

Meg Taylor
Compliance Adviser/Ombudsman
International Finance Corporation
2121 Pennsylvania Avenue NW
Washington DC 20433, USA
cao-compliance@ifc.org

20th December 2011

Dear Ms. Taylor

**New Forests Company, Luwunga Plantation; IFC financing via Agri-Vie Fund
PCC (Project Number: 27674)**

We the undersigned are members and representatives of the communities affected by the New Forest Company's (NFC) Luwunga Plantation in Kiboga District, Uganda. On behalf of those affected communities, which are now dispersed both within and beyond Kiboga district, we hereby lodge a complaint concerning the New Forest Company's project at Luwunga.

We can be contacted c/o Rutaryabusha Bauman Eliphazi [CONTACT INFORMATION REMOVED].

We, as representatives of the community members, also hereby authorise Oxfam and Uganda Land Alliance to support the affected communities, including in a representative capacity where appropriate, in relation to this complaint. Accordingly, correspondence relating to this complaint should also be copied to:

Esther Obaikol, Executive Director, Uganda Land Alliance, Plot 1521, Block 29, Mawanda Road, P.O. Box 26990 Kampala, Uganda (telephone: +256 (0) 414540048);

and

Barbara Stocking, Chief Executive, Oxfam GB, Oxfam House, John Smith Drive, Oxford OX4 2JY, United Kingdom (telephone: +44 (0) 1865 47 3727).

Role of IFC

The International Finance Corporation participates in NFC's Luwunga project through a US\$7 million equity investment in a financial intermediary, Agri-Vie Fund PCC (Project Number: 27674), which holds an equity stake in and a seat on the board of NFC.

As part of its due diligence before investing in Agri-Vie, IFC conducted a field appraisal of another of NFC's plantations, the Namwasa plantation in Mubende district, on 16-18 March 2010. The purpose of the appraisal was to investigate allegations of forcible eviction and harassment of communities that IFC had become aware of from media reports, to review the compliance of the resettlement process with IFC Performance Standard 5 and to assess risks for IFC. The report of the visit concluded that "only a full social audit of Namwasa can provide sufficient factual

evidence that IFC can fully negate the allegations in the mass media.” As far as we are aware, no such social audit was conducted and IFC acted on the recommendation of the report “to proceed with its investment in Agri-Vie, which includes funding to NFC” on the basis that “based on the information obtained by IFC to date, the risks related to Namwasa resettlement [...] seem to be limited and well managed by NFC”.

No equivalent appraisal or similar exercise was conducted in relation to the Luwunga Plantation, despite the fact that allegations of similar evictions and harassment exist.

Nature of complaint and breach of IFC Performance Standards

The CAO’s Operational Guidelines provide that complaints may relate to any aspect of the planning, implementation or impact of IFC projects that fall within the CAO’s mandate to address environmental and social impacts of IFC investments.

This complaint concerns the adverse social impacts that local communities have suffered. By way of background, please find enclosed with this complaint a copy of a case-study examining two of NFC’s plantations in Uganda, based on research conducted by Oxfam and Uganda Land Alliance.¹

We understand that, as part of its assessment of this complaint, the CAO Ombudsman will consult with stakeholders (including the affected communities) in order to clarify the scope of the issues to be considered. At this stage, by way of non-exhaustive indication, we wish to draw your attention to the following specific concerns:

- By 2010, the affected communities had been involuntarily evicted from and/or lost access to and use of land they had lived on and cultivated, in some instances for decades.
- As a result of this physical and economic displacement, the affected communities’ livelihoods have been significantly impaired. In particular, and due especially to decreased productive and income-earning potential, many families report (i) eating materially less well, (ii) being unable to afford to continue sending their children to school and (iii) being unable to afford health services.
- The displacements took place in the absence of genuine consultation with the affected communities and without any compensation for land or assets and with no effort to restore income-earning capacity, productivity levels and standards of living. In addition, the displacement process was not conducted on the basis of a baseline survey or census.
- In some instances, families report that the evictions from their homes were accompanied by violence and destruction of property.

In light of the above, we consider there has been material noncompliance with the requirements of IFC Performance Standards.

Performance Standard 5

In particular, had PS5 on Land Acquisition and Involuntary Resettlement been implemented correctly in relation to NFC’s Luwunga Plantation, many of the adverse

¹ Please note that the testimony and evidence upon which this research is based will be made available to the CAO Ombudsman separately and on a confidential basis to assist in its assessment of the issues raised by this complaint.

social impacts experienced by the affected communities could have been avoided or minimised.

As a purchase of access rights, NFC's licence to use the land at Luwunga amounts to a 'land acquisition' for the purposes of PS5.

PS5 defines involuntary resettlement as referring "both to physical displacement (relocation or loss of shelter) and to economic displacement (loss of assets or access to assets that leads to loss of income sources or means of livelihood) as a result of project related land acquisition. Resettlement is considered involuntary when affected communities do not have the right to refuse land acquisition that results in displacement."

