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### Land Deals In Laos: First Insights From A New Nationwide Initiative To Assess The Quality Of Investments In Land

Cornelia Hett et al.

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## **Land Deals In Laos: First Insights From A New Nationwide Initiative To Assess The Quality Of Investments In Land**

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## Abstract

In Laos land concessions have increased dramatically over the last decade. To provide a window into the concessions landscape, we conducted a nationwide inventory between 2007 and 2011. In response to an order by the Lao Government to its ministries, we developed a methodology to update the inventory and complement existing data with a systematic assessment of investment quality in 2014. We investigated aspects of compliance as well as impacts on livelihoods and the environment. In this paper we present insights into the landscape of land concessions in Laos from the first national inventory and an overview of the approach to update and enhance it. We then present results from the first two provinces assessed - Luang Prabang and Xiengkhouang – through the second baseline study. Nearly 90% of the total area granted to investors in these two provinces was granted to foreign investors. There are many domestic concessions, but these are generally small in size. Household income and employment were the most common positive impacts as perceived by affected villagers, while the lack of land for farming and rising social conflicts were the most common negative impacts. FPIC was widely conducted in the agricultural and mining sector; it is completely missing in the tree plantations sector so far.

**Key Words:** Land concessions; concession inventory; quality of investment; FPIC; Laos

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# 1 Introduction

The last few years have seen a surge of interest in foreign acquisitions of land for agriculture, forestry, and natural resource extraction in developing countries (Cuffaro & Hallam, 2011; Vixathep, 2011). “Land grabbing” has become a buzzword that, originating from media debates and civil society campaigns, is now a serious topic of scientific and public debate. The term predominantly refers to land investments in the global South, which are characterized amongst other things by large, extensive leases and concessions, a lack of transparency, incompleteness of contracts, a high likelihood of human rights violations, disputes over access to land, dispossession of smallholders with customary user rights, and the involvement of international investors (Cuffaro & Hallam, 2011; Cotula, 2014; Franco, 2014).

Large-scale investments in land are a direct response to global demand for agricultural commodities and natural resources. A systematic assessment of these investments found that most do not target idle or marginal land as sometimes assumed (Deininger & Byerlee, 2011) but contribute to fierce competition over land and forest resources (Messerli et al., 2014). A great body of local case studies on large-scale investments document a wide range of negative socio-economic impacts, including villagers’ loss of access to land and forests the ensuing loss of livelihoods and food security; insufficient job opportunities; inadequate wages and labour conditions; and forced non-compensated resettlements. Environmental impacts can be serious as well, including deforestation, contamination of water, air and soil, and disproportionate use of agrochemicals, to name only a few (De Schutter, 2009; Davis, D’Odorico, & Rulli, 2014; Matondi, Havnevik, & Beyene, 2011; Das & Grant, 2014; Haberl, 2014).

A recent report examined 39 mature agribusiness investments in Africa and Southeast Asia and assesses to what extent their activities can be characterized as responsible in terms of respect for local rights, consultation and transparency with stakeholders, support of livelihoods, environmental sustainability, and other criteria (Mirza, Speller, Dixie, & Goodman, 2014). It found that private sector investments – including those that involve land acquisitions –generated positive incomes if conducted in a socially and environmentally responsible manner. Direct job creation was the most frequently cited benefit arising from the investments. However, strong negative impacts also arose, in which disputes over access to land were prominent (Mirza, Speller, Dixie, & Goodman, 2014).

There are broad calls for more transparency and full disclosure in big land deals (Franco, 2014), as well as international efforts to govern them. The FAO created a set of Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests (VGs) (FAO, 2012) which were officially endorsed by the Committee on World Food Security in 2012. Since then their implementation has been encouraged by G20, Rio+ 20, and the United Nations General Assembly. In addition civil society groups have advocated for Free, Prior, and Informed Consent (FPIC)<sup>1</sup> of local communities, in keeping with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) (UN, 2008), in order to prevent the negative impacts of land concessions.

The global rush for land and natural resources has come with a large number of promises for many developing countries which are rich in natural resources but cash-poor. Lao PDR is a clear example. Commercial pressures on land in Laos increased fifty-fold in the past decade (Schönweger, Heinemann, Epprecht, Lu, & Thalongsechanh, 2012). Large-scale investments in tree crops, agricultural commodities, minerals, and hydro-power are largely driven by demand for natural resources in its rapidly developing neighbours China, Thailand and Vietnam.

In Laos, the GoL started its transition from a centrally-planned to a market-oriented economy in

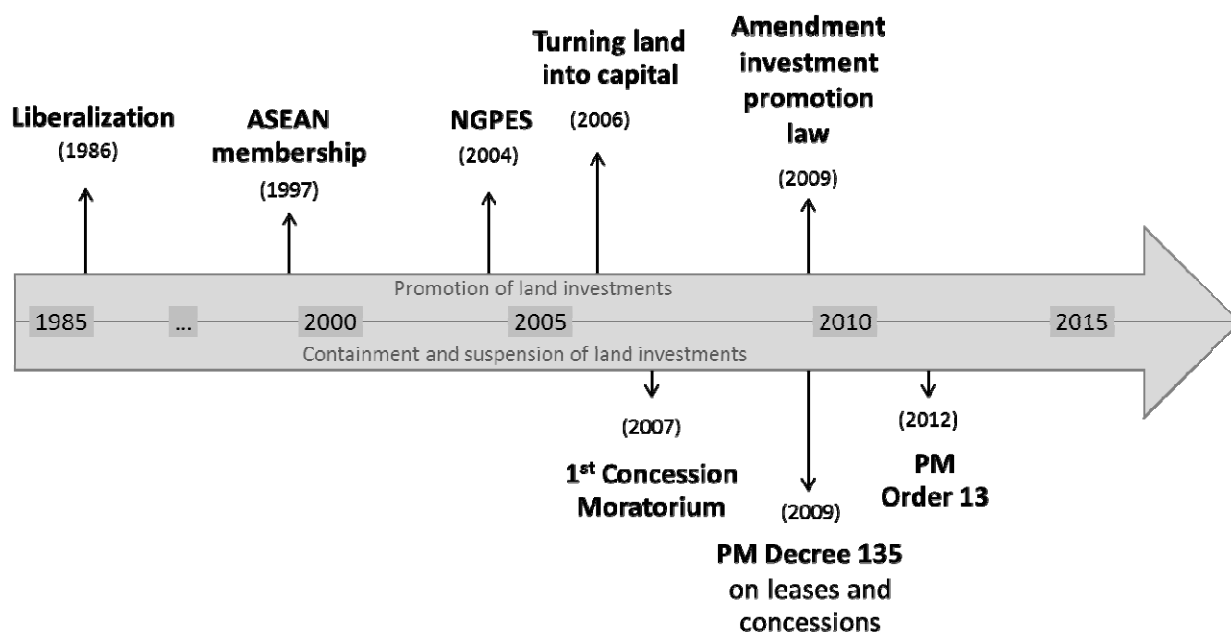
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<sup>1</sup> FPIC postulates that a community has the right to give or withhold its consent to proposed projects that may affect the lands they customarily own, occupy or otherwise use (UN, 2008)

1986. Trade development and liberalization then reached a new era in 1997, when Laos joined ASEAN and has since then participated in the SEAN Free Trade Area (AFTA) (Vixathep, 2011). In 2004 Laos adopted its National Growth and Poverty Eradication Strategy (NGPES), a framework under which the government intended to develop and implement initiatives to end poverty and at the same time sustain national growth. In order to achieve the country's goal of exiting the status of Least Developed Country by 2020, the Government of Laos (GoL) planned to gradually lessen the country's high dependency on official development assistance (ODA). The GoL sees private sector development as an important instrument for both growth and poverty eradication, and hence has strongly encouraged investors to get involved in Lao social and economic development. Against this backdrop, the government embarked in 2006 on its campaign of "turning land into capital" in order to attract more private investment (Dwyer, 2007). In 2009, the Investment Promotion Law was amended with the aim to facilitate foreign investment. Key elements of the amendment include permission for foreigners to own land and incentives for foreign investment in various forms, including reduced duties and taxes.

Even though land acquisitions for tree plantations, agricultural commodities and mineral extraction contribute to gross national revenue, such investments also have negative effects on rural livelihoods and the environment. Indeed, a significant number of investments made negative headlines in the media over the last several years (Reporters, 2014; Reporters, 2012). For instance, the operation of vast rubber plantations in Laos by the Vietnamese company HAGL, which received financial support from Germany's Deutsche Bank, violated the latter's own ethics and sustainability policies (Hesse, Schmitt, & Wagner, 2013). Complaints have been filed through the hotline of the Lao National Assembly (Sengdara, 2014) with the urgent demand to resolve such land conflicts.

As in other developing countries, the GoL has been criticised by citizens and development partners for its lack of capacity to effectively manage the country's land investments. The GoL reacted to this criticism through various legal instruments. In 2007 the GoL issued a moratorium on new concessions for mining and tree plantations as a reaction to the growing negative impacts of such investments on local livelihoods. Subsequently, the Prime Minister issued a decree on leases and concessions in 2009, directing different ministries to collaborate to collect and review data on existing lease and concession projects in Laos. In 2012 a second moratorium was issued, known as the Prime Minister's Order No. 13 (PM 13), to suspend approval of new concessions for mineral exploration and eucalyptus and rubber plantations through the end of 2015. PM 13 also called for an assessment of the quality of investments in the suspended products and sectors.



**Figure 1: Lao policies affecting land investments**

In order to achieve its goals of growth, poverty eradication and the sustainable use of resources, the GoL has to answer many challenging questions around the number and type of land concessions and lease projects to attract and promote. There is therefore an urgent need for more comprehensive information on investments in land which can serve as a basis for informed decision making.

