



Forest Peoples Programme

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Final report to FSC to document the verification of the conditions for re-association of Danzer with the FSC

Based upon the independent verification missions to SIFORCO in the Democratic Republic of Congo and IFO in the Republic of Congo by the Forest Peoples Programme

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The purpose of this final report is (a) to clarify the final conclusions of the verification of the conditions for re-association of Danzer with the FSC set out in the headline document of 28 March 2014; (b) to refine the original recommendations based upon subsequent feedback from FSC, Greenpeace, Danzer and IFO, and (c) to integrate additional information relating to the recommendations, including potential responsibilities and timelines.

Introduction

On 7 November 2011, Greenpeace International lodged a Policy for Association complaint against Danzer's former subsidiary claiming that Siforco in the Democratic Republic of Congo (DRC) had violated the human and traditional rights of the Yalisika community in the course of its activities. An impartial complaints panel evaluated the complaint and recommended to the Forest Stewardship Council (FSC) Board of Directors that FSC disassociate from Danzer. The FSC Board of Directors accepted the recommendations of the Panel.

The FSC then disassociated from Danzer and set a number of conditions that Danzer had to fulfill before re-applying for certification, as described in the Memorandum of Understanding (MoU) between FSC and Danzer dated 21 May 2013. These conditions required that Danzer fully performed the contractual obligations towards the Yalisika community and that Danzer developed and implemented effective new conflict avoidance and conflict resolution mechanisms.

Danzer engaged Swisspeace to support them in developing a comprehensive conflict prevention and mitigation framework and to monitor the process by which Danzer / Siforco would live up to their obligations towards the community of Yalisika.

In November 2013 the FSC approached the UK-based Forest Peoples Programme (FPP) to verify Danzer's and Siforco's fulfillment of the conditions for re-association as agreed in the May 2013 MoU between the FSC and Danzer. The separate MoU between FPP and FSC governing the independent verification was finally agreed in December 2013.

The objectives of this verification exercise, which was funded by the FSC, were as follows.

Objectives of Independent Verification

FPP shall verify whether Danzer and Siforco have fulfilled all commitments as set out in the conditions for re-association contained in the MoU between Danzer and the FSC, notably (and in summary):

- To fully perform the contractual obligations towards the Yalisika communities as finally agreed between the company and the communities concerned.
- To develop and implement a comprehensive conflict prevention and mitigation framework that is inclusive, based upon recognized FPIC procedures, timely, and supportive of government compliance with international human rights standards.

In the original ToR between FPP and the FSC a desk review of documentation was indicated, and one verification mission to the DRC was agreed.

The Verification Process

In early December Danzer provided a first very comprehensive set of documentation on the SIFORCO case to FPP, including the recently completed Conflict Manual developed by Swisspeace on behalf of Danzer as part of the conditions for re-association.

In late December FPP met with senior Danzer staff in London to discuss the case. During that meeting it was decided by FPP that an additional verification mission to Danzer's company IFO in the Republic of Congo (RoC) was required, since Danzer had since sold SIFORCO in the DRC, and the comprehensive conflict prevention and mitigation framework stipulated in Danzer's conditions for re-association with the FSC could be applied by Danzer only to its existing operations in the RoC. This meant it was imperative that FPP was able to confirm that IFO had an adequate management system in place on the ground in the Ngombe concession, and this required a field visit.

During the London meeting Danzer agreed to supply additional information to FPP on its IFO operations, and to link FPP up with key SIFORCO staff and other people involved in the DRC process. FPP met with all these people before going to the field in the Bumba area and reviewed extensive literature provided to us. FPP also consulted Greenpeace and Global Witness to obtain their views on the case in advance of both verification missions.

In January and February FPP teams visited the Yalisika region around Bumba in the DRC, where SIFORCO had been operating in 2011 when the events leading to the complaint by Greenpeace took place, and also to the IFO logging concession centered on Ngombe in northern RoC, which continues to be owned and operated by Danzer.

Patrick Kipalu, FPP's DRC country manager, led the SIFORCO mission and the IFO mission was led by John Nelson, FPP's Africa Regional Coordinator. In both locations FPP spent 7 days on the ground. During these 2 verification missions to the field FPP held 20 community

meetings and in addition met with logging company staff, civil society representatives and local government officials. Over 700 people contributed to these discussions. Before, during and after these missions FPP consulted over 80 documents provided to FPP by Danzer, SIFORCO, IFO, Swisspeace, Greenpeace, Global Witness and a number of other anonymous parties. After the SIFORCO and IFO missions FPP shared preliminary findings with SIFORCO and Danzer staff in FPP's office in Kinshasa, where additional clarifications were received, and since then there has been regular exchange of views and documentation on both IFO and SIFORCO that has helped to inform the final conclusions and recommendations set out below.

