Towards responsible agricultural investment in Lao PDR

A study of agribusiness experiences

Deutsche Gesellschaft
für Internationale
Zusammenarbeit (GIZ) GmbH

As a federally owned enterprise, GIZ supports the German Government in achieving its objectives in the field of international cooperation for sustainable development.

Published by:
Deutsche Gesellschaft für
Internationale Zusammenarbeit (GIZ) GmbH

Registered offices
Bonn and Eschborn, Germany

Friedrich-Ebert-Allee 36 + 40
53113 Bonn, Germany
T +49 228 4460-0
F +49 228 4460-1766

E info@giz.de
I www.giz.de

Programme/project description:
Programme Responsible Land Policy
Friedrich-Ebert-Allee 13
53113 Bonn, Germany

Author:
Justine Sylvester

Responsible:
Dr. Klaus Ackermann

Design/layout:
Jeanette Geppert pixelundpunkt kommunikation, Frankfurt

Photo credits/sources:
Cover, p.31 GIZ/Bart Verweij; p. 7, p.18, p. 22, p. 27, p. 29 GIZ; p. 14 shutterstock/BePhumirat; p. 25 shutterstock/CHOKCHAI POOMICHAIYA; p. 37 shutterstock/Tanes Ngamsom

URL links:
This publication contains links to external websites. Responsibility for the content of the listed external sites always lies with their respective publishers. When the links to these sites were first posted, GIZ checked the third-party content to establish whether it could give rise to civil or criminal liability. However, the constant review of the links to external sites cannot reasonably be expected without concrete indication of a violation of rights. If GIZ itself becomes aware or is notified by a third party that an external site it has provided a link to gives rise to civil or criminal liability, it will remove the link to this site immediately. GIZ expressly dissociates itself from such content.

Maps:
The maps printed here are intended only for information purposes and in no way constitute recognition under international law of boundaries and territories. GIZ accepts no responsibility for these maps being entirely up to date, correct or complete. All liability for any damage, direct or indirect, resulting from their use is excluded.

On behalf of
German Federal Ministry for Economic Cooperation and Development (BMZ)
Bonn, Germany

GIZ is responsible for the content of this publication.

Eschborn, June 2018

Towards responsible agricultural investment in Lao PDR

A study of agribusiness experiences

TABLE OF CONTENTS

ACKNOWLEDGEMENTS

Research Team: Avakat Phasouysaingam, Juliet Lu, Chansamone Souvanhsai, Sommith Manylert and Hanno Fuehren.

The team would like to sincerely thank all of the community members, company representatives, government officials, development partners and civil society organisation staff who kindly gave their time during fieldwork for this study.

SELECTED LIST OF ACRONYMS

BMZ	German Federal Ministry of Economic Cooperation and Development
CFS	Committee on World Food Security
CSO	Civil Society Organisation
ELTeS	Enhanced Land Tenure Security project
FAO	United Nations Food and Agriculture Organisation
FDI	Foreign Direct Investment
FPIC	Free, Prior and Informed Consent
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit
LAK	Lao currency (kip)
LMDP	Land Management and Decentralized Planning project
MAF	Ministry of Agriculture and Forestry
MONRE	Ministry of Natural Resources and Environment
MPI	Ministry of Planning and Investment
MRLG	Mekong Region Land Governance project
OECD	Organisation for Economic Cooperation and Development
RAI	Responsible Agricultural Investment
SEL	Stora Enso Laos
USAID	United States Agency for International Development
VFI	Village Focus International
VGGT	Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests within the Context of National Food Security

Executive Summary

In 2017, a research team documented diverse experiences of agricultural investments in Lao PDR (Laos), for a study commissioned by the Global Programme on Responsible Land Policy, implemented by GIZ on behalf of the German Federal Ministry of Economic Cooperation and Development (BMZ). The study sought to identify factors for making agricultural investments more responsible in the Lao context, and to examine the extent to which international guidance shapes interactions between the various stakeholders, especially with local communities. In particular, the team examined agricultural investment in Laos with regards to the 2012 Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests within the Context of National Food Security (VGGT), and the 2014 Principles for Responsible Investment in Agriculture and Food Systems (CFS Principles).

The study team selected six agricultural investments across Laos. Recognising the lack of private sector perspectives in most literature in Laos, this study gathered information directly from six agribusinesses, including:

- Two Chinese rubber companies, Thaijieng Rubber Company and Yunnan Natural Rubber Company, in Luang Namtha province;
- Mitr Lao Sugar Company, a Thai sugar and energy (biofuels) company in Savannakhet province;
- Yee Nong Banana Company, a Chinese-owned banana company, in Sayaboury province;
- Thongtai Trade Company, a joint Lao-Chinese mango and pomelo (mak pook) plantation, in Sayaboury province; and
- Stora Enso Laos, a subsidiary of a Swedish-Finnish pulp and packaging company with eucalyptus plantations in Savannakhet and Salavan provinces.

To capture a diverse range of experiences, agribusiness selections were based on geographical factors (southern and northern Laos), land arrangements (contract farming, non-state land leasing, state land concession[1], and mixed arrangements), amounts of capital invested, and country of origin of the investors. Access to the investment sites was facilitated by the GIZ Land Program in Laos, and the Ministry of Planning and Investment (MPI). Interviews were conducted with relevant government representatives at national, province and district levels, as well as with communities impacted by the investments, company representatives, and civil society organisations in Laos.

Key Findings

This study found a general lack of awareness and understanding of international guidance across stakeholder groups, with the exception of some multinational agribusinesses, a handful of central government officials, and some civil society organisations working on land issues in Laos. Yet many stakeholders confirmed a growing interest in applying this international guidance – particularly the VGGT – within the Lao context. The study also found that regional guidance recently developed by neighbouring countries such as Thailand, Vietnam and China has untapped potential to positively influence the business practices of agribusinesses operating in Laos. For example, the Chinese government, issued Guidelines for Sustainable Development of Natural Rubber (2017) contain clear principles for responsible outbound investment, as well as advice for conducting due diligence before proceeding with an investment. Regional ("non-Western") actors need to be brought into the dialogue and efforts towards responsible investment.

[1] A land concession is the process of giving authorization to individuals or legal entities to operate business with the right to use state land, based on terms and time limit specified in the contract (Decree on State Land Lease or Concession, No.135/PM, 25 May 2009). For simplicity, concessions and state land leases are often referred to as 'land deals'.

This study also found a trend away from large-scale state land concessions towards contract farming and non-state land leasing, driven both by government policies and by investors seeking alternatives to large-scale land concessions. Support for smaller-scale, locally-agreed investment models is also contained in international guidance, such as USAID's Operational Guidelines on Responsible Land-Based Investment (2015), which advises investors to seek models such as "contract farming or smallholder outgrower schemes". Chapter 12 of the VGGT also urges governments to consider promoting a range of production and investment models that do not result in the large-scale transfer of tenure rights to investors.

Particularly in northern Laos, local level agreements[2] (i.e. – contract farming or small-scale land leasing) are being formed between investors and communities. However, little analysis has been done so far of the negotiation processes or the content of such agreements in Laos. This knowledge gap needs to be closed, and further study is needed to determine the cost-benefits of such arrangements. The legal and regulatory frameworks for contract farming requires further development, while persistent enforcement and implementation gaps need to be addressed for agreements to be fully effective, and to provide effective channels for grievance redress.

This study concludes with **implications for stakeholders** working towards responsible agricultural investment, and highlights areas for future development cooperation, including:

- Build **communities'** knowledge of their land rights, build capacity and create political space for communities to negotiate fair local agreements, and share experiences.
- Build **local authorities'** knowledge and capacity for mediating and supporting fair negotiations between communities and investors. **Implementation and enforcement** of investment laws and regulations also needs to be strengthened.
- Support negotiations that **enable third parties (civil society organisations, paralegals)** to play an advisory role throughout the negotiation process. Increased civic space is also needed to allow civil society organisations to operate freely in Laos.
- Develop a **common language and shared understanding of what constitutes 'sustainable' and 'responsible' investment** in Laos, based on internationally recognised principles and standards.
- Government and other stakeholders should capture and share **aggregated data on the sizes, locations, and impacts of contract farming arrangements**. This is a key step towards greater transparency, which is necessary for informed decision-making.
- Develop **robust, evidence-based land use planning and management tools**, such as monitoring tools that allow government agencies to identify and compare common 'weak spots' across investments.
- There is plenty of global guidance available – yet a lack of awareness and understanding means it is not being fully utilized by most stakeholders in Laos. Technical training is needed to **close this knowledge gap**, and to adapt international guidance to **localised, context-specific versions** to be more easily applied by local authorities, organisations, and agribusinesses operating in Laos.
- Some actors will first require a **deeper understanding of the domestic legal and regulatory frameworks** to be able to apply international guidance.
- There are several positive signs in the policy, legal and regulatory frameworks that Laos is moving towards more responsible agricultural investment – yet this **progress 'on paper' needs to be matched by practices 'on the ground'**.

Employees of Stora Enso Laos take a break after clearing land.

[2] Due to the vague legal status of local level "contracts" between investors and communities, the term "agreements" is used instead.

1. Introduction

Globally, investments in agriculture have grown over the past decade to keep up with rising demands for food, fuel, feedstock and specialty agricultural products. In particular, commercial agricultural investment[3] in 'cash crops' such as sugarcane, oil palm, rubber, banana, cassava, cacao, coffee and tea is dominating landscapes across the global south. Since 2008, activists, development institutions and civil society organisations (CSOs) tended to situate large-scale agricultural investments within the "land grab" category, characterised by a general lack of transparency, possible violations of human rights, social conflicts, environmental degradation and land loss for local communities (Cotula, 2016). On the other hand, proponents of agricultural investment focused on the potential for positive impacts such as economic growth, employment opportunities, and increased productivity. Within this debate, communities affected by land-based investments were alternately cast as either "victims" or "beneficiaries" (Portilla, 2015), painting a black-and-white picture of both sides. More recently, however, the land grabbing narrative began to shift towards a more measured discourse of sustainability, responsible agricultural investment, green growth, and quality investment.

