

OXFAM'S RESPONSE TO SGS INVESTIGATION INTO THE FOREST STEWARDSHIP COUNCIL COMPLAINT

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OVERVIEW

Land acquisition has accelerated rapidly in the last ten years. As many as 227 million hectares of land – an area the size of Western Europe – has been sold, leased, or licensed since 2001, mostly to international investors and much of it in sub-Saharan Africa. Oxfam firmly believes that responsible investment in low income countries can play a vital role in sustainable development. However, companies and governments must take urgent steps to improve land rights outcomes for people living in poverty. Power relations between investors and local communities must change if investment is to contribute to, rather than undermine, the food security and livelihoods of local communities.

This is why Oxfam has increased its work on land acquisition, and why it is directly supporting the many thousands of poor people who have been evicted from their land in Uganda.

In September, Oxfam published a report and a case study which detailed the eviction of 22,500 people in two areas of Uganda, without consent or compensation, to make way for the timber plantations of the New Forests Company (NFC). Oxfam's report focused on the Namwasa plantation in Mubende district, which was FSC-certified by the certification body SGS Qualifor in May 2009, and the Luwunga plantation in Kiboga district, which is not certified. Oxfam's report identified areas where NFC appears to have breached the Forest Stewardship Council (FSC) Principles and Criteria, and in October, the FSC made a formal complaint to SGS about its certification of NFC. This obliged SGS to investigate the issues of concern raised by FSC in its complaint regarding the land disputes, the evictions, the lack of compensation, and the loss of livelihoods. Oxfam has reviewed the report prepared by SGS in response to the FSC complaint and has reached the conclusion that the SGS report is deeply flawed, not fit for purpose and a wholly insufficient response to the serious allegations raised by Oxfam's research. In particular:

- The SGS report **does not attempt to give serious consideration to the requirements of the FSC Principles and Criteria**, and instead focuses on discrediting Oxfam's report on land acquisitions and its case study about NFC's plantations. For example, the SGS report relies heavily on the 'illegality' of people's presence in the forest reserves to deny them *all* rights – including customary and traditional rights, and the rights to compensation for lost livelihoods which are protected by the FSC Principles and Criteria.
- The SGS report therefore **fails to provide sufficient evidence to support its conclusions** that FSC Principles relating to the rights of people to free, prior, and informed consent, outstanding land disputes, forced evictions, and loss of livelihoods without compensation were not breached.

- The SGS report **does not take into account the evidence presented by Oxfam which was provided to SGS**. Specifically, it does not address people’s testimony regarding violence used during the evictions and the alleged involvement of NFC workers and security guards in the evictions, or people’s various claims to the land. Nor does it consider, as required by Criterion 4.5 of the FSC Principles, the damages to livelihoods that have been caused by the evictions, as detailed in Oxfam’s report, case study, and evidence.
- SGS does not appear to have **spoken to any of the community members who have raised the allegations** that form the basis of the complaint filed by FSC.
- The SGS report’s **own findings are contradictory**. For example the lead auditor, Dr Nelson Turyahabwe, claims there were no people living in the Luwunga reserve prior to 1992; yet the interviews conducted with local leaders demonstrate that local leaders told him people had settled in Luwunga in the mid-1970s.
- On one crucial point, Oxfam and SGS agree: **that no-one evicted from their homes and farms to make way for NFC’s plantations has yet received any compensation**. Oxfam’s research shows that there was no appropriate mechanism in place to compensate those with rights, as required by Criterion 4.5.

Oxfam’s response focuses primarily on the SGS report’s failure to prove that breaches of FSC Principles and Criteria have not occurred, as this is the key issue at hand (Section 1). However, given the serious allegations relating to Oxfam and its research methods, a brief response is also provided (Section 2).

SECTION 1: THE SGS REPORT'S ASSESSMENT OF FSC PRINCIPLES AND CRITERIA

As mentioned above, Oxfam believes that the SGS report fails to support its conclusions that FSC's Principles and Criteria have not been breached.

