



abandoned water mill  
surrounded by eucalyptus plantations  
in Minas Gerais, Brazil

# **FSC consultation and complaints procedures: the case of Veracel Celulose in Brazil**

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**An example of the unequal ‘dialogue’ between communities struggling to halt industrial tree plantations and certification schemes claiming to improve large-scale monocultures**

*“If you are neutral in situations of injustice,  
you have chosen the side of the oppressor.  
If an elephant has its foot on the tail of  
a mouse and you say that you are neutral,  
the mouse will not appreciate your neutrality”*

Desmond Tutu

For decades, industrial tree plantations have been expanding, especially in the global South, and communities have been struggling against this expansion in many places. In the process of reclaiming their territories to recover food production and restore forest areas, they inevitably confront the corporate power and its state and private allies who promote the expansion of industrial plantations. Without exception in this struggle, communities face huge difficulties, and often violence and human rights abuses.

Since the early 1990s, communities have faced an additional obstacle: voluntary certification schemes. One such scheme is the Forest Stewardship Council. The FSC was launched in 1993 and provides certification among others for forest and plantation management. The certificates in turn are marketed by companies as credible assurance that their industrial-scale land use is ‘sustainable.’<sup>1</sup> Using a standardised, but always flexible, interpretation of so-called principles and criteria,<sup>2</sup> FSC

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<sup>1</sup> FSC also provides certification for native forest management. This aspect of the FSC is not considered in this publication.

<sup>2</sup> See <https://ic.fsc.org/principles-and-criteria.34.htm>. Sometimes these principles and criteria are adapted to national contexts.

states that it has certified 13,75 million hectares of industrial tree plantations globally as ‘environmentally appropriate, socially beneficial and economically viable’. The FSC name and logo is now visible on many paper products.

Consultation and complaints procedures are an integral part of FSC certification. “Stakeholders” with objections against a certificate can use these procedures to request that their concerns be assessed. Given the scale and intensity of criticism against specific FSC certificates over the years<sup>3</sup>, it is surprising how few companies have lost their certificate. Have consultation and complaints mechanisms been so successful that the concerns have been resolved? Or is the paucity of certificates that have been withdrawn an indication that these mechanisms do not meet the needs of affected communities? In search of an answer to this question, this briefing will take a look at one particular - and particularly controversial – FSC certification of industrial tree plantations. It complements earlier WRM publications such as *Certifying the Uncertifiable*,<sup>4</sup> which have exposed the manifold problems with FSC certification of large-scale monoculture tree plantations.



*MLT blockade of Veracel trucks loaded with eucalyptus demanding for agrarian land reform, municipality of Eunápolis, Bahia, 2013.*

<sup>3</sup> See for example [www.fsc-watch.org](http://www.fsc-watch.org) and [www.wrm.org.uy/browse-by-subject/tree-plantations/certification/](http://www.wrm.org.uy/browse-by-subject/tree-plantations/certification/)

<sup>4</sup> <http://www.wrm.org.uy/actors/FSC/uncertifiable.html>

## The FSC certification of Veracel Celulose S/A

The pulp and paper company Veracel Celulose S/A is jointly owned by the Brazilian company Fibria (ex-Aracruz) and the Swedish-Finnish multinational corporation Stora-Enso. When FSC certified a Veracel operation that includes almost 100,000 hectares of eucalyptus plantation in the extreme south of Bahia, Brazil, in 2008, the certificate became one of the most controversial FSC certificates ever issued. Communities and local groups have criticized the certification from the beginning, claiming that Veracel does not comply with the principles and criteria of the FSC, that their concerns have been sidelined and that the certificate amounts to little more than greenwashing. When Veracel announced it had obtained the FSC certificate, local groups and residents felt betrayed by the FSC and ignored by the NGOs promoting the FSC. The many consultations, field visits and assessments carried out as part of the FSC certification, they felt, had not strengthened but further marginalized their position. For the communities, *"the FSC certificate only serves to deceive the people in the North."*<sup>5</sup>

Why did communities, local groups and residents lose confidence that by using the consultation mechanisms and filing a formal complaint against the FSC certificate, their concerns would eventually be heard? What made the process so frustrating, and the outcome so predictable, from the communities' point of view?

In the end, they were proven right by the FSC itself: Despite a formal complaint, and a report confirming several of the communities' complaints, Veracel still holds the FSC certificate. The company is confident that it will also be able to secure certification for new plantations as it prepares to more than double the capacity of its pulp mill to about 2.5 million tonnes a year.<sup>6</sup> The company also does not envisage obstacles in the FSC certification of small-holders growing eucalyptus for Veracel's pulp mill as part of outgrower schemes, the so-called '*fomento florestal*' programme. Yet, in December 2008, the State of Bahia published a study reporting that after inspecting 85 properties that are part of Veracel's '*fomento florestal*' programme, the inspectors found that almost 70% of the

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<sup>5</sup> <http://vimeo.com/50781178>