At the same time, the global rush for land appears to have peaked and is now slowing, as companies gain greater awareness about the reputational risks associated with contestation over land grabbing (Cotula, 2016). This point in time presents an opportunity for a more nuanced view of agricultural investment, bringing together diverse stakeholder groups – government, civil society, researchers, communities, and the private sector - for dialogue and collaboration towards more responsible agricultural investment.

This study, commissioned by the Global Programme on Responsible Land Policy, which is implemented by GIZ on behalf of the German Federal Ministry of Economic Cooperation and Development (BMZ), presents perspectives of stakeholders in agricultural investment in Lao PDR (hereafter Laos), including communities, investors[4], national and local government agencies, civil society, researchers and development partners. The study examines different models of agricultural investment in sugarcane, eucalyptus, rubber, banana, and pomelo (mak pook) across Laos. Drawing on these diverse experiences of investment, the study aims to identify success factors – as well as constraining factors – for making agricultural investments more sustainable. The study also synthesises lessons that can be shared within Laos, across the Mekong region, and globally with countries facing similar agricultural investment situations.

This study examines agricultural investments in Laos within the framework of international standards and guidance, particularly the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests within the Context of National Food Security (VGGT), and the Principles for Responsible Investment in Agriculture and Food Systems (CFS Principles). The VGGT, which were endorsed by the Committee on World Food Security (CFS) in 2012, are intended to be a global standard on governance of land tenure that can be "interpreted and applied in accordance with national legal systems and their institutions" (2). The CFS Principles build on and complement the VGGT, and were endorsed by the CFS in 2014. Although these Principles are voluntary and non-binding, they represent the first time that governments, the private sector, civil society organisations, UN agencies, development banks, foundations, research institutions and academia agreed on what constitutes responsible investment in agriculture and food systems (FAO, 2014).

This report begins with an explanation of the methodology used in the study, then provides a summary of global trends of agricultural investment, and situates agricultural investment trends in Laos within this global narrative. The report then examines the Lao legal and regulatory frameworks, and explores the extent to which the domestic framework is supportive of provisions in international guidance such as the VGGT and CFS Principles. The following section highlights key findings from fieldwork, examining the different stages of investment throughout the lifecycle of projects, and drawing out success factors and lessons learned based on experiences of investors, communities, government and civil society. The report concludes with implications for stakeholders working towards more responsible agricultural investment.

[3] Agricultural investment' refers to commercial agriculture, including agro-forestry, tree plantations, and crop production. Agricultural investments in livestock (meat and dairy production), aquaculture, and non-timber forest products are excluded from this study.

[4] Agricultural investors are alternatively referred to as companies or agribusinesses in this report – 'investor' in this report does not mean an institutional investor, rather an enterprise or company that is acquiring rights to use or own land and resources.

1.1 Methodology

The objectives of this study were to document diverse experiences of agricultural investments in Laos, identify success factors for making agricultural investments more sustainable, and examine the extent to which international guidance – the VGGT, CFS Principles, and others – shapes interactions between the various stakeholders, especially local communities.

The study team selected six agricultural investments across Laos. To ensure a diverse mix of experiences, agribusiness selections were based on: geographical factors (southern and northern Laos), land arrangements (contract farming, small-scale land leasing, land concession[5]), amounts of capital invested (where this information was available), and country of origin of the investors (Chinese, Thai, Swedish-Finnish, and joint venture). Access to the investments was facilitated by the GIZ Land Management and Decentralized Planning (LMDP) and Enhanced Land Tenure Security (ELTeS) programmes of the GIZ Land Program in Laos, and the Ministry of Planning and Investment.

The study examined different stages throughout the investment project cycle:

1. **Due diligence**, including how the initial investment decision was made, feasibility studies and risk management;
2. **Pre-implementation**, including land acquisition processes and community engagement;
3. **Contract negotiations**, at national and particularly at local levels, and;
4. **Ongoing project operations**, including monitoring, reporting and grievance redress mechanisms.

The study team acknowledges that involving the private sector in research is often time-consuming and can prove more difficult to gain access. However, it is crucial to include more private sector perspectives and participation in future research to develop a common understanding of responsible investment, and to facilitate cross-sector dialogue. Recognising the lack of investor's perspectives in most literature in Laos[6], this study conducted in-depth interviews with representatives from six agribusinesses. This report aims to avoid reductionist portrayals of investors as good, bad, or greedy, instead allowing investors to explain in their own words how they attempt to navigate the complex terrain of agricultural investment in Laos.

Information gathered during fieldwork was mostly qualitative, using semi-structured and in-depth interviews with key informants, and focus group discussions. Some quantitative data was collected on commodity prices, labour wages, areas of land investment, amounts of capital invested, etc. At each fieldwork site, the study team interviewed provincial and district staff from relevant government offices, including: planning and investment, agriculture and forestry, natural resources and environment, industry and commerce, and where possible, the district governors. In southern Laos, the team met with 10 company representatives from Mitr Lao Sugar Company, both management and technical staff, and with representatives from three villages. Unfortunately, all of the village representatives were male, and most of the company representatives, provincial and district level government officials were also male, leading to a gender bias in this case.

In Luang Namtha, the team interviewed provincial and district staff from relevant government offices, two company representatives from Yunnan Natural Rubber Company and one from Thaijieng Rubber Company, and met with representatives from six villages. In Sayaboury, the team met with provincial and district staff from relevant government offices, and interviewed six company representatives, two from Thongtai Trade Company and four from Yee Nong Banana Company, and met with representatives from four villages. Men and women's participation in interviews and focus group discussions in northern Laos was more balanced, but discussions still tended to be male-dominated, except in one village with a female Village Head (naiban).

[5] A land concession by Lao law is the process of giving authorization to individuals or legal entities to operate business with the right to use state land, based on terms and time limit specified in the contract (Decree on State Land Lease or Concession, No.135/PM, 25 May 2009). Note that for simplicity, concessions and state land leases are often referred to as 'land deals'.

[6] Some notable recent exceptions include: Schoenweger & Messerli (2015), Hett et al (2015), Kenney-Lazar (2016), Friis & Nielsen (2016), and Lu & Schoenweger (2017).

In addition, interviews were conducted with some representatives from civil society organisations engaging with the private sector, with central government representatives from the Ministry of Planning and Investment (MPI) and the Ministry of Agriculture and Forestry (MAF), and with company representatives from Stora Enso Laos (SEL). Interviews with local stakeholders were supplemented by a literature review of the domestic legal and regulatory framework, as well as relevant international guidance, reports, and unpublished materials.

Table 1:Individual property rights and conflicts about them

COMPANY DETAILS	LAND ARRANGEMENT(S)	LOCATION OF INVESTMENT(S)
Mitr Lao Sugar Company, subsidiary of Mitr Pohl Group, a Thai sugar and bio-energy company, operating in Laos since 2006.	Concession of 10,000 hectares, currently 8,706 acquired and planted, and an additional 1,588 hectares under contract farming arrangements.	Savannakhet province.
Thongtai Trade Company, a Lao-Chinese joint venture fruit tree plantation company operating in Laos since 2015.	202 hectares granted for 'promotion' of pomelo and mango trees, currently 150 hectares are planted.	Sayaboury province.
Yee Nong Banana Company, a Chinese banana company operating in Laos since 2015.	498 hectares granted for 'promotion' of banana trees, currently 252 hectares are planted.	Sayaboury province.
Stora Enso Laos (SEL), subsidiary of Swedish-Finnish pulp and packaging company Stora Enso, operating in Laos since 2007.	3,731 hectares land leasing approved by government, currently 2,988 hectares planted with eucalyptus trees.	Savannakhet and Salavan provinces. One pilot village in Khammouane province.
Yunnan Natural Rubber Company, a subsidiary of Yunnan State Farms Group, a Chinese state-owned enterprise (SOE), operating in Laos since 2006. Yunnan company is part of the Opium Replacement Program (OPR).	An agreement with the Lao government for the company to seek up to 166,666 hectares across four provinces. Currently 214 hectares planted as concession area in Luang Namtha, and at least an additional 60 hectares under contract farming in this province.	Luang Namtha, Luang Prabang, Bokeo and Oudomxay provinces.
Thaijieng Rubber Company, a private Chinese company with headquarters in Xishuangbanna, China. Thaijieng has been operating in Laos since 2006. Thaijieng company is part of the OPR.	1,004 hectares approved for 'promotion' of rubber, currently 300 planted.	Luang Namtha province.

Locations of fieldwork sites in Laos.

2. Global trends towards responsible agricultural investment

As commercial agricultural investment has grown worldwide, especially in Asia and sub-Saharan Africa, concerns about land grabbing, environmental degradation and land loss for local communities have also been raised (Shoenberger *et al* 2017). In an effort to combat negative outcomes from such investments, international institutions and governments have begun introducing global concepts of responsible agricultural investment (RAI), green growth, and quality investment for improving agricultural investment practices. Some agribusinesses have also made efforts to align their business operations with international principles and standards. Signalling a new way of approaching land-based investment, a number of international 'soft law' instruments have been developed to provide global guidance on land governance and agricultural investment. Some of the most well known examples are:

- Principles for Responsible Agricultural Investment that Respects Rights, Livelihoods and Resources, jointly developed and released in 2010 by the FAO, UNCTAD, IFAD and The World Bank;
- United Nations' Guiding Principles on Business and Human Rights, endorsed by the Human Rights Council in 2011;
- Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries and Forests within the Context of National Food Security (2012);
- Principles for Responsible Investment in Agriculture and Food Systems, (2014);
- International Finance Corporation (IFC) Performance Standards on Environmental and Social Sustainability; and
- OECD-FAO Guidance on Responsible Agricultural Supply Chains (2016).

Building on these instruments, guidance has also been developed specifically for investors to align their business operations with provisions contained in the documents above, including:

- United States Agency for International Development (USAID) Operational Guidelines for Responsible Land-Based Investment (2015);
- Interlaken Group's Respecting Land and Forest Rights guide for companies (2015);
- Analytical Framework for Land-Based Investments in African Agriculture (2015), jointly developed by the African Union, FAO, and several donor governments including Great Britain, Germany, France and the United States; and
- Mekong Partnership for the Environment (MPE) Investors Guide to Responsible Development: a primer for investing in the Mekong region (2016).

