

LEGEND

*Land: Enhancing Governance
for Economic Development*



FINDINGS AND KEY LESSONS FROM LEGEND'S WORK ON RESPONSIBLE LAND INVESTMENT

Meeting of LEGEND partners with the CFS
private sector mechanism

16 October 2019, FAO, Rome

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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

- Idea of RLI grounded in CFS-RAI and VGGT principles: contributes to food & nutrition security and respects legitimate land rights – including natural resources, gender, youth
- Sliding scale of RLI: simple “do no harm” to tangible benefits for affected communities and countries, reflected in a raft of guidance.
- Land tenure part of companies’ ESG commitments and risk assessment but often without systems in place to address these in practice
- Possible tensions between different visions for RLI; too much focus on process rather than outcomes of investment processes.
- Overall, consensus is that legal compliance alone is not enough.



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 speak to power that governments, companies, local leaders, land users and owners have over land and natural resources, in political context.
- Key actions to create a basis for successful RLI by addressing information and power asymmetries that preclude any fair negotiation with local communities:
 - Identify and recognise legitimate tenure rights early on;
 - Create a level playing field for negotiation;
 - Be accountable around global principles; and
 - Monitor implementation and outcomes of investments.
- More agreement needed on what RLI means in practice and how to measure it.

7 RLI LESSONS



LESSON 1 Timely identification of land rights issues is better than having to address them later, after they 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, re-igniting earlier 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 on land related human rights and ESG issues at the planning stage

- Use available tools for early risk assessment, e.g. **Landscape risk tools**
- Engage local organisations and experts in **field reconnaissance of land tenure arrangements amongst affected groups** and to initiate consultation
- Dedicated tools and processes needed to identify and address VGGT- based due diligence “red lines”
- **Careful attention to legacy issues** as investments change hands – ongoing retro-active diligence process to understand and mitigate problems.

> LEGEND pilot examples



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

- Invisible rights holders: legitimate customary and informal rights not captured in official land information systems
- Negotiations on company land access not fair and meaningful unless the rights of people directly affected are identified and they are directly involved as counterparties.
- Legal paperwork alone cannot capture the realities of land holding on the ground and the potential conflicts that can emerge.



LESSON 2

FINDINGS FROM LEGEND

- Undertake **Land Tenure Assessment** on the ground:
 - **Identify how land holding and land use are organised at community and household levels, and among vulnerable groups, including women.**
 - Use tools and methods for **rapid, participatory land rights mapping**, open data tools and sources and **digital platforms for parcel mapping and certification of community and household rights**, to supplement the coverage of official systems.
 - Companies can assist in securing rights of smallholder suppliers and provide funding, but **independent, professional support is needed to establish land information systems**, as a public good
- **Put appropriate land information systems in place to document legitimate land rights**, targeting investment “hotspots” and linking up with ongoing programmes for more systematic land tenure regularisation.



(A) ENTIDADE EMISSORA Associação Ohau Omale AS040001-011-3505

DECLARAÇÃO DE AQUISIÇÃO DE DIREITO DE USO E APROVEITAMENTO DE TERRA POR OCUPAÇÃO

(B) TITULARES

NOME	GENERO	DATA NASC	TIPO IDENTIFICAÇÃO	# IDENTIFICAÇÃO	DATA EMISSÃO
Acacio Fernando Naquiria	Masculino	11-03-1970	Cédula Pessoal	149643	04-02-2011

(C) DATA DELIMITAÇÃO 01-11-2016 (D) TESTEMUNHAS Duarte Alberto Manuel Tressuro (E) DATA EDITAL (F) PRAZO EDITAL 30 Dias Assinatura e Data 04-05-2018