- A. FSC Criterion 2.2: 'Local communities with legal or customary tenure¹ or use rights shall maintain control, to the extent necessary to protect their rights or resources, over forest operations unless they delegate control with free and informed consent to other agencies.'**

Oxfam believes that the SGS report fails to demonstrate that the people evicted to make way for NFC's Namwasa and Luwunga plantations had no legal or customary tenure. Moreover, the SGS report focuses solely on questions of 'legality' under Ugandan law. It **does not consider or address the issue of customary tenure** which is upheld under FSC Criterion 2.2

Legal tenure

Whether the communities had any legal claim to the land is still a matter of dispute (see discussion of Criterion 2.3 below) on which the Ugandan courts have not yet ruled. The SGS report cites the Forestry and Tree Planting Act extensively to show that anyone living or farming on forest reserve land is automatically illegal.

The SGS report does not consider other sources of law or nor does it address the arguments raised by the communities themselves in their court cases (other than the issue of the 2006 Executive Order) on the basis of which they claim, variously, to be lawful occupants, bona fide occupants and/or customary tenants protected by the Constitution of the Republic of Uganda and the land laws of Uganda.

Given that the High Court was prepared to issue interim orders on the strength of those arguments (as generic as they may be), the failure to address these would appear to be an omission. These arguments include: allocation of land by government, recognition by government of the right to hold land, and granting of rights to develop land by government.

In addition, publicly available research suggests that the Forestry and Tree Planting Act conflicts with other provisions of national law. For instance, Ugandan lawyers' NGO ACODE (Advocates Coalition for Development and Environment) carried out an analysis of the conflict between the National Forestry Authority's (NFA) management of forest reserves and the rights of those occupying that land. The analysis concluded that the former occupiers' 'prolonged and uninterrupted use' of the land gives them legal rights over it under Ugandan law:

'It is legally conceded that uncontested long possession of land ultimately confers legal title to the occupier irrespective of the formal or documentary record of ownership. This common law principle forms the foundation of the bona fide occupants recognised under the Land Act of 1998. As strange

¹ FSC defines these terms as: **Customary:** rights which result from a long series of habitual or customary actions, constantly repeated, which have, by such repetition and by uninterrupted acquiescence, acquired the force of a law within a geographical or sociological unit. **Tenure:** Socially defined agreements held by individuals or groups, recognized by legal statutes or customary practice, regarding the 'bundle of rights and duties' of ownership, holding, access and/or usage of a particular land unit or the associated resources there within (such as individual trees, plant species, water, minerals, etc).

as it may seem, adverse possession confers actual title to the holder who occupies land for long enough and meets the following basic requirements: (i) the adverse possessor must have actually entered the property; (ii) the possession must be notorious – the possession must be seen; (iii) the possession must be adverse to the owner’s claim; and (iv) the possession must be continuous. Indeed the forest encroachers on the ten settled villages on the South Bugosa Forest Reserve (the reserve examined by ACODE) meet these basics. The land has been cultivated and improved. The government has set up infrastructure including a school on the reserve. The encroachers for all intents and purposes treat the land as theirs. Consequently the right of adverse possession rightly accrues to them. The doctrine of adverse possession operated in conjunction with the Limitation Act Cap 80, which provides that an action to recover land must be brought within twelve years from the date of the cause of action.’²

Moreover, the SGS report fails to consider the evidence of various claims to land submitted by Oxfam. This includes war veterans’ families’ documentation relating to the granting of land to them by the Mengo Government; the documentation of residents’ application of transfer of title from customary to freehold; and the various letters from government authorities relating to the length of time people have lived on the land.

Customary tenure

In addition to determining the communities' status as illegal without comprehensively assessing the legality of their claims, the SGS report also fails to address the issue of customary tenure at all. This is a serious omission given the importance of this issue to Criterion 2.2, which is specifically designed to offer rights to those without legal title.

Under the FSC’s definition of customary tenure, Oxfam believes thousands of people evicted to make way for NFC’s Namwasa and Luwunga plantations should have been accorded the right to free, prior, and informed consent.

