



A view of Rio Tungki and the community of Mahalwas

CASE STUDY

Transfer of Finca Miranda from MLR Forestal to Mayangna Sauni Arungka (Matumbak) Territory

March 2024

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Arungka (Matumbak) Territory

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Executive Summary

The transfer of land from a company to a community has the potential to bring about positive outcomes for all parties. Yet land transfer also presents potential risks to communities, such as elite capture, increased land conflicts, and the loss of important economic benefits from a company's operations on the land. As with any investment-driven change in land use, ownership, or management, responsible land transfer requires robust community consultation and consent processes to identify and manage such risks, and to ensure that communities are able to shape and participate in decisions that result in a positive outcome for both the community and the company. This case study describes a successful transfer of land from MLR Forestal de Nicaragua S.A. (MLR), an agroforestry company operating in northeastern Nicaragua, to the Mayangna Indigenous communities of the Mayangna Sauni Arungka (Matumbak) Territory, through a multi-year free, prior, and informed consent (FPIC) process.

In Nicaragua, demarcation and titling of Indigenous territories of the Caribbean Coast began quite recently, following the passage of Law 445 of 2003. Due to a number of factors, the designation of Indigenous territories has in many cases resulted in overlapping rights, with lands held by non-Indigenous landholders falling within now-titled Indigenous territories. Finca Miranda, one of MLR's teak and cacao plantations in the municipality of Bonanza, was one such property, as it was located within Matumbak Territory upon the titling of the territory in December 2009. Although the law provides some guidance around the how to resolve situations in which 'third-party' landholders find themselves within Indigenous territories, implementation has been limited.

In the years following titling of the territory, the Indigenous Territorial Government of Matumbak (GTI-Matumbak) and MLR began to establish a relationship, with MLR focusing on supporting three of the territory's Mayangna communities located near Finca Miranda. Although it began as an informal relationship centered around in-kind support, the relationship was formalized in 2017, when GTI-Matumbak and MLR signed their first mutual cooperation agreement. At this same time, GTI-Matumbak officially granted recognition to MLR of their property rights over Finca Miranda, affirming their status as a third party with legitimate rights under Law 445. Through the course of their collaboration in subsequent years, MLR came to better understand the governance structure of Matumbak, and how to effectively engage with the communities of the territory.

Ultimately, in 2021, after evaluating its options under the law regarding Finca Miranda and considering the potential costs and benefits for the communities and for MLR's ongoing operations, MLR determined that it would propose to transfer possession of Finca Miranda to the communities of Matumbak. The company sought to carry out the transfer in accordance with national law and international best practices but found no clear legal procedures under Nicaraguan law, and limited information on international best practices for company-to-community land transfers. The company worked with a local legal and land governance expert to develop a draft protocol for the transfer based on Matumbak's own FPIC Bio-Protocol, which provides a biography of their community and a clear explanation of their governance norms and how they wish for FPIC to be carried out for matters affecting their territory. MLR also engaged Landesa to advise and ensure that their process aligned with international standards and best practices.

Landesa carried out a review one year after the transfer was complete to follow up on the initial study and gain deeper insights into land transfers. The findings from the first-year review are presented in Annex 1.

The FPIC process included:

- A **preparatory phase** in which the protocol was prepared and details discussed in collaboration with Matumbak authorities;
- A **consensus-building phase** featuring a round of community assemblies with all 9 communities in the territory, to socialize the idea with community members and receive input, after which MLR and the territorial leaders would agree on a document detailing the terms of the transfer;
- A **consent phase** centered on a second round of community assemblies in which communities could choose to provide or withhold consent, followed by a territorial assembly in which the leaders provide final confirmation of the territory's consent to receive the land, after which the documents would be signed to finalize the transfer;
- An **accompaniment phase**, following the transfer of the property, in which MLR provides capacity-building and technical support to ensure that the communities of Matumbak are able to continue to operate the agroforestry plantation for their own benefit as a source of sustainable income.

Several key factors contributed to the success of the process:

- Positive relationship and trust between MLR and Matumbak communities
- Organization and capacity of Matumbak communities and territorial leadership
- Commitment by MLR, and its investors Finnfund and FMO, to acting responsibly
- Robust accompaniment to support the transition of farm management to Matumbak
- Identifying locally appropriate solutions to support broad and effective participation of all the communities that comprise the territory
- Involvement of women and youth in consultation, consent, and management of land

Overall, the findings in this case confirmed the importance of a robust consultation and consent process as a means of addressing risks associated with the transfer or return of land from companies to communities. The case is also particularly notable as a pioneering instance of a third-party landholder within a titled Indigenous territory voluntarily transferring property to the communities of the territory in accordance with Law 445. The FPIC process accompanying the transfer was similarly significant, as it represented the first time an external party followed the FPIC process laid out in Matumbak's FPIC Bio-protocol. The process thus served as a validation of that instrument, supporting territorial governance and providing an example of responsible conduct for other companies in the region to follow. Further research will be needed to draw learnings from the critical post-transfer accompaniment stage and assess the extent of benefits realized by the communities from the transfer.

1. Introduction

The transfer or return of land from companies to rural communities—sometimes also referred to as land divestment or land relinquishment—is an emerging trend in various regions around the globe, driven by a range of factors such as increasing awareness of land rights, changes in companies' land requirements, social justice concerns, and changing government policies. Although the return of land from a company can benefit a community, experiences from other contexts have demonstrated that transfer of land can present a number of challenges and risks to both companies and communities, including:

- **Conflict with Investors:** In initiating a transfer or return of land, companies may face resistance from investors or entities that currently hold rights to the land, potentially leading to legal and economic disputes.
- **Unclear Processes:** The process of transferring land may face logistical and administrative challenges, including unclear legal pathways and difficulty in the identification of rightful beneficiaries and the establishment of clear land tenure systems.
- **Resistance from Local Interests:** Some local elites or interest groups may resist the transfer of land to communities, fearing the loss of benefits or influence derived from current land use. Actors from such groups may also try to capture disproportionate benefits from the transfer for themselves.
- **Government Capture:** Even when supported by law, transfer of land to communities can run counter to the current policies or interests of the government, either local or national. As a result, there can be risks of local government trying to capture the land for their own gain, as well as of national government attempting to maintain control of the land for economic purposes.
- **Environmental Degradation:** In some cases, communities may be taking on a liability if companies are transferring degraded lands, and/or lands containing hazardous wastes (e.g., former industries of any kind). In other cases, the transfer of land may result in unsustainable land use practices by local communities, leading to environmental degradation.

In light of these risks, and given that transferring land from a company to a community is a significant land management decision, it is critical that such transfers be managed responsibly and include a robust community consultation and consent process. In addition to being essential to ensure respect of community rights, a robust community consultation process can help mitigate the above risks by ensuring all relevant stakeholders are aligned, prepared, and supportive of the transfer.

In Nicaragua, the enactment of Law 445 established legally titled Indigenous territories for the first time in the country's history. In delimiting Indigenous territories based on the extent of ancestral possession, the law has in a number of cases resulted in overlapping rights, with individuals and entities holding title to land within newly designated Indigenous territory. While land transfer from a company to a community is one solution to resolving this issue, since the passage of the law in 2003, there have been no examples of a company or individual going through the process of transferring land held under a previously valid title.

MLR Forestal de Nicaragua S.A. (MLR), an agroforestry company operating in northeastern Nicaragua, offers the first example of such a transfer. In 2010, the nine communities of the Mayangna Sauni Arungka (Matumbak) Indigenous Territory received their territorial title, the boundaries of which encompassed in its entirety a 113-hectare (ha) farm in Bonanza that was owned and operated by MLR. Over the course of the next few years, MLR and Matumbak undertook a process of engagement and relationship-building which culminated in formal transfer of the land to the community. The company sought to ensure that the transfer process was legally valid under national law and aligned with relevant international standards and expectations for responsible land transfer. Based on Landesa's global experience advising companies on responsible land investment, including land divestment, MLR approached Landesa for support in 2021 as the company sought to define its land transfer strategy. This case study describes the successful MLR land transfer example and discusses the challenges, lessons learned, and considerations for future instances of transfer or return of land from companies to communities.

