

LEGEND

*Land: Enhancing Governance
for Economic Development*



Responsible Land Investment

Lessons from five years of LEGEND
CLST

Anna Locke, Julian Quan, Lorenzo Cotula and Joseph
Feyertag

OVERARCHING MESSAGE: There are different visions of what constitutes responsible land investment (RLI) and how to successfully implement it, but it is clear that legal compliance alone is not enough.

Issues

- Sliding scale of RLI: simple “do no harm” to tangible benefits for affected communities and countries.
- Reflected in a raft of guidelines and principles, at both the regional and global level.
- Possible tensions between different visions for RLI; too much focus on process rather than outcomes.
- Overall, consensus is that legal compliance alone is not enough; businesses need to recognise ‘legitimate tenure rights’.



OVERARCHING MESSAGE: There are different visions of what constitutes responsible land investment (RLI) and how to successfully implement it, but it is clear that legal compliance alone is not enough.

LEGEND's work underscores three key issues and actions on RLI:

- “Responsibility” needs to address politics and power of natural resources.
- More agreement needed on how to measure RLI and its successful implementation.
- Key actions to achieve the most fundamental aspects of RLI and address the information and power asymmetries that preclude any fair and informed negotiation:
 - Identify and recognise legitimate tenure rights early on;
 - Create a level playing field for negotiation;
 - Be accountable around global principles; and
 - Monitor implementation of investments.

7 RLI LESSONS

LESSON 1 Timely identification of land rights issues is critical; if addressed later, are likely to escalate leading to conflicts and additional costs

ISSUES

- **Businesses can incur serious operational, reputational and financial cost if local people's land rights are not taken into account.**
- Companies cannot rely on legal paperwork to establish chain of title.
- Investors can fall foul of **land legacy issues** in brownfield projects, where investment sites change hands and new plans are made, reigniting conflicts.

NEWS

Land grabbing in Africa 'is fueling conflicts'

New research released on Thursday by the Rights and Resources Institute shows that despite improvements in respect for communities' rights by global companies, land rights remain largely ignored.

LESSON 1

FINDINGS FROM LEGEND

Improve due diligence at the planning stage:

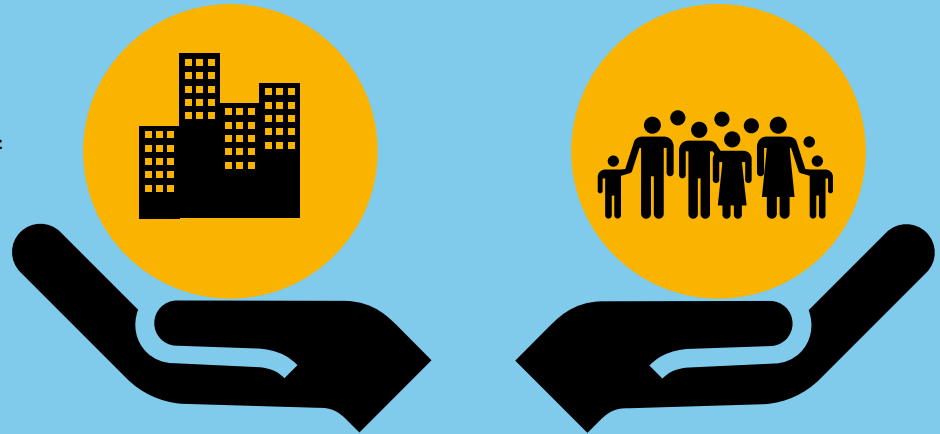
- Of both human rights impacts and ESG risks related to land rights
- Use improved approaches to due diligence and identifying land rights:
 - Use available tools, e.g., the **Landscape risk tools**
 - Investors should also engage local organisations experts in **field reconnaissance of land tenure arrangements amongst affected groups** and to initiate consultation
- **Include scoping of legacy issues**



LESSON 2 Legitimate tenure rights in and around investment sites need to be recognised, documented and, as far as possible, secured before companies negotiate land access

ISSUES

- Negotiations on company land access not fair and meaningful unless the rights of people directly affected are identified, they are directly involved and supported to negotiate on a level playing field – too often, not the case.
- Legal paperwork alone cannot capture the realities of land holding on the ground and the potential conflicts that can emerge.
- Most affected communities likely to have legitimate tenure rights, and are the main counterparty for any land transaction



LESSON 2

FINDINGS FROM LEGEND

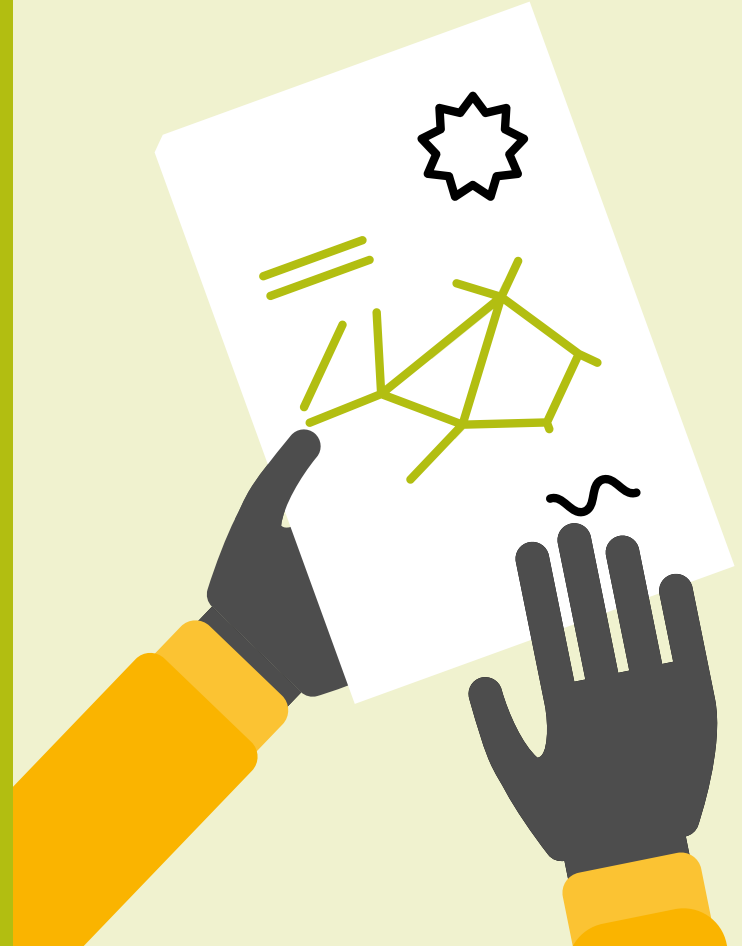
- Undertake **Land Tenure Assessment** on the ground:
 - **Identify how land holding is organised in the community and households, and among vulnerable groups, including women.**
 - Use tools and methods for **rapid, participatory land rights mapping, and open data platforms for parcel mapping and certification of community and household rights**, to supplement the coverage of official systems.
- **Put appropriate land information systems in place to document legitimate land rights**, targeting investment “hotspots” unless there are strong reasons to do more systematic land tenure regularisation.
- Provide **independent, professional support to establish such land information systems**, as a public good.



LESSON 3 Companies and governments need to establish fair and open negotiation processes to achieve community consent for investment plans

ISSUES

- Land-based investments typically involve power imbalances between project developers, governments and local as well as within communities. Community consultation often poorly organised, confined to traditional leaders and unrepresentative groupings of community members.
- Legitimate land rights holders affected not always directly involved in negotiations to establish whether or not they consent to changes involved in the project.



LESSON 3

FINDINGS FROM LEGEND

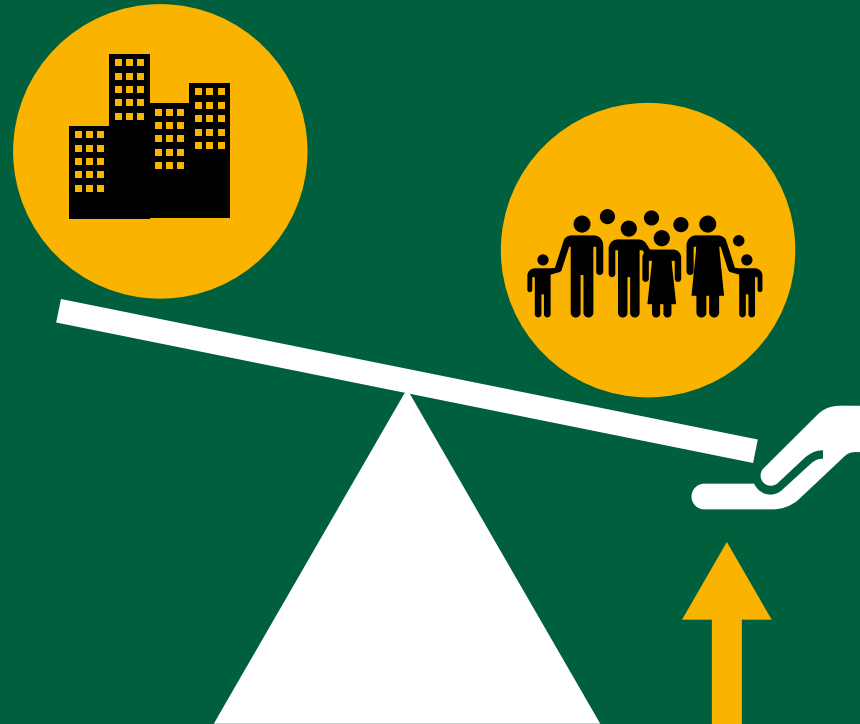
- **Consultations should:**
 - Be intensive, organised on a village-by-village basis, and reach down to engage all those utilising community land.
 - Separate discussions with women and other specific groups, such as youth and tenant farmers, are likely to be needed.
 - Use specialist outreach staff and the services of locally knowledgeable practitioners.
 - Involve full transparency, taking into account levels of literacy, using appropriate communication tools and media
- Donors can assist in creating conditions for effective negotiation by supporting mechanisms to finance community legal support and Multi-Stakeholder Platforms as standing consultation mechanisms.
- Free prior informed consent (FPIC) could be applied to all land holding communities to ensure a company's social licence to operate.



LESSON 4 Communities need **effective, independent, politically savvy support** to protect legitimate rights and negotiate effectively

ISSUES

- Negotiation is meaningless if communities cannot access independent professional support.
- Governments are often unwilling or unable to level the playing field between companies and communities.
- Few service providers are able to provide the full range of support needed.
- Financing by responsible businesses to enable communities access professional support can create conflicts of interest and accountability problems.



LESSON 4

FINDINGS FROM LEGEND

Step up support to legal empowerment organisations to:

- Upscale interventions to help local communities secure their land rights.
- Provide comprehensive support packages for communities in investment processes.
- Complement grassroots action with work at national and international levels.
- Integrate a more explicit political economy approach for professional support to communities.
- Develop new institutional and financing arrangements to ensure independent support to the community.



Legal empowerment in agribusiness investments: harnessing political economy analysis

Lorenzo Cotula with Thierry Berger



**Analytical
paper**
April 2017

LESSON 5

The business case for RLI is becoming clearer in economic terms, but companies still need to mainstream land rights in their core business decisions

ISSUES

- Financial impacts of land disputes have been less clear than reputational risks but can cost investors between **US\$10 and US\$100 million**.
- Businesses have to justify RLI internally against other risks and demands, with constraints:
 - Limited capacity to satisfy ESG-criteria, especially at the plantation level
 - Human skills and technical assistance required to add capacity not always available
 - Incentive structures may prevent the business case for RLI becoming embedded in core business decisions
- But growing understanding that benefits of investing responsibly in land far outweigh the costs by:
 - Reducing the operational risks of experiencing delays.
 - Improving operational efficiency and so the returns of an investment.
 - Helping to cultivate a positive reputation in local and international markets.

LESSON 5

FINDINGS FROM LEGEND

- Increase awareness of positive examples of how resolving land rights issues can unlock a range of solutions to complex social and environmental issues to gain resources within company.
- Provide access to training on compliance and developing local markets for ESG service provision.
- Re-evaluate internal decision-making procedures and structures to mainstream RLI in core business decisions.



LESSON 6 RLI is an important entry point for more inclusive agribusiness

ISSUES

- RLI is central to inclusiveness
- But for RLI to maximise the potential for social and economic inclusion, other conditions need to be in place:
 - Effective arrangements for voice and representation.
 - Inclusive and fair value chain relations.
 - Employment creation and respect for labour rights.
 - Contribution to food security.
- Different value chains vary in their scope to promote more responsible, inclusive investment practices.
- These practices are more important than any one particular IAB model.



LESSON 6

FINDINGS FROM LEGEND

- Focus on inclusive investment practices not models.
- Use RLI guidelines to assess the different business models within different value chains.
- Understand the scope for promoting more responsible, inclusive investment practices of different value chains.
- Promote options for business models not requiring land acquisition.
- Understand the trade-offs between different pillars at different phases and for different target groups.
- Assess outcomes as well as processes – for RLI and wider social and economic inclusion.



PILLAR 1

EFFECTIVE
ARRANGEMENTS
FOR VOICE AND
REPRESENTATION

PILLAR 2

INCLUSIVE AND
FAIR VALUE CHAIN
RELATIONS

PILLAR 3

RESPECT FOR
LAND RIGHTS AND
INCLUSIVE
TENURE
ARRANGEMENTS

PILLAR 4

EMPLOYMENT
CREATION AND
RESPECT FOR
LABOUR RIGHTS

PILLAR 5

CONTRIBUTION TO
FOOD SECURITY

LESSON 7 Positive regulation and a systemic approach to overall governance are essential to support RLI

ISSUES

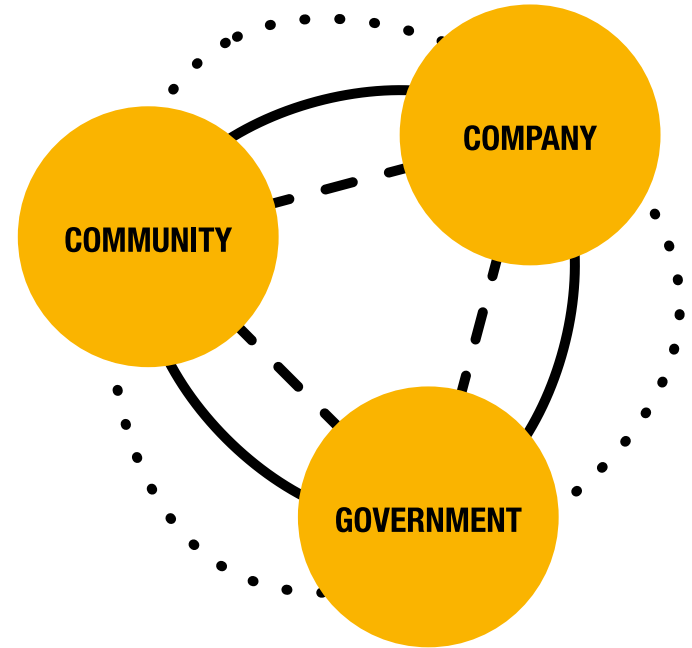
- Focusing solely on companies and communities as targets of RLI can create “islands of best practice”, not a system of generalised best practice.
- This can create an uneven playing field for investors and companies.
- And it misses opportunities for economies of scale and more effective use of resources to support RLI.



LESSON 7

FINDINGS FROM LEGEND

- To generalise best practice, RLI must be part of the overall governance system that regulates investment, including:
 - Host governments in screening, approving and continuously monitoring investments, integrating VGGT;
 - Multi-stakeholder platforms - appropriately designed - to connect all players.



CLST OUTPUTS ON RLI: landportal.org/partners/legend/outputs

Analytical papers and briefing papers

- AP2: [Addressing 'legacy' land issues in agribusiness investments and accompanying briefing paper](#)
- AP3: [Agri-investments and land disputes \(briefing only\)](#)
- AP4: [Legal empowerment in agribusiness investments and accompanying briefing paper](#)

Reports

- 2019: [Are development finance institutions equipped to address land rights issues?](#) and separate [executive summary](#)
- 2019: [Securing land rights at scale](#), plus separate [executive summary](#) and accompanying [presentation slide deck](#)

Briefing Notes

- [Land rights and investments: why the IFC performance standards are not enough](#)

Bulletins

- Issue 2: <https://landportal.org/news/2016/02/legend-land-policy-bulletin-october-2015>

State of the Debate Reports

- Strengthening Land Governance: [Lessons from implementing the Voluntary Guidelines](#)
- [Land governance and inclusive business in agriculture: advancing the debate](#)

Challenge Fund Briefing Paper

- [Learning from Responsible Land Investment \(RLI\) pilots](#)