



UGANDA

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

Friends of the Earth (FoE) – Uganda

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

Green Resources AS (GRAS) and its Ugandan subsidiary, Busoga Forestry Company Ltd (BFC). BFC has two plantations in Uganda: Bukaleba in Muyege and Kachung in Dokolo district and an industrial site Masese in Jinja district.¹

Chapter II – Characteristics of the Company / Consortium

GRAS owns and manages a group of plantation companies in Mozambique, Tanzania and Uganda with around 34,900 hectares of planted area. 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.² GRAS subsidiary BFC in Uganda has its offices in Jinja. BFC was established in 1996 and is 100% owned by GRAS. As of June 2019 it manages 6,203 hectares of eucalyptus and pine plantation in Uganda - part of a total area of GRAS operations of 34,913 hectares in the three countries.³ BFC has received a 50-year lease for 11,864 hectares of plantations in Uganda with licenses from the National Forestry Authority for plantation forestry in forest reserves including reforestation of 'degraded' lands and maintenance of land for conservation purposes.

¹ Busoga Forest Company (2020) Management plan summary 2020-2025, http://greenresources.no/wp-content/uploads/2020/09/BFC_Management-Plan-Summary-2020-2025.pdf

² GRAS, 2017, Environmental and Social Impact Report 2016, page 6

³ Note that GRAS does not provide documents for BFC Uganda and BFC is not included in its corporate structure in Orbis. Orbis shows Lango Forestry Company Ltd as Norwegian based, whereas GRAS lists it as an Ugandan registered company in its annual report for 2019. Green Resource AS, Annual report 2019, <http://greenresources.no/wp-content/uploads/2019/12/Green-Resources-Annual-Report-2019.pdf>

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 2013-2014⁴ mentions that GRAS had over 80 shareholders when it was 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.⁵ Contrary to the Orbis data, the 2019 GRAS Annual Report⁶ states that as of June 30, 2019 Norfund, and ultimately the Norwegian government, held a 67% 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.

Chapter III – General Argumentation of the Case

Thousands of rural Ugandans were evicted to make room for the plantations or banned from using the land since the arrival of GRAS in the area in 1996 (Bukaleba) and 1999 (Kachung). The livelihoods of people living in the villages adjacent to Kachung Forest Reserve in the Dokolo District have been severely jeopardised as they lost access to the land they used for farming, grazing and the collection of wild food and firewood.⁷ The government gave land to GRAS on which communities lived and which they used to support their livelihoods.

While GRAS was supposed to develop the land that was free of encumbrances (free of other claims), the company went ahead to develop the land amidst community protests. The Bukaleba community are predominantly agriculturists and pastoralists. The communities struggle to find areas to grow food and graze their animals, and for facilities such as for education and health. The argument of this case is against GRAS working in Bukaleba and Kachung at the expense of community suffering.

In 2008 a group of around 300 community members took the company to court demanding compensation for loss of land, which was still not resolved after more than 10 years. In Uganda the majority of the land is customary owned. This means it is inherited under customary law and it is very hard to prove ownership in courts of law as the size is estimated using the knowledge of elders and custodians. The laws that were contravened include Article 237 of the constitution of the republic of Uganda, which states that land belongs to the citizens of Uganda and Article 26(1) protects the right to own property either individually or in association with others, for instance groups of people who hold land communally.

The land act was also violated, which states that Subject to article 237 of the Constitution, all land in Uganda shall vest in the citizens of Uganda and shall be owned in accordance with the following land tenure systems— (a) customary; (b) freehold; (c) mailo; and (d) leasehold. While people lived on the land before the coming into force of the 1995 constitution of the republic of Uganda, who are hence bonafide occupants, the government still gave away their land without the communities being given the option of holding the land in question as required by the law before leasing it to GRAS. Whereas GRAS recognises the communities' land issues it supports strict enforcement of 'illegal' encroachment by community members and defers any responsibility to the government. As exemplified in their response to stakeholders pleading for access to land to support their livelihoods: "Management acknowledges the problem of land shortage in the area and the need for people to grow crops but noted that under the National Forestry and Tree Planting Act, 2003, crop growing in a forest reserve is not allowed."⁸

⁴ Green Resources AS, 2015. Annual Report 2013-2014. 2

⁵ Orbis Green Resources, accessed 26 February 2020

⁶ Green Resource AS, Annual report 2019, <http://greenresources.no/wp-content/uploads/2019/12/Green-Resources-Annual-Report-2019.pdf>