The SGS report claims extensive consultations were held with communities in Luwunga and Namwasa; that the evictions were voluntary and peaceful, and that NFC was not involved in the evictions. This runs counter to substantial evidence obtained by Oxfam. In meetings with over 600 people from several different communities in March and July 2011, Oxfam heard consistent testimony regarding the evictions from Luwunga and Namwasa. The story described was similar in both cases: evictees of both districts told Oxfam that they were not adequately consulted – but rather told to leave the land – and did not consent to losing their land, homes, and livelihoods. These claims are repeated in the communities’ legal claims.

In Luwunga, many of the people told Oxfam they were born on the land, while others say they had lived there since the early 1970s, building up 40 year’s worth of social and communal services, and physical infrastructure. Some people say they had bought and sold plots during that time. In Mubende, Second World War veterans and their descendants say they were allocated land in recognition of service, while others say they had bought, were gifted, or inherited land in the area since the 1980s. In their legal pleadings, the claimants assert that they are ‘either bona fide, lawful occupants and/or customary tenants, and are protected by the constitution of the Republic of Uganda and the land laws of Uganda.’

² O. Mugenyi et al (2005) ‘Balancing Nature Conservation and Livelihoods: A Legal Analysis of Forestry Evictions by the National Forestry Authority’, ACODE Policy Briefing Paper N.13, Para 7.1, available at: www.acode-ug.org/documents/PBP%2013.pdf

As noted in FSC's complaint to SGS, the allegations of forced and violent evictions would, if true, also constitute a breach of Criterion 2.2. But the SGS report does not consider any of the evidence or testimony submitted by Oxfam, which claims forced and sometimes violent evictions from homes and land. This includes affidavits appended to Civil Suit no. 164. SGS explains that because no violence was reported to the authorities, the company, or the Ugandan Human Rights Commission, the evictions must therefore have been peaceful. Such an approach ignores the reality for people in isolated communities, surrounded by the very army, police, and company workers who they say took part in the evictions. A **culture of impunity** exists in Namwasa and Luwunga according to people interviewed by Oxfam. They describe how, when they attempted to bring complaints to the police, either they were arrested themselves, or told 'we do not take cases from encroachers.' When asked why they had failed to make formal complaints about the abuse, harassment, and intimidation they had suffered, one community leader told Oxfam, 'people who were supposed to enforce the law were those breaking the law'. The SGS report also fails to acknowledge that the communities did raise their allegations of violence with the authorities – in the form of legal cases against the company brought before the Ugandan High Court. Even if SGS questions what would be the most appropriate route for lodging their complaints, it is inaccurate to suggest that no reports were made to the authorities.

Oxfam is confident that if SGS visited the communities Oxfam met, it would hear a consistent and powerful story that is completely at odds with the version of events outlined in its report.

Oxfam's conclusion is that the SGS report dismisses claims as illegal without considering any other possible interpretations of Ugandan law relating to the legality of the affected people's claims to the land. Furthermore, it does not give any consideration to whether the communities' long-standing use of the land would qualify them as holding 'customary tenure'. The SGS report fails to take account of, and therefore effectively dismisses, testimony, including affidavits, of forced and sometimes violent evictions.

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.'

The SGS report and Oxfam agree on one issue: that **no-one evicted from Luwunga or Namwasa has received any compensation for the loss of their homes, farms, and livelihoods**. The SGS report argues that only a very limited number of people are eligible for compensation. However, it does not describe any mechanism to establish eligibility criteria and compensation levels for all those entitled to losses and damages under FSC Criterion 4.5.

The Namwasa evictions

In Namwasa, SGS quotes the NFA's estimate that '31 families' are eligible for compensation, and states that no compensation has yet been received by those families.

To reach this figure, SGS relies on a registration of residents in Namwasa conducted by the NFA in September 2009 (Appendix 4 of the SGS report) and a letter from the NFA dated 7 June 2011 (Appendix 6 of the SGS report), following a visit on June 2, 2011. These two sources contain unexplained errors and inconsistencies and do not provide a comprehensive assessment of the numbers of people who were living in Namwasa.