<sup>6</sup> In the final evaluation report of the first ASI investigate, the ASI notes on Veracel's expansion plans: „ASI's position is that Veracel does not currently have the structure, resources and procedures in place to adequately deal with the potential impacts of a project of this scale (especially social impacts). [...]. In ASI's opinion, major and fundamental improvements in the implementation of Veracel's current procedures would be needed for such a project to be implemented while maintaining full compliance with FSC certification requirements.” <http://www.accreditation-services.com/wp-content/uploads/downloads/2011/10/asirep54sgs2008veracelbrupdtps.pdf> Page 30. Given that the certification body lost its accreditation after a second investigation it would seem doubtful that such “major and fundamental improvements” have been implemented.

operations requiring municipal licenses did not have the required license or only possessed an invalid license. 60% of these properties producing eucalyptus for Veracel had not registered the required protection areas as '*Reserva Legal*'. A second type of protected area required by law, the '*Área de Preservação Permanente*', APP, was used in 70% of the properties for pasture, growing of eucalyptus or for other purposes without adequate protection – all of which constitutes a violation of the law.”<sup>7</sup>

## Disputes and violations that should have stopped the FSC from certifying Veracel

As mentioned above, the certification of Veracel's eucalyptus plantations in the extreme south of Bahia is among the most controversial for FSC. Protests against the issuance of the certificate in 2008 led to two investigations by Accreditation Services International, ASI, the entity used by FSC to supervise FSC certifiers; two damning ASI reports (the first shortly after the certificate was initially issued<sup>8</sup> and a second two years later<sup>9</sup>); and the certifier who had first approved the Veracel certificate, SGS Qualifor, giving up its accreditation that allowed the consultancy to certify plantations in Brazil for the FSC. An official complaint against the certification of Veracel was initiated in 2010 after the Belgian office of FSC felt compelled to act in reaction to a critical article<sup>10</sup> and film<sup>11</sup>, 'Sustainable on Paper'.<sup>12</sup>

When FSC announced first extra audits into the certification, it had been widely assumed that a final decision on the certification would not be taken until after the first additional FSC audit in March 2008. A team of ASI technicians arranged meetings, including with many of the organisations who

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<sup>7</sup> Silvicultura de Eucalipto no Extremo Sul da Bahia (2008): Situação Atual e Perspectivas Ambientais. GOVERNO DO ESTADO DA BAHIA, SECRETARIA DO MEIO AMBIENTE – SEMA & INSTITUTO DO MEIO AMBIENTE – IMA

<sup>8</sup> Full FSC report of the extra audit: <http://www.accreditation-services.com/wp-content/uploads/downloads/2011/10/asirep54sgs2008veracelbrupdtps.pdf>

<sup>9</sup> FSC summaries the findings as follows: “The final ASI FM Assessment Report of the 6 – 10 December audit has found that the Certification Body has not conformed to relevant scheme requirements. The Report reveals 8 Major Corrective Action Requests (CARs), 5 Minor CARs and 2 Observations of non-conformities of SGS Qualifor in their audit of Veracel, relating to issues such as the use of chemicals, health and safety of workers, national, local and international laws, stakeholder consultation, identification of High Conservation Value forests, and other requirements as outlined in the Report. The lead assessor for ASI has therefore recommended suspension of SGS Qualifor program for FSC Forest Management Brazil.” <https://ic.fsc.org/veracel-brazil.319.htm>

<sup>10</sup> <http://www.mo.be/en/article/sustainable-paper-eucalyptus-plantations-bahia-brazil>

<sup>11</sup> <http://vimeo.com/50781178>

<sup>12</sup> FSC website with link to FSC reactions to the film, article and FSC investigations: <https://ic.fsc.org/veracel-brazil.319.htm>

had until that stage felt excluded from the certification assessment of SGS. But two weeks before the appointment between ASI and local groups, the certifier SGS issued the FSC certificate to Veracel. *“The arranged appointment was not useful any more”*, stated CEPEDES (Centro de Estudos e Pesquisas para o Desenvolvimento do Extremo Sul da Bahia), the main environmental group that has tracked Veracel’s operations ever since the company arrived in the region. For CEPEDES, the experience was a re-run of its experience with the FSC certification of another large pulp and paper company in the region, Suzano. *“The FSC label exists only on paper, not in practice,”* local groups claimed. The ASI investigation continued regardless, and the ASI inspection teams issued two devastating reports. The second, in the beginning of 2011, was focused on the quality of SGS’s work. SGS did not allot enough time for a thorough audit, and accepted figures and studies provided by Veracel without verifying the veracity of the information. The report reveals that in ASI’s view, the certificate should not have been granted.<sup>13</sup> But the rules established by the FSC certification scheme limit the power of ASI to sanctioning certifiers. Only SGS as the certifier could have retracted the label. And they did not. Instead, SGS gave up their FSC accreditation to perform plantation assessments in Brazil. The Veracel certification was taken over by another FSC-accredited certifier, Imaflora, the Rainforest Alliance’s Brazilian affiliate which also manages the FSC certification of Suzano (and most other plantation companies with an FSC label in Brazil). While confirming several of the shortcomings identified by ASI, Imaflora in the end also approved the Veracel certification.