On the basis of this definition, members of the communities affected by the Luwunga Plantation have been involuntarily resettled: they have been physically and/or economically displaced and did not have the right to refuse the displacement. The only meetings conducted with the affected communities were to inform them that they had to leave the land.

Accordingly, the requirements of PS5 should have been implemented in relation to the evictions in Kiboga district. These requirements reflect the following objectives, none of which have been met in our submission:

- To avoid or at least minimise involuntary resettlement wherever feasible by exploring alternative project designs.
- To mitigate adverse social and economic impacts from land acquisition or restrictions on affected persons' use of land by: (i) providing compensation for loss of assets at replacement cost; and (ii) ensuring that resettlement activities are implemented with appropriate disclosure of information, consultation and the informed participation of those affected.
- To improve or at least restore the livelihoods and standards of living of displaced persons.
- To improve living conditions among displaced persons through provision of adequate housing with security of tenure at resettlement sites.

Performance Standard 1

Similarly, we consider that the following objectives of PS1 have not been met in relation to NFC's Luwunga Plantation:

- To avoid, or where avoidance is not possible, minimise, mitigate or compensate for adverse impacts on workers, affected communities and the environment.
- To ensure that affected communities are appropriately engaged on issues that could potentially affect them.

Performance Standard 4

PS4 requires the client to assess the risk of using security personnel and "to investigate any credible allegations of unlawful or abusive acts of security personnel, take action (or urge appropriate parties to take action) to prevent recurrence, and report unlawful and abusive acts to public authorities where appropriate". Some members of the affected communities report incidents of property damage and

violence by security personnel, which have not been adequately investigated or acted upon by NFC.

Attempts to resolve the dispute to date

In 2009, Civil Suit no. 102 was filed against NFC on behalf of affected communities in Kiboga district, alleging abuse, harassment, destruction of livestock and crops and seizure of land amounting to some 43,000 acres.²

In connection with Civil Suit No. 102, the High 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.

Civil Suit No. 102 has not been finally disposed of and remains pending before the High Court, although the communities are currently unable to pursue the case actively because they cannot afford to fund legal representatives having lost their income-generating capacity.

The affected communities have also raised their concerns with government authorities, at district and central levels, including the Office of the Prime Minister and the Minister for Lands. Government has at times indicated a willingness to assist the affected communities, but this has not resulted in any form of redress.

In addition, since September 2011, Oxfam has been engaged in dialogue with NFC and IFC, as well as other stakeholders in NFC’s Luwunga Plantation. The dialogue with NFC has involved discussion about the affected communities’ concerns and the means to achieve a lasting remedy to the conflict, but has not resulted in agreement on this. The affected communities hope that these discussions may provide a useful basis for seeking a solution with the assistance of the CAO Ombudsman.

Oxfam has also raised concerns about NFC’s plantations in Uganda with the IFC and the President of the World Bank. In this context, Oxfam has met with Mr. Lars Thunell and Mr. Oscar Chemerinski (together with members of their respective staffs). A primary focus of these conversations has been how IFC can assist in achieving redress for the affected communities. Please see attached correspondence between Oxfam and IFC relating to this matter. Also attached is correspondence with the President of the World Bank.

Outcome sought by the complainants

The primary concern of the affected communities is their loss of livelihoods and the associated adverse impacts on their standards of health and education. Accordingly, we request that a comprehensive livelihood restoration plan be developed with the participation of the affected communities and agreed upon by the affected communities. The affected communities consider that the most effective means of redress would be to identify alternative land for resettlement.

² Documents relating to this legal case will be provided to the CAO Ombudsman separately and on a confidential basis.

The affected communities also wish to secure meaningful recognition of and redress for their lost property and economic resources, including the opportunities they have been denied since the evictions took place, such as lost income, lost education and the inability to afford health care.

In addition, the affected communities seek recognition and redress for the nature of the evictions and for the abuses they have suffered.

Further, given the apparent noncompliance with IFC Performance Standards, and the weaknesses in the pre-investment due diligence conducted by IFC, especially the field appraisal to assess compliance with PS5, we also consider that this complaint should be referred to the CAO Compliance section.

We look forward to notification of your acceptance of this complaint and to hearing how you propose to progress it.

Yours faithfully



Rutaryabusha Bauman Eliphazi
Chairman for Disabled Persons, Kibaale
Parish, Kibiga Sub-County, Kiboga
District



Ntamachakilo Joseph
Vice-Chairman, LCI Kambuzi B, Kibiga
Sub-County, Kibaale Parish, Kibiga Sub-
County, Kiboga District



NansabaTasiana
Women's Representative of all Churches
in Kibaale Parish, Kibiga Sub-County,
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KayindaUziyeri
Chairman, Planning Committee,
Kikoloto-Kambuzi, Sirimula Parish,
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Esther Obaikol
Executive Director, Uganda Land
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Barbara Stocking

Barbara Stocking,
Chief Executive,
Oxfam GB

Jeremy Hobbs

Jeremy Hobbs,
Executive Director,
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