A draft version of the September 2009 registration exercise lists 542 households and the NFA notes there are some mistakes, with names appearing twice. (No final version is provided.) Out of this list of 542 households, NFA identified six from Rwanda, although one name seems to be listed twice. Based on this, SGS concluded in February 2010 that the households were mostly from Rwanda, an assertion that is not corrected in this report. According to the registration list, 18 households qualify as having lived in the Central Forest Reserve (CFR) prior to 1992. But according to NFA's 7 June letter, the Resident District Commissioner (RDC) recommended 31 households as qualifying as pre-1992 residents. SGS explains that this is due to the fact that some of the areas had not been accessed by the NFA registration exercise, which shows that **the registration exercise on which SGS's report relies was in fact not comprehensive**. Certainly, none of the individuals from whom Oxfam collected testimony in March and July 2011 appear on this list.

Another major unexplained discrepancy is noted in the NFA's letter of 7 June 2011, which finds that there is hardly any match between the 18 households identified by the register and the 31 households identified by the RDC. Only four household names can be cross-referenced on both lists. This is critical as it is these people who are deemed eligible for compensation. NFA appears unable to trace the remaining 14 households it identified as entitled to compensation via its register (physical presence listed as 'not found' and remark 'might have left'). NFA appears to conclude that only the four families living in the CFR will be eligible for compensation because they are on the register. It states that the other 27 families living on the CFR (who are on the RDC's list of households qualifying as pre-1992 occupants) did not register during the September 2009 registration exercise because 'they had fears and because there was a lot of confusion', and they have 'disadvantaged themselves from qualifying for compensation.' This demonstrates that the registration process of September 2009 was not comprehensive and contained significant problems in terms of documentation.

Even former Namwasa 'encroachers' that are listed in Appendix 1 of the SGS report as interviewed by SGS do not appear on the September 2009 registration list.³

None of these discrepancies are questioned in the report. This is not a simple numbers game. Each of these documents may eventually determine who gets compensation for lost homes, farms, and livelihoods and who does not. There appear to be basic errors in the documentation relied on by SGS: 14 households originally identified for compensation are noted as 'lost'. This does not instill confidence that there has been fair and transparent due process on this crucial issue, as is required to satisfy Criterion 4.5.

The Luwunga evictions

Although Luwunga was not formally included in the FSC complaint to SGS (as Luwunga does not have FSC-certified status), SGS includes an assessment of the Luwunga evictions in its report because, according to SGS, 'the management of Luwunga is in the same spirit as Namwasa' and 'NFC needs to comply with the FSC Partial Certification Policy.'

In Luwunga, the SGS report claims there were no encroachers prior to 1992 and that no families qualify for compensation. Oxfam questions these assertions and has a weight of testimony relating to people who say they settled in the Luwunga area in the 1970s. For example, in July 2011, at seven Focus Group Discussions, attended by over 380 people, local leaders described the history of their

³ The names of "former encroachers" from Mubende interviewed by SGS and listed in Appendix A are Ali Busungwe, Hussein Mukaala, Saad Kawooya, and Godfrey Sserubogo.

communities: how they settled on the land following Idi Amin's call to the landless to cultivate the land in Kiboga. They say they established settled communities with schools, a health centre, and recognised local councils. Named testimony from Luwunga evictees is discounted on the basis that aerial photographs would be able to prove otherwise. However, these photographs are not included in the report. SGS does not provide any other empirical evidence that people were not living in Luwunga before 1992.

Moreover, SGS's own evidence, presented in Appendix 2, contradicts the claim that no one lived in Luwunga before 1992. Dr Nelson Turyahabwe was told by local leaders '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.'

SGS supports its conclusions on the basis that it has specifically focused on this issue since 2008 through four audits, including an audit in 2010 witnessed by Accreditation Services International (ASI), and has independently reviewed the encroachment issue; it visited encroacher communities and interviewed a wide range of stakeholders including 'encroachers' and 'former encroachers.'

As far as Oxfam is aware, ASI visited the Namwasa site only, since Luwunga was not, at that stage, in the process of obtaining FSC certification. Certainly, the ASI public report on the visit only refers to Namwasa⁴. Similarly all four SGS audits refer only to the Namwasa site, not Luwunga. Oxfam calls on SGS to clarify its research methods and audit history relating to the NFC's Luwunga plantation.