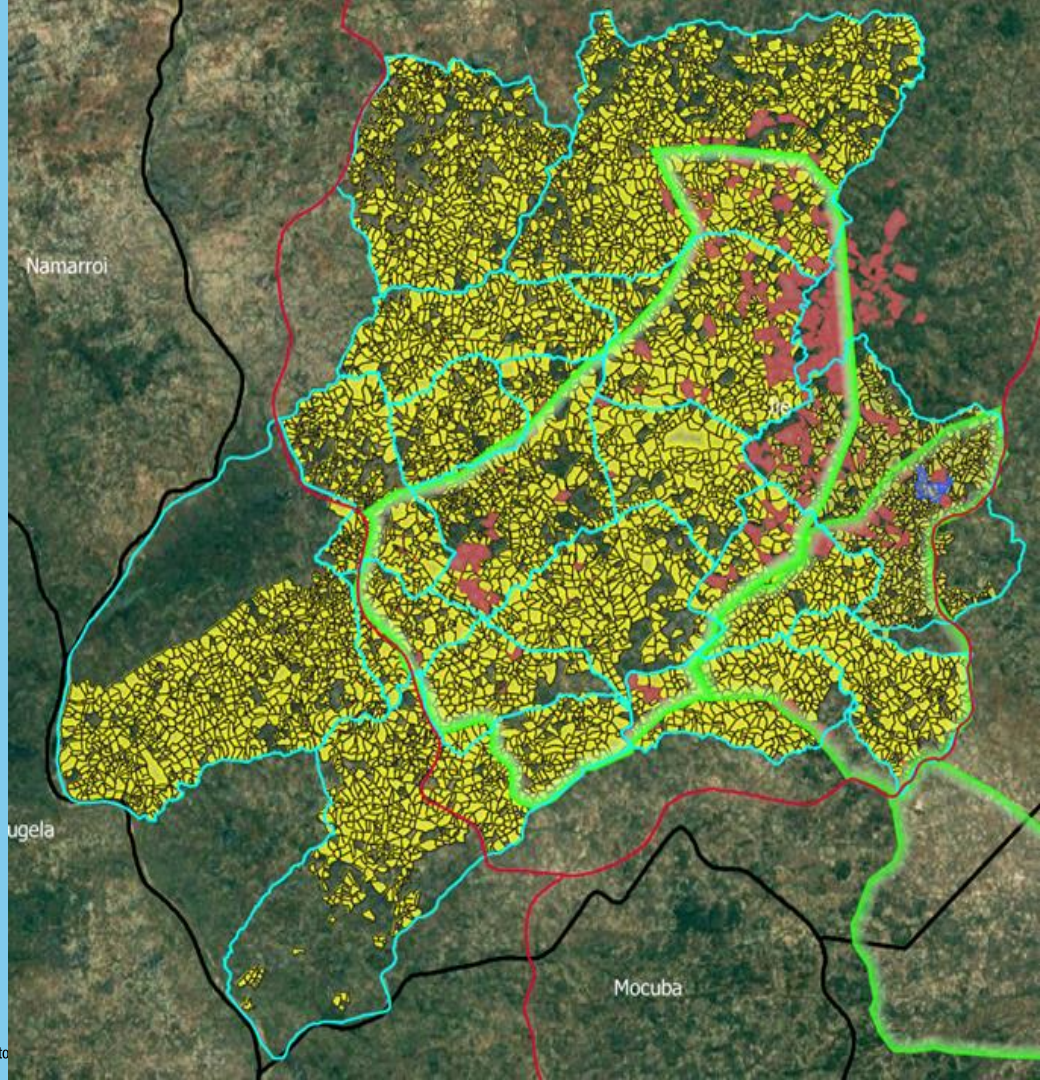
(G) Parcela # 3505 Distrito de NAMARROI Área aproximadamente 11 Hectares Posto de REGONE Bloco Cadastrel de MUSSECEIA

ESBOÇO PLANTA DE LOCALIZAÇÃO

Forestry investment in central Mozambique:

Right: overlap of concessions (outlined green) and land parcels planted by the company (red) with village community land areas (outlined blue) and family land parcels (yellow) mapped by ORAM and with certificates issued by Village Land Associations

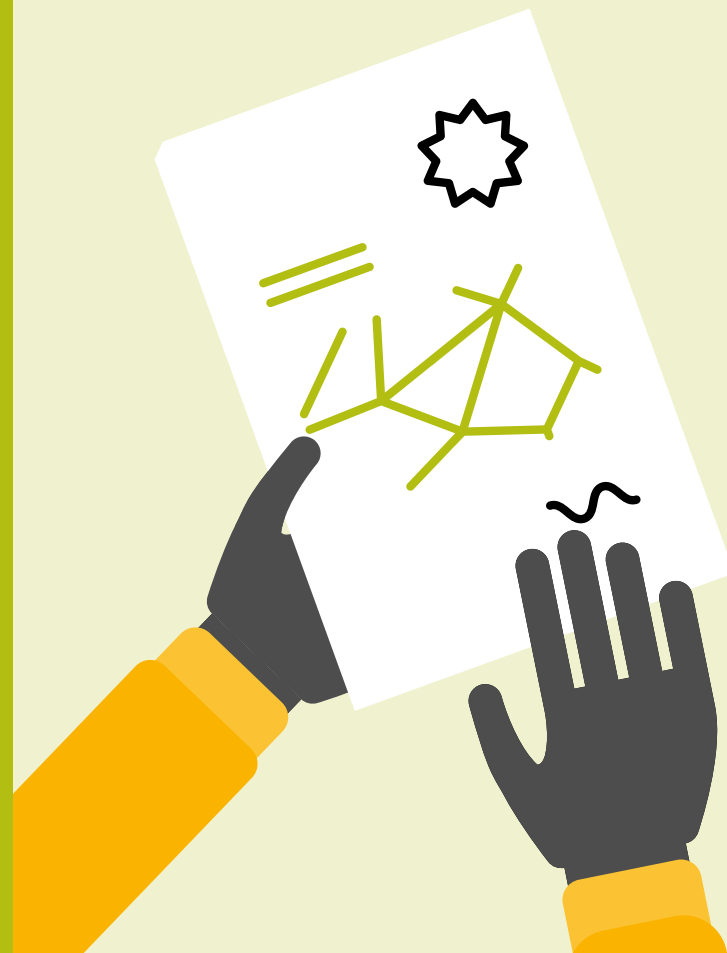
Below: Parcels released to the company may or may not overlap with individual family parcels. In one case a company parcel is surrounded by family parcels, with no apparent conflicts. In another a company parcel overlaps with a group of family land parcels subsequently delimited by ORAM. In such cases the company acknowledges the land claims of local families .