Against this background, a comprehensive nationwide study of concession and lease projects was carried out between 2007 and 2010 by the GoL in collaboration with the Centre for Development and Environment (CDE) of the University of Bern, with significant contributions from the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) (Schönweger et al., 2012). This inventory on land investments provided the first systematic insights into the contexts (in relation to poverty, environment and infrastructure) in which land concessions and leases take place in Laos. We summarize the methodology used for the 2007-2010 inventory in section 2.1 and key results in section 3.1.

Despite the existing wealth of baseline information on concessions and leases in Laos from that study, further knowledge and key information is still urgently needed. The concession landscape in Laos is highly dynamic; a large number of new projects have been granted since the first inventory. The GoL hence launched a second baseline study to add missing information to the inventory data from 2007-2010, add new projects, update the database with detailed spatial information, and measure aspects of investment quality. The methodology of the second baseline assessment is presented in section 2.2, while first results from this on-going field data assessment are presented in 3.2.

The current debate in Laos on land acquisitions hinges critically on investment quality. The question is thus how to identify “good” investments, while setting up rules, guidelines and a monitoring system for all investments in order to improve their operations. In direct response to this need, we designed an approach to assess the quality of investment in land concessions and integrated it into a second baseline assessment of the national concession landscape. The approach is given in section 2.2. Analysis of investment quality in the first two provinces we inventoried - Luang Prabang and Xiengkhouang in Northern Laos – is presented in section 4. Finally, section 5 gives some conclusions from the experiences gained in the initial field investigations and their relevance to global ‘land grabbing’ debates.

## 2 Methodology of inventory assessments

### 2.1 *The first nation-wide assessment of land concessions and leases*

From 2007 – 2010 we collected data from line agencies at the national, provincial and district levels and, where possible, compared it with pre-existing data from the GoL. Documents of interest included all legal documents available (e.g. investment approvals, investment contracts, memorandums of understanding, etc.) as well as feasibility studies, available maps and progress reports on implementation (Schönweger et al. 2012). An overview of key documents which are required according to a formal application process in order to implement a concession project is given in **Table 1**.

The team visited investment project sites and compiled GIS data using handheld GPS equipment, and noted the implementation status and location of projects. Whenever possible, the team also contacted the investing companies in order to collect additional information or maps. The field teams recorded the location of the concession project as point data along with the size of the area granted for each concession in the investment contracts. However the field team was not able to verify what portion of the concessions were utilized, or whether the areas granted in concession contracts were in fact the areas ultimately developed.

**Table 1: Overview of key documents required for the implementation of a concession project**

Step in Concession granting process	Key document	Agriculture/ Tree Plantation	Mining
1. Application and review	Application form	✓	✓
2. Approval	Concession Licence	✓	✓
	Business license	✓	✓
	Agribusiness licence	✓	
	Exploration licence		✓
	Excavation licence		✓
	Tax licence	✓	✓
	Notification Agreement or MoU (=Concession Contract)	✓	✓
3. Land survey, impact assessment & concession agreement	Land survey report / Land prospecting and exploration certificate	✓	✓
	Feasibility study (technical and economic)	✓	✓
	Environmental Impact Assessment report	✓	✓
	Notification Agreement	✓	✓
	Concession Agreement	✓	✓

### 2.2 *The second baseline assessment of land concessions and leases*

#### 2.2.1 Measuring Allocation and Implementation

Concession areas granted on paper frequently do not accurately reflect conditions on the ground, which can lead to inaccurate assessments of their impacts on local livelihoods. Hence, the second baseline assessment added spatially explicit data on the “allocated area” and “developed area” in addition to the area formally granted in concession contracts (see Table 2). We defined the “granted area” as the area of a land concession negotiated between the investor and government officials, as stipulated in the concession contract. These contracts often do not specify the exact location of

concessions: once contracts are signed investors must go through an allocation process with local officials. The “allocated area” emerges in the official documents created in the land allocation process. To capture the “developed area” we used participatory mapping with district level authorities. We printed-out satellite imagery maps at 1:20,000 scale on A0 paper. We used the most recent high-resolution imagery where it existed and was freely available to the GoL (either Google Maps, BING maps, readily available ortho-photos owned by the GoL, Quickbird, Spot6), or alternatively Landsat 8 data from early 2014, and displayed the existing concession points as well as auxiliary information (roads, rivers, district boundaries etc.).

**Table 2: Overview of area information gathered in the concession granting process. Grey shading marks the area information that was assessed in the second concession inventory baseline study.**

Steps in concession granting process	Area type Agriculture/Tree Plantation	Area type Mining	Document	Means of data collection
Application	Proposed project location	Prospecting area	Concession proposal	(not assessed)
Approval of application	Granted area <ul style="list-style-type: none"> <li>Describes the area that is agreed upon by the investor and the Lao authorities in the negotiation process</li> <li>Specified in the contract documents (Concession Contract, or Agreement).</li> <li>No geometries, only figure(s) and sometimes indication of location (village or district name(s))</li> </ul>		Concession contract	Looked up in concession contract
Land survey	Survey area: <ul style="list-style-type: none"> <li>Area to be surveyed for suitability of the project</li> <li>Area is roughly delineated (sketch map)/or defined by natural and manmade features</li> </ul>		Survey Report	(not assessed)
Land allocation	Allocated area: <ul style="list-style-type: none"> <li>Specifies the area that was found suitable for the land use purpose of the concession after investigations of the responsible government agency. A variety of factors are considered: soil conditions, slope, current land use etc.</li> <li>This area lies within the previously defined survey area.</li> </ul>		State land title document	Looked up in state land title document
Project implementation	Developed area <ul style="list-style-type: none"> <li>Area used by the project</li> <li>Expands over time as project develops further</li> </ul>	Excavation area <ul style="list-style-type: none"> <li>Area used by the project</li> <li>Expands over time as project develops further</li> </ul>	(none)	Participatory mapping with district level authorities

In theory the granted area should be greater than or equal to the allocated area, and the allocated area in turn should be greater than or equal to the developed area. The developed area should be located within the allocated area, for which spatially explicit information is provided in maps in the project documents, if they exist.

We assessed the stage of operation for every concession project. This was already assessed in the first



inventory, but the categories were refined in the second baseline study.

**Table 3** gives an overview of the terms used to describe the stage of operation for a project for the 2010 and the 2014 assessments.

**Table 3: Overview of status categories used to describe the stage of operation for a concession project**

Status categories 2010		Status categories 2014	
Category name	Description	Category name	Description
Exploration	For mining projects only: Mineral exploration and prospecting activities are undertaken in a large area (the exploration area)	Exploration	Same as 2010
Not-yet-started	Project has been given the green light to start implementation but no activities on the ground so far	Not-yet-started	Same as 2010
Active	Project is being implemented	Start-up	Project is implemented but still in the period of setting up. No production or yield yet. E.g. planting of rubber trees
		Operational	Project is implemented and in its production phase. E.g. tapping in rubber project
		Abandoned	Project implementation is in principle ongoing, but for some reason production has (temporarily) stopped. E.g. no tapping in a mature rubber plantation due to low rubber prices
Never started	has been given the green light to start implementation but implementation has never started	Never started	Same as 2010
Stopped	Project has stopped operations	Ceased operations	Activity has stopped but the project is still within its contract period
		Operations concluded	Contract is completed and operations have concluded

**Table 4** summarizes the procedure used in the field. It is particularly important to note that after completing data collection at the district level, we met with district authorities. An official document summarizing all projects and key variables was signed by the heads of relevant offices in each district.

**Table 4: Process of land concession inventory update**

Preparations	Administrative Level
(1) Trained and/or briefed of national level update team of GoL	national
(2) Coordinated meeting with the line agencies of GoL, including the Provincial Governor, District Governors, and project field teams	province
(3) Province and district-specific preparation at the national level: Collected official documents from different GoL agencies, updated of existing database at national level with missing information found in collected documents; created concession project lists for districts, and collected maps for each district.	national
<b>Inventory update in the field (province, district, project level)</b>	

(4) Organized field visit with provincial and district offices	province
(5) Cross checked information in database and collected data with existing databases of line agencies in the province; mapped concession areas (developed areas), entered collected data into the concession inventory database (online)	province
(6) Cross checked new database with existing provincial line agencies databases, mapped concession areas (developed areas), entered new data into the concession inventory database (online)	district
(7) Met with district authorities after data was collected; official document with summary of key variables signed by the heads of relevant district offices	district

### 2.2.2 Assessment of investment quality

In order to assess the quality of investment in land concession projects we designed a set of questionnaires that complements the information in the original land concession database. The questionnaires cover aspects of compliance, as well as economic, social and environmental impacts.

We interviewed three categories of stakeholders:

- **Government authorities:** We designed questionnaires for representatives of the following line agencies:
  - Provincial level: Provincial Department of Agriculture and Forestry; Provincial Department of Natural Resources and Environment; Provincial Department of Planning and Investment; Provincial Department of Energy and Mines; Provincial Department of Finance; Provincial Department of Tax; Provincial Department of Labour and Social Welfare
  - District level: District Planning and Cooperation Office; District Agriculture and Forestry Office; District Natural Resource and Environment Office; District Energy and Mines Office; District Labour and Social Welfare Office and District Finance Office
- **Representatives of the company** at the local company office or project site
- **Affected villagers**

We conducted focus group interviews with affected villages including the village chief, village elderly, village land unit, village forester, village women's union representative and further village representatives from three categories of households affected by concessions: households who lost land to the project, households with at least one member who is employed by the company, and households who did not lose any land and do not work with the concession company. The number of villages interviewed for one concession project depends on the size of the area developed and the number of affected villages.