Failure to assess losses and damages to local people or to provide a mechanism for fair compensation

The SGS report also fails to assess the impact of the evictions on the thousands of people who have lost homes, farms, and livelihoods. Even by its own estimation, relying solely on NFA data, nearly 10,000 people were displaced from the Namwasa and Luwunga reserve lands, with no resettlement assistance and no compensation.

Without such an assessment, it is difficult to see how SGS can claim that NFC is not in breach of FSC Criterion 4.5.

The SGS report defends NFC's failure to ensure anyone affected by its operations was compensated by stating that the company was not allowed to offer compensation. Indeed, the NFA and the Minister for Water and Environment state that compensation is a government matter, not for private investors. **However the relevant question is whether such operations should be certified as sustainable by SGS, given the requirements of Criterion 4.5.**

Testimony gathered by Oxfam describes the devastating impact of the evictions on evictees' livelihoods. (The names are anonymised for reasons explained in Section 2.B below.) Ms Apanabang has eight children. She now lives in a rented house for 15,000 shillings (\$5.50) a month and says even finding this money is a problem. She earns some money from casual work when she can find it. She cannot afford school fees. Before being evicted, she said her family ate well from a variety of crops they grew. 'Now we rely on *posho* [a maize porridge staple] and the days I fail to get *posho*, we sleep on empty stomachs,' she said. 'One of the things that most touches my life now is that I have forgotten the feeling of eating well.'

⁴ Accreditation Services International, FSC Forest Management Audit - Uganda - SGS 2010, available at: www.accreditation-services.com/resources/document-library?did=77

'I remember I wrote the details in my notebook,' she said. 'The officials gave us a deadline to leave between the 12th and 28th of February 2010. I chose to leave on the 12th. We saw them burning down people's houses and cutting down people's plantations. That convinced me to collect my children and leave. It was too painful. And what I feared is what has happened – we have nothing to eat. My children are not going to school and we don't know what the future holds.'

Mr Allen says: 'One of the things that pained me most was that my land was the source of income for school fees for my children. I am not an educated person. It was my plan to raise money to educate my children so that when I'm gone they can take care of other family members. But now I can only afford to send one of my six children to school. Now they are held back, they are nobody. That is the painful thing.'

'We are no longer interested in going back to the land we had before. We only want to have money to buy some new land somewhere else. Let the past settle,' Mr Allen said. 'I only pray to God that a miracle comes now, to get land somewhere else. I think that is when we shall have back the peace and happiness in the family that we have all lost.'

Maria Peimong is a 66-year old grandmother who was evicted from Kyato village in Mubende, where she told Oxfam she had lived for over 15 years. She used to farm maize, bananas, avocado, and jackfruit; she had eight cows and 15 goats. Now she is reduced to a precarious existence: 'I am an old woman. Now I just work as a casual labourer in this village where I found refuge. At my age how can I live like that? ... It is so frightening.' She is terrified of falling sick as 'that means going for a day without a meal, because you cannot work.'

Oxfam's conclusion is that the SGS report confirms that no one affected by NFC's operations in Namwasa and Luwunga has yet received any compensation for their lost homes, farms, and livelihoods. Whether or not NFC is allowed to pay compensation, the fact remains that there has been no mechanism provided for fair compensation, in apparent breach of Criterion 4.5.

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

The SGS report acknowledges that court cases were brought against NFC but appears to conclude that criterion 2.3 was not breached because (i) the cases were brought against the wrong party; (ii) the cases as pleaded were without merit or were technically flawed; and (iii) the cases are not currently being actively progressed.

None of these arguments demonstrates the absence of disputes of substantial magnitude involving a significant number of interests. The fact that the communities displaced from both the Namwasa and Luwunga plantations launched legal proceedings to protect their rights at least raises a presumption that disputes existed.

In addition:

(i) The SGS report claims that the case was bought against the wrong party since NFC is not a land owner and has no legal authority to evict people from the forest reserves. However, SGS does not address the fact that Civil Suit no. 164 and Civil Suit no. 102 both contain allegations that NFC was involved in the evictions. This is denied by NFC, but there is no evidence that these allegations have been considered, investigated, and dismissed.

