



USAID
FROM THE AMERICAN PEOPLE



LAND DIVESTMENT

COMPARING EXPERIENCES WITH RETURNING LAND TO LOCAL COMMUNITIES IN MOZAMBIQUE & TANZANIA

INTEGRATED LAND AND RESOURCE GOVERNANCE TASK ORDER UNDER THE STRENGTHENING TENURE AND RESOURCE RIGHTS II (STARR II) IDIQ

Contract Number: 7200AA18D00003/7200AA18F00015

COR: Stephen Brooks

USAID Land and Resource Governance Division

Contractor Name: Tetra Tech

Authors: Leslie Hannay and Laura Eshbach, Landesa

DECEMBER 2023

This document was produced for review by the United States Agency for International Development. It was prepared with support from the Integrated Land and Resource Governance Task Order, under the Strengthening Tenure and Resource Rights II (STARR II) IDIQ. It was prepared by Tetra Tech.

Cover Photo: Community members farm on Green Resources relinquished plot in Arejoane community, Mocuba District, Zambezia Province, Mozambique/Ricardo Franco

Tetra Tech Contact: Matt Sommerville, Chief of Party
159 Bank Street, Suite 300
Burlington, VT 05402
Tel: (802) 495-0282
Fax: (802) 658-4247
Email: matt.sommerville@tetrattech.com

Suggested Citation: Hannay, L. and Eshbach, L. (2024). *Land Divestment: Comparing Experiences with Returning Investment Land to Local Communities in Mozambique & Tanzania*. USAID Integrated Land and Resource Governance Task Order under the Strengthening Tenure and Resource Rights II (STARR II) IDIQ.

All individuals featured in photographs in this document have given their consent for their image to be used in ILRG publications.

LAND DIVESTMENT

COMPARING EXPERIENCES WITH RETURNING LAND IN MOZAMBIQUE & TANZANIA

INTEGRATED LAND AND RESOURCE GOVERNANCE TASK ORDER UNDER THE STRENGTHENING TENURE AND RESOURCE RIGHTS II (STARR II) IDIQ

Submission Date: 7 November 2024

Submitted by: Matt Sommerville, Chief of Party
Tetra Tech
159 Bank Street, Burlington VT 05401, USA
Tel: (802) 495-0282
Fax: (802) 658-4247

Contract Number: 7200AA18D00003/7200AA18F00015
COR Name: Stephen Brooks
USAID Land and Resource Governance Division
Contractor Name: Tetra Tech
Authors: Leslie Hannay and Laura Eshbach, Landesa

DISCLAIMER

This publication is made possible by the support of the American People through the United States Agency for International Development (USAID). The contents of this publication are the sole responsibility of Tetra Tech and do not necessarily reflect the views of USAID or the United States government.

TABLE OF CONTENTS

TABLE OF CONTENTS	1
LIST OF ACRONYMS	3
EXECUTIVE SUMMARY.....	1
GRAS DUAT RELINQUISHMENT MOZAMBIQUE.....	1
GRL LAND RETURN TANZANIA	2
LESSONS LEARNED	2
1.0 INTRODUCTION & BACKGROUND.....	4
2.0 LAND DIVESTMENT DRIVERS & TRENDS	6
2.1 GLOBAL LAND DIVESTMENT TRENDS.....	6
2.1.1 HOW BIG IS THE LAND DIVESTMENT TREND?.....	6
2.2 DRIVERS OF LAND DIVESTMENT.....	6
2.2.1 FAILED OR UNDERPERFORMING INVESTMENTS.....	6
2.2.2 CONCLUSION OF AN INVESTMENT PROJECT.....	6
2.2.3 RECOGNITION OF THE LAND RIGHTS OF RURAL COMMUNITIES	7
2.2.4 COMMUNITY DEMAND FOR LAND.....	7
2.2.5 POLICY REFORM	7
2.3 LAND DIVESTMENT CHALLENGES & RISKS.....	8
2.3.1 UNCERTAIN LEGAL PATHWAY FOR LAND RETURN.....	8
2.3.2 UNCLEAR/INCOMPLETE LAND ACQUISITION MAY CHALLENGE RETURN OF LAND.....	8
2.3.3 ELITE CAPTURE.....	8
2.3.4 DAMAGED OR DESPOILED LAND AND ENVIRONMENTAL HARMS.....	8
2.3.5 LIABILITY FOR FURTHER HARMS.....	8
3.0 CASE STUDY: GRAS MOZAMBIQUE.....	10
3.1 SUMMARY OF INVESTMENT	10
3.2 LEGAL CONTEXT FOR LAND DIVESTMENT	11
3.3 DIVESTMENT PROCESS.....	13
3.3.1 EVALUATING OPTIONS FOR RESPONSIBLE EXIT	13
3.4 CHALLENGES	15
3.5 SUCCESSES	17
4.0 CASE STUDY: GRL TANZANIA LAND RETURN.....	19
4.1 SUMMARY OF INVESTMENT	19
4.2 LEGAL FRAMEWORK	19
4.2.1 LEGAL CONTEXT FOR LAND DIVESTMENT	21
4.3 DIVESTMENT PROCESS.....	22
4.4 SUCCESSES	23
4.4.1 DIVESTMENT.....	23
4.4.2 ENGAGEMENT AT MULTIPLE LEVELS.....	23
4.4.3 SOCIAL DEVELOPMENT FUNDS.....	23
4.5 CHALLENGES	26
4.5.1 NEED FOR ADDITIONAL ENGAGEMENT OF DISTRICT OFFICERS.....	26
4.5.2 COMMUNITIES NEED ADDITIONAL SUPPORT POST-RETURN.....	26

5.0 LESSONS LEARNED.....	27
5.1 LESSON: WHEN LAND IS RETURNED, COMMUNITY-LEVEL OUTCOMES CAN BE POSITIVE, PARTICULARLY WHERE THE COMPANY HAS AN INTEREST IN MAINTAINING A POSITIVE RELATIONSHIP WITH THE COMMUNITIES INVOLVED.....	27
5.2 LESSON: COMPANIES CONCERNED ABOUT REPUTATIONAL RISKS SHOULD FACTOR COSTS OF LAND RETURN INTO THEIR ACQUISITION COSTS.	27
5.3 LESSON: THE LEGAL FRAMEWORK – AND HOW IT DEFINES COMMUNITIES’ RIGHTS TO LAND – IS CRITICAL TO UNDERSTANDING HOW DIVESTMENT CAN OR SHOULD HAPPEN.....	28
5.4 LESSON: AS WITH OTHER PHASES OF THE LAND INVESTMENT LIFE CYCLE, RESPONSIBLE ENGAGEMENT FOR LAND DIVESTMENT REQUIRES DOING MORE THAN JUST FOLLOWING THE LETTER OF THE LAW.....	29
5.4.1 RISK ASSESSMENT.....	29
5.4.2 RIGHTS CLARIFICATION AND BOUNDARY DEMARCATION.....	30
5.4.3 COMMUNITIES NEED ADDITIONAL SUPPORT POST-RETURN.....	30
5.4.4 STRONG ADVOCACY AND TRANSPARENT PROCESSES MAY BE NECESSARY TO ENSURE THAT COMMUNITIES BENEFIT FROM DIVESTMENT.....	30
6.0 CONCLUSION.....	31
ANNEX 1: INTERNATIONAL STANDARDS FOR RESPONSIBLE DIVESTMENT	33
AFI PRINCIPLE & OPERATIONAL GUIDANCE ON REMEDIATION & ACCESS TO REMEDY	33
IFC PERFORMANCE STANDARD 1	33
IFC PERFORMANCE STANDARD 5	34
ANNEX 2: REFERENCES	35

LIST OF ACRONYMS

AFi	Accountability Framework
CaVaTeCo	Community Land Value Chain
CSO	Civil Society Organization
DUAT	<i>Direito do Uso e Aproveitamento da Terra</i> (Land use and benefit rights - Mozambique)
ESG	Environmental, Social, and Governance
ESIA	Environmental and Social Impact Assessment
GOM	Government of Mozambique
GOT	Government of Tanzania
GRAS	Green Resources AS
GRL	Green Resources, Limited
ha	Hectare
IDIQ	Indefinite Delivery/Indefinite Quantity
IFC	International Finance Corporation
ILRG	Integrated Land and Resource Governance
NGO	Non-Governmental Organization
PS	Performance Standard
SDF	Social Development Fund
STARR II	Strengthening Tenure and Resource Rights II
TIC	Tanzania Investment Centre
USAID	United States Agency for International Development
VA	Village Assembly
VCC	Variable Capital Company
VLUMC	Village Land Use Management Committee
VLUP	Village Land Use Plan

EXECUTIVE SUMMARY

Guides for responsible land-based investments tend to focus on the beginning of an investment, but there has been far less attention to what happens to land at the end of an investment - when investments fail, projects reach a natural conclusion, or companies need to divest. National laws tend not to contemplate the end of an investment or the withdrawal of a company that has acquired community lands; best practices and international standards likewise provide limited direct guidance.

While there is little information available on the extent of land divestment,¹ available data on land investment indicates a significant amount of company-acquired land globally is not being used for its intended investment purpose and that some lands may be beneficial for companies and communities to return. A recent study of 4,558 land deals covering an area of 179,120,562 ha estimated that 19 percent of deals and 23 percent of land area subject to investment had been abandoned, were still under negotiation, had expired (without any use or occupation of the land), or the investment had failed or ended (Borras et al, 2022).² These estimates suggest that a significant proportion of land deals have not resulted in the anticipated commercial use, and raises the question of how governments and companies have responsibly considered and addressed community rights in the process.

Two recent cases of voluntary relinquishment of land by a company offer a rare opportunity to better understand land divestment, and to identify motivations, risks, and good practices to carry out a responsible exit that supports communities' rights and benefits. Established in 1995, Green Resources, A.S. (GRAS) is the largest forest development and wood processing company in East Africa, with operations in Uganda, Tanzania, and Mozambique. The company recently carried out large-scale land divestments under different circumstances and at different scales in Mozambique and Tanzania.

GRAS DUAT RELINQUISHMENT MOZAMBIQUE

In Mozambique, GRAS carried out a divestment process in which it relinquished approximately 239,000 hectares (ha) of land and transferred related assets to communities in Zambézia, Nampula, and Niassa Provinces. Engaging in this process between 2018 and 2023, GRAS partnered with local subcontractor Terra Firma and a range of non-governmental organizations and community-based organizations through financial support of the United States Agency for International Development's (USAID) Integrated Land and Resource Governance Program (ILRG).

The GRAS relinquishment process faced a number of challenges, including an unclear legal framework regarding the disposition of assets found on the land upon relinquishment; the need to address legacy land issues; poor record keeping and inconsistent processes; and the scale, complexity and relatively short timeline of the intervention. Despite these challenges, GRAS successfully relinquished all its rights of use and benefit of land - referred to by its Portuguese name *Direito de Uso e Aproveitamento da Terra* (DUAT) - titles to the state, registered high-value immovable assets in the Real Property Register (*Registo Predial*), and drafted the sale and purchase contracts for the transfer of existing plantations and other assets to the communities. Over the course of the process, ILRG supported the delimitation or reconfirmation of community land, strengthened community governance institutions and capacity on land rights, supported the formation of community land associations with equitable gender representation, and supported communities to manage and benefit from natural resources and land

¹ Land divestment is defined here as a company's sale or forfeiture of land for financial, ethical, or political objectives (Legal Information Institute, 2022).

² The outcome of investment deals varies significantly across geographies, and in some countries the proportion of non-operational deals may be significantly higher. For instance, a report on land-based deals in Myanmar from 1991-2016 conservatively estimated that less than 15 percent of the land allocated for agriculture was in use for the intended commercial purposes (Thein, et al., 2018).

assets. These efforts reached over 109 communities comprising 334,00 people (177,000 adults age 15+) over more than 720,000 hectares.³

GRL LAND RETURN TANZANIA

In Tanzania, Green Resources, Ltd. (GRL), a GRAS subsidiary, initiated and completed the voluntary relinquishment of three parcels comprising 14,173 ha to communities in Mufindi and Kilombero Districts in 2022 to 2023. With the support of Haki Ardhi, a Tanzanian land rights organization, and Landesa, an international land rights organization with offices in Tanzania, the project worked to fortify communities' land rights and capacity to sustainably manage the returned land by supporting a review of each community's Village Land Use Plans (VLUP) and through targeted capacity strengthening and awareness raising following the land return.

The GRL land process aimed to ensure that communities benefited from the land return. The main barrier that the project faced was the legal framework, which offers few options for transferring company land back to communities.