Perhaps this is not surprising, considering how field assessments are done: *“When these certification bureaus do their field work in the plantations, the eucalyptus companies give the certifiers [sic] a tour to carry out random checks. So, if there are a thousand [hectares of] plantation, they choose one or two or ten. Which plantations will they choose? The plantations that correspond the best to the principles of sustainability. That’s a big problem. They continue to mask the reality,”* explains João Luis Monti, the former head of one of Brazilian environment agency IBAMA’s local offices. ASI also acknowledged this practise for the specific case of Veracel and SGS in its report. But beyond the observation in the report, there have been no apparent consequences.

One of the realities that the FSC certificate masks is that of multiple, repeated violation of labour, environmental, land and other laws and regulations by Veracel. In order to obtain the FSC label, a company has to respect the laws of the country. According to FSC certifiers SGS and Imaflora,

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<sup>13</sup> Full ASI report: <http://www.accreditation-services.com/wp-content/uploads/downloads/2011/10/ASI-REP-54-SGS-Qualifor-2011-BRA-Veracel-AR-0592.pdf>

Veracel complies with this condition. But João Alves da Silva, public prosecutor in Eunápolis, the location of Veracel's pulp mill, disagrees. "*Veracel violates the labour legislation, the environmental legislation and the criminal code*". More than 700 cases have been registered with the employment tribunal in Eunápolis alone against Veracel and its subcontractors.<sup>14</sup> "*The Public Prosecution can produce proof of environmental crimes, money laundering, tax evasion and corruption. We have a testimony of a town councillor who was bribed by Veracel to persuade his colleagues to vote for favourable laws.*"<sup>15</sup> In 2008, Veracel was convicted by the Brazilian federal court in Eunápolis for illegal deforestation of the Atlantic Rainforest, and was fined EUR 7 million.<sup>16</sup> The case had been brought before the court in 1993 after local organisations provided evidence that Veracel had been involved in illegal deforestation of the native *Mata Atlantica* forests. Veracel was found "*guilty of environmental devastation committed during the first years of operation until 1993.*"<sup>17</sup> The judge also ruled that the licenses for at least 49 thousand hectares of plantation were illegal and demanded that Veracel restore the area of 96.000 hectares of eucalyptus plantation included in the license.<sup>18</sup>

Unsurprisingly, Veracel appealed the court decision. "*Veracel always lodges an appeal in Brasilia,*" says Cleide Guirro, head of IBAMA in Eunápolis. "*We have six inspectors for an area four times the size of Belgium. And eucalyptus is only one of the problems we have to deal with.*" Public prosecutor João Alves da Silva, adds that "*The consumer buying cellulose from Veracel has to realize that he is buying an illegal product and that the sustainability label doesn't reflect reality.*" Rosemary Vianna of certifier SGS explains why the FSC certificate does not reflect this reality: "*We don't want to involve ourselves in the judicial process, as long as there is no final judgement, we follow up on this case via our audits.*" This view expressed by SGS led to both FSC certifiers and the FSC itself deciding that irrespective of a series of pending cases and a valid conviction - even if appealed by Veracel - the company was *in compliance* with the relevant laws of the land.

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<sup>14</sup> Marcus Kröger (2001): Veracel faces legal battles and risks profitability: logging bans threaten the supply of eucalyptus in the pulp mill; lawsuits mount to a closure risk.

<http://maattomienliike.files.wordpress.com/2011/04/lawsuitsveracel2011.pdf>

<sup>15</sup> Sustainable on Paper. <http://vimeo.com/50781178>

<sup>16</sup> Federal Judicial Power of Bahia on 17/06/2008.

<sup>17</sup> Ação Civil Pública 2006.33.10.005010-8, de junho de 2008. See also for more detail Souza, Ivonete Gonçalves e Overbeek, Winfridus (eds.) *Violações Socioambientais Promovidas pela Veracel Celulose, Propriedade da Stora Enso e Aracruz Celulose: uma história de irregularidades, descaso e ganância*. Pg. 18-25.

<sup>18</sup> See also Video by Dutch NGO Both Ends 'Are capital flows from Europe climate-proof?' <http://www.youtube.com/watch?v=yn3bgxn9Iyc> esp. Minute 03:02 – 07:55

### ***Environmental licenses in exchange for equipment to improve roads***

One of the contentious issues regarding the question of whether the area of eucalyptus plantation was inside or beyond limits established in the licensing agreements for Veracel's operations is the planting of eucalyptus by small-holders growing eucalyptus for Veracel. The article below from a local newspaper is indicative of the '*modus operandi*' and testament to the power Veracel possesses in the region. According to local groups, such *negotiations* as described in the article lack an unambiguous legal basis and may well be found illegal by the courts. Irrespective of the legality or lack thereof of the *negotiation*, such exchange of Veracel providing equipment to the municipality in exchange for the major revoking a decision that the council had passed to limit the planting of eucalyptus in the municipality raises questions about the commitment of the company to FSC principals and criteria, both in letter and in spirit.