**Table 5** below shows the applied sampling scheme. We used a structured interview approach with mostly closed-ended questions and a few open-ended ones. We used mobile technology to collect the data and the data was uploaded to the database directly via 3G. We only assessed the quality of investment for projects granted greater than 10ha. All together the questionnaires add up to more than 700 questions.

**Table 5: Sampling scheme for village level interviews**

Number of villages affected by a	Sampling approach	Sample number
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<b>concession</b>		
1 – 3	Most impacted <sup>2</sup> village	1
4 – 6	Most impacted + least impacted villages	2
7 – 15	2 most impacted + least impacted villages	3
16 – 25	2 most impacted + 2 least impacted villages	4
> = 26	3 most impacted + 3 least impacted villages	6

Importantly, we asked all respondents questions about the positive and negative impacts of the concession project. We recorded which kinds of impacts, both positive and negative that respondents brought up in the field survey. We didn't however analyse or subjectively weigh the importance of these impacts one against the other. We coded and tallied the number of times certain impacts were mentioned (for example, increased employment or increased land conflict). We also measured community engagement in the concession process as an aspect of investment quality. Following the international FPIC standard, our questions covered access to information about the project, consultation, and consent.

## 2.3 Study sites

The second baseline assessment started in Luang Prabang and Xiengkhouang provinces. In the initial national inventory of 2010, a total of 78 concessions had been granted in Luang Prabang, covering an area of more than 35,000 ha across its 12 districts; 55 concessions were granted in Xiengkhouang's 7 districts, covering more than 47,000 ha in total.

The field work in those two provinces was carried out between June and July 2014. Two field teams of two persons each collected official concession project documents at the national, province and district levels, and led participatory mapping of the currently developed concession areas. In addition, two more teams with two persons each conducted interviews to assess investment quality. Our teams were accompanied by a provincial level government representative for all interviews, focus groups and mapping.

## Results

### 3.1 Evidence from the 2010 inventory

The 2010 investment inventory (Schönweger et al. 2012), revealed key insights on the previously opaque landscape of commercial investment in the Lao countryside. The study concluded that at least 1.1 million hectares of land in Lao PDR had been granted in 2,642 leases and concessions - more than the entire area devoted to rice production in the country at that time. Even though they account for only 30% of all land deals recorded in the inventory, foreign investors were granted 72% of the total area inventoried, with Vietnam, China and Thailand as the major players (Figure 2).

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<sup>2</sup> The level of impact was calculated based on the amount of land lost in a village and the village's population. If a large amount of land is lost, and there is a large population in a village the level of impact is assumed to be high.

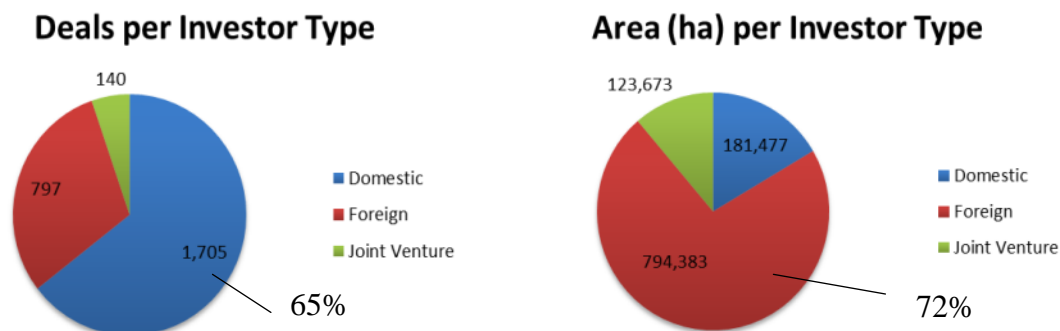


Figure 2: Total number and area of deals per investor type of the first nation-wide inventory conducted between 2007 and 2010

Figure 3 shows how investment overwhelmingly focused on production in the primary sector; primary-sector projects such as agriculture, tree plantations and mining accounted for 91% of the total area. Mining projects alone accounted for 50% of the total area.

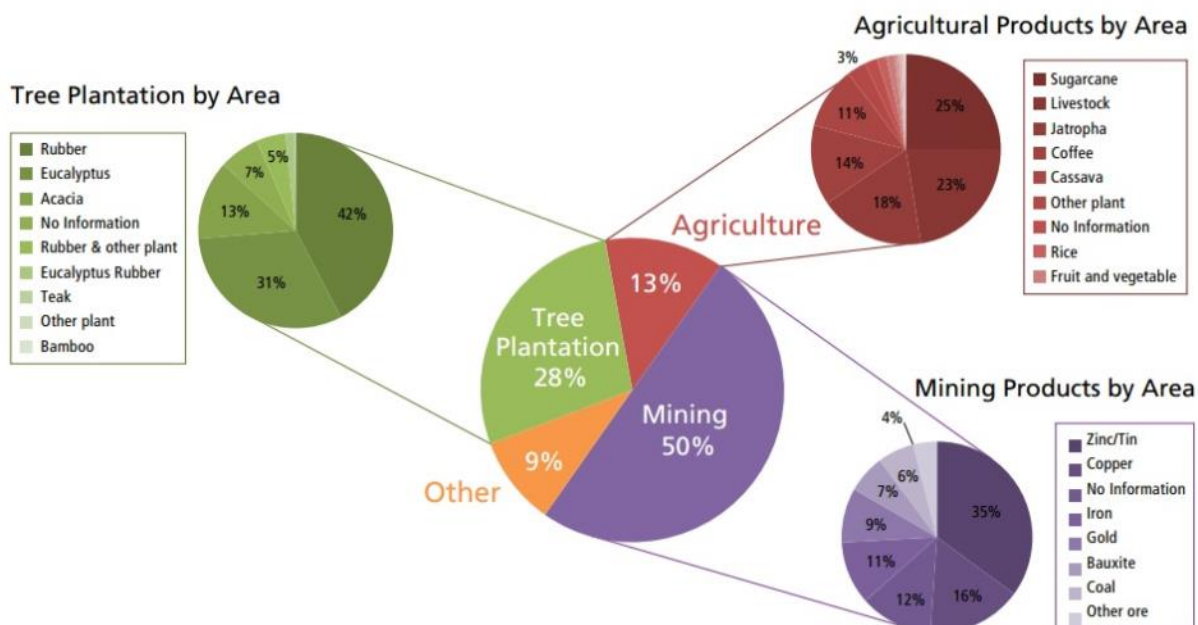
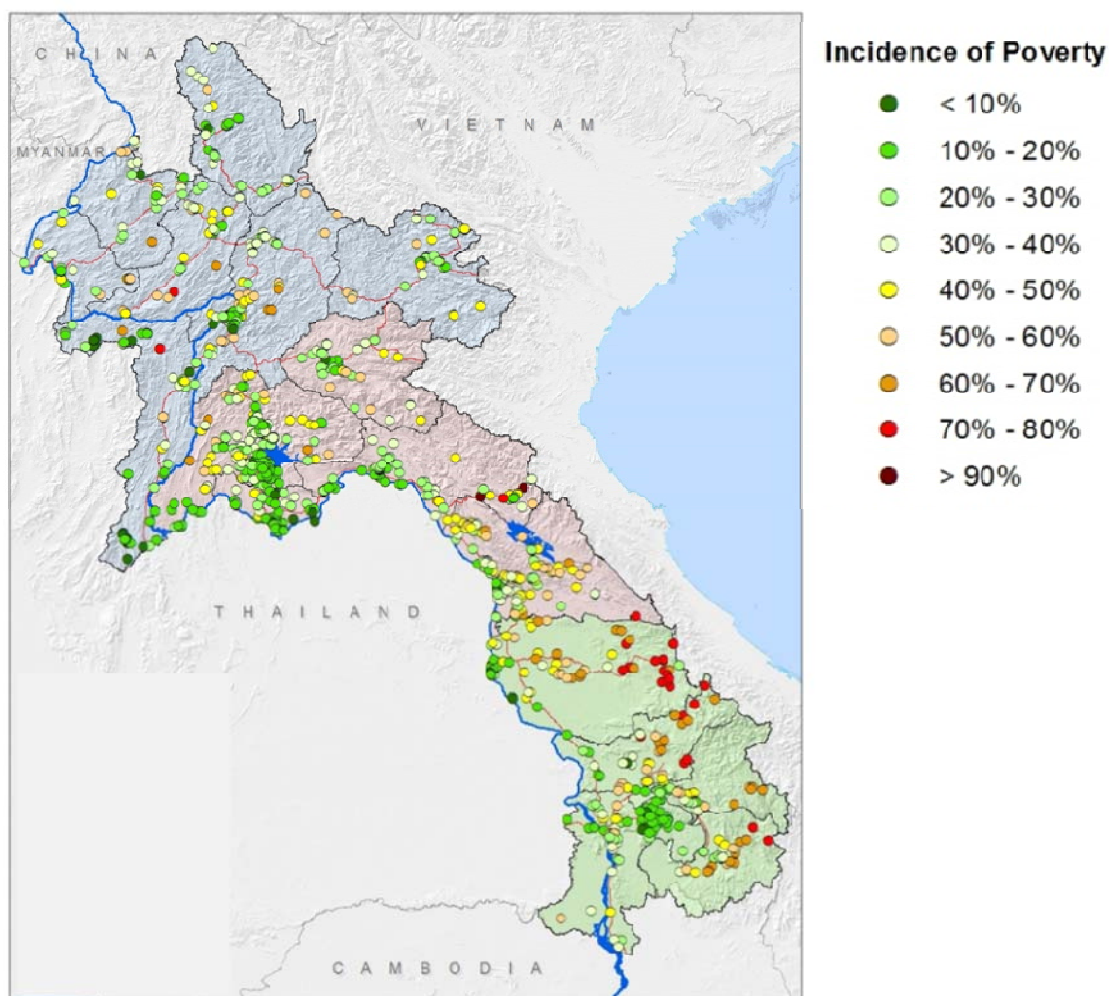


Figure 3: Concession and lease projects by sector and area in the first inventory (2010)

Concessions and leases were located in regions with average poverty incidence and in rather accessible areas (Messerli et al., 2008; Epprecht, Minot, Dewina, Messerli, & Heinimann, 2008) (Figure 4). This suggests investors' preferences for accessible concessions outweigh government efforts to direct investments to poorer and more remote areas.