LESSONS LEARNED

This report draws on project and company documents, supplementary desk research, and remote interviews with participants in the land divestment cases. A review of these experiences in Tanzania and Mozambique demonstrates good practices for responsible land investment that should apply to divestment, which is a part of the investment life cycle. The end of an investment should be planned for as any other aspect of investment and should employ many of the elements of good practice that should be familiar to responsible investors: risk assessment; identification of land rights holders; documentation of rights; engagement and establishing transparent, continual, multi-directional communication between a company and communities, as well as with government and civil society; support for institutional capacities to administer land and resources and support for participatory land management; and transparency. Having employed these elements, the GRAS examples demonstrate:

- Community outcomes can be positive, particularly where the company has an interest in maintaining a positive relationship with the communities involved.
- Responsible land divestment has monetary and time costs that companies should plan for.
- The legal framework – and how it defines communities' rights to land and assets – is important to understanding how divestment can or should happen. Ambiguities or gaps in the legal framework can create conflicts and insecurity, especially in cases where communities and government authorities have competing interests.
- As with other phases of the land investment life cycle, responsible land divestment requires doing more than just following the letter of the law. Responsible divestment processes should include:
 - Risk assessments for companies and communities;
 - Rights clarification and boundary demarcation; and
 - Additional support for communities to realize and defend their rights to land and assets.
- Despite the substantial benefits to communities seen in these two cases, such outcomes may not be the norm. Responsible divestment is more time-consuming and far costlier than just

³ GRAS titled land was relinquished and then incorporated into communities' overall land areas, which were then delimited as communities' DUATs. The delimited area encompassed the community DUAT as a whole, not just that part of their land that overlapped with GRAS titles. The total recorded land area was therefore larger than the total area of land that GRAS relinquished.

walking away from a failed investment and so may not be the path of choice for companies seeking to relinquish lands which tend to be companies in financial distress. Additionally, the Tanzania case in particular illustrates issues in the national legal framework that leave communities vulnerable to permanent disenfranchisement once village land has been ceded to an investor, a circumstance likely repeated in other country contexts.

Further research and learning are needed to more fully understand the range of risks and opportunities land divestment presents for communities and companies and to develop guidance for responsible land divestment.

1.0 INTRODUCTION & BACKGROUND

Land return, or land divestment, is a process in which a private company legally transfers all or part of its landholdings back to a community or government.⁴ This can occur for a range of reasons, for example when a specific investment fails, when a company faces financial stress and needs to consolidate its landholdings or collapses entirely, or when a company finds that it cannot meet its initial development expectations, amongst other reasons. While the precise scale of the phenomenon is not known, recent cases suggest that land return may be on the rise globally, as companies, communities, and governments re-evaluate land requirements following the surging numbers of large-scale land acquisitions by foreign investors in the mid-2000s. According to a report by the World Bank, of the 45 million hectares (ha) of land under negotiation in 2009, 70 percent was in Africa (Byerlee et al, 2011),⁵ much of which was community land already occupied and used by local people (Hall, 2011). In many cases, some or all the land acquired stands idle. During the initial acquisition of land, there may be incentives to acquire more land than is immediately necessary, and during the initial stages of investment, land may be seen as an asset. In cases where development is delayed, land can become a liability, with expectations and promises made to communities and government that some investors may find increasingly difficult to meet.

As a rising global population and economic and climate shifts intensify communities' demand for land for agriculture, carbon capture, natural resources development, and human settlements, land return holds promise as a way to correct for excessive land allocation, and to address historical injustices amidst a growing understanding of the value of land to communities as an economic and cultural asset necessary for resilience and sustainable growth (Brondizio et al, 2021; Kennedy et al, 2023). In response to the changing context for land investment and identified risks of holding large areas of land, there are pressures for companies to identify alternative models for accessing land (Cotula and Leonard, 2010), though the scale of demand for new partnerships is not clear. Land return may offer an opportunity to restructure company-community relationships to make way for more sustainable and mutually beneficial arrangements. Companies may also pursue land return as part of downsizing, risk management, or dissolution.

As with any change in land use or ownership impacting rural communities, land return carries risks, and should be approached in such a way that protects communities' rights and avoids or mitigates negative impacts, while ensuring that communities benefit and participate in decisions that impact their land and livelihoods. Yet there is little guidance that deals directly with land return: national laws tend not to contemplate the end of an investment or the withdrawal of a company that has acquired community lands; best practices and international standards likewise provide limited direct guidance.⁶

Two recent cases of voluntary relinquishment of land by a company offer a rare opportunity to better understand land divestment and to identify motivations, best practices, risks, and questions for further research. Established in 1995, Green Resources, A.S. (GRAS) is the largest forest development and

⁴ For the purposes of this paper, land divestment is defined as a company's sale or forfeiture of land for financial, ethical, or political objectives (Legal Information Institute, 2022). This paper discusses company-driven processes of land relinquishment and does not delve into processes of land restitution, tribal land reclamation (also referred to as 'Land Back'), or other movements seeking redress for colonial dispossession of local peoples. Nonetheless, such movements are reflective of the growing recognition of Indigenous rights and the centering of land in efforts to address historical injustices and are relevant to understanding the broader context in which land divestment occurs.

⁵ Pressures on Indigenous and rural communities' land continue to intensify amid growing demand for undeveloped land to support the energy transition. A recent study found that nearly 60 percent of Indigenous Peoples' land in 64 countries is currently under threat from industrial expansion (Kennedy et al, 2023).

⁶ International Finance Corporation (IFC) Performance Standards 1 and 5 provide the most direct guidance on project closure (see Annex 2).

wood processing company in East Africa, with operations in Uganda, Tanzania, and Mozambique.⁷ The company recently carried out large-scale land divestments in Mozambique and Tanzania. From 2018 through 2023, GRAS carried out a divestment process in which it relinquished approximately 320,000 ha of land and assets in Zambézia, Nampula, and Niassa Provinces of Mozambique. This process was done in partnership with local subcontractor Terra Firma and a group of non-governmental and community-based organizations through financial support of the United States Agency for International Development's (USAID) Integrated Land and Resource Governance Program (ILRG). From 2022 to 2023, Green Resources, Ltd. (GRL), a GRAS subsidiary in Tanzania, initiated and completed the voluntary relinquishment of three parcels comprising 14,173 ha to communities in Mufindi and Kilombero Districts, Tanzania.

This analysis presents case studies of these two recent land divestment examples and discusses successes, challenges, and lessons learned to shed light on the risks, potential, and further research needed on the subject of land return.

⁷ In February 2023, New Forests Africa Investments VCC (the "VCC" and acting for purposes of its sub-fund, the African Forestry Impact Platform) acquired 100 percent of the shares in Green Resources AS from Norfund, Finnfund, and other minority shareholders. The VCC is an open-ended variable capital vehicle incorporated in Singapore and managed by New Forests Asia (Singapore) Pte Ltd ("New Forests").

2.0 LAND DIVESTMENT DRIVERS & TRENDS

2.1 GLOBAL LAND DIVESTMENT TRENDS

2.1.1 HOW BIG IS THE LAND DIVESTMENT TREND?

There is little data available on the precise scale of land divestment. While there have been several cases in recent years in which governments have returned land previously allocated to private companies, for instance by canceling a lease or concession, these have primarily been government-driven processes in which companies have played a limited role. A review of available sources has found few reported examples of a company divesting land with the aim of returning that land to a community.

While there appear to be few examples of divestment, global land-based investment data suggests that, with a large proportion of land-based investments still non-operational, land relinquishment could become an increasingly common phenomenon. A recent study of the extent of failed or non-operational investments found that, of a total of 4,558 land deals covering an area of 179,120,562 ha, 850 deals (41,963,232 ha) were classified as non-operational (Borras et al, 2022). By this estimate, 19 percent of deals and 23 percent of land area subject to land investment had been abandoned, or the agreement was under prolonged negotiation, had expired (without any use or occupation of the land), or the investment had failed or ended.⁸ These estimates suggest that there may be a large number of investments that could be relinquished, including – given the right conditions – to communities. As such, land divestment should be better understood as an element of responsible investment across the project life cycle.

2.2 DRIVERS OF LAND DIVESTMENT

2.2.1 FAILED OR UNDERPERFORMING INVESTMENTS

Underperformance or outright failure of an investment could be a strong motivation for an investor to divest some or all of the land it has acquired. There are several reasons an investment could fail or be deemed by an investor or its shareholders to be underperforming. In some cases, the business purpose or crop may no longer be viable or profitable. For instance, the jatropha rush of the early 2000s drove investors to acquire huge concessions, with more than 2.2 million acres being planted globally by 2008 (Mowbray, 2008). The majority of these investments failed due to low yields and an economic downturn that led investors to back out of jatropha plantations. Other deals made during the land rush of the early 2000s failed to materialize due to procedural or consent issues leading to the revocation of land concessions. In addition, market shifts and changes in economic outlook and risks related to landholding may render the scale of a landholding unsustainable or undesirable, and companies may be interested in returning part of an initially planned concession. It must be noted that while there are many examples of failed investments following the rush for land for biofuels, in none of these cases are their reports of a company undertaking a considered process for land return to communities, and subsequent actions on the part of governments to resolve or restore community rights are not documented. In these cases, land either reverted to the government or was abandoned, with the latter situation creating potential uncertainty and risk of conflict and poor land management.

2.2.2 CONCLUSION OF AN INVESTMENT PROJECT

⁸ The outcome of investment deals varies significantly across geographies, and in some countries the proportion of non-operational deals may be significantly higher. For instance, a report on land-based deals in Myanmar from 1991-2016 conservatively estimated that less than 15 percent of the land allocated for agriculture was in use for the intended commercial purposes (Thein et al, 2018).

Land divestment, similar to environmental rehabilitation, may also be considered as a planned stage of the investment life cycle, as a natural procedure taken when a project ends. While more commonly discussed in the extractives context, a desire to responsibly exit from a land investment when the investment purpose has been fulfilled could be a driver for land divestment in other sectors, as well.

In the extractives sector, post-mining land use has gained prominence as a priority issue in project lifecycle planning for many major companies (Keenan & Holcombe, 2021). Lessons and good practices could be usefully drawn from mining sector experience, particularly regarding how post-mining land use is considered and included in the planning, contracting, and operational phases of some mining projects.

2.2.3 RECOGNITION OF THE LAND RIGHTS OF RURAL COMMUNITIES

Increasing awareness, advocacy, and formal recognition of the rights of rural communities and Indigenous Peoples embodied in Environmental, Social, and Governance (ESG) standards and related shareholder and reputational considerations can increase pressure on companies to return land that they previously acquired.

Respecting the land rights of rural communities is now a mainstream commitment of companies and development finance institutions. This growing recognition has increased pressure on and scrutiny of companies, moving them to reevaluate their landholdings in accordance with ESG standards and as a means to minimize their exposure to risk arising from legacy land issues or investment contexts in which land investment is a tense issue.

2.2.4 COMMUNITY DEMAND FOR LAND

The growing strength of advocacy for community rights and increasing awareness among Indigenous and local communities of their rights to land in the context of private sector investment may be a driver for land divestment. Examples of communities demanding the return of land from investors that fail to respect communities' rights or uphold the negotiated terms of an agreement are increasingly common across the globe. In North America, a tribal land reclamation movement (also known as LandBack) seeks the return or protection of Indigenous land through protests, litigation, and advocacy (Zimmer, 2022; LandBack, 2021). Such efforts may factor into how a company and its lenders consider the relative costs and benefits of retaining or divesting land.

2.2.5 POLICY REFORM

Changes in government policies to recognize or formalize Indigenous and community land rights can drive the return of land to rural communities. Where countries' legal frameworks have recently embraced stronger protections for community land rights and participatory land and resource decision making by communities, companies may face pressure to take measures to redress legacies of injustice, even if the acquisitions complied with existing laws when they occurred. For instance, in Nicaragua, the adoption of a law⁹ recognizing the territorial rights and autonomy of Indigenous communities resulted in numerous instances in which privately titled land, including land held by private companies, was situated within the newly delimited territorial boundaries of Indigenous communities. In at least one case, this legislative change prompted a company to voluntarily transfer land and assets to an Indigenous community.¹⁰ In other cases, policy and regulatory environments may deteriorate leading companies to withdraw from agreements, including offloading interests in land (Borras Jr et al., 2022).

⁹ Law 445 of 2003. Law of Communal Property Regime of the Indigenous Peoples and Ethnic Communities of the Autonomous Regions of the Atlantic Coast of Nicaragua and of the Rivers Bocay, Coco, Indio and Maiz.