*"The Mayor of Itabela, Osvaldo Gomes Caribbean, last Monday, April 23, 2012, repealed the decree number 1064/2012, which prohibited, since the beginning of 2011, the extraction of eucalyptus grown through the fomento scheme for Veracel in the municipality.*

*The decree number 1216/2012, of April 23 that was published on Monday by the mayor, revokes the ban [...]. The decree will enter into force after its publication in the Official Gazette of the Municipality. According to the mayor, the decision was taken in consideration of the legal opinion issued by the attorney general of the municipality, Luiz Tadeu Alagia Vaz, responsible for ratifying the acts of the Municipal Department of Environment, in regards to licensing procedures issued by that entity.*

*On 17 March this year the mayor Osvaldo Gomes Caribbean stated publically, in an interview with a radio station, that he had met with representatives of the company Veracel the previous day to negotiate the approval of the licenses, in exchange, according to him, for machines for the improvement of roads in the municipality."*

*"In almost all municipalities where companies have plantations, they have a well-oiled relationship with the executive, legislative and judicial branches. Companies give a "handout", large or small. The "handout" can come in several ways: the recovery of the Town Hall, building a school or day care center, renovation of a public square, sponsoring festivities, among others; and then by-laws are changed in their favour, or stricter laws to plant eucalyptus are prevented."*

Father Joseph Koopman – 2008

Other ongoing disputes in which FSC certifiers have strengthened the company's position and weakened that of local communities and indigenous peoples involve the occupation of the territory of the Pataxó indigenous peoples and the use of '*terra devoluta*', land held by the state and with priority for allocation to landless peasants in the country's agrarian reform process.

Social movements assert that Veracel has planted eucalyptus on roughly 30,000 hectares of land that was never officially registered and thus remains government property, so-called '*terra devoluta*'. Neither the government nor the company have revealed the extent and location of '*terra devoluta*'

that Veracel is using for its eucalyptus plantations, leaving social movements and local groups with the painstaking task of identifying and documenting this illegitimate use of land on the part of Veracel. “We want to grow food crops again, because people don’t eat eucalyptus. This region has the capability to export food instead of importing it, which it does now,” explains a woman whose family lives as one of 65 under plastic sheets along a busy road.



*Harvest of eucalyptus for the production of charcoal. FSC certified operation in Minas Gerais, Brazil*

An emblematic case regarding the ‘*terra devoluta*’ question is that of the landless peasants’ movement MLT. They successfully provided evidence showing that 1,333 ha of the 1,943 hectares within the São Caetano farm in the Eunápolis municipality which are occupied by Veracel with eucalyptus plantations, are ‘*terra devoluta*’. The MLT for this reason had been occupying the area since 2008. At the same time that Veracel applied for an injunction to expel the MLT members from what Veracel considers their land, another court action moved by the prosecutor of the state of Bahia succeeded with the demand that the competent state authorities identify the exact location of the ‘*terra devoluta*’ within the occupied area. In addition, the Attorney General’s Office, in August 2010, intervened successfully against the injunction requested by Veracel. The MLT was able to maintain

their land ‘occupation’, with the prosecution requesting that the areas in dispute *"shall be assigned to the settlement of families of the social movement called Movement of Struggle for Land (MLT)."* The proceedings were suspended by the court for a maximum of one year to allow for the issue to be settled out of court. But Veracel appealed the decision soon after and when a hearing was scheduled, Veracel requested a 60 day period for negotiation with the state of Bahia, and shortly after, requested an extension of 90 days. During the 150 days, no proposal for settlement was presented by the company. The area in question continues to be occupied by landless peasant families while the precise identification of the *‘terras devolutas’* which the Attorney General's Office had requested, continues to be paralyzed.



*Where the water was flowing the whole year before the arrival of the plantations.*

Since the occupation began in 2008, the land has sustained 85 landless families. The MLT camp *‘Baixa Verde’* has become the biggest producer of manioc in the region, and produces a significant share of beans, maize and pineapple. In 2012 alone, the families harvested 1,600 kilos of food crops and produced 10,000 bags of flour. The income from the sale of these staple food crops allowed the purchase of agricultural equipment through the camp as well as providing work for youth and a

school and library for residents of the camp, many of whom use the alphabetization classes provided by local volunteers.

Yet FSC chose the line taken by Veracel, namely that the company has purchased the lands legally, having registered land title for every single hectare it possesses. However, many of these acquisitions remain shrouded in controversy: Even if the last purchase can be shown as having been properly recorded and registered, alleged irregularities and illegalities linked to previous transactions remain unresolved.