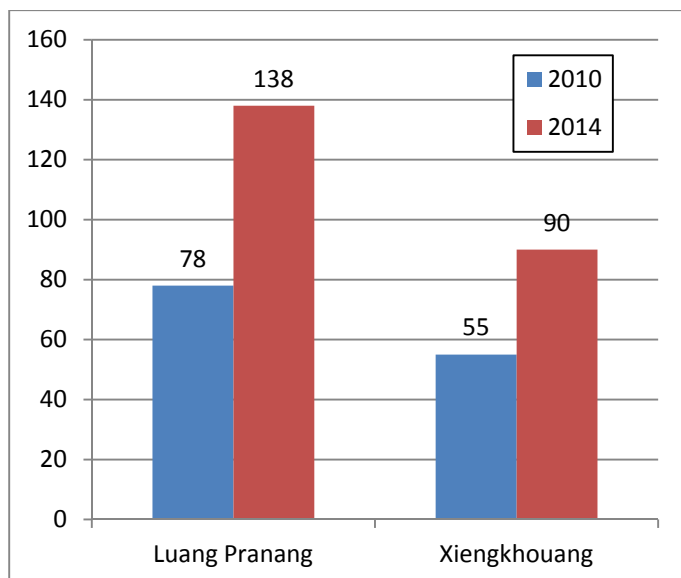


**Figure 4: Incidence of poverty in the Lao PDR**

### ***3.2 Insights from the second inventory - Luang Prabang and Xiengkhouang Provinces***

#### **3.2.1 A dynamic, growing concession landscape**

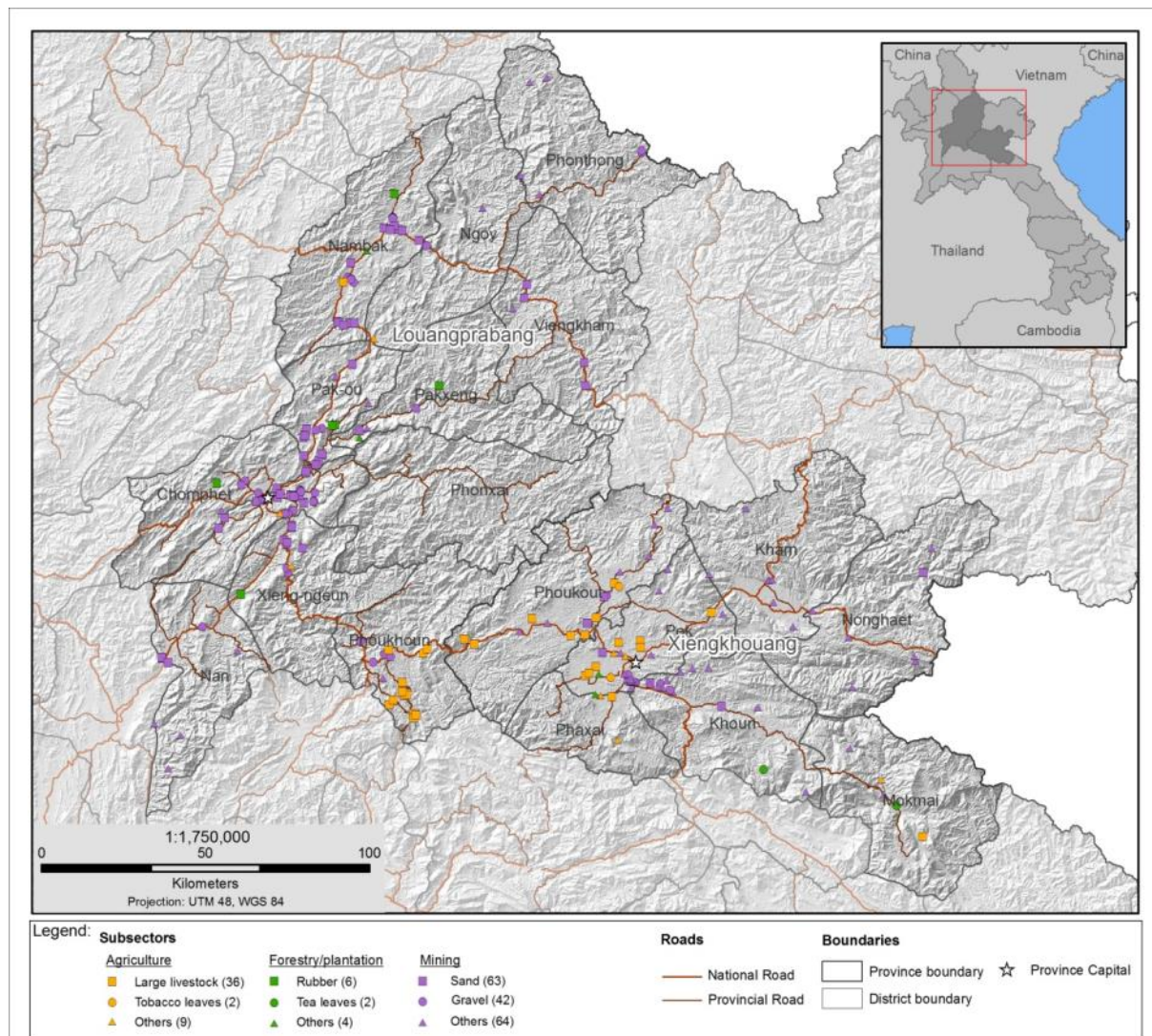
In the second concession inventory a total of 228 projects for agriculture, tree plantations and mining were recorded (138 in Luang Prabang and 90 in Xiengkhouang). The number of concessions thus nearly doubled since 2010, with an increase of 60 projects in Luang Prabang and 35 in Xiengkhouang (see Figure 5).



**Figure 5: Comparison of number of projects between 2010 and 2014**

An updated inventory map of the location and types of concessions in Luang Prabang and Xiengkhouang shows again, that most are relatively accessible (see Figure 6). They are predominantly located along national and provincial roads.





**Figure 6: Overview of concessions for agriculture, tree plantations and mining, assessed in the second baseline inventory in 2014. For each subsector the two most common products are listed separately; remaining products are marked “others”**

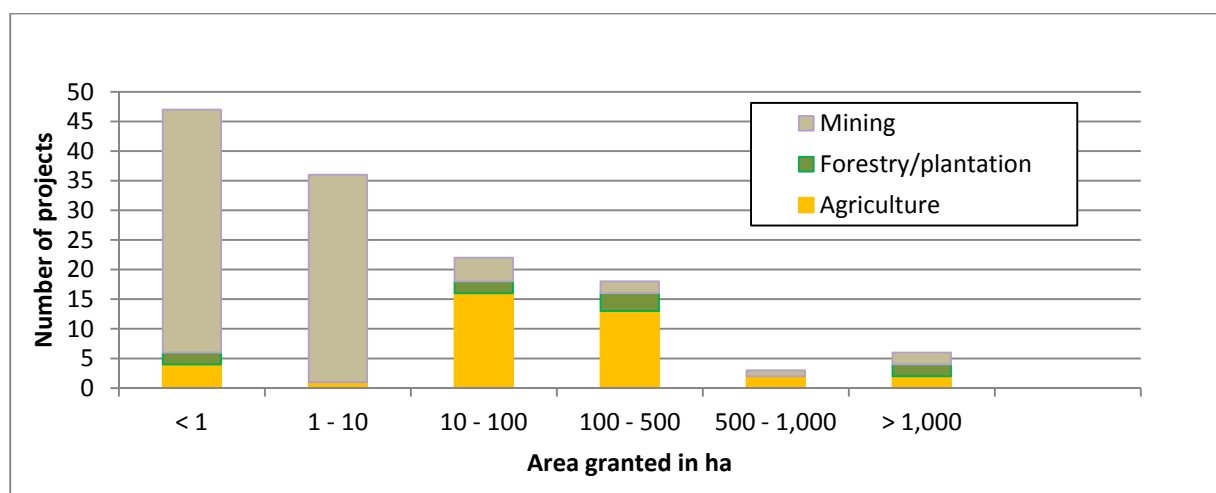
In 2014 nearly 60% of all projects were active, while 12% had either not yet started their operations or were, in the case of mining projects, in the exploration phase. The concession landscape is highly dynamic: we found a high level of turnover in project in both provinces between 2010 and 2014. We compared project status between 2010 and 2014 in the agriculture and tree plantation sectors. Out of a total of 59 agriculture and tree-plantation projects active in 2014, only 27 (46%) existed in 2010 (see Table 5). In 24 of these projects, their status did not change: 17 of them were active in 2010 and are still active in 2014; five projects were never started; and two projects had already stopped their operations in 2010. A total of 32 projects however, are new since 2010. Most of them (28 projects) were in their active phase in the 2014 assessment. Looking at the more detailed categories of the 2014 assessment (see Table 3) we can see that of these 28 active projects, 21 are in their start-up phase, six are in their operational phase, and one was already abandoned. Three projects have already stopped their operations again, even though they were granted after 2010.