2. Case Background

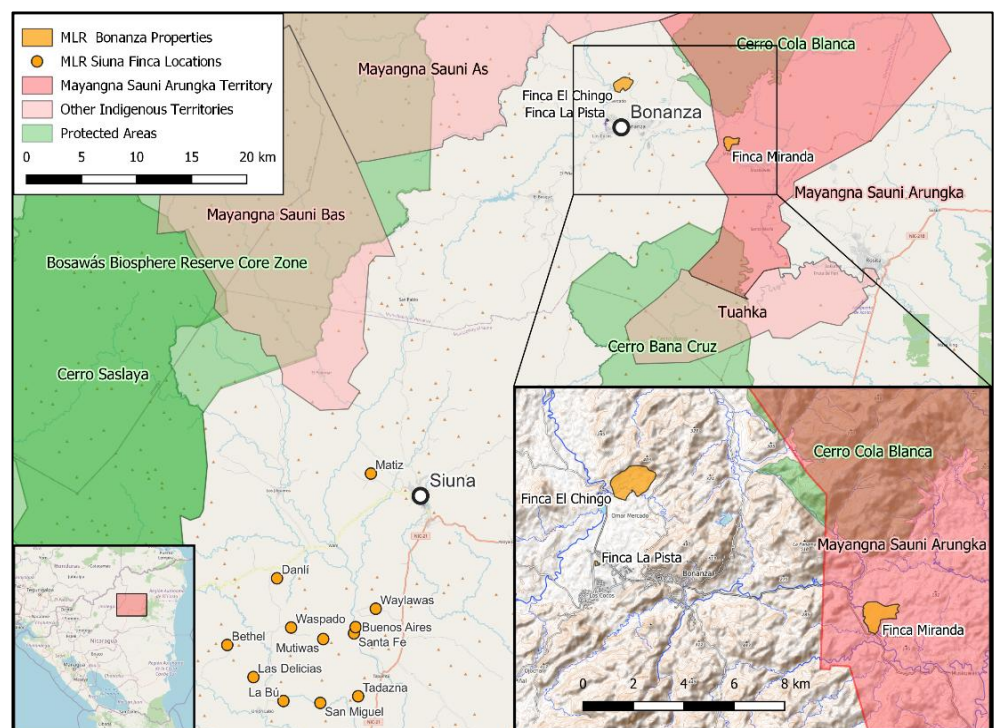
2.1 Mayangna Sauni Arungka (Matumbak) Territory

The Mayangna Sauni Arungka Territory, referred to as Matumbak, is one of the six indigenous Mayangna territories of Nicaragua's North Caribbean Coast Autonomous Region, and is located between the municipalities of Rosita and Bonanza. Nine communities comprise the Matumbak indigenous territory: Ispayulilna, Wiunakwas, Yapuwas, Mahalwas, Ibanwas, Pansuhwas, Mukuswas, Wassah, and Wakilwas. The Matumbak territory has an estimated population of 4,500 (2018), the majority of which speaks the Mayangna language, Panamahka. Some of the community members also speak Spanish and Miskito.

Matumbak presented to the National Commission for Demarcation and Titling (CONADETI) a petition for the titling of their communal property, encompassing a territorial area of 48,499.86 hectares, under the Communal Land Law (Law 445, 2003). CONADETI issued the communal property title in December 2009, and in June 2010 delivered this title to the governing authorities of the Matumbak communities. However, much of this land is currently in possession of third party (non-Mayangna) landholders, including many who hold titles originally issued by the State of Nicaragua through agrarian reform, and others who have settled illegally on Matumbak land.

2.2 MLR Forestal

MLR Forestal (MLR) is a privately held company that develops forestry and agroforestry plantations for teak and cocoa production. The operations that became MLR began as the Javier Chamorro Mora Forestry Project, started in 2008 by HEMCO Nicaragua, a mining company operating in Bonanza. In 2012, Javier Chamorro Mora Forestry Project became an independent entity when it was acquired by MLR Forestal, with the stated mission of generating added value to the environment and to the communities where it operates through the sustainable and responsible development and management of agroforestry plantations.



Map 1. MLR Properties in Siuna and Bonanza, and Indigenous Territories

According to its website, MLR works to "transform degraded lands into forestry and agroforestry plantations to contribute to conservation, carbon sequestration and establish corridors that allow

biological connectivity" through operations covering approximately 4,000 ha in the municipalities of Siuna and Bonanza, both in the North Caribbean Coast Autonomous Region of Nicaragua.

The majority of the company's operations are in the municipality of Siuna; at the time of the land transfer, MLR's operations in Bonanza represented approximately 5 percent of the total land area of the project. MLR operations in Bonanza consisted of two teak and cacao farms, Finca El Chingo and Finca Miranda, as well as an administrative base with a small farm (Finca La Pista), with Finca Miranda representing approximately 2 percent of MLR's operations.

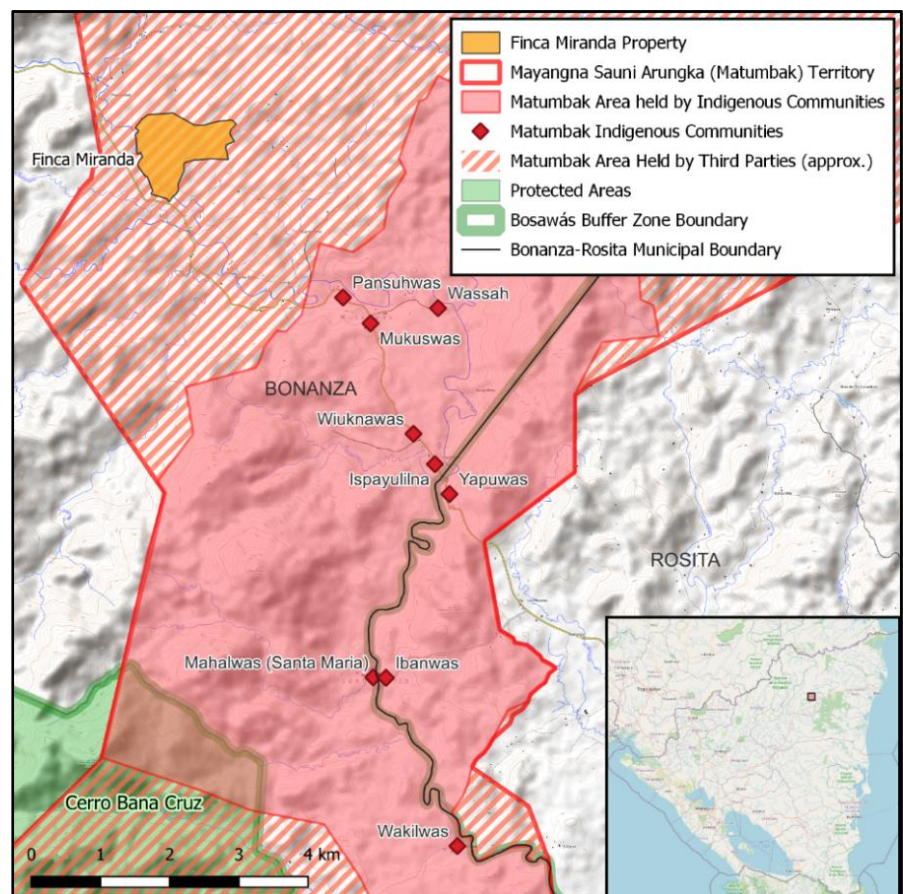
The properties comprising the 113.84-ha Finca Miranda were titled by the State of Nicaragua to private landholders in the 1980's through the agrarian reform process and have been privately held since that time. Finca Miranda was acquired and became part of the Javier Chamorro Mora Forest Project in March 2009.

As of early 2023, the property featured 18 hectares sun-grown cacao trees, 34 hectares of cacao shaded by teak trees, and 5 hectares planted solely with teak trees, with many of the cacao trees mature and bearing fruit, and many of the teak trees ready for harvest. Another 57 hectares, representing just over half of the property, was protected as a natural conservation area.

2.3 Matumbak–MLR Relationship

In 2015, the Indigenous Territorial Government of Matumbak (GTI-Matumbak) approached MLR to inform the company that Finca Miranda was included in the recently recognized and titled Matumbak territory. Following this contact, the two parties began to establish a relationship, with MLR focusing on supporting three communities which were located along the highway near Finca Miranda: Pansuhwas, Mukuswas, and the territorial capital of Ispayulilna. At first, this relationship was not formalized, but consisted of in-kind support based on needs and requests from the Matumbak.

Over the years, MLR has worked to consistently maintain amicable relations with Matumbak, fostering a strong sense of neighborly goodwill. The relationship was formalized in 2017, as MLR and GTI-Matumbak



Map 2. Matumbak Communities and Finca Miranda

signed an agreement on joint workstreams, through which MLR would support the development of the territory on matters such as health, education, natural resource management, and response to natural disasters, with a particular focus on providing benefits to the three aforementioned communities. In conjunction with this agreement, GTI-Matumbak endorsed MLR's continued operations within the territory, and the Finca Miranda property was regularized as a recognized and legitimate third-party landholding under Law 445.

During the process of reaching these agreements, an MLR-GTI commission was formed, facilitating regular contact between MLR and GTI-Matumbak for coordination in the execution of the agreed activities.

Several external factors, including political events in 2018 and the subsequent challenges posed by the Covid-19 pandemic, as well as the impact of hurricanes Eta and Iota, prevented the original workstreams from being executed precisely as planned. Yet, the two parties adapted plans based on the changing circumstances. For example, in the early period of the Covid-19 pandemic, MLR supplemented State relief efforts by distributing Covid prevention kits and providing food to Matumbak communities. Following the hurricanes Eta and Iota in 2020, the joint work plan was again adapted to contribute to State relief efforts, as MLR reoriented its support to address immediate community needs arising from the heavy impact of the storms, providing essential items such as food, roofing sheets (zinc), and construction materials.