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

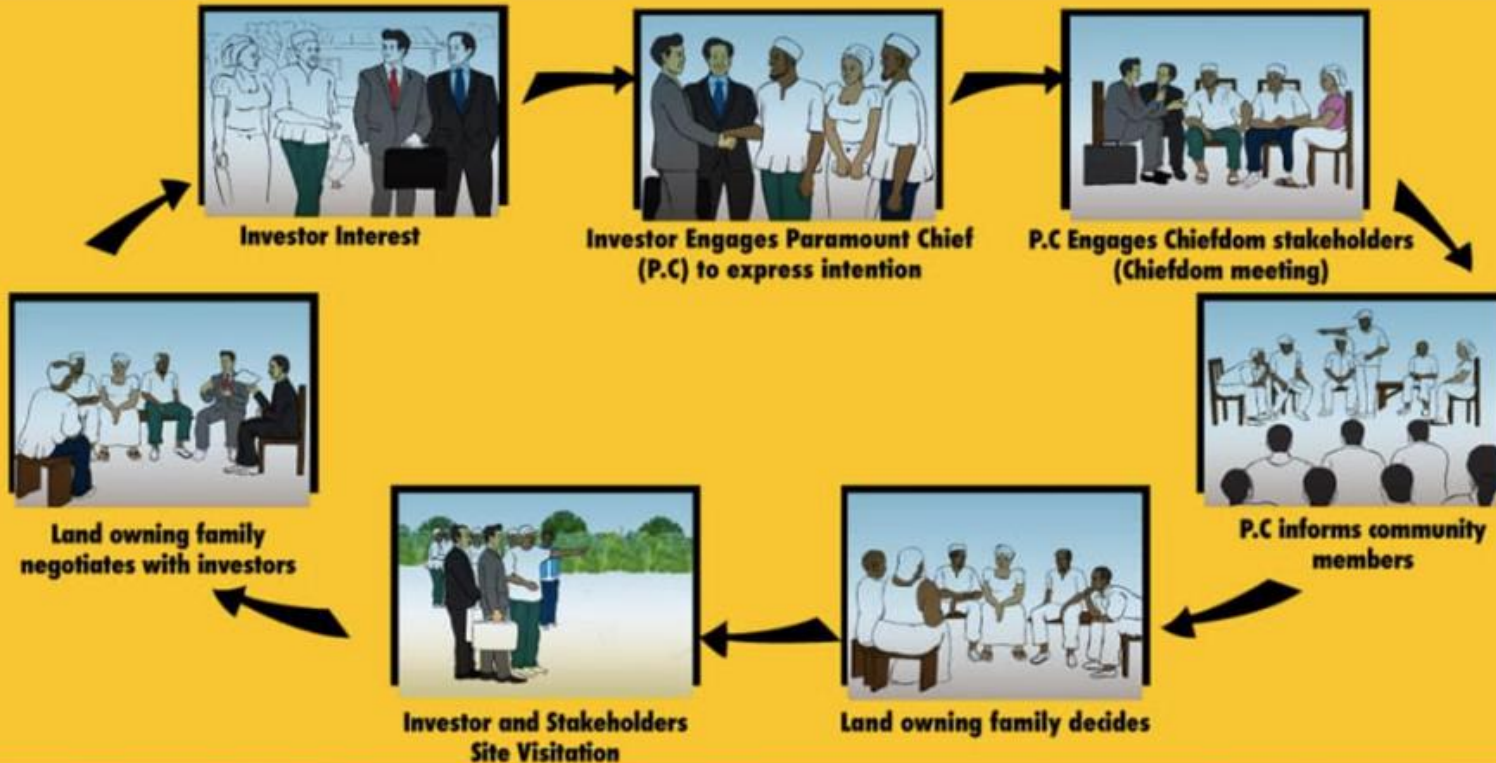
FINDINGS FROM LEGEND

Initiate consultation at the planning stage; negotiate directly with rights owners and land users to secure access to specific land parcels

- **Free prior informed consent (FPIC)** makes good business sense for ALL land holding communities, not only IPs, to ensure a company's social licence to operate.
 - Intensive, village by village consultation, often best combined with participatory mapping, reaching down to all land users.
 - Full transparency on investment plans, taking into account levels of literacy, using appropriate communication tools and media
- **Budget enough time and resources** (40-70% of costs in LEGEND projects). Use specialist outreach staff and the services of locally knowledgeable practitioners.
- **Promote internal community and family consultation.** Verify this through separate discussions with women and other specific groups, such as youth and tenant farmers
- **Multi Stakeholder Platforms** have proved effective as standing mechanisms for effective consultation and negotiation have proved effective , especially to address legacy conflicts and in complex landscapes.



