



# LEGEND

*Land: Enhancing Governance  
for Economic Development*



## **Responsible land investment in sub-Saharan Africa**

**Six insights from the  
private sector**

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# Acknowledgements

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# Background and Introduction

This briefing consists of six insights drawn from the feedback of qualitative interviews with 37 companies aiming to invest responsibly in land, drawing on key principles from the CFS-RAI Principle 5 and the Voluntary Guidelines on the Responsible Governance of Tenure (VGGT):

- 1) Go beyond national-level legal compliance to engage more strongly with local institutions and actors;
- 2) Recognise local communities as the primary and level counterparties for negotiation;
- 3) Gear incentive structures and corporate governance within companies towards respecting local land rights as a key dimension of broader sustainability challenges;
- 4) Go beyond self-reported and reputation-based data to ground-truthed land rights metrics and integrate them into investor due diligence processes;
- 5) Align and combine industry-wide standards and guidance;
- 6) Be transparent and collaborative in order to convert practice into policy.

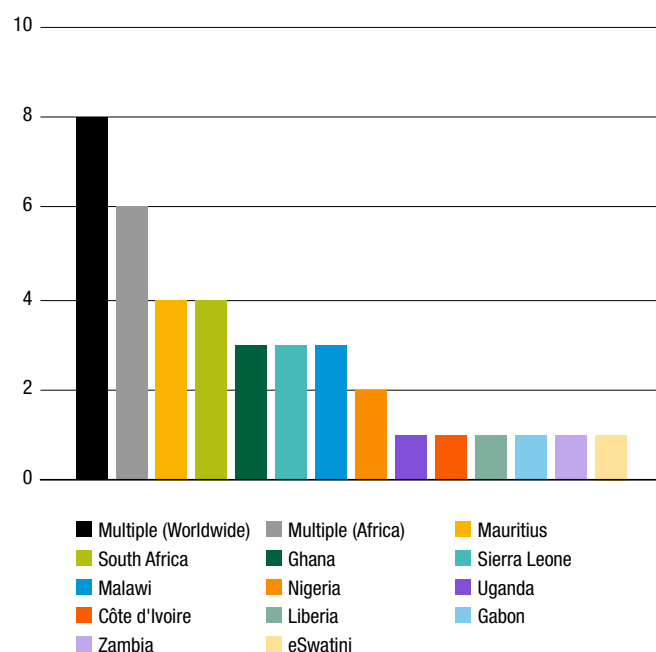
The companies involved operate in the sub-Saharan African sugar cane and palm oil supply chains and were in part actively involved in the DFID-funded LEGEND programme, including the 'Quantifying Tenure Risk' (QTR) project, UK Land Policy Forums or the Challenge Fund. Our thanks goes to these businesses for their generous time devoted to this research.

These insights are aimed at other businesses that are aware, or are beginning to recognise, the role of secure land rights in responsible land investment. They are relevant to members of sustainability, procurement, financial or legal teams within companies, but also board members and operational-level staff working in companies operating or investing in low- and middle-income countries. These include multinational, regional and national investors, as well as producers, processors, traders, retailers, consultancies, conglomerates and member organisations, including certification bodies.

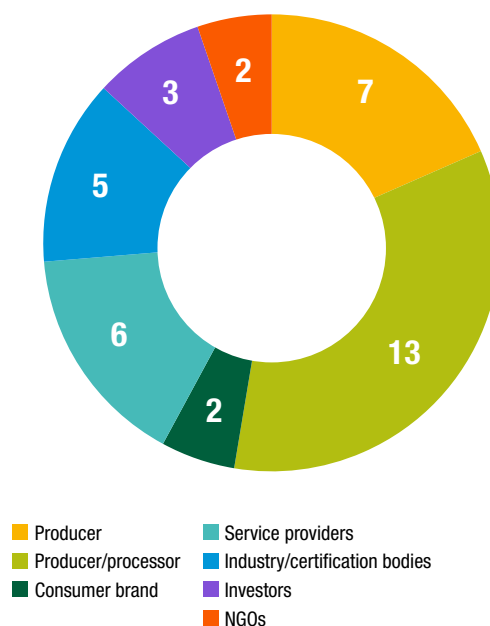
Several insights draw on the need for further support from international donors and governments. In many instances, investors in emerging markets face governance deficits and development challenges that they cannot address on their own. Better coordination of public and private efforts on land rights, as well as the inclusion of smallholder farmers, pastoralists and other vulnerable groups, will therefore be key to the successful implementation of these lessons. Recognising that responsible land investment cannot be achieved by the private sector alone is one of the key insights of this brief, and we encourage readers to share this output with colleagues, government officials and members of academia or civil society to help spread this message.

That said, respecting local land rights has gained traction among companies as the impact of grievances involving land are increasingly felt. Firstly, operational

**Figure 1**  
**LOCATIONS OF COMPANIES INTERVIEWED**



**Figure 2**  
**PRIMARY POSITION IN SUPPLY CHAIN**



risk is growing as businesses face material challenges that result from intensifying pressure on land. This has been particularly evident in sub-Saharan Africa, where population increases are reducing available land and other natural resources. Secondly, advances in communication technology have allowed communities and activists to mobilise more effectively, which in turn has enabled greater protection of community land rights. This means that businesses are increasingly exposed to reputational risks related to land disputes. Finally, together with growing reputational and operational risks, shifts in values amongst decision-makers within companies have meant that land rights are being taken more seriously. This has resulted in the emergence of several private sector ‘pioneers’ that have integrated procedures in their due diligence processes that go beyond legal compliance.

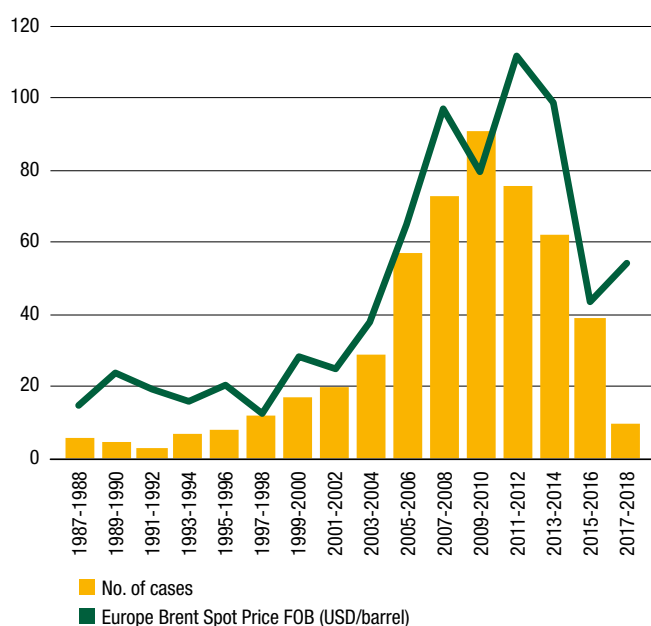
Despite this positive development, companies face persistent challenges that prevent ‘RLI’ becoming standard practice. Land-related issues are often complex, involving overlapping or unclear boundaries, historical grievances related to drivers besides land (e.g. access to water) and limited capacity of governments or local service providers. Downward pressure on commodity prices remains intense. This can divert attention and resources from land governance towards other, seemingly unrelated, but in fact closely connected, sustainability challenges. Added to

this is the pressure from competitors who do not commit the resources required to invest ‘responsibly’. Although the long-term financial returns of doing so are becoming increasingly apparent, the terms of lending in sub-Saharan Africa remain unfavourable and do not often provide the upfront, patient capital required to undertake necessary community engagement.

We have summarised these challenges, including what companies can and cannot do about them, in the following six insights. Although they are primarily aimed at the private sector, they acknowledge the different roles that businesses play in global agricultural supply chains and the support they require. However, more effort is required by everybody involved. What if pioneers shared positive lessons of how to engage local communities productively with their competitors? What if retailers pushed responsibly sourced products and removed irresponsibly produced ingredients from their shelves? What if investors not only started tightening their ESG standards, but enforcing them as well? A collaborative effort is needed to achieve a shift in the way local land rights are treated. Meanwhile, international donors and governments should embed and enforce improved practices, coordinate with businesses and address local capacity constraints, where needed. This recognises the multiple levers need to be pulled to achieve RLI.

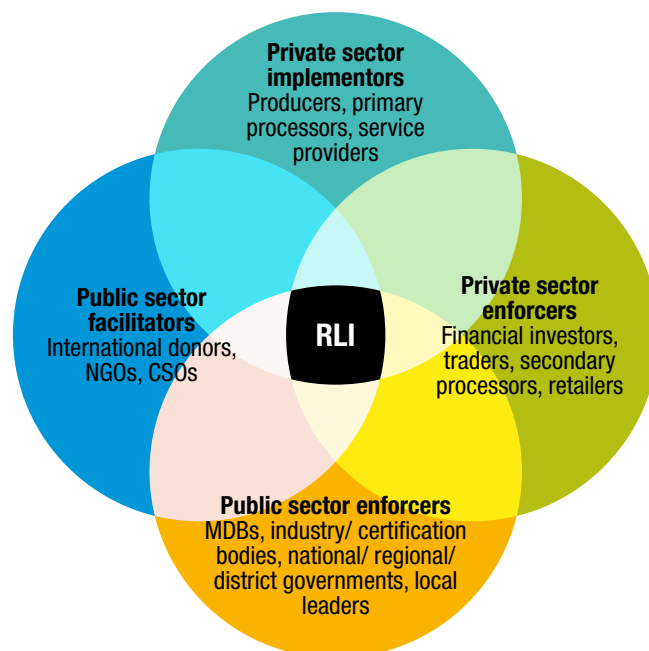
**Figure 3**

### NUMBER OF LAND TENURE DISPUTES AGAINST COMMODITY PRICES<sup>2</sup>



**Figure 4**

### ACTORS REQUIRED TO ACHIEVE RLI



# Insight 1

## Investors need to go beyond national-level legal compliance to engage local institutions and actors

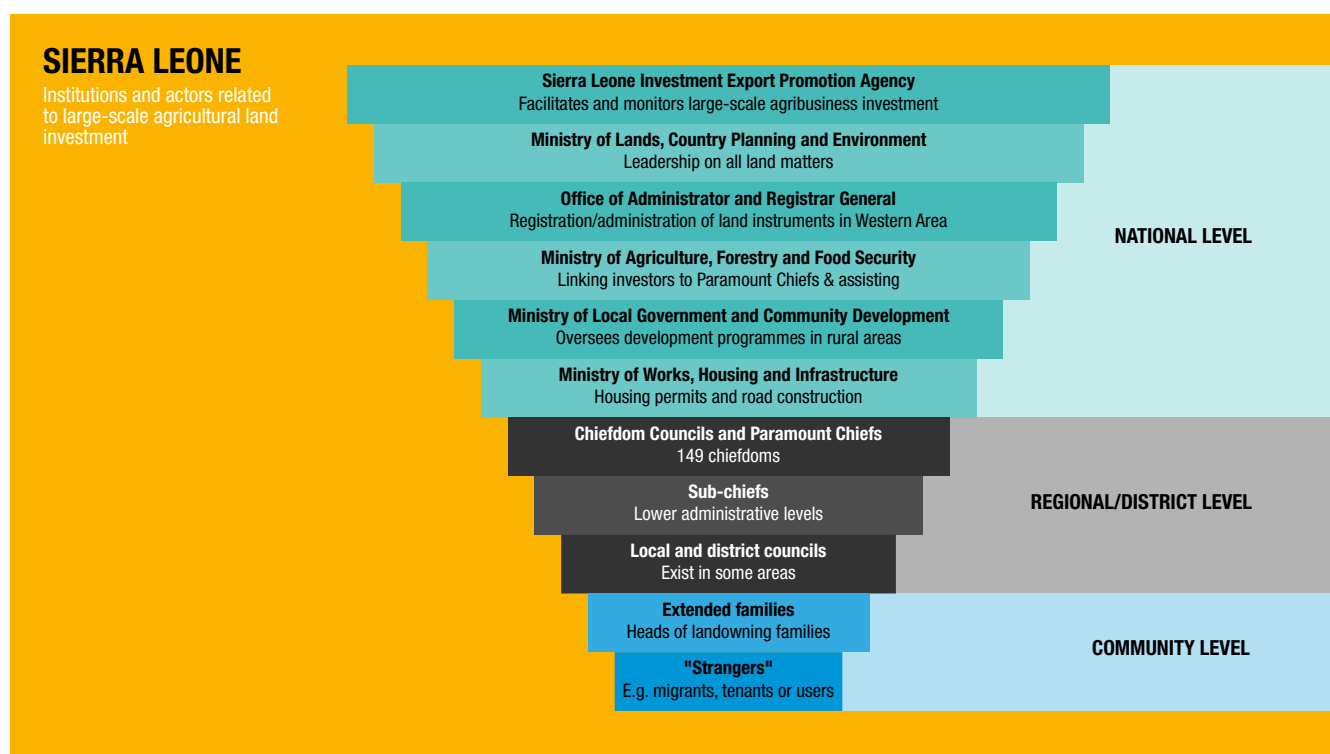
### Adherence to national legal standards is clearly insufficient

Evidence from interviews suggests that many companies only pursue formal channels towards acquiring land. Often, procurement takes place at a national level because land is held by the government in trust for its citizens. But national investment approval procedures are frequently sub-standard and do not include sufficient checks and balances to ensure that people affected have been properly engaged. Examples include Environmental and Social Impact Assessments (ESIAs) conducted by desk-based external consultants and approved by national agencies. These may not recognise the existing tenure rights of local communities (see Insight 2 and Figure 6), which are not always registered in official land and property records.

Negotiating with national governments can be further complicated by vested interests of officials, overlapping responsibilities between agencies and tensions between the legislature and the executive, as well as between district, regional or national government. Companies may be granted a concession by one ministry, only to find that the land has been designated a national park by another. Permission to carry out infrastructure investments may require the permission of local officials as well as national ones (see Figure 5)

There is little that companies can do themselves to improve investment approval processes, clarify overlapping responsibilities or strengthen governance capacity. Collective action by governments and development partners (see Insight 6) over a longer-term will be required to achieve

Figure 5



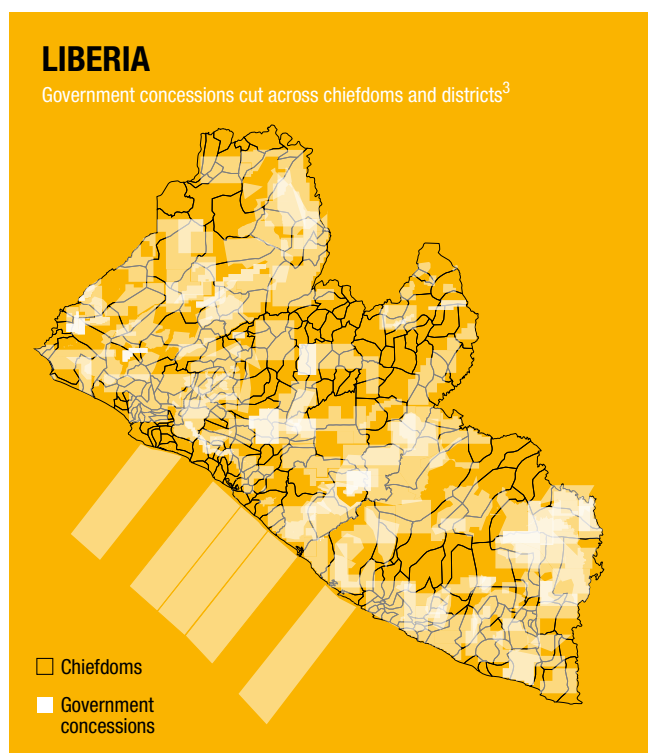
these. In the meantime, companies should recognise that land-related investments are complex processes that require a combination of legal compliance at both national and local levels, compliance with international soft law principles (such as the VGGT) and best practice standards on RLI.

### Local institutions can be engaged in an appropriate way

When engaging with local institutions and actors, companies face both risks and opportunities. In some cases, local officials, chiefs or elders are responsible for carrying out the business of government and control important elements of the investment process – such as local land management, permission to build roads, install irrigation or clear land for development. These local leaders often have legitimate functions as gatekeepers who control access to the very communities that investors need to engage with as primary counterparties (see Insight 2). At the same time, these actors may not fully represent the interests of local communities, especially those of women and other vulnerable groups. Leaders may have become alienated from their communities due to, for instance, issues related to corruption. In such instances, companies face reputational and operational risks when striking up negotiations with local institutions and actors.

In order to understand local social norms, cultural practices and power dynamics, investors need to screen local power dynamics and map stakeholder relations, paying particular attention to those between local leaders

Figure 6



and different elements within communities. This will enable companies to establish the most appropriate way of directly building productive relationships with communities and their leaders.

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## Insight 2

# Recognising communities as the primary counterparties and ensuring balanced negotiation with them

### **Trust communities as the primary counterparties.**

While approval from governments and local leaders should be sought, local communities directly or indirectly affected by an investment should be considered the primary counterparties for companies. Failure to negotiate proposals with affected communities to gain their approval risks seriously antagonising them, particularly as they may not even be aware that their land has been assigned to a concession. Flawed engagement and approval procedures may identify as available for investment areas where local communities have legitimate rights to land (even if those rights are not recognised formally under national law) – as well as land that is environmentally or ecologically sensitive. Unintentionally, central company legal compliance and procurement teams can end up following high-level box-ticking exercises without knowing that they can create serious grievances among local people. Once grievances arise, resolving them may not, ultimately, be possible but will certainly require significant resources over a lengthy time period.

### **CSOs and independent legal advice ensure transparent and equal negotiation with communities.**

To ensure the most sustainable outcome for an investment, local communities need an effective support system to help them negotiate on a level footing with the company or investor. This includes practices, such as providing communities with independent legal advice, and informing communities of their right to walk away from a proposed investment in line with the principle of free, prior and informed consent (FPIC) (see Figure 8).

While it is not necessarily the responsibility of an individual investor to provide this support, in practice, investors interviewed were often called on for this, given the lack of alternative resources. Companies themselves can also benefit from insight into community dynamics and the diversity of relations with land affected to ensure that negotiations are well informed. Many of the companies spoke to also used civil society organisations (CSOs) to facilitate mechanisms that enabled constructive relationships between the company and affected communities. When available, CSOs can give companies the necessary understanding of the social dynamics on the ground and advise on the use of appropriate tools.

### **Companies should call on international organisations and mediators where independent advice is needed**

Companies frequently cited as barriers a lack of local CSOs or service providers with sufficient capacity or willingness to engage, and the high costs of hiring international consultants to assist. This constrains application of good investment planning practices and assessment tools, such as participatory land rights mapping.

Where this is the case, international donors and NGOs need to help build capacity among CSOs, or local markets for service provision (e.g. by linking them up to the Social License Platform or the Earthworm Centre of Social Excellence). Likewise, where companies are met with irreconcilable demands between different stakeholders, an independent mediator or ombudsman should be called upon.

Figure 7

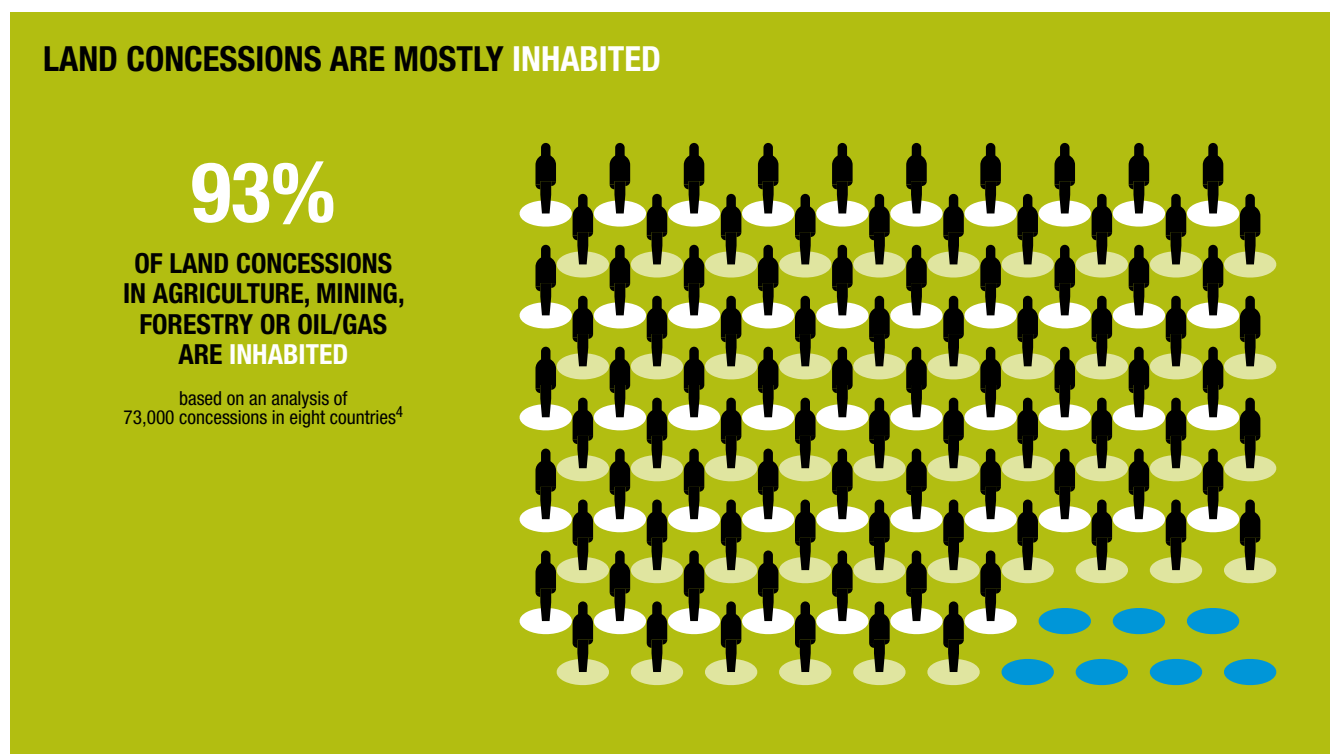
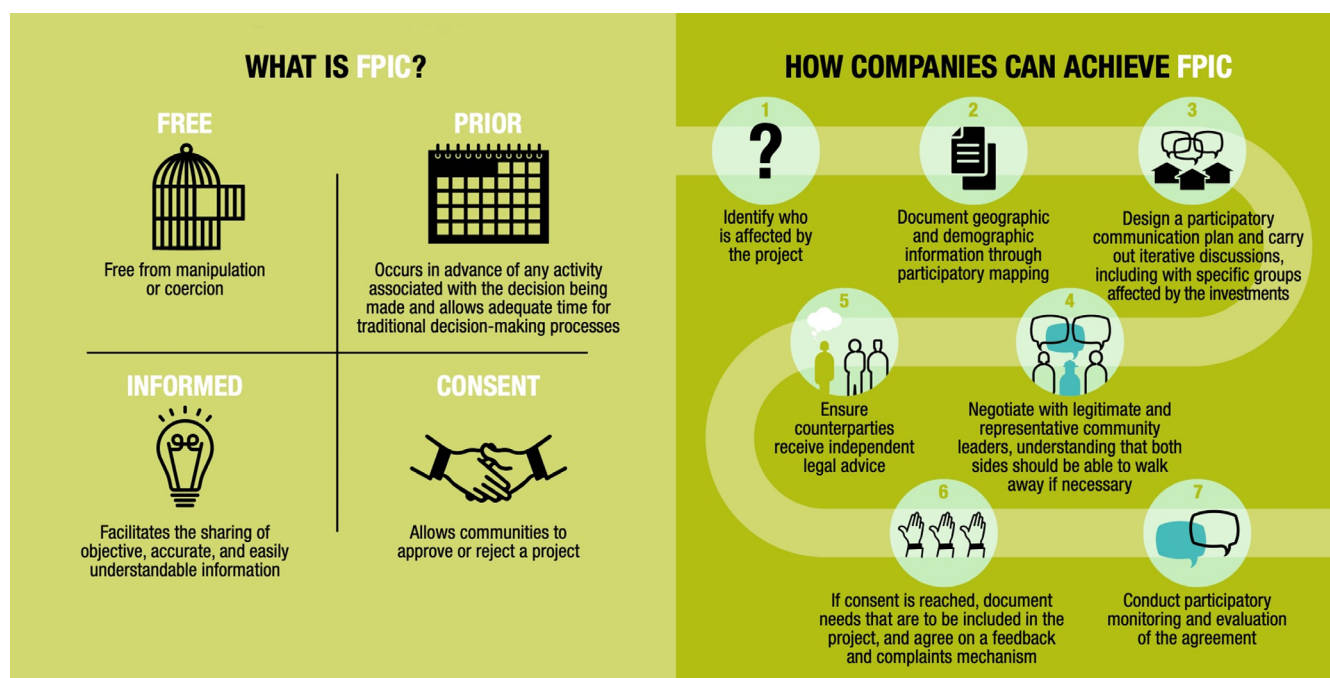


Figure 8



# Insight 3

## Corporate governance: gearing incentive structures within companies towards RLI

### The business case for securing social license to operate is becoming clearer.

Businesses are increasingly recognising the economic case for ensuring clarity over local tenure rights as a pre-requisite to meaningful negotiation over access to land. Respecting legitimate tenure is also being seen as an increasingly important condition for addressing other sustainability principles that are high on company agendas. Recognition of community members' tenure rights is therefore key to securing 'social license to operate'.

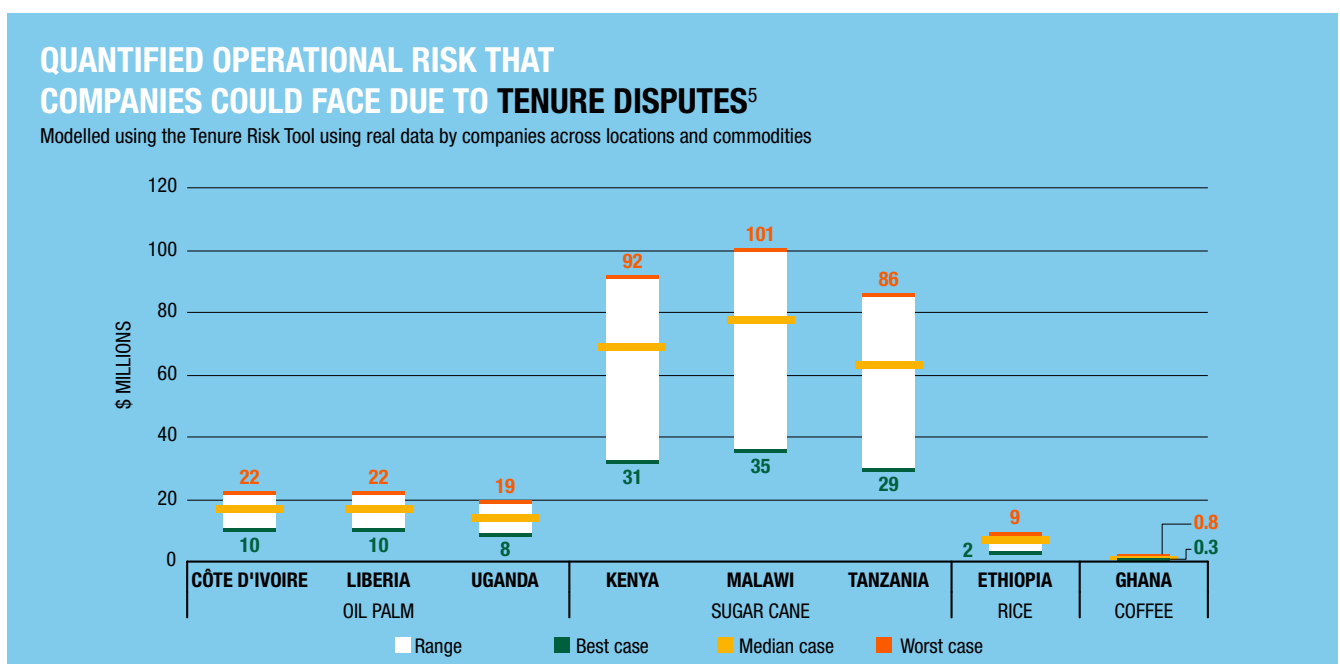
The upsides of respecting local land rights as a basic operational requirement for investing in land far outweigh the costs by:

- a) Reducing the operational risks of experiencing delays due to land-related issues (see Figure 9).
- b) Improving the operational efficiency and therefore the returns of an investment.
- c) Cultivating a positive reputation in local and international markets by reducing grievances at local level.

### However, proponents of responsible investment need to articulate the linkages between land rights and other sustainability issues more clearly

While the economic benefits of securing social license to operate are becoming more evident, the wider social and environmental returns of securing land rights remain poorly understood. Most sustainability managers interviewed (see Figure 10) spoke of having limited resources to address a number of sustainability issues that are considered more pressing than land rights, including child labour, human rights, plastics, deforestation or climate change. Yet land is central to these issues and there is some evidence that secure tenure can reduce migration, deforestation, forced labour and other challenges. Its centrality is precisely what makes land tenure so difficult to grasp, but the real connections between land and other sustainability factors need to be highlighted more clearly in company sustainability strategies and ESG risk management. Treating secure land rights as a separate issue instead of understanding it as a lever for addressing

Figure 9



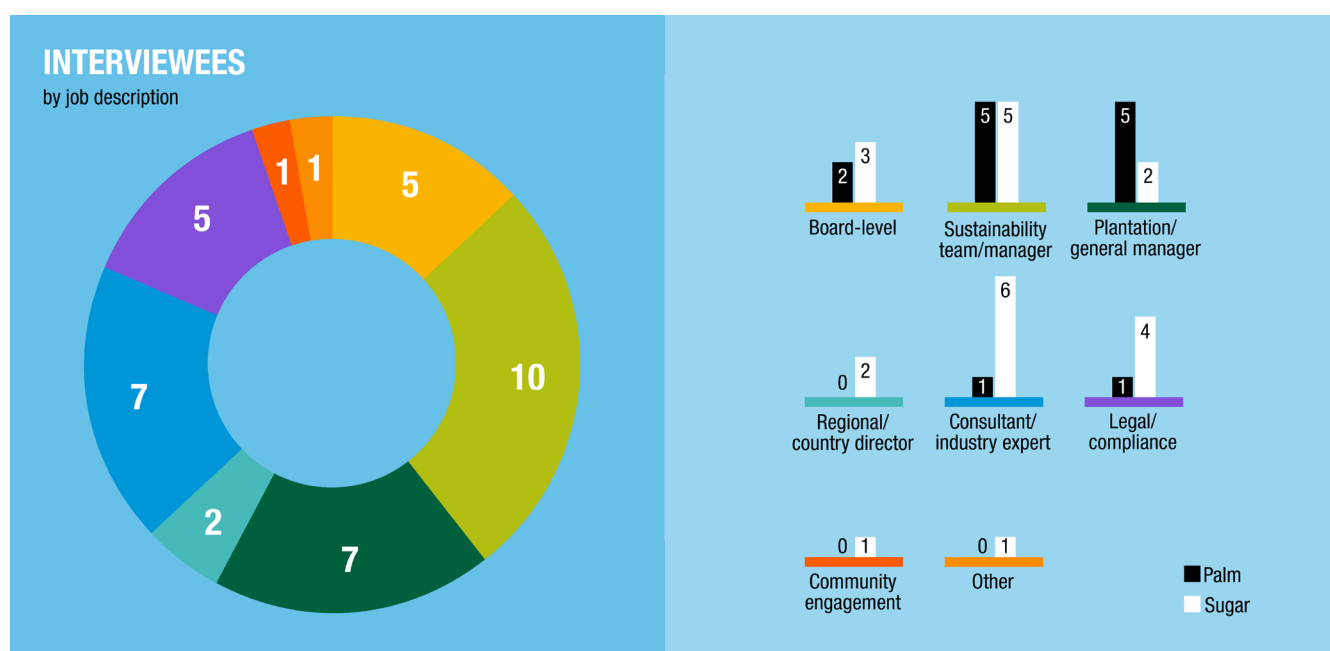
wider ESG issues makes it difficult for sustainability teams to create the business case for taking a proactive, strategic approach towards securing land rights.

### Companies need to gear organisational and incentive structures towards sustainability.

Once board members are convinced that respecting local land rights is critical to success, organisational and incentive structures need to be adjusted so that they are geared towards sustainability in practice. Managers need to consider how sustainability departments or staff engage with the rest of the business and how empowered they are. Many companies budget for sustainability under communications or PR budgets, which can severely affect the way in which sustainability is perceived within a company. Instead, investing responsibly land needs

to be treated as a fundamental compliance issue, with a resulting influence on business behaviour and core operating procedures (i.e. engaging decision-makers). Influential finance departments can be convinced of the long-term economic returns of securing land rights using instruments such as the Tenure Risk Tool or Landscape. Mechanisms need to be put in place to ensure that policies decided at the corporate level are implemented at the operational, plantation level and that sufficient time is given to implement them. This requires embedding human and technical skills, either through training or using skilled service providers where available. Pressure on operations to deliver deals or short-term financial returns while simultaneously ‘auditing’ sustainability criteria also needs to be relieved, as it can be at the expense of long-term financial returns at operational level, and real social returns.

Figure 10



## Insight 4

# The financial sector can be used to emphasise social impact

### **Demand for investments that satisfy the ‘triple bottom line’ of improving profit, people and the planet is increasing.**

A third of global investable assets, some US\$30 trillion, are managed by socially responsible vehicles (see Figure 11). The reason why investors are abandoning the shareholder-first mantra is not due to the discovery of some new corporate purpose. Rather, there are financial reasons as to why investors want to ensure their portfolios are socially and environmentally responsible, as they understand that doing so increases the likelihood of stable, long-term returns at a time of growing, long-term risks. This means that there is enormous and growing potential to use the leverage of finance to ensure that responsible investors can recognise and respect all legitimate tenure rights. Doing so has clear quantifiable benefits to investors because it reduces several economic, financial and reputational risks that are endemic in developing markets. Ensuring that portfolios consist of investments that have undergone

robust due diligence procedures with respect to supporting legitimate land rights can reduce the risk of fraud, reduce disputes that result in labour shortages or even reduce the chances that a tenure dispute escalates into regional- or national-level political instability. Added to this is the potential for positive externalities that can help investors meet other environmental and social targets.

### **Align criteria of sustainability loans with RLI principles.**

Social and environmentally responsible financial institutions, especially development finance institutions (DFIs), are keystone investors in sub-Saharan African agriculture (see Figure 12). Many of the larger companies spoken to benefit from so-called ‘sustainability loans’, which award lower interest rates in exchange for meeting certain ESG criteria. Demand for these loans is high in a market where foreign investment remains difficult to come by due to the more general risks associated with

Figure 11

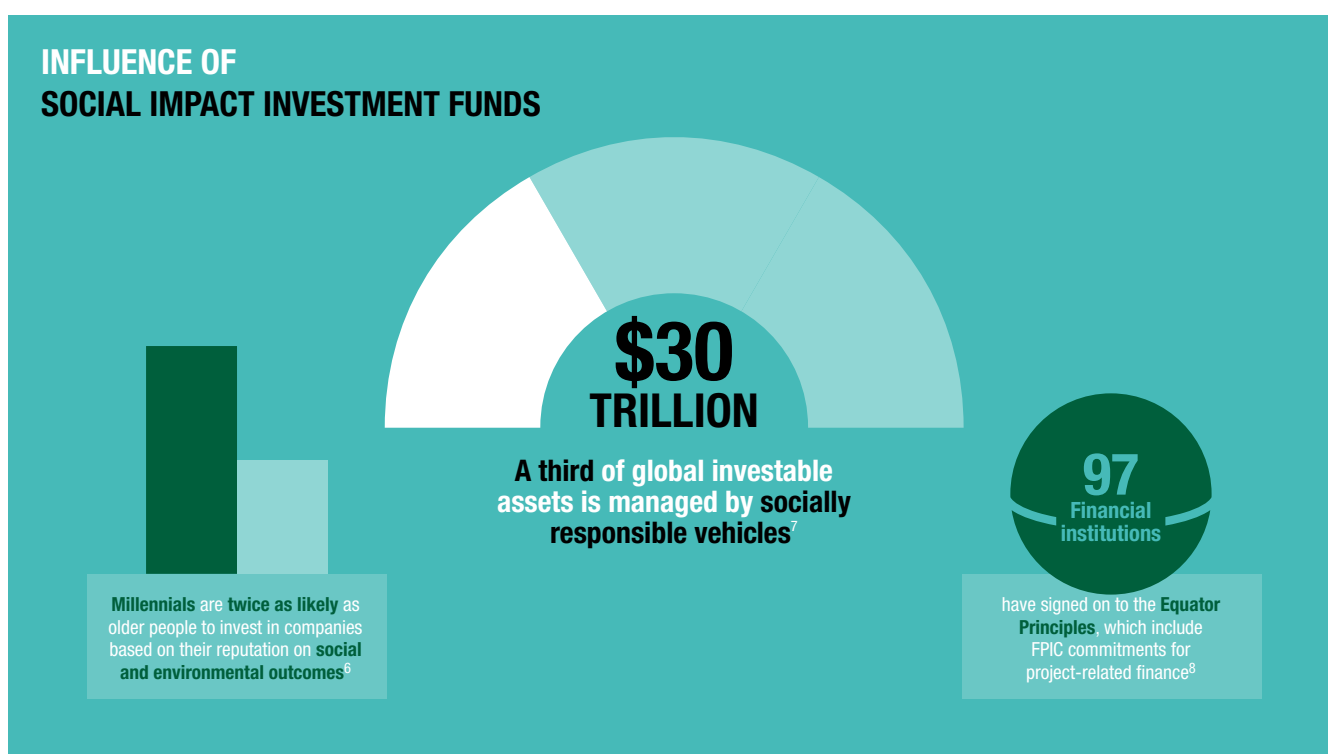
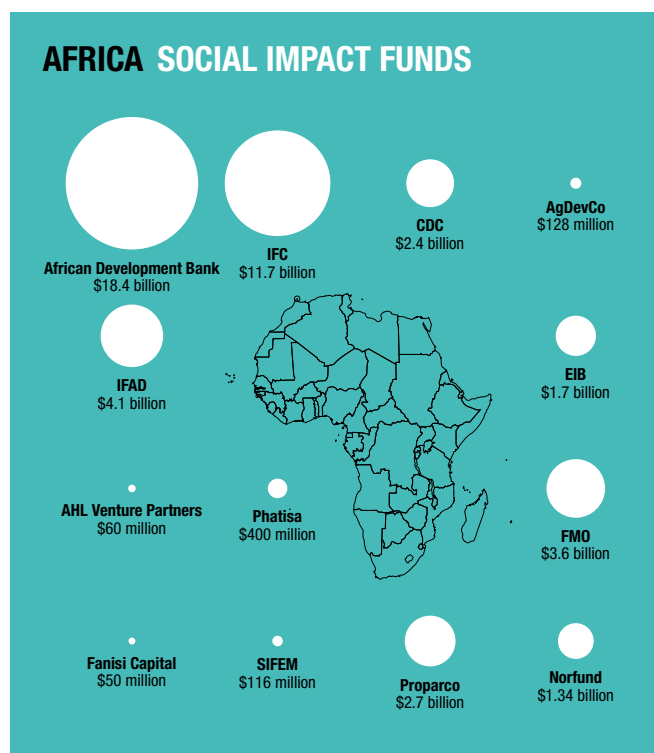


Figure 12



investment in low-income countries, including exchange rate movements and political instability. However, ‘social’ and especially land-related ESG criteria are not well developed, and only a few go beyond securing legal land rights. Where criteria relating to land rights exist, they are often limited to corporate policy commitments rather than practice.<sup>9</sup> Meanwhile, unlike many producers and processors, investors recognise that gaining a social license to operate is one of the most significant ways of reducing the immediate risk that an investment will fail, with land rights playing a central role in that. Demand for social performance measures, including those that can reliably determine whether an investment is respecting local land rights, is higher than ever. To take advantage of this, sustainability criteria should use performance measures

that account for whether investments have ensured level negotiation with local communities. Once adopted, international finance institutions should use their leverage to ensure that local banks and microfinance institutions use them as well, in order to reach individual, small- or medium-sized farmers.

### Making use of company know-how.

The investor lever is particularly effective with larger, established companies with resistant company cultures. It is also important to recognise that measures of social performance can help identify what companies are *doing right*, rather than just what they are doing wrong, which in turn helps investors make a reasonable risk assessment of the company. Agricultural producers with decades or more of experience operating in low-income markets have made important innovations themselves. Many rely on technical officers who have built trust and relationships with communities over a period of years, which risk being erased by corporate-level sustainability teams that follow desk-based, box-ticking exercises. By identifying what operational staff are doing right, reliable metrics can therefore help protect established company practices that have been refined over decades, while helping and incentivising companies to recognise particular weaknesses in their operations.

### Guaranteeing upfront finance.

Public and private investors, including multilateral development banks, Equator Banks, DFIs and local financing institutions need to change the way they finance investments in developing markets. At present, there is not enough upfront or blended finance available to companies, even though the beginning of a project is exactly where the most resources to ensure that land-based investments proceed responsibly. These efforts include mapping land rights, resolving pre-existing grievances and providing smallholder farmers with access to credit facilities (preferably locally) to bridge the gap between initial financial investments and their returns, especially for the cultivation of cash crops such as coffee, cocoa, oil palm or sugar cane.

## Insight 5

# There is need to align and combine industrywide standards and guidance

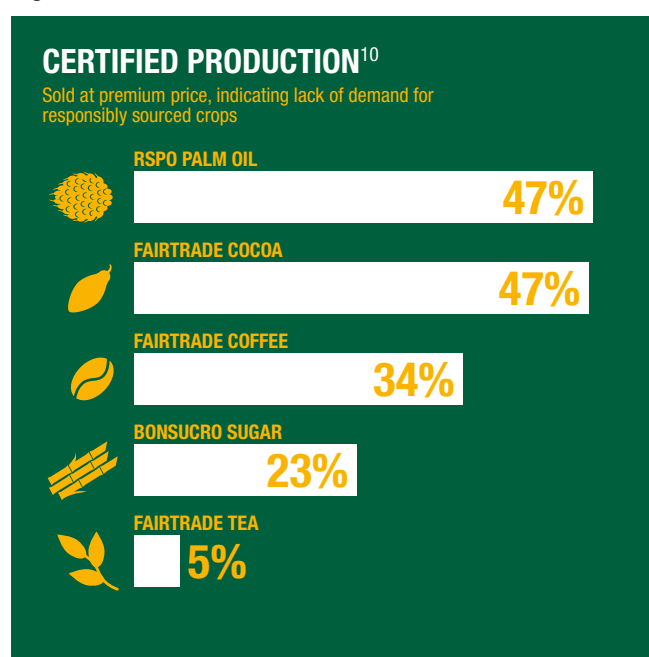
### Recognise industrywide certification as an important pathway towards RLI.

Interviews demonstrated that a common pathway towards more responsible land-based investment is through the adoption of certification schemes, often driven by wider sustainability efforts. This approach can integrate RLI principles as part of a more holistic strategy, preventing a ‘silo’ approach towards securing land rights. However, the viability of this pathway is being seriously eroded by the lack of price premia associated with certified products against the high costs of fulfilling criteria using international service providers, although the lower costs of sustainability-finance partly corrects this imbalance. Furthermore, there has been a lack of knowledge and buy-in for certified products in many regional and domestic markets. This prevents smaller producers from achieving certification and using this as a pathway towards more responsible practices. In highly disaggregated agricultural supply chains where producers are far removed from consumers, retailers and secondary processors need to recognise industry-wide standards and raise awareness of the importance of them among their customers.

### Ensure certification schemes are aligned with best practice standards and guidance.

Interviews revealed that companies adopt a wide variety of certification schemes, standards and guidelines. The last few years have been characterised by an increase in this variety rather than by consolidation, especially with the emergence of company-level certification schemes. This is not only confusing for the consumer, but for companies pursuing responsible land use and tenure practices as well. Firstly, not all schemes include a commitment to recognising legitimate land rights. Secondly, even those that do may not include sufficient criteria, limiting them to ‘policy commitments’ or legal compliance rather than actual implementation

Figure 13



(see ZSL's SPOTT programme). Many certification bodies therefore cannot be relied upon as proof of recognition and respect for legitimate tenure rights. In fact, they can even entrench poor corporate behaviour by making companies believe they are taking adequate measures to secure land rights when they are not. Certification schemes should review their criteria on land rights and ensure they are aligned with the latest best practice standards. Assessment of whether companies have respected local tenure rights should be data-driven, adopting new technologies to measure the operational impact beyond the processing level, and ensuring that meaningful community and ground level data is captured and considered.

# Insight 6

## Transparency and collaboration are needed to turn practice into policy

### Share positive lessons of RLI with each other.

While there are many commercial incentives for adopting responsible land investment practices, many companies still find it difficult to do so due to a lack of positive examples of what this involves. Even where companies have achieved successful outcomes by respecting local land rights and ensuring transparent and balanced negotiations with communities, details on the processes involved and the types of good practices that are needed remain obscure. The relative dearth of detailed, positive examples, compared to the negative experiences often flagged in the press, can tarnish whole sectors and all the companies within them, regardless of individual company efforts to follow good practice. It can also limit the ability of sustainability teams to make the business case to their managers (Insight 3). To increase the uptake of good practice, and lift the reputation of a sector as a whole, companies should share positive experiences and valuable lessons learned with each other – in a high level of detail – following the models of, for example, Forest Dialogues and the Interlaken Group.

### Support local business partnerships and wider dissemination of materials.

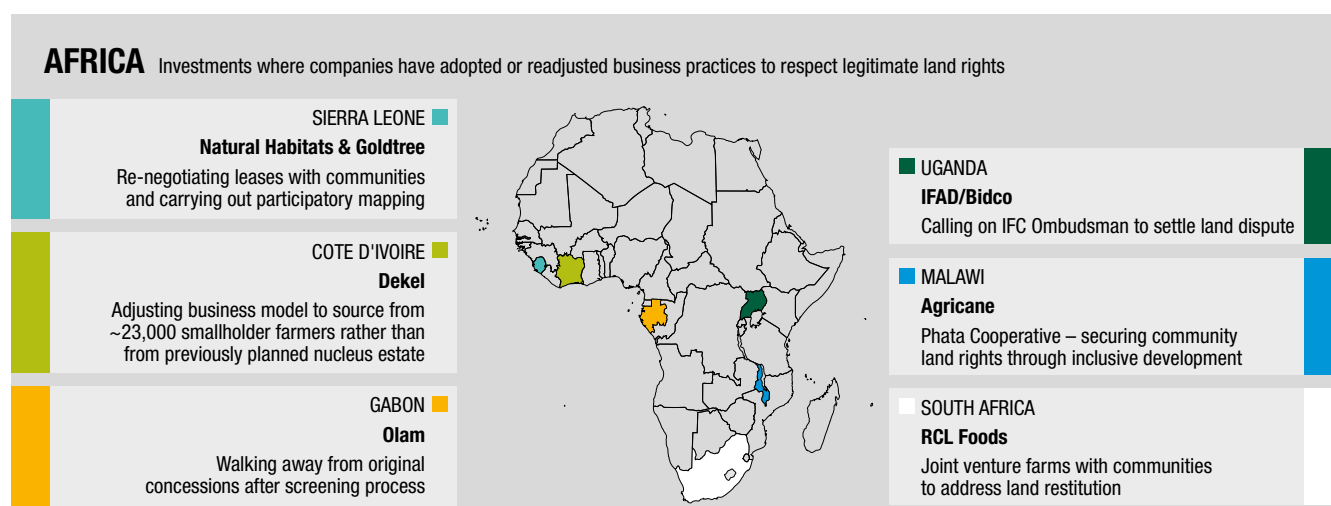
However, even these collaborative initiatives are only accessible to companies with resources available to attend international meetings, despite specific efforts to engage in country-level initiatives. This limits replication of responsible

land investment practice by local businesses. Donors and governments can help set up fora at country level that facilitate local business partnerships involving small and medium-sized enterprises.

### Collectively lobby government to localise investment approval processes and build capacity.

Ultimately, local community and government engagement needs to be anchored in improved investment approval procedures to secure land rights. Only this will level the playing field for RLI pioneers and prevent a ‘race to the bottom’ in which unscrupulous investors undercut improved investment practice. This is especially important to achieve before another cycle of high commodity prices leads once again to increasing appetites for large scale investment in sub-Saharan African agriculture. Together with international donors and advocacy groups, companies can combine efforts to lobby governments for change. Though documenting land rights is not a direct responsibility of the private sector – as highlighted by several interviewees – collectively, companies can support the development of much-needed local capacity by funding and collaborating with government and civil society efforts to strengthen land rights documentation. Examples of this include participation in public-private partnerships in local land administration, or helping governments design economic development initiatives such as drives to become self-sufficient in sugar or rice production.

Figure 14



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## Endnotes

- 1 Principle 5 of the RAI calls for investments to respect legitimate tenure rights in line with the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries, and Forests (VGGTs), especially but not limited to Chapter 12 (FAO, 2012; 2014).
- 2 Based on data from TMP Systems. For more information, see ODI and TMP Systems (2019) *Assessing the costs of tenure risks to agribusinesses*. London: ODI. <https://landportal.org/library/resources/qtr-report-2019/assessing-costs-tenure-risks-agribusinesses>
- 3 Bunte, Jonas B., Harsh Desai, Kanio Gbala, Brad Parks, Daniel Miller Runfolo (2017) *Natural Resource Sector FDI and Growth in Post-Conflict Settings: Subnational Evidence from Liberia*. AidData Working Paper #34. Williamsburg, VA: AidData. Accessed at <http://aiddata.org/working-papers>
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- 8 Oxfam (2019) *Consent is everybody's business: Why banks need to act on Free, Prior and Informed Consent*. Oxford: Oxfam.
- 9 USAID (2018) '2018 Investor Survey on Land Rights', available at: [www.land-links.org/wp-content/uploads/2018/05/Investor-Survey-on-Land-Rights\\_Report-2018.pdf](http://www.land-links.org/wp-content/uploads/2018/05/Investor-Survey-on-Land-Rights_Report-2018.pdf)
- 10 RSPO (2019) 'Impact'. Webpage. <https://rspo.org/impact> and FairTrade (2019) 'Facts and figures about fairtrade'. Webpage. [www.fairtrade.org.uk/What-is-Fairtrade/Facts-and-Figures](http://www.fairtrade.org.uk/What-is-Fairtrade/Facts-and-Figures)

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