Over the course of 2018-2020, MLR also came to better understand how to effectively engage with the communities of Matumbak. The company began to work with a Nicaraguan land governance expert who is familiar with the territory and has experience and expertise on investor-community engagement in the region. MLR familiarized itself with the governance structure of the territory and began to engage directly with the communities in addition to its meetings with territorial leaders. In 2020, MLR and GTI-Matumbak jointly developed a new five-year mutual cooperation agreement for 2021-2025. Signed in 2021 following approval by communal assemblies, this agreement focused on six workstreams:

- Institutional strengthening of territorial and communal authorities
- Consolidation of property rights
- Improving the standard of living in the communities
- Promotion of community forestry and reforestation
- Risk management and reduction
- Training of women and youth

Around the same period, MLR also evaluated its options under the law regarding Finca Miranda and considered the potential costs and benefits for the community and for MLR's ongoing operations, and determined that it would propose to transfer possession of Finca Miranda to the communities of Matumbak in compliance with the provisions of Law 445. In doing so, MLR committed to developing and following a legitimate, legal, and transparent process that could serve as an example of recognition of the Indigenous Matumbak communities' right to communal property.

3. Methodology

A variety of research methods were used in the preparation of this case study, including both desk review and field research.

Desk review consisted of a review of relevant documents and geospatial data serving as contextual background for this specific case, as well as documentation of the consultation and consent process as it proceeded. See [Annex 1](#) for a list of key documents reviewed.

Field research consisted of key informant interviews, focus group discussions, observation of assemblies, and field visits by the Landesa team to MLR properties. The majority of the field research, including all assemblies and focus group discussions, occurred on-site in Matumbak Territory, within the municipalities of Bonanza and Rosita, Northern Caribbean Coast Autonomous Region, Nicaragua (see Map 1). Additional interviews and group discussions with MLR Forestal staff, investors FMO and Finnfund, and GTI-Matumbak were conducted remotely via video calls.

In-person key informant interviews and focus group discussions were conducted during two separate site visits, the first in January 2023, and the second in April 2023. These interviews and focus group discussions were conducted in Spanish, Mayangna, and/or Miskitu. When Mayangna and/or Miskitu was used, a Mayangna-Miskitu-Spanish-English interpreter was used to translate the Mayangna and/or Miskitu into Spanish and/or English and vice versa. Key informant interviews included a total of 15 individuals: three Matumbak leaders, four Matumbak community members, four MLR representatives, and four representatives of institutional investors in MLR. Four of the interviewees were women and eleven were men. In order to hear from a broader array of stakeholders, a total of seven focus group discussions were conducted, with 48 total participants (see Table 1).

| Focus Group | Participants | Date Interviewed | Location |
|---|-------------------|------------------|-------------|
| GTI-Matumbak | 5 women 16 men | Jan 26, 2023 | Ispayulilna |
| Women Leaders of Matumbak | 6 women | Apr 11, 2023 | Ispayulilna |
| GTI-Matumbak Land Transfer Commission* | 6 men | Apr 11, 2023 | Ispayulilna |
| Community Members from Wakilwas | 3 women 3 men | Apr 13, 2023 | Ibanwas |
| Women from Ibanwas & Mahalwas | 4 women | Apr 13, 2023 | Ibanwas |
| Men from Mahalwas | 4 men | Apr 13, 2023 | Ibanwas |
| Community Members from Wassah | 5 women 2 men | Apr 14, 2023 | Wassah |

Table 1. List of focus groups conducted by Landesa.

* Appointed specifically to oversee the process of MLR's transfer of Finca Miranda to Matumbak

Interviews were conducted in semi-structured style. In-person interviews focused on the details of the land transfer process to date, including the consultation and consent process, and the role of each interviewee in that process; perceptions of the process, including challenges and successes; concerns related to the land transfer; and desired outcomes from the process. Remote interviews with MLR leadership and investors focused on MLR Forestal's motivations and factors underlying the decision to transfer the land and assets to Matumbak, and to carry out the consultation process in the way the company has.

Focus group discussions focused on perceptions regarding the land transfer and consultation process; the nature, extent, and mechanisms of engagement of community members, including women; the terms of the transfer agreement document; and perceptions and concerns regarding the accompaniment period following the formalization of the transfer.

In addition to these interviews and focus group discussions, the Landesa team attended six assemblies, which were convened by GTI-Matumbak for community consultation regarding the transfer of Finca Miranda, in accordance with their community norms:

| Assembly Type | Location | Participating Communities | Date | Purpose |
|-----------------------------|-------------|--|--------------|---|
| Community Assembly | Ispayulilna | Ispayulilna Wiunakwas Yapuwas | Jan 24, 2023 | Community consultation |
| Community Assembly | Mahalwas | Mahalwas Ibanwas | Jan 25, 2023 | Community consultation |
| Community Assembly | Pansuhwas | Pansuhwas Mukuswas Wassah | Apr 12, 2023 | Community consent |
| Community Assembly | Ispayulilna | Ispayulilna Wiunakwas Yapuwas | Apr 12, 2023 | Community consent |
| Community Assembly | Ibanwas | Ibanwas Mahalwas Wakilwas | Apr 13, 2023 | Community consent |
| Territorial Assembly | Ispayulilna | Representatives of all (9) communities | Apr 14, 2023 | Confirmation of consent by territorial and communal leaders |

Table 2. List of Community and Territorial Assemblies attended by Landesa.

The Landesa team was not able to observe the first Community Assembly of the Consultation Phase, held in the community of Mukuswas on January 11, 2023. In lieu of attending, Landesa received a verbal report from MLR and reviewed the minutes of the assembly prepared by GTI-Matumbak.

4. Legal context

4.1 National legal framework for land and Indigenous land rights

Indigenous peoples' right to their territories and to self-government is recognized in Nicaragua's 1987 Political Constitution, in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), which Nicaragua voted to approve, and in Convention 169 of the International Labor Organization (ILO 169), a legally binding international treaty ratified by Nicaragua. Article 89 of Nicaragua's 1987 Political Constitution recognizes the ancestral rights of Indigenous communities in the Autonomous Regions of the Caribbean Coast to self-governance, communal land tenure, and preservation of their identities and cultures. The 1987 Constitution also established an autonomous regime for Indigenous and Afro-descendant governance of the Atlantic Coast region, which represents approximately 50 percent of the country's land area. The subsequent enactment of the Statute of Autonomy of the Caribbean Coast (1987) further elaborated on these rights established in the Constitution, creating the legal mechanisms and regulations to implement the autonomous region in the Caribbean Coast region.

Despite the constitutional enshrinement of their ancestral rights to communal land tenure, Indigenous communities' rights to land remained tenuous, with limited enforcement in the decades immediately following the establishment of the 1987 Constitution, as community lands lacked demarcation and formal titling. In 2003, the State of Nicaragua sought to address this gap through the enactment of Law 445 on Communal Property Regime of the Indigenous Peoples of the Autonomous Regions of the Caribbean Coast of Nicaragua and of the Bocay, Coco, Indio and Maíz rivers, more commonly known as the Communal Land Law or Law 445. This law established a legal procedure for Indigenous communal authorities to petition for demarcation, recognition, and titling of their communities' ancestral lands, and also established the fundamental principles of the administrative regime of indigenous peoples in the management of their respective territories. The law created the National Commission for Demarcation and Titling (CONADETI), to receive applications and oversee the demarcation and titling process. Five stages were prescribed for the process:

1. Application
2. Conflict Resolution
3. Measurement and Demarcation
4. Titling
5. *Saneamiento*[†] or Regularization

It is important to note that, under Law 445, territories are demarcated based on 'historical and cultural possession,' not present possession. This recognition of ancestral rights to land, which in many cases encompassed a far greater range than in the present day, meant that many of the resulting titled territories included considerable areas of land which have been possessed for decades by non-

[†] This concept does not translate directly to English, but refers to reconciliation of the presence and status of third-party landholders within titled Indigenous territories. The Spanish word *saneamiento* literally translates as 'sanitation,' but some sources have translated this as 'regularization.' IWGIA (2023) *El Mundo Indígena 2023: Nicaragua*. 2023. International Work Group for Indigenous Affairs (IWGIA). <https://www.iwgia.org/doclink/iwgia-book-the-indigenous-world-2023-eng/eyJ0eXAiOiJKV1QiLCJhbGciOiJIUzI1NiJ9.eyJzdWIiOiJpd2dpYS1ib29rLXRoZS1pbmRpZ2Vub3VzLXdvcmxkLTlwMjMtZW5nIiwiaWF0IjoxNjg5NzcxMDMxLjEhHAiOiJlE2ODE4NTY0MzF9.PxHbwjCHHzLhC5V4CSm9QD0ZwrRggSEZOAP38mX6h9c>.

Indigenous landowners, whom the law refers to as ‘third parties.’ These third-party landholders include many individuals and private entities, such as MLR, that hold legal titles issued by the State of Nicaragua through land reform processes in the late 20th century. Article 36 of Law 445 addresses these conflicting rights by declaring that third parties with agrarian reform titles have full rights to continue possessing the property.

However, the law prohibits third parties from selling the land or improvements to any party except the community within whose territory the property is located. Landholders within now-titled Indigenous territories who are not in possession of a valid agrarian reform titles are required to return the lands to the Indigenous communities, although in some cases they may be able to remain on the lands and pay a rental fee to the communities (Articles 35, 37, 38).