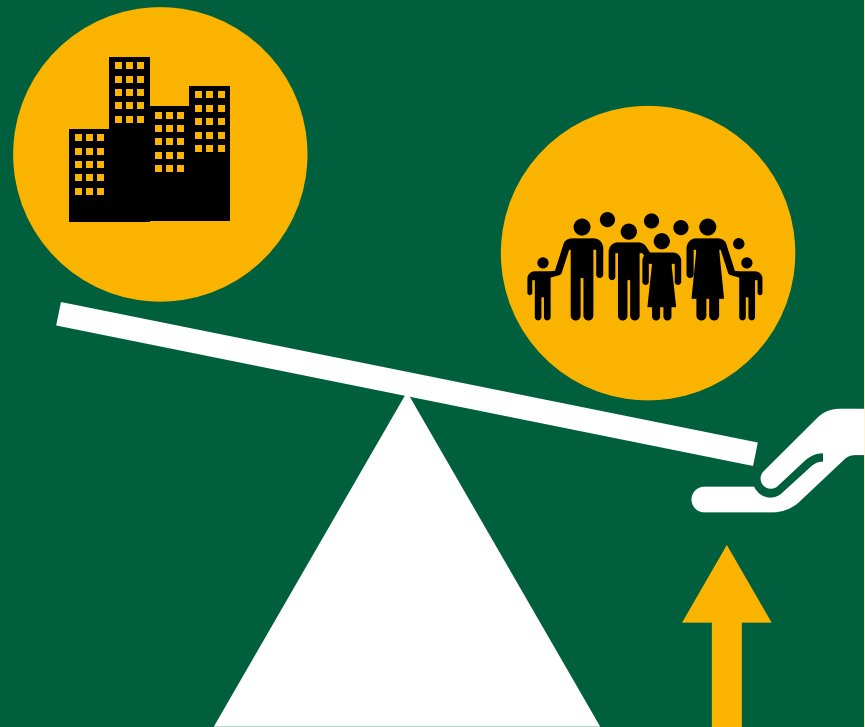
Recommended Land Acquisition Steps by Community Stakeholders



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.
- Legal support arranged by companies and investors can create conflicts of interest: independent mechanisms are needed to finance community advice and inter-mediation .

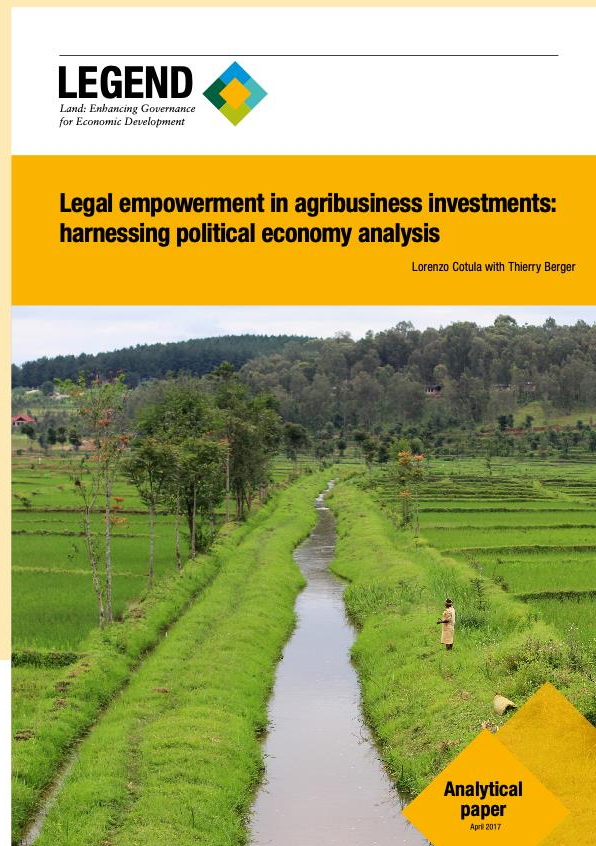


LESSON 4

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.



LESSON 5

The business case for RLI is becoming clearer in economic terms, but companies still need to mainstream land rights in their core operations and 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 measures against other risks and demands, but with internal constraints:
 - Limited capacity and scope to satisfy ESG-criteria, especially at the operational level – focused on production and output
 - Required human skills and technical assistance often not 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 delays and conflicts
 - 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

- Resolving land rights issues can unlock opportunities and resources for wider partnerships
- CSR action focused on livelihoods diversification can achieve positive social and environmental impacts.
- Importance of building trust between companies and civil society: training on compliance and good practice; local markets for ESG service provision.
- Tools & procedures for land tenure mapping and management by farmers' organisations can strengthen sustainable land use and output across supply chains
- Review internal decision-making & incentive structures to mainstream RLI in core business.



