

2018 INVESTOR SURVEY ON LAND RIGHTS

**Perceptions and Practices of the Private Sector
on Land and Resource Tenure Risks**



USAID
FROM THE AMERICAN PEOPLE

ACKNOWLEDGMENTS

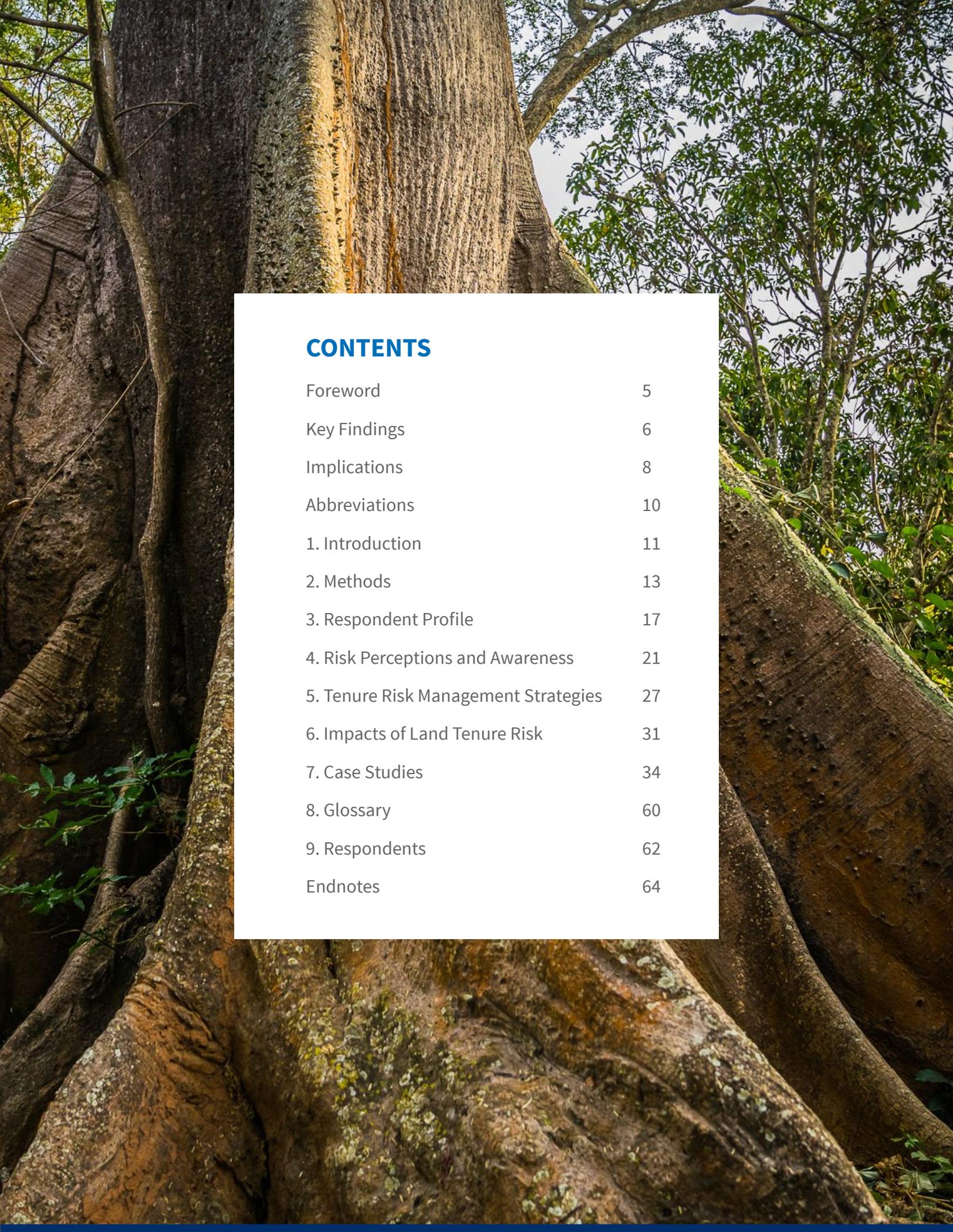
This research was initiated by USAID and co-designed and implemented by Indufor North America. We acknowledge The Cloudburst Group and Landesa for their review of the research design and survey findings report. We are grateful to the European Investment Bank for endorsing the survey.

We are especially appreciative of the individuals who volunteered their time and effort to provide responses to the survey and case studies. While some respondents wished to remain anonymous, others are listed at the end of this report.

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The background of the page is a photograph of a large, ancient tree trunk with deeply textured, greyish-brown bark. The tree trunk is the central focus, with its roots spreading out at the bottom. The lighting is natural, highlighting the rough texture of the bark. A white rectangular box is overlaid on the right side of the tree trunk, containing the table of contents.

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FOREWORD

In 2017, U.S. Agency for International Development (USAID) initiated and funded the Investor Survey on Land Rights with the endorsement of the European Investment Bank to more systematically understand the drivers of tenure risk to land-based investments from the perspective of the private sector, and how investors and operators assess, mitigate and are affected by such risks. We believe the findings from the first-ever Investor Survey on Land Rights will provide readers with useful insights into the current treatment of land tenure risks in land-based investments, as well as a unique glimpse into the workings of land-based investment. This report is based on the survey launched in late 2017 and distributed directly to relevant investors and operators. In addition, this report features six case studies from survey respondents that provide a more detailed picture of how land-based investors and operators perceive and confront land tenure challenges and seek to provide benefits to local land rights holders.

With this report, investors and operators can benchmark their own performance relative to others and learn about best practices they may not have tried yet. At the same time, governments, financial institutions and civil society will be better positioned to adapt regulations, financing requirements, voluntary guidance and capacity-building for greater positive impact.

In areas with weak land governance, there is both an opportunity and a need for the private sector to play a proactive role to protect the legitimate land rights of communities and individuals involved in or affected by land-based investments. The opportunity is found in a strengthened local license to operate and positive engagement as a development partner with affected communities. The need is to play the role of advocate with governments that may be otherwise unresponsive to help secure the rights of communities and individuals where companies operate. The private sector is still evolving in how it recognizes and manages land tenure risks, with uneven awareness and adoption of best practices. This survey helps contribute to a better understanding and appreciation of how a set of investors and operators address tenure issues to secure land and mitigate their risks.

In areas with weak land governance, there is both an opportunity and a need for the private sector to play a proactive role to protect the legitimate land rights of communities and individuals involved in or affected by land-based investments. The opportunity is found in a strengthened local license to operate and positive engagement as a development partner with affected communities. The need is to play the role of advocate with governments that may be otherwise unresponsive to help secure the rights of communities and individuals where companies operate. The private sector is still evolving in how it recognizes and manages land tenure risks, with uneven awareness and adoption of best practices. This survey helps contribute to a better understanding and appreciation of how a set of investors and operators address tenure issues to secure land and mitigate their risks.

The time is ripe for more systematic learning and scaling of successful approaches. We hope this first survey, with its inherent limitations, will spur more targeted action to integrate the private sector's perspectives into efforts to strengthen land governance.



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KEY FINDINGS OF THE FIRST INVESTOR SURVEY ON LAND RIGHTS

1

Respondents perceive land tenure risk as increasingly important to their organizations: Fifty-eight percent of all respondents noted that land tenure risk had increased significantly or very significantly during the past five years.

2

Operators perceive land tenure risks as more salient than investors: Operators ranked land tenure risk as the second-most important risk amongst a variety of business risks, whereas investors ranked land as seventh-most important.

3

Risks related to local communities' rights are perceived as increasing more than governance-related risks: Local community rights to access resources and local community land disputes were cited by more than 50 percent of respondents as increasing over the past five years. Fewer than 20 percent of respondents cited governance issues such as expropriation or overlapping concessions as increasing.

4

Land tenure risks can lead to forgone investments or operational interruptions: Land tenure risks led to the rejection of at least 66 percent of reported projects with a combined value of approximately USD 1.6 billion. At least five out of 63 reported projects were abandoned due to tenure risks after investment with a reported combined value of approximately USD 25 million. The case studies provide examples of how companies budgeted and planned for long-term community engagement in efforts to reduce tenure risks to operations.



5

Performance standards are more widely used than tenure guidelines:

Sixty percent of respondents were aware of the IFC Performance Standards while only 20 percent were aware of the VGGTs. A quarter of respondents were unaware of any land tenure guidance or standards. Commitment to bank lending ESG standards is significant but still lower than adherence to voluntary sector-specific ESG standards. Half of the respondents have made some corporate ESG policy commitments, but only a quarter of respondents have made their commitments public.

6

Tenure risk assessment most commonly relies on community consultations:

All respondents undertake qualitative tenure risk assessments, and many use more than one approach. The majority of respondents undertake community consultations and field verification of land titles. Fewer than half map land holdings or conduct environmental impact assessments or environmental and social impact assessments. About half of respondents assess land tenure risks quantitatively via scenario analysis and shadow pricing. The case studies demonstrate experiences conducting initial land tenure and livelihood assessments to identify conflicts, to ensure social-license-to-operate and to identify opportunities to support local communities.

7

Active community engagement risk mitigation strategies work better than exclusionary tactics:

Of the tenure risk mitigation strategies reportedly used in undertaken projects, those perceived as being successful in more than half of reported projects focused on stakeholder engagement, community development programs, participatory mapping of land rights, establishment of grievance mechanisms and support to local communities to obtain land titles. The strategies that succeeded in fewer than half of reported projects included working with government authorities, installing guards to protect plantations, employment of local community members and building fences around plantations. Approaches used in the case studies include providing impartial legal assistance to local stakeholders for contract negotiations and providing technical assistance to strengthen farmer interest and participation in out-grower models.

IMPLICATIONS

While the results of the survey and case studies are limited to the respondent organizations, several key implications for actors involved in responsible land-based investments can be derived from the results.

PRIVATE SECTOR

Assess early and often: Integrate land and resource tenure risk assessments into investment decision-making processes to identify the types of risks and possible mitigation actions. Build internal capacity or seek outside support to understand land tenure issues and resolve conflicts at the outset and throughout the life of the project.

Engage rather than exclude: Ensure that projects plan and budget for recruiting and training qualified staff on best practices for community-centric approaches such as systematic stakeholder engagement, grievance mechanisms, community development programs and participatory mapping of land claims. Build relationships with NGOs, government and donors to test new production models that do not require land acquisition or that support local land titling.

Learn what works: Track costs related to assessing, mitigating or remedying land tenure disputes between the company and affected stakeholders to ensure budgets and operations are better informed and the company learns from previous experiences. Leverage existing risk quantification approaches in the company to include better estimates on land tenure risk impacts on investment returns. Quantify the benefits of addressing land risks and engaging communities such as reductions in cost of capital, increased share price, increased revenue, etc.

Commit to recognizing and protecting local land and resource rights: Consider and adopt relevant certification standards that include robust performance indicators on respecting land tenure rights and apply responsible investment guidance on land. Participate in peer learning opportunities to better understand operational approaches to land tenure risk identification and mitigation actions.



GOVERNMENTS

Abide by international commitments: Almost all governments have committed to the VGGTs, which require them to respect legitimate land rights. Doing so can help mitigate risks to projects that might traditionally overlook some legitimate land rights.

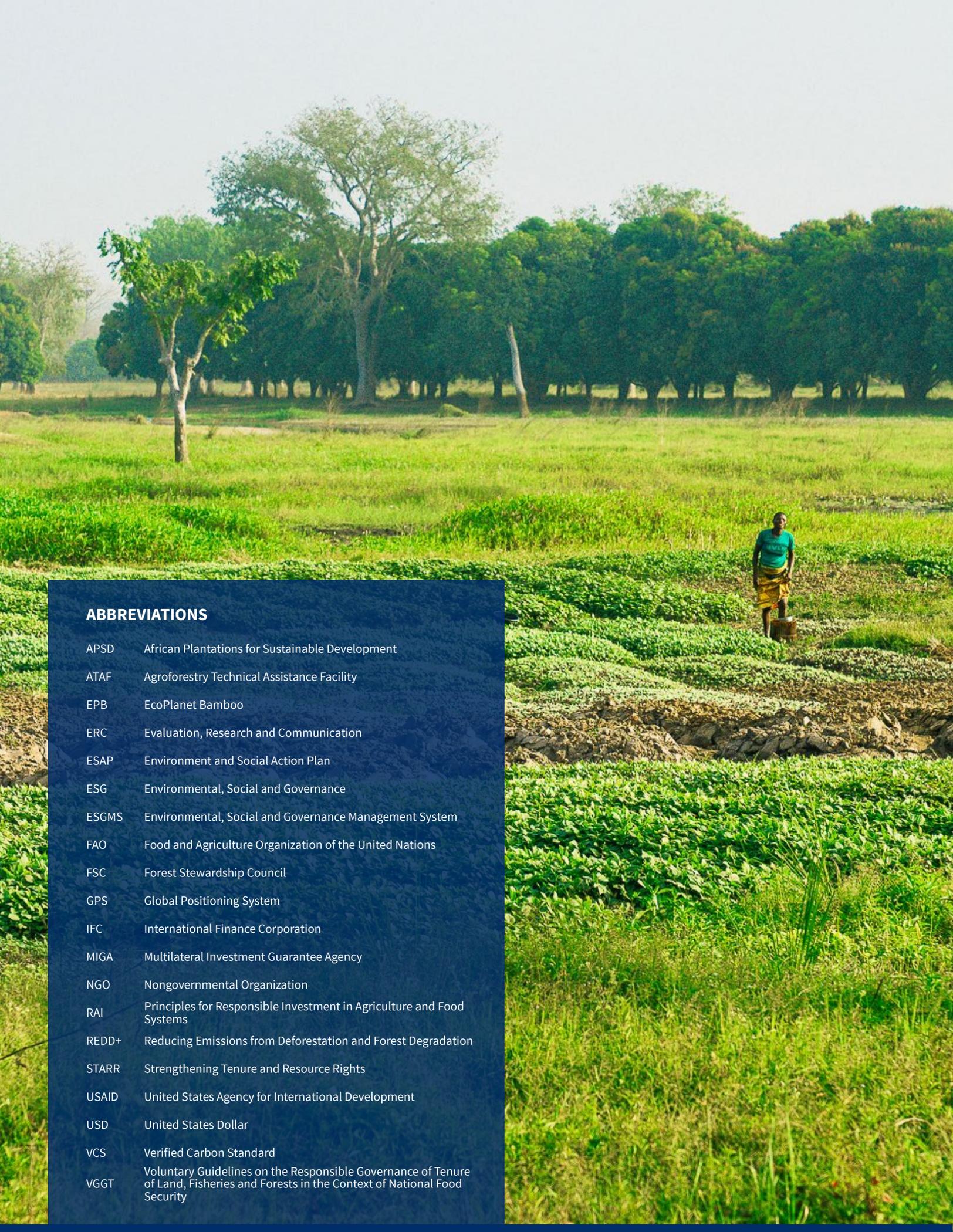
Lead by example: Strengthen customary land and resource tenure rights through inclusive laws and policies, and enforce them in practice. Companies are more comfortable investing in countries that provide clear and enforced land rights.

Incentivize responsible investment: Long-term economic sustainability of land-based investments requires partnerships between investors, operators, communities and the government to ensure all parties benefit. Incentivize companies to create investments that are socially and environmentally responsible, which provide greater benefits to all in the long run.

DONORS

Support what works: Identify and support the scaling-up of practical approaches to reduce land tenure risks and support land tenure rights of communities, such as participatory mapping and outgrower production models. Consider how to support integration of stronger land tenure criteria into existing voluntary sector standards.

Facilitate learning across sectors: Companies are often focused on their own business. Providing spaces for companies to learn more about land tenure risks and strategies to mitigate them can speed up learning and application of successful approaches.



ABBREVIATIONS

APSD	African Plantations for Sustainable Development
ATAF	Agroforestry Technical Assistance Facility
EPB	EcoPlanet Bamboo
ERC	Evaluation, Research and Communication
ESAP	Environment and Social Action Plan
ESG	Environmental, Social and Governance
ESGMS	Environmental, Social and Governance Management System
FAO	Food and Agriculture Organization of the United Nations
FSC	Forest Stewardship Council
GPS	Global Positioning System
IFC	International Finance Corporation
MIGA	Multilateral Investment Guarantee Agency
NGO	Nongovernmental Organization
RAI	Principles for Responsible Investment in Agriculture and Food Systems
REDD+	Reducing Emissions from Deforestation and Forest Degradation
STARR	Strengthening Tenure and Resource Rights
USAID	United States Agency for International Development
USD	United States Dollar
VCS	Verified Carbon Standard
VGGT	Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security

1. INTRODUCTION

Companies behind the recent growth in land-based investment have confronted the reality that much of the land in emerging markets—and in some developed markets—is held under customary tenure systems with little legal recognition. For example, 80 percent of land in Africa is held under customary rights, but communities only hold legal rights to three percent of that land.¹ Government agencies promoting investment have allocated land for commercial use, often overlooking the land tenure rights of local communities.

Yet when an investment project fails to adequately account for community land rights and uses, it affects the well-being of local communities and the success of investment projects. Media reports frequently highlight land disputes between companies and communities.² For companies and investors, disputes may lead to construction delays, interruption of operations, compensation payments, or other indirect operating costs, which are often only visible to the company management. For communities, disputes may seriously jeopardize their livelihoods, cultural identity and personal security.

Best-practice guidance on land rights has been produced by early movers like USAID, FAO and the Interlaken Group.³ But this guidance may not be applied systematically across investments; in reality, private sector actors usually respond to land tenure risks faced on the ground on a case-by-case basis. Company operational policies on land must be set and put into practice, and companies must engage directly with affected communities. Learning about what works or does not work from others' experience may help improve investment practices to minimize risks and enhance benefits. Donors are also increasingly interested in understanding how land tenure risks are perceived and managed by the private sector and what can be done to find win-win solutions in areas with weak land governance.

The Investor Survey on Land Rights is a research project initiated and funded by USAID, conducted by Indufor North America and managed by the Cloudburst Group. It is intended to document and analyze the perceptions and practices of investors and operators regarding risks related to land and resource tenure rights. This report is based on the voluntary survey launched in November 2017. The survey collected data and produced the following analysis for use by U.S. and other investors, operators, donors such as USAID, civil society and governments.

The survey aimed to include as many companies and investors as possible to maximize the number of respondents and to provide a basis for comparison in future years.⁴ The final responses are presented in aggregate only to ensure the confidentiality of respondents. The findings provide a first-of-a-kind glimpse into investor perceptions of land tenure risks and strategies to create responsible land-based investments.



2. METHODS

The Investor Survey on Land Rights employed a purposive sampling approach to maximize the number of qualified respondents. The survey targeted two groups, investors, which are organizations that provide capital or develop projects, and operators, which are organizations that produce, process and/or wholesale raw materials (see Figure 1). Qualified respondents included for-profit organizations that actively invest in or operate land-based investments and met several other criteria.⁵

The survey was conducted in two rounds. The first round (Survey 1) screened for qualified respondents and collected basic data on organizational information and perceptions of tenure risks. The second round (Survey 2) requested more detailed information on the strategies used by qualified respondents to assess and mitigate land tenure risks. A selection of six investors and operators also shared concrete case studies in which they describe how they managed land tenure risks prior to and during project development and implementation. While the context and challenges faced by each organization were unique, key findings and lessons can be drawn from the respondents' experiences.

Figure 1 | Simplified Land-Based Investment Value Chain



OUTREACH AND RESPONDENTS

For Survey 1, an initial list of approximately 40,000 relevant companies was generated using publicly available sources, which the survey team used to collect contact information for approximately 4,900 individuals working in relevant positions in those companies. The survey team sent personalized invitations to those individuals asking them to complete the survey and followed up with several reminders. A link to Survey 1 was also posted on relevant list-servs⁶ and USAID outreach communications.

In total, 143 respondents completed Survey 1, of which 75 met the qualification criteria. Their responses to Survey 1 are included in this report, and they were also asked to complete the detailed second-round survey. Thirty-five respondents completed Survey 2 and provided in-depth information regarding 102 projects worldwide, including 39 rejected and 63 undertaken projects in agriculture, forestry and renewable energy. The individuals responding to the survey on behalf of their organizations were all senior executives (C-suite⁷ or sustainability officers).

Figure 2 illustrates the survey process.

Figure 2 | Survey Process



LIMITATIONS

Given the aim and scope of the survey, it is very likely that the organizations that responded to the voluntary survey would have a preexistent interest, concern, or commitment to responsible land-based investment. Additionally, the number of respondents from Asia and Oceania was relatively small compared to those from other regions. This report, therefore, only makes claims regarding the organizations that participated in the survey. It should not be interpreted as representative of organizations outside the sample, nor does it try to draw generalizations about land-based investment as a whole.

Despite numerous efforts to generate as many participants as possible, the final sample size of the survey was modest. The response rate may have been affected by several factors. Given that this is the first edition of the survey, there was no reference point for potential respondents. The request for detailed operational information and length of Survey 2 may also have dissuaded some potential respondents. In addition, the timing of the survey—launching in late 2017 with data analysis in early 2018—coincided with several holidays and the short timeframe limited possible follow-up efforts. There may be a lack of awareness of land tenure issues amongst survey recipients that led to a low response rate. The branding of the survey by USAID—a public institution—might have dissuaded some private company responses due to the sensitive nature of the questions. Lastly, many emails bounced back, ended up in spam folders, or were never opened. Once it was started, however, 77 percent of potential respondents completed the survey.



PROTECTING THE CONFIDENTIALITY OF RESPONDENTS

To protect the confidentiality of survey respondents and encourage responses, the findings below are presented in an aggregate form, excluding all organization-specific information unless an organization has consented to being attributed. Only the aggregate dataset containing no identifiable information was shared with USAID and Cloudburst. Information submitted by individual respondents was not transmitted to any staff outside of the survey team. In some instances, individual respondents have given explicit permission to be attributed in the report.

DATA QUALITY CONTROL

Prior to analysis, the data was cleaned to ensure accuracy and consistency. The survey team followed up with individual respondents by phone and email to fill in or clarify incomplete or inconsistent answers.



3. RESPONDENT PROFILE

RESPONDENT ORGANIZATIONS

The respondent base covers a wide breadth of investor and operator sizes, country headquarters, regions of investment and sectors. The majority of Survey 1 respondents invest or operate in more than one geography. Figure 3 shows the headquarters of each organization by region and where those organizations invest or operate.⁸ Most reported investments were made by companies headquartered in Europe or North America and focused on Africa and South America. Respondent organizations ranged in size from USD 1 million to more than USD 100 billion in annual revenue.

PROJECT DATA

The 102 projects included in this report have an aggregate reported value of approximately USD 5.2 billion, with the highest total reported regional value of projects in North America (USD 1.4 billion) followed by South America (USD 1.3 billion) and Africa (USD 1.1 billion). The remainder of the projects are spread over Asia, Central America, Europe and Oceania. The greatest number of projects reported are from agricultural projects in Africa, forestry projects in South America and renewable energy projects in North America. Figure 4 presents summary statistics on the number of projects, their value and most frequent project sector.

Figure 3 | Respondent Organizations' Headquarters and Investment Regions
(n = 75 of 75 respondents)

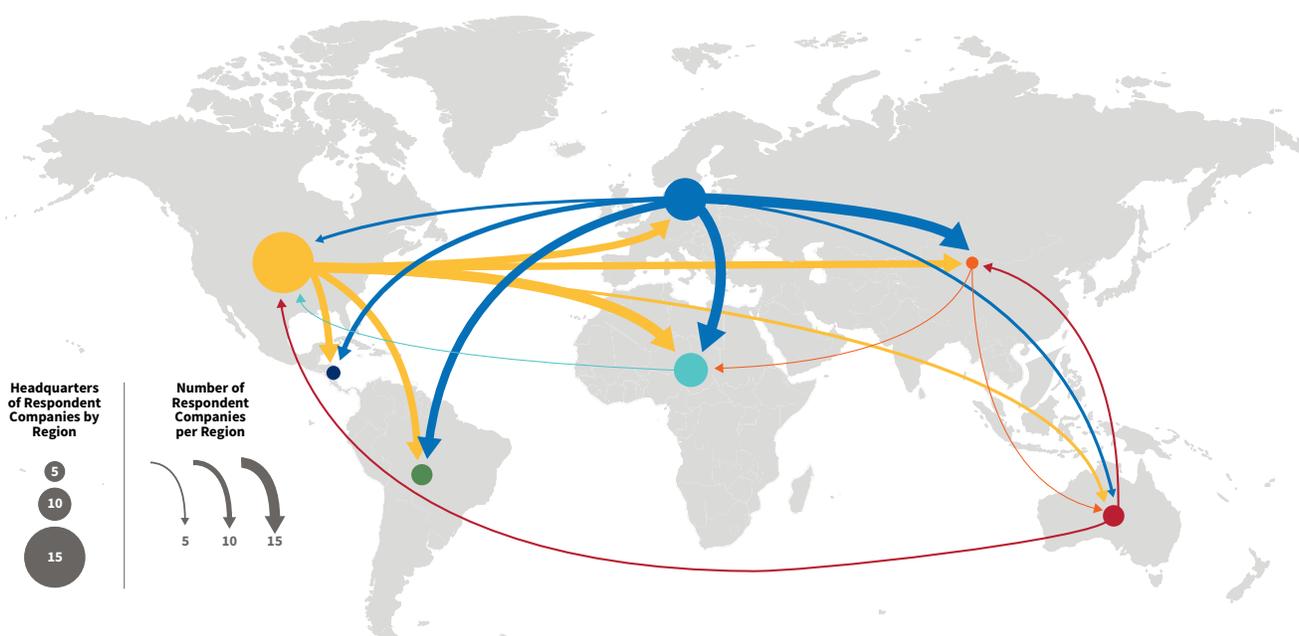
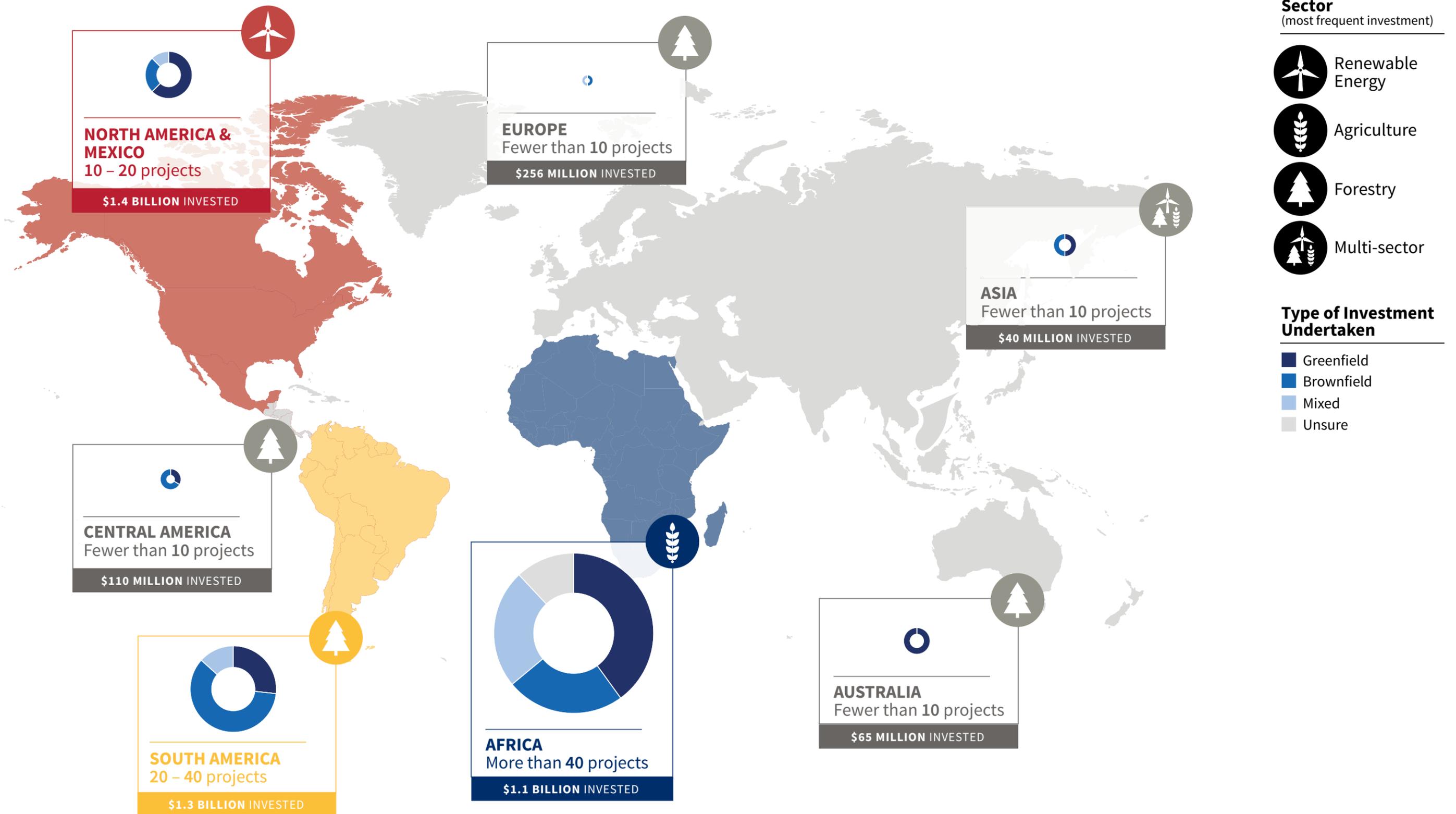


Figure 4 | Summary by Region, Sector and Value of Reported Undertaken Projects
(n = 102 projects)



Sector
(most frequent investment)

- Renewable Energy
- Agriculture
- Forestry
- Multi-sector

Type of Investment Undertaken

- Greenfield
- Brownfield
- Mixed
- Unsure



4. RISK PERCEPTIONS AND AWARENESS

PERCEPTIONS OF LAND TENURE RISKS

Operating companies and investors face numerous risks throughout the life of a project. For example, there may be uncertainties related to market demand, whether the company will have enough cash to cover its project operations, or whether the company’s reputation may be tarnished because of certain actions. Survey respondents were asked to rate a variety of project risks,⁹ including risks related to land tenure, ranging from “not relevant” to “very important.” Figure 5 below shows that market risks were most widely cited by both investors and operators as “very important.” Land tenure risks¹⁰ were the second most cited risk for operators, but only the seventh most cited risk for investors, who identified reputational risks, among others, as more important. This might be explained by the proximity of the operator to local land tenure dynamics in their projects when compared to investors whose interactions with the project are usually more remote.

To further understand perceptions of land tenure risks, respondents were also asked whether the importance of land and/or resource rights has changed over the past five years. About two-thirds of respondents reported that it has increased or significantly increased in the past five years, while the remaining third report no change. There was no substantial difference observed between respondents that operated or invested domestically versus regionally or internationally.

Figure 5 | Risks Rated to be Very Important (n = 62 of 75 respondents)

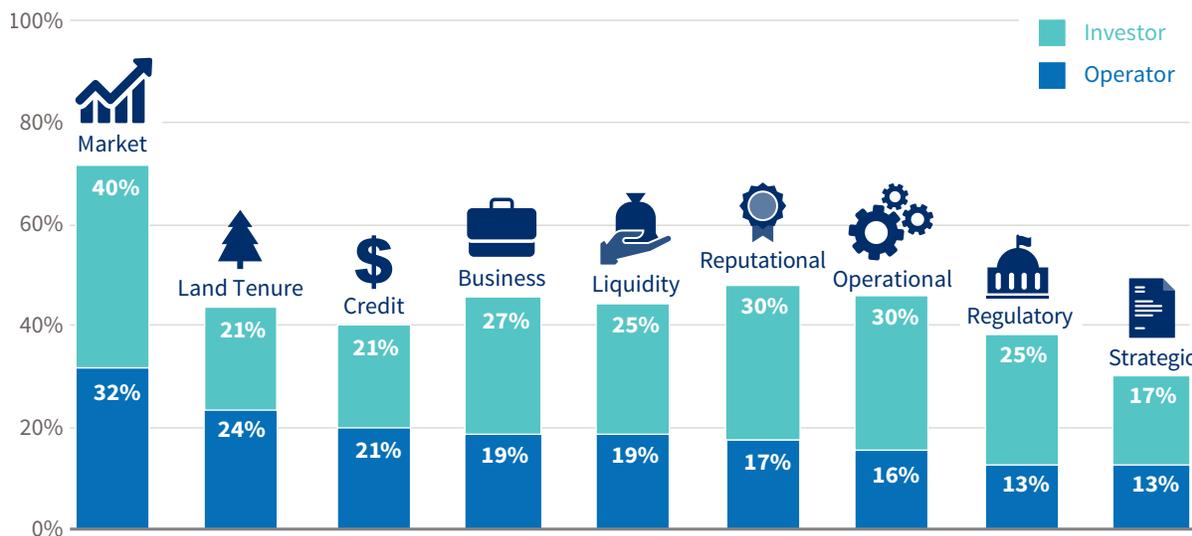
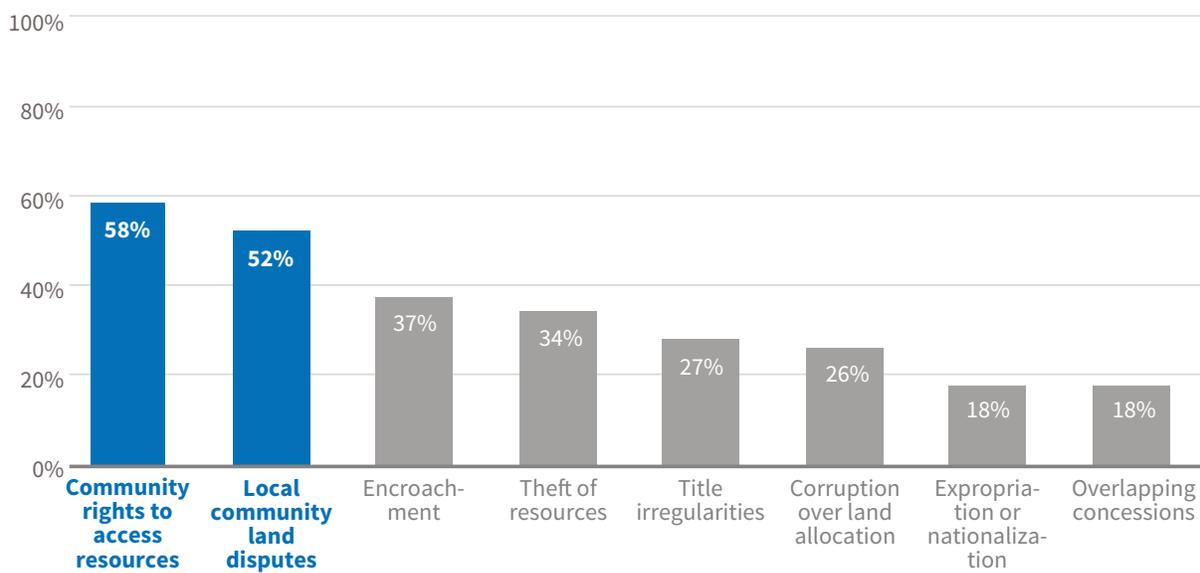


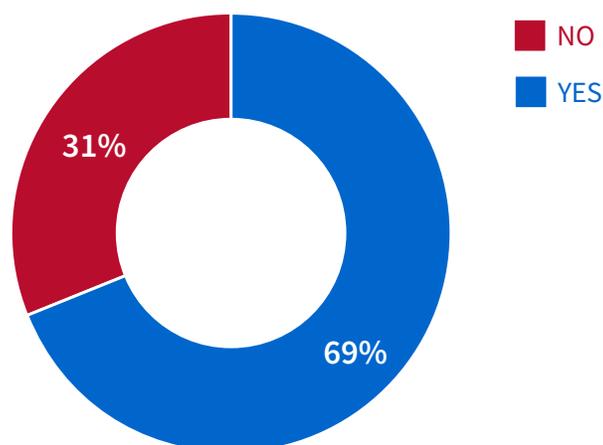
Figure 6 | Which Tenure Risks Have Increased in the Past Five Years? (n = 62 of 75 respondents)



When asked for more detailed information on which tenure risks have increased in the past five years, respondents noted the increase in risks related to local community land use more than other risks (see Figure 6). More than half of respondents identified risks related to community rights to access resources and local community land disputes as increasing in the past five years, while fewer than 20 percent of respondents flagged more traditional risks related to property rights such as expropriation or nationalization as increasing. When analyzed regionally, governance risks such as expropriation or overlapping concessions were seen to be slightly more important to organizations operating or investing in South America compared to those operating in Africa or North America.



Figure 7 | Commitments to Voluntary Sector Standards (n = 34 of 35 respondents)

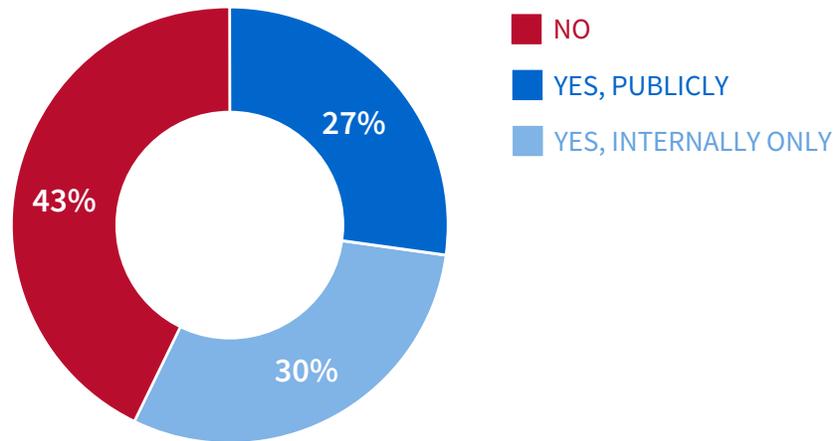


AWARENESS OF GUIDANCE AND STANDARDS ON LAND RIGHTS

In geographies where land governance is weak, investors and operators are increasingly expected to fill the institutional vacuum left by governments by adhering to international best standards and guidelines.¹¹ Some companies that access financing from development finance institutions or banks that have signed on to initiatives such as the Equator Principles¹² must also comply with environmental and social standards. A variety of guidelines on respecting land and resource rights are available to help investors and operators assess and mitigate land tenure risks both pre-investment and during operations.

Respondents were asked to identify whether they were aware of a range of common guidance and standards that touch upon land tenure, including the IFC Performance Standards, the Principles for Responsible Investment in Agriculture and Food Systems (RAI), the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGTs) and the Analytical Framework for Land-Based Investments in African Agriculture. Three-quarters of respondents were aware of at least one of the guidelines, with 61 percent of respondents aware of the IFC Performance Standards. Figure 7 shows that almost 70 percent of respondents reported commitments to voluntary sector standards. The VGGTs, which underpin much of the guidance documents on land tenure, was the least familiar to respondents with just 19 percent of respondents reporting awareness. Those adhering to the IFC Performance Standards often reported doing so to qualify for financing from IFC or other private-sector-facing arms of multilateral development banks. Some respondents reported developing internal responsible investment procedures on a voluntary basis that include land tenure components drawing from a variety of guidance documents.¹³

Figure 8 | Corporate Commitments to ESG Standards (n = 32 of 35 respondents)



Respondents were also asked whether their organizations made corporate environmental, social and governance (ESG) commitments and whether or not those commitments were made publicly. Publicized commitments might be part of a corporate social responsibility strategy, but they also allow outside stakeholders to hold companies accountable for their compliance with standards. Roughly half of respondent organizations have made corporate ESG commitments, but only one-quarter have made their commitments public (Figure 8).

More organizations, however, have made commitments to voluntary, sector-specific or commodity-specific certification standards, many of which include criteria related to land tenure rights.¹⁴ About 70 percent of respondent organizations abide by some voluntary, sector-specific standard. The most common standards followed include the Forest Stewardship Council (forestry) and Fairtrade (agriculture).

There is no certification standard dedicated to verifying best practices on respecting land rights, but existing sector-specific certification standards provide a mainstream entry point for project developers to address land tenure issues and include clear criteria for compliance and improvement. Tenure-related clauses in these standards require that project developers recognize and uphold the legal and customary rights of indigenous peoples or local communities and provide some limited prescriptions on modes of stakeholder engagement (e.g., Free, Prior and Informed Consent). However, they do not provide concrete guidance on determining legitimate land rights as other guidelines dedicated to tenure such as the Analytical Framework.

Many investors and operators reported combining use of the above standards and guidance, drawing from detailed guidelines to help them comply with bank lending or certification standards. The IFC Performance Standards were commonly reported as paired with the VGGTs and a sector-specific certification standard such as FSC. Of the respondents, one-third used no standards or guidelines, while another third relied solely on certification including a land tenure component. Others combined the use of the IFC Performance Standards with certification and/or voluntary tenure guidelines. Still other respondents pursue certification to sector-specific guidelines without following land tenure-specific guidelines.



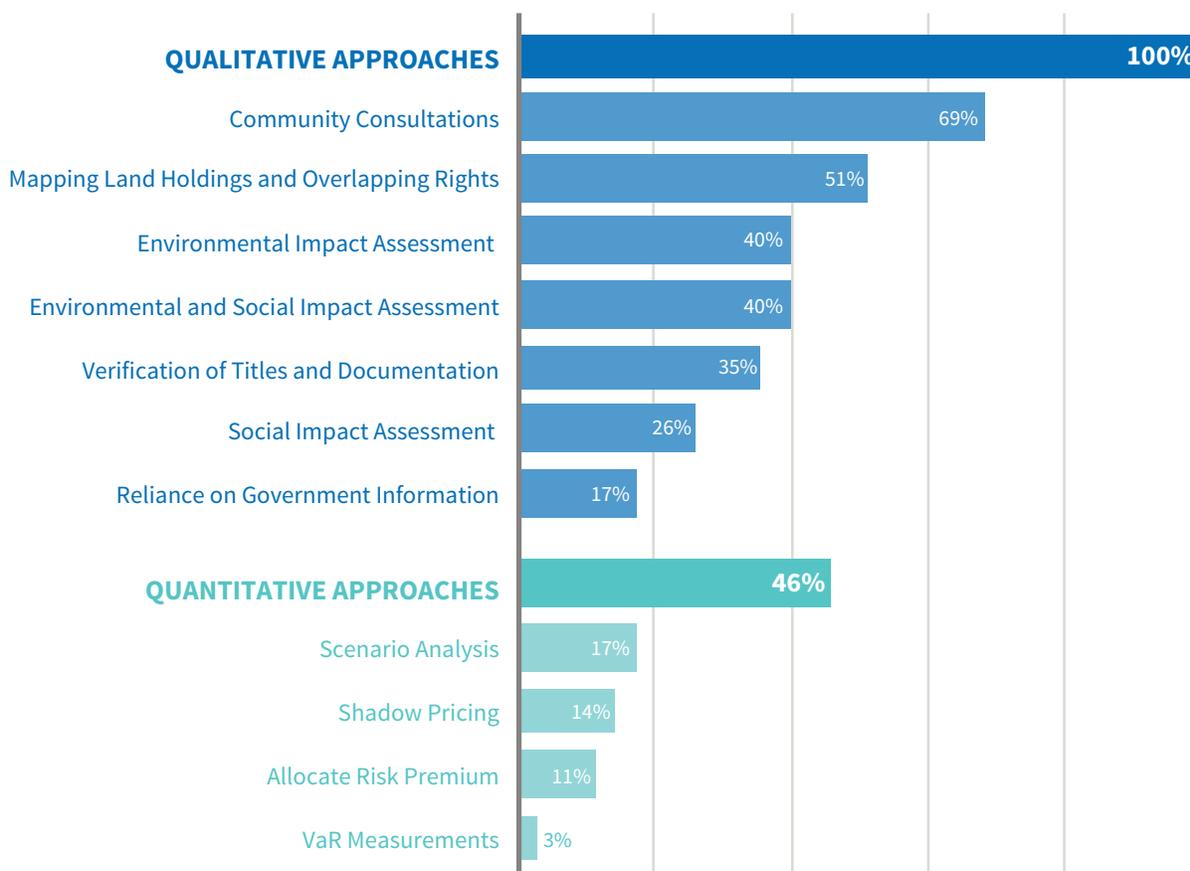


5. TENURE RISK MANAGEMENT STRATEGIES

ASSESSING TENURE RISKS PRIOR TO INVESTMENT

Organizations that reported assessing land tenure risks prior to investing were asked whether and which qualitative and quantitative approaches they use (see Figure 9). All 35 respondents reported that they assess land tenure qualitatively and 73 percent reported using multiple qualitative approaches. Fewer than half (16) reported that they use quantitative approaches to determine the financial risks of land tenure issues in the project. Of the qualitative approaches, about 70 percent reported undertaking community consultations to determine tenure risks to their projects, 67 percent reported undertaking field verification of land titles and about half of respondents reported undertaking some form of mapping to determine whether land they hold has overlapping rights to it. About 40 percent of respondents relied on some variation of environmental impact assessment, environmental and social impact assessment or social impact assessment to identify possible tenure risks. Just 16 percent of respondents reported relying on government information.

Figure 9 | Risk Assessment Approaches (n = 35 of 35 respondents)



To quantitatively assess the financial risk of land tenure issues in their projects, respondents most commonly reported using scenario analysis (35 percent). Scenario analysis assesses the impact of different land tenure risk scenarios on the project's costs and benefits. Shadow pricing, used by 29 percent of respondents, estimates the potential financial loss due to land tenure risks. A quarter of respondents reported allocating a land tenure risk premium in their discounted cash flow valuations when modeling the expected return of a project. The value-at-risk technique, used by just one respondent, estimates the level of tenure-related financial risk within an overall portfolio of projects over a specific time period.

RISK MITIGATION STRATEGIES

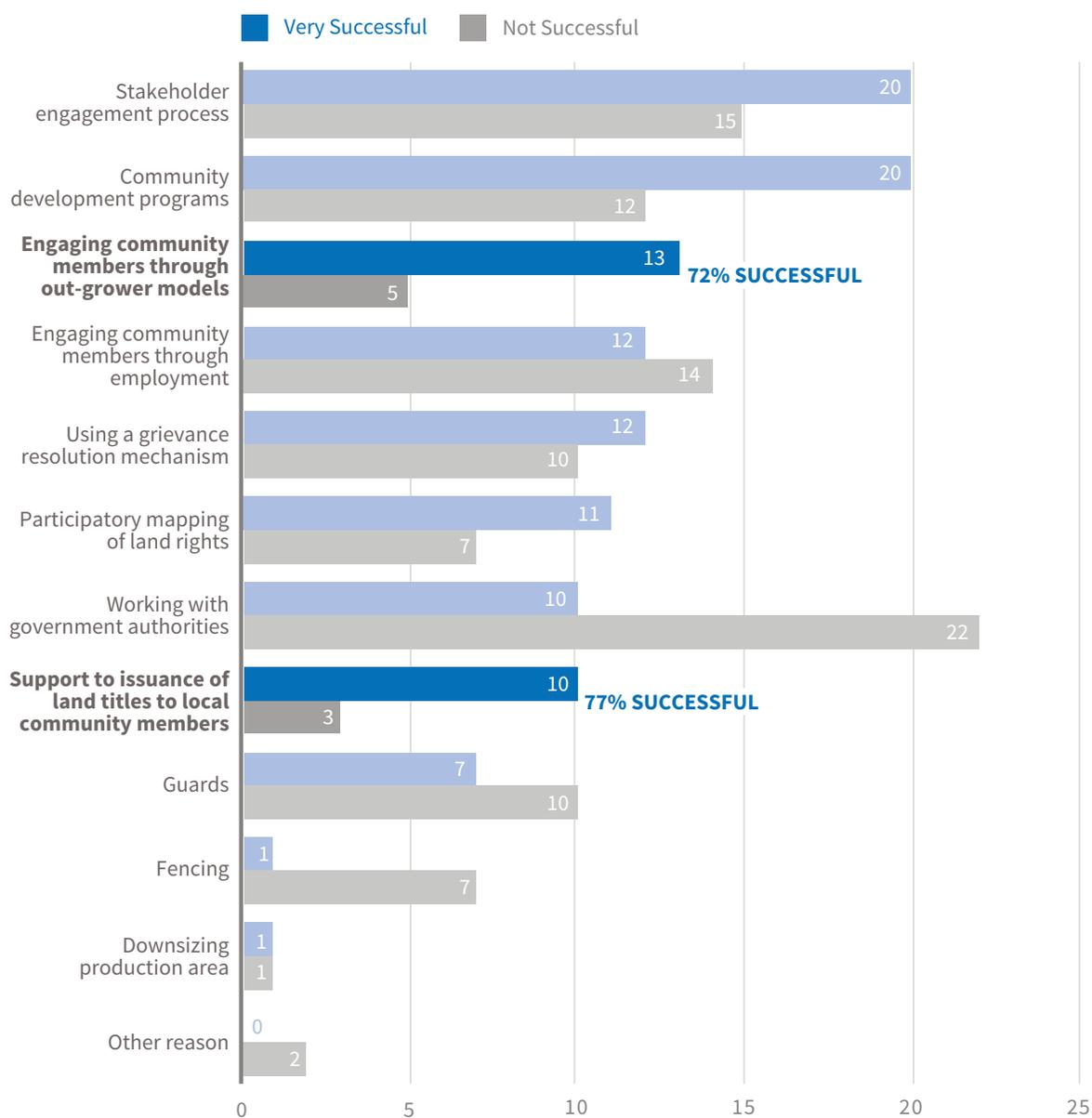
Upon identifying land tenure risks, respondent organizations reported using a variety of approaches to mitigate the impacts of the risks throughout the life of a project. Respondents were first asked to identify which risk mitigation approaches they used in the projects they reported undertaking (63 projects). They were then asked whether these approaches were successful. The most frequently used strategies entail recognition that local community support for the project is paramount to successful operations (Figure 10). Strategies reported to be “very successful” in more than half the reported projects included stakeholder engagement processes, community development programs, grievance mechanisms, participatory mapping, out-grower models and support provided to local communities to receive land titles. In contrast, the strategies reported to be successful in fewer than half of reported projects included working with government authorities, employing local community members, using guards and fencing. Only two projects downsized the production area to mitigate tenure risks, with mixed success.



Notably, some approaches such as supporting issuance of land titles to local community members (reportedly very successful in 10 of 13 cases) and using out-grower models (reportedly successful in 13 of 18 cases) are used less frequently than other less successful approaches (such as working with government authorities).

These results indicate that some of the same approaches used to assess risks, as described above, are used to mitigate risks. The selection of strategies employed is likely partially a function of the familiarity of the investor or operator with local conditions, experience with community engagement and local context. Their level of success also likely depends on how well the approaches are implemented. Investors and operators did not consistently specify whether they themselves carried out a strategy. In several cases respondents separately referred to using external service providers or working with local NGOs to carry out community engagement strategies. Strategies involving technical assessments were often outsourced.

Figure 10 | Risk Mitigation Strategies Used in Undertaken Projects (n = 63 of 63 projects)





6. IMPACTS OF LAND TENURE RISK

Survey respondents reported two types of impacts from land tenure risks on their activities. The first type includes lost opportunities where tenure risks led to the respondent organization rejecting the projects. The second type includes delays, costs and other impediments to the operations of the project. Both impacts can lead to economic losses, either through losing out on return-generating opportunities or by incurring direct and indirect costs of slowdowns or disruptions in production.

LOST OPPORTUNITIES

Respondents provided detailed information on 39 projects that their organizations have rejected in the past five years. The projects ranged in estimated value from about USD 1 million to USD 500 million, with the majority of projects valued between USD 10 million and USD 50 million. The top three risks that triggered project rejection included operational risk (including land tenure risk), business risk and market risk (see Figure 11).

Figure 11 | Risks Leading to Project Rejection (n = 39 of 39 rejected projects)

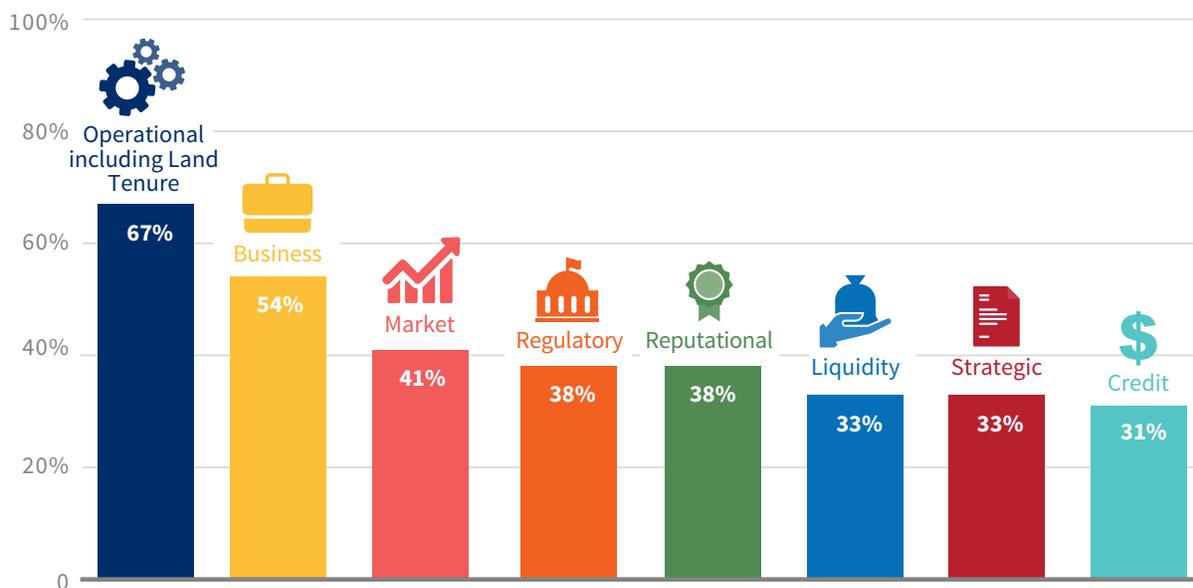
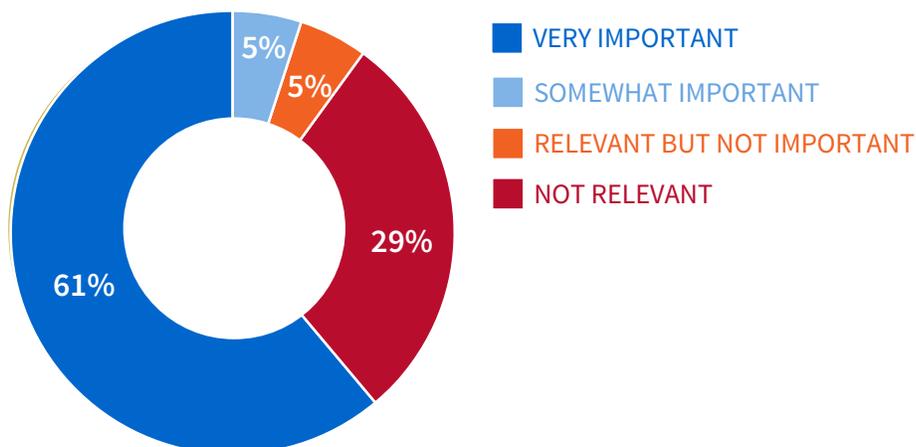


Figure 12 | Importance of Tenure Risks Leading to Project Rejection
(n = 39 of 39 rejected projects)



When asked further about the importance of land and resource tenure issues leading to project rejection, respondents reported that land tenure risks were very or somewhat important in 66 percent of the projects, whose reported combined value amounted to approximately USD 1.6 billion (see Figure 12). For these projects, community land disputes were cited as the most important factor leading to project rejection (30 percent of reported cases), followed by community access rights to the land in question (26 percent) and disagreements over compensation and benefit-sharing with local communities (23 percent).

OPERATIONAL IMPACTS

The majority of respondents did not disclose financial impacts from managing land tenure risks in their operations. However, respondents were willing to share information about tenure-related impediments that occurred in eleven of the 63 undertaken projects in the sample. Of the eleven cases, nine reported that operations were interrupted with disruptions lasting an average of ten days. In five projects, local community members threatened employees, blocked access to the project and damaged project property. The same five projects, valued at approximately USD 25 million combined, were ultimately abandoned due to tenure-related impediments. Other reported operational impacts from tenure-related issues include human casualties, incarceration of company employees, lawsuits, reduced production yields and compensation incurred to cover damages.

Anecdotal evidence from one respondent estimated the cost of mitigation efforts to include spending USD 50,000 on boundary retracement and USD 100,000 on community sensitization programs. Other costs cited by respondents included legal fees to settle claims against the project and compensation payments to injured staff or their families.

The case studies included later in this report provide more detailed descriptions on similar efforts and examples of dealing with tenure risks to operations.



7. PRIVATE SECTOR PERSPECTIVE CASE STUDIES

Six respondents volunteered to collaborate with the survey team to develop case studies on how their projects identified and addressed land tenure risks. The survey team then gathered information through interviews with company representatives, supplemented by additional background research on the companies and countries of investment or operation. The case studies illustrate the perspectives of investors and operators, without corroboration with communities’ or other actors’ points of view.

USAID is neither involved in these projects nor endorses them or the associated companies described in the case studies. The case studies are not in-depth assessments, but rather an effort to share lessons on how real companies have dealt with, and in select instances continue to deal with, land tenure risks by engaging with communities, sharing benefits and budgeting for continuous activities related to managing land tenure challenges.

The case studies presented here feature one investor and five operators with an emphasis on timber and bamboo plantations and renewable energy in Africa, South America and North America. While the context and challenges each company has faced are unique, some lessons can be drawn from their experiences. Table 1 summarizes the key features of each case study.

Table 1 | Summary of Case Studies

ORGANIZATION	LOCATION	SECTOR	LESSONS
AFRICAN PLANTATIONS FOR SUSTAINABLE DEVELOPMENT	Ghana	Plantations for energy generation	<ul style="list-style-type: none"> Enhanced environmental and social outcomes by developing mix of plantations, conservation areas and farming plots. Reduced risk of land conflict by verifying land titles and related documentation, surveying boundaries and plotting maps and requesting validation from Stools (chieftaincies). Engaged communities through sensitization meetings and sharing maps to visualize land use plans, and devotes small percentage of annual project budget to continuous sensitization and communication efforts. Negotiated some voluntary farm relocations directly with households in exchange for pre-plowed, larger farms in farm belt.
AGRIBUSINESS COMPANY	Sierra Leone	Timber plantations	<ul style="list-style-type: none"> Reduced risk of land conflict by employing bottom-up approach to land lease agreements that start with communities, rather than district and chiefdom councils (avoiding the mistake made by other companies). Reduced risk of decreased livelihoods by introducing community-led mapping of land uses and excluding areas of economic importance from consideration for lease. Actively engages vulnerable groups such as women and youth, including through anonymous feedback via a grievance mechanism. Enhances employment and leasing revenue benefits of project by paying five percent of harvest revenue into community development fund.

Table 1 | Summary of Case Studies (continued)

ORGANIZATION	LOCATION	SECTOR	LESSONS
MORINGA PARTNERSHIP	Africa & Latin America	Agroforestry	<ul style="list-style-type: none"> • Due diligence process flags land tenure risks, including potential involuntary resettlement, large-scale land acquisition or clearance (especially primary forests) or loss of communities' resource access. • Mitigates land risks by assisting investees in effectively engaging with communities to understand resource tenure and future needs and to adapt projects to meet these needs. • Works hand in hand with investees to implement Environmental and Social Action Plans and reach compliance with international standards. • Seeks to amplify impacts of investments through Agroforestry Technical Assistance Facility, which provides technical assistance and capacity building to investees, smallholder farmers and vulnerable communities.
FORESTRY COMPANY	Uganda	Timber plantations and carbon offsets	<ul style="list-style-type: none"> • Reduced land risks by maintaining team of social scientists to manage stakeholder relations, community outreach, FSC certification, continuous social impact assessments and grievance mechanism. • Seeks to address land conflicts by employing a grievance resolution mechanism and mediation system. • Adopted a basic company code of conduct that is exemplified and promoted by higher-level management, including adhering to FSC rules. • Generates benefits for neighbors and former encroachers through job creation, agricultural training, marketing assistance, environmental education and other rural development interventions.
REDD+ PROJECT DEVELOPER	Brazil	REDD+ and organic açai	<ul style="list-style-type: none"> • Mitigated heightened tensions over land rights by seeking greater dialogue with community leaders and other stakeholders to understand their history and concerns, and generate ideas for how communities can pursue alternative sustainable income streams. • Seeks to increase alternative livelihoods by developing an organic, Fair Trade certified açai project that benefits local growers. • Signed partnership contract with the co-op that commits the company to: assume costs of organic certification; transport fruit to processing plant; purchase raw açai at Fair Trade certified price; and donate a portion of profits to community development initiatives. • Reduced illegal logging and deforestation.
ENERGÍA VELETA	Mexico	Wind energy	<ul style="list-style-type: none"> • Seeks to form strong relationship with a key landowner to establish its position as a fair and legitimate actor in land market. • Mitigates land risks by creating maps of land ownership through piecing together individual land titles and <i>ejido</i> property surveys. • Engages communities by holding open meetings at <i>ejido</i> houses and hiring a mobile announcement service to drive through <i>ejido</i> villages, announcing the time and date of upcoming meetings. • Seeks to reduce risks for private landholders or <i>ejido</i> members by paying for third-party legal counsel, limiting leases to finite timeframes for project development and utilizing infrastructure removal bonds.

AT A GLANCE

A plantation company describes improving community livelihoods as it develops sustainable biomass plantations and a power generation facility in central Ghana.



LOCATIONS: Ghana **FUNCTION:** Operator **SECTOR:** Eucalyptus Plantations for Energy Production

Key Land Risk Mitigation Strategies

- Enhanced environmental and social outcomes by developing mix of plantations, conservation areas and farming plots.
- Reduced risk of land conflict by verifying land titles and related documentation, surveying boundaries and plotting maps and requesting validation from Stools (chieftaincies).
- Engaged communities through sensitization meetings and sharing maps to visualize land use plans, and devotes small percentage of annual project budget to continuous sensitization and communication efforts.
- Negotiated some voluntary farm relocations directly with households in exchange for pre-plowed, larger farms in farm belt.

BACKGROUND ON THE INVESTOR

Although foreign investment can have varied effects on local communities, this case study illustrates how one foreign investor in biofuel engaged in dialogue and negotiations with local communities to reduce negative impacts on land rights and mitigate land-related risks to the investment.

African Plantations for Sustainable Development (APSD) was incorporated in 2007 by Erling S. Lorentzen Investment for Sustainable Development Ltd. to promote industrial investments based on sustainable forestry in Africa. Since 2010, APSD has been developing eucalyptus plantations and a power generation facility¹⁵ on 23,000 ha of land near Atebubu, on the western shores of Lake Volta in central Ghana.¹⁶ The CEO of APSD explained:



“From the outset of our project, we focused our efforts on engaging and collaborating with the communities in and around the concession area. We spent time informing them of our activities, understanding their needs and developing ways to ensure we all would profit from the project. For instance, we ensured that their access to common resources remained intact, and we provided them with pre-plowed farmlands. Although following this strategy has been a long process, our continuous engagement and collaboration has resulted in strong local goodwill and mutual benefit sharing.”¹⁷

RISK REDUCTION STRATEGIES PRIOR TO THE INVESTMENT

As APSD set out to obtain lease concessions for the area of interest, their objective was to reduce any conflicts on the ground while applying an integrated landscape approach.²¹ First, APSD discussed with the relevant Stools if they were interested in leasing their land. Second, if the Stools expressed an interest, APSD verified land titles and related documentation through the Regional Land Administration. Third, to confirm ownership and verify that the land was free of other leasehold contracts, APSD performed boundary surveys, plotted maps with GPS tools and aerial photography and requested validation from the Stools.²²

Based on its due diligence, APSD found that three of the Stools did not know the exact location of all of their concession boundaries. **To avoid any conflicts, APSD did not consider any of the disputed Stool areas for lease. As a result, only 50 percent of the area that the Stools said belonged to them was signed under a lease arrangement.** The remaining land still belongs to the respective Stools and they are free to do with it whatever they see fit for the area. To date, APSD has lease agreements for 32,000 ha and a hold²³ on another 30,000 ha. Both arrangements can be renewed for another 50 years.

In addition, APSD collected information on the livelihoods and land uses of communities, a mix of residents and non-residents with no legal title to the land, to enumerate each household and to ensure the communities would be an integral part of the plantation development process. The data indicated that the density of human settlements and infrastructure was low in all parts of the concession area except for two clusters of farming communities with households having access to two to four ha of arable land. APSD informed these communities of the project using a Public Consultation and Public Disclosure²⁴ approach. During several sensitization meetings, APSD explained its intentions and showed the communities maps to visualize their land use plans, which gained the approval of the communities.

DURING THE DEVELOPMENT OF THE INVESTMENT

After signing lease agreements, APSD still had a substantial amount of work to do before it began to cultivate the plantations. **APSD is a member of the World Wildlife Funds' New Generation Plantations Platform, which aims to support better plantation management through real world examples.** To become a member, APSD adhered to the platform's four key principles of 1) development through effective stakeholder involvement process, 2) maintaining ecosystem integrity, 3) protecting and enhancing high conservation integrity and 4) contributing to economic growth and employment.

SNAPSHOT

LAND RIGHTS IN GHANA

In Ghana, land is held under an overlapping customary and statutory governing system. Twenty percent of land in Ghana is held by the state (as public lands), while 80 percent of land is held by traditional authorities, chieftaincies (Stools), families and lineages under customary tenure.¹⁸

Within the customary system, land titles are categorized as allodial, customary freehold, leasehold or sharecropping arrangements.¹⁹ Of these titles, customary freehold are especially vulnerable to land right abuses, as these titles are not a registrable land right, leaving customary freeholders without an opportunity for legal redress. Moreover, within this system foreigners can only obtain land under a leasehold up to 50 years.²⁰

Initially, APSD envisioned that none of the farms were to be relocated. Instead, it planned to develop the concession area in stages and update the communities as work progressed. However, during the first dry season it became evident that this approach was not working, as the communities preemptively set fires on farms and plantation lands around them to protect their land from third-party fires. To diminish the number of fires, APSD gradually relocated the farms of 84 households who had been farming within the concession (but living outside the concession) to a 50-meter fire and farm belt around the concession area.²⁵ Although this relocation was not covered in the lease agreement, it was negotiated with every single household. Most households agreed to the relocation, as they had been farming against government regulations in sensitive conservation areas. These farmers were convinced to relocate once APSD offered to pre-plow a new and larger farm for them in the farm belt.

Free plowing has proved to be one of APSD's most successful and popular strategies among farmers, so APSD has extended this service to all agricultural plots within the concession area.

To further ensure that communities inside the concession area would stop setting fire to the plantations, APSD continued its community sensitization meetings. In these meetings, APSD explained the negative consequences of fires to the land's fertility and productivity and tried to convince the communities that burning would no longer be necessary as APSD would plow the harvest residues back into the soil. A small incentive program, which included handing out five-kilogram bags of rice and holding a drawing to win a motorbike, was also implemented for every household that did not use fire to manage their land. Moreover, APSD set up a communication and sensitization team and staffed an Agricultural Officer to help the communities optimize their land use within their financial capacity.

Meanwhile, damage from fires started by charcoal producers in the area still plagued APSD, destroying up to eight percent of their plantation area during the dry season each year (December to mid-April).

In response, APSD began to offer community development programs. **One of these programs, a sustainable charcoal project, sought to provide a guaranteed income stream for charcoal producers by setting up sustainable fuelwood plantations and more efficient kilns. As a result, APSD constructed six charcoal kilns and established 30 ha of fuel wood plantations per village, with both the kilns and plantations owned and operated by the local communities.**

IMPACTS OF ACTING ON LAND TENURE

Employment on the plantation has produced the greatest economic impact on local communities in the area. Currently, APSD employs some 800 community members, of which 40 percent (320) are women. Moreover, when the project is fully operational, APSD expects employment to rise to 1,500.²⁶ Community members who are not directly employed benefit indirectly from APSD's investment in dams, water pipes and roads that increase access to local markets.

In addition, local communities have learned improved land management practices. While fires have not been eliminated entirely, their incidence has declined substantially. Last year only 32 ha out of 8,500 ha were burnt. **Moreover, household access to land increased in the project area. Prior to the project, households typically had access to two to four ha of arable land; they now have access to more than four ha. To accomplish this, 1,142 ha of the lands leased by APSD were reserved for the use of local communities in Atebubu-Wiase. This number is set to increase to 2,500 ha of farmland over the life of the project.**



LESSONS LEARNED

During the development of the plantations, APSD noticed that the communities had not fully understood what the project would entail and what the impacts might be, even though they had gone through the Public Consultation and Public Disclosure process. However, as the project proceeded and the communities received tangible benefits, their support and commitment grew, resulting in fewer fires. This illustrates that merely following a protocol such as the Public Consultation and Public Disclosure process is likely not sufficient for communities to fully understand projects. One potential solution would be to better demonstrate to communities the potential project benefits, either by providing more visual illustrations of these benefits or by connecting target communities with other communities that have gone through similar development processes.

In the end, the cost of setting up a project using best practices pays off. Finn Jacobsen, CEO of APSD, explains:



“The main risk to our project is related to the fires inside the plantations. At present, one percent loss of plantations represents roughly 300,000 USD and this cost increases every year as trees grow older. We, therefore, do whatever is needed to avoid conflicts related to land. There are some direct costs, but many are not accounted for in our budget. Our costs related to land issues are about 500,000 USD annually, of which half is spent on local programs and ongoing sensitization and communication efforts. This is only one percent of EBITDA²⁷ once the project is up and running. Ensuring responsible and sustainable land-based investments to avoid the risk of losing business due to land tenure issues is a minimum cost, resulting in more benefits in return.”

AT A GLANCE

An agribusiness describes how it developed commercial timber plantations with communities in Sierra Leone.



LOCATIONS: Sierra Leone **FUNCTION:** Operator **SECTOR:** Sustainable Plantation Agriculture

Key Land Risk Mitigation Strategies

- Reduced risk of land conflict by employing bottom-up approach to land lease agreements that start with communities, rather than district and chiefdom councils (avoiding the mistake made by other companies).
- Reduced risk of decreased livelihoods by introducing community-led mapping of land uses and excluding areas of economic importance from consideration for lease.
- Actively engages vulnerable groups such as women and youth, including through anonymous feedback via a grievance mechanism.
- Enhances employment and leasing revenue benefits of project by paying five percent of harvest revenue into community development fund.

BACKGROUND ON THE INVESTOR

The agribusiness profiled here, which will remain anonymous, set out to develop a local sustainable agricultural plantation production enterprise in Sierra Leone. The Sustainability Officer of the agribusiness explained the project:



“We saw an opportunity to meet an increased demand for our products from African countries by developing a local timber operation with lower operational costs and significant economic return for the communities through employment.”

The agribusiness (abbreviated as AG) initiated operations in Sierra Leone in 2012 with funding from private shareholders. By 2017, it had developed over 4,100 ha of commercial plantations within its leased land. Currently, AG grows a mix of plantation crops for export and biomass for the local energy market. In the next two years, AG will start manufacturing additional agricultural products for both local and international markets.

RISK REDUCTION STRATEGIES PRIOR TO THE INVESTMENT

When AG set out to obtain lease rights to the land, they engaged directly with local clans and communities. During the initial conversations, local landowners expressed enough interest to lease their lands to AG to support commercially-viable plantations. The Sierra Leonean government lacked the institutional capacity to support companies in the agricultural sector with large-scale, long-term lease arrangements; therefore, AG launched a process to develop appropriate leasing arrangements.

To avoid mistakes that other companies had made, AG undertook extensive research into other companies, with a focus on past situations that had resulted in land conflicts. They discovered

that some companies signed land leases directly with local governments and/or did not conduct sufficient stakeholder engagement, which caused resentment and dissatisfaction on the part of communities. **AG’s approach was therefore to work with communities in a bottom up approach, rather than starting their work with the district and chiefdom councils** (who, legally, must ultimately sign the leases). This approach avoided any potential pressure from subnational government officials on the landowners. **Once AG had a draft version of the proposed lease, they had it reviewed by lawyers and translated into the local language before sharing it with the local clans and communities as the basis for beginning negotiations.**

The land acquisition process that followed the drafting of the lease contract took over a year. Within this process, AG adhered to a voluntary community-led acquisition approach to avoid relocations and the loss of productive farmland. As part of the approach, AG introduced a participatory mapping exercise (see Figure 13, Step 5) to identify community land uses, including sacred sites and water points. Any area of economic importance to the community was excluded from the lease. Within this process, AG ensured communities’ access to resources by identifying products that community members collected in the lease area, such as medicinal herbs, and by assessing whether they could be harvested elsewhere.

During the mapping exercise, AG’s community team tried to engage with all stakeholders, including vulnerable groups such as women, religious leaders and youth, to inform them of AG’s mission, values and plan. At this time, some of the landowners and community representatives also received training in GPS mapping to assist AG with the mapping efforts. This further enhanced stakeholder empowerment and engagement, and proved critical to the success of the project. To date, AG has conducted mapping with approximately thirty communities. The Sustainability Officer of AG explained:



“The key to a successful project is to first have the land mapped by the community and then to verify the mapped lands with government land records to assess their validity. Although in the beginning, our presence might have highlighted some existing boundary issues between landowners, the mapping exercises urged them to address and solve their issues. As a result, only two disputes remained. In one case there was no record of the land in the government registry. In the other case, two neighboring families could not agree on their boundaries. We did not enter into a lease agreement with either of these landowners, and will not until they have resolved the dispute among themselves.”

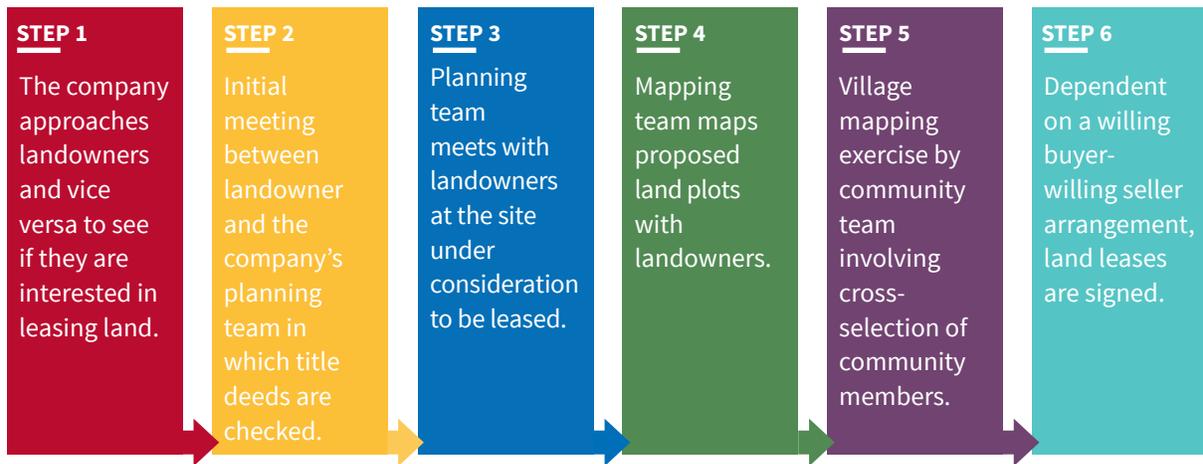
SNAPSHOT

LAND RIGHTS IN SIERRA LEONE

In Sierra Leone, land ownership is held under general and customary systems, with most of the land held under customary law in the hands of chieftaincies. Under general law, land can be categorized into two legal types: freehold and leasehold. Freehold refers to land acquired by individuals or corporate entities with Sierra Leonean citizenship

Leaseholds can be obtained with payments for a fixed period, as spelled out in the terms of a lease agreement. Customary land tenure rights are based on membership in a land-owning community or family that is part of a chiefdom. Leasehold and freehold are subject to compulsory acquisition by the State,²⁸ while customary lands can be acquired by local councils of chiefs who have the right to hold land and to resolve conflicts under the 2004 Local Government Act. Under general and customary systems, foreign investors can lease land by entering into a joint venture with the local chief,²⁹ or by entering into a lease agreement for up to 99 years under general law.³⁰

Figure 13 | AG's Six-Step Approach to Obtain a Land Lease



After the land was vetted through the mapping exercise, leases were drawn up in the local language and explained to the landowners by a lawyer of their choice, paid for by AG. To finalize the process, each landowner and their lawyer signed a document that stated that the landowner had fully understood the terms of the lease. All documents were recorded for transparency and accountability reasons. Figure 13 illustrates AG's lease process.

DURING THE INVESTMENT

To further strengthen its relationship with the communities, AG implemented development programs, including offering scholarships to over 500 children annually and constructing boreholes (seven to date). AG also set up a grievance mechanism to enable the more vulnerable groups, such as women and youth, to voice their concerns anonymously.

IMPACTS OF ACTING ON LAND TENURE

According to AG, providing employment opportunities has probably created the greatest impact on the community. In 2017, AG employed about 680 local people³¹ to manage the plantation, each of whom on average supports a family of 6. Within the community, landowners benefited from directly leasing their land to AG (80 percent of the leasing fee is directly paid to the landowners and 20 percent is paid to the district and chieftom council, which is required by law). AG also pays the landowners an additional fee for every developed hectare and pays five percent of the harvest revenue into a community fund. The community fund is intended for community development programs as decided by the community, with financial and planning advice from AG. Overall, AG's benefit-sharing approach is expected to impact the majority of the community members living in the lease areas (Figure 14).

Figure 14 | How Different Players in the Community May Benefit from AG's investment



LESSONS LEARNED

One of the key lessons AG points out is that community engagement is often enhanced when employees have a direct link to the communities. However, to reach all stakeholders, AG notes that it is essential to ensure participation of women and vulnerable groups, as they are often excluded in male-dominated societies such as in Sierra Leone. The Sustainability Officer of AG explained:



“The village mapping exercise played a pivotal role in engaging the more vulnerable groups. In addition, setting up and promoting a grievance mechanism ensured that these voices kept being heard. For example, one woman complained that she had lost some productive palms because of the company’s land development and had not been compensated. Once the company talked with her and the other landowners, it was discovered that the payment had not been passed on to her. Once this was understood, the dispute was resolved. However, as grievances dropped, we also learned that there is a need to keep advertising the presence of the dispute mechanism in a more informal way to reach more people—for instance, through health awareness schemes.”

The Sustainability Officer concluded:



“To build and strengthen our relationship with the community, we spend about 10 percent of our annual budget on social and community-related activities, such as development programs, employee welfare and communication efforts. This might seem a high price, but not compared to the return it brings in operational stability and security, as we almost entirely avoid land tenure-related risks. Furthermore, it allows the company to abide to international good practice and certification schemes, allowing further funding streams.”

AT A GLANCE

A private equity investment fund provides an overview of how it manages land tenure risks in agroforestry projects during initial due diligence and throughout the life of an investment.



LOCATIONS: Africa and Latin America **FUNCTION:** Investor **SECTOR:** Agroforestry

Key Land Risk Mitigation Strategies

- Due diligence process flags land tenure risks, including potential involuntary resettlement, large-scale land acquisition or clearance (especially primary forests) or loss of communities' resource access.
- Mitigates land risks by assisting investees in effectively engaging with communities to understand resource tenure and future needs and to adapt projects to meet these needs.
- Works hand in hand with investees to implement Environmental and Social Action Plans and reach compliance with international standards.
- Seeks to amplify impacts of investments through Agroforestry Technical Assistance Facility, which provides technical assistance and capacity building to investees, smallholder farmers and vulnerable communities.

BACKGROUND ON THE INVESTOR

The Moringa Fund is a USD 104 million investment fund that targets profitable large-scale agroforestry projects in Latin America and sub-Saharan Africa aiming to achieve positive environmental and social impacts while generating a return on investment for its investors. The fund is managed by the Moringa Partnership and makes equity and quasi-equity investments of USD 5–12 million per project.

Parallel to the fund, Moringa Partnership established the Agroforestry Technical Assistance Facility (ATAF) to provide technical assistance and capacity building for Moringa Fund investees, outgrowers and other smallholder farmers and vulnerable communities near Moringa projects. The ATAF is a grant-based mechanism with the goal to amplify and upscale positive environmental and social impacts triggered by Moringa's investments.³²

PRE-INVESTMENT PROCESS

Moringa pursues both greenfield and brownfield³³ investments, but sees the risk of land tenure as higher with greenfield deals, given the land use changes often triggered by new projects.

Rather than investing in large areas of land itself, Moringa invests in companies that hold land suitable for agroforestry projects. **It considers developing outgrower schemes and supporting small farmers directly as a way to secure supply, while generating positive impact in countries where population pressure on land is strong and land availability is limited.** For example, Moringa invested in a cashew

processing facility in Benin whose supply relies on 7,000 small producers. To further create positive impact for local communities and the broader region, Moringa is investigating how to transform the agricultural waste from the cashew facility into electricity.

To account for all risks and ensure that proposed activities will not lead to significant adverse impacts, Moringa assesses each prospective deal in accordance with a set of standards and guidelines.³⁴ During this initial assessment, land titles are verified and boundaries are checked on maps to determine if the investee company has the rights to the land. **The investment process ends if the assessment flags land tenure risks that cannot be mitigated, including disputes with local communities, the need for involuntary resettlement, large-scale land acquisition or clearance, particularly of primary forests.**

Once prospective investments have passed the initial assessment, a due diligence process follows. During this process, Moringa hires a third party to comprehensively assess the ESG risks that could arise from the investment. This includes confirming Moringa's initial land title assessment and checking existing maps and boundaries to ensure that the investee enterprise possesses proper statutory land rights that do not overlap with customary rights claimed by local people. **An investment will only be made if it is verified that the company has rights to the land where plantations or a processing facility will be established.**

In addition, mapping of the investment lands is often carried out over time through the collection of GPS data. Moringa does not expect a company that works with small farmers to have a complete map or database of its growers at the time of the investment. Rather, it regards the development of such a database as part of the development of an outgrower scheme, and as such Moringa will work with the company over the years to create the database by mapping the farms.

As part of the due diligence process, Moringa also considers whether the project will deprive local populations of their access to resources. For instance, a project could lead to the conversion of a fallow or abandoned plantation that is being used by local communities for firewood collection or fruit picking, such that the communities would no longer be able to continue harvesting the site. Moringa assesses such existing land uses and related risks for the population in these cases and develops risk mitigation actions as appropriate.

For example, one of Moringa's investee companies received complaints from neighboring communities who feared losing their access to firewood. The neighboring communities were accustomed to collecting firewood within the plantations; however, the company had to prevent access to its premises in order to become compliant with certification requirements. To address this issue, the company improved its communication with the community, meeting monthly with the village leader to openly discuss community demands. Moreover, after renovation of their plantations, the company gave all of the wood removed from the plantation to the community. The company also carried out other philanthropic activities to support the community, such as the collection of garbage, renovation of parks and maintenance of roadways and bus stops. The relationship between the community and the investee improved and allowed for the development of new projects by the company in subsequent years, with an emphasis on ensuring benefit-sharing with the community (e.g., a project is currently under consideration to transform agricultural waste into charcoal briquettes that could benefit the local communities).

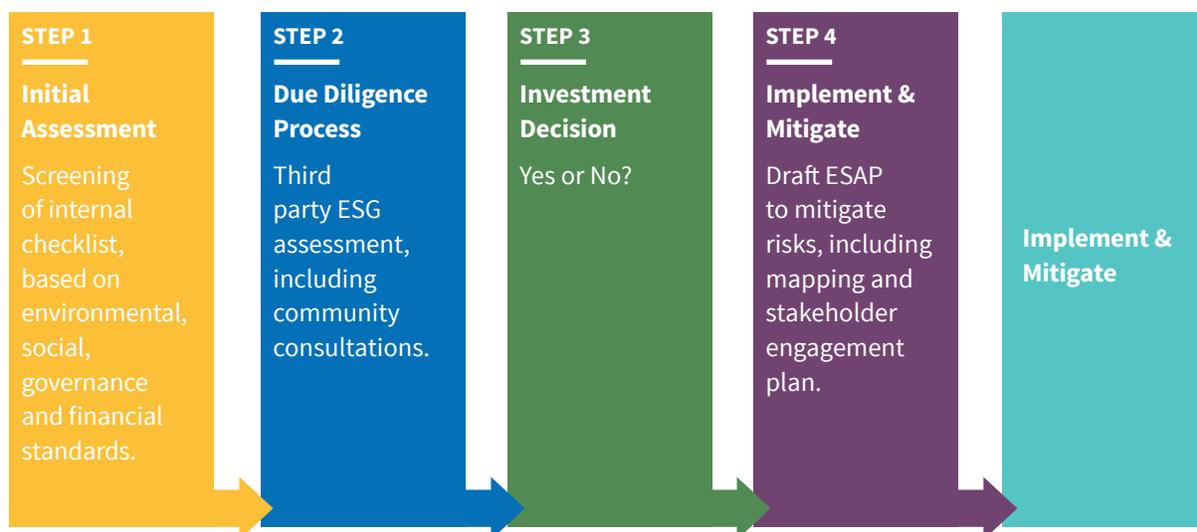
DURING THE INVESTMENT

Based on risks identified during the due diligence process, an external consultant drafts an Environment and Social Action Plan (ESAP) for the investee company to comply with Moringa’s standards and guidelines. The ESAP is then approved by Moringa and the investee, who agrees to implement it during the investment period, typically over several years. As part of this ESAP, the investee must implement a full environmental, social and governance management system (ESGMS). Developing an ESGMS often takes time, as it requires a new monitoring and management system, training and a certain evolution of vision and strategy, with Moringa working in the background to ready the company for compliance with international standards. The schedule of implementation depends on the proposed activities and the level of risks.

As part of the development of a full ESGMS, Moringa encourages investees to develop a stakeholder³⁵ engagement plan, aimed at all land rights holders that are directly and indirectly affected by the investment. **Particularly if an investment involves a sensitive relationship with a local community, Moringa requires the firm to improve its relationship with the community through better communication—for example, by increasing the number of meetings it has with the community and developing a grievance mechanism.** It is up to the communities themselves to decide who will represent the community’s interests and lead interactions with the investee company. The most common practice is that the investee company will meet with the village leaders, but other arrangements are possible. In one of Moringa’s investments, for instance, meetings with local communities included the representative of each religious group as well as the political leaders.

Moringa visits its investees to monitor project implementation and assess impacts approximately every two years, though the frequency of visits is dependent on the challenges faced by the companies. In addition to tracking qualitative indicators of livelihoods, Moringa has defined quantitative indicators to monitor the impact of its investments, including the number of jobs created, the area of land renovated and the number of farmers impacted. More in-depth impact studies are conducted when possible to better assess impact of the investments on livelihoods. Figure 15 depicts Moringa’s assessment process.

Figure 15 | Moringa’s Assessment Process





Moringa's projects are designed to reach local communities beyond the initial investment. Bolstered by Moringa's financing and guidance, investees are better positioned to improve livelihoods of smallholder farmers through job creation and technical assistance to enable adoption of sustainable agricultural practices such as agroforestry. Moreover, by encouraging its investees to implement rigorous ESG guidelines and policies, Moringa helps them comply with international standards.

In addition, by developing new financial mechanisms—typically, through ATAF projects—Moringa has enabled smallholder farmers to enter outgrower schemes from which they previously would have been excluded. For example, one ongoing project assists small coffee farmers to renovate their farms by planting good quality, shade-grown coffee. In this project, the investee company plants coffee on one hectare or half of the farmer's land (depending on the farm size), leaving the farmer with enough land to allow subsistence farming while the coffee is growing. The company also provides quality planting materials, inputs and access to better markets. In return, the company receives 50 percent of the coffee production for the first three years of production to cover establishment costs. After five years (two non-producing and three producing), the farmer gains fully productive land planted with rust-resistant and highly productive coffee trees, enabling her or him to increase yields and coffee quality, and in turn to improve her or his livelihood.

LESSONS LEARNED

Moringa has found it helpful to take a comprehensive approach to due diligence, including evaluating the resource tenure conditions and needs of communities that may be directly or indirectly affected by the project. Based on its experience, Moringa understands it is unlikely that local companies or entrepreneurs will meet all of its environmental or social sustainability criteria before the time of investment. Instead, Moringa is generally ready to work with companies to improve their practices and mitigate risks that could be potentially high but are currently manageable, developing an action plan and ESGMS to help reach compliance with ESG international standards.

Providing technical assistance to the investee and smallholder farmers in the area has also been crucial for strengthening farmer interest and participation through outgrower schemes as an alternative to land acquisition.

AT A GLANCE

A forestry company engages communities and solves conflicts when dealing with legacy land issues in a forest reserve.



LOCATIONS: Uganda **FUNCTION:** Operator **SECTOR:** Timber Plantations and Carbon Offsets

Key Land Risk Mitigation Strategies

- Reduced land risks by maintaining team of social scientists to manage stakeholder relations, community outreach, FSC certification, continuous social impact assessments and grievance mechanism.
- Seeks to address land conflicts by employing a grievance resolution mechanism and mediation system.
- Adopted a basic company code of conduct that is exemplified and promoted by higher-level management, including adhering to FSC rules.
- Generates benefits for neighbors and former encroachers through job creation, agricultural training, marketing assistance, environmental education and other rural development interventions.

BACKGROUND ON THE OPERATOR

The forestry company (FC, hereafter) is a limited liability corporation with its headquarters in Europe. It was founded in the late 1990s with the goal of financing sustainable forestry through the sale of carbon credits. Since the carbon market has not developed as expected, the production of timber has become its primary business.

BACKGROUND ON THE INVESTMENT

FC has a 50-year license from the Ugandan National Forestry Authority to plant trees in a central forest reserve, but not to conduct or allow any other land use activities such as agriculture. The forest reserve was delineated and mapped in the 1960s in an attempt to define an area exclusively for timber production. The land formerly belonged to the local king and then the British crown prior to becoming property of the state of Uganda. No other traditional or formal land use titles were registered prior to the delineation. The constitution of Uganda and subsequent laws stipulate that any land claim created after the delineation is void. Land titles older than the delineation can only lead to compensation, not to allocation of land within the forest reserve.

According to FC, previous attempts by the National Forestry Authority to plant trees in the reserve at a small scale failed due to managerial and funding constraints. While the reserve was left idle by the Forest Authority, people started to fell trees and bushes for charcoal production and brought in cattle for grazing, although FC reported that people said they knew these actions were illegal. Also, some people obtained fraudulent documents they thought were land titles or land-use permits for limited sections of the reserve, mainly alongside its boundaries.

In the late 1990s, FC was approached by the Ugandan government to develop the forest reserve into timber plantations. FC has now planted approximately two-thirds of the estate with exotic and local tree species in a mosaic planting pattern, managed by a local forest management company. Approximately 600 people work at the forest management company, with the majority belonging to communities neighboring the forest reserve.

RISK REDUCTION STRATEGIES PRIOR TO THE INVESTMENT

Prior to the investment, the company informally spoke with local stakeholders and relevant authorities to assess if the local population would welcome the project. In addition, FC performed due diligence on land title documents to determine whether any claims to the same land had formally been registered, or if there were any other major conflicts over land. The company's tree farming license was found to comply with Ugandan law, and no documents were brought to the company's attention that would confirm any overlapping land rights in the forest reserve. **At the time, land use conflict was not rated as a major risk, given that grazing and firewood collection were sporadic and broadly regarded as illegal, the local population was small and the job opportunities provided by the project were significant.**

CHALLENGES

Given the weak rule of law and the various levels of formal and informal land use-rights, FC has found it difficult to address conflicting land tenure claims. FC's efforts to resolve these land tenure issues have received the highest priority from the company's leadership, which considers the continued risk of unresolved land tenure conflicts to be a potential source of physical and reputational damage.

Ideally, FC would like to be able to address the lack of a strong legal framework through a neutral, lawful entity who can make a final ruling. In the absence of this structure, **FC has been addressing conflicting land claims by offering local communities support, such as training in alternative livestock and agriculture management, in exchange for discontinuing use of FC's leased land.** This has proven successful with those farmers who owned or acquired land outside the forest reserve. Over 1,600 farmers received support for their agricultural value chain, including improved access to food markets, adoption of appropriate postharvest management practices and use of proper farm inputs and agronomy to increase yields for food and cash.

SNAPSHOT

LAND RIGHTS IN UGANDA

The 1995 Constitution and the Land Act of 1998 provided a decentralized framework for land management, and they redefined the five legally recognized forms of land tenure as customary, leasehold, freehold, *mailo*³⁶ and public.

In rural areas, land owners with customary tenure rights cover 80 percent of all land, yet 95 percent of customary tenure rights holders lack land titles. They have the option to convert customary rights into freehold land rights, but registration is costly and time-consuming. The lack of clarity around different systems of land ownership complicates access to and investment in land. Operators and communities look to the National Forest Authority and District Forest Service to safeguard community forest tenure rights—for example, by educating communities on their rights, clarifying forest boundaries through consultations and mapping and arbitrating conflicts.

Additionally, FC set up a mediation system independent from the state to address land-tenure conflicts. FC's staff are the moderators, which requires oversight to ensure the moderators are accountable and fair. Although FC would like a third party to conduct these mediations, attempts to set this up have failed, as no third-party could be found that demonstrated a good track record of balanced mediation and independence. To a limited extent, this role is currently being filled by the annual FSC auditors during their field visits.

DURING THE INVESTMENT

The company established and maintains a team of seven social scientists to structure and manage day-to-day stakeholder relations, organize community outreach activities, achieve FSC certification, conduct continuous social impact assessments and implement stakeholder grievance and feedback procedures, while consulting various local legal experts.

Through this team, the company has implemented a host of strategies to manage land tenure issues that have been successful to varying degrees. **The following strategies have been successful, according to the company:**

- **Adopting a basic company code of conduct across the company that is exemplified and promoted by higher-level management, including following rules as set out by FSC.**
- **Listening to and following up on complaints in a structured, transparent way.**
- **Seeking high-quality legal and policy advice on the customary and formal land tenure claims in the forest reserve.**
- **Having frequent face-to-face conversations with any stakeholders who perceive any sort of conflict with the company, especially related to land tenure.**
- **Using FSC certification as the formal framework to guide the company's operational decisions.**
- **Generating tangible benefits for neighbors and former encroachers through: employment; training to increase crop yields; training in livestock breeding and rearing; assistance in marketing milk and maize; environmental education to improve sustainability of land use; and other rural development interventions.**

The company also found that some strategies were not helpful and did not address the root causes of tenure conflicts. These included:

- Having stakeholder relations managed by local staff who understand the context and language but lack a solid, professional background in social sciences or mediation.
- Relying on formal and informal authorities to adhere to and implement laws, regulations and contracts without persistent personal follow-up.
- Trying to explain to third parties the positive impact of the company's activities on local communities and land tenure without formal, scientific impact studies.

IMPACTS OF ACTING ON LAND TENURE

Due to the persistent efforts of a team³⁷ of five full-time staff for community relations and another ten working in livelihood improvement programs, today only about ten percent of the forest reserve remains disputed land that cannot be planted, compared to earlier when people were sporadically



using all of the forest reserve. All claims have been and continue to be recorded, discussed and forwarded to the relevant authorities for final decision. **For any new claims, a record-keeping and mediation system is in place to ensure accountability and transparency in dealing with these claims. This system has proven effective. Stakeholders have stated that they appreciate the system, and many encroachers have peacefully vacated the land.** Immediate neighbors of the forest reserve have also become proactive in not letting controlled grass fires from their farms spread into the forest, collaborating with FC in detecting fires.

LESSONS LEARNED

According to FC, the key to developing successful, sustainable projects while respecting legitimate land rights is adhering to a strict due diligence process, supported by a robust grievance resolution mechanism. Within the due diligence process, the first step is to carefully record all land rights as perceived by each stakeholder to ensure all language and cultural nuances are well understood by all parties. The second step is to use a science-based assessment of local stakeholders' requirements (e.g., a livelihood assessment) that produces high-quality data and results in a better understanding of stakeholder needs from the outset. It will also give third parties such as investors and interest groups more confidence in the quality of such assessments.

Additionally, FC states that establishing a system whereby conflicting parties can meet to understand each other's views on land tenure is critical, including explaining each stakeholder's position under formal and traditional Ugandan law. This can start with simple, structured meetings with a moderator, with accurate minutes and follow-up. Diligent documentation of local stakeholder grievances can enable follow-up and provide proof to third parties, such as traditional leaders, to come to mutually agreed solutions.

Finally, the company believes that providing clear evidence of how neighboring communities can benefit from the project (e.g., through employment or rural development interventions) can increase social license to operate and help mitigate land tenure conflicts.

AT A GLANCE

A REDD+ developer engages communities through an outgrower scheme to provide secure income.



LOCATIONS: Brazil **FUNCTION:** Operator and Investor **SECTOR:** Forest Conservation (REDD+) and Organic Açai

Key Land Risk Mitigation Strategies

- Mitigated heightened tensions over land rights by seeking greater dialogue with community leaders and other stakeholders to understand their history and concerns, and generate ideas for how communities can pursue alternative sustainable income streams.
- Seeks to increase alternative livelihoods by developing an organic, Fair Trade certified açai project that benefits local growers.
- Signed partnership contract with the co-op that commits the company to: assume costs of organic certification; transport fruit to processing plant; purchase raw açai at Fair Trade certified price; and donate a portion of profits to community development initiatives.
- Reduced illegal logging and deforestation.

BACKGROUND ON THE INVESTOR

The developer, hereafter referred to as The Company (TC), was formed in 2000 as a Japanese corporation divested its Brazilian forest holdings to TC. Currently, TC focuses on developing environmental, biodiversity and renewable energy projects in Brazil. To date, TC's main activity is conserving rainforest, which generates revenue through voluntary carbon credit sales. TC also derives income by developing açai plantations, part of a community investment strategy designed to reduce deforestation from illegal logging.

BACKGROUND ON THE INVESTMENT

In the 1960s and 1970s, many multinational companies tried to enter the Brazilian timber market. However, most failed to generate a profit from their logging activities. Today, a REDD+ project (to reduce emissions from deforestation and forest degradation) developer is trying a more forest- and community-friendly approach. Instead of felling trees for timber, the developer generates income through carbon credits earned from conserving forest trees. In addition, the developer is promoting community cultivation and harvesting of açai berries in both native forest and deforested areas.

Historically, the land now owned by TC belonged to local indigenous peoples. However, during the colonial period, European settlers took control of the land, as it was not previously demarcated and indigenous peoples were not considered legal proprietors. Land ownership from then on shifted from European settlers to a small set of European traders, creating a socioeconomic conflict between “settlers/workers,” who lived and worked on the land, and “bosses,” who owned the land and its

resources. TC's land was first controlled by a Portuguese merchant, who sold it to a subsidiary established by the Japanese corporation in 1969, which then divested it to TC in 2000.

Prior to acquiring the forest land in 2000, **TC's due diligence process focused on verifying land titles to confirm their validity, including field work to ascertain land tenure rights and any existing ownership disputes. However, some legacy issues caused by colonial ownership were not identified,** dating from the time of the earlier Portuguese land owners, when a sawmill owner exploited the local settlers by paying them below-market prices for the timber they harvested. **Resentment from this earlier exploitation created an atmosphere of distrust for TC's land use plans of which TC was unaware.** As a result, the community did not always respond positively to TC, even though its stated aim was to reduce poverty and increase forest conservation⁴¹ through a participatory approach.

SNAPSHOT

LAND RIGHTS IN BRAZIL

Brazil has some of the most progressive land laws in the world.³⁸ Under the 1988 constitution, Brazil recognizes a right to adequate housing and property in both rural and urban areas. The constitution also guarantees indigenous and traditional people the exclusive possession of their territories and strengthens women's rights to obtain land. Despite these safeguards, Brazil suffers from one of the highest levels of unequal land distribution in the world; in 2015, Brazil's Gini index was 51.3.³⁹

To increase efficiency and reduce bureaucracy, the government of Brazil approved a new national land regularization law in July 2017. However, analysts from the Land and Urban Reform Movement claim that the new law results in reduced land rights and access for the poor. They argue that the law makes it possible to transfer public assets, land and natural resources to the private sector without consideration of social and collective criteria, which was previously required by Brazilian land law.⁴⁰ As a result, land rights and tenure remain insecure, despite the country's progressive laws.

RISK REDUCTION STRATEGIES DURING THE DEVELOPMENT OF THE INVESTMENT

As TC set out to conserve existing rainforest, it inadvertently aggravated conflict with the community by announcing that timber extraction was no longer allowed within the project area. This eroded TC's image, as communities depended on the income from logging for their survival. In response to the announcement, trade unions and other organizations began a social movement against TC. In March 2001, at the pinnacle of local dissatisfaction, local trade unions organized a march for the rights of rural workers/settlers, with the support of local politicians.

In response to the frustration demonstrated by the march, TC sought greater dialogue with community leaders and representatives of the social movement. **In 2002, TC convened multiple stakeholder consultations involving TC, communities, government and NGOs.** These consultations raised concerns about how settlers could adapt to a new production culture, given their long history of working in wood extraction, and how settlers could ensure a sustainable income stream with alternatives to timber extraction.

These discussions helped TC better understand the communities' perceptions of the company.

Several more meetings were scheduled, with particular care taken to make them accessible to the communities living in TC's area. At these meetings, TC addressed the community concerns and explained the rights of the communities living within TC's area. Some representatives remained distrustful of TC, as they did not believe that private land ownership could ever bring real opportunities for local development. But overall, enough trust was built between TC and the communities to allow TC's project to move forward.

For TC, these consultations demonstrated the need to increase community involvement in the conservation project. **During these and subsequent meetings, TC came to understand the importance of formal land ownership for the communities. Like many families living in the Amazon, the community members residing on TC's land do not have defined, formal land rights. Given their historical presence, they are permitted by Brazilian law to remain on the land and to extract non-timber forest products.** TC notes that, despite this ability to continue to live on and use the land in some ways, the lack of formal land ownership is a source of instability for the communities and results in less concern for the state of the land and the environment overall by the communities.

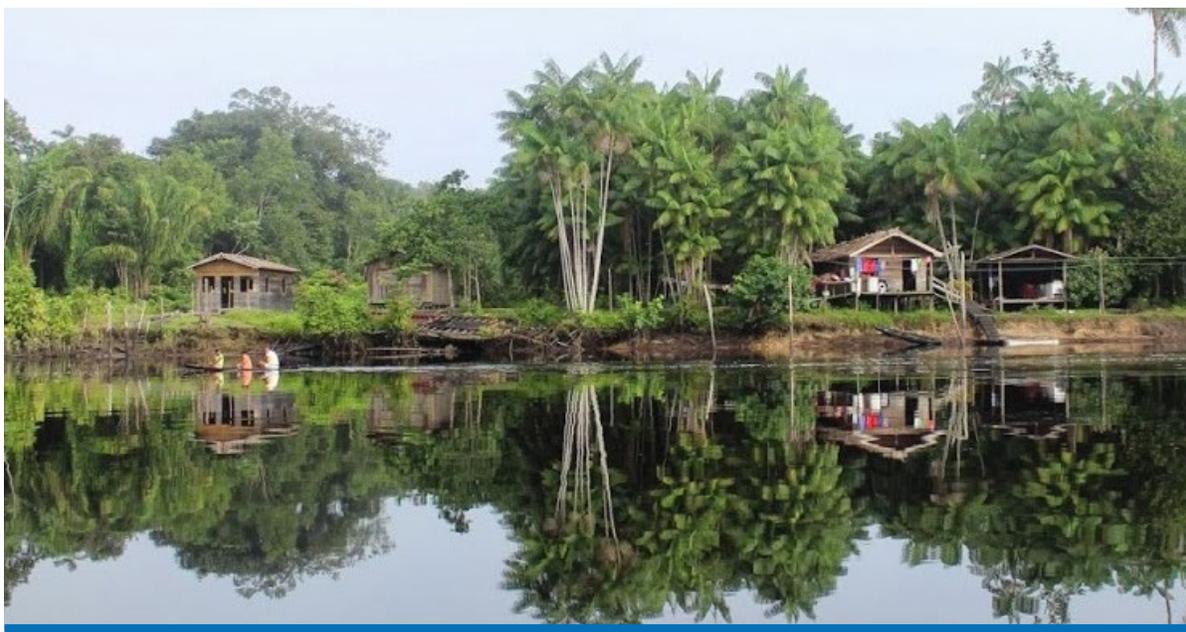
To ensure the viability of TC's project and improve its relationship with the communities, TC did not contest or interfere with the communities' right to acquire property within the boundaries of the land it legally owned, as outlined in Brazilian law. As a result, some members of the community have since obtained a rural property title that surrounds their existing homes. The CEO explained:



“Not only do we see the community as partners protecting our property, but more importantly, given their low density, it would have cost us more to use guards or have them removed, while disrupting our relationship with the community and losing a viable workforce.”

In addition to the community meetings, **TC conducted studies of local social and economic conditions to develop alternative livelihood opportunities appropriate for the local communities.** These studies indicated that seven communities, consisting of 1,300 members in total, were living within TC's land holdings. Most of the families are poor and depend on income from slash-and-burn logging. In response, TC initiated several community development programs, with varying levels of success. Due to the remoteness of the area and the poverty of the communities, the most successful projects have been community schools and, most recently, the cultivation of açai berries.

Currently, TC is developing açai plantations in deforested areas as well as developing wild, enriched açai groves, in which açai is planted in groves of native trees preserved by the conservation project. The aim is to create 100 percent socially and environmentally friendly organic açai products for the national and international markets. To organize and encourage community involvement in the açai project and increase its economic viability, TC has helped participating community members to form an açai outgrowers cooperative. **TC has also signed a partnership contract with the co-op, committing TC to assume the costs of organic certification. The contract also obligates TC to transport the açai fruit to the processing plant, to purchase raw açai at a Fair Trade⁴² certified price and to donate a portion of TC's profits to community development initiatives.** TC's first-year donation—an investment in the community school—actually exceeded its total profits for that year. TC expects açai profits—and subsequent donations—to increase over time.



IMPACTS OF ACTING ON LAND TENURE

Within the açai project, TC employs people from approximately 10 percent (22 out of 210) of the families living on TC's land. Given that there are few economic opportunities in the area and that the families' main activities are subsistence agriculture, the sale of açai has become one of the primary sources of cash income for these families. The number of families benefiting from the açai project is expected to increase as more members join the cooperative over the life of the project. The environmental impacts of the conservation and açai projects are notable as well. Between 2013 and 2017, illegal logging in the project area diminished, preventing deforestation of some 4,250 ha, while the açai project is set to plant up to 1,200 ha with a mix of native species of the region, including wood and other fruit species.

LESSONS LEARNED

TC sees local communities as the protectors of the forests and land and, despite rocky beginnings, has since worked diligently to create good relationships with them. The CEO of TC explains that working with them and ensuring their livelihoods is essential for the success of the project:



“We spent great efforts to make the communities an integral part of our mission to create value from nature and ensure sustainable management of the forest. To ensure community participation in the project, land ownership played a critical role. However, land ownership was far more complex than we expected, given the historic relationship of the communities with the land and the ad hoc nature of their presence in our area. Currently, we are still in the process of fully comprehending the situation and ensuring the legitimate land rights of the communities are respected, as this ensures the success of our project. In hindsight, we would have spent more time on understanding the land issues prior to project development. We recommend that other companies perform participatory mapping of the area to engage communities from the outset of the project and to give them a sense of security that their land rights will be protected. To date, the success of our project has relied on our work with the communities, which has reduced illegal logging and conserved the forest.”

AT A GLANCE

A wind energy developer illustrates how to deal with specific country-based tenure risks.



LOCATIONS: Mexico **FUNCTION:** Operator **SECTOR:** Wind Energy Project Development

Key Land Risk Mitigation Strategies

- Seeks to form strong relationship with a key landowner to establish its position as a fair and legitimate actor in land market.
- Mitigates land risks by creating maps of land ownership through piecing together individual land titles and *ejido* property surveys.
- Engages communities by holding open meetings at *ejido* houses and hiring a mobile announcement service to drive through *ejido* villages, announcing the time and date of upcoming meetings.
- Seeks to reduce risks for private landholders or *ejido* members by paying for third-party legal counsel, limiting leases to finite timeframes for project development and utilizing infrastructure removal bonds.

BACKGROUND ON THE INVESTOR

Recent energy market reforms, including competitive energy auctions, have made Mexico a country primed for renewable energy development. Energía Veleta, a 2014 joint venture between businessman Mannti Cummins and General Electric, was created to identify and develop wind energy projects in Mexico. As of 2018, Energía Veleta is developing or has completed development of over 1,000 megawatts of wind energy sites on just under 200,000 ha of leased land in Mexico. With operations in Tamaulipas, Coahuila, Baja California Sur, Sonora, Zacatecas, Jalisco and Veracruz, the company expects to generate 160,000 megawatts per hour annually by 2019, with additional generation capacity as new sites are developed.

RISK REDUCTION STRATEGIES PRIOR TO INVESTMENT

Energía Veleta’s business model is based on Cummins’ experience in the oil and gas sector. The framework of the model adapts to the needs of each project, with a focus on land tenure issues. This process includes conforming the project to the land tenure and documentation requirements of the country, checking land arrangements and building relationships with communities.

Conceptually, Energía Veleta explains the wind energy sphere to local *ejido* members as a *rompecabeza* (puzzle) in which there are several critical pieces that are needed for any given project to reach the development stage. The puzzle pieces (Figure 16) consist of: a strong wind resource that is consistent throughout the year; a robust energy market; connection

to the main power grid; honest land relationships and documented rights; and finally, investment partners who will see the project through.

Once promising sites are selected, the most influential landowners are identified.⁴⁶ By forming a strong relationship with a key landowner, Energía Veleta seeks to establish its position as a fair and legitimate actor in the land market.

The process to build strong land relationships can take weeks or months, given the informal and mixed titling structure within which many rural *ejidos* still operate. Many times, an individual landowner will have a boundary map of the property, but the cadastral office will have no such central record. **To ensure that the land surveys are accurate, Energía Veleta prepares its own maps by piecing together individual land titles and *ejido* property surveys. When the maps do not line up, Energía Veleta works with land titleholders who can show possession of property by creating chain of title documentation.**

On average, 20 percent of *ejido* members have titling inconsistencies or unpaid taxes that must be resolved. Most title irregularities occur because landowners did not update their land title after their marriage, the birth of their child or death of their predecessor, and therefore can easily be solved. **Due to the contractual nature of this process and the potential for asymmetries in legal power that are inherent when large corporations negotiate with local communities, Energía Veleta preemptively suggests that private individuals or *ejido* members seek their own third-party legal counsel. This process is paid for by Energía Veleta to help ensure an equitable arrangement.** The independent verification of land titles and establishment of fair contracts has helped Energía Veleta build lasting relationships with landowners.

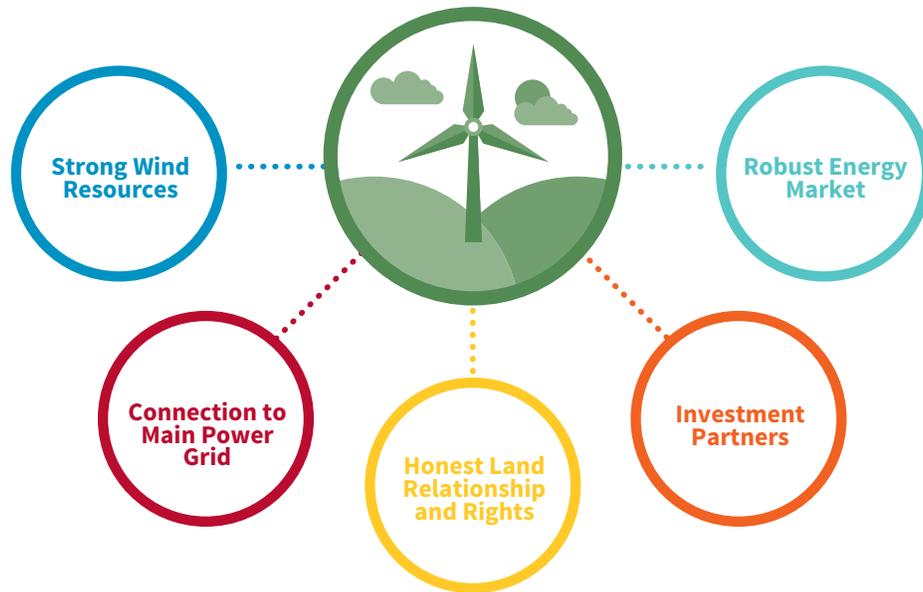
SNAPSHOT

LAND RIGHTS IN MEXICO

Ejidal and *comunidad* land is one of four broad categories for tenure holdings in Mexico that also includes private (*domino pleno*), federal and *colonias*.⁴³ Beginning in 1917, the new government of Mexico's first agrarian reform distributed over 100 million ha of privately held land to *ejidos* and *comunidades*.⁴⁴ In this arrangement, usufruct rights were allotted to communities that applied for and subsequently established residency on their respective parcel of land.

Over the course of the twentieth century, the *ejido* structure grew to comprise more than 54 percent of Mexico's land area and over 3 million households. *Ejidos* and *comunidades*, however, have often struggled to overcome issues of clientelism, poverty and limited land markets. The 1992 Agrarian Law and accompanying reforms focused on improving the self-governance of *ejido* property rights, removing restrictions on privatization and market transfers of *ejidal* land rights and implementing a system of agrarian justice separate from the executive branch. Twenty-five years later, the impacts of the second agrarian reform are evident. Over 70 percent of all *ejido* land has been legally recognized and more than 3.5 million rural and urban *ejido* members have been granted land rights.⁴⁵

Figure 16 | Five Critical Elements of a Successful Wind Energy Project



DURING THE INVESTMENT

Many of Energía Veleta’s projects have experienced risks or temporary impediments, predominantly due to preexisting social, political and economic factors. On a project in Jalisco, disputes among *ejido* leadership caused delays, eventually leading Energía Veleta to cancel the project to mitigate conflict within the community.⁴⁷ Cummins outlined the problem from the perspective of the company:



“After initial titling irregularities were resolved through proper legal channels, the project assessment began. Shortly thereafter, it became clear that internal disputes among *ejido* leadership had been obscured during community consultations.”⁴⁸

Building from this experience, Energía Veleta improved its community consultation process to mitigate land-based risks at another project in Tamaulipas. **It held open house meetings at *ejido* houses and hired a mobile announcement service to drive through *ejido* villages, announcing the time and date of upcoming meetings. More recently, they carried out social impact assessments led by third-party anthropologists.** This allowed Energía Veleta to take a more tailored approach to community engagement—even leading them to produce orientation videos that explained the development of wind energy projects to *ejido* community members.



In Baja California Sur, Energía Veleta began exploring a potential project with an *ejido* by holding pre-announced community meetings to provide landowners with a copy of a rental contract. **The contract established set compensation fees attached to energy production, a limited seven-year term for project development, audit rights and periodic sales meter calibrations, free right to release land not claimed by the project, infrastructure removal bonds and standards of behavior for both Energía Veleta and the landowner.**⁴⁹

During these initial meetings owners expressed concern about surface disruptions that could impact current land uses. Once Energía Veleta illustrated the land offset requirements for placing wind turbines, these concerns were resolved. Additionally, the results of the social impact study, which illustrated land mitigation activities to ensure current land uses were preserved, assured the landowners that their concerns were met. Even though landowners made no further objections, Energía Veleta conducted follow-up meetings to assure the project's license to operate. This mechanism proved very successful, as any dissatisfaction could be addressed immediately.⁵⁰

LESSONS LEARNED

From Cummins' experience, the key to successful land tenure arrangements is understanding these arrangements as partnerships with local stakeholders that are built on trust, with the goal of improving the situation of both partners. Concrete steps to mitigate risks include: "landowner friendly" clauses in respect to fair and equal transparency, third party social and environmental assessments of preexisting risks, and open engagement and dialogue within the *ejido* networks. In this way, projects can be approached with a long-term ethical commitment to best practices and fair play.

8. GLOSSARY



INVESTMENT TYPE

- **Brownfield investment** is when a company purchases or leases existing production facilities to launch a new production activity.
- **Greenfield investment** is when a company builds operations from the ground up. In addition to the construction of new production facilities, these projects can also include the building of new distribution hubs, offices and living quarters.



LAND TENURE ARRANGEMENT

- **Freehold title** means the landowner owns the property outright in perpetuity.
- **Concession** is a grant of rights, land or property by a government, local authority, corporation, individual or other legal entity.
- **Leasehold** refers to the holding of property by lease, usually under a lease agreement contract.
- **Management contract** is an arrangement under which operational control of an enterprise is vested by contract in a separate enterprise that performs the necessary managerial functions in return for a fee.
- **Outgrower scheme** refers to binding arrangements through which a firm ensures its supply of agricultural products by individual or groups of farmers on their own land.



RISKS

- **Market risk** is the risk that changes in market prices will reduce the value of a project or portfolio (e.g. equity price risks, interest rate risk, foreign exchange risk, commodity price risk).
- **Credit risk** is the risk of an economic loss from the failure of a counterparty to fulfill its contractual obligations, or from the increased risk of default during the term of the transaction (e.g. default risk, bankruptcy risk, downgrade risk, settlement risk).
- **Liquidity risk** relates to a firm's ability to raise the necessary cash to roll over its debt, to meet the cash, margin and collateral requirements of counterparties, to satisfy capital withdrawals and to execute a transaction at the prevailing market price with a counterparty with potential appetite.
- **Operational risk** refers to potential losses resulting from a range of operational weaknesses including inadequate systems, management failure, faulty controls, fraud and human errors.



- **Land tenure risk** is in line with the definition of operational risk and refers to the likelihood of a materially significant dispute between local people and project proponents over land and natural resource rights.
- **Business risk** refers to the classic risks of the world of business, such as uncertainty about the demand for products, the price that can be charged for those products or the cost of producing and delivering products.
- **Strategic risk** refers to the risk of significant investments for which there is a large uncertainty about success and profitability.
- **Reputational risk** relates to the belief that an enterprise can and will fulfill its promises to counterparties and creditors, and the belief that the enterprise is a fair dealer and follows ethical practices.
- **Regulatory risk** refers to the risk that laws or regulations that affect the project or organization will change during the lifetime of the project.



TENURE RISKS

- **Community/indigenous peoples' rights to access resources:** risk related to community access to water, fuelwood or food.
- **Local community land disputes:** risk of dispute between members of local communities around occupying land, not between the project and the community.
- **Encroachment:** risk of people planting on investment area without legitimate rights.
- **Theft of resources:** risk of crops being stolen from production area.
- **Seasonal use rights:** risk related to pastoralists' rights.
- **Secondary use rights:** risk related to easements or rights of way.
- **Title irregularities:** risk that title has not been certified or there are conflicting titles over the same plot.
- **Expropriation/nationalization:** risk that land will be taken away by government.
- **Corruption over land allocation:** risk of land allocation based on bribery or vested interests.
- **Overlapping concessions:** risk of mineral concession being allocated on top of existing forestry concession.

9. RESPONDENTS

The following list of respondents includes operators and investors who elected to be named in this report. Other respondents opted to keep their names confidential.

ORGANIZATION	ORGANIZATION TYPE	COUNTRY HEADQUARTERS
Althelia Ecosphere	Investor	UK
Arboreal	Investor	Philippines
Arije Investment Industries Nigeria	Investor	Nigeria
Evensen Dodge International	Investor	USA
Finnfund	Investor	Finland
Floresta Atlântica	Investor	Portugal
Moringa Partnership	Investor	France
Orion Capital	Investor	Chile
PROPARCO	Investor	France
Renew Strategies	Investor	USA
Sembrador	Investor	Chile
Solifor	Investor	Canada
Treehouse Investments	Investor	USA
Africa Plantations for Sustainable Development	Operator	Ghana
EcoPlanet Bamboo	Operator	USA
Energía Veleta	Operator	Mexico
Ethio Gypsum Industrial	Operator	Ethiopia
Illovo Sugar Africa	Operator	South Africa
IT Africa Trade	Operator	Kenya
Yok Agri-Business Company	Operator	South Sudan



ENDNOTES

1. Rights and Resources Initiative (2017). Stockholm Priorities and Opportunities Brief. <http://rightsandresources.org/wp-content/uploads/2017/09/Stockholm-Priorities-and-Opportunities-Brief.pdf>
2. Boudreaux, K., Vhugen, D., and Walter, N. (2017). Community Land Conflicts: How Local Land Disputes Affect Private Sector Investments and Development Projects. https://cloudburstgroup.com/wp-content/uploads/2017/10/Cloudburst_LEGEND_Community_Land_Conflicts.pdf
3. For examples, the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests; the Principles for Responsible Agricultural Investment; the Interlaken Group Guide for Respecting Land and Forest Rights; as well as the Analytical Framework for Land-based Investments in African Agriculture that was released by Grow Africa and the New Alliance for Food Security and Nutrition.
4. The survey is designed to be implemented every two years.
5. Qualified respondents include investors or operators who actively work in land-based investments and own at least 10 percent of a project that was undertaken in the past five years or planned within the next year.
6. Listserv outreach included seven IISD forums: Energy-L, Land-L, Forests-L, SDG, AfricaSD-L, AsiaPacificSD-L, LARC-L (<http://enb.iisd.org>) and GRAIN's 'Food Crisis and the Global Land Grab' listserv (<https://www.farmlandgrab.org>).
7. C-suite or C-level executives refers to the titles of top senior executives that usually begin with the letter C, for chief, as in chief executive officer (CEO), chief financial officer (CFO), chief operating officer (COO), etc.
8. By sector, 15 respondents focus on agriculture (eleven investors, four operators), 15 focus on forestry (eight investors, seven operators), six on energy (three investors, three operators), 39 on multiple sectors (21 investors, 18 operators).
9. The survey adapted the risk management framework developed in Global Association of Risk Professionals.
10. Land tenure risks were defined as the likelihood that disputes between local people and project proponents over land and natural resource rights would have negative impacts on the operations of the project.
11. Interlaken Group (2015). Respecting Land and Forest Rights: A Guide for Companies. <http://www.interlaken.org/>
12. See: <http://equator-principles.com/>
13. Respondents also use or adhere to the following guidance and standards produced by: Agence Française de Développement (French Development Agency), European Investment Bank, FAO, IFC, UN Guiding Principles on Business and Human Rights.
14. Respondents cited the following: Community and Biodiversity Alliance, Forest Stewardship Council, Fair Trade, Climate, GIIRS, Global Compact, Global GAP, Rainforest Alliance, SEDEX, Social Carbon, Tesco Nurture, UTZ, Verified Carbon Standard.
15. The power plant will start operations in 2022 once the plantations are fully developed.
16. APSD (2015). 60 MW Biomass Project, Ghana: Project Introduction.
17. All the quotes in this case study are based upon an interview with Finn Jacobsen, CEO of APSD.
18. Duncan, J., Gaafar, R., and Lufkin, M. (2013). The Land Bill (Draft 3): Analysis and Policy Recommendations. Report by the Ghana Land Policy Action Node. Landesa. <http://www.landesa.org/wp-content/uploads/Ghana-Land-Bill-Final-Landesa-Report-23-Oct-13.pdf>
19. USAID (2013). Ghana Country Profile.
20. Duncan, J., Gaafar, R., and Lufkin, M. (2013). The Land Bill (Draft 3): Analysis and Policy Recommendations. Report by the Ghana Land Policy Action Node. Landesa. <http://www.landesa.org/wp-content/uploads/Ghana-Land-Bill-Final-Landesa-Report-23-Oct-13.pdf>
21. APSD developed a spatial mix of plantations, blocks of conservation areas and settlements with associated farming plots in and around the settlements. De GeoServ (2013). Public Disclosure and Consultation for the Study.
22. As there are no formal borders mapped, APSD brought the Stools of all bordering areas together to verify the boundaries. This continued until APSD had identified lands that were not contested in order to avoid any disputes regarding lease payment.
23. This refers to land that is currently not in development, but that can be added to APSD's project in case APSD expands its power generation facility.
24. A Public Consultation and Public Disclosure process outlines the objectives and the national and international regulatory regime that the process will follow. This includes giving notice periods, holding public gatherings in the presence of local/governmental representatives and holding Q&A sessions. APSD's Public Consultation and Public Disclosure meetings informed the traditional council, representatives of the communities, local civil and religious societies, representatives of the Youth Association, The District Assembly and the commons. APSD also held meetings with nonresident land users, including charcoal-producing households. De GeoServ (2013). Public Disclosure and Consultation for the Study.
25. In 2011, eleven farms were relocated, 15 in 2012, five in 2013, 23 in 2014, nine in 2016 and 21 in 2017.
26. APSD employs about to 2–4 percent of the total viable workforce in and around the concessions—an area of about 500,000 ha.
27. EBITDA: Earnings before interest, taxes, depreciation and amortization.
28. Government of Sierra Leone (2015). Draft National Land Policy of Sierra Leone. <http://www.slundp.org/content/dam/sierraleone/docs/projectdocuments/environment/Land%20Policy%20SL%20151214%20FINAL.pdf> (Accessed March 1, 2018).

29. US Department of State (2011). 2011 Investment Climate Statement - Sierra Leone. Bureau of Economic, Energy and Business Affairs. <https://www.state.gov/e/eb/rls/othr/ics/2011/157354.htm> (Accessed March 7, 2018).
30. Government of Sierra Leone (2015). Draft National Land Policy of Sierra Leone.
31. Ninety percent of employees are from within 30 kilometers of the plantation.
32. Moringa website (2018). Agroforestry Technical Assistance Facility <https://www.moringapartnership.com/agroforestry-technical-assistance-facility/> (Accessed March 13, 2018).
33. See glossary for definition.
34. Moringa consults the following standards, inter alia, for guidance on land tenure, Indigenous Peoples, protection of cultural heritage and community relations, among other aspects of environmental and social sustainability: IFC Performance Standards; IFC Environmental, Health and Safety Guidelines; FAO Principles for Responsible Investment in Agriculture and Food Systems; FSC Principles and Criteria.
35. Stakeholders can include the farmers working with the company, local communities where activities are implemented, or any person or organization that has a legitimate interest in the company's development.
36. A system of freehold land tenure in Uganda, which granted ownership in perpetuity to landlords and protected rights of tax-paying tenants. <https://en.oxforddictionaries.com/definition/us/mailo> (Accessed March 9, 2018).
37. This constitutes less than one percent of total plantation personnel, but includes more than half of the management team and staff with higher education degrees.
38. USAID (2011). USAID Country Profile—Property Rights and Resource Governance—Brazil. https://usaidlandtenure.net/wp-content/uploads/2016/09/USAID_Land_Tenure_Brazil_Profile.pdf (Accessed March 9, 2018).
39. World Bank, GINI Index for Brazil [SIPOVGINIBRA]. Retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/SIPOVGINIBRA> (Accessed May 7, 2018).
40. Bedeschi, L., and Romeiro, P. (2017). MP da regularização fundiária: um assalto ao território em diversas frentes. Nexo Jornal. Available at: <https://www.nexojornal.com.br/ensaio/2017/MP-da-regulariza%C3%A7%C3%A3o-fundi%C3%A1ria-um-assalto-ao-territ%C3%B3rio-em-diversas-frentes> (Accessed March 9, 2018).
41. TC expects to be Fair Trade certified by 2020.
42. The aim was to implement a project, based on the Clean Development Mechanism, to sequester carbon.
43. USAID (2017). USAID Country Profile—Property Rights and Resource Governance: Mexico https://www.land-links.org/wp-content/uploads/2016/09/USAID_Land_Tenure_Mexico_Profile.pdf
44. Private property can be freely bought and sold; federal land is owned and maintained by the government; *ejidal* and *comunidad* lands are owned by the state but managed communally; and *colonias* are informal urban settlements on formally vacant land.
45. Agrarian reform and land access were key tenets of the 1910 revolution, seen in the Constitution of 1917 that followed. Deininger, K. and Bresciani, F. (2001). Mexico's *ejido* reforms: their impact on the functioning of factor markets and land access. World Bank paper for the American Agricultural Economics Annual Meeting, August 5–8, Chicago, Illinois. <http://ageconsearch.umn.edu/bitstream/20519/1/sp01de05.pdf> (accessed 06 February 2018).
46. Influential landowners are identified based upon their active participation in electoral politics, position in public office, family group association or seniority in the community and leadership in agricultural trade organizations.
47. Rather than force the project timetable and expectations on the landowner, Energía Veleta adopted a less proactive posture to remove the project as a key conflict stressor. From reports received following their actions, the conflict level subsided and progress was made on clearing the legal status of each *ejidatario* and establishing legal authority of the elected *ejido* leaders.
48. UDGTV (2017). Comunidad La Punta en los Altos de Jalisco inicia batalla contra despojo por parte de constructoras. <http://udgtv.com/noticias/comunidad-punta-altos-jalisco-inicia-batalla-despojo/> (Accessed March 9, 2018); Reverso (2017). Devora empresa eólica un ejido de 7 mil hectáreas en Jalisco <http://reverso.mx/devora-empresa-eolica-un-ejido-de-7-mil-hectareas-en-jalisco/> (Accessed March 9, 2018).
49. Removal bonds are a lesson learned from former oil and gas field work, where many old oil fields are littered with abandoned equipment that was not removed following project completion. The performance bond can be used if the project itself does not pay for equipment removal.
50. Almost universally anticipated dissatisfactions include turbine placement, flicker effects, noise and effects on cattle or farming operations. When these concerns are addressed in a group or one-on-one meetings, Energía Veleta approaches them in a straightforward manner and explains how the contract contains provisions addressing these concerns. When required, special circumstances (cemeteries, schools, etc.) may result in changes to the overall contract.



PHOTO CREDITS

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