**Table 5: Overview of changes in project status from 2010 to 2014 in Luang Prabang and Xiengkhouang provinces**

		2014			
		Not-yet-started	Active	Never started	Stopped
2010	Not-yet-started				
	Active		17		
	Never started		2	5	1
	Stopped				2
New approvals			28	1	3

In Luang Prabang a total of 25,362 ha were granted for projects that are either active concessions or concessions that have not yet started operations but expect to in the near future. This figure does not include projects in the exploratory phase, as exploration areas for mining are normally very large while the actual project implementation takes up only a fraction of this area. In Xiengkhouang the total area granted to concession projects currently active or in their start-up phase amounts to 38,994 ha.

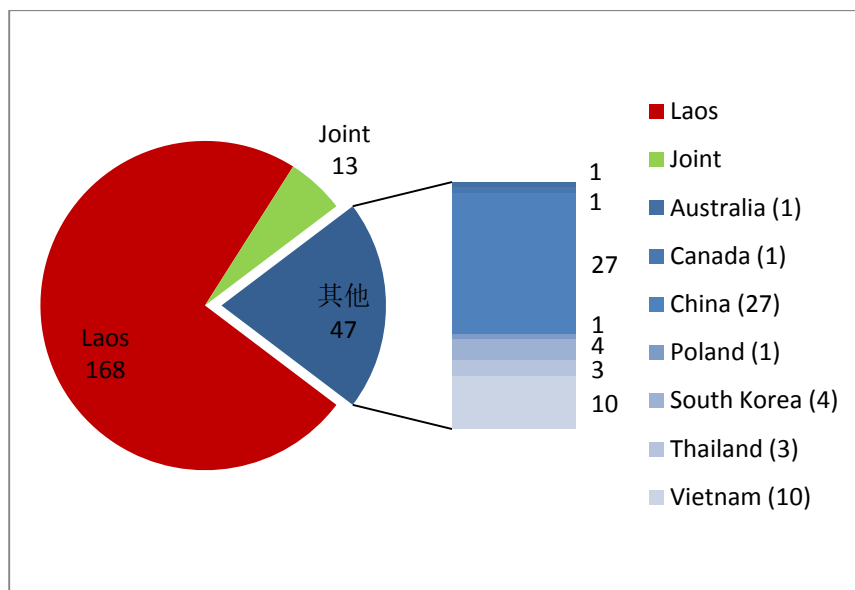
More than 60% of the projects were granted less than 10 ha - 36% are smaller than 1 ha, 27% are between 1 and 10 ha (see Figure 7). Most of the small (<10 hectare) concessions are sand and gravel mines. The majority of the agricultural projects were granted between 10 and 500 ha. Very few concessions were granted areas larger than 500 ha.



**Figure 7: Concession projects in Luang Prabang and Xiengkhouang provinces by size of area granted in the concession contract. (N = 132; only projects with the status “active” and “not-yet started” are included.)**

The vast majority of investors in concession and lease projects -168 cases, or 74 percent of all projects surveyed are Lao (see Figure 8). Joint -ventures make up 6% of all projects or 13 projects overall. The remaining 20% of the concessions, 47 projects, were foreign investments. Out of the foreign investors nearly 60% were from China, followed by Vietnam, South Korea and Thailand. Even though Lao investments are by far the largest in terms of numbers of deals (168), a look at the total area granted reveals a different picture: foreign investments make up nearly 90% of the total granted area, as shown in **Figure 9**.





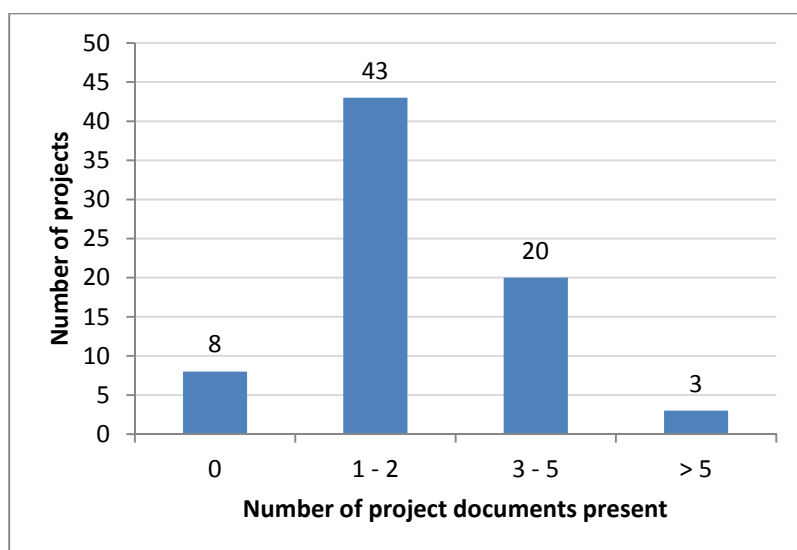
**Figure 8: Number of concession projects by investors' country of origin**



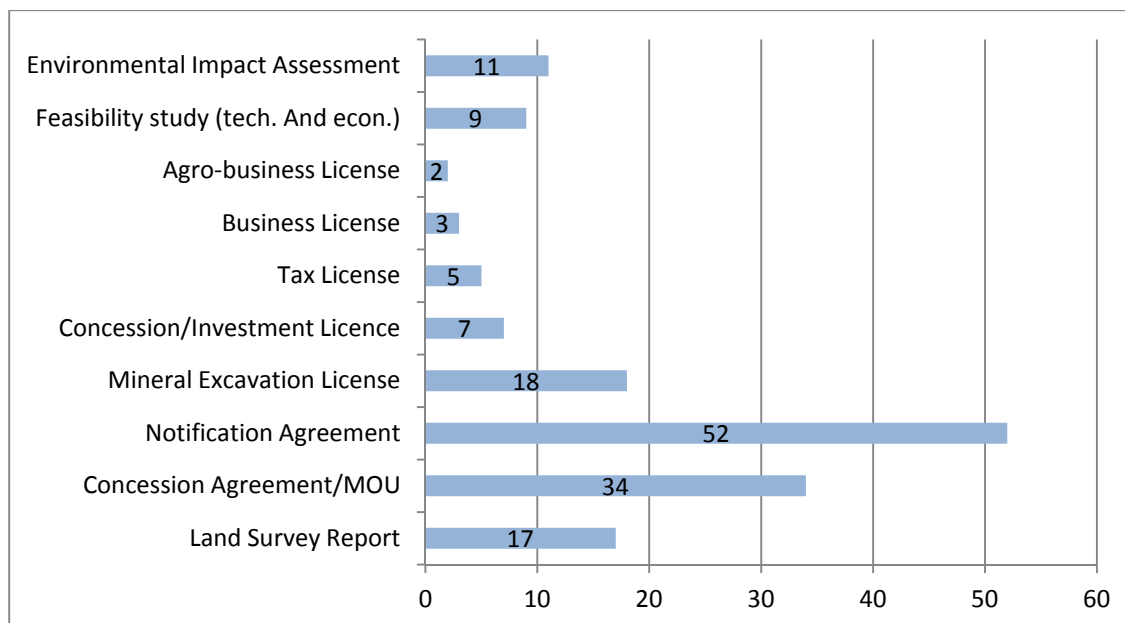
### ***3.3 Compliance and transparency as measured through completeness of concession documents***

During our field work we collected 12 key documents which, following the formal process of concession and lease project approval should be present in order to implement a project (see Table 1 in section 2.1). Here we take the level of completeness of this documentation as an indicator for the quality of project governance, assuming that through our field investigations, covering three administrative levels and all the responsible GoL agencies therein, we would have collected a particular document if it existed. We examined all projects which were either in their active or start-up phase in our two first provinces, for a total of 74 projects in the agriculture, tree plantation and mining sectors.

Figure 10 shows that out of the key documents required for project implementation only 4% of projects (a total of 3) had more than 5 documents, and 27% (20 projects) had between 3 and 5 documents. The vast majority of projects had only one or two documents; these were mainly the Notification Agreement and one additional document. A total of 8 projects (11%) did not have any legal documents but were operating all the same. The Notification Agreement and the Concession Contract were the most commonly available documents (see Figure 11). It is interesting to note that of projects in the implementation phase, only a total of 34 projects (46%) have a Concession Contract. It is striking to see the low number of Tax Licenses (5), Business Licenses (3) and Investment Licenses (7). Furthermore, formal land allocation only took place in 23% (17) of all projects that are currently being implemented. Land was formally allocated for 13 sand excavation projects, 3 out of 6 rubber plantations, and one orange plantation.