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

ISSUES

- RLI is central to inclusiveness
- But to maximise inclusive social and economic impacts, 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.
- Specific contexts, benefit sharing arrangements and access to new opportunities are more important than any one particular IAB model.



LESSON 6

FINDINGS FROM LEGEND

- Companies have had to change business plans and practices to be more inclusive to accommodate legitimate land rights > smaller concessions, more out-growers
- Use RLI criteria scope and design more responsible and inclusive practices, and business models, limiting needs for land acquisition in different value chains.
- Opportunities for private sector in farm management, offtake and supply, incubating socially owned businesses.
- Community based business in natural products and services: LEGEND pilot examples
- Understand trade-offs between different ingredients of RLI over time and for different target groups; assess investment outcomes as well as processes.



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

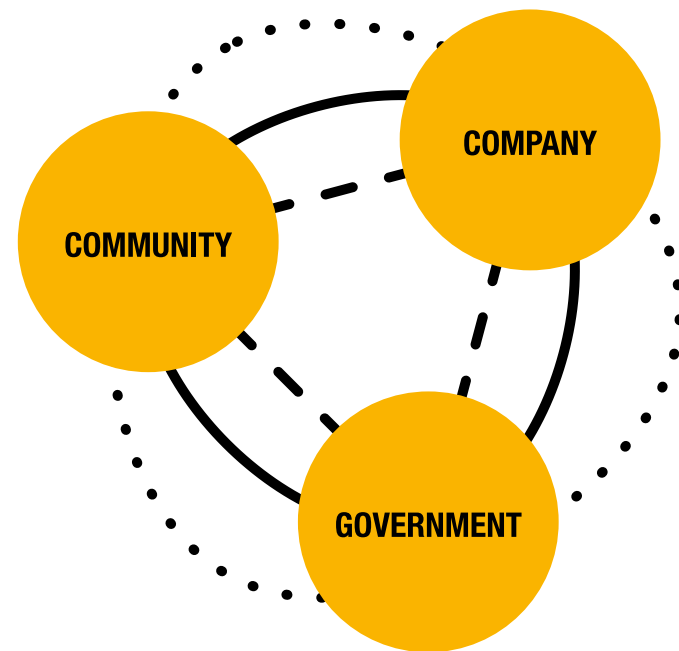
- Focusing solely on companies and communities as actors in RLI can create “islands of best practice” not a system of generalised best practice.
- Working through a donor project approach is instructive but creates an uneven playing field amongst companies and be unsustainable.
- And misses opportunities for economies of scale and more effective use of resources to support RLI.
- **Governments, donors and international organisations, not only companies have key roles to play in facilitating an enabling and equitable regulatory environment for responsible investment.**



LESSON 7

FINDINGS FROM LEGEND

- To generalise best practice, RLI must be part of the overall governance system that regulates investment:
 - Mechanisms to finance independent legal and technical support to communities and enable companies to access civil society and expert services
 - Further efforts to design, pilot and scale up innovative investment approaches, learning from experience
 - Assist host governments in screening, approving and continuously monitoring investments, integrating VGGT
 - Link and direct tenure security and land governance programmes to investment corridors and hotspots
 - Support Multi-Stakeholder Platforms at landscape scale and build land governance capacity of relevant jurisdictions (local, regional, customary)



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

Analytical papers and briefing papers

- API: Addressing corruption in land governance
- 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 finance institutions equipped to address land development rights issues?](#) and separate [executive summary](#)
- 2019: [Securing land rights at scale](#), plus separate [executive summary](#) and accompanying [presentation slidedeck](#)

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 Learning Outcomes - Briefing Paper and case studies (forthcoming)

- Wide range of grantees' and business partners dissemination and learning products