(ii) Neither Civil Suit no. 164 nor Civil Suit no. 102 have been substantively considered nor finally determined by the Ugandan High Court. Accordingly, it is inaccurate to infer that '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'. This conclusion appears to be based on SGS's own assessment of the legal case and NFC's defence as stated in the report.

(iii) Both cases remain pending and neither has been withdrawn by the plaintiffs. The plaintiffs' explanation of why they are not able to pursue the cases – that they cannot fund their lawyers in the absence of income from the land they used to cultivate – is not taken into account. Similarly, the fact that the very act the communities sought to prevent in bringing the cases – namely eviction from their land – took place in spite of ongoing litigation is not addressed in the SGS report.

Evidence and testimony from over 600 evictees that Oxfam met during two field visits in 2011 demonstrates that evicted communities still feel aggrieved – specifically that they feel that they were not fairly consulted; that they had established and functioning communities which were destroyed by the evictions; that they had various legitimate claims to the land; that the evictions were forced and in some cases violent; that they received no resettlement assistance; and that they deserve some form of compensation.

Civil Suit No. 164

In 2009, 1,489 named plaintiffs from Namwasa launched civil suit no. 164 against NFC. This suit alleges 'the defendant [NFC]... began grabbing people's land forcibly, destroying people's houses, erasing down plantations and deployment of different security personnel who instead of keeping security of the place commit atrocities against the residents and/or persons of the plaintiffs'. The plaintiffs claim to be 'either bona fide, lawful occupants and/or customary tenants'. It is inaccurate, therefore, to suggest, as SGS does, that the plaintiffs' subsidiary argument, that NFC was in contravention of an Executive Order, was in fact the substance of their case. This lawsuit constitutes a significant dispute, which has **not yet been dismissed** and must therefore still be regarded as outstanding

The SGS report argues that the plaintiffs were trespassing on forest reserve land and that their presence on the land was therefore illegal, based on the Forestry and Tree Planting Act of 2003. The report does not consider any other sources of law, such as those discussed above in the section on Legal Tenure.

Further, the SGS report does not address the plaintiffs' assertion of land rights in the court documents, which the High Court of Uganda deemed of sufficient merit to justify granting an interim order 'against [NFC] and or its agents or any other authority under him to avert continued abuse of the applicants/plaintiffs rights over the suit matter pending the hearing of the substantive application for a temporary application.' Following a series of extensions, that substantive application was due to be heard on 18 March 2010, by which date the plaintiffs and others had already been evicted from their homes.

It is true that this interim order against the company has been dismissed. Representatives of the plaintiffs explain that they did mobilise and travel to Kampala to attend the court hearing on 18 March 2010. They arrived at the court after the application had been heard and dismissed and their lawyers were unable to have the application reopened. Given the hearing was held less than two weeks after the evictions, the difficulties the communities encountered in reaching Kampala appear to Oxfam to be entirely understandable. In addition, it is material that, as the SGS report notes, the application was dismissed 'on account of [the plaintiffs'] non appearance' rather than on any assessment of the merits of the application.

Civil Suit No. 102

Civil Suit no. 102 brought by two plaintiffs on behalf of affected communities in Luwunga alleges abuse, harassment, destruction of livestock and crops, and seizure of land amounting to some 43,000 acres. **This case has not yet been dismissed**, as the SGS report confirms: ‘NFC is currently having the case formally dismissed by the court.’

The SGS report inaccurately characterises the plaintiffs’ case as being based on the 2006 Executive Order. It fails to recognise the primary arguments advanced by the plaintiffs, namely, that they had been the ‘lawful occupants of the land since 1970, having been allocated the same by Government’, and ‘were granted rights to develop the suit land by the Central Government with guarantees in writing’.

The SGS report also fails to acknowledge that the substance of Civil Suit no. 102 has not been considered by the court, but appears to infer that it is without merit because (i) NFC is able to present arguments in defence; (ii) the NFA performed a survey; and (iii) the plaintiffs have been unable to pursue the case. Again, the SGS report fails to acknowledge and examine the fact that, in connection with Civil Suit no. 102, the court granted an interim order ‘restraining [NFC], its workers, agents, assignees and/or those acting through or delivering authority from it from evicting the applicants and their families, destroying their crops, schools, hospitals, social infrastructure and livestock’ until the main application for a restraining injunction could be heard.