**Figure 10: Number of documents present per concession project**



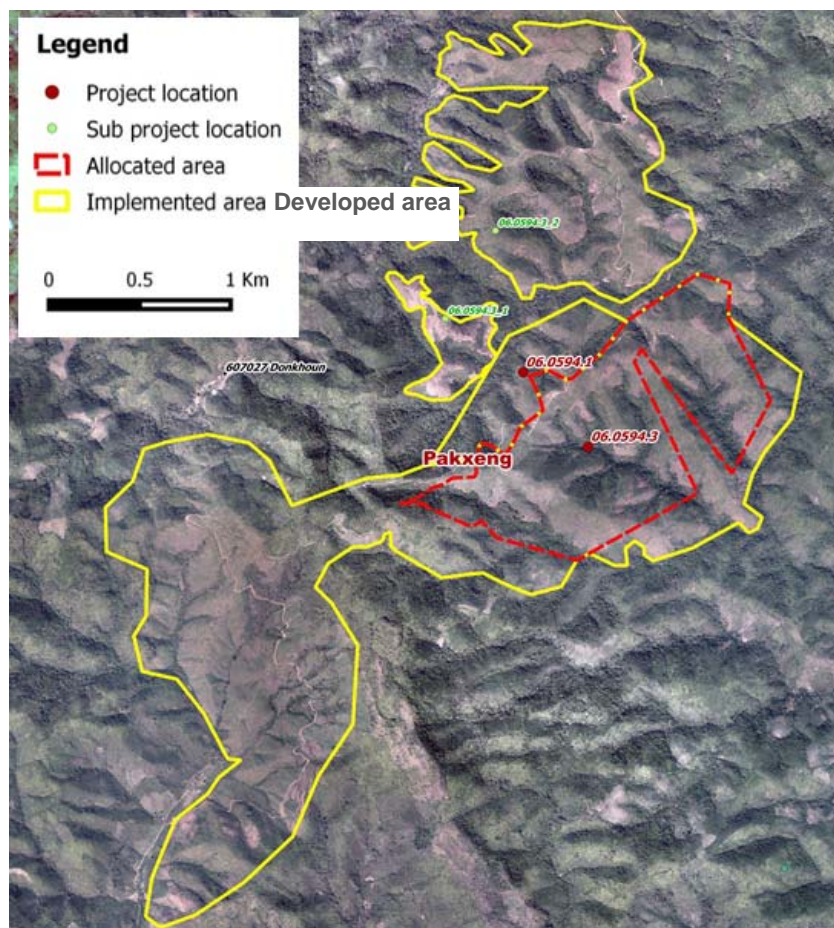
**Figure 11: Overview of the number of projects already operating or in start-up phase for which each key document was available.**

### ***3.4 Size and place matters: some case study insights on mismatches between granted, allocated and developed areas***

The initial national inventory focussed solely on the granted area of the concession projects - the area negotiated the Concession Contract or Agreement as the maximum area which can be developed by the concessioner. In the second baseline assessment we included the allocated area (where documents and/or geometries were available) and assessed the developed area.

In Luang Prabang Province, a total area of 25,362 ha was granted, but projects were only implemented on 12,429 ha, or 49% of the total granted area. In Xiengkhouang Province around 38,994 ha was granted, yet projects have only been implemented on 4,873 ha (12% of the granted area). There are many different reasons why the full granted area is not developed, even after many years of a project's operation. One rubber plantation in Luang Prabang for example, was granted a 4,000 ha concession. So far only 3,645 ha, or 26% of the total granted area, has been used. In this case the actual extension of land available to the company – in terms of suitable land for the product – was a relatively small section of the total granted area. In a 30,000 ha a cassava plantation granted in Xiengkhouang in 2008, only 1,048 ha (less than 5% of this area) has been used. According to provincial authorities land is available, but the investor failed to implement the project so far. The reasons for this failure remain to be investigated.

In our study we also observed the inverse case with regard to area implemented and area granted: in a few concessions for agriculture and tree plantations the developed area is much greater than the granted one. An example is given in **Figure 12** below. Here, too, the reasons for this mismatch need further investigation; possible explanations include that maps for the allocated area were created without ground surveying and evaluation of the suitability of the area, and/or that investors negotiated with the village communities to directly select the land.



**Figure 12: Example of mismatch between allocated and developed area**

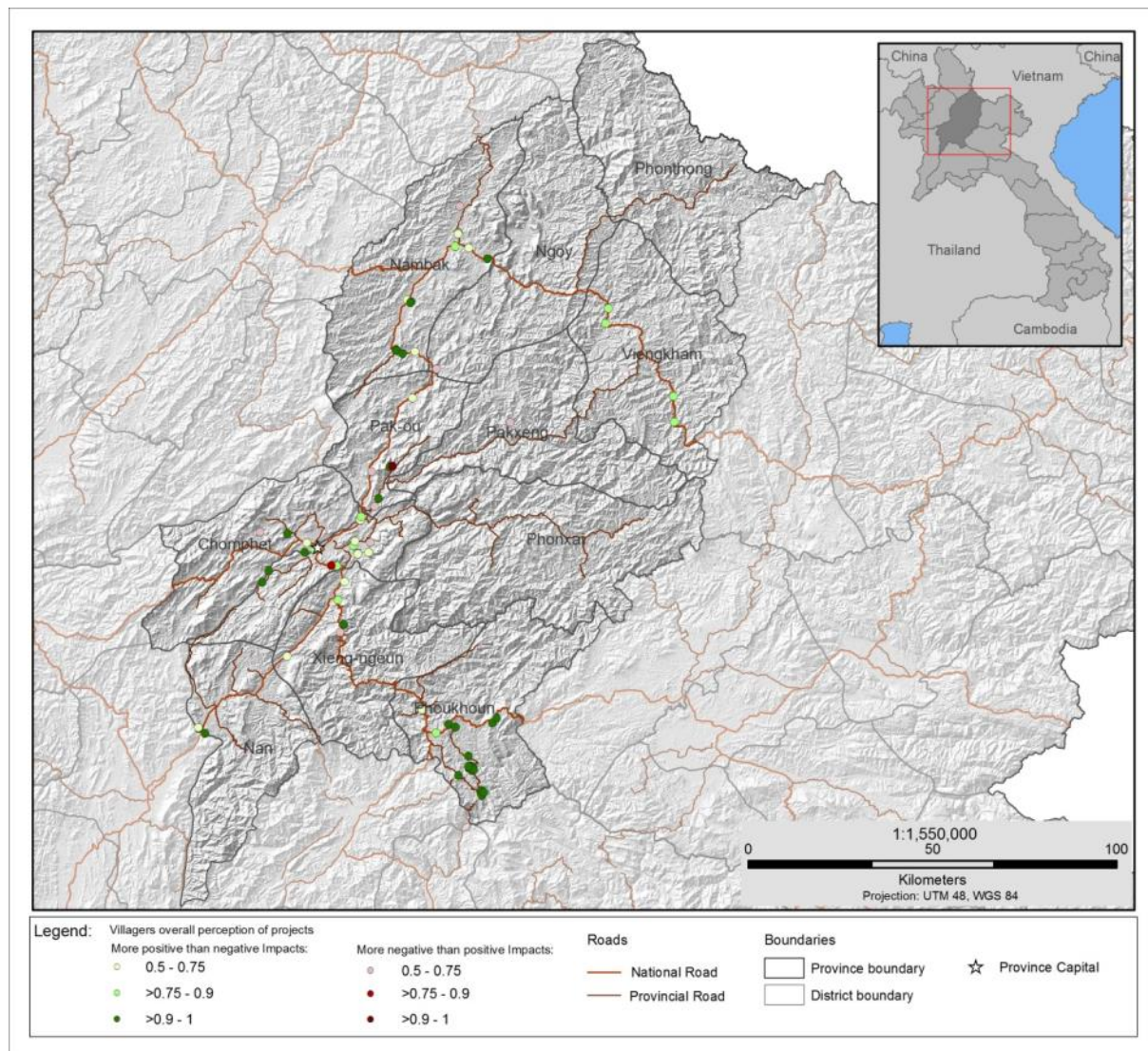
## **4 Results from the investment quality assessment**

We conducted the initial investment quality assessment in Luang Prabang province and limited the assessment to projects currently in their start-up or operational phases. A total of 74 projects were assessed: 3 agricultural projects, 5 tree plantations, 17 livestock projects and 49 mining projects.

### ***4.1 Villagers perception and level of consent***

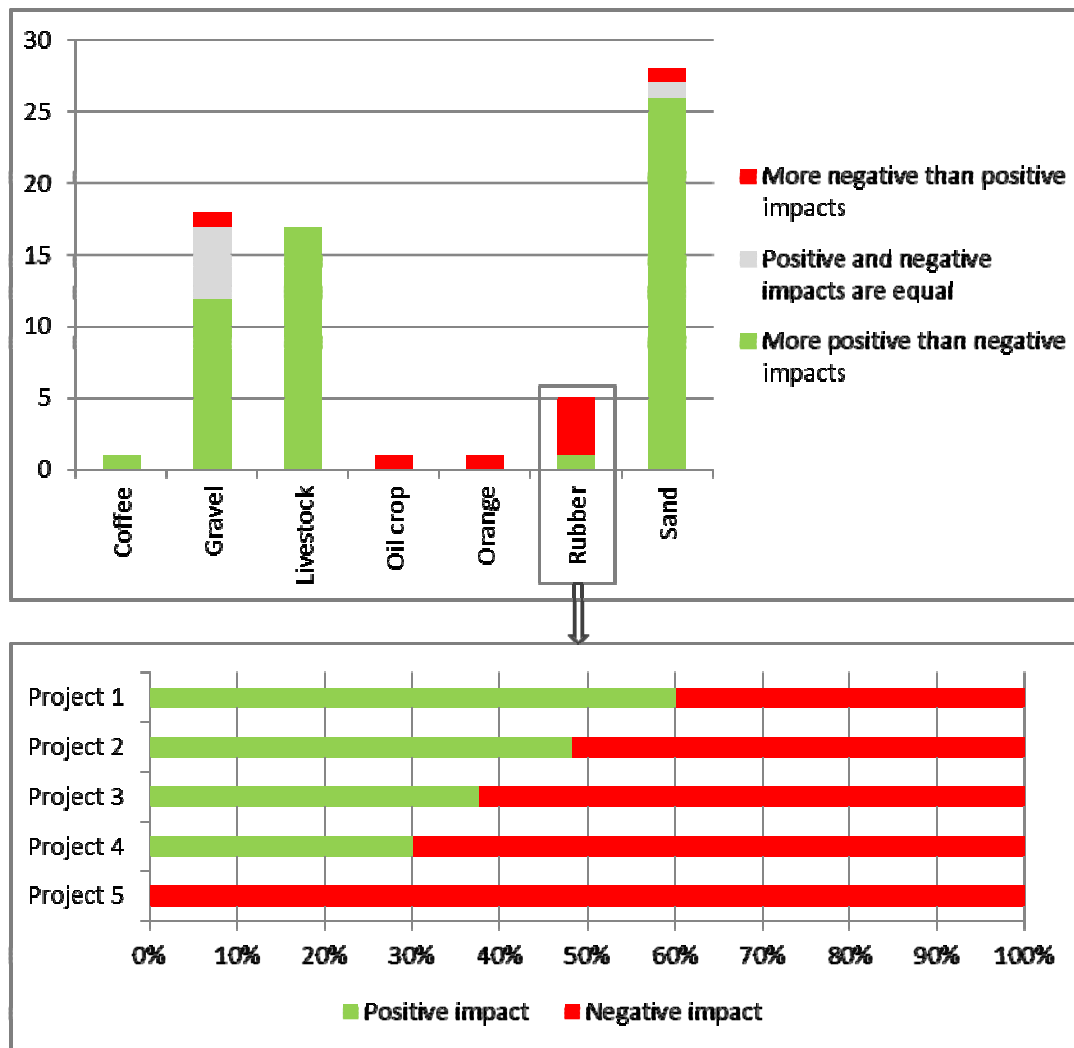
As mentioned in section 0 we asked villagers about their perception of positive and negative impacts from the projects. We sampled 83 villages in total: 20, 12 and 51 villages for the agriculture, tree-plantations and mining sectors respectively. Our results show that for a vast majority of projects (more than 80%), perceived positive impacts were mentioned more frequently than the negative ones. **Figure 13** provides an overview of how positively or negatively the projects were perceived by villagers and where these projects are located.