⁷ The case of GRAS plantations in Uganda has been extensively researched and documented by independent media, as well as Oakland Institute: Oakland Institute (2014) The Darker Side of Green, <https://www.oaklandinstitute.org/darker-side-green> & Oakland Institute (2017) Carbon Colonialism, https://www.oaklandinstitute.org/sites/oaklandinstitute.org/files/uganda_carbon_colonialism.pdf & Oakland Institute (2019) Evicted for Carbon Credits, https://www.oaklandinstitute.org/sites/oaklandinstitute.org/files/evicted-carbon_0.pdf

⁸ SGS (2018) FSC Audit report SGS-FM/CoC-008691, page 51, <http://fsc.force.com/serlet/serlet.FileDownload?file=00P300000t135LEAQ>

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

Oakland Institute has documented and reported on several impacts on thousands of people living in adjacent villages in 2014 and 2019. The main issues were rights violations and impacts on livelihoods due to land grabbing and subsequent evictions as well as access limitations for collecting forest resources and grazing areas. People who maintained their land and agriculture around the plantations experienced negative impacts on their production, potentially due to use of pesticides and other environmental impacts of monoculture plantations.

Communities report corporate pollution of land and waterways by agrochemicals used in forestry plantations, allegedly resulting in crop losses and livestock deaths. During one FSC audit, the response from the company to stakeholder concerns was: Management noted that chemicals used are Glyphosate for weed control and Imidacloprid for termite control believed to be environmentally friendly.⁹ Whereas Glyphosate is banned in many regions due to health and environmental concerns.¹⁰ And Imidacloprid has been banned since 2018 in the EU mainly because of impacts on the environment and pollinators.¹¹

Evicted people and those still trying to use the land licensed to GRAS report being subject to physical violence by police officers and private security forces. The communities are now food insecure, and water and soil is allegedly polluted by chemicals. They lack grazing land and land for agriculture. GRAS employs several hundred people but communities report that employment with GRAS is not stable. They claim that when village people are employed they do not earn stable and sufficient incomes to provide for their livelihoods during the year and that there are delays in salary payments. People also report having to buy safety equipment themselves.

The company has been using several strategies to legitimise its actions with the support of international financiers and organisations. In its 2019 report, Oakland Institute clearly described how GRAS uses its good relations with three Scandinavian governments through their diplomatic, financial (Norway and Finland) and carbon credits backing (Sweden). However, in 2020 support started to falter from the Swedish side after reports on evictions and other human rights, environmental and social impacts in Uganda.

BFC obtained a FSC certificate for forest management and chain of custody in 2011 for both plantation areas (9,134 hectares) in Uganda. This certificate is still valid, despite the ongoing human rights issues and environmental concerns. It was renewed during a 2018 audit. It was previously audited by certification body SGS, but is now in the hands of the Soil Association.¹² A separate chain of custody certificate for the BFC Kasaali sawmill, Masese pole treatment plant and Railway Yard sales outlet was issued in 2020.¹³

The sale of Carbon Credits has also been a key part of Green Resources’ business model and 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.¹⁴ Green Resources however, failed to achieve the status of verification of its carbon credits under Verra’s CCB standards in Uganda and Mozambique.¹⁵ The Swedish Energy Agency cancelled the contracts to buy carbon credits because of public reports on the impacts of the industrial plantations on communities in Uganda, including land evictions.¹⁶

⁹ SGS (2018) FSC Audit report SGS-FM/CoC-008691, page 51, <http://fsc.force.com/servlet/servlet.FileDownload?file=00PF3000001135LEAQGreen>, <https://www.oaklandinstitute.org/darkerside-green> & Oakland Institute (2017) Carbon Colonialism,

¹⁰ <https://www.baumhedlundlaw.com/toxic-tort-law/monsanto-roundup-lawsuit/where-is-glyphosate-banned/> (9 November 2020) https://www.oaklandinstitute.org/sites/oaklandinstitute.org/files/evictedcarbon_0.pdf

¹¹ https://ec.europa.eu/food/plant/pesticides/approval_active_substances/approval_renewal/neonicotinoids_en (9 November 2020)

¹² <https://info.fsc.org/details.php?id=a024000006wWlpAAM&type=certificate>

¹³ <https://info.fsc.org/details.php?id=a02f300000m3EuKAAU&type=certificate>

¹⁴ CDM project database, <https://cdm.unfccc.int/Projects/DB/DNV-CUK1380279225.53/view>

¹⁵ Verra project registry: <https://registry.terra.org/app/projectDetail/CCB/1617>

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

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?

Oakland Institute has been extensively researching and documenting the case together with the communities and civil society. It has organised advocacy actions targeting the international backers of the case, including FSC, the Swedish Energy Agency and the Norwegian and Finnish governments. NAPE organised training for communities after conducting a community conservation resilience assessment. They captured community voices on the impacts the project has had on them as well as their demands to the government and the company. In 2018 a coalition of international and Ugandan NGOs wrote petitions to the Ugandan government, the company and the Swedish Energy Agency asking that they stop funding for the project and also address the community demands.¹⁷ Swedish newspapers covered the case and ran a documentary on one of the Swedish television stations.

2. Is there evidence of corporate influence and capture 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?

This is a Norwegian, Finnish, Swedish and Ugandan government supported GRAS as a way of addressing climate change through the sale of carbon credits, which turns out to be a false solution.

3. 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?

No.

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

No case has been filed against communities. There are reports from communities of intimidation by company workers.

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

The obstacles to accessing justice include the high expense of hiring the services of a lawyer on land dispute matters. The justice system in Uganda favours the rich and corporations, who take two approaches:

1. Delaying the case in court for a very long time: "Justice delayed is justice denied". This is true of the court cases started in 2008 that have not been resolved for over a decade.
2. As most of the land in Uganda that is targeted by investors is either public land or customary land companies deliberately temper and destroy boundaries after they take it. This makes it very hard for communities to prove customary land ownership in the courts of law.

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?

The African Charter on Human and Peoples Rights, the UN declaration of Human Rights, ILO norms, FAO VGGT, among others.

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

The facilitating institutions are Uganda Investment Authority, the Ministry of Agriculture Animal Industry and Fisheries, The National Forestry Authority, Ministry of Trade and Investment, the REDD+ program among others. The Norwegian (Norfund), Finnish (Finnfund) and Swedish governments (Swedish Energy Agency) through finance, diplomatic support and carbon schemes. The FSC and carbon credit bodies (UN Clean Development Mechanism/Verra/Climate Community and Biodiversity Alliance¹⁸) give their validation or seal of approval to the projects based on flawed audits.

¹⁷ <https://www.oaklandinstitute.org/letter-erik-knive-green-resources-non-compliance-swedish-energy-agency> (9 November 2020)

¹⁸ <https://www.climate-standards.org/2019/09/23/ccba-statement-on-kachung-forest-project-afforestation-on-degraded-lands-uganda/> (9 November 2020)

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

Yes, GRAS received funding from International Financial Institutions (direct foreign investments), such as Norfund, the Dutch FMO and Finnfund.¹⁹ 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. The World Bank has invested millions of dollars to promote the industrial plantation industry in Uganda, as with a recent investment announcement of almost USD 150 million.²⁰

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

Loans, investments among others.

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?

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.²¹ The Swedish Energy Agency decided to halt its carbon credit contracts in 2020.

6. In the place the company is being denounced, has 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?

The government is siding with the company rather than the people. The government claims the land was a forest reserve and that people occupied it illegally.

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 in line with international standards. They consistently deny all allegations of social and environmental impacts.²² Norfund and Finnfund state they support the company to 'meet its financial and sustainability goals'. Oakland Institute reports that following their "exposé in 2014, revealing the mistreatment and violence perpetrated by the company in Uganda, Green Resources' only carbon credit buyer, 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."²³

¹⁹ Green Resources, Annual Report 2019, <http://greenresources.no/wp-content/uploads/2019/12/Green-Resources-Annual-Report-2019.pdf> (27 February 2020)

²⁰ <https://www.worldbank.org/en/news/press-release/2020/04/23/world-bank-invests-1482-million-to-improve-ugandasforest-management-and-provide-benefits-to-communities-including-refugees> (9 November 2020)

²¹ <https://www.oaklandinstitute.org/sites/oaklandinstitute.org/files/green-resources-setting-record-straight.pdf> (9 November 2020)

²² See for example: <https://redd-monitor.org/2019/09/10/swedish-energy-agency-delays-us1-million-carbon-credit-payment-to-green-resources/>

²³ <https://www.oaklandinstitute.org/carbon-colonialism-failure-green-resources-carbon-offset-project-uganda> (9 November 2020)

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.²⁴ 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 USD27.8 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 2018²⁵, 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 2023.²⁶

9. Has a lobby or interest group become involved with the intention of favouring the company in the conflict?

No.

10. Are you aware of any policies, requirements or procedures of the lending institution/s that are being violated?

Not aware.

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

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²⁴ Norfund, “Green Resources USD, <https://www.norfund.no/investment/green-resources-usd/> accessed 27 February 2020

²⁵ Oakland Institute (2019) Evicted for Carbon Credits, https://www.oaklandinstitute.org/sites/oaklandinstitute.org/files/evicted-carbon_0.pdf

²⁶ Green Resources, “Annual Report 2019,” <http://greenresources.no/wp-content/uploads/2019/12/Green-Resources-Annual-Report-2019.pdf>, accessed 27 February 2020