The Land Law of 1850, which introduced private land property, is characterised by its complex process by which land is registered and has often been unlawfully appropriated in Brazil. The process has marginalised the large majority of Brazilian peasant communities, as the example above demonstrates. Many peasants were violently expelled from their territory just because they were unable to present a land title document. Though they were rightful occupants, they lost the land. The acquisition process involved many illegal land appropriations and registrations, a reality that is still reflected in Brazilian language today: *'terra grilada'*, land with a fake title document. FSC and its certifiers simplify this complex issue to the benefit of companies in the same way they side with Veracel on the question of whether convictions of environmental crimes that are appealed by the company can be considered non-existent until a final ruling has been obtained.<sup>19</sup>

Indigenous peoples affected by Veracel's plantations have had similar experiences with the FSC certification process. José Fragoso is the head of the Pataxó community Tiba. For decades the Pataxó have been demanding the demarcation of their traditional territory. That territory is today partly covered by Veracel's plantations. In the film, 'Sustainable on Paper', José Fragoso is asked whether he thinks that Veracel deserves the FSC certificate. *"I don't think so. The label is only intended to deceive people who do not know about this [reality of living with the plantations]. It's easy because it's on paper. For the white man it's only true when it is written. [Veracel] does not comply with a lot of principles from this label. They say they treat the indigenous community well. But that is not true."*<sup>20</sup>

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<sup>19</sup> Rulings further up the in the appeals courts are commonly in favour of the companies, and are often ruled on technicalities rather than the actual issue that led to the original conviction – a reflection of *among others* the sophisticated legal strategies used by the companies.

<sup>20</sup> <http://vimeo.com/50781178>

FSC's Principle 3 says that a company must "*identify and uphold indigenous peoples' rights of ownership and use of land and resources.*"<sup>21</sup> Two examples cited in 'Sustainable on Paper'<sup>22</sup> highlight how the FSC has strengthened Veracel's interpretation of the land situation, undermining that of the indigenous Pataxó peoples.

Veracel uses an average of 9 litres of glyphosate, or RoundUp, on each hectare of plantation during the first year of planting<sup>23</sup> as well as "*large amounts of a chemical product blacklisted by the FSC*", Sulfluramid. Sulfluramid was included in the FSC's new list of banned substances in May 2007. Veracel uses the agrotoxin to treat plantations infested by ants. The company, along with other plantations companies in Brazil, was granted a partial exemption for the use of Sulfluramid by FSC in January 2008.<sup>24</sup>



*MST land occupation of Veracel plantation, municipality of Eunápolis, Bahia, 2012.*

<sup>21</sup> FSC's revised Principle 3 is even more specific, stating that "The Organization shall identify and uphold indigenous peoples' legal and customary rights of ownership, use and management of land, territories and resources affected by management activities." <https://ic.fsc.org/the-revised-pc.191.htm>

<sup>22</sup> <http://www.mo.be/en/article/sustainable-paper-eucalyptus-plantations-bahia-brazil>

<sup>23</sup> 'It's only during the first year that we spray nine litres of glyphosate per hectare. It's a Monsanto weed killer, more commonly known as Round Up. It's a perfectly safe product, there's nothing wrong with it.' Letter Veracel in response to article 'Sustainable on Paper'. <http://www.mo.be/en/article/sustainable-paper-eucalyptus-plantations-bahia-brazil>

<sup>24</sup> [http://pesticides.fsc.org/wp-content/uploads/2012/01/FSC-GUI-30-001a\\_V1-0\\_EN\\_Approved\\_Pesticides\\_Derogations\\_2013-01-222.pdf](http://pesticides.fsc.org/wp-content/uploads/2012/01/FSC-GUI-30-001a_V1-0_EN_Approved_Pesticides_Derogations_2013-01-222.pdf)

*“Veracel wanted to plant eucalyptus up to here, ten meters from my house. They sprayed everything with poison while the kids were playing outside. We chased them away with bow and arrow. They don't have the least bit of respect for us,”* explains Kuhupyxa, whose family lives in the Pataxó village Guaxuma. His son Takwahy adds, *“When we used to go into the forest, we ate coconut, avocado, fruit, oranges, jackfruit. That was before they planted these trees here. If we go there now, we find nothing. It's hard to find any fish. There used to be animals we could hunt. But now there's only eucalyptus. It has become hard to survive. [...] The rivers and wells in the neighbourhood dried up, because eucalyptus needs huge amounts of water. And if it rains, the poison of the plantations spills in the rivers – the water we use to drink and to wash ourselves. For two years now we have a water tank in the village because we don't trust the river anymore.”*<sup>25</sup>

FSC certifier SGS knew of the Guaxuma complaint and the extensive use of agrotoxins in the plantations. *“Bearing in mind the used products and dosages, pollution of the water is highly improbable”*, however, is all the SGS certification report had to say about the issue. Not even a mention of the derogation that Veracel obtained for the use of a chemical blacklisted by the FSC.

The lack of respect towards the indigenous peoples' use of their traditional land and the struggle for demarcation of their traditional territory is equally obvious in Veracel's position on the disputed question about the extent of that territory. The article 'Sustainable on Paper' cites former Veracel sustainability officer Eliane Anjos claiming that Veracel maintains an excellent relationship with all indigenous communities in the region, citing the Pataxó community *Coroa Vermelha* as an example. However, *Coroa Vermelha* is one of the exceptions. In the region of Veracel's eucalyptus plantations, only four Pataxó communities have had part of the Pataxó territory demarcated as community territory. *Coroa Vermelha* is one of them. Many others have been waiting for the promised recognition of their territory for more than ten years, and many are today surrounded by eucalyptus.

