employ of Oxfam.

Oxfam should stop slandering the company with unfounded allegations. They should either substantiate these claims or remove them as they cause damage to the company.

UNTRUTHFUL AND UNCORROBATED ALLEGATIONS BY OXFAM:

We call on Oxfam to immediately and publically withdraw allegations which can be proved to be wrong and to apologise to the parties involved. On uncorroborated allegations, we call on Oxfam to provide evidence and testimony which they claim to have in their possession which can support these allegations

UNTRUTHFUL Oxfam Allegations:

1. People were moved off the land without consent and consultation – page 1
2. Nelson Turyahabwe is not a lead auditor. He is a local specialist – page 2
3. That Ugandan courts have not yet ruled on NFC cases – page 3
4. That Neither Civil Suit no 164 and Civil Suit 102 have been “substantially considered nor finally determined by the Ugandan High Court – page 8
5. That both cases “remain pending” (page 9) – see above
6. That the dismissal of the injunction attached to Civil Suit no 164 resulted from community members not being present – page 9
7. Case 102 “has not yet been dismissed” - (page 10)

8. That NFC has not presented a survey to Oxfam (page 13). This was provided in early December before the Oxfam statement was published on December 12th and acknowledged formally by Phil Bloomer, head of Campaigns at Oxfam
9. That there is no mechanism in place to compensate those with rights-
page 2

UNCORROBORATED Oxfam Allegations:

1. NFC workers were involved in evictions – page 2
2. Communities have documentary evidence to prove legal rights to the land – where is the documentary evidence – the registered title deeds of “plots bought and sold”? – page 4
3. Several schools were destroyed – page 12 – Oxfam must provide detail of “several” schools and where they were

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