Oxfam’s conclusion is that significant disputes remain outstanding over NFC’s plantations in Luwunga and Namwasa (and were outstanding at the time of Namwasa’s certification) in apparent breach of FSC Criterion 2.3.

In summary, the SGS report does not adequately address the concerns raised by FSC in its complaint to SGS regarding violence in the evictions, the outstanding land disputes and the affected people’s claims to the land, and the lack of compensation to local people for damage and loss of livelihood. As a result, the report fails to establish that breaches of FSC Principles and Criteria have not occurred.

SECTION 2: SGS'S SPECIFIC 'CONCERNS' OVER OXFAM'S REPORT AND CASE STUDY

A. Oxfam's research methods

Oxfam commissioned an initial desk study into NFC operations in Mubende and Kiboga districts, which was conducted by external consultant, Mark Curtis, in January 2011.

In March 2011, Oxfam conducted an initial field visit to verify the information identified through the desk study. During this trip, the team convened three focus group discussions (FGDs) with a total of 57 evictees from Mubende and four FGDs with a total of 61 evictees from Kiboga (118 evictees in total). The team also conducted individual in-depth interviews with eight evictees from Mubende and seven evictees from Kiboga.

In July 2011, Oxfam, together with alliance partners Uganda Land Alliance and Environmental Alert, conducted a second visit to further verify the facts underlying the case study. During this trip, the team convened five FGDs with a total of 230 evictees in Mubende and seven FGDs with a total of 385 evictees in Kiboga (615 evictees in total). The team also conducted formal, recorded individual interviews with six evictees from Mubende and four evictees from Kiboga.

The special value of FGD evidence lies in the authority lent to statements delivered to a group of peers, and subjected to challenge, where appropriate, by others present.

In addition, Oxfam has performed extensive analysis of publicly available sources and continues to monitor the position on the ground in concert with alliance partners. Oxfam has corresponded with NFC since March 2011 to gain an appreciation of the company's position; this engagement was initially ignored but is now ongoing. Finally, Oxfam talked to government officials, the NFA, and regional and district authorities.

The authors of the SGS report contrast Oxfam's two visits in 2011 with the several audits carried out by SGS over four years. As detailed above, Oxfam carried out two field visits in March and July 2011. On both occasions, Oxfam was accompanied and advised by a Ugandan NGO community facilitator who has been advising and supporting the affected communities for the past three years. Furthermore, Oxfam has had, through the lawyers representing the communities, extensive access to the documentation supporting two of the three court cases referred to by SGS.

SGS also claims to have talked to many more 'former encroachers' than Oxfam. However, during the two field visits in 2011, Oxfam met over 600 evictees from several different villages within the Namwasa and Luwunga plantations. The SGS report says 10 former encroachers were interviewed during its November 2011 visit (out of a total of 53 people). The public summary of the SGS certification report does not specify how many evicted people SGS interviewed during its previous visits.

Oxfam and partners were with affected communities in Mubende and Kiboga from 15–17 November 2011, at the same time as SGS staff carrying out their field visit. Neither Oxfam, nor its partners, nor the affected communities, were aware of the SGS visit, and would have been happy to provide testimony and evidence to them about the evictions had they been in contact.

B. SGS claims re anonymity of testimonies

The SGS report claims that because interviewees were anonymised in Oxfam's report and case study, their testimony is questionable. All people interviewed by Oxfam were in fact happy to be named, without exception – this was checked explicitly during each interview and recorded electronically. Oxfam, however, has an organisational policy not to reveal the names of people interviewed in its external publications in certain situations in order to protect those people. The true identities of the people whose testimonies were used are known to Oxfam and were provided to FSC. We understand that FSC shared with SGS the testimonies provided by Oxfam, which named those persons interviewed. These were shared on the condition of confidentiality. This is not acknowledged here by SGS and the testimony appears not to be taken into account.