¹⁰ Between 2019-2023, MLR Forestal, a privately held company that develops forestry and agroforestry plantations for teak and cacao production in Nicaragua, finding that one of its farms fell within the boundaries of the Indigenous Mayangna Sauni-Arunka territory designated under Law 445, carried out the transfer of a 114-ha farm to the community (MLR Forestal, 2023).

2.3 LAND DIVESTMENT CHALLENGES & RISKS

On the surface, return of land to communities may seem like a straightforwardly positive proposition that simply reverts the land to the people from whom it was originally acquired. In reality, land divestment presents a number of challenges and risks to both communities and investors.

2.3.1 UNCERTAIN LEGAL PATHWAY FOR LAND RETURN

National legal frameworks offer little guidance for how a company should go about the process of returning land, and in many cases these frameworks are not clear about to whom rights should revert when a company exits an investment. Many countries may simply not have contemplated or provided for a scenario in which land would be returned to or turned over to a community. In many other countries (as in Tanzania), governments have prioritized land investment and have made explicit in the law that investment land must be recategorized from “village” land to “general” or state land and cannot easily return to community management.

Even where there are no such barriers that explicitly challenge communities’ right to take possession of relinquished land, in many countries, the framework for acquiring land rights has been streamlined for investors, while communities seeking to formalize their rights face costly and complicated processes. One study of 15 countries in Latin America found that communities typically wait decades for land titles, while companies can acquire land or begin operations in as little as 30 days (Notess & Veit, 2018).

Such contexts that either have no procedure for divestment or create barriers for formalizing communities’ rights, may challenge a company’s efforts to transfer rights to communities.

2.3.2 UNCLEAR OR INCOMPLETE LAND ACQUISITION MAY CHALLENGE A SIMPLE RETURN OF LAND

Land acquisition that failed to follow required procedures or was poorly documented may make it difficult for an investor to know to whom land should be returned, on what terms, and even what the proper boundaries are of the land in question. Poor community consultation and opaque land deals may have resulted in encroachment, competing claims to land, and other challenges; where land has sat idle for many years, these challenges may be greater still.

2.3.3 ELITE CAPTURE

Local elites (from within communities, local or national government, or company staff) or interest groups may resist the return of land to communities, seeking to acquire the land or assets for economic, social, or political benefits or influence. This risk presents an especially difficult challenge to companies’ ability to return the land. In such a situation, the company risks both the reputational harm of being associated with a failed land investment and a faulty land return, as well as damaged relations with host country or local government that could jeopardize the company’s ongoing operations.

2.3.4 DAMAGED OR DESPOILED LAND AND ENVIRONMENTAL HARMS

Communities receiving land from an existing investor risk assuming liability for any environmental issues or contamination that are left on the land or may be left with degraded land. For instance, a common practice in Myanmar during the land boom of 1991-2016 was for logging companies to skirt restrictions on logging by acquiring forested land for oil palm or rubber concessions. Companies would clearcut the trees and abandon the land (Borras et al, 2022), leaving communities without land or dealing with the environmental consequences of degraded land.

2.3.5 LIABILITY FOR FURTHER HARMS

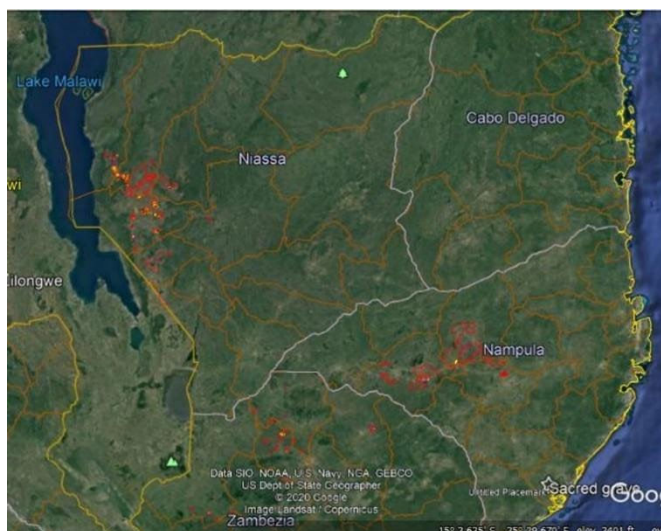
Even where a company has fulfilled all legal obligations to relinquish land, it may be held responsible for any subsequent issues that arise on the relinquished land or in the affected communities. A company returning land may risk drawing unwanted attention or scrutiny of their operations, or negative attention and blame for the failed investment. This negative attention could impact ongoing or future operations (in cases where a company remains in operation on land adjacent to or nearby the relinquished land) by straining its social license to operate and complicating relations with communities. These lasting impacts are reflected in the common occurrence where communities may continue to refer to contested land by company names even decades after a company's operations have ceased.

3.0 CASE STUDY: GRAS MOZAMBIQUE

3.1 SUMMARY OF INVESTMENT

In 2018, Green Resources held a total land area of approximately 360,000 hectares in Mozambique in Nampula (125,000 ha), Niassa (102,000 ha), and Zambézia Provinces (135,000 ha), across a total of 17 districts. These landholdings comprised nearly 150 parcels. Of these, the majority of parcels were acquired through the purchase or merger with other commercial forestry enterprises, including Chikweti Forests, Tectona Lda, and Ntacia Lda.; approximately 15 percent were acquired by GRAS directly.

In late 2018 and early 2019, GRAS commenced a corporate restructuring and consolidation process. Having determined that it had acquired far more land than it could effectively develop, GRAS wanted to relinquish a significant portion of its landholdings to limit its risk and financial exposure and focus on developing its plantation forest operations in Niassa. Through a detailed audit of its landholdings, GRAS identified 238,852 ha for relinquishment, comprising 123 parcels scattered across the three provinces (see Annex 1). These parcels were held under either provisional or definitive DUAT titles, acquired in exchange for promised community jobs and benefits.¹¹ An estimated 320,000 people lived on the land to be relinquished.¹²



These communities were largely agricultural and poor, with an estimated 60 percent earning less than \$1.90 USD per day. Through this audit, GRAS sought to understand, in detail, all the processes that had been followed by previous firms in acquiring the land, and to ensure that all steps during these acquisitions were appropriate and properly documented.

The parcels to be returned were geographically scattered and were diverse in terms of the quality of the land, resources on the land, the extent of GRAS' activities on the land since acquisition, residual development potential, physical assets, and the presence and extent of human settlements on each. Some of the lands contained the remnants of tree plantations that could be used for limited livelihoods purposes; a small number of parcels included commercially valuable plantations. The remainder consisted of failed plantations, natural vegetation (dense forest, woodland, and savannah), cultivated fields, and villages. Overall, approximately 24 percent of parcels to be returned contained "High-Value Assets" which were defined as parcels having infrastructure, trees of commercial value, or important natural resources. As noted, the processes by which lands were acquired (either by GRAS or by a predecessor company) (see Table 1), and the extent and quality of community consultation and negotiations, also varied significantly.

¹¹ A provisional DUAT (which is the 'right to use and benefit from land', or *Direito de Uso e Aproveitamento de Terra*) is granted for a period of two to five years to commercial applicants, until the investment can be verified and approved; once approved, a definitive DUAT title is granted for terms of up to 50 years, renewable for a further 50 years.

¹² Source: ILRG estimate, using global population data, of the number of people who lived on the delimited concession land.

TABLE I. GRAS MOZAMBIQUE LAND DIVESTMENT TOTALS

Province	Acquiring Entity	Total area relinquished (ha)	% of GRAS holdings in province to be returned	Community DUAT Area Delimited (ha)
Niassa	Chikweti	52,831	Niassa: 13.5%	229,986
	Niassa Green Resources	2,627		
	Massangulo	5,969		
Nampula	Lúrio Green Resources	153,218	Nampula: 94.4%	142,891
Zambézia	Ntacua	4,748	Zambézia: 100%	205,166
	Tectona	19,459		
Scattered HVP	Various communities	Totals incorporated within above	-	145,079
Total GRAS area returned (ha):		238,852	Total area delimited:	723,122
GRAS area post-return (ha):		40,393		

Source: Parcel by Parcel Assessment, GRAS internal document; Terra Firma final report; GRAS company records.

3.2 LEGAL CONTEXT FOR LAND DIVESTMENT

Land tenure has been a contested issue throughout Mozambique's history, and successive waves of conflict-driven displacement and return and state acquisition and allocation of large concessions form an uneasy backdrop for land-based investment. Most rural land in Mozambique is held by communities with perpetual DUATs based on their traditional occupancy. Smallholders depend upon access and use rights to extensive communal grazing areas, forest resources, and arable land to support long-cycle crop rotation and shifting agriculture. In recent decades, there has been an increasing proportion of large commercial and real estate concessions on the scale of hundreds or thousands of hectares (Filipe & Norfolk, 2017). The average smallholder farm size in Mozambique ranges between one and two hectares; there are relatively few medium-sized (10–100 hectare) landholdings (USAID, 2018).

The 1997 Land Law affirmed the State's ownership of all land while establishing heritable, transferable use rights to land. Under the law, individuals, communities, and corporate entities can obtain long-term or perpetual use rights to land (DUAT, abbreviation for Portuguese *Direito do Uso e Aproveitamento da Terra*). The law provides that a DUAT can be acquired in three ways:¹³

- 1) Customarily, through historical occupation by individuals or local communities consistent with customary norms and practices;
- 2) By occupation in 'good faith,' unchallenged, beneficial occupation of land by an individual or household for a period of ten years; or
- 3) By formal application by an individual or corporate person to the State for a DUAT.

A long-term leasehold may be obtained for commercial purposes for a maximum term of 50 years, renewable for an equal period. Individuals and commercial enterprises may acquire a DUAT from the state. Under the 1997 Land Law, all investors seeking land must consult with the relevant local community to confirm whether the land is available and must then negotiate terms with any existing DUAT holders to gain access. Companies seeking to acquire a DUAT must prepare and submit to the National Directorate of Lands an exploitation or land development plan. While there are no minimum or maximum sizes of land transactions permitted, for areas over 10,000 hectares, this plan must include the terms of any negotiated agreements with existing DUAT holders (local communities and/or

¹³ Land Law No. 19/97 of 1 October, art. 12

individuals) (USAID, 2018). Once the application is accepted, the land must be surveyed, the boundaries determined, and the DUAT must be registered. The state then issues a provisional grant for either two years (to foreign persons or entities) or five years (to Mozambican citizens). If the exploitation or land use plan is fulfilled, the grant becomes “definitive” or final.

A DUAT also recognizes the land rights of communities and individuals and protects the customary rights of communities to their traditional territories. A community may register their DUAT at any time by delimiting and certifying their land, but this is not required: a community’s DUAT is valid even without formal documentation of the right.¹⁴ A community’s right to land is not subject to any time limit: it is a perpetual right.¹⁵ The law devolves to communities administrative authority over their land and resources (art. 24). The Land Law and regulations provide instructions on the delimitation and documentation of community land rights.¹⁶

Mozambique has yet to adopt laws, regulations, or policies on how companies should responsibly return unused or underutilized land. Article 18 of the Land Law deals with the extinction of a DUAT, providing that a DUAT may be (1) extinguished due to a failure to carry out the investment or land use plan in connection with which the DUAT was issued; (2) revoked for reasons of public interest; (3) extinguished upon expiration of the term of use; or (4) renounced by the titleholder. Where use rights have been lost, the rights revert to the state (Art. 18). If land rights are revoked because the DUAT holder fails to fulfill the exploitation/land use plan, any assets or improvements made to the land revert to the state and the grantee has no right to compensation.

Article 18 does not further define the disposition of these assets and has been variously interpreted to mean either that the State is at liberty to directly manage the assets or award them to another investor without further consultation or participation of communities; or, that the assets (and the underlying DUAT rights) revert to the local community, as an integral part of the State.

For the GRAS land divestment process, the interpretation of Article 18 in the event of termination of a DUAT held by a commercial entity was central to determining whether the DUAT relinquishment process could achieve the desired result of return to communities. GRAS therefore commissioned a legal opinion to determine whether communities’ underlying DUAT rights persist or are extinguished as a result of a temporary allocation of use right to an investor; how a DUAT may be extinguished; and what happens to the immoveable assets on the land in the case of an extinguished DUAT. This legal opinion determined that a community’s DUAT rights survive the temporary allocation of land to an investor; when an investor relinquishes its rights to land, the use rights return to the community.¹⁷

The question of what happens to the immoveable assets on land when a DUAT is extinguished was critical to the land divestment process, which faced opposition primarily over the fate of parcels containing High-Value Assets, including standing trees, that were of interest to the State or to elites. Importantly, the Land Law provides that, while land is the property of the State and cannot be sold or otherwise alienated, mortgaged, or encumbered,¹⁸ immoveable assets on land at the time of DUAT

¹⁴ Land Law No. 19/97 of 1 October, art 13.