In 2008, while Veracel was in the middle of the FSC certification process, FUNAI, the Brazilian government entity responsible for upholding the constitutional rights of indigenous peoples, published its first report detailing the location of traditional Pataxó territory. The FUNAI report, based on anthropological and other studies, identified 52,748 hectares as land traditionally occupied by the Pataxó. The Pataxó organisation '*Frente de Resistência e Luta Pataxó*' formally contested the

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<sup>25</sup> <http://vimeo.com/50781178>

assessment conclusions regarding the size of the area, referring to an earlier in-depth analysis by anthropologist Maria do Rosário which documented an area of about 120,000 hectares as traditional Pataxó territory.<sup>26</sup> One of the main beneficiaries of the FUNAI assessment suggesting a reduced area for the traditional territory of the Pataxó was Veracel. The company declared: “*Veracel owns only 3,229 hectares of the area claimed by the indigenous, that is, 6.2% of the total 52 thousand hectares mentioned in the Study for Expansion of the Indigenous Territory of Barra Velha. The Federal Court is responsible for judging the merit of the matter, and local society is awaiting a solution. The situation is conflicting, but it should never be called an invasion.*”<sup>27</sup> Naturally, for the indigenous Pataxó, the perspective is somewhat different. Both their presence in the region and struggle for recognition of their traditional territory long predates the presence of Veracel, and to the Pataxó, ‘invasion’ is an appropriate description of what happened.

However, the SGS certification report only refers to the FUNAI assessment, not to the position of the ‘*Frente de Resistência e Luta Pataxó*’, thus strengthening the position of the company while contributing to the Pataxó position being marginalised. Furthermore, in spite of FUNAI studies showing that Veracel occupies indigenous Pataxó lands, SGS did not consider this occupation of *at least* 3,229 hectares of traditional Pataxó territory a violation of the FSC’s principle 3. The consequence of doing so would have required rejecting certification of Veracel. It is noteworthy that in a similar situation involving the occupation of indigenous peoples’ land in the neighbouring state Espírito Santo by pulp and paper company Aracruz (now Fibria, and co-owner of Veracel), a similar situation had led to the company failing to obtain the FSC certificate until the land dispute had been resolved. The certification report also fails to report on the political interference that the Pataxó believe had influenced the FUNAI report – a claim that has been shown to be true in a number of land demarcation assessments conducted by FUNAI.

<sup>26</sup> CEPEDES (2008): Violações Socioambientais promovidas pela Veracel Celulose, propriedade da Stora Enzo e Aracruz Celulose. [http://wrm.org.uy/oldsite/paises/Brasil/CEPEDES\\_2008.pdf](http://wrm.org.uy/oldsite/paises/Brasil/CEPEDES_2008.pdf)

<sup>27</sup> Letter Veracel in response to the article that appeared in Mo magazine.

## **Why community concerns never stood a chance of being heard**

In the film ‘Sustainable on Paper’, the futility perceived by villagers and local residents of expecting an official complaint with FSC to help their situation, is palpable: *‘FSC and Veracel, they are the same – neither wants to hear about the damage the plantations cause or the power that the company has.’*

FSC certification today is not only a corporate strategy to respond to negative publicity, the scheme has become part of the plantation expansion process. It allows economic special interests whose operations are opposed by local community groups to claim that they are engaging in a multi-stakeholder process, with the three-chamber model of the FSC and the various consultation and dispute resolution mechanisms providing a ‘level playing field’. In reality that field is also tilted strongly in favour of the corporate interests within the FSC. As a result, FSC certification has become an additional difficulty for communities in their struggle to defend their territories against the advance of industrial tree plantations. Certification schemes facilitate the public debate in favour of expansion and in their quest to increase their own market share, undermine local opposition. An unacknowledged imbalance of power between corporations and the certification schemes on the one hand and communities and their allies on the other hand has become manifest. It results in the FSC, by design, strengthening “resolution” of disputes in a way that favors companies while leaving local organizations and communities with frustrated expectations.

For example, community requests for a company to not enter their territory are seldom taken at face value, or even acknowledged. Rather, they are routinely set aside by certification schemes' proposals for 'mediation', 'dialogue', 'amicable dispute resolution' and negotiations over 'adequate compensation' and 'projects that would benefit the community'. Community-level 'objective assessments' – for example, that territories are being invaded – are typically implied not to be 'objective' enough to count, or not to be 'real' enough to be given any weight in consultant reports. No matter how well-documented, assessments that do not strengthen a plantation company's overall position rarely get much attention. The history of how FSC was set up goes some way towards explaining why very few community organizations have even bothered to file complaints with the FSC. From the outside, this state of affairs may appear odd: If the purpose of the complaint process is to identify possible errors in the application and interpretation of the principles and criteria and to prevent or mitigate negative impacts of plantations on local communities living in and around the plantation areas, why is the mechanism not being used more?

First of all, the certification scheme took shape in meetings held in comfortable conference rooms in pricey hotels far away from the communities affected by the industrial monoculture plantations, and far away from the conflicts. Crucially, very few representatives of those communities directly affected by the plantations took part in these meetings. Therefore, the shape and structure of the FSC, the principles and criteria and the procedures used for certification reflect little of the views and realities of directly affected communities. Reflections on the overall idea and limits of certification itself in the context of the realities faced by affected communities remained at best marginal considerations in the development of the FSC. The results of this history are reflected in the frustration of communities like those affected by Veracel's FSC-certified plantations. Their hope had been for the FSC to demonstrate itself as a process that would help reduce the imbalance of power between them and the company. In reality, communities have never been able to influence the direction, key decisions and documents of FSC in a way that would allow them to reflect their reality or their views and ideas on how the system might function. Rather, from the very beginning, communities have been objects in a process that has by default been designed and defined to suit the realities experienced by companies, by other private 'stakeholders', and by 'professional' social and environmental NGOs. Among themselves, these stakeholders divide up the seats and membership on boards, commissions and working groups – in short, the bodies that define the organizational structure of the FSC. And thus it does not come as a surprise that of the few criticisms that ever reach the status of a formal complaint, most are submitted by larger environmental NGOs, not community groups or communities affected by certified plantations.

Given this history, it is also no surprise that the FSC's consultation and complaints mechanisms – with their "procedures", "flowcharts", demands for "robust" or "objective evidence", references to "audits", "surveillance" and so forth – are not exactly community-friendly. They are written in a technical-scientific language far removed from the language used in multi-cultural indigenous and other traditional rural and peasant communities. Absent from these documents are also considerations of the impact that the unequal balance of power and its flipside, the marginalisation experienced by many of these affected communities, have on the use of dispute resolution procedures: their bargaining power is limited by the corporate repression they have experienced when opposing the expansion of plantations into their territories.

But it is not only the language that makes the FSC's '*Dispute resolution*' procedures unsuitable for affected communities. It is also the worldview, the values and the perspectives that this language reflects: The language of the certification schemes demands that what is happening in and around

landscapes dominated by industrial tree plantations be seen, analysed and described in a way that is compatible with the templates of the certification “protocols” and “procedures” of FSC and similar certification schemes – and that it be written in a language that the certification consultant is familiar with. Yet the stories of community members who live in these contested areas, who have their roots there and who have experienced plantation companies, often violently, invading and radically transforming their territories are impossible to fit into these consultation and complaints templates with their limiting technical language and the restricted reading of the certification consultants. As a consequence, the FSC (and) corporate view of things simply dominates the community view, as the examples in this briefing clearly show, just as the corporate decision to expand the plantations on the communities’ lands against their will, dominated over the communities’ decision to maintain their local economies and land use.



*Company promoting a protected area surrounded by eucalyptus plantations in Minas Gerais, Brazil.*

**The case of Plantar in Brazil:** *The impact of industrial tree plantations on water that FSC certifiers fail to see*

The large-scale eucalyptus monoculture plantations of the company Plantar S.A. were certified by the consultancy company and FSC-certifier SCS between 1998 and 2000. One of the main complaints of the communities in this savannah (cerrado) landscape in the north of the state of Minas Gerais has been the severe reduction in the availability of water since the plantations were set up. This is actually a very common complaint and experience of thousands of communities in places in Latin America, Africa, Asia, Spain and Portugal where native vegetation and traditional land use were destroyed in order to set up large-scale industrial eucalyptus tree plantations. Communities in the Plantar area, especially the elders with lots of experience about land use and memories of the landscape before the arrival of eucalyptus plantations, affirm through very site-specific stories the severe reduction in water availability, the seasonal drying up of some rivers that used to run the whole year even in this “cerrado” region.

The response from SCS technicians to these detailed experiences: *“Problems with drought are inherent to the savannahs,”*, and further, that the lack of water experienced by people is due to the *“El Niño phenomenon”*, not to the eucalyptus plantations. The certifiers simply disregarded the testimonies of community people, as well as the well-documented evidence on the issue from many plantation areas around the world. No reflection on the causes for the ruins of water mills throughout the area now covered with Plantar’s eucalyptus plantations. These mills, used by local people to make flour, raw brown sugar and other products in the past, had to be abandoned because the water running the mills started drying up as the eucalyptus plantations kept expanding. The mills are silent testimonies of a region that once had an abundance of water. But SCS preferred to repeat the plantation company line that related to eucalyptus plantations *“until now there are no scientific proves [sic] that it can cause water supply problems in an established region, since the environmental care are [sic] correctly taken, as the riverheads protection,(...)”*.

To be able to survive, several communities surrounded by Plantar’s eucalyptus plantations had to construct deep wells to guarantee their basic water supply. Some depend on water trucks from the outside for their daily needs. But none of these realities appear in the certification reports. It is but one of the examples that highlights how SCS technicians were unable to see the reality as described by the communities faced with the daily struggle to secure water supply in the face of ever-expanding, very thirsty eucalyptus plantations – and how by their own conclusion that these local experiences did not suffice as ‘objective evidence’, the certifier sides with the company which all along has been denying that there is a problem. The company to this day retains its FSC certificate while the communities continue to suffer the impacts, above all, the severe water shortage, they had raised years ago that result from being surrounded by monoculture eucalyptus plantations on such a large scale. Following this initial experience with ‘consultation’ during the FSC certification assessment, and seeing the plantation company receive the FSC certificate without their concerns having even been adequately acknowledged, community members never even considered it worth their while to submit an official complaint.