C. An implication that Oxfam misrepresented the story about the school building

Oxfam's intention in referring to the school was to illustrate the way in which people say they have been left worse off as a result of the evictions, without the income required to pay for children to attend school. The school mentioned by SGS is only one of several schools which communities say were closed down or destroyed during the evictions. Nine individuals in Mubende and six in Kiboga provided oral testimony to Oxfam about the impact of their reduced income on their ability to pay school fees. As a result, they have had to pull their children out of school. This is corroborated by three of the FGDs conducted in March and all of those conducted in July.

The following are examples of additional references to the school situation, taken from testimony gathered by Oxfam (names withheld for reasons identified in Section 2.B):

Name withheld. (male) Kayindiyindi village, Kiboga: 'I have ten children who can no longer go to school. They used to go to school in the forest....'

Name withheld. (female, late 50s) Kigumya village, Mubende: 'When we were evicted the local primary school was demolished. Two of my children (aged 7 and 11) and two of my grandchildren (aged 4 and 5) were going there. It was only a kilometre from our house and very easy to get to. The community set up the school in the 1990s and we parents contributed to paying the teachers' salaries.'

Name withheld. (female), Mubende: 'Before the eviction, we had a school in Kyamukasa [Ssefra primary school], where my children used to go. This was started by the parents with the support of the LC Chairman. During the eviction, the security forces – the police, the army and the private security company – brought the school down and it is no more. Since then we have struggled and now the nearest school is five km away.'

D. SGS claims that Oxfam 'grossly exaggerated' the number of people evicted at Luwunga

The SGS report states that Oxfam says 20,000 to 22,500 people were evicted from Luwunga. This is incorrect. Oxfam uses the figure of approximately 15,000 evictees from Luwunga. SGS says that Oxfam's source is not accurate 'or scientifically based'. For its part, SGS relies for its number on a registration process carried out by the NFA in 2005/6 which found 7,000 people on the land. A copy of that register is not provided, so it cannot objectively be assessed.

Oxfam's figure is based on an NFC-financed census taken in 2008, which NFC told Oxfam totalled 15,191 people – a figure it regards as exaggerated. Although Oxfam has requested a copy of this census from NFC, Oxfam has not yet seen it. The reason Oxfam chose this census as a basis for its estimate of the number of people affected is that communities repeatedly talked about the thoroughness of the census – how they were photographed and asked for their names, addresses, the size of their land-holding, and the value of assets such as livestock. The people Oxfam spoke to believed this was a genuine attempt to assess the value of their homes and farms in order to calculate compensation.

Oxfam derived a figure of approximately 7,400 people evicted from Namwasa based on the legal case filed on behalf of 1,489 families, which, based on an average Ugandan family size of five (Uganda Demographic and Health Survey 2006) equates to approximately 7,400 people.

Oxfam therefore arrived at a total figure of people evicted from both plantation areas as approximately 22,500 (the sum of 7,400 and 15,191).

E. SGS repeats allegations of bribery against Oxfam

In the report, SGS cites a community petition which alleges that Oxfam offered money to evictees so that they would make false statements. Oxfam's objective is to give these communities a voice, and support them in seeking redress. There is no incentive for Oxfam to offer bribes in order to prompt individuals to give false testimony.

No evidence is provided to support this allegation. Oxfam has a zero tolerance approach to its staff paying bribes. If any evidence was presented to support claims of bribes having been paid, we would take that evidence extremely seriously and ensure it was thoroughly investigated.

Missing Documentation

Oxfam requests disclosure of the following materials:

1. The SGS report refers to aerial photographs of Luwunga forest reserve as evidence to prove there was no one living in the reserve prior to 1992.
2. The report also refers to a registration of families living in Luwunga that was conducted by NFA in 2005/06.
3. The SGS report refers to a dispute about the boundary in the Luwunga reserve. Oxfam and its partners have previously requested maps of NFC's licence areas and of the Namwasa and Luwunga reserves from NFC and the NFA.
4. Oxfam has also asked NFC for documentation of the consultations which it says were conducted in both Namwasa and Luwunga prior to evictions. The SGS report too says consultations took place.