¹⁵ Land Law No. 19/97 of 1 October, art 17(2)(a).

¹⁶ Decree No. 66/98, of 8 December, as amended by Decree No. 1/2003, of 18 February, and Technical Annex to the Land Law

¹⁷ Specifically, because only the State may extinguish constitutionally recognized rights, and in doing so must justify such an action by demonstrating that it is in the public interest, where there has been no State process to formally extinguish a community DUAT right, the underlying DUAT rights of the community survive their ‘temporary’ reallocation to a commercial entity by the State.

¹⁸ Land Law art. 3

renunciation revert to the State. Article 16 of the law clearly provides that immovable assets can be mortgaged, sold, and transferred through inheritance or gift.¹⁹

This legal analysis laid the foundation for the divestment process. In the GRAS divestment case, the immovable assets were legally transferred to the communities by sale and purchase contracts *prior* to the relinquishment. When GRAS relinquished its DUATs, they reverted to communities that had already acquired, by purchase, the legal ownership of the assets.

3.3 DIVESTMENT PROCESS

In late 2018, GRAS contracted with Terra Firma, a Mozambican consulting firm, and Landesa, a global land rights NGO, to support a responsible divestment from landholdings in Nampula, Zambézia, and Niassa Provinces. This work consisted of several phases: (1) risk audit on the company's landholdings (2018); (2) development of a methodology for land relinquishment (September 2019); and (3) operationalization of the methodology (2020-2023).

The risk assessment identified the following key issues:

- Communities' land rights were largely undocumented. Further, where GRAS acquired its DUAT rights through negotiation with government and communities, the negotiated agreements were not clearly recorded, as required by law,²⁰ and were not part of the 'DUAT contracts' between investor and the state. In Mozambique, documentation of rights strengthens community claims to land and improves future engagement over potential investments.
- Conflicting legal interpretations of who holds rights to relinquished DUATs. In principle, and in law, the underlying community right re-emerges on extinction of any allocated DUAT. However, in practice, the state sometimes retained the DUAT as 'state land reserve, or offered the land to other investors, posing a risk to communities that relinquished lands would be reallocated to another investor without their participation, consultation, or consent.
- Under the law, immovable assets on the land revert to the state, but it was unclear what this meant in practice, and which entities comprised the 'state' in this context.

3.3.1 EVALUATING OPTIONS FOR RESPONSIBLE EXIT

Noting an absence of clear precedent or guidance under international standards, the risk analysis and recommendations report proposed a range of best practice options that could be adopted as appropriate to the specific circumstances and attributes of each parcel to be divested.

Under the law, GRAS had several legal options for relinquishing land:

- Seeking a viable buyer for some or all of the parcels slated for divestment;
- Renunciation as provided under article 18(d) of the Land Law, by which GRAS could cede its DUATs by making a formal, written request to the Government of Mozambique (GoM); or
- Transfer of assets to communities and DUAT relinquishment with support for documentation and delimitation of communities' rights.

The risk analysis identified potential risks to communities and to the company that could result from the DUAT relinquishment process (USAID, 2022).

Potential risks to communities identified included:

¹⁹ Land Law art. 16.

²⁰ Land Law Regulations, Decree 66/98, art. 27.

- Risk of capture of land or assets by national and local government and elites;
- Gender imbalances in land access post-relinquishment;
- Loss or limitations on access for vulnerable families and youth; and
- Mismanagement by communities of plantation resources and other natural resources on the parcels.

Potential risks to GRAS from DUAT relinquishment included:

- Reputational risk that the GoM or others might hold GRAS responsible for anything negative that happened on the land (e.g. forest fires) after relinquishment;
- GoM or others may insist that GRAS remained liable for promises to local communities made during land acquisition; and
- Risk of ongoing rent-seeking if the relinquishment process required multiple government approvals.

Based on the risk analysis, GRAS determined that the sale of landholdings in Zambézia and Niassa would expose the company to unreasonable risk. The option of renunciation of its DUATs and ceding related assets to the Government of Mozambique, while legally acceptable, was likewise found to carry an untenable risk of harm to communities, with potential negative reputational consequences for the company. This analysis left DUAT relinquishment back to communities, along with the legal transfer of assets to communities and support for communities to realize and defend their rights as the sole viable option for GRAS.

To mitigate identified risks, GRAS adopted a Do No Harm approach to the DUAT relinquishment process consisting of:

- Strengthening and documenting community land rights in all areas subject to divestment, including areas where GRAS never physically occupied or used land and had impact on local livelihoods.
- Assistance, where needed, to local communities to formally register their collective DUAT rights over community territories, as per the law, and to establish a representative entity.
- In areas with assets such as standing tree plantations, transferring these assets to communities and assisting local communities to register those assets and establish equitable and sustainable use and management regimes over the plantation resources.
- Where required, community-based commercial entities were formed, and linkages made with commercial operators and offtakers.
- In all cases, the approach sought to ensure equitable outcomes at community level, through land rights training and targeted capacity building on gender and social inclusion. These efforts aimed to support gender equity in social relations within communities, to ensure that any future arrangements would adequately compensate those community members who lost land rights and land access and that women could share in the benefits of the relinquished land and assets.

Best Practices for Land Relinquishment

The following steps were identified as minimum best practices to guide design of land relinquishment in Mozambique:

- Completing a census of impacted land, assets, people, and livelihoods, including baseline issues;
- Conducting stakeholder mapping and developing consultation and information sharing plans and procedures;
- Delimiting boundaries and mapping assets;
- Valuing land and other assets;
- Ensuring community consultations and benefit sharing is inclusive of vulnerable groups;
- Remediating latent issues; and
- Ensuring access to remedy.

3.4 CHALLENGES

Government resistance to return of land and transfer of valuable assets to communities

As identified in the project risk assessment, national and regional authorities' interpretation of the Land Law as vesting relinquished DUATs with the State and interest in retaining control over land and assets on the relinquished parcels often complicated the process of divesting land and supporting communities' secure rights to land and assets.

To avoid and mitigate the risk of inappropriate government interference, ILRG and GRAS made sustained efforts to provide clear and detailed information about the planned processes, and commissioned and shared a detailed legal opinion on the proper interpretation of the law in this case. Nonetheless, the National Directorate of Land and Territorial Development issued letters to the provincial authorities instructing them to halt the delimitation activities. The project ILRG took the matter to the legal counsel of the Minister of Lands and Environment, who agreed with the legal interpretation and technical approach taken by ILRG; through this appeal, the activities were allowed to continue.

Legacy land Issues

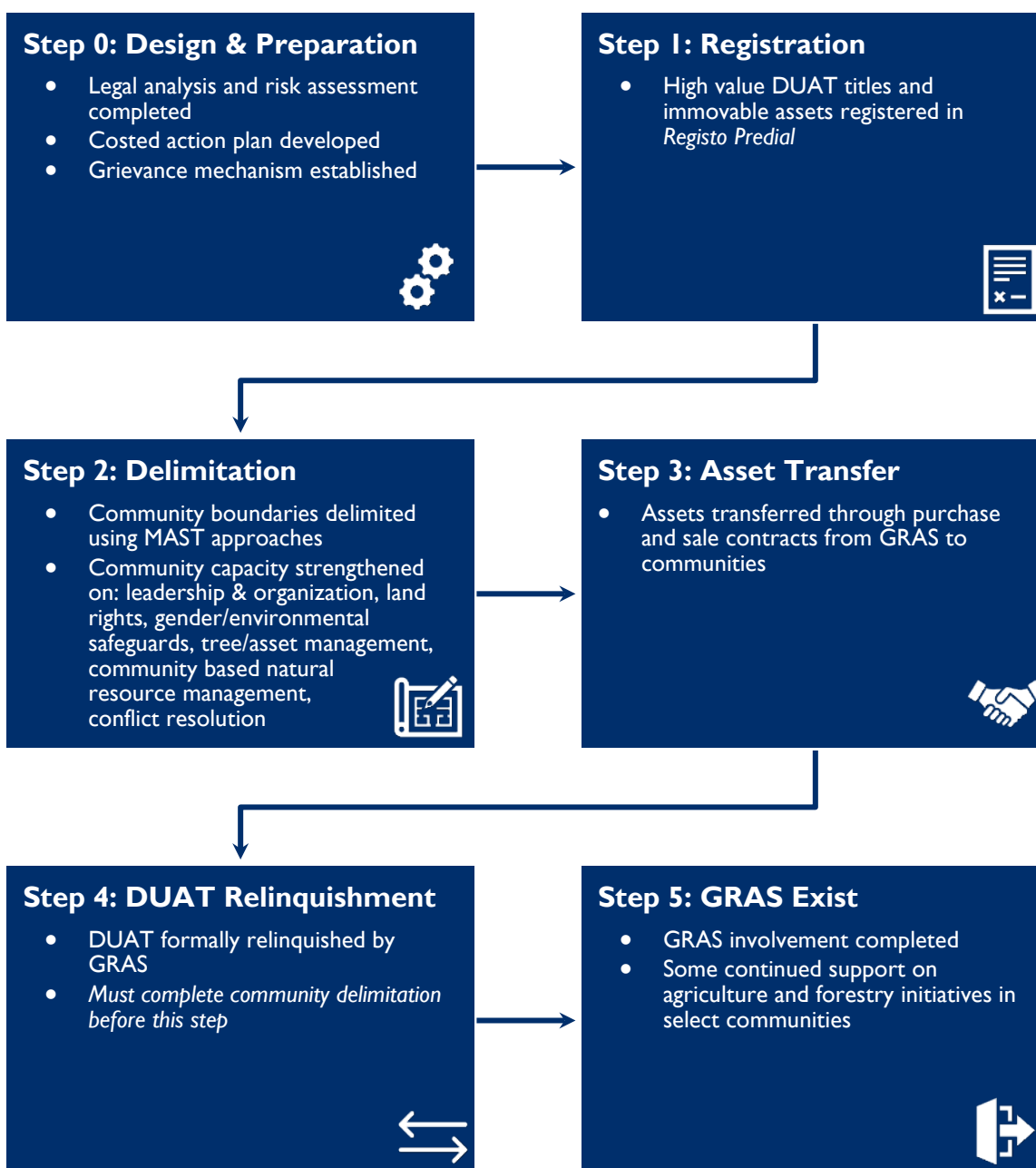
Although processes by which GRAS and predecessors acquired DUATs were legal, in many instances they fell short of accepted good practice for socially responsible and equitable investment processes. As a general matter, the extensive processes required for relinquishment, including the delimitation of communities' land areas and the establishment of community governance structures with legal personhood that could then register the communities' DUAT and assets, should have been part of any socially responsible process for acquiring the DUAT in the first place.

In some cases, the company had not fulfilled its commitments to community development funding or infrastructure. In many communities, the project teams had to first deal with community resentment over unfulfilled promises on the part of the company before they could begin the land return and related processes. In some communities, the land return process was halted until the company paid into the community development fund as it had promised. Adding to this challenge was the lack of clarity over the history of the land acquisition and related engagements and agreements with communities, particularly in areas that GRAS had acquired indirectly through mergers and acquisitions of other entities.

Unclear or unfulfilled legacy commitments also may have created opportunities for local authorities or former GRAS employees to interfere with or manipulate the process for personal gain. In Ng'auma, even after payment was made into the community development fund, the project continued to be blocked by government authorities. Project implementers speculate that District Authorities may have taken advantage of the legacy issue to block the process to serve their personal interests in benefiting from the land and assets in question.

These shortcomings made the land relinquishment processes more challenging than it would have been had the land acquisition been done correctly.