While the law provides detailed guidance outlining the process by which Indigenous land is to be titled (stages one through four of the process), only one article addresses the fifth stage, stating that “Each of the communities, once their title has been obtained, will be able to initiate with the technical and material support of the Rural Titling Office (OTR), the stage of *saneamiento* of their lands, in relation to third parties that are within them” (Article 59). In the decades since the law’s passage, no further provisions, details or clarifications have been identified on how the process of *saneamiento* will be carried out. As a result, expectations and understandings around the topic have varied widely, and it has proven to be the source of significant contention.

4.2 Overview of International Standards and Best Practices

Neither international nor regional guidance exists regarding how a company seeking to transfer land to a community should approach the process. However, there is considerable international guidance and experience on what constitutes responsible investment in land. In particular, the International Finance Corporation’s (IFC) 2012 Performance Standard (PS)¹, “Assessment and Management of Environmental and Social Impacts,” PS 5, “Land Acquisition and Involuntary Resettlement,” and PS 7, “Indigenous Peoples,” provide recognized international standards regarding community impacts associated with land-based investments.[‡] These best practices and principles apply when changes in land use, ownership, or control are likely to impact communities, and are therefore also applicable in cases when the transfer is from investor directly to communities. Key best practices are outlined below:

1. **Understand extent of land and assets to be transferred**, including delimited boundaries and monetary valuations

[‡] IFC PS 1 on “Assessment and Management of Environmental and Social Impacts” provides the most directly relevant guidance on divestment. PS 1 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.” The standard explicitly applies to the entire life cycle (through design, construction, commissioning, operation, decommissioning, closure or, where applicable, post-closure) of a project. PS 1 Implementation Resources include a good practice handbook for companies doing business in emerging markets that includes a chapter on Downsizing, Decommissioning, and Divestment (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>).

2. **Map stakeholders to be impacted**, with a particular focus on communities with rights to the land being transferred
3. **Develop a consultation and information sharing plan** which is aligned with community decision-making norms
4. **Consult with the affected communities** through a process which is participatory, inclusive of vulnerable groups, and defined by the communities
5. **Provide communities with the right to free, prior, and informed, consent**, as an internationally recognized right for Indigenous communities, and best practice for other customary communities holding land collectively
6. **Remediate issues**, such as latent environmental or social issues, or land conflicts associated with the land to be transferred, prior to confirmation of the transfer
7. **Provide access to remedy** through a contextually appropriate, accessible, and risk-free (with option of anonymity) grievance mechanism

4.3 Matumbak Territorial Governance

The territory has its own form of social organization, a structure of self-government and administration at the communal and territorial levels with responsibilities, powers and functions established according to tradition and custom and based on the principles established in Law 445.

In each of the 9 communities, there is a set of communal authorities, which includes: the Communal Assembly, which is the highest government authority within the community, made up of all the members of the community over 16 years of age; the Sau Tatuna (Communal Trustee); the Pa Tatuna (Communal Judge); the Muih Barak (Council of Elders); the Sumalyang (pastors or religious leaders); the Kulsumalyang (leader of education); the Health Leader; and the Communal Councilor for the GTI, who is the person elected by the community to integrate and represent at the territorial government level. All significant decisions affecting communities must be consulted with each community in a Communal Assembly.

At the Territorial Level, the GTI is organized as follows:

- The Territorial Assembly is the highest decision-making authority of the territory, made up of 65 members including elected representatives from each community, a Board of Directors, a Territorial Council, the Communal Authorities, and the Organization of Women of the Territory (MAYAKAT).
- The Territorial Board of Directors is made up of one President, two Vice Presidents, two Secretaries, two Prosecutors, a Treasurer, a Territorial Trustee, a Territorial Chief, and one Board Member (*Vocal*), as well as the nine members of the Territorial Council. This Board directs the administration of the Territory and has its legal representation through the President. The Board is also responsible for convening and directing the Territorial Assembly as well as coordination with the Communal Authorities.
- The Territorial Council is composed of nine territorial councilors, with each of the communities electing one.

- The positions of Territorial Trustee and *Cacique* of the Territory are elected by the Territorial Assembly.

The Matumbak communal property title describes a single territorial unit held by the nine indigenous communities of the territory. Within this territory, each indigenous community has traditionally occupied and continues to occupy a specific area for the use of the community; each community's land area is delimited and recognized by the rest of the Matumbak communities. Beyond this, the remainder of the territory—representing the majority of land under Matumbak title—is held in common by all nine of the territory's communities, rather than pertaining to any specific community. However, as noted above, much of this land is currently in possession of third party (non-Mayangna) landholders.

5. Intervention – Community Consultation and Transfer of Finca Miranda

5.1 Goals and Objectives

Although MLR Forestal and Matumbak had entered into a second Mutual Cooperation Agreement and enjoyed a positive relationship related to the company's operation within the Territory (see section 2.3), in 2021, after careful consideration, MLR decided to propose to the communities of Matumbak that they assume full ownership of the land and assets of the Finca Miranda. The transfer proposal was a decision by the Management and owners of MLR which, importantly, was fully supported by its financiers FMO and Finnfund. This was based on consideration of the following primary factors:

- **Remoteness from company operations:** Due to the expense and logistical challenges associated with maintaining operations at great distance from their primary base of operations, MLR has been seeking to consolidate their operations in Siuna, where their processing facilities and the majority of their plantations are located.
- **Legal status of the farm as part of Matumbak Territory:** According to Article 36 of Law 445, if a third-party holding land under an agrarian reform title within a titled Indigenous territory intends to alienate that property, they may only sell the improvements to the Indigenous community.
- **Recognition of potential benefit to Matumbak:** Through the process of relationship-building between MLR and Matumbak, MLR realized that the communities could gain greater benefit from the plantation if they were to manage it directly themselves.
- **Compatibility with Matumbak community land use:** MLR had observed the communities' interest and experience with agroforestry, in the form of traditional cacao cultivation as well as existing cooperatives in the territory focused on cacao production.
- **Reputational risk:** Despite the company's positive relationship with Matumbak, continuing to hold land within a now-titled Indigenous territory exposed MLR to reputational risk.

Once the decision was made to pursue the transfer of the Finca Miranda property to Matumbak, MLR began to gather information to determine what the process should entail. MLR's objective was not only to legally transfer ownership of the farm to the communities of Matumbak, but also to support the communities to ensure that they would be equipped to manage the farm communally. In considering and designing their approach to the land transfer, MLR had several goals:

- **Compliance with applicable national laws:** MLR sought to carry out the transfer process in accordance with national regulations including Law 445, which governs agrarian titles on indigenous lands (see Section 4.1).
- **Alignment with international standards:** MLR aimed to adhere to international best practices and standards, including International Finance Corporation (IFC) Performance Standards (PS) 5 and 7, which pertain to the responsible acquisition of land and the rights and participation of Indigenous peoples, and the principle of Free, Prior, and Informed Consent (FPIC).
- **Respect for community norms and culture:** MLR sought to carry out the land transfer process in a transparent and inclusive manner, in accordance with Matumbak's norms, in a manner

respectful of their customs, traditions, knowledge and culture, and their right to make decisions regarding the transfer process itself and the management of the farm.

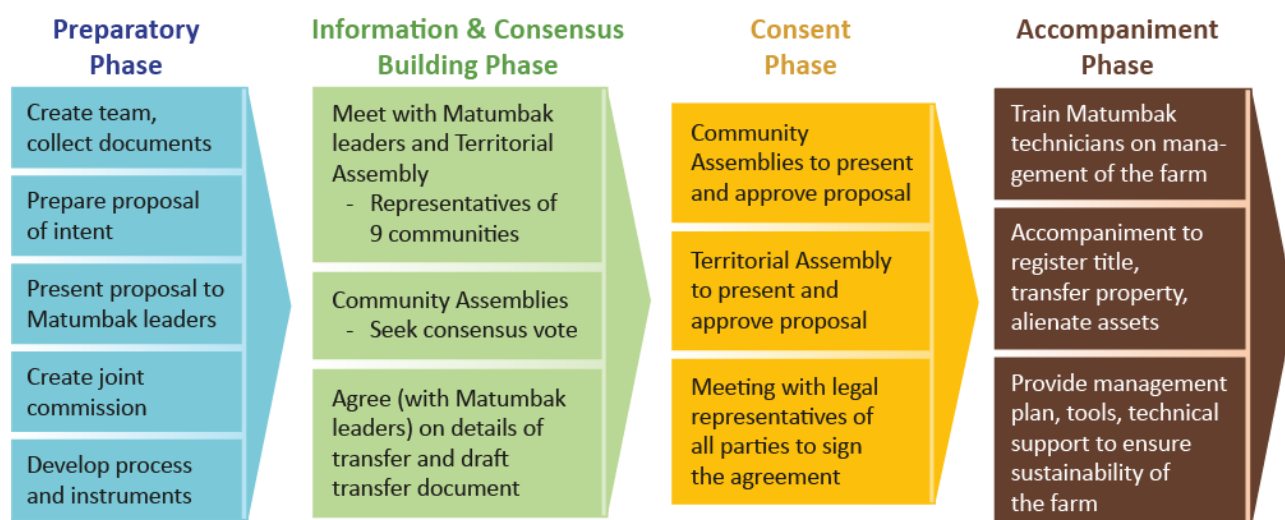
- **Community benefit from the existing assets on the property:** Given that the farm contained assets of considerable economic value in the form of mature teak and cacao trees, and assuming that Matumbak was interested in continuing to manage Finca Miranda as a teak and cacao plantation, MLR intended to provide the necessary support to enable a smooth transfer of operations and ensure that Matumbak was well-positioned to continue sustainably operating the farm for the communities' own benefit.