**Figure 13: Overview of projects classified by relative shares of positive and negative impacts mentioned per projects by affected villagers.**

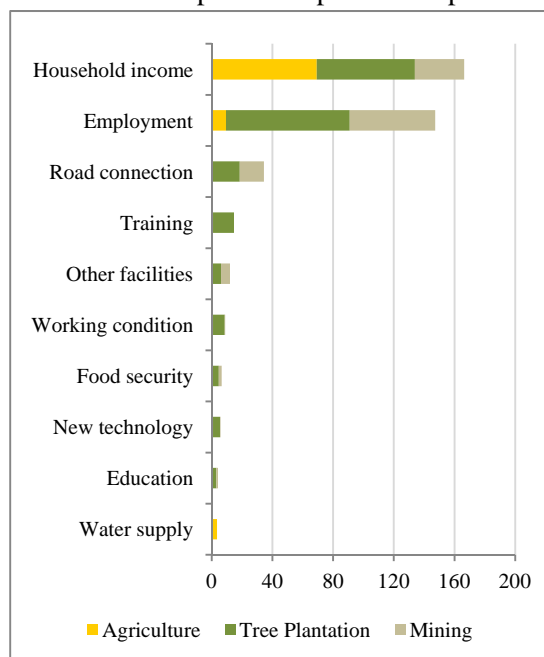
**Figure 14** provides an overview by products. All livestock projects were perceived as positive and a large share of the sand (90%) and gravel (60%) projects were too. Rubber is the only product in which the majority – four out of five - projects were perceived as predominantly negative. It remains to be further investigated whether the negative perception of tree plantation projects is an issue specific to this sector, whether it is related to the size of the concessions, or both. While mining and agriculture projects are generally small, all mining projects are smaller than 5 ha and 90% of agriculture projects are smaller than 500 ha, tree plantation projects are significantly larger; 40% of them are larger than 5,000 ha and 80% are larger than 100 ha.



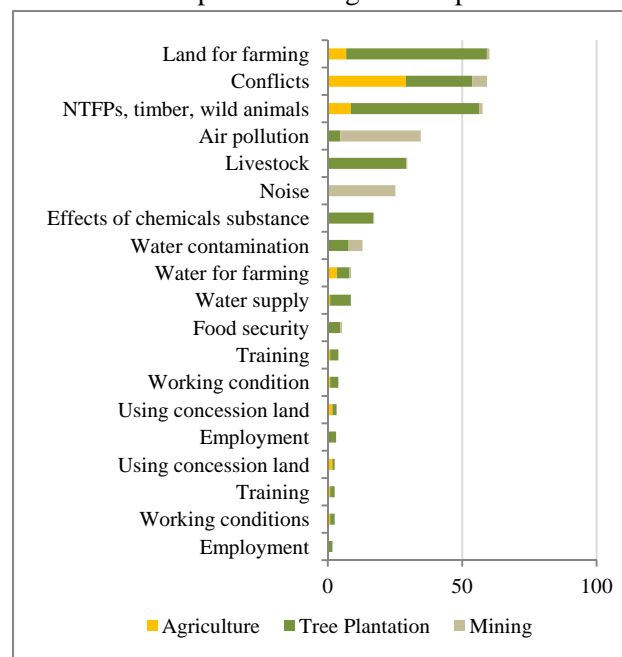
**Figure 14: Number of projects which are perceived either positively or negatively by the affected villagers by products (N = 74)**

Finally, we focussed on the types of impact which were mentioned as either positive or negative by villagers. Increased household income and employment were by far the most positively perceived impacts throughout the three sectors (**Figure 15**). Road connections and training were mentioned a few times for rubber plantations and small-scale mining projects. The most common negatively perceived impacts were the loss of land for farming, rising conflicts over land, and loss of access to non-timber forest products (NTFPs), timber and wild animals. While a rise in land conflicts was more important in the agricultural sector, the loss of land and access to NTFPs was reported primarily for tree plantations. Only mining projects created local concerns about air pollution and noise.

A: Mentions of particular positive impacts



B: Mentions of particular negative impacts



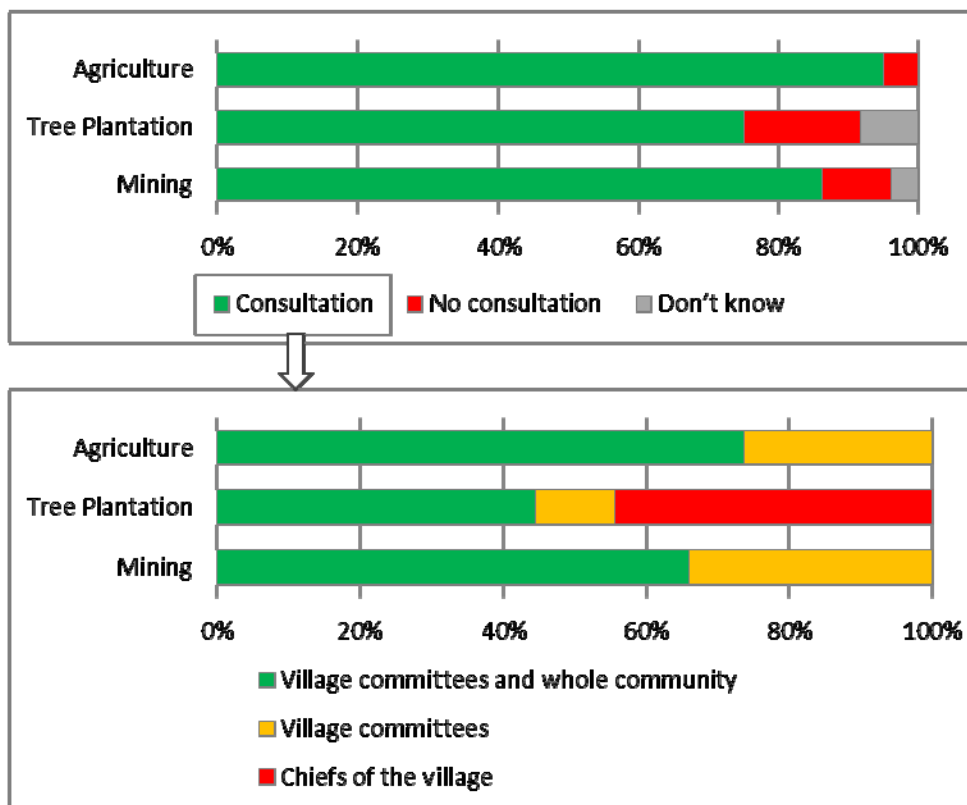
**Figure 15: Overview of types and significance of impacts perceived as positive (A) and negative (B)**

## 4.2 Villagers' perceptions and level of consent

Our analysis of the level of villagers' information about a project – received initially from the company – and the level of villagers' involvement in the land acquisition process rendered the following insights: in the majority of the affected villages that we interviewed in the mining and agriculture sectors, the concession contract was shared with villagers. This was not the case in the tree plantations sector, where in 9 out of 12 projects the contract was not shared, and in one village the respondents did not know if they had shared it or not.