FIGURE 1. GRAS RELINQUISHMENT STEPS - MOZAMBIQUE



Project complexity and relatively short timeline

The diverse characteristics of parcels to be returned in terms of area, assets on the land, potential for economic or livelihood value, and the extent and nature of GRAS' activities on each parcel increased the complexity of the project's technical approach and logistics and significantly increased the time and cost required for completion. The GRAS-Terra Firma response to this challenge was to take extra care and time to develop a detailed plan that could be tailored to the particular requirements and circumstances of each DUAT and respective community. The parcel-by-parcel assessment supported the development of a modular approach, by which the project developed and implemented targeted activities appropriate

to the particular assets on the land and the livelihoods, needs, and land dynamics at play in each community. For instance, on some High-Value Parcels with remaining tree assets, communities were trained in Community Forest Plantation Management with the goal of maintaining returned tree assets as a commercial enterprise. Where needed, the project carried out conflict-resolution activities to address issues arising from the delimitation or other activities. This emphasis on getting the design right to meet the requirements of the context paid off, resulting in the successful transfer to communities of all assets and registration of relinquished land as part of community DUATs. One trade-off was that the timeline had to be extended for preparatory work, which in some cases led to shorter timelines for awareness-related activities.²¹

Communities would have also benefited from having more time after the successful transfer of land to support the establishment of tree plantations and agribusinesses and to further develop their capacity to build and manage the assets and to equitably distribute benefits.

Poor record keeping and data management on the part of land administration institutions

The lack of a functioning government system to manage land data and the poor state of cadastral archives presented a significant challenge as the project worked to identify legitimate and legal holders of land use rights and determine whether DUAT titles had already been formally relinquished or not. The absence of reliable and up-to-date records of landholdings, transactions, agreements, and parcel maps made planning and carrying out a responsible land divestment process very challenging. This is an issue that plagues many countries around the world.

3.5 SUCCESSES

Preparing communities for divestment

Over a two-year period, the ILRG process resulted in the delimitation or reconfirmation of boundaries for 109 communities comprising 334,000 people over more than 720,000 hectares. GRAS successfully relinquished all of its DUAT titles to the GoM, registered high-value immovable assets in the Real Property Register (*Registo Predial*), and drafted sale and purchase contracts for the transfer of existing plantations and other assets to the communities. In the process, ILRG supported the delimitation of community land, strengthened community governance institutions and capacity on land rights, and supported communities to manage and benefit from natural resources and land assets.

The process supported the formation of 126 new community land associations with a total of 1,977 members (44 percent women/56 percent men).

Community protection of its assets and land rights

Having documented DUATs and strengthened governance capacity has helped communities to defend their rights to land and resources. In one particularly compelling example, a community in Zambézia was able to stop a third party from cutting the community's trees by showing the community's certified DUAT and signed contract with GRAS for the legal transfer (by sale) of the trees to the community. In this case, a high-level government official had sold to a third party the purported right to cut the timber. The community produced its documents and called on ILRG to seek assistance and advice. In this case, documentation of rights clarified and strengthened community claims and fortified their ability to withstand pressures and manipulation by elites. It also suggests that capacity development for land management bodies, including training on land rights, along with connection to networks of practitioners and allies, contribute to a community's security of land and resource rights.

²¹ Internal project report, Relatório de Visita de Monitoria-GRAS-CESC- Niassa April 2022.

Legal and policy framework for community land rights clarified and strengthened

Though Mozambique has progressive land laws that establish a strong formal basis for community land rights, the realization of these rights in practice has been challenged by government institutions' interpretation of the law to favor the accrual of land and resource rights to the state and to support its economic aim of attracting large-scale investment in land. Academics and civil society organizations have been advocating for policy reforms and improved implementation of existing law to support stronger rights for smallholders for decades. In particular, the basic but critical question of whether a community's DUAT is severed or survives the temporary titling of land to a commercial investor has been called out as a weak point in the law. This project demonstrated how this provision can render community rights vis-à-vis an investment uncertain, and, through its approach to resolving the issue, provides a potentially important precedent to guide future interpretations of community land rights.

4.0 CASE STUDY: GRL TANZANIA LAND RETURN

4.1 SUMMARY OF INVESTMENT

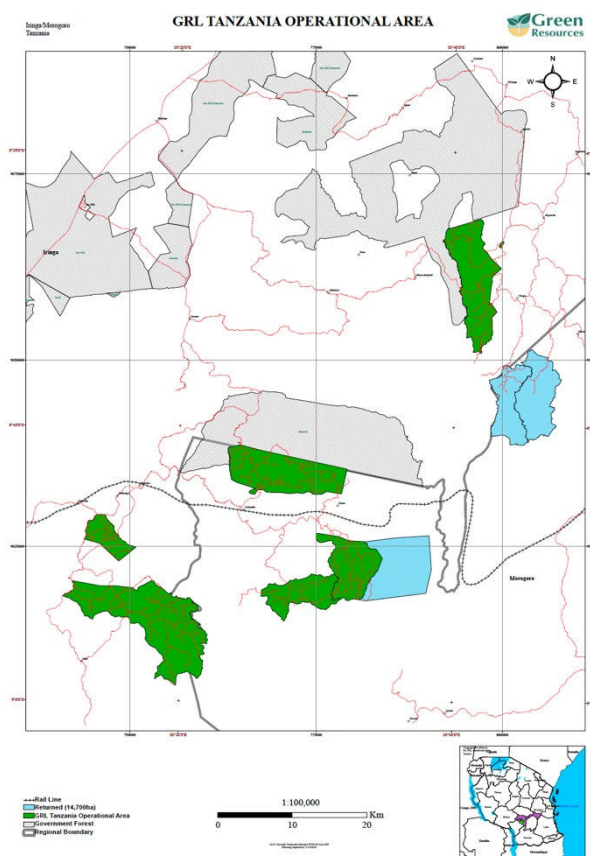
In 2020, GRL, Green Resources' plantation subsidiary in Tanzania, possessed approximately 60,000 ha of land in the Mufundi and Kilombero Districts. Following a review of its landholdings, risk analysis, and changes to the company's development strategy, it identified approximately 14,900 hectares of unutilized land for divestment and return to community members. Part of the land identified for return was in the process of being acquired, while other areas had already been issued derivative rights of occupancy by the Government of Tanzania (GoT). After a review of the acquisition history and subsequent activities on each parcel, GRL decided to proceed with a return of 14,173 ha comprising three parcels, each of which had been originally acquired directly from communities. GRL elected to withdraw the fourth parcel that had been acquired from an individual landholder, in order to ensure that land return to communities would not encounter any challenges. GRL bore the costs of the land return process, with co-funding and technical support from Landesa. This work was conducted outside of the ILRG project.

4.2 LEGAL FRAMEWORK

In Tanzania, all land is public land vested in the President as trustee for and on behalf of all citizens.²² For purposes of management of public land, land is divided into three categories: reserved land, village land, and general land.²³

Reserved land is all land designated by legislation for official public use. This includes road reserves, national parks, forest reserve, and land protected by statute or otherwise protected land.

Village land includes registered village land, land demarcated and agreed as being village land by relevant Village Councils, and land occupied and used as village land for 12 or more years under customary law.²⁴ Village land in each village is administered under the authority of the Village Council, which is the elected body in each village, and is accountable for its decisions to the Village Assembly (made up of the entire adult population of the village). The Village Land Act empowers Village Councils and Village Assemblies to allocate land to community members.



²² Land Act, No. 4 of 1999, sec. 4(1).

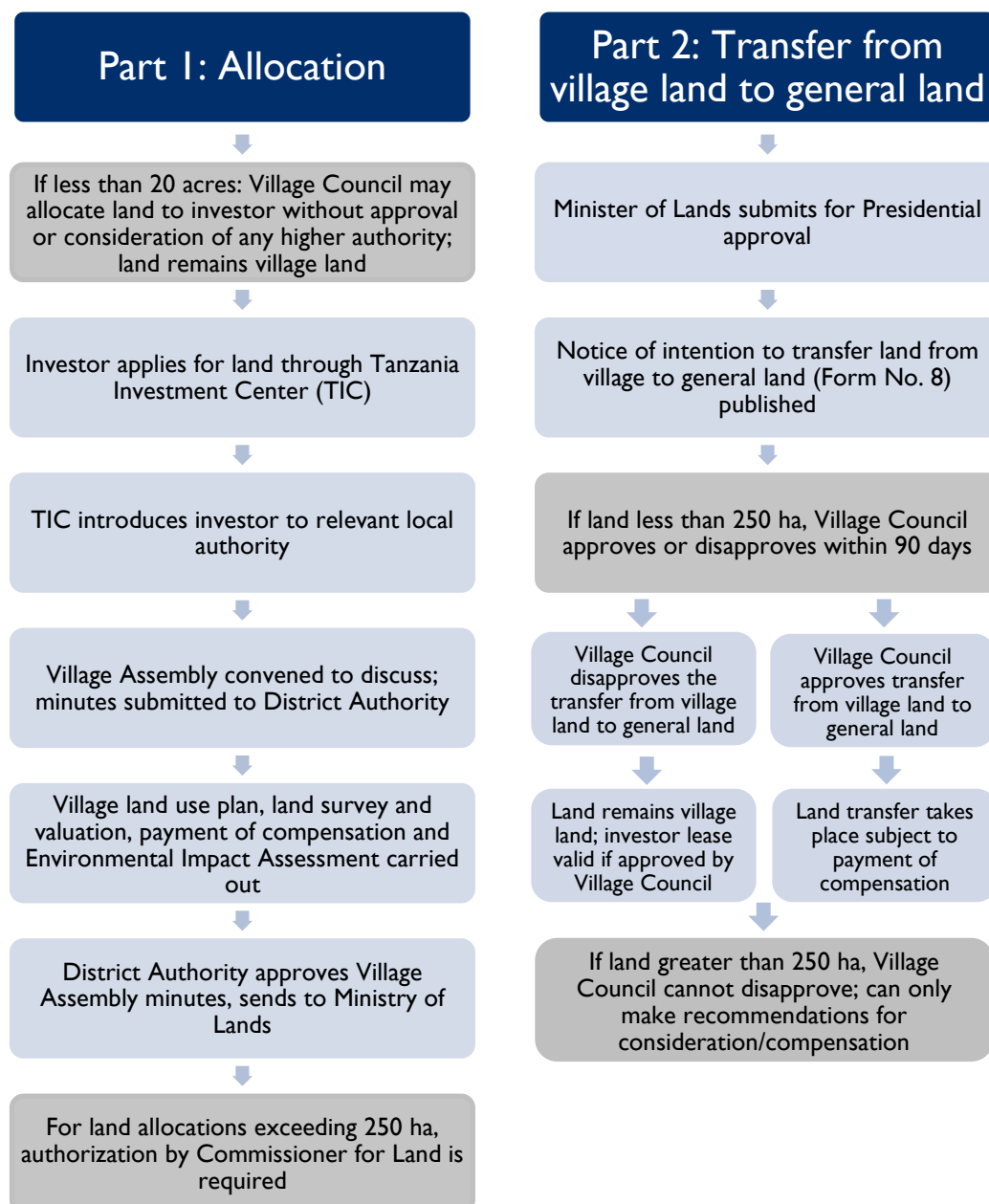
²³ Land Act, No. 4 of 1999, sec. 14(9).

²⁴ Section 2 of the Land Act, No. 4 of 1999 read together with the Village Land Act, 1999.

General land is all land not classified as reserved or village land, including unoccupied or unused village land.²⁵

As the trustee of all land in Tanzania, the President is the only office with the authority to transfer land from one category to another. The Village Land Act (art. 4, sections 1 and 2) provides that the President may “transfer any area of village land to general or reserved land” as long as it is in the public interest, which includes “investments of national interest.” Such a designation removes the land from the administrative jurisdiction of the Village Council.

FIGURE 2. STEPS IN THE PROCESS OF LAND ACQUISITION BY FOREIGN INVESTORS



²⁵ Sections 2 and 7 of the Village Land Act, 1999.

Non-citizens and foreign entities are not permitted under the law to purchase or own land, and they cannot acquire customary rights to land. Investors may obtain land through a Granted Right of Occupancy (if the majority of shareholders are Tanzanian citizens), or through a Derivative Right granted by Tanzania Investment Centre (TIC) or through a sub-lease through a Granted Right of Occupancy. A Right of Occupancy and Derivative Right may be granted for up to 99 years and are renewable.

Village land of any size that is to be offered to a foreign entity must first be transferred to the category of general land (Sulle, 2017). Under the law, if foreign investors want to lease village land, the community must give their permission and agree on the amount of compensation. This community consent occurs through convening of the Village Council and Village Assembly.²⁶ The community's decision on the proposed land allocation, and any terms or conditions to its approval of the request, are recorded through Village Assembly minutes. To be allocated to an investor, the land must then be formally transferred from "Village" to "General" status by the President. Such a transfer requires the approval of the Village Council, the District Council Land Committee, and the Village Assembly (for parcels smaller than 250 ha in size). Compensation is paid to villages at the time of acquisition according to the provisions of the Village Land Act, the Land Acquisition Act, 1967 and other related laws depending on the nature of the investment.