At the same time, global guidance has begun to emphasize the role of alternative models of development, encouraging investors and governments to pursue alternatives to large-scale land acquisition. The USAID Guidelines, for example, states that it "does not endorse large-scale land acquisitions of land", and further urges investors to consider alternatives such as contract farming and smallholder outgrower schemes. Literature is also evolving to challenge the "global land grab meta-narrative" (Baird, 2014), supplementing the focus on large-scale land acquisitions with arguments for smaller-scale, subtle forms of investment in commercial agriculture (for example, see De Schutter, 2011). So, while the global land grab is slowing down, contract farming is enjoying a renaissance. However, as described later in this report, the design of such arrangements must be carefully considered.

2.1 Multi-Stakeholder Approaches to Responsible Agricultural Investment

Driven by a growing interest to find new ways to promote and implement responsible agricultural investment, civil society, donors and development agencies have made efforts to engage with the private sector - albeit with variable success, and with a range of interpretations of what 'engagement' means. Global civil society efforts to engage with agribusinesses have been driven by large international organisations such as World Wide Fund for Nature (WWF), Global Witness and Oxfam, donors and development agencies such as the United Nations Food and Agriculture Organisation (FAO), the United Kingdom's Department for International Development (DFID), and GIZ on behalf of BMZ. Large multilateral programmes, such as the New Alliance for Food Security and Nutrition, have also promoted public-private partnerships for inclusive agriculture-led growth in Africa, with mixed results. The Interlaken Group is an international example of a multi-stakeholder platform. Founded in 2013, the Group is a network comprising companies, investors, CSOs, government and international institutions. Locally, development partners such as the Mekong Region Land Governance (MRLG) project, financed by the Swiss Agency for Development and Cooperation (SDC), BMZ and the government of Luxembourg, have also supported multi-stakeholder and civil society efforts towards responsible agricultural investment, such as the RAI Working Group in Laos.

Private sector actors have responded in different ways, with some embracing the opportunity to work with CSOs, while others remain disinterested or wary due to long-held associations of CSOs as 'watchdogs' of the private sector. At the same time, some CSOs do not aim to engage with private sector actors, and many CSOs are still weighing the risks – for example, the risk of greenwashing[7] – and carefully considering if / how to engage with private sector actors.

2.2 Agricultural investment in Laos

In Laos, the Turning Land into Capital (TLIC) policy (*nayobay han din pen theun*) has been the driving force behind land-based investment in Laos over the past 10 years (Dwyer, 2007). Under the TLIC policy – which was not formalised into one policy document but is mentioned in several policy documents - Laos increasingly opened the door to an influx of foreign direct investment (FDI), especially land-based investment. Promoting private sector investment was tied to the government's long-held goal of poverty reduction and socio-economic development (Fullbrook, 2014). Since the introduction of TLIC, land-based investment (agribusiness, hydropower, mining, infrastructure) has increased rapidly as foreign investors – primarily China, Thailand, and Vietnam – seek to fuel their growing economies and meet their energy needs (Schoenweger *et al*, 2012). According to Ministry of Planning and Investment (MPI) data, trans-border investment from these three neighbouring countries represents a large proportion of total FDI in Laos, with the value of investments far exceeding that of other countries (OECD, 2015).

The online platform Land Matrix[8] contains information on 55 land deals in Laos, including two investments examined in this study (Mitr Lao Sugar Company and Yunnan Natural Rubber Company). However, some of this data is from several years ago, and the total percentage of information about the deals is currently at 56 percent. There is potential for enhancing public sharing of information and transparency of land deals in Laos, as described more fully in section 3.1.

The concession inventory conducted between 2007 and 2011[9] (Schoenweger et al, 2012) is impressive, but likely underestimates the amount of land under agricultural investment, *since it excludes all areas under contract farming*. The inventory also shows that investment in the agriculture and forestry sub-sectors is dominated by three foreign investors: Thailand (9 out of 10 sugarcane companies are Thai-owned), China (primarily acacia, eucalyptus and rubber) Vietnam (primarily rubber), followed by South Korea, India and Japan[10]. According to the inventory, domestic investment comprised just 17 percent of the total area under investment. Further, the average size of foreign investments granted as concessions were *ten times* the size of the average domestic investment (1,167 hectares compared to 117 hectares). Joint ventures comprised 5 percent of all projects, but generally were granted land areas comparable to FDI, around 1,048 hectares.

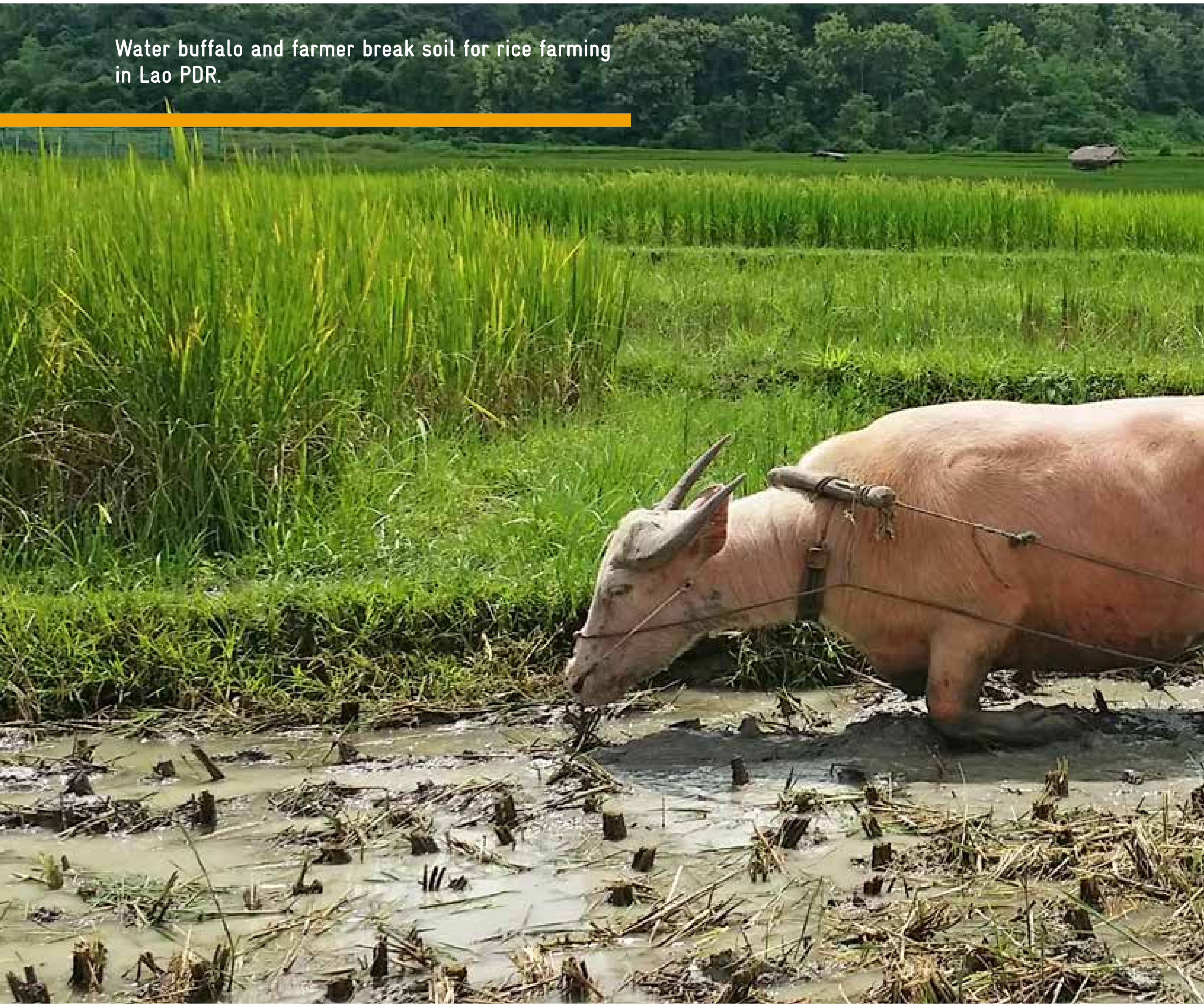
Rubber, eucalyptus and sugarcane remain dominant plantations in terms of hectares, but in recent years, bananas have come to the forefront of debates, after public concerns

[7] A common definition of greenwashing is a company (or organisation) spending more time and money claiming to be 'green' through advertising and marketing than genuinely implementing environmentally responsible business practices.

[8] The Land Matrix (www.landmatrix.org) is a global, independent land monitoring initiative that aims to promote transparency and accountability in decisions about land and investment.

[9] The inventory was a joint effort between the Centre for Development and Environment (CDE) and the then National Land Management Authority (NLMA) under the Ministry of Natural Resources and Environment, with support from GIZ, the Swiss Agency for Development and Cooperation (SDC), and BMZ. The CDE team began updating the inventory in 2014, along with a new initiative to assess the quality of investments, beginning in Luang Prabang and Xiengkhouang provinces (Hett et al, 2015).

[10] This may soon change, as the two largest Indian and Japanese investments have transferred ownership or are in the process of transferring ownership.



Water buffalo and farmer break soil for rice farming in Lao PDR.

about the environmental and health impacts of pesticides and herbicides. The area of banana plantation is significant, covering a total area of 22,920 hectares (NAFRI, 2016). A Prime Ministerial Order issued in late 2016 banned expansion and approval of new banana plantations, and several northern provinces have also issued prohibitions on banana plantations.

Other 'boom crops', such as Job's Tears (a grain native to Southeast Asia), cassava and maize, are having significant impacts on rural communities, including transforming large areas into 'toxic landscapes' in the case of maize (Bartlett, 2016). These agricultural investments warrant further research, however such crops were not examined in this study.

2.3 Moving towards Responsible Agricultural Investment in Laos

The concept of responsible agricultural investment, or RAI, is still relatively new in Laos. The term Corporate Social Responsibility (CSR) is more common, but interpretations vary widely. CSR is often viewed as a form of philanthropy, with companies making corporate donations to social causes – in Southeast Asia this is sometimes called 'Buddhist CSR' (GIZ, 2014). Interest in RAI in Laos has arisen from the intersection of a growing awareness of CSR, concerns about the impacts of investments, and a government that is attempting to regulate large-scale land investments while leaving options open for commercial agriculture.

As with the TLIC policy, agricultural investment is still tied to broader objectives of poverty reduction and socio-economic development. There is a positive shift – at least on paper – in government rhetoric towards promoting 'green growth', and 'quality investment'. However, some investors report that the business restrictions on taxation, labour and administration are counterproductive to creating an enabling environment for incentivizing responsible business practices (GIZ, 2014). On the other hand, institutional barriers such as irregular implementation and enforcement of laws and regulations, and unclear land tenure regimes, also hinder responsible investment. After Laos was ranked 139th out of 190 countries in The World Bank's 2017 Ease of Doing Business Index (The World Bank, 2017), the government has vowed to improve the investment climate (The Vientiane Times, 23 September 2017).

3. Domestic legal and regulatory frameworks governing agricultural investment

The legal and regulatory frameworks governing agricultural investment in Laos are a complex, interconnected network of policies, visions, Party resolutions, strategic and implementation plans, laws, orders, decrees, and instructions. Since responsible agricultural investment covers a wide range of topics – agriculture, forestry, land tenure, natural resource management, business, industry, economics, taxation, gender equality and others – it is not possible in this report to provide a complete list of all instruments. The summary below highlights some of the most relevant documents. It is also important to note the institutional context in which investors are operating in Laos; while efforts are being made towards the rule of law, there are still serious gaps in the enforcement of local laws and regulations.

At national level, the main relevant documents are the National Development Vision to 2030, which aims for "green economic growth that ensure sustainable, resilient development", complemented by the 10-Year Socio-Economic Development Strategy (2016-2025), and the Eighth Five-Year National Socio-Economic Development Plan (2016-2020), which incorporates targets of the Sustainable Development Goals (SDGs) into national-level planning. The 2015 Agriculture Development Strategy to 2025 and Vision to the Year 2030 also supports sustainable agriculture and focuses on food security as a national priority.

In lieu of a National Land Policy, a Resolution of the Party's Central Committee on the Enhancement of Land Management and Development in New Period was issued on 3 August 2017, stating that "complaints and cases on land also keep increasing… conversion of land into capital still has no comprehensive legal framework, due to which the Government and peoples have not received as much benefits as they should have" (unofficial English translation, 2). Relatedly, the 2003 National Land Law is currently under revision, continuing from the redrafting process in 2015 – this Law is expected to closely follow the content of the Party Resolution. The Forestry Law (2007) is also currently under revision.

The Investment Promotion Law was revised in 2016, and encourages more responsible agricultural investment by providing incentives for environmentally-friendly businesses (Article 9). The VGGT was used as a reference tool during the law revision process. The revised law includes several provisions echoing the VGGT, particularly Chapter 12 on Investment, including a principle to protect natural resources effectively in a "green direction and sustainably" (Article 5), stronger environmental obligations (Article 74) which were drawn from several VGGT chapters, and clearer mechanisms for dispute resolution (Part X) and monitoring (Part XI). The revised Law also establishes the roles of Central and Provincial Investment Promotion and Management Committees (CIPMC and PIPMC) in approving and monitoring investments (unofficial translation, Article 5). However, some details are yet to be specified in implementing decrees and instructions, which are not yet finalised.

Significantly, the Law on Agriculture has not been revised since 1998 - there is potential for this law to be updated to include provisions on responsible agricultural investment, and to inject more clarity into its articles.

A Prime Minister's Order was issued in 2007, prohibiting new concessions for mineral exploration and tree plantations larger than 100 hectares, and another in 2012 placed a moratorium on new concessions for mining, rubber and eucalyptus plantations. An Order banning banana plantations was also issued in late 2016, and was followed by several northern provinces. A forthcoming Ministerial Instruction will provide guidance on the approval and management of state and private land leasing for banana and other plantations (MPI, unofficial translation).

In early 2017, the Prime Minister also established a Taskforce to "investigate land concessions, the transfer of land use rights in various cases, implementation of the government's policy to turn assets into capital... after these issues have caused land disputes and problems" (The Vientiane Times, February 6, 2017). The findings of this Taskforce are due to be reported in 2018.

Regarding responsible agricultural investment, some gaps remain in the domestic legal and regulatory framework. For example, requirements for investors to conduct community consultations are not clear except during Environmental Impact Assessments (EIA), as required by the Decree on Environmental Impact Assessment (No. 112 / PM, 2010), and if the investment involves compensation or resettlement, as required by the Decree on Compensation and Resettlement Management in Development Projects (No. 84 / PM 2016). There is therefore a need to further clarify obligations for investors to consult, continuously engage with and seek collective consensus from communities affected by agricultural investment projects, in line with Free, Prior and Informed Consent (FPIC) standards.

Further efforts are also needed for greater clarity in current frameworks, particularly paying attention to how different laws and regulations interact, and, importantly, ensuring they do not contradict each other, to support greater land tenure security for rural communities and a clear (and enforced) legal framework for investors.

3.1 International standards and guidance in the Lao context

This study found a general lack of awareness and understanding of international guidance across stakeholder groups, with the exception of some investors (mostly multinational agribusinesses), some central government officials, and some civil society organisations working on land issues in Laos. Another exception was the relatively high level of awareness and understanding of the Sustainable Development Goals (SDGs), or Global Goals, several of which are incorporated into the Eighth National Socio-Economic Development Plan. Yet many stakeholders confirmed a growing interest in this international guidance – particularly the VGGT – although some stakeholders regarded the guidance as "too general" or "too high level". As such, there is scope for localised versions to be developed to fit the Lao context.

An analysis of the legal and regulatory framework in Laos found that it is generally supportive of the principles contained in the CFS Principles, or where it is not directly supportive, it does not go against the goals or activities listed in the Principles (Lamb, 2017). However, there remain some gaps in the frameworks regarding land tenure security (Principle 1, and a cornerstone of the VGGT), especially with respect for legitimate tenure rights, whether formal or informal. Land tenure security, as stated in several international guidance documents, is the foundation for good land management, increased productivity, investor confidence and sustainability for the production of agro-forestry products. In order to be able to uphold their land rights, communities need to have strong land tenure security, not only through systematic registration and titling, but also through legal recognition of customary land rights and ownership; this has not yet been fully achieved in Laos.

The current revision process of the National Land Law is a crucial moment in time for the Lao government to ensure that this law is in line with international practices for responsible governance of land tenure. This international guidance has been developed with policy development in mind, and is intended to be a useful reference document during policy drafting processes to create strong national laws (Lamb, 2017). The Lao legal framework is not yet meeting all the standards contained within the VGGT. For example, gaps remain in provisions and clarity around expropriation of land for public / private purpose, land acquisition procedures in line with FPIC principles, compensation (valuation processes, non-financial compensation, and responsibility for compensating), and the nature of land use rights and customary land rights. A more thorough Gap Analysis of which aspects of the VGGT are currently covered by Lao laws – and which provisions require further attention to close the gaps – is beyond the scope of this study, but is a worthwhile initiative for future development cooperation.

Finally, transparency is the hallmark of a responsible investor and an open government. Within the Lao legal framework there are currently limited requirements for public availability of information of investments, including public access to contracts. In practice, investment deals tend to be opaque. One exception is the provision on public information disclosure regarding Environmental Impact Assessments under Articles 7 and 8 of the Decree on Environmental Impact Assessment (No. 112/PM, 2010). As stated in Principle 8 of the VGGT, investment decisions should be widely publicized in languages and formats that are "accessible to all".

Making contracts available and accessible to the general public can build a climate of stronger accountability and trust, and by sharing this information, stakeholders have the opportunity to compare terms that other countries offer for similar investments (for example, see: *www.openland-contracts.org*). Greater transparency is also encouraged by a number of international guidance documents, including the CFS Principles, VGGT, USAID Operation Guidelines, and the United Nations Principles for Responsible Contracts (2011).

3.2 Regional guidance and standards

There is a tendency to take a Western-centric view of 'international' guidance, and non-Western actors are at times excluded from the RAI conversation. Recently, more regional guidance has been developed to promote responsible agricultural investment, yet this remains lesser-known. Significantly for Laos, governments of China, Thailand and Vietnam have issued guidelines governing outbound agricultural investment. A promising example is the Guidelines for Sustainable Development of Natural Rubber, developed by the China Chamber of Commerce of Metals, Minerals, and Chemicals Importers and Exporters (CCCMC) with a diverse group of experts, including Global Witness. The draft was released for public comment in September 2016, and a final version was published in late 2017.

While not quite as comprehensive as the VGGT, these industry guidelines represent positive action by the Chinese government and international partners to improve overseas agricultural investment practices. The guidelines include principles for responsible investment in rubber, as well as advice for conducting due diligence before proceeding with an investment, including assessing and understanding local customary land rights, laws and practices in collaboration with communities, civil society and local experts. The guidelines also contain provisions for conducting FPIC with potentially affected communities, including a statement that "no new investment on rubber production or rubber processing should take place without the free, prior and informed consensus of local communities and indigenous peoples". Signaling another promising step, the China Chamber of Commerce of Foodstuffs and Native Produce and Animal By-Products (CFNA) has also developed a Guide for Overseas Investment and Production of Sustainable Palm Oil by Chinese Enterprises (2015). The Guide was presented at the 13th Annual Roundtable Conference on Sustainable Palm Oil for public consultation (RSPO, 2015).

Dried latex awaits processing at the Yunnan Natural Rubber Company processing factory in Luang Namtha province.

4. Findings from the field: from large-scale concessions to alternative investment models

This study examined four typologies of agricultural investment in Laos:

1. Land concession;
2. Contract farming under a 2+3 model, also known as 'promotion'. In this arrangement, farmers provide land and labour (the "2") and the company provides capital, technology, and market access (the "3");
3. Land leasing, also known in Laos as contract farming under a 1+4 model, where farmers provide only land, and;
4. Mixed arrangements, which may be a combination of concession, contract farming and / or land leasing.

It is important to note that these four typologies are not clear-cut, as land arrangements in Laos tend to blur across these typologies. In addition, although smallholder agriculture is not a typology listed above, *farmers are investors in agriculture* in their own right - the majority of agricultural production across Southeast Asia is smallholder-driven, with smallholder farmers being "remarkably persistent and surprisingly resilient" in the face of agrarian transformations (Rigg *et al* 2015, 119).

The focus of this study, however, was to examine the ways in which farmers and agribusinesses interact, particularly regarding land tenure and the extent to which international guidance shapes these interactions.

Agricultural investors in Laos enter into a variety of contracts or agreements with national and / or local authorities, and communities[11], as represented in the table below:

Table 2: Investor Contracts / Agreements

COMPANY NAME	CONTRACTS AND / OR LOCAL AGREEMENTS			
	CENTRAL GOVT.	PROVINCE GOVT.	CONTRACT FARMING (2+3)	LAND LEASING (1+4)
Mitr Lao Sugar Company	X		X	X
Yunnan Natural Rubber Company	X	X	X	X
Thaijieng Rubber Company		X	X	
Stora Enso Laos	X	X		X
Thongtai Trade Company		X		X
Yee Nong Banana Company		X		X

Sources: stakeholder interviews, PPI and PAFO statistics.

In some cases, the District also co-signed community-investor agreements; although this was difficult to verify without consistent record keeping of local level agreements.

[11] Informal purchasing agreements - often just verbally agreed between farmers and traders - are also common in Laos, but are not well documented: further research is needed to examine these agreements.

Typology 1: Land Concessions
Investors in this study who were granted concessions encountered challenges in acquiring the full quota of state land. Mitr Lao Sugar Company, for example, was granted a concession of 10,000 hectares, but after falling short of its target area, the company moved into 2+3 contract farming with some farmers. After farmers became in debt to the company (see text box), Mitr Lao Sugar Company also began leasing land (1+4) from farmers as a method for repaying debts, although this arrangement is not captured in official records. Yunnan Natural Rubber Company has been granted just over 160,000 hectares of land across four northern provinces, including 33,000 hectares as concession area (also known as 'demonstration areas'). The company has entered into contract farming arrangements after running into difficulties obtaining the quota of state land. Land concessions are not an automatically successful model for agricultural investment, as many investors find it difficult to obtain the full amount of state land granted in concession agreements (Lu & Schoenweger, 2017; Schoenweger & Messerli, 2015).

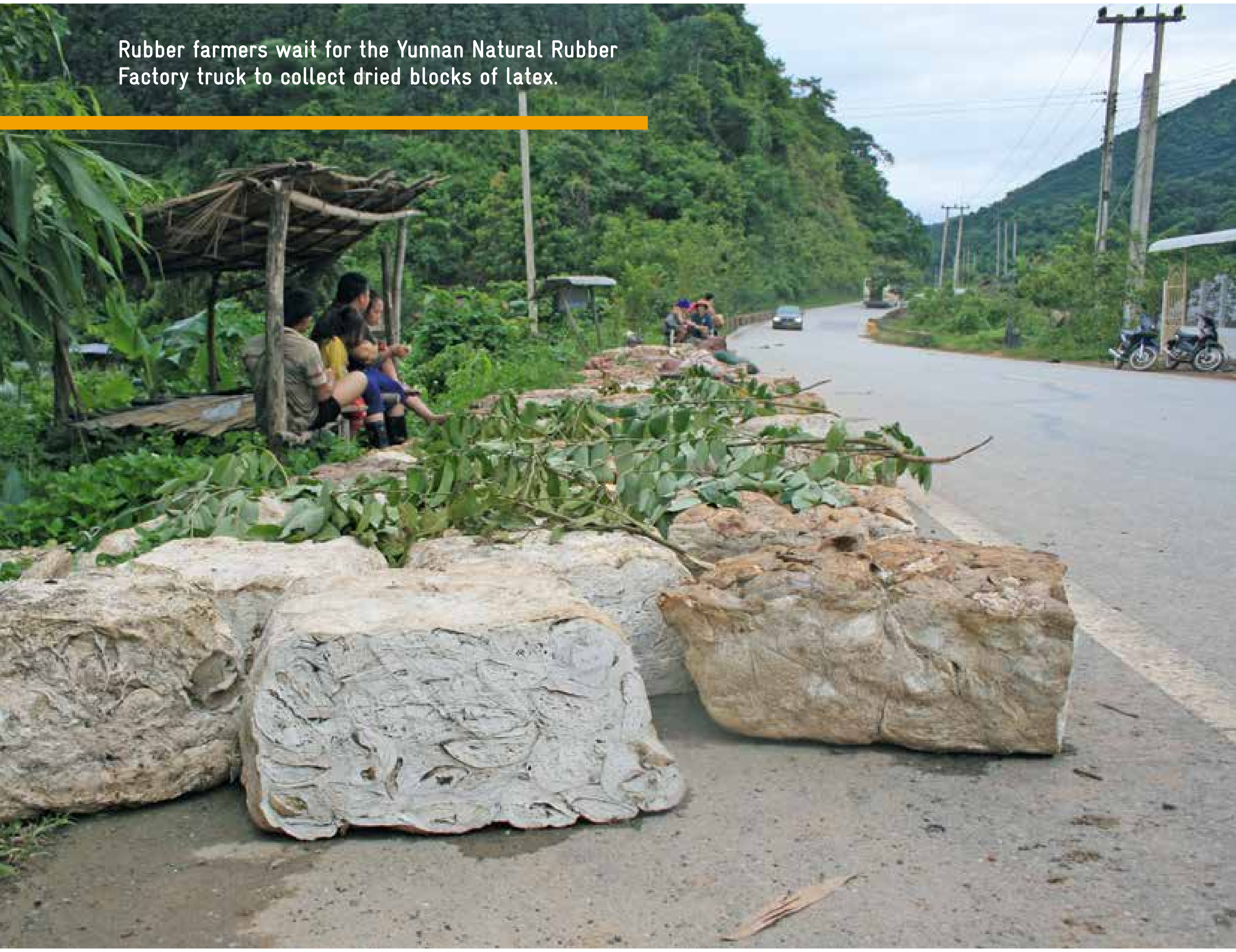
Typology 2: Contract farming (2+3)
The 2+3 model was promoted in northern provinces, especially for rubber investments (Vongvisouk & Dwyer, 2016), but such arrangements are becoming more common across Laos as the government and investors seek alternatives to large-scale land concessions.

In the case of Thaijieng Rubber Company, the company was granted 1,000 hectares by provincial authorities to pursue "rubber promotion", also known as 2+3. Under this arrangement, the company receives 30 percent of profits from the sale of latex, and farmers receive 70 percent. The company also agrees to provide rubber seedlings, training on how to grow and tap trees, and once trees are mature, to provide materials for tapping (knives, cups). Thaijieng Rubber Company agreed to buy the latex from farmers, but there was no set price – some farmers had mobilised into rubber groups (kom) to sell latex since companies gave a small additional payment per tonne if latex was sold collectively. Currently, with just two rubber companies buying latex, no minimum or 'floor prices' specified in agreements, and a crackdown on outside traders in the province[12], rubber farmers' options for selling remain limited.

Mitr Lao Sugar Company and Farmer Debt

This case has been documented in some local studies (Kemp, 2012; Phoumanivong & Ayuwat, 2013; Fullbrook, 2014; Lao Farmer Network, 2016) as a warning of the risks and volatility associated with agricultural production. The study team heard that sugarcane farmers were in debt up to 171 million LAK (over $20,000 USD) for several reasons: unclear and high costs charged by the company for clearing land, inaccurate measurement of land cleared versus land planted, unsuitable soils for growing sugarcane, and less than expected yields. Although the company is not actively seeking repayment of debt at this time, and are putting in a policy of '50-50 debt sharing' for existing debts, however the protracted dispute resolution process has been costly for the company and farmers, and had negative psychological and social effects for farmers (Kemp, 2012). In neighbouring Cambodia, in 2018 a class-action lawsuit was filed in a Thai civil court by Inclusive Development International on behalf of villagers who claim to have been forcibly displaced by a temporary concession granted to Mitr Pohl Sugar Company in 2009. Mitr Pohl states that it withdrew from the Cambodian project in 2014; the case is ongoing.

[12] The research team heard from several villages that local authorities were acting to prohibit 'outside' traders coming into Namtha district from other provinces or from China to buy latex, at the request of one of the rubber companies.



Rubber farmers wait for the Yunnan Natural Rubber Factory truck to collect dried blocks of latex.

Typology 3: Land leasing (1+4)

Small-scale land leasing between companies and smallholders is more commonly categorised as a 1+4 contract farming arrangement in Laos. This typology remains under-studied, as the national focus on land concessions has obscured more subtle, informal forms of land acquisition, especially in northern Laos where land leasing between Chinese agribusinesses and farmers is commonplace. This type of agricultural investment is more difficult to regulate and aggregate at national level - as one central government official stated, it is difficult to gain a clear picture of 1+4 arrangements since "not all investments come through formal channels".

Villagers who leased their land to Thongtai Trade and Yee Nong Banana companies were quite certain that after the five-year contract period expired, the land would be returned to them. However, in the case of rubber 'land sharing' or 'tree sharing' arrangements (this essentially becomes land leasing after the village cedes 30 percent of the rubber trees to the company as an alternative to sharing profits of the latex), some communities were clear that the land should be returned to them, while other communities were less certain. This issue may surface more strongly in the near future as rubber trees cease to be productive after around 25 years. Again, this highlights the importance of negotiating clear written contracts that are enforced by local authorities, and can be used as a reference point for resolving uncertainties and protecting communities' long-term land tenure.