5.2 Design of the Transfer Process

To advise as they assessed how to proceed, MLR again engaged the services of a Nicaraguan Indigenous land governance expert to advise on national laws and local considerations. MLR also engaged Landesa to produce a guidance memo on international best practices for land return and to serve as an observer and advisor to ensure the process was being designed and carried out in accordance with international standards and best practices.

In reviewing the national laws relevant to the land transfer, MLR found that Law 445 was not clear on exactly how third parties within Indigenous territories should go about alienating property and transferring assets to Indigenous communities. For the legal matter of formally transferring ownership, they were able to determine a process based on various other laws regarding the transfer of property and assets. But for the matter of consulting the community regarding the transfer, MLR needed to look beyond national legislation.

While carrying out an Environmental and Social Impact Assessment in 2019, MLR had learned that Matumbak, with the support of IUCN, had in 2014 published their own *Bio-protocol of Free, Prior and Informed Consultation and Consent*. The Bio-protocol is a comprehensive document providing an overview of the history of the Mayangna communities of the territory and their governance structures and detailing step-by-step the protocol that external parties should follow for processes of consultation and consent for matters affecting the territory. In the absence of clear legislation mandating a different process, MLR determined that this Bio-protocol was the most relevant instrument to follow. MLR therefore developed their internal Transfer Protocol based directly upon the steps specified in Matumbak's Bio-Protocol. This helped not only to ensure alignment with community norms and customs, but also provided a strong basis to ensure compliance with international standards, given that a key component of FPIC is that the consultation and consent process should be culturally appropriate and self-directed by the affected communities. The development of MLR's Protocol took place over a period of approximately 12 months, with the document being finalized in June of 2022. The protocol included four phases, as illustrated in Figure 1.



5.3 Phase 1: Preparatory Phase

The MLR Forestal team working on the transfer process consisted of MLR's Sustainable Development Director, Luis Lopez, and Mabel Lazo Quino, Head of Social Management, with support from MLR's Consultant on Indigenous Community Relations and Land Governance. Collectively, this team brought experience in intercultural community engagement, management of gender risk, as well as knowledge of Indigenous land tenure issues and the relevant legal framework and regulatory processes.

During the Preparatory Phase, the MLR Forestal team gathered the essential background information and documents, including property titles, registry information, maps and inventory of current assets on the property, and investment records. Once this was compiled, the team developed the initial documents necessary to commence the process, including the work plan and tentative timeline; the transfer proposal with technical, social and economic justification for the transfer; and an updated grievance mechanism.

In October 2022, during one of the regular meetings between the MLR Forestal team and GTI Matumbak authorities regarding the relationship between the two parties, MLR shared their proposal to transfer possession of Finca Miranda to Matumbak, and alienate MLR's right to the improvements thereon, in accordance with Law 445. MLR explained their motivations for the transfer and shared their intent to follow a process of free, prior, and informed consent with the constituent communities of Matumbak territory, as described in the territory's published FPIC Bio-protocol. Additionally, they shared their intent for the transfer to include accompaniment and support to ensure the sustainability of the farm so that it can be managed for the benefit of the communities' interests.

The proposal received a mixed reception from the authorities of GTI-Matumbak. While they welcomed MLR's recognition of their rights to the land, and the resulting transfer of the property, they also raised several concerns, centering on the following issues:

- Matumbak's ability to pay for the sale of the improvements on the property: *"The communities do not have the financial resources to pay for these improvements."*
- Matumbak's capacity to continue operating the farm: *"How are we going to maintain them?"*

- Questions about potential ulterior motives: *“There is no private company in the world that makes this type of gift without expecting anything in return.”*
- Concerns about losing MLR’s support as a partner and ally in their territory: *“When we started this relationship [between Matumbak and MLR], we used the example that this was like a marriage, two people uniting to advance together, but today I feel that we are facing a divorce—is MLR leaving the territory and its communities alone?”*

In response, MLR reiterated their explanation and motivations: that they were seeking to consolidate operations in Siuna; that according to the law, if they were to alienate that property, their only option would be to transfer it to Matumbak as its ancestral rightsholders; that they believed it would be of greater benefit to the communities of Matumbak to manage the farm directly, and that MLR intended to provide support through the transition, including after the transfer, to help ensure this benefit is realized. Following this explanation and subsequent discussion, the GTI Matumbak authorities present agreed to proceed with the consultation and consent process regarding transfer, according to their territorial norms, and MLR agreed to share with GTI Matumbak the documents they had gathered and developed for the process. It is worth noting that some documents specified in the original Transfer Protocol were not ultimately developed. These include the stakeholder mapping and socioeconomic diagnostic assessment. Given that the consultation process would be planned and coordinated in collaboration with GTI-Matumbak, and considering their intimate knowledge and existing documentation of their territory and communities, it was not considered necessary to produce these new documents. Additionally, doing so would have slowed down the consultation process, and it was viewed as important to maintain ‘momentum’ and not subject the consultation and transfer process to unnecessary delays.

5.4 Phase 2: Information and Consensus Building Phase

With initial approval received from representatives of GTI-Matumbak, the next step was for the matter to be brought to a Territorial Assembly—the highest decision-making body of the territory. This assembly took place in November 2022, and once again the transfer proposal was approved so the decision was made to proceed with the consultation process. A Transfer Commission was formed to accompany and facilitate the process, which consisted of the two designated authorities— the trustee (*síndico*) and the judge (*wihta*)—from each community in the territory. According to Matumbak’s decision-making norms, a round of Community Assemblies was planned for January 2023, in which GTI and MLR would explain the proposed transfer and the consultation and consent process to be followed, receive questions and initial feedback, and seek the consent of each of the communities to proceed to the subsequent steps of the consultation process. If any of the Community Assemblies were to withhold their consent, this would trigger further dialogue with the community or communities in question to understand and address their concerns. If they continued to withhold consent after one month, the consultation process as a whole would be suspended indefinitely.

Given that the communities of the territory are geographically clustered into three groups, three Community Assemblies were held during this phase, with each assembly covering three communities. Each assembly had approximately 80-100 participants, including:

- Representatives of MLR
- Representatives of GTI-Matumbak
- The two communal authorities for each of the three participating communities

- Community members from each of the three participating communities
- Observers from Landesa (two assemblies) or FMO and Finnfund (one assembly)

As it is not feasible for all community members to attend each Community Assembly, the communal authorities aimed to invite a representative sample of community members, balancing participation of women and men as well as youth, and elders. Based on Landesa's observations, participation was typically balanced as intended, though in two of the assemblies, male participants significantly outnumbered female participants. To ensure all community members could understand and participate, all portions of the assembly which occurred in Spanish were subsequently translated into Mayangna for the audience. According to territorial norms, following each assembly, the community members and leaders who had attended would then filter the information back to the remaining community members.

During the assemblies that Landesa observed, several key themes emerged among the comments from participating community members and leaders:

- Gratitude to MLR for recognizing their rights to the land, for undertaking this consultation and transfer process, and for their commitment to accompaniment
- Confirmation that the process planned for consultation, consent, and execution of the transfer was clear to them
- Urging the community to be motivated to work to make the farm productive
- Emphasizing the importance of broad participation in the consultation process and the maintenance of the farm—and even in other aspects of territorial management
- Expressing belief that the farm could be a source of employment, especially for youth
- Expressing hope that women would be involved in managing and working on the farm
- Asking about details of the proposed transfer, including the cost for the sale of the improvements
- In communities that were not part of MLR's original community engagement: Questioning why they had not heard of MLR previously or why only three of the communities were engaged with MLR previously[§]

Following responses to comments by GTI representatives, communal authorities, and MLR, each of the community assemblies voted unanimously to approve proceeding with the transfer process.

This first round of Community Assemblies was followed by a period of two months in which the GTI and the communities of Matumbak had an opportunity to further reflect upon the proposal and the responses and concerns from various community members. During this period, the Transfer Commission also met with MLR to represent their communities' perspectives as the two parties came to agreement on the specific terms of the transfer—such as the timing, compensation for the alienation of

[§] Although MLR's initial relationship of mutual cooperation with Matumbak was focused on the three communities along the highway near Finca Miranda (see section 2.3), the land transfer process required the involvement and consultation of all nine communities of the territory.

improvements, and accompaniment for the transition of management of the farm. The draft Agreement document was then brought to a Territorial Assembly for approval to proceed to the next phase.