In addition to the statutorily defined payment to local government, additional compensation is typically negotiated and paid between the investor and the local communities. Such compensation can be in kind (such as an agreement to construct a school or other community infrastructure) or through direct payments to communities or an established social fund. Frequently, investors do not pay compensation to the village(s) immediately upon the transfer of land rights to a company; the timing of performance can be among the negotiated terms included in the resulting investor-community agreement.

4.2.1 LEGAL CONTEXT FOR LAND DIVESTMENT

As a general matter, the legal framework for land investment in Tanzania strongly favors processes that draw land into the category of general land under the control of the government, while making it difficult for land to revert to communities.

A lack of clarity regarding the definitions of general land in the Land Act and Village Land Act, especially in the context of "unoccupied or unused village land," allows for a legal interpretation that enables the government to claim ownership of lands which are neither settled nor farmed, thereby exposing communities to potential loss of communal pastures and woodlands.

In addition, the Land Act's mandates that village land must first be transferred to general land prior to allocation to an investor. Coupled with the provision that general land can only be transferred back to village land by Presidential approval, this means that communities will in most cases permanently lose control of lands ceded to an investor, even in cases where a land agreement is only for a limited period of time or where the investor fails to take possession of the land or perform on the terms of the agreement, or permanently vacates the land. This permanent transfer of land to general land aligns with the stated policy of the central government that Regional and District authorities should seek to retain land as general land for the purpose of developing a national land bank, creating a further barrier for communities seeking to regain land once it has been allocated to an investor (Government 2016).

A company's options to transfer its rights to land are, therefore, limited. Section 5 of the Land Act provides that land held under a Granted Right of Occupancy can be disposed of by a successful request

²⁶ Village councils are the primary decision-making bodies at the community level. By law, the Village Council has authority to manage village land on behalf of the community. To ensure that the Village Council is accountable to the community, its decisions in land management are not final, but must be approved by the Village Assembly.

to the President to transfer land from general land to village land. An investor may pursue this procedure by submitting an application to the District Council stating its interest to return land.

The law appears to permit a company to return a portion of its land to a community by gift. This process does not require the transfer of land; rather, a portion of land can be divided from the company's land title and can then be allocated to a village council or other legally registered group of individuals.

4.3 DIVESTMENT PROCESS

Having identified the land it wished to return, GRL set out to identify and avoid any negative impacts of the land return process, both to communities and to the company. To ensure the process was well-aligned with best practices for community consultation, participatory decision-making, and responsible private sector investment in land, GRL sought support from Haki Ardhi, a Tanzanian civil society organization whose mission is to promote land rights for rural communities, and Landesa.

From April 2022 to November 2023, Landesa and Haki Ardhi ('project team') supported GRL to develop and implement a strategy to support a responsible and durable land return process of 14,173 ha of unutilized land to communities in Ukami and Chogo villages, Mufindi District, and Kitete Village, Kilombero District. The process began with a legal analysis and detailed review of GRL's documentation of each parcel acquisition and subsequent community engagements. Through the document review, the team determined that the acquisition process for all parcels was incomplete: the land had never been transferred to general land and so, technically remained in the village land category. This greatly simplified the land return process; had the land been transferred as general land, it is unlikely that GRL and the project team would have received the required Presidential approval to revert the land to village land.

The team next carried out consultations with community members and leaders to validate the land transaction records, and to understand communities' perspectives on GRL, their expectations of the land return process, and their desired outcomes from the return. This consultation confirmed the legal analysis, shaped the land return process to ensure that it had legal validity and was acceptable to the community.

Cognizant of the risks that the District or other influential individuals might interfere with the return of land to the communities, and aware that the District has an important role as an advisor to Village Councils and as a stakeholder in the area of GRL's ongoing operations, the team approached district engagement carefully. The team met with each District at the beginning of the project to inform them of the company's interest in evaluating its operations and community relations more generally; land return was not directly mentioned in the initial engagement meetings in order to build trust and a common understanding of activity objectives.

The land return consultations were carried out in multiple stages to first introduce to communities and Village councils the proposal for land return, and then to discuss the land area in question and community concerns. By allowing several weeks between each engagement, this staged approach provided the necessary time for communities to consider the issues internally and bring to the consultations their own priorities and concerns. For instance, at the initial stage of the consultation process, community members expressed concern about the prospect of land return and urged the company to reconsider its plans to divest. However, following internal discussions among community members and village leaders, this reticence had given way to a positive view of the potential benefits that the returned land could bring to the communities.

Risk mitigation actions identified through this process included a need for boundary verification, clarification regarding the status and company intentions vis-à-vis promised community benefits, and a

need to address rights awareness and capacity limitations among the communities' land governance institutions to mitigate risks that the land return might result in conflict, elite capture, or unfavorable land deals with future investors. Through this process, communities also requested that District officials be present in the final meeting to conclude and sign the land return agreement.

Following these consultations, the team carried out boundary verification exercises and produced updated maps showing the new, post-return boundaries. The agreements were then negotiated with each Village Council before being discussed and approved by the Village Assembly. The agreements were then signed at the Village Assembly meeting and were recorded as part of the Village Assembly minutes, which are established in the Village Land Act as an important method to enter community decisions into the legal record.

To support the communities to sustainably manage the returned land and provide a better understanding of their legal rights and private sector investment, the project team carried out awareness raising activities in the three communities. In addition, the team worked with Village Land Use Management Committees (VLUMC) and Village Councils in the three communities to build their capacity to sustainably manage village land.

4.4 SUCCESSES

4.4.1 DIVESTMENT

GRL successfully returned more than 14,100 hectares to the three villages. Given the clear government policy encouraging District land officials to build up the government land bank, and the strong legal presumption that investment land, as general land, reverts to the government, the relinquishment of land to the three communities would not have happened without the intention and efforts of GRL and local partners. GRL plans to follow the model developed through this process to return an additional 7,000 ha of land to communities in Mufindi District.

4.4.2 ENGAGEMENT AT MULTIPLE LEVELS

The fact that the land involved was classified as village land required that the project team engage at multiple levels. The project team principally engaged at the village level but also took care to engage with Mufindi and Mlimba District Councils from the outset to gain entry to village-level authorities and to ensure that the District was informed about the project and the project team and Village Councils received needed support from the District throughout the land return process.

At the end of the land return process, the project team engaged District and Village authorities in preparing updated Village Land Use Plans (VLUPs) that incorporated the returned land. With the facilitation of District authorities, the project team initiated land use planning steps with VLUMCs, Village Councils, and Village Assemblies. Village authorities sought advice from the District regarding land management as provided under Section 9 of the Village Land Act. In the absence of any formal registry designating land as village or general land, integrating returned land into District-approved updated VLUPs was an important step to signal the restoration of returned land from GRL back to village management.

4.4.3 SOCIAL DEVELOPMENT FUNDS

Social Development Funds (SDFs)²⁷ were established in Chogo and Kitete, where GRL would continue to have ongoing operations and were funded in proportion to the total area of village land allocated to

²⁷ GRL established Social Development Funds in its areas of operations as a mechanism to provide financial support for the social economic development of partner villages.

the company. In Ukami, where GRL returned to the community all the land it had originally acquired and would no longer have ongoing operations or physical presence, GRL decided to make a one-time contribution to a SDF.

While not an explicit trade-off in the community consultations over the land return, communities saw the SDFs as a concrete benefit that could help to balance the loss of social benefits from the termination of the community development agreements made at the time of GRL's acquisition of the land. From GRL's perspective, SDFs provided a way to bolster positive relations with communities and to continue to support community development aims in the communities in GRL's area of operations, while encouraging responsible management of lands, particularly concerning fire risk mitigation, and deterring illegal activities on plantation land and adjacent areas.

GRAS had developed the SDF procedure in another of its country operations and had found it to be an effective way to foster and maintain positive relations with communities. GRL developed, and the project team reviewed, SDFs for each of the three villages. This procedure, if implemented as written, will help to ensure that the SDF contributes positively to the success of the land return in all villages by addressing outstanding issues related to GRL's previous community development agreements and establishing a clear, forward-looking mechanism for providing support to communities. GRL's Social Funds Management Procedure provides that issues arising out of the SDFs are to be addressed through the company's grievance mechanism.

FIGURE 3. GRAS RELINQUISHMENT STEPS - TANZANIA



4.5 CHALLENGES

4.5.1 NEED FOR ADDITIONAL ENGAGEMENT OF DISTRICT OFFICERS

While it was not originally planned as a specific activity, more frequent engagement and coordination with District authorities was needed to communicate the project's approach and its legal basis, to respond to their concerns, and foster their support. The project team first met informally with the District land officer from Mufindi District to determine the appropriate timing, frequency, and manner of engagement with the District to ensure that the land return would receive the support of each district office. From this meeting, the team found that Mufindi District was not receptive to the land return and rejected the project team's conclusion that the land was still in the village land category. The project team developed a briefing document to share with Mufindi and Kilombero District Land Officers as well as the updated regulations and legal analysis from which the team had developed the land return strategy.

The team then followed up with formal meetings with each District to share project updates on activities conducted since the initial District engagement and to share the results of the community consultation efforts. From these meetings, the team received the support of both District offices and had the needed approval to proceed with the land return.

4.5.2 COMMUNITIES NEED ADDITIONAL SUPPORT POST-RETURN

For the purposes of this project, the signing and public notice of the land return agreement marks the completion of a successful return of a parcel to the community. However, the project team's ongoing consultations with communities and engagement with experts on the untested question of how to responsibly return land to communities in Tanzania made clear that the communities would still face risks of increased conflict over rights to the returned land and of losing their land altogether following the land transfer due to elite capture, poor land governance capacity and understanding, and interference or influence by District government officials, who are under pressure from the national level to make land available for investment.

To avoid and mitigate these imminent risks, and to support the communities' sustainable land management of the returned land, two additional activities were carried out immediately following the conclusion of the land return: (1) Capacity building and institution building at the village level to support functional and inclusive land management; and (2) Review of Village Land Use Plans to integrate the returned land in the three villages.

These activities set out to accomplish three goals. The first goal was to resolve any ambiguity as to the communities' rights to the land. A second goal was to fortify land governance and participatory land use decision making that takes better account of land valuation in the face of increasing pressure on land due to population increase, land-based investment, and climate change. A final goal was to strengthen land management practices and ensure that the returned land is integrated into well-functioning land management systems and supports the stated objectives of promoting communities' well-being and productive use and management of the land.

5.0 LESSONS LEARNED

5.1 LESSON: WHEN LAND IS RETURNED, COMMUNITY-LEVEL OUTCOMES CAN BE POSITIVE, PARTICULARLY WHERE THE COMPANY HAS AN INTEREST IN MAINTAINING A POSITIVE RELATIONSHIP WITH THE COMMUNITIES INVOLVED.

While it is too soon to assess the full impacts of land divestment for the communities involved, initial indications in both countries suggest that land divestment may bring important benefits to communities as well as to companies. In Tanzania, returned land in Ukami village is helping the community overcome challenges of land scarcity, and the process of return has revitalized the community's approach to land management and participatory decision making. In Mozambique, hundreds of communities have received documented land rights, and many communities' livelihoods and economic agency have been increased through the GRAS divestment process. A recent event in Mozambique highlights the potential benefit for communities' tenure security. As noted above, a community that gained land from the GRAS divestment recently was approached by a new company that had been issued a permit for logging on their land by the government. However, the community was able to use their new land documents, which includes the DUAT as well as proof of ownership of the assets, to enforce its resource rights, and the community successfully stopped the company from logging the area. This example suggests that land divestment could be one means to address legacies of inequitable land access and allocation to companies.

In both countries, the company divesting the land took time to consider how the divestment might affect the communities, the likelihood that the land would be allocated to new investors without community consultation or consent, and the potential for elite capture, and took steps to avoid these negative outcomes. In each case, the company found a legal means to relinquish the land in a way that resulted in the communities taking possession and managing the land and assets. In both cases, this successful result was achieved despite some actors' efforts to subvert or at least discourage the acquisition of land and assets by communities.

However, such positive outcomes are often not the case, as companies that divest often do so out of financial need, walking away from the investment completely. A company that plans to remain in operation and is financially solvent may benefit from taking steps to ensure that a community's land rights are protected and to avoid government or elite capture, though must also recognize that this process can be time consuming and costly. Also, in both of the GRAS cases, the company planned to continue its operations in Mozambique and Tanzania, creating incentives for GRAS to maintain and strengthen strong, functional relationships with government and with the communities where they remained operating.

5.2 LESSON: COMPANIES CONCERNED ABOUT REPUTATIONAL RISKS SHOULD FACTOR COSTS OF LAND RETURN INTO THEIR ACQUISITION COSTS.

The steps to avoid negative impacts of land divestment can be resource- and time-intensive, particularly where the land divestment requires actions to remedy a flawed land acquisition. In Mozambique, GRAS shareholders, particularly Finnfund and Norfund, played an important role in pushing the company to pursue a responsible divestment process despite the costs, citing the need to adhere to responsible investment standards, particularly to the IFC Performance Standards.²⁸ The Mozambique divestment came at an approximate cost of \$820,000. In Tanzania, the land return and related community activities

²⁸ According to participants in the land relinquishment design process, pressure from Finnfund was the single most important factor in pushing the company to reject alternative relinquishment options and pursue the more intensive approach taken.

cost an estimated \$200,000. In the case of Mozambique, GRAS contributed \$120,000; the remainder was supported by USAID's ILRG activity. In the case of Tanzania, GRL contributed \$30,000 towards Haki Ardhi's support of the process, and additional support was provided through Landesa project funding.²⁹ In addition to these outlays, the process required staff time, in kind contributions, and other costs over the multi-year engagements. GRAS made the business decision that some expense was justified (though without the support of USAID and Landesa, it is unclear that the company would have been able to bear the full cost of either process). More robust due diligence at the time of its acquisition of landholding companies might have helped GRAS to flag a lack of clear documentation of community rights and land acquisition agreements. Given the challenging context for land-based investment in Mozambique, this could have resulted in a more cautious evaluation of the commercial potential of large-scale land acquisition. This underscores the need to plan for and internalize responsible investment practices as a part of the cost of doing business (especially important for companies susceptible to public pressure or reliant on development bank financing) and underscores the value of robust due diligence prior to land acquisition.

Companies investing in land and natural resources should plan for land-related costs for the full life cycle of investment, including responsible acquisition, ongoing community relations, and potential land divestment. It bears mentioning that a responsible investment –in which the land has been acquired responsibly, and in which ongoing relations with communities have supported the company's social license to operate– is a key factor in ensuring that any land relinquishment will be more efficient, low-cost, and likely to result in positive outcomes for communities.

5.3 LESSON: THE LEGAL FRAMEWORK – AND HOW IT DEFINES COMMUNITIES' RIGHTS TO LAND – IS CRITICAL TO UNDERSTANDING HOW DIVESTMENT CAN OR SHOULD HAPPEN.

Gaps and inconsistencies in legal frameworks for responsible land-based investment are a persistent challenge in many investment contexts. As in other phases of an investment life cycle, where national legal frameworks fail to provide clear guidance regarding rights and procedures for ending an investment, companies may be left to fill in the gaps. Ambiguities in national legal frameworks – where the laws and regulations fail to outline required divestment processes or do not clearly define to whom relinquished rights are conferred – invite rent-seeking behavior on the part of government and elites.

In both Mozambique and Tanzania, the divestment strategies that GRAS pursued hinged on the legal analysis, both for the obvious need to ensure compliance with the relevant laws and regulations, but also because neither legal framework presented obvious processes by which the company could relinquish its land and assets and by which communities, rather than government, could acquire the land and assets.

In Mozambique, the legal strategy centered on the community's perpetual DUAT right and the law's separation of land from immovable assets on the land. The community's underlying DUAT use rights to the land survive their temporary allocation to the investor; when the investor relinquishes a DUAT, the use rights return to the community. In this context, the community was able to further strengthen their tenure security by following the formal delimitation processes. However, when an investor's right to land is terminated, immovable assets (e.g., trees or standing infrastructure) on the land revert from the investor to the State according to Article 18(2) of the Land Law. In the GRAS divestment case, the immovable assets were legally transferred to the communities by sale and purchase contracts *prior* to the relinquishment; when the DUATs were relinquished, they reverted to communities that had already acquired, by purchase, the legal ownership of the assets. This provided the necessary pathway for the

²⁹ Landesa support was funded under the Community Smart Consultation and Consent project, funded by the BHP Foundation and implemented by Landesa in partnership with the Centre for Social Responsibility in Mining, Conservation International, and RESOLVE.

divestment to result in the transfer of immovable assets to communities, whose DUAT rights were re-asserted upon the company's relinquishment of the DUAT. To further bolster the action, the legal strategy posited that the "the State" comprises local communities, so the assets could have reverted to communities even had they not acquired the assets by purchase and sale agreement.

In Tanzania, legal analysis was critical to identify a way to ensure that the land returned to communities. The analysis found that, while the law is clear that land may only legally be allocated to an investor once it has first become general land, general land does not revert to village land at the end of a concession period. Therefore, communities do not retain any residual right to that land. In the case of the GRL acquisitions of land, the process of transferring the land to general land had never been formally and fully completed. Therefore, the land had never transferred from village land to general land, though it was being managed in practice by GRL. This made it possible to design a land return process that centered on the review of each community's Village Land Use Plan and the integration of the returned parcels into each community's official plan, with the approval by consensus vote of the Village Assembly.

In short: In Mozambique, if land acquisitions had been done properly, with community land delimited at the time of acquisition, the divestment would have been much simpler and less costly. In Tanzania, if the acquisition had been done properly, the return of land to communities could not have happened without express decree by the President.

5.4 LESSON: AS WITH OTHER PHASES OF THE LAND INVESTMENT LIFE CYCLE, RESPONSIBLE ENGAGEMENT FOR LAND DIVESTMENT REQUIRES DOING MORE THAN JUST FOLLOWING THE LETTER OF THE LAW.

There are several common elements across the two projects, derived from best practices in other parts of the investment life cycle, that should be a part of any responsible land divestment process.

5.4.1 RISK ASSESSMENT

Risk assessment is essential to understand and mitigate risks for all parties. Ensuring that risk assessment is carried out by experts who have deep knowledge and experience with land and investment issues in the local context, as well as an understanding of international standards and comparative experience, is key.

In Mozambique, substantial risks to the company elevated the importance – particularly in the view of GRAS shareholders – of demonstrating good faith and good practice, and propelled the process towards the extensive, socially responsible approach that ultimately prevailed. The large scale of the company's landholdings and the company's mixed reputation in Mozambique, as well as the national discourse and attention on the impacts of land-based investment on community rights created a general environment of risks. The magnitude of the potential reputational risk to GRAS in Mozambique was high; historically, NGOs have stopped several multi-million-dollar projects in Mozambique and have inflicted reputational damage to companies and project sponsors (examples include ProCana, Prosavana, Quifel, Hoyo Hoyo, etc.). A failure to mitigate or avoid any of the risks identified could have resulted in accusations by communities, local administrators, civil society actors, investors, or other international stakeholders, of the company's negligence or bad faith. And the risks to communities (particularly communities with High-Value Asset parcels) were clearly apparent.

In Tanzania, this was not so clearly the case. During the first engagements with communities in which the subject of land return arose, the communities expressed dismay that the company was going to give the land back. All three communities urged the company to reconsider (while also emphasizing that they wanted GRL to fulfill the promises it had made to the communities regarding employment and community development projects). Two of the communities stated that their desired outcome would be for another investor to come to make use of the land. Had GRL decided to merely return the land to

communities without the full process, the biggest risk to the community would have been that they would enter into a land contract with another investor that would be unfavorable to the community. Good or bad, the reputational harm to GRL would have been minimal if it had merely followed the law.

In both cases, Green Resources and its investors were aware of reputational risk that exceeded the company's ability to completely avoid. In particular, there was a risk that the government or others could hold GRAS responsible for anything negative that happened on the land (e.g. forest fires) after relinquishment, or that the termination of a land agreement (even with efforts to address outstanding issues with each community) or that communities would be unable to make productive or equitable use of their returned land or assets. In the face of these risks, the question of "when has a company fulfilled its duty" can be difficult to answer. In the Mozambique case, the answer to this question was that the return of DUAT lands to communities, accompanied by documentation of community land rights and a good faith effort to return tree assets to community management and ownership would constitute strong compliance with best practice standards of Corporate Social Responsibility. Clarity about ownership of tree assets after divestment was important to remove the risk of any residual liability for subsequent accidents such as wildfires.

5.4.2 RIGHTS CLARIFICATION AND BOUNDARY DEMARCATION

In addition to the issue of elite capture and government interference with the transfer of assets to a community, land transfer can attract opportunistic behavior by individuals from neighboring communities or from within communities receiving the land. Land delimitation and transparent, participatory processes that clarify and affirm rights following a transfer can help to curtail or address concerns related to squatters, land grabbers, and others who may view the land in question as 'up for grabs.'

5.4.3 COMMUNITIES NEED ADDITIONAL SUPPORT POST-RETURN

As in project initiation, responsible divestment should include efforts to ensure that communities have the capacity to participate in, shape, and benefit from the divestment process and manage the returned land. Where additional assets are on the land, preemptively bolstering communities' rights, knowledge, documentation, access to support, and ability to use the newly acquired assets may be necessary to ensure durable, positive outcomes for communities.

5.4.4 STRONG ADVOCACY AND TRANSPARENT PROCESSES MAY BE NECESSARY TO ENSURE THAT COMMUNITIES BENEFIT FROM DIVESTMENT

In Mozambique, the legal strategy on its own would not have been enough to overcome the strong presumption of the State that land-based assets should revert to government upon the termination of a company's DUAT. The GoM so opposed the relinquishment of valuable assets to communities that it stopped the project's delimitation activities in the three provinces. Forceful, persistent advocacy was required. Having well-connected and well-established local partners who are unafraid of confronting powerful individuals in government was very helpful in this case.

Another factor that helped to overcome the blockage may have been the sheer area of land and number of communities involved in this process. The project mobilized a lot of communities, educated them about their rights, and initiated a process of delimiting and registering those rights. This gave the project important leverage to refute the government's claim to the relinquished rights.

6.0 CONCLUSION

The lessons from these two cases may not be generalizable. However, the elements of good practice for land divestment are consistent with general good practices for responsible land investment: documentation of rights is helpful; engagement and establishing transparent, continual, communication between communities and companies is fundamental; establishing and/or bolstering institutional capacities to administer land and resources and support for participatory land management are also important.

Although the GRAS experience in Mozambique and Tanzania demonstrates that land divestment can offer substantial benefits to communities, we should not expect this to be the norm. The examples from GRAS and elsewhere demonstrate that responsible divestment is more time-consuming and far costlier than just walking away from a failed investment and so may not be the path of choice for companies seeking to relinquish lands as a result of financial distress. Perhaps the clearest evidence of this is the sheer number of cases of failed or non-operational land investments, compared to the very small number of known instances in which a company has voluntarily relinquished land and taken steps to ensure that communities' rights to that land were secure. While estimates based on Land Matrix data suggest that there are at least 850 failed or non-operational investments totaling 41,963,232 ha, there are fewer than four known instances of companies voluntarily relinquishing land and taking steps to protect communities' rights.³⁰

In Tanzania, though the GRL relinquishment was positive for communities, the case highlights issues in the legal framework that leave communities vulnerable to permanently losing their land once village land is allocated to an investor. Given the scale of relatively recent investments in the country, and the ongoing push to open up land for future investments, the impact of this legal framework may soon begin to be felt across the country, particularly in the case of failed land investments. The land return experience may provide a useful entry point for advocacy to address these issues through policy and legislative reform.

Given the lack of experience and shared literature on responsible land divestment, more research, case studies, and documentation of companies' and communities' experiences would be helpful in building a shared understanding of risks and best practices for land divestment, including in contexts of failed investments.

Topics for further learning include:

- How common is land divestment?
- What are the more frequent and more important risks and opportunities associated with land divestment for communities, companies, and governments?
- What lessons and tools from other sectors could provide useful guidance for agricultural and forestry investment contexts so that they better anticipate and provide for the end of an investment over its entire life cycle? For example, this could include examples from the mining sector.

³⁰ Land Matrix presents data on land deals in four categories: Concluded (contract formalized, and either (a) not started yet, (b) in startup phase, (c) operational, (d) abandoned, and (e) no information); Failed (meaning the deal was initiated but abandoned); Intended; or Other (expired or subject to a change in ownership). A recent study analyzing the extent and impact of 'failed' land deals groups the data into 'operational' and non-operational (including concluded deals that were later abandoned, expired, ended and failed, or still under negotiation). This analysis found that, as of November 2020, land deals covered a total of 179,120,562 ha (4,558 deals), of which 41,963,232 ha (850 deals) were classified as 'non-operational' (Borras, et al., 2022).

- What legal strategies or reforms can support communities' secure rights over the resources from divestment?
- In many contexts, government policies and positions conflict between a stated goal of resources belonging to communities versus desire for government's role to attract and control investments over land. Are there examples, where these goals are effectively balanced?
- What are the capacities, commitments, recognized rights, and risk mitigation strategies that need to be in place for the community to have secure rights to and the ability to beneficially manage the land and assets returned? Where do/should companies' responsibilities end in reaching this point?
- How might models of direct leasing between companies and communities, creating joint ventures with community-owned companies, or other contractual agreements and investment structures create beneficial arrangements for companies and communities that are less risky for the security of communities' land rights?
- What needs to be in place to ensure women's participation, awareness of women's rights, and women's ability to influence and benefit from how divested land and assets are managed?
- How, if at all, do the social movements around Indigenous land and territorial rights, including the Land Back movement in the United States, affect the risks, priorities, and practices for responsible land divestment?
- How might land relinquishment support communities and broader efforts to support communities' resilience in the face of climate change?

ANNEX I: INTERNATIONAL STANDARDS FOR RESPONSIBLE LAND DIVESTMENT

There is little international or regional guidance regarding how a company should conduct a responsible land divestment. The Accountability Framework (AFi) Core Principle 9 and Operational Guidance, and the International Finance Corporation's (IFC) 2012 Performance Standard (PS) I "Assessment and Management of Environmental and Social Impacts" and PS 5, "Land Acquisition and Involuntary Resettlement" and associated Guidance Notes and Good Practice Handbooks do provide directly relevant guidance that can be applied to divestment.

AFI CORE PRINCIPLE AND OPERATIONAL GUIDANCE ON REMEDIATION AND ACCESS TO REMEDY

AFi Core Principle 9 on "Remediation and Environmental Restoration" establishes that companies that have not fulfilled their commitments to communities, or whose operations, supply chains, or investments result in adverse human rights or environmental impacts associated with their operations, must provide for or cooperate in the remediation of any harms to communities. Under AFi Principle 9.2, a company should "not divest its interests in land until either: i) outstanding grievances are fully resolved, or ii) obligations have been legally transferred to another party."³¹

AFi's Operational Guidance on Remediation and Access to Remedy further provides that, where remediation of harms is required or grievance processes are ongoing, companies should not "abandon or divest their interests in land (e.g., through sale, corporate restructuring, or otherwise) before remediation is complete or such obligations are properly and transparently transferred to a competent party with the financial and technical capacity to address the remediation (e.g., a new owner)."³²

IFC PERFORMANCE STANDARD I

IFC PS I on "Assessment and Management of Environmental and Social Impacts" provides the most directly relevant guidance on divestment. PS I establishes standards for managing social and environmental risks of an investment, citing the "importance of (i) integrated assessment to identify the environmental and social impacts, risks, and opportunities of projects; (ii) effective community engagement through disclosure of project-related information and consultation with local communities on matters that directly affect them; and (iii) the client's management of environmental and social performance throughout the life of the project."³³ The standard explicitly applies to the entire life cycle (through design, construction, commissioning, operation, decommissioning, closure or, where applicable, post-closure) of a project (IFC, 2012).

The Performance Standard I Implementation Resources include a good practice handbook for companies doing business in emerging markets (IFC, 2007), that includes a chapter on Downsizing, Decommissioning, and Divestment. Noting that divestment of land or assets is likely to involve different stakeholders whose concerns, interests, and potential impacts will likely differ from those at earlier stages of a project, the Handbook recommends the following actions:

- Revisit stakeholder analysis in light of proposals for downsizing, decommissioning or divestment.
- Communicate with stakeholders early to allay fears and uncertainty.
- Provide regular updates and progress reports to stakeholders.

³¹ AFi (2023) Core Principles, sec. 9.2. <https://accountability-framework.org/use-the-accountability-framework/core-principles/>.

³² AFi (2019) Operational Guidance on Remediation and Access to Remedy, at 9.

³³ IFC (2012) Performance Standard I, para. I. <https://www.ifc.org/en/insights-reports/2012/ifc-performance-standard-I>.

- Plan and execute stakeholder consultation as though it were at the project feasibility stage.
- Consult on transfer and management of assets and liabilities.
- Gear up to manage grievances.
- Review the capacity of future management systems to deliver stakeholder engagement on decommissioned or divested assets.

Such measures are meant to identify and mitigate negative impacts on communities such as the loss of employment, a decline in regional economic activity, the cutting-back of community services previously provided by the company, and cessation of other valued community activities. The IFC emphasizes that these impacts on communities can all result in long-term financial and reputational liabilities for the divesting company.

IFC PERFORMANCE STANDARD 5

IFC PS 5, “Land Acquisition and Involuntary Resettlement” and its associated Guidance Note and Good Practice Handbook provide strong guidance on steps to take to mitigate or avoid harmful impacts of land acquisitions, relocation of community members, and involuntary resettlements (physical and economic displacement) associated with commercial projects.

Objectives of PS5 include:

- Avoiding or minimizing displacement of local peoples by considering alternative project designs;
- Avoiding forced displacements;
- Minimizing or avoiding adverse social and economic impacts from land acquisitions or restrictions on land use by providing compensation for losses at replacement cost;
- Ensuring informed consultation, participation and appropriate disclosure of information; and
- Improving or restoring livelihoods and standards of living, where needed, providing adequate housing and tenure security for physically displaced persons.³⁴

³⁴ IFC, “Performance Standard 5: Land Acquisition and Involuntary Settlement” (2012), available at: <https://www.ifc.org/content/dam/ifc/doc/2010/2012-ifc-performance-standard-5-en.pdf>.

ANNEX 2: REFERENCES

- Accountability Framework Initiative. (2023). The Accountability Framework Core Principles. <https://accountability-framework.org/use-the-accountability-framework/download-the-full-framework/downloads/core-principles/>.
- Accountability Framework Initiative. (2019). Operational Guidance on Remediation and Access to Remedy. Revised 2020. <https://accountability-framework.org/use-the-accountability-framework/download-the-full-framework/downloads/operational-guidance-remediation-and-access-to-remedy/>.
- Alcantara, C., and J. Nelles. (2009). Claiming the City: Co-operation and Making the Deal in Urban Comprehensive Land Claims Negotiations in Canada. *Canadian Journal of Political Science*, 42(3), 705-727. <https://doi.org/10.1017/S0008423909990394>.
- Borras, S., Franco, J., Moreda, T., Xu, Y., Bruna, N., and B. Demena. (2022). The value of so-called ‘failed’ large-scale land acquisitions. *Land Use Policy* 119 (August 2022): 106199, <https://doi.org/10.1016/j.landusepol.2022.106199>.
- Borras, S., Fig, D., and S. Suaréz. (2011). The politics of agrofuels and mega-land and water deals: insights from the ProCana case, Mozambique. *Review of African Political Economy* 38(128): 215-234.
- Brondizio, E., Aumeeruddy-Thomas, Y., Bates, P., Carino, J., Fernández-Llamazares, A., Farhan Ferrari, M., Galven, K., Reyes-García, V., McElwee, P., Molnár, Z., Samakov, A., and U. B. Shrestha. (2021). Locally Based, Regionally Manifested, and Globally Relevant: Indigenous and Local Knowledge, Values, and Practices for Nature. *Annual Review of Environment and Resources* 46: 481-509. <https://doi.org/10.1146/annurev-environ-012220-012127>.
- Byerlee, D. R.; Deininger, K.; Lindsay, J.; Norton, A.; Selod, H.; and M. Stickler. (2011). Rising global interest in farmland: can it yield sustainable and equitable benefits. Agriculture and Rural Development Washington, D.C.: World Bank Group. <http://documents.worldbank.org/curated/en/998581468184149953/Rising-global-interest-in-farmland-can-it-yield-sustainable-and-equitable-benefits>.
- EJAtlas. (2023). ProCana Sugar Plantation, Limpopo, Mozambique. Global Atlas of Environmental Justice. Available at <https://ejatlas.org/conflict/procana-sugar-plantation-limpopo-mozambique/?translate=es>.
- Filipe, E. and S. Norfolk. (2017) Changing landscapes in Mozambique: why pro-poor land policy matters. Briefing. IIED, London. <http://pubs.iied.org/17356IIED>.
- “Government sets aside 200,000 acres to start land bank programme.” *The Citizen* [Dar es Salaam], 22 May, 2016, Retrieved from <https://www.thecitizen.co.tz/tanzania/news/national/govt-sets-aside-200-000-acres-to-start-land-bank-programme-2555792>.
- Hall, R. (2011). Land grabbing in Southern Africa: the many faces of the investor rush. *Review of African Political Economy*, 38(128), 193–214. <http://www.jstor.org/stable/23055201>.
- IFC (2007). Stakeholder Engagement: A Good Practice Handbook for Companies Doing Business in Emerging Markets. <https://www.ifc.org/content/dam/ifc/doc/mgrt/parttwo-downsizing.pdf>
- IFC (2012) Performance Standard 1: Assessment and Management of Environmental and Social Risks and Impacts. <https://www.ifc.org/en/insights-reports/2012/ifc-performance-standards>.

Keenan, J. and S. Holcombe. (2021). Mining as a temporary land use: A global stocktake of post-mining transitions and repurposing. *The Extractive Industries and Society* 8 (2021) 100924. <https://doi.org/10.1016/j.exis.2021.100924>.

Kennedy, C., Farris, B., Oakleaf, J. R., Garnett, S., Fernández-Llamazares, A., Fa., J., Baruch-Mordo, S., and J. Kiesecker. (2023). Indigenous Peoples' lands are threatened by industrial development; conversion risk assessment reveals need to support Indigenous stewardship. *One Earth* 6: 1032-1049. <https://doi.org/10.1016/j.oneear.2023.07.006>

Legal Information Institute [LII] (2022). Divestment. Wex Legal Dictionary and Encyclopedia. <https://www.law.cornell.edu/wex/divestment>.

LandBack. (2021). Retrieved from <https://landback.org>.

Lay, J.; Anseeuw, W.; Eckert, S.; Flachsbarth, I.; Kubitz, C.; Nolte, K.; and M. Giger. (2021). Taking stock of the global land rush: Few development benefits, many human and environmental risks. Analytical Report III. Land Matrix, <https://landmatrix.org/resources/land-matrix-analytical-report-iii-taking-stock-of-the-global-land-rush/>.

MLR Forestal (6 August, 2023). Historic agreement between Mayangna communities of the Matumbak territory and MLR Forestal. Company website. Accessed at <https://mlr.com.ni/historic-agreement-between-mayangna-communities-of-the-matumbak-territory-and-mlr-forestal-2/?lang=en>.

Mowbray, S. (2023). Jatropa: The biofuel that bombed seeks a path to redemption. Mongabay. <https://news.mongabay.com/2023/04/jatropa-the-biofuel-that-bombed-seeks-a-path-to-redemption/>.

Notess, L. and P. Veit. (2018). As Indigenous Groups Wait Decades for Land Titles, Companies Are Acquiring Their Territories. World Resources Institute. <https://www.wri.org/insights/indigenous-groups-wait-decades-land-titles-companies-are-acquiring-their-territories>

Sulle, E. (2017). Of local people and investors: the dynamics of land rights configuration in Tanzania. DIIS Working Paper 2017: 10. Danish Institute for International Studies. Retrieved from https://pure.diis.dk/ws/files/1220266/DIIS_WP_2017_10.pdf.

Terra Firma. (2017). The application of the Community Land Value Chain (CaVaTeCo) approach to land tenure formalization processes in Mozambique. Available at <https://glt.net/2017/05/31/white-paper-the-application-of-the-community-land-value-chain-cavateco-to-land-tenure-formalisation-processes-in-mozambique/>.

Thein, S., Diepart, J.-C., Hlwan, M. and C. Allaverdian (2018). Large-Scale Land Acquisitions for Agricultural Development in Myanmar: A Review of Past and Current Processes. MRLG Thematic Study Series #9. Vientiane: MRLG.

USAID (2018). Mozambique – Property Rights and Resource Governance Profile, <https://www.land-links.org/country-profile/mozambique/#land>.

USAID (2022). Green Resource: DUAT Relinquishment Project, How to support land relinquishment and develop best practice guidelines for responsible divestment. PowerPoint presentation, February 6, 2020. (on file with author).

Zimmer, Eric. (2022). “Can the Indigenous #Landback Movement Secure Self-Determination?” *The Washington Post* (Washington, D.C. 1974. Online).

U.S. Agency for International Development

1300 Pennsylvania Avenue, NW

Washington, DC 20523

Tel: (202) 712-0000

Fax: (202) 216-3524

www.usaid.gov