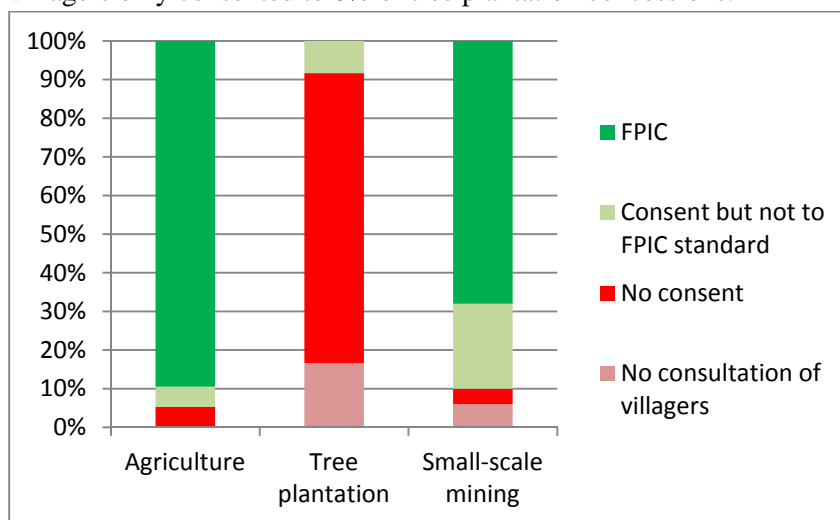
A great majority of villagers confirmed that their village was consulted before the decision about the concession project's approval was made. In the agricultural subsector 95% (or 19 out of 20) were consulted, in the mining and tree-plantation sectors it was 86% and 75% respectively (see **Figure 16**). In the agriculture sector the whole community was involved in 14 villages out of 19 (or 74% of all the villages affected by agricultural concessions). In the remaining 26% of cases investors consulted with the village committees only. The mining sector shows a similar pattern; here consultation with the whole village community was carried out in 66% of the cases while in the remaining cases, only the village committees were consulted. In the tree-plantation sector however, consultation with the whole community took place in only four villages (or 44% of all cases) while the village committee was consulted in one case. In the remaining four villages investors consulted with the village chiefs only.





**Figure 16: Overview of village consultation process. Top: Villages where consultation was carried out prior to the concession grant as a percentage of all villages interviewed. Bottom: Type of consultation for those villages where consultation was carried out.**

Finally, our assessment revealed that despite the fact that consultation was carried out in many cases, villagers did not consent to a large number of projects. In these cases projects went ahead in spite of local opposition. In the agriculture sector 85% of all villages gave their consent according to the standard of Free-Prior-Informed Consent (see **Figure 17**). In the mining sector 70% of villages gave their consent following FPIC; another 22% gave their consent, but not following the FPIC standard. In the tree plantation sector however, most villages – in fact 75% of them – did not consent to the implementation of the project, and another 16% were not asked for consent in the first place. Villagers only consented to 8% of tree plantation concessions.

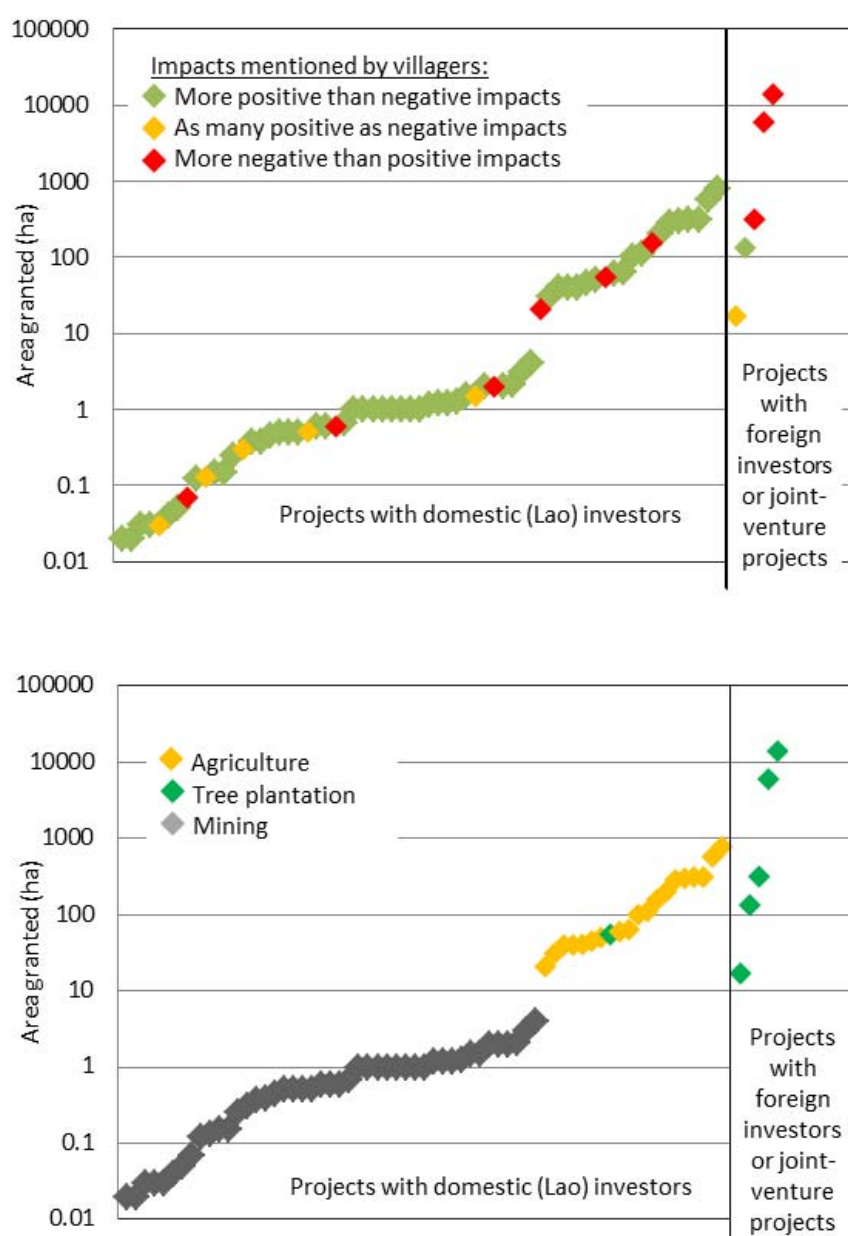


**Figure 17: Type of consent and consultation by sector, if any**

## 5 Conclusions and Outlook

Our results based on data from the first two provinces we surveyed show that the fear of selling-out Lao's land to foreigners is partly justified. Foreign investment makes up nearly 90% the area granted to investors in the two provinces. At the same time, there are many domestic land concessions, which are generally small in size. Our study revealed that there are more positive than negative impacts perceived by the affected local population, though the link between project's size and villagers' perception of the projects suggest that the positive impact of these projects does indeed relate to their size. The smaller the project, the more positively its impact was perceived (see **Figure 18**).

Household income and employment were the most commonly perceived positive impacts, while the lack of land for farming and rising social conflicts were the most common negative impacts. Villagers' perceptions varied heavily by sector. Only one out of five rubber plantations was perceived as positive; for all others the negative aspects were mentioned more often than the positive ones. While FPIC was widely conducted in the agricultural and mining sectors, it was completely missing in the tree plantation sector. Future efforts should hence go into (1) the promotion of FPIC standards in tree plantation projects (2) capacity building on how to properly conduct FPIC and (3) enforcement of the latter by the government authorities.



**Figure 18: Overview of projects of the quality of investment assessment by size of area granted. Above: the projects are categorized by the overall perceived investment quality by villagers. Below: the projects are categorized by sub-sector.**

Turnover in these concession projects is striking – many end after only a few years of operation. This dynamic is generally more pronounced in small-scale projects, particularly for sand and gravel mines. High turnover makes managing and monitoring concession projects a challenging task for the government. We found generally weak governance by the Lao authorities, expressed by the lack of key documents in existing concessions (e.g. concession contracts, survey documents, tax licenses etc.). The highly dynamic landscape of concessions makes it clear that timely information is needed to properly manage these projects across the different administrative levels and government sectors. A one-time extensive data collection through a census-like field campaign afforded key insights on land investments. However, this is clearly not sufficient, as it becomes outdated in a short period of time.

Future efforts should focus on putting in place processes for cross-sectorial collaboration among different government ministries to integrate information on new land investments and update information on existing concessions based on their individual stages of operation.

The Lao case has international implications as well. We found that small concession projects that followed FPIC standards were generally perceived positively by local communities. As in the recent UNCTAD-World Bank report, employment was the most often mentioned positive impact (Mirza, Speller, Dixie, & Goodman, 2014). It seems however, that large projects, especially for tree plantations, were unaccountable to community needs. These projects were relatively accessible to roads and towns, and land conflict figured centrally in villagers' perception of the project. This confirms other studies (Messerli et. al., 2014) that show large scale land concessions are rarely located in remote, uninhabited areas. The Voluntary Guidelines on the Responsible Governance of Land Tenure demands that FPIC be in place for projects to move forward. Our initial sample confirms this as well; where FPIC was conducted, investments had fewer negative impacts and caused less conflict. We also confirmed that the size and nature of land investment matters – while relatively small land concessions for livestock and mining had positive impacts on villagers, the large scale concessions largely did not. These projects are more in keeping with the global narrative on “land grabbing” where investors are unaccountable and local communities are negatively impacted. There is a clear need for more transparency on large scale land investments (Franco 2014). In our initial results, large scale plantations were the least transparent – many did not even have signed contracts on file in the relevant government offices. Efforts to provide this transparency will need to measure the actual areas of concessions that are finally allocated and developed, as these differ significantly from areas granted in formal contracts, and enforce FPIC standards.

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### About the Author

**Cornelia Hett** is a senior researcher with the Centre for Development and Environment (CDE) of the University of Bern. Her research focusses on landscape transformations in Laos under the influence of global change. She leads the on-going investigations on large-scale land investments in Laos by conducting a nation-wide inventory and analysis of concession and leases. Her second focus lies on the study of changes within traditional upland farming systems and sustainable management opportunities through agro-biodiversity and payments for eco-system services.