5.5 Phase 3: Consent Phase

Phase three centered on a second round of community assemblies, which were held in April 2023, and followed a similar composition of attendees and structure to those held in Phase 2. In each of the three assemblies, the draft Agreement was shared with community members in its entirety, and the terms contained therein were explained to ensure understanding. As part of this process, MLR addressed one of the key concerns that had been discussed in previous meetings—the question of how Matumbak would pay for the improvements—by sharing that MLR had decided to not request compensation for the improvements on the farm. After reviewing the document, a space was provided for questions and comments from community members. Once again, a few key themes emerged, some of which echoed the comments from the first round of assemblies:

- Gratitude to MLR for recognizing their rights to the land, and for undertaking the consultation and transfer process, and for their commitment to accompaniment following the transfer
- Confirming that the process planned for consultation, consent, and execution of the transfer was clear to them
- Urging the community to be motivated to work to make the farm productive, to invest in it and not to neglect it once the transfer is completed, and to ensure the asset is not lost or sold
- Noting that the farm should benefit all the members of the territory, especially the youth
- Suggesting that the community should use the farm as a base from which to learn and stimulate agroforestry across the territory

Following further discussion, in which community participants were invited to openly discuss their reactions and concerns, and GTI and MLR representatives responded to questions from the community participants, community members were asked to vote whether they approved or disapproved of the agreement and of proceeding to finalize the transfer. Once again, in each case, the assemblies unanimously approved, consenting to proceed.

After the final community assembly concluded affirmatively, another Territorial Assembly was held to endorse the decision made in the community assemblies and to delegate legal representation of the Territory for the formalization of the transfer. In addition to the standard participants at all Territorial Assemblies—the GTI and the trustee and judge from each community—given the importance of the occasion, this Territorial Assembly was broadened to include representatives of the women’s organization, religious leaders, and two agricultural technicians who would manage the farm following the transfer. The assembly provided an opportunity for reflection upon the consultation process, and commentary regarding the upcoming transfer:

- MLR shared that the process had been valuable, a source of ongoing learning which continued to reinforce the relationship between the company and the communities.
- The GTI once again thanked MLR, emphasizing the significance of the transfer as an affirmation of their rights, and the importance of that given the challenges the territory faces in terms of ongoing invasion and deforestation by outside settlers.

- The GTI noted that this assembly was the first meeting of the territorial governance at which representatives of the community of Wakilwas had participated in several years, since Wakilwas had been largely overtaken by settlers and nearly lost (see box on page 21).
- The GTI acknowledged that preparing and signing the documents was the easy part of this process, the hard part would be for Matumbak to continue to operate the farm. They noted how MLR had been training two agricultural technicians so they would be prepared to manage the farm following the transfer.
- The *Cacique* of the territory spoke of the importance of the farm as an opportunity to generate income to support their communities and territorial governance.
- The president of the women's organization, Mayakat, reminded the assembly that women can also do work related to this farm, and expressed her hope that they would be involved.

The assembly voted to approve the agreement, endorsing the consent provided in the community assemblies, and then each of the attendees signed the transfer agreement document. This assembly also provided the chance to agree on the timing of the final steps to formalize the transfer, namely, the signing of official documents by representatives of Matumbak and MLR, the registration of the transfer of title in the public registry, and a future meeting to discuss a technical plan for management of the farm.

On May 5th, 2023, legal representatives from GTI Matumbak and each of its constituent communities met with MLR representatives at the Finca Miranda property. There, in a ceremony attended by community members from each of the nine communities, as well as the mayor of the municipality of Bonanza, the representatives from MLR and Matumbak signed the documents officially transferring the property and its improvements to the communities of Matumbak.¹

5.6 Phase 4: Accompaniment Phase

The Accompaniment Phase will involve ongoing support from MLR to enable a smooth transition in management of the farm and ensure that Matumbak is able to benefit from it. Although the Accompaniment Phase sequentially follows the Consent Phase, in practice, some aspects began prior to the transfer being formalized—namely, the training of agricultural technicians from Matumbak. The transfer agreement contained several provisions regarding the Accompaniment Phase (translated and quoted directly):

- 1) *MLR will maintain at its disposal a representative and will provide the necessary resources to accompany the Communities to conclude the registration of the agreed public instrument of transfer and the request for the cancellation of the registry entries as stipulated in this agreement.*
- 2) *From the date of this agreement until December 2023, MLR will assume the costs of hiring a Mayangna field technician from Matumbak to support the Communities in the management of the farm. MLR also agrees to train and train this technician according to MLR's management standards and protocols for cocoa and teak.*
- 3) *During a period of 6 months, counted from the signature of this agreement, MLR will provide technical support to the personnel designated by the Communities for the management of Finca*

Miranda with internships in the company's plantations. Likewise, the tools, equipment and any other technical means currently used in Finca Miranda will be delivered to the Communities.

- 4) MLR FORESTAL, will collaborate and provide advice to the communities for the commercialization of the cocoa harvest providing information on possible markets, prices, qualities, among others and offers to buy at fair and competitive prices the teak harvest that the communities and territory produce in the productive unit.*
- 5) For their part, the Communities and Territory commit to have a minimum technical team of three people composed of a man and a woman selected according to the technical and academic requirements for the exercise of the functions, these personnel will be financed by GTI MATUMBAK, who, together with the Technician hired temporarily by MLR FORESTAL, will exercise the technical functions of the productive unit.*
- 6) The Communities and Territory of Matumbak, commit to establish alliances with public, cooperative or private entities to ensure the integral sustainability (management, harvesting and commercialization) of the cocoa and teak plantations of the transferred farm.*

In accordance with these provisions, in January 2023, MLR hired an agricultural technician from Matumbak, selected by the GTI, to train and work in MLR's Bonanza unit until the finalization of the transfer. In April 2023, another agricultural technician began training with MLR, receiving support from the GTI as stipulated in the agreement. Upon receiving the property in May 2023, the female technician was hired as administrator of the Finca Miranda which, once received, was renamed the Umiswas Farm, after the Mayangna toponym for the location.

6. Challenges and Successes in this Case

Following observation of the process, and discussions with community members and key stakeholders, this process of consultation, consent, and transfer of land is viewed as a success in terms of responsible land divestment and respect of Indigenous community rights. Several factors were identified as key contributors to this success:

Positive relationship and trust between MLR and Matumbak communities

Challenge: Community engagement process by companies frequently suffer due to a lack of trust, inhibiting dialogue and mutual understanding. In some cases, a lack of trust can lead to the failure of a consultation or negotiation. In this case, a strong foundation of mutual trust was essential to realize an effective consultation and consent process, and to ensure Matumbak communities were well-prepared and supported to receive the farm and assume management of operations.

Solutions:

- The **well-established relationship** between the two parties, with clearly agreed roles and responsibilities, was vital to the success of this process.
- Each party's history of setting clear expectations and **following through on their commitments** resulted in mutual trust between the company and the territorial authorities.
- **Clear, frequent, and bi-directional communication** between the company and the communities helped ensure mutual understanding. Importantly, this included both **direct communication between MLR and community members** (in assemblies) and regular contact between MLR and the GTI as well as the transfer commission.
- To ensure community members' trust, MLR and Matumbak leaders both emphasized **full transparency** throughout the consultation and consent process—developing a plan together, sharing it with community members, and following through on the plan.
- MLR's approach to social engagement, with a **dedicated team including staff from the region**, was also an important factor in fostering a positive relationship based on mutual trust.
- In particular, the involvement of an **advisor, with long-established rapport with the communities**, was an important factor in supporting effective intercultural engagement.

Organization and capacity of Matumbak communities and territorial leadership

Challenge: When small rural and Indigenous communities engage with external actors such as companies, in many cases, the communities' ability to represent their own interests can be hindered by a lack of organization, limited knowledge of their rights and/or relevant laws, or other capacity gaps.

Solutions:

- The **well-functioning governance structure and strong capacity of the leaders** of the communities of Matumbak territory were crucial to ensuring the success of this process.
- **Government recognition of the territorial rights of the communities** of Matumbak, in the form of a territorial title, was a driving factor in this case, and the territorial authorities' knowledge of their rights and related legal processes were important factors that enabled their successful engagement with MLR.

- The communities of the territory have **clearly established norms for decision-making**, and have published these in their **FPIC Bio-protocol**, providing a clear path to follow for responsible consultation and consent.
- The **transparency of the territorial authorities** was noted as a key factor in ensuring trust—both from MLR, who trusted that the land would not be subject to elite capture given that there has been no history of selling territorial land from Matumbak, and from community members, who trust their authorities to represent them and make decisions on their behalf given their history of responsible and accountable leadership.
- Finally, the process could not have a successful outcome without the **will, unity, and motivation of the community members** to receive the land and manage the farm. This will be even more important moving into the Accompaniment Phase and beyond, but the communities’ cohesion was also essential to their mutual support for undertaking this collective enterprise.

Commitment by MLR, and its investors Finnfund and FMO, to acting responsibly

Challenge: Around the globe, in many cases, national laws establishing the rights of Indigenous Peoples and rural communities are poorly implemented due a range of factors, such as a lack of clarity regarding required processes for implementation and a lack of capacity, resources, or political will to enforce the provisions established in law. Such implementation gaps introduce ambiguity as to what processes are required and who bears responsibility for ensuring that communities’ rights are respected. This can establish a low bar for company behavior, putting communities’ rights at risk, while also presenting challenges to companies seeking to deliver on internal or public commitments to respect FPIC and other community rights, and can leave communities vulnerable to companies or others seeking to cut costs and avoid responsibility.

Solutions:

- As stated above, although Law 445 provided part of the justification for the land transfer, it offers little guidance on the appropriate processes by which a company ought to transfer land to Indigenous rights holders. However, many international lenders, including MLR investors Finnfund and FMO, have committed that they and their funding recipients will adhere to international standards concerning land, Indigenous people and local communities. In this case,

The FPIC process as a means to strengthen territorial governance: The case of Wakilwas

Although it was not one of the original goals of this consultation and consent process, an unexpected benefit of the process was that it helped to reinforce territorial and communal governance structures and provided an opportunity to reintegrate a vulnerable community.

In 2018, following years of encroachment by settlers from elsewhere in Nicaragua, the community of Wakilwas was largely overtaken through repeated violent incursions. Dozens of families were displaced, with many seeking refuge in other parts of Matumbak territory. As of the initiation of this FPIC process in 2022, Wakilwas had ceased to function as a cohesive community. Since the invasion and displacements, the community has had no elected representatives and thus has had minimal connection to the overall governance structure of Matumbak. As one of the remaining residents put it, “Our community does not have leadership; we are just individuals out there.”

As a result, few members of Wakilwas were present at the first round of community assemblies, during the Consultation and Consensus Building Phase of this process. However, following those community assemblies, Matumbak leadership determined that this process was an opportunity to reintegrate the remaining residents of Wakilwas into the territorial governance system, and thus to help reinforce their community and ensure it does not disappear.

For the second round of community assemblies, during the Consent Phase, GTI Matumbak invited more members of Wakilwas to join. Following the assembly, GTI representatives encouraged the remaining community of Wakilwas to elect representatives who could serve as a connection between them and the GTI to ensure they are not living in isolation from the rest of the territory. The community elected two representatives, who were able to attend the final territorial assembly on behalf of Wakilwas.

MLR—with support from Finnfund and FMO—worked to ensure that the consultation and consent process for the transfer **followed international standards and best practices concerning land, Indigenous peoples and local communities** (including the relevant IFC Performance Standards). Central to this was ensuring **respect for the rights and autonomy of the communities** of Matumbak.

- This represents a landmark as the **first known instance in Nicaragua of a third-party landholder within now-titled Indigenous territory voluntarily transferring property** to the communities of the territory in accordance with Law 445. As such, it serves as one potential model for furthering implementation of the still-ambiguous final stage of Law 445—that of *saneamiento*.
- MLR’s determination to **follow the steps outlined in Matumbak’s FPIC Bio-protocol** made the company the first external actor to put the protocol into practice, providing an important validation of the instrument and an example for future companies interested in engaging with Indigenous territories in the region.
- It should be noted that in following the Bio-protocol, the company committed to a far lengthier, costlier, and more bureaucratic process than anticipated. Yet by the conclusion of the process, MLR leadership viewed process as necessary and attributed the success of the process in large part to the decision to follow the community’s Bio-protocol and to the organizational and institutional strength of Matumbak.
- In part, this comes down to **company leadership and staff valuing and prioritizing positive social impact** and being willing to allocate financial and human resources accordingly.

Robust accompaniment to support transition of farm management

Challenge: One of the most frequently noted challenges associated with this process was the matter of Matumbak taking over management and operation of the farm, given that they had not collectively operated an enterprise such as this in the past.

Solutions:

- Anticipating concern over the technical challenges that assuming operation of the farm would bring, MLR’s transfer plan included provision of **support for transitioning land management** from the company to communities of the territory.
- Specific terms of accompaniment were agreed to during the Consensus Building Phase, and were written into the transfer agreement, establishing **clear expectations from both parties**.
- Stakeholders on both sides considered it essential that MLR **train technicians in advance, share the management plan for the farm, and provide technical support and market access support** following the transfer.
- MLR’s investment of resources in **beginning to train one technician well in advance**—in January, approximately five months prior to the transfer—was seen as very important, given the complexity of the operation and the amount of technical information required to be able to take over management of the farm.

Identifying locally appropriate solutions to support broad and effective community participation

Challenge: Even with the best intentions and intensive processes to ensure that decision-making processes are fully participatory and seek and obtain the informed consent of every individual in a community, time and resource constraints on the part of both communities and companies can present a challenge to realizing this aim. While processes of representative governance and decision making can support more transparent and inclusive consultation and can help to ensure the solicitation and dissemination of information across a community, achieving 100 percent participation is often not feasible. During focus group discussions with Landesa, some community members expressed a desire for a greater share of the community to be able to directly participate in assemblies.

Solutions:

- Acknowledging that it would not be feasible to speak to all of the nearly 5,000 residents of the territory, and following their commitment to proceed in accordance with territorial norms, **MLR discussed the matter with Matumbak territorial leaders.** Through the Territorial Assembly, Matumbak determined that the communities would be grouped in three clusters, of three communities each (following their natural geographical groupings), in which to hold the Communal Assemblies, in which approximately 80-100 people were invited to each assembly.
- **Sufficient time (2.5 months) was allotted for informal community discussion, reflection, and deliberation** in between rounds of Communal Assemblies in order to enable those who were not present at the assemblies to receive the information and have an opportunity to provide feedback to communal leaders.

Involvement of women in consultation, consent, and management of land

Challenge: In many rural and indigenous community settings in Latin America and elsewhere around the world, women are not afforded equal right to participate in decision-making, particularly around land use and investments, and are often excluded from commercial agricultural work due to gender norms.

Solutions:

- When inviting community members to assemblies, Matumbak territorial and communal leaders sought to **ensure gender balance among participants, as well as balance among generations.**
- During communal assemblies, the facilitator would **specifically solicit comments and questions from women** (and youth) in the audience, to try to help ensure that these voices were not crowded out by comments from men in the communities.
- **Women were vocal in their desire to be included in the management and operation** of the farm, and to be able to learn from it to undertake cultivation of cacao elsewhere in the territory.
- Representatives of Mayakat, the **women's organization of the territory, were invited to participate in the Territorial Assembly** concluding the consent phase of the project.

7. Conclusion

Overall, the conclusions drawn from this case affirm the vital role played by a robust consultation and consent process in effectively mitigating risks linked to the transfer or return of land from companies to local communities. This particular case also holds a distinctive significance for the precedent it sets at the national level, as the first known case—insofar as any of the involved parties are aware—wherein a third-party landholder within a titled Indigenous territory voluntarily transferred its titled property to the communities of the territory, aligning with the requirements of Law 445.

Similarly noteworthy is the Free, Prior, and Informed Consent (FPIC) process that accompanied this land transfer. This represented a milestone for the Matumbak territory, being the first recorded instance in which an external entity adhered to the FPIC process delineated in the territory's FPIC Bio-protocol. Consequently, this process not only validated the efficacy of the instrument but also served as an opportunity to reinforce territorial governance structures, as demonstrated in particular by the re-establishment of communal governance structures in the community of Wakilwas. The case thus provides a commendable model for responsible conduct which can help inform other companies in similar situations.

Still, it is important to recognize that many of the details will vary between cases. Indeed, with FPIC processes in particular, the crux of the matter is the need to ensure that the process is defined by communities themselves. While many communities are increasingly active in asserting their rights to consultation and consent, most will not have already published protocols regarding this.

As this research is only inclusive of the period up to the signing of the transfer documents, the ultimate outcomes remain to be seen. Given that many stakeholder concerns pertained to the transition of operations of the farm, it will be important to monitor how the accompaniment stage proceeds. Further research in the form of follow-up assessment will be critical to understand impacts and draw lessons from that critical stage of the process, including how to ensure and maximize community benefit from the land received.

Annex 1: Update, one year after the transfer

In June 2024, Landesa held remote follow-up interviews with MLR staff and GTI-Matumbak representatives. This section provides a synthesis of the perspectives shared in these interviews.

Mayangna community management of the returned land

Following the meeting on May 5, 2023 to formally transfer the deed to the communities under the leadership of GTI-Matumbak, the legal and physical transfer of the farm was complete. This meeting also served to affirm the ancestral territorial rights of the Mayangna communities of Matumbak, who renamed the farm *Umiswas*, which means “bat river” in the Mayangna language and is the traditional name for the location.

The GTI appointed a watchman to be stationed at the farm, placed their own locks on the gates, and began to manage the farm from that point on. The GTI coordinates with all nine communities to maintain Finca Umiswas, working with community leaders to rotate the work schedule among community members. Community members earn wages for each day worked, and the cost for their food and transportation to and from the farm are covered by the GTI from their budget for the farm. Since this is an economic opportunity for community members, the GTI works to distribute the income from the farm throughout the communities by rotating workdays across community members.

The direct management of the farm was delegated to one of the agricultural technicians who had been training with MLR since January 2023.

Accompaniment by MLR following the transfer

MLR and Matumbak have continued their relationship through regular meetings between the GTI and MLR representatives. MLR has been providing ongoing capacity building and technical support for the development of management plans, in fulfilment of their commitments in the Transfer Agreement. In fact, MLR has continued its accompaniment and economic support beyond what was committed in the agreement, renewing funding for one of the Matumbak agricultural technician positions for all of 2024 and offering continued technical support for more than one year after the transfer, as well as supporting Matumbak with market access for the cacao harvest through offers to purchase cacao produced at the farm at a guaranteed price that is higher than local market rates.

The importance of this market access support became clear to Matumbak during the past year, as climatic and financial challenges demonstrated the risks they face in managing the farm themselves. Although portions of the farm contain cacao trees that are mature and producing, they also have stands of young trees that are not yet yielding fruit but nonetheless require investment and maintenance to ensure their future productivity. As a result, even with MLR covering the salary of one of the agricultural technicians, the farm is not yet yielding a net profit, and GTI have needed to continue managing expectations amongst the communities regarding the income to be generated by the farm. These budgetary challenges were heightened by a severe drought that struck the region from December 2023 to May 2024, costing Matumbak (as well as MLR) a significant portion of the harvest.

When Matumbak was able to successfully harvest cacao, the GTI experimented with selling it to different sources, including MLR as well as local traders. While the local traders may pay more quickly (up front, versus 15 days later), the GTI eventually determined that this expediency was not worth the lost income, as local traders pay lower prices and often engage in unscrupulous buying practices.

As of June 2024, Matumbak had not yet begun harvesting teak, as they were still in the process of transferring required forestry permits** from MLR's name to Matumbak's.

Perspectives on the process to date:

| <i>From GTI-Matumbak:</i> | <i>From MLR:</i> |
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| <ul style="list-style-type: none"> • Matumbak have succeeded in taking over the management and operation of the farm. • They have harvested and sold 8 tons of cacao as of June 2024. • The consultation protocol and transfer agreement have provided essential guidance to ensure a smooth transition in management of the farm. • The GTI felt that one strength of the management of the farm has been the inclusion of women and youth—for example, having a woman administrator of the farm management team, and involving women and youth in the maintenance work • This was all a very new process for Matumbak, who had not previously had this type of business experience, and who have not typically used land for commercial purposes. | <ul style="list-style-type: none"> • Matumbak have succeeded in continuing the operation of the farm with minimal financial support, with MLR mostly providing just technical support. • One aspect that has been key was ensuring broad involvement from across the communities, throughout the transfer process. • Despite the change in local leadership, the MLR-Matumbak relationship and farm management have continued without significant challenges. The process remained uninterrupted, as engagement extended beyond a few leaders to include the broader community, including women, youth, and others. • MLR has continued to fund the salary of the community-appointed Farm Manager beyond the period initially agreed. This has allowed for continued training and technical assistance. |

Additional Challenges and Learnings

Turnover and the need for ongoing capacity building

The agricultural technician that MLR had originally trained to run the farm left his position to pursue another job opportunity nine months after the transfer. Given how much time had been invested in building his capacity to ensure capable administration for the farm, this was a concern. Fortunately, they were able to promptly fill his position with another agricultural technician from Matumbak, who had been working for MLR in Siuna.

Despite the swift resolution, this alerted the GTI to the importance of continuing the process of building the capacity of Mayangna agronomists and technicians, to provide redundancy and ensure that they have the needed capacity to fill any open positions. They view this dynamic as natural; they cannot expect that someone will stay in the farm administrator role forever, and building the capacity of more community members is beneficial even aside from addressing this turnover concern. For the sustainability of the farm and to maximize community benefits, the GTI considers it important to involve as many people from the communities as possible.

The challenge of turnover also connects to a related worry: Although they are managing the farm now, with technical support from MLR, the GTI do have some concern about needing to operate it in the future without support. They view this ongoing capacity building as critical for this reason, to ensure they are prepared. For MLR's part, they have continued to employ community members from

** From INAFOR, the National Forestry Institute

Matumbak, helping to ensure more people from Matumbak have the needed experience in production of teak and cacao.

Budgetary constraints and financial sustainability

During the process of developing the farm management plan for 2024, the costs of the initial draft plan exceeded the revenue that the farm would produce. The budget needed to be revised to reach a realistic balance of investing in the farm (purchasing tools and agricultural inputs) and providing work and income to community members, while staying within the budget available based on projected production and revenue. Eventually, they were able to achieve a manageable balance, but it was necessary to supplement the farm’s budget with funds from GTI-Matumbak’s general budget to cover the remaining shortfall and ensure they are sufficiently caring for the young teak and cacao trees that will reach maturity in the coming years.

Although it is currently requiring more investment than it generates in income because not all sections of the farm are mature and producing, Matumbak are confident that later, with continued investment, they will be able to profitably operate the farm, and it will be an important economic contributor for the communities of the territory.

Managing expectations within the communities has been a challenge for the GTI, as many community members expect that each community will receive income from the farm right away, in addition to the wages paid to those who contributed labor at the farm. The GTI has had to help people understand that the farm is not yet profitable and has had to explain that they will need to continue investing the profits until the remaining portion is in full production.

Security of the property

Encroachment by non-Indigenous settlers was a concern when Matumbak took over management of the farm, since it is surrounded by non-Indigenous settlers. During the weeks immediately following the transfer, only the Board of Directors of the GTI went to the farm, out of a concern for the safety of community members. The GTI engaged in a process of building relationships with the neighbors and the police. This process included meetings with the national police and inviting the police to enter and inspect the farm, to provide security for Mayangna people visiting or working on the farm. Eventually, it became clear that the neighbors understood that the Mayangna would be managing the farm, and Matumbak’s concerns over security eased. The people of Matumbak are no longer afraid of neighbors trying to take the land, or of what might happen to Matumbak community members who visit the farm. Still, GTI-Matumbak remains vigilant about the security of the property and seeks to be proactive in its relations with neighbors to manage risks. One such risk is the neighbors’ burning on their plots, which presents an ongoing risk for the farm. The GTI has spoken with the neighbors about making sure their fires do not reach the farm, and to date there have not been any issues.

Concluding Observations – Looking Ahead

| <i>From GTI-Matumbak:</i> | <i>From MLR:</i> |
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| <ul style="list-style-type: none">• The past year has been an ongoing process of learning, and the GTI are glad to have an ally in MLR that can help them to realize the potential of the farm. | <ul style="list-style-type: none">• MLR is pleased to see how Matumbak have been able to keep the farm going as MLR had hoped.• Although Matumbak have not yet achieved financial sustainability in their management of the farm, as is normal for a project that has not yet reached maturity, |

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| <ul style="list-style-type: none"> • The communities of Matumbak hope to be able to extend cacao production to other parts of their territory. But first, they are focused on ensuring that they can sustainably manage the current farm and bring economic benefits from it to their communities. • <i>“Many other people said, ‘this farm is going to disappear, the Mayangna are going to sell it.’ But we have been firm on our principles—no one here sells land.”</i> | <p>they have learned over the past year what it will take to reach that goal and have made many positive strides.</p> <ul style="list-style-type: none"> • For MLR’s part, the company aims to help Matumbak to better market their cacao, to leverage the communities’ story in order to enable Matumbak to reach higher-value buyers for greater economic benefit to the communities. • MLR has continued to fund the community-appointed Farm Manager to ensure the community receives the necessary training and is fully equipped to technically manage the farm. |
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Annex 2: Key background and process documents reviewed by Landesa

| Background Documents | Process Documents |
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| <ul style="list-style-type: none"> • 2010 study commissioned by GTI-Matumbak on the feasibility of saneamiento in the Indigenous territories of the region² • 2012 case study by CIFOR, CADPI, and URACCAN on territorial land governance challenges in Matumbak Territory³ • GTI-Matumbak’s 2013 Strategic Plan for Territorial Development⁴ • 2014 CADPI report on demarcation and titling of indigenous territories in Nicaragua, featuring a case study on the titling process for Matumbak Territory⁵ • 2015 FAO case study on the foodways and agricultural production system of the community of Ispayuliina, capital of Matumbak territory⁶ • Geospatial information for Matumbak Territory and surrounding area | <ul style="list-style-type: none"> • FPIC Bio-protocol of the communities of Matumbak Territory⁷ • 2021 Landesa guidance memo for MLR Forestal on international best practices in land return • MLR Forestal’s protocol for the transfer of possession of the land and assets of Finca Miranda to the communities of Matumbak Territory • MLR Forestal’s Community grievance mechanism procedure document • Community Relations and Mutual Cooperation Agreement between GTI-Matumbak, the communities of Pansuhwas, Mukuswas, and Ispayuliina, and MLR Forestal for the period 2020-2025 • 2022 Annual Operating Plan for the Implementation of the Community Relations and Mutual Cooperation Agreement • 2022 case study by Bluefields Indian & Caribbean University on the Community Relations and Mutual Cooperation Agreement⁸ • Minutes and agreements from October 15, 2022 meeting between MLR Forestal staff and GTI-Matumbak • Minutes and agreements from March 17, 2023 meeting between MLR Forestal staff and members Matumbak’s land transfer committee |

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- ⁶ Davis, S., Dalvez, M. & Robins, T. (2015) Sistemas de Producción Mayangna de Ispayulilna. En: *Sistemas alimentarios tradicionales de los pueblos indígenas de Abya Yala: Miskitu, Garifuna, Mayangna, Telpaneca*. Organización de las Naciones Unidas para la Alimentación y la Agricultura (FAO). p.65-94 <https://www.fao.org/family-farming/detail/es/c/332128/>.
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