

Briefing Package: Assessment of Environment and Land-Related Policy, Legal & Regulatory Frameworks, Gaps & Needs of Agricultural Investment Stakeholders in Lao PDR (E-RAI Project)

February 2019



Introduction

In recent years, agricultural investment in commercial crops has rapidly increased in Lao PDR (Laos), bringing economic growth and socio-economