



TANZANIA

TECHNICAL FORM FOR THE PRESENTATION OF A CASE

Chapter I – Characteristics of the Case

1. Organisation(s) or group(s) responsible for presenting the case

Lawyers' Environmental Action Team (LEAT).

2. Name of the company and/or consortium being accused

Green Resources AS (GRAS) and its Tanzanian based subsidiaries, Green Resources Ltd (GRL) Sao Hill Industries Ltd (SHI).

3. Place of operation in which events related to the accusation/case occurred

Mapanda, Idete and Uchindile, Mufindi District, Iringa region, Tanzania.

Chapter II – Characteristics of the Company / Consortium

1. Country or countries where the company has its headquarters / main office

GRAS owns and manages a group of plantation companies in Mozambique, Tanzania and Uganda. It is a private Norwegian company with Company no. 975 879 968, registered in Oslo, Norway. In 2016, GRAS moved its head office from London in the UK to Dar Es Salaam, Tanzania.¹ GRAS is the majority owner of SHI and GRL, which are both registered in Tanzania and have acquired Idete, Mapanda and Uchindile Forest Plantations since 1997. It has offices in Mufindi District, Iringa region.

2. Ownership of the company's capital

SHI operates the largest sawmill in East Africa, and is the largest supplier of transmission and fencing poles in Tanzania.² According to Orbis database, it is 50% owned by GRAS, and 50% by the Africa Agriculture Development Company, a UK based Investment fund.³ According to the GRAS Annual report from June 2019 however, both SHI and GRL are 100% owned by GRAS.⁴

¹ GRAS, 2017, Environmental and Social Impact Report 2016, page 6

² Sao Hill LTD Company Website: <http://www.saohill.com/about-SHI.html>

³ Orbis SAO Hill Limited Ownership Summary (February 2020)

⁴ Green Resources, Annual Report 2019, <http://greenresources.no/wp-content/uploads/2019/12/Green-Resources-Annual-Report-2019.pdf> (27 February 2020)

GRAS was established by Mads Asprem in 1995, at that time with the name Fjordgløtt, before changing to its current name in 1996. Mads Asprem is a former deputy member of the Norwegian parliament for the Conservative party (Høyre). The GRAS Annual Report 2013-2014⁵ mentions that company had over 80 shareholders when it was first created with a majority of Norwegian capital, having begun its operations in Africa in 1996. Recent information from Orbis shows that the majority of GRAS shareholders are based in Norway, apart from Unicredit Bank of Austria AG, which according to Orbis is the second biggest shareholder (9.46%) after the Norwegian government's majority stake (50.62%) through its private equity fund, Norfund.⁶ Contrary to the Orbis data, the 2019 GRAS Annual Report⁷ states that as of June 30, 2019 Norfund, and ultimately the Norwegian government held a 67% percent stake. It subsequently reports that in October 2019 the Finnish government-funded Finnfund bought shares in Green Resources from Norfund, increasing Finnfund's stake in the company from nil to 25% and reducing Norfund's stake from 67% to 42%, making both the governments of Norway and Finland major investors in GRAS.

3. Country or countries in which the parent company has its operations

GRAS owns and operates plantation companies in Tanzania, Uganda, and Mozambique.

Chapter III – General Argumentation of the Case

GRAS brands itself as the largest 'forestry' and logging company in East Africa, with major tree plantations in Mozambique, Uganda, and Tanzania. GRL operates a sawmill (Sao-Hill Industries Limited) that was acquired after privatisation. GRL has 60,000 hectares of land in Tanzania, of which around 25,000 hectares is plantable. GRL says around 15,500 hectares is planted⁸, but the FSC audit report notes 10,857 hectares is planted.⁹ (with eucalyptus and pines trees).

Since entering Tanzania in the 1990s GRL has been linked to a number of injustices. GRL acquired village land through deceit and misrepresentation. For example, communities in Mapanda and Idete consented to give their land to GRL but at that time villagers were less informed about the importance and value of their land. Communities gave consent to GRL as the company promised employment opportunities and the development and/or improvement of infrastructure including classrooms, medical facilities, water services, and the construction of houses for teachers and health workers. Furthermore, GRL promised to give 10% of the profits from carbon sequestration sales from eucalyptus and pine plantations to local villages.

All GRL's promises were written up and signed by all parties. Since then GRL has been operating successfully for more than 20 years however its commitments to the villages have not been fully realised. To date community members assert there is no permanent employment in their villages as well as poor working conditions, low salaries (below the minimum), and lack of transport to and from work. During the last FSC audit in 2019 community members claimed that there are unresolved land disputes, community members (especially youth) have lost their jobs, community development projects have not been executed, plantation development is lagging, compensation of lost land has not been paid and there is lack of transparency around the income from carbon credits.¹⁰

- What is the background / life context of the affected people and their demands?

GRL operates in areas where communities primarily engage in crop cultivation activities. Land is the primary input for the livelihoods of communities, as they need it to grow food for sustenance and for commercial purposes. Key crops grown in affected communities include: corn, sweet potatoes, bananas, coffee, tea, sunflowers and pyrethrum.

⁵ Green Resources AS, 2015. Annual Report 2013-2014.

⁶ Orbis Green Resources (26 February 2020)

⁷ Green Resource AS, Annual report 2019, <http://greenresources.no/wp-content/uploads/2019/12/Green-Resources-Annual-Report-2019.pdf>

⁸ <https://greenresources.no/operations/tanzania> (7 November 2020)

⁹ SGS (2019) FSC certification report GRL
<http://fsc.force.com/servlet/servlet.FileDownload?file=00PF3000013zwOWEAY>

¹⁰ SGS (2019) FSC certification report GRL
<http://fsc.force.com/servlet/servlet.FileDownload?file=00PF3000013zwOWEAY>

- What are the strategies being pursued by affected people and their network of support?

Affected villages have used their governments to seek audience with GRL and discuss matters. Sometimes affected communities have used district level authorities to facilitate meetings.

- What are the steps taken towards accessing justice by affected communities and their network of support?

No court case has been filed to address injustices by LEAT. One public FSC audit report mentions the Idete community has brought the land dispute with the company to court, but to no avail.¹¹ However, NGOs have worked with affected villages to build their capacities. One local NGO, SUHEDO, provided advocacy activities in the villages on land access, use and control rights.

- What are the national laws being violated by the company? And what are the international treaties/agreements of which the country is signatory?

GRL has violated the Law of Contract Act, Cap. 345 R.E 2002 of the United Republic of Tanzania, which, among other things provides that all agreements enforceable by the law are contracts thus should be undertaken responsibly. GRL has not complied with the agreements it concluded with communities affected by the plantations.

Chapter IV – Impacts: Violations of People's Rights and Destruction of the Environment

1. What are the main impacts of the company's operations in the place the accusation is being made?

The establishment of plantations in the villages has led to many challenges. The main issue is the reduced land for crop cultivation activities in the villages. Communities lost land to GRL on the basis of unfulfilled promises and dishonesty. In some villages the establishment of tree plantations have proliferated the increase in velvet monkeys that rely on farmland for their survival. This has reduced farm produce that is essential for the survival of the communities. The planting of eucalyptus has led to environmental impacts as eucalyptus are not native and have negative effects on the local environment as it induces soil degradation, decline of groundwater level, and decrease of biodiversity. FSC detected invasion of the invasive and exotic Eucalyptus trees in natural areas, which can be a threat to local biodiversity. The plantations are in the range of the natural Miombo woodlands, a large forest ecosystem that is crucial for biodiversity, people and soil and water systems. Plantations in Mufindi are also linked to wildfires that often lead to loss of properties

2. In the impacts mentioned above, what has the company's involvement been?

Direct effects of its operations.

3. Who has been mainly or differently affected by the company's activities?

Villagers overall are affected by company activities, although to different extents.

4. What strategies has the company used to legitimise its actions or quell resistance?

The company legitimised its activities through an Environmental and Social Impact Assessment. Equally, GRL uses Corporate Social Responsibility to legitimise its ambitions to plant and expand its plantations. GRL also offers free tree seedlings to villagers for them to plant in their personal land parcels. GRL also uses greenwashing as one of its strategies, as they publicise their plantations as planted forests, whereas plantations are a wholly different land use, with other ecological, social and economic parameters. GRL is certified under FSC and works with a carbon credit system, providing the company with a green image and access to finance. GRL and GRAS attract investments through promises of development and employment that do not materialise in the end.

¹¹ Supra note 10

Chapter V – Strategies of Resistance: Local and National Level

1. What strategies of resistance have social organisations and affected communities adopted in the company's place of operation?

A number of non-governmental organisations have had activities in the affected communities. CSOs have delivered trainings on land access, use and access rights, management of water resources, ecological agriculture, conservation of natural flora and fauna to affected communities. Firefighting trainings have also been held as villages with plantations are prone to wildfires.

2. Has a case been presented before a local, national or international court?

LEAT is currently not involved in any court cases to address injustices. Villages have often opted to hold talks with the company to demand it fulfill its promises. Local government officials such as district commissioners have sometimes been the facilitators of the talks.

3. Is there evidence of corporate influence that has played a role against the interests of the affected people? How do you describe the company's relationship with the local / national government?

The relationship between GRL and local and national governments is controversial. The national government approves the establishment of plantations not only by Green Resources but also other companies. However, not everyone supports the establishments. Some members of local governments, for example, complain about Green Resources' unfulfilled promises.

4. Has the corporation filed a case against the government - using the ISDS (Investor to state dispute system) or other dispute mechanisms, at ICSID & other Tribunals – what was the outcome?

GRL has not filed any case against the government.

5. Has the corporation filed a case or taken other steps against a community organisation or community activists?

No case has been filed against community activists.

6. What are the main obstacles to access to justice for affected communities?

No case has been opened against the GRL.

Chapter VI – Global Context: Policies, Actors, States and National / International Institutions and Frameworks relevant to the case

1. What official international instruments and/or international declarations are being ignored or violated by the accused company?

GRL operations in Tanzania violate International Labour Norms (ILO), Convention on Biological Diversity, The Constitution of the United Republic of Tanzania, 1977 Cap. 2 R.E 2005 (Article 23 [1] and [2]) and the Law of Contract Act, Cap. 345 R.E 2002 of the United Republic of Tanzania.

2. Which national and international institutions are facilitating the entry and operations of this company / consortium?

NATIONAL

- a. Tanzania Investment Centre (Prime Minister's Office - Ministry of Investments).
- b. Tanzania Forestry Services (Ministry of Natural Resources and Tourism).

INTERNATIONAL

FSC facilitates the entry and operations of GRAS in Tanzania by giving its seal of approval of responsible forest management to its plantations despite social and environmental issues. The sale of Carbon Credits has also been a key part of Green Resources' business model and it conducts public relations around its mission to combat climate change. Several international organisations, consultancies and firms have facilitated this, such as carbon credit standard manager Verra. The CDM, the carbon trading mechanism under the Kyoto protocol, has validated GRAS projects.¹² Green Resources however, failed to achieve the status of verification of its carbon credits under Verra's CCB standards in Uganda and Mozambique¹³. In Tanzania, the carbon credit project still seems to be in operation.¹⁴

3. Was the company's entry to the country facilitated by the policies of international financial institutions?

GRL's entry into the country was largely facilitated by Tanzania's privatisation policies and structural adjustments programs pioneered by Breton wood institutions.

GRAS received funding from International Financial Institutions (direct foreign investments), such as Norfund, FMO and Finnfund.¹⁵ In 2019 GRAS received a USD18 Million IFC investment for developing the plantations in Tanzania based on promises regarding FSC certification, carbon credits and employment (500 permanent jobs and 5,000 seasonal positions).¹⁶ GRAS benefited from the profit driven "reforestation" plans and programs driven by World Bank and FAO policies. Norfund and Finnfund essentially rescued GRAS from bankruptcy in 2018.

4. Which mechanisms or instruments did these financial institutions use to facilitate the entry of the corporation?

The main mechanism was loans and structural adjustment plans and liberalisation of the markets.

5. If it is a transnational corporation what has the position of the government of the corporation's country of origin been? Has it facilitated the entry of the corporation into the country where it is being denounced?

The position of the country of origin, Norway, has been in favour of and in defence of the company. In meetings between civil society and the Ambassador of Norway in Mozambique in July and September 2017, it was clear that the embassy does not accept that there are serious negative social and environmental impacts caused by GRAS and denies any wrongdoings by the company. It therefore facilitates not only the entry of GRAS but the perpetuation of human rights violations. Oakland Institute has clearly demonstrated the unwavering support of GRAS by the Swedish, Norwegian and Finnish governments over the past years, even after evidence of social and environmental harms was documented and reported.¹⁷

6. In the place the company is being denounced have the national and local governments favoured the company by making changes to legislation? Are these changes related to the impunity with which the company acts? What has the position of the national government been in the conflict?

Not applicable.

¹² CDM project database, <https://cdm.unfccc.int/Projects/DB/DNV-CUK1380279225.53/view>

¹³ Verra project registry: <https://registry.verra.org/app/projectDetail/CCB/1617>

¹⁴ <https://registry.verra.org/app/projectDetail/CCB/142>, accessed 16th October 2020

¹⁵ Green Resources, Annual Report 2019, <http://greenresources.no/wp-content/uploads/2019/12/Green-Resources-Annual-Report-2019.pdf> (27 February 2020)

¹⁶ https://www.ifc.org/wps/wcm/connect/news_ext_content/ifc_external_corporate_site/news+and+events/news/green_resources_investment

¹⁷ <https://www.oaklandinstitute.org/sites/oaklandinstitute.org/files/green-resources-setting-record-straight.pdf> (9 November 2020)

7. What role are the company's majority shareholders / owners playing? What is the relationship between the accused company and the government of the country in question?

The company's shareholders defend their interests and justify all proceedings were undertaken in accordance with national legislation or international standards. They consistently deny all allegations of social and environmental impacts.¹⁸ Norfund and Finnfund state they support the company to 'meet its financial and sustainability goals'. Oakland Institute reports that: "the Swedish Energy Agency, suspended funding in 2015 and outlined ten actions for the company to undertake to reinstate payments. The following year, GRAS' major shareholder, global forestry investment firm Phaunos Timber Fund, divested from the company."¹⁹ After resuming its relations, in 2020 the Swedish Energy Agency cancelled the contracts to buy carbon credits due to the impacts of the industrial plantations on communities in Uganda, including land evictions.²⁰

8. Is the company receiving public or private funding? From whom?

The Norwegian government and other development banks including the IFC, Finnfund and the FMO, (previously) invested in GRAS, and according to the Norfund website, the Norwegian government, through Norfund, became a shareholder in 2018 due to "financial challenges" at the company.²¹ The GRAS 2019 Annual Report lists current and non-current loans, including historical loans it had with the IFC (2009, USD10 million) and FMO (2013, USD15 million) that were taken over by Norfund in 2017 and 2018 respectively. Oakland Institute reports that by December 2018, Norfund's investment had reached around USD 27.8 million and by May 2019, Norfund said that it controlled 67% of the shares.

The Finnish government's development financier, Finnfund, gave an initial loan of USD10 million to the company in 2012, which increased to a total of USD14.77 million in 2018. Together with Norfund, Finnfund converted Green Resources' debt into equity and took majority ownership in July 2018²², essentially rescuing the company from bankruptcy. The GRAS 2019 annual report also states that GRAS signed a restated loan agreement in April 2019 with Norfund and Finnfund for USD19.5 million, to finance the company through to 2021, to be repaid in August 2023.²³

This form is based on the "Technical Form for the Presentation of a Complaint against a Transnational Corporation", of the Permanent Peoples' Tribunal, used in the Permanent Peoples' Tribunal on Transnational Corporations in Southern Africa (Manzini - Johannesburg, 2016-18).

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¹⁸ See for example: <https://redd-monitor.org/2019/09/10/swedish-energy-agency-delays-us1-million-carbon-creditpayment-to-green-resources/>

¹⁹ <https://www.oaklandinstitute.org/carbon-colonialism-failure-green-resources-carbon-offset-project-uganda> (9 November 2020)

²⁰ <https://redd-monitor.org/2020/03/11/the-swedish-energy-agency-has-stopped-buying-carbon-credits-from-greenresources-destructive-plantations-in-uganda/>, accessed 16th October 2020

²¹ Norfund, "Green Resources USD, <https://www.norfund.no/investment/green-resources-usd/> accessed 27 February 2020 Oakland Institute (2019) Evicted for Carbon Credits,

²² https://www.oaklandinstitute.org/sites/oaklandinstitute.org/files/evicted-carbon_0.pdf

²³ Green Resources, "Annual Report 2019," <http://greenresources.no/wp-content/uploads/2019/12/Green-Resources-Annual-Report-2019.pdf>, accessed 27 February 2020