For this verification exercise FPP was obliged to conduct two verification missions rather than the one stipulated in the original TOR between FPP and the FSC. In addition FPP circulated a number of internal report drafts and very detailed questions to SIFORCO, IFO and Danzer in order to confirm our findings from the field, and this has led to a series of substantive additions to our on-going analysis. The time required to carry out the additional verification mission to the RoC, combined with delays to the visa process for that visit, the vigorous exchanges with the company about our subsequent field findings, and the large amount of additional documentation that FPP was required to review for the IFO case in the RoC are the reasons why the final report to FSC to document the verification of the conditions for re-association was not completed as per the original planned date of February 28, 2014.

The aim of the headline document published on that date was to provide a summary of the headline conclusions and recommendations of this verification exercise at least 2 weeks before the FSC board of directors meeting planned for the week of 17 March 2014.

The purpose of this final verification report is:

- (a) to clarify the final conclusions of the verification of the conditions for re-association of Danzer with the FSC that we set out in the first headline document published on February 28, 2014;
- (b) to refine the original recommendations based upon feedback from FSC, the Complainants Greenpeace, Danzer and IFO, and;
- (c) to integrate additional information relating to the recommendations, including potential responsibilities and timelines.

Main Conclusions

The below text comprises the conclusions of this final report to FSC to document the verification of the conditions for re-association of Danzer, based upon the verification missions by FPP to SIFORCO in the DRC and IFO in the RoC.

1. Based upon our analysis of events we judge that SIFORCO's failure to operate fully on the strict basis of community FPIC is key to understanding the 2011 conflict that is at the root of Danzer's disassociation from the FSC, and the subsequent confusions over the development of the May 2013 agreement (which goes beyond the ToR of this verification exercise).
2. Since then SIFORCO and Danzer have invested considerable resources and effort into the process to comply with the May 2013 agreement, and lots of recent progress has been made on the ground;
3. However as of today, Danzer/SIFORCO have not yet fulfilled both the letter and the spirit of the May 2013 agreement stipulating the construction of 5 schools and 5 dispensaries in the Boumba area where the Yalisika community is located;
4. Strictly speaking SIFORCO has fulfilled its contractual agreements of 14/15 May 2013 since all building materials were delivered to communities in the region, and these also arrived at the construction sites in the villages. However due to a number of factors including those beyond the strict control of SIFORCO, including misappropriation by local individuals as well as poor governance of some local construction committees, not all schools/clinics are constructed yet;
5. There is considerable variation in progress towards completion of the infrastructures between the different communities concerned with the May 2013 agreement. Some structures are almost complete, while others are likely to require at least 6 months to complete under current conditions and plans;
6. SIFORCO has made significant progress towards improving the pace of the fulfilment of the May 2013 agreement, and has recently put in new measures to help ensure that the work is closely monitored by an independent "comite d'accompagnement" and supported by a qualified engineer, and they have committed to supporting the process until all the infrastructures mentioned in the May 2013 agreement are completed. These promise to ensure that the May 2013 agreement could be fulfilled within 6 months;
7. Danzer have made clear their commitment to ensure that the May 2013 accord is fulfilled as soon as possible, including offering to provide building materials that were already supplied but may need to be replaced due to spoil or misappropriation;
8. With Danzer's support SIFORCO is capable of ensuring that the construction of local infrastructures under the May 2013 agreement is completed within 6 months;

9. The Manual on Conflict Sensitivity Due Diligence for Timber Companies in the Congo Basin (hereafter referred to as the Conflict Manual), which was produced by Swisspeace as part of Danzer's comprehensive conflict prevention and mitigation framework, is good but not complete;
10. Danzer has comprehensively integrated the recommendations of the Conflict Manual into its management on the ground in IFO;
11. However the Conflict Manual as it stands fails to address land and resource conflicts that are the primary causes of conflict in and around logging concessions in the Congo basin, and this remains an important gap in Danzer's conflict prevention and mitigation framework;
12. The Conflict Manual could be adapted quickly to address land and resource conflicts with at least one additional specific Guidance Note, and this could be finalised within 3 months.
13. The management system that IFO has put in place to engage communities across its concession (their Social Programme) is very comprehensive and well supported, and is one of the best so far reviewed by FPP in the Congo basin;
14. The IFO social team actively engages communities across the IFO concession, maintains detailed records of community meetings in its management office, and these records are shared and available in the individual communities concerned;
15. IFO has mapped a large proportion of communities' customary lands, and documents many key community resources to protect, and this is integrated with their logging operations;
16. There are important technical gaps in the systematic mapping of community customary lands and in the documentation of community resources, the sharing of maps with communities, and the integration of this knowledge into FPIC and benefit sharing processes;
17. Local and indigenous communities have been extensively consulted about IFO's logging operations;
18. Investments in community development in the IFO concession are broadly guided by communities' Free, Prior and Informed Consent;
19. However there are some important weaknesses in IFO's procedures that need to be addressed in order to comply fully with FSC Principles and Criteria, and which are directly related to conflicts over land and resources and Danzer's conflict prevention and mitigation framework;
20. These procedural gaps cover IFO's participatory mapping processes of community customary lands, its procedures to obtain community FPIC for its forest exploitation and in the identification, organization and delivery of community benefits, including