## Final considerations: the injustice of increasing inequality

Over the years we have heard many testimonies about communities making a substantial effort to meet the tight schedules of the consultants from certification firms announcing short visits on short notice. While the certifiers often arrive in company vehicles (not rarely accompanied by personnel of the plantation company seeking the certification and paying the certifier for their time), many community representatives have to sacrifice their own time and money to travel to meet with them. They tell their stories in good faith and share experiences about the negative impacts they suffer – loss of territories, lack of water, contamination from agrottoxins, lack of areas to produce food, increasing health problems, threats, and criminalization or intimidation, as well as about their hard and bitter struggle to reclaim the land. Often, restricted access to communication and internet services is another problem for communities trying to engage with processes that rely heavily on written and virtual communication. Yet, in spite of their disadvantaged position, in spite of the many perverse impacts they suffer, in spite of the illegalities and the complex issues that involve the presence of industrial large-scale tree plantations in their territories, none of the evidence provided represents an obstacle to FSC certification.



*“Suzano buys certificates”*

In addition, communities in most instances face an overall lack of information about how to deal with these certification schemes and what they actually stand for. Communities generally have little information provided to them about the principles and criteria of a certification scheme. A visit by an FSC-accredited certifier is often the first time community people hear about FSC. What these people actually learn about what FSC is therefore depends on the explanation the consultant is willing to give (often in the presence of a company representative) during the always very short time he or she spends with communities. For the consultant, the priority is to get the information that allows the effective completion of the certification protocols. Questions about the functioning of the FSC are considered out of the scope of the field visit by the consultant. Explaining the context of FSC certification, its different stages and mechanisms, and providing context about different views on and experiences of certification elsewhere, are not the consultant's job. Yet information is rarely provided to community members from other sources either. All this further entrenches community marginalisation. The inequality of the actors involved in the process remains as it was before, or even increases.

The situation is further aggravated by the fact that it is not FSC that issues the certificates, but the certifiers. Direct contact of the FSC with the affected communities therefore is limited. According to the contractual arrangement the FSC has with each accredited certifier, only the certifiers can cancel a certificate. This contractual arrangement significantly limits the influence FSC and associated bodies such as ASI have over certifiers – who are directly paid by the very same companies seeking certification. Some argue that the combination of these two aspects of the FSC-certifier relationship have essentially turned the FSC into a ‘bystander’ in its own certification process.

This reality goes a long way toward explaining why so few communities present complaints:

- by the time they have witnessed the same company that took their land and destroyed their livelihood being awarded a certificate;
- after they have noted that the issues they raised made no difference in the decision to award the certificate;
- experienced the certifier siding with the company's line of argument and against their's;

-and jumped through all the preparatory hoops required to file a complaint, FSC's '*Dispute Resolution*' procedure begins to look as if it will be just one more frustrating experience in an already difficult struggle for livelihood. Too many expectations had been created by the apparently participatory certification scheme.

The frustration and inbuilt marginalisation of community views was all too apparent in the position that the FSC and FSC-accredited certifiers took in relation to Veracel's appeal against the verdict of the federal court of first instance of Eunápolis, which had ruled that Veracel did not have a valid environmental license to operate (see above).

SGS claimed, and FSC agreed, that it didn't want to involve "*itself in an ongoing judicial process*", assessing the claim of multiple legal violations on the part of Veracel. Yet the FSC fails to acknowledge that by tendentiously claiming that the company is in compliance with the Brazilian law, it is already '*involved*'. By default, that is, it has already taken a position about the country's legal processes, no less than if it had taken the view that as long as appeals against the court decision were pending, a final conclusion could not be reached on the question of whether Veracel is in compliance with or in violation of the laws of the country – and hence whether Veracel is in compliance with the first FSC principle. Instead, by adopting the position that nothing had been decided yet, FSC simply ignored a first instance federal court ruling that has yet to be invalidated. Such a position is biased in favour of Veracel, and against the communities and grassroots groups for whom legal proceedings are a recognized instrument of accountability.

Implicitly, FSC certification has come to be used as a tool to promote plantation expansion in defiance of opposition from communities faced with loss of their territories. Few cases show this more clearly than the FSC's continuing to uphold the certification of Veracel Celulose.

By their very **scale** and **monocultural nature**, Veracel's operations – which, like those of any other big industrial plantation, require significant use of water, agrotoxins, chemical fertilizers and fossil energy - simply cannot transform themselves into a land use that would justify the label 'sustainable', or, in the words of the FSC, 'environmentally appropriate, socially beneficial and economically viable'. FSC, by continuing to certify 'the uncertifiable', provides another tool that allows one view to consistently dominate another, replicating the very structures that lead to companies dominating so many other decisions, politics and public opinion in regions and countries

dominated by large-scale plantations while community views, visions and economies are marginalized.

In this context the urgency increases to move beyond certification if we want to stop expansion of plantations and end the violence and violations they cause. After all, the key challenge is not improving plantations. The key challenge is to end the use of the large-scale monoculture production model and the injustices that are inherent in that model.