Typology 4: Mixed arrangements

Finally, a combination of the above typologies results in mixed arrangements or outgrower schemes[13]. In these mixed arrangements, farmers in villages surrounding a 'nucleus estate' (also called a demonstration plot or demonstration garden) enter into agreements with the company. For example, Mitr Lao Sugar Company and Yunnan Natural Rubber Company both obtained a state concession area, constructed processing facilities, and entered into a variety of contract farming or land leasing agreements with surrounding villages. Similarly, Thaijieng Rubber Company obtained a small concession area for its rubber processing factory, and entered into 2+3 agreements with eight surrounding villages. Stora Enso Laos is also considering how to design an effective outgrower scheme for eucalyptus tree farmers.

While 'outgrower scheme' is a relatively new term in Laos, these have the potential to be more inclusive than land concessions, to share risks inherent in agricultural production and avoid a permanent transfer of land and resource rights. As supported by the VGGT, governments should consider promoting "a range of production and investment models that do not result in the large-scale transfer of tenure rights to investors, and should encourage partnerships with local tenure right holders". Well-designed outgrower schemes can generate revenue, contribute to long-term certainty and greater control over production quality for investors, and – in line with national objectives – support the construction of processing facilities for adding value to raw agricultural products. At the same time, outgrower schemes can increase benefit and risk sharing, provide access to financial and technical assistance and a guaranteed market for farmers. Schemes should be designed to safeguard farmers' rights to their land, with clear tenure rights of land and ownership of the trees, crops or other agricultural products grown on their land.

4.1 Local level agreements and the concession obsession

Large-scale land concessions in Laos, especially by foreign investors, have tended to generate the most public attention. However, after land concessions were halted by moratoriums on large-scale tree plantations in 2007 and 2012, agricultural investors began to consider alternative models of investment, while the central government also began promoting contract farming in the agricultural sector to "ensure local level benefits" (Schoenweger & Ullman, 2009, 16). As a result, more local level investor-community agreements[14] began to form, including 2+3 contracting, 1+4 land leasing arrangements and a host of informal production agreements in between. In theory, this is a positive development, with potential to foster greater benefit sharing and participation of communities entering into agreements with investors. However, the tendency of stakeholders to focus on high-profile land concessions has overshadowed these subtler, lower-profile forms of agricultural investment. Friis and Nielsen's (2016) research on small-scale acquisitions for banana plantations in northern Laos, for example, is one of the few aiming to "challenge the preoccupation with large-scale and long-term land acquisition" and to highlight the importance of focusing policy attention on more subtle forms of land acquisitions, such as small-scale land leasing. At the same time, almost no analysis has been done so far of the negotiation *processes* or the *content* of such agreements in Laos. Advocates of responsible agricultural investment are left without a clear picture of the scale, scope and nature of local level agreements.

Support for smaller-scale, locally-agreed investment models has been echoed by experts such as De Schutter (2011), and is also contained in international guidance, such as USAID's Operational Guidelines (2015). The Operational Guidelines, for example, advise investors to seek alternative models to concessions such as "contract farming or smallholder outgrower schemes". The VGGT also urges governments to pay close attention to small-scale producers, and support partnerships between private sector and smallholders. CFS Principle 2 advocates for the creation of 'shared value', noting that contracts should "balance the interests of contracting parties, be based on mutual benefit… and special consideration [should be given] to the situation and needs of smallholders".

[13] Note that in other countries, outgrower schemes are sometimes used interchangeably with contract farming. In Laos, 'outgrower scheme' is not as commonly used, but refers to an investment with both a land concession and contract farming or land leasing arrangements, usually surrounding a processing facility or small agricultural demonstration or pilot area.

[14] Due to the vague legal status of local level "contracts" between investors and communities, in this report the term "agreements" is used.

This study found that while business models based on local level agreements do have the potential to be more inclusive, and avoid a transfer of land and resource rights, however **several obstacles and issues** were raised by stakeholders, including:

- difficulties in collection of revenue (i.e. - land taxes, fees) compared to concession fee collection;
- asymmetry of power and knowledge between companies and communities;
- vague terms and unclear legal status of agreements;
- local elites with vested interests are often involved in investment deals, resulting in biased negotiations;
- lack of transparency of contracts / local agreements;
- difficulties enforcing the agreements due to the absence of rule of law;
- lack of legal recourse if either party breaks the terms of the agreement;
- limited capacity (or willingness) of some local authorities to support fair negotiations between companies and communities;
- more difficult regulation of investments at provincial and central levels; and
- transformation of the landscape into monoculture under contracts.

As contract farming is burgeoning in Laos, analyses of different types of local level agreements across different crops, and positive and negative impacts, are needed. Contract farming and land leasing arrangements are outpacing the response from the government and development community. While some development agencies have focused on contract farming[15], however there remains a lack of collated information about investments under contract farming and direct land leasing. As Fullbrook (2014) notes, in the absence of public quantitative data "it is impossible to say whether on balance the majority of contracts leave farmers better or worse off".

[15] For example: the LEAP project under HELVETAS Swiss Intercooperation, CIRAD, IFAD, the FAO under the South-South Cooperation Framework, and the consortium-based LIFE Initiative's contract farming training.

Natural rubber from a rubber tree.

5. Success factors for agricultural investment in Laos throughout the project cycle

The following section follows the lifecycle of an agricultural investment project. Each stage presents different examples of agricultural investments from the various perspectives of stakeholders involved. At each stage, aspects of good practice and factors for success are highlighted, as well as areas for improvement.

One key point to note is that investors who have been in Laos for several years have learnt - in some cases, the hard way - that the early stages of an investment (i.e. - due diligence and pre-implementation) are *the most important*, requiring sufficient resources (financial, human and time) to reduce the risks of conflicts, project delays, reputational damage and associated financial losses.

I. Due Diligence

A key lesson echoed by several companies is that **being granted a state land concession does not necessarily guarantee that this is 'empty' or 'unused' land**. As such, investors should not rely on the assurances of government or other parties about land use or land rights, but should conduct due diligence to **identify actual land use practices of communities** as well as assessing legal claims of land ownership. Yet companies accepted a variety of land documents from farmers, including land tax receipts for at least three years, temporary land use certificates, agricultural land registration books, and land titles. In some cases, investors were indirectly handed the complex task of assessing land ownership and land usage; the outcomes for communities can therefore vary widely depending on the investor's assessment.

For government, a comprehensive and realistic assessment of the suitability of prospective investors is important: in Sayaboury province, Yee Nong Banana Company was screened by the Provincial Investment Promotion and Management Committee, approved as a pilot project, and continues to be closely monitored by district agencies. This proactive approach can help reduce the risks associated with companies lacking technical expertise and experience, or without adequate financial capital for long-term investment in Laos, and can help to identify companies with track records of failed investments or violations of human rights in other countries.

Land use planning and mapping can be a useful tool to help to identify suitable areas for investment. At village level, active participation from smallholders and the surrounding community (participatory mapping), will help to identify suitable land and ascertain how the proposed investment will interact with current land use and occupancy. This study found, however, that many villages had outdated land use plans, or did not have village land use plans. Physical framework planning (such as GIZ's Physical Framework Planning approach) can also help local governments to plan and manage land sustainably, and guide potential agricultural investments to suitable areas.

Two investors expressed a concern that the land on which their investments were located could be "taken back" or the type of land could be "changed" by the government, since the categories of land were not completely clear. This highlights how **land tenure security and clarity in the legal framework** is crucial for investor's confidence to invest long-term.

II. Pre-Implementation

Community engagement based on FPIC principles is essential for long-term viability of an investment. As the CEO of Stora Enso Laos explained, the main piece of advice he would give to investors seeking to invest in Laos is to "follow FPIC", as he has seen other companies' operations be stopped by farmers who were not consulted properly and had not given collective consent. Community consultation is a key area where **cross-sector collaboration between investors, government and civil society** can be valuable. The joint development of communications tools (audio, visual) can help to increase communities' understanding of the proposed investment.

The **language of communication is also vital**. In Laos, many 'frontier investments' (Barney, 2009) are made on land used by ethnic groups, who may not speak Lao language. Chinese investors in Luang Namtha and Sayaboury provinces also emphasized the importance of having company staff who can speak the local language – for Thongtai Trade Company, one of their main challenges was not having a Lao interpreter yet. A good practice example comes from Stora Enso Laos; the company has jointly developed community consultation tools in local languages – Ta-Oy and Mankong – after observing that the majority of ethnic women in their investment areas did not understand or speak Lao language.

Investors should explain clearly the risks and benefits, and potential long-term impacts of the investment. Companies and local authorities should not act as 'salesmen' to simply convince the communities to cooperate and give consent - rather efforts should be made to provide full and accurate information to allow communities to discuss and decide collectively. One village noted that they were "only told of good things" by a rubber company, such as the factory would employ people from their village. However, not mentioning the potential negative impacts (especially the smell, and the discharge of wastewater into the river) resulted in the village having some level of distrust towards the company; once this trust is lost, it is difficult to regain.

Villagers attend a meeting with the Stora Enso Laos Land Team during community consultations in Salavan province.

Investors also noted that they "cannot achieve anything without farmers". As a representative of Thaijieng Rubber Company emphasized, "we depend on them [farmers] for everything". Another company Director stated that early engagement with farmers was vital to success, because "if the farmers aren't with us, we can't get land". A common narrative told to the study team by Chinese investors was that a key motivation to invest in Laos was not only to make money, but also to generate "employment for local people" or "to help local people develop".

III. Contract Negotiations

As described in section 4 above, **investors are increasingly negotiating directly with communities**, with varying degrees of involvement from local government. This study strongly encourages the government and the development community to pay closer attention to this method of land acquisition. While local level contracts or agreements are not taken seriously by some actors as a binding instrument due to lack of enforcement, it appears that **contract negotiations will become an increasingly prominent feature of the investment process**. As such, more support will be required for communities and local government to facilitate fair, balanced and 'good faith' negotiation processes. In some countries, CSOs and paralegals play a central role in supporting such negotiations, but restrictions on associations in Laos limit CSOs' activities. Greater civic space for all civil society groups to operate freely is needed.

Transparency remains a key issue in terms of negotiation processes and content of local agreements. The study team encountered difficulties in obtaining hard copies of local contracts - either because agreements were only verbal, or written agreements were lost or destroyed, or companies kept a copy but did not provide one to the village. It is also possible that some interviewees were reluctant to share this information due to confidentiality concerns, or vested interests were involved, resulting in pressure from other parties not to share.

Findings from this study indicate that **written agreements will gain prominence in agricultural investment processes**, especially as they have the potential to be tools for enforcement of laws and regulations, and as a reference point for avoiding or resolving conflicts. As noted by Fullbrook (2014), written contracts also improve understanding and clarify expectations, and lead to greater transparency, certainty and confidence. Again, enforcement by local government is crucial for the efficacy of written agreements.

Knowledge is Power: the case of Ban Donpamai

In Sayaboury, the case of Donpamai Village illustrates how **shared knowledge can empower communities**. In this village, farmers contacted relatives in neighbouring provinces to research land leasing prices, then, equipped with this knowledge, successfully collectively negotiated with Yee Nong Banana Company to secure a 500,000 LAK increase in land leasing fees, and an advance payment for 38 families. After learning of this strategy, a neighbouring village also negotiated an increased land leasing fee.

In Laos, resettlement and relocation remains a larger issue for investments such as hydropower or infrastructure. **Where compensation is required for loss of productive lands, the preferred method of compensation is a combination of financial and in-kind, and should take into consideration the loss of future yields.** As in the case of a concession area granted to Yunnan Natural Rubber Company within one village, after the rubber plantation encroached on farmers' rice fields, the compensation value paid by the company was calculated to take into account future potential production of rice.

IV. Project Operations

Efforts towards **better monitoring of companies** have been made by government and development partners in Laos, notably through GIZ's Quality Investment Promotion (QIP) program and the Centre for Development and Environment (CDE) quality investment initiative. Local government agencies are mandated to provide support to companies to improve not only compliance with domestic laws but also to improve business practices, in line with national priorities and international standards for responsible agricultural investment.

Thongtai Trade Company started growing pomelo and mango in Sayaboury province in 2016. The company expects to harvest the fruits in 2018 for exporting to China.

Across all stakeholder groups, there remains **limited awareness or understanding of how to apply international guidance in the Lao context**, with some exceptions, particularly Forest Stewardship Council (FSC) certification and the IFC Performance Standards, which were more well-known by large agro-forestry companies than VGGT or CFS Principles. As a first step, most stakeholder groups require increase awareness and understanding of both domestic and international laws, guidance and standards, and then to apply these laws and standards in practice.

In general, **grievance redress mechanisms (GRM) need to be further developed in Lao**s. At present, many companies resolve complaints either directly with villagers, or informally via phone or through village meetings. However, the resolution process, proposed solutions and outcomes are not well documented, and processes are not consistently applied across cases. As investment continues to expand in Laos, and as more local level agreements are negotiated, increasing numbers of contractual conflicts are expected, so a well-designed GRM will become a priority.

Agricultural investments require significant start-up capital and often do not become profitable until several years into the project lifecycle – **several investors told the study team that they were not yet making a profit**. One investor advised other agribusinesses seeking to invest in Laos to make sure they had plenty of financial resources to cover 'unexpected costs' (especially when obtaining the necessary documents for investing) and added that he would be happy to share his experiences with other investors coming to Laos, to "make sure they won't be shocked".

6. Implications for stakeholders working towards RAI

1. Building knowledge and capacity

For communities and local authorities, a priority is **creating space and building capacity for fair negotiations with agricultural investors**. At central level, MPI is working with external development partners to develop a model State-Investor contract. However, local level agreements between communities and investors, with varying degrees of government oversight and external support, are becoming more and more prevalent.

Specific support could be mobilised for: (i) building **communities' knowledge** of land rights, creating political space for communities to enter into investment negotiations, build capacity to negotiate fair local agreements, and share experiences, (ii) building **local authorities' knowledge and capacity** for mediating and supporting fair negotiations between communities and investors, (iii) supporting negotiations that enable third parties (civil society, paralegals) to play a role throughout the process. Efforts are needed to increase civic space, to allow CSOs to operate freely, especially for grassroots activities.

Develop a **simple, localised template** for 'good practice' local agreements, with fair terms and clarity of content that can be adapted and replicated across a variety of contractual agreements between agricultural investors, communities and local authorities. **Enforcement of such agreements**, in line with efforts to become a country governed by the rule of law, needs to be a priority.

Multi-stakeholder platforms are an effective method of creating a mutual understanding of RAI, and for sharing knowledge and experiences. Support could be directed towards expanding and building on these platforms across Laos, and for promoting trans-boundary platforms across other Mekong region countries.

There are indications that investment policy and legal framework in Laos is moving towards greater emphasis on sustainability, quality investment and green growth, but institutional constraints and enforcement gaps remain. At the same time, stakeholders **need a common understanding of "sustainable" and "responsible" investment** based on internationally recognised principles and standards. Regional actors from China, Vietnam and Thailand need to be involved in this dialogue.

2. Developing clarity and tools for informed investment decision-making

The previous 'obsession with concessions' has meant that there is a lack of clarity around the nature and scale of local agreements, particularly contract farming. There is a **need for district, province and national level aggregated data on the sizes, locations**. More research on the impacts of contract farming arrangements is also needed; an inventory may not be practical due to the rapid pace of change, but more systematic documentation and analysis of contract farming arrangements is imperative.

Robust, evidence-based land use planning and management tools for district and provincial authorities are essential for guiding future agricultural investments. Identifying 'cold spots' (under-utilised areas that have the potential to be used more effectively) is one method used by the Area Physical Framework (APF) of GIZ to guide investments towards areas free of competing land claims. At village level, **participatory community mapping of land** is a useful tool for informed decision-making around land use and agricultural investment.

3. Improving the legal and regulatory frameworks

While investor-state contracts are kept at national level, and are not often publicly shared, at local levels record keeping of contracts remains fragmented – making it difficult to know the scale and content of local agreements and contracts. **Legal requirements for transparency and improved record keeping** of local level agreements should be implemented, combined with upwards reporting including actual copies of agreements.

There is opportunity to **strengthen legal and regulatory instruments governing contract law – and implementation and enforcement of such instruments**. Although agreements are being made between farmers and investors, in practice there is little legal recourse available for when contracts or agreements are broken by either party. At present, enforcement depends almost entirely on the goodwill and mutual understanding among the parties, which is not adequate for large-scale commercial agricultural enterprises (Schoenweger & Ullenberg, 2009).

As Laos continues to transition from subsistence to commercial agriculture, there remains **potential for engaging and empowering youth in agriculture**, as promoted by Principle 4 of the CFS Principles. Working with the Lao Youth Union to develop specific programmes for encouraging and promoting the involvement of youth is a potential entry point. There is also a need for a greater focus by all stakeholders on **gender equality and advancing women's rights within the context of agricultural investment** (Principle 3).

4. Bringing policies and practices in line with international guidance and standards

There is plenty of global guidance available – yet a lack of awareness and understanding means it is not being fully utilized by most stakeholders in Laos. There is a need to **close the knowledge gap, and raise awareness on the usefulness of international guidance** as a 'gold standard' for working towards RAI. Initiatives could also support the development of **localised versions of the guidance** to be more easily applied by local authorities, organisations and agribusinesses operating in Laos.

As noted in section 3.1, a **gap analysis of the VGGT and the domestic legal framework** would provide clarity for all stakeholders on which aspects of the VGGT are currently covered by Lao laws, and where improvements are needed to bring laws in line with international good governance of land tenure.

There needs to be a **deeper understanding of what constitutes benefit sharing arrangements,** and it should be clear that compensation is not benefit sharing. Further, investors could be encouraged to take a longer-term view of benefit sharing and costs over time. The extractives sector has made progress in identifying benefit sharing schemes (for example, IFC's Art and Science of Benefit Sharing, February, 2015), which could be adapted and applied to the agro-forestry sector.

Overall, the future outlook suggests that the agriculture sector will not grow as rapidly as in previous years, consistent with the growth in industry and services as Laos transitions out of Least Developed Country status (FAO, 2016). However, the ongoing transition from subsistence to commercial agriculture coupled with population growth means that productive land will become scarcer. This necessitates a proactive, collaborative approach by all actors for effective land use planning, and to better regulate, implement, monitor and manage agricultural investments. At the same time, pressure from investor's home states (especially China, Vietnam, and Thailand) to mitigate social and environmental risks of overseas investment is increasing – this has untapped potential for influencing the business practices of regional investors in Laos. Overall, there are several positive signs 'on paper' that Laos is moving towards more responsible investment – this now needs to be matched by implementation and enforcement 'on the ground'.

Farm in rural Lao PDR.

Annex 1: Terms of Reference

Documentation of experiences in private investments in agricultural land in Laos, including fieldwork and reporting

BACKGROUND

The GIZ Global Programme on Responsible Land Policy (hereafter called "the Global Programme") aims at improving the conditions for sustainable development and food security in selected partner countries through strengthening secure and responsible land use and tenure rights. The UN Committee on World Food Security's 'Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security' (VGGT) and the 'Principles for Responsible Agricultural Investment' (RAI Principles), jointly developed by UNCTAD, FAO, IFAD and the World Bank, provide guidance to planning and execution of the programme.

The programme's target groups are small-scale farmers and pastoralists in selected partner countries (Laos, Uganda, Benin, Peru and Madagascar) who live in rural areas and are affected by weak or insecure rights to land. They include marginalised groups, such as indigenous communities, displaced persons, refugees and the youth. Special emphasis is placed on women in all these groups, since they play a vital role in achieving food security for households and communities but often face particular disadvantages regarding access to land.

The approach taken by the programme is to secure land and tenure rights of the local population by improving land policy frameworks and introducing more effective and efficient land administration procedures and mechanisms (Output A).

Both state and non-state actors are involved, and the programme encourages engagement of civil society organisations in formulating and implementing responsible land policies (Output B) and sensitise private sector enterprises regarding responsible agricultural investments (Output C). In this regard, the global programme aims at providing investors with advise on compliance and implementation of international guidelines (VGGT, RAI) and the establishment of multi-stakeholder dialogue platforms among non-governmental actors (e.g. village elders, provincial assembly, NGOs, women's association), private investors and government representatives, in particular for monitoring the implementation of international guidelines for agricultural investments.

Networking and exchange of opinions and experiences among the various actors will take place at national as well as regional and local levels in the context of multi-stakeholder platforms.

OBJECTIVES OF THE ASSIGNMENT

The Global Programme on Responsible Land Policy plans to generate and document knowledge and experiences in private agricultural investments in Laos. The proposed study shall draw on experiences of land investments carried out by domestic and international investors, with particular emphasis on the extent to which international guidelines (VGGT and RAI) and national legislation shape interactions between the various stakeholders and the impacts generated, particularly regarding the local population. The study shall draw the attention to different kinds of situations (positive, negative, partially positive/negative) and focus on the diverse investment stages from the initial investment decision, community involvement and land acquisition to on-going farming operations. Based on these experiences, the study shall identify success factors for making land investment projects more responsible in Laos and possibly in other countries covered by the Global Programme.

The consultant/s shall visit at least three land-based agro-investments in Laos, which will be selected in the early stage of implementation of this assignment, in agreement with staff members of the GIZ Project "Enhanced Land Tenure Security (ELTeS) and its counterpart at the Ministry of Planning and Investment (MPI). Data collection will be predominantly based on interviews with investors and local population as well as structured observation in the surrounding areas. Review of legislation and other published and/or unpublished materials shall also be carried out.

DELIVERABLES / DESCRIPTION OF ASSIGNMENT

- Proposal for work plan in agreement with all parties involved.
- Selection of investment projects in cooperation with staff members of GIZ project ELTeS and its counterpart at the Ministry of Planning and Investment.
- Preparation and execution of field visits.
- Organization of general support during field visit (e.g. transport, facilitation and translation of individual and group discussions and interviews with stakeholders)
- Production of a report on the experiences gathered, reflecting on good, bad and partially good/bad practices and success factors for making land investment projects more responsible. The report should also formulate recommendations for the case of Laos in the context of the ELTeS project and, if possible, for other countries covered by the global programme. The report should have an extension of approximately 30 pages and should be written in a rather journalistic form (i.e. not a scientific publication) in order to attract a wide spectrum of readers such as policy makers, practitioners, investors, civil society and the academia. The consultant/s will propose an appropriate structure for the report which shall be agreed upon by all parties involved (GIZ, studied investors, MPI). The same applies to the actual contents of the report and, particularly, the main statements and conclusions.
- Presentation of results at the workshop meeting of the Global Programme in Vientiane 13-17 November 2017.

TIMEFRAME

Duration: Mai 15th – November 30th, 2017 Number of Days: Up to 30 days

References

Barney, K. (2009). Laos and the making of a 'relational' resource frontier. The Geographical Journal, 175. 146-159. DOI: 10.1111/j.1475-4959.2009.00323.x

Baird, I.G. (2014). The global land grab meta-narrative, Asian money laundering and elite capture: reconsidering the Cambodian context. Geopolitics 19. 431-453. DOI: http://dx.doi.org/10.1080/14650045.2013.811645

Bartlett, A. (2016). The Toxic Landscape: LURAS discussion paper. HELVETAS Swiss Intercooperation, LURAS project. Vientiane.

Cotula, L. (2016). "'Land grabbing' and international investment law: toward a global reconfiguration of property?" in Bjorklund, A.K. (ed.) Yearbook on International Investment Law & Policy 2014-2015, Oxford University Press.

De Schutter, O. (2011). How not to think of land-grabbing: three critiques of large-scale investments in farmland, The Journal of Peasant Studies, 38:2. 249-279. DOI: 10.1080/03066150.2011.559008

Dwyer, M. (2007). Turning Land into Capital: A review of recent research on land concessions for investment in Lao PDR. CIDSE-Laos.

Dwyer, M. (2011). Territorial affairs: turning battlefields into marketplaces in postwar Laos. Doctoral dissertation. University of California, Berkeley.

FAO, IFAD, UNCTAD, and T. W. B. Group. (2010). Principles for responsible agricultural investment that respects rights, livelihoods and resources (extended version). Discussion note prepared by FAO, IFAD, UNCTAD and the World Bank Group to contribute to an ongoing global dialogue.

FAO (2016). Country Programming Framework for Lao PDR. 2016-2021. Final draft for government review. Vientiane.

Friis, C. and Nielsen, J.O. (2016). Small-scale land acquisitions, large-scale implications: Exploring the case of Chinese banana investments in Northern Laos. Land Use Policy 57. 117-129. DOI: *http://dx.doi.org/10.1016/j.landusepol.2016.05.028*

Fullbrook, D. (2014). Contract farming: what works and what might work better. Prepared for the contract farming workshop by the Government-Development Partners Sub-Sector Working Group on Farmers and Agribusiness (SWGAB), AFD, SDC, and the INGO Network in Laos. Vientiane.

GIZ, and BGR. (2014). Corporate Social Responsibility in Lao PDR: Baseline Assessment of Social and Environmental Regulations & Standards. Vientiane.

Global Witness. (2016). Public consultation announced on promising Chinese industry guidelines for rubber companies. September 13, 2016. Available from: *https://www.globalwitness.org/en/press-releases/public-consultation-announced-promising-chinese-industry-guidelines-rubber-companies/*

Hett, C., Nanhthavong, V., Saphangthong, T., Rodriguez, G., Phouangphet, K., Speller, W., ...Heinimann, A. (2015). Land Deals In Laos: first insights from a new nationwide initiative to assess the quality of investments in land. Presented at Land grabbing, conflict and agrarian-environmental transformations: perspectives from East and Southeast Asia conference, Chiang Mai University, Chiang Mai.

Hirsch, P., Scurrah, N. (2015). The Political Economy of Land Governance in the Mekong Region. Mekong Region Land Governance project, University of Sydney, SDC, BMZ and GIZ. Available from: *http://mrlg.org/wpcontent/uploads/2015/12/Political_Economy_of_Land_Governance_in_Region_FA.pdf*

Kemp, M (2012). A short and anecdotal study of indebtedness in selected farming villages. A summary report. Laos Extension for Agriculture Project, HELVETAS Swiss Intercooperation, and SDC. Vientiane.

Kenney-Lazar, M. (2016). Authoritarian Resource Politics and the Governance of Laos's Industrial Tree Plantations. Dissertation draft. Clark University, Worcester, Massachusetts.

Lamb, T. (2017). Current and Upcoming Natural Resource Policy and Legal Frameworks in Lao PDR Implications for Responsible Investment in Agriculture. [unpublished]. FAO Technical Assistance to the Government of Lao PDR in Land Law and Implementation of VGGT. Vientiane.

Lao Farmer Network, (2016). Farmer Indebtedness 1: sugarcane in Sayburi district, Savannakhet province. Youtube video, available from: *https://www.youtube.com/watch?v=rHdAT7u25_Y*.

Lu, J., and Schoenweger, O. (2017). Great expectations: Chinese investment in Laos and the myth of empty land. Territory, Politics, Governance. DOI: *http://dx.doi.org/10.1080/21622671.2017.1360195*.

National Agriculture and Forestry Research Institute, (2016). How sustainable is commercial banana production in Laos? A case study. Presented at the Policy Think Tank workshop, Vientiane.

OECD. (2016, March). Investment Policy Review of Lao PDR. [Preliminary draft for discussion, unpublished]. Vientiane. AANZFTA Economic Cooperation Support Program.

Phoumanivong, S. and Ayuwat, D. (2013). The impacts of contract farming on rural households in Lao PDR. Faculty of Nursing and Development Science Program, Faculty of Humanities and Social Sciences, Khon Kaen University, Thailand.

Portilla, G. (2015, April). Rural youth and land concessions in southern Laos. Presented at Land grabbing, conflict and agrarian-environmental transformations: perspectives from East and Southeast Asia conference, Chiang Mai University, Chiang Mai.

Rigg, J., Salamanca, A. and Thompson, E.C. (2015). The puzzle of East and Southeast Asia's persistent smallholder. Journal of Rural Studies, 43. 118-133. DOI: 10.1016/j.jrurstud.2015.11.003

Schoenberger, L., Hall, D. and Vandergeest, P. (2017). What happened when the land grab came to Southeast Asia?, The Journal of Peasant Studies, 44:4. 697-725. DOI: 10.1080/03066150.2017.1331433.

Schoenweger, O., Heinimann, A., Epprecht, M., Lu, J., and Thalongsengchanh, P. (2012). Concessions and Leases in the Lao PDR: Taking stock of land investments. SDC, CDE, GIZ, and MONRE. Vientiane.

Schoenweger, O. and Ullenberg, A. (2009). Foreign Direct Investment (FDI) in Land in Laos. GTZ. Eschborn, Germany.

Schoenweger, O. and Messerli, P. (2015). Land acquisition, investment and development in the Lao coffee sector: successes and failures. Critical Asian Studies, 47. 94-122. DOI: *http://dx.doi.org/10.1080/14672715.2015.997095*.

Times Reporters. (2017). Ministry to closely monitor agri-business. The Vientiane Times. 15 February 2017. Available from: https://www.laolandinfo.org/2017/02/07/ministry-to-closely-monitor-agri-business/

Vongvisouk, T. and Dwyer, M. (2016). After the Boom: responding to falling rubber prices in Northern Laos. HELVETAS Swiss Intercooperation, LURAS project. Vientia

Bananas at the local market in Pakse,
Champasak Province, Laos.

Deutsche Gesellschaft für
Internationale Zusammenarbeit (GIZ) GmbH

Registered offices
Bonn and Eschborn

Friedrich-Ebert-Allee 36 + 40
53113 Bonn, Germany
T +49 228 44 60-0
F +49 228 44 60-17 66

Dag-Hammarskjöld-Weg 1 - 5
65760 Eschborn, Germany
T +49 61 96 79-0
F +49 61 96 79-11 15

E info@giz.de
I www.giz.de

On behalf of

Federal Ministry
for Economic Cooperation
and Development