investment in local development, which should be linked to participatory mapping outcomes and community decision-making and benefit sharing on the basis of community FPIC;

21. These procedural gaps have not been identified by IFO certification bodies for FSC compliance (including ASI);
22. These procedural gaps should be closed under IFO's conflict prevention and mitigation framework in order to ensure good performance in its implementation;
23. Based upon our assessment of IFO's management system during the verification mission, if procedural gaps in participatory mapping, FPIC and benefit sharing procedures had been identified by auditors, then given IFO's capacity we believe that IFO would have been able to address them;
24. Given Danzer's commitment and the high capacity of IFO's social team, we are confident that these procedural gaps could be addressed within the next 3 to 6 months;

Recommendations

Based upon the verification missions in the DRC and RoC, FPP believes that if the below recommendations are accepted then the immediate re-association of Danzer with the FSC should be agreed.

An indicative timeline is set out below that could act as part of potential conditionality of immediate re-association of Danzer with the FSC.

1. SIFORCO should commit to the principle of FPIC in its future engagement with communities in the areas where it is working. Since Danzer does not own SIFORCO, Danzer should commit to not purchasing SIFORCO products unless SIFORCO commits to apply the FPIC principle in its dealings with communities;
2. The construction committees for the infrastructure to be completed under the May 2013 agreement should be re-organised on the basis of community FPIC. This means that the communities should be able to choose their own representatives to oversee the final delivery of the infrastructures. This will help to improve transparency and good governance of the process.
3. Where materials or cash for the infrastructure have been misappropriated, appropriate remedies should be implemented, including the possible punishment of the guilty parties. It is up to SIFORCO and relevant government authorities to assess how best to do this to ensure a fair outcome that keeps conflict to a minimum;
4. DANZER should keep funding the "comite d'accompagnement" until completion of the infrastructures stipulated under the May 2013 agreement;

5. SIFORCO/DANZER should maintain its technical support on the ground until the infrastructures indicated under the May 2013 agreement are completed as planned. The details of how this is to be done are up to SIFORCO and Danzer;
6. In addition to materials, SIFORCO/DANZER should maintain commitment to providing funding to ensure that valid outstanding costs of the building work (including labour) under the May 2013 agreement will be covered;
7. The Conflict Manual needs to be augmented to address land and resource conflicts;
8. The new elements of the Conflict Manual that will be added to address land and resource conflicts should then be integrated into Danzer's management matrix;
9. IFO should maintain the excellence of its social team with additional investments in their capacity to enable them to implement fully these recommendations within the time frame indicated;
10. IFO procedures should be corrected to ensure that they comply fully with current international law and the FSC principles and criteria related to participatory mapping of indigenous and local communities' lands, obtaining communities' FPIC over forest exploitation of those lands, and in the organisation and delivery of community benefits linked to them;
11. A wider discussion of FSC standards needs to be opened to ensure that guidelines and auditing become fully compliant with FSC principles and criteria, and with international law. This is outside Danzer's control, so should not be a factor in their re-association with the FSC.

Potential timeline for implementation of the recommendations

Recommendation	Timing	Role and Responsibilities
1	3 to 6 months	Danzer to negotiate with SIFORCO
2	1 month	SIFORCO to work with comite d'accompagnement
3	6 months	Not a condition for FSC re-association
4	Immediate	Danzer has already committed to this
5	Immediate	Danzer has already committed to this
6	Immediate	SIFORCO has already committed to this
7	3 months	Should draw on final verification by FPP
8	3 months	Danzer
9	3 month	IFO to provide more support to social team
10	3 to 6 months	Should draw on final verification by FPP and FSC
11	2014	Not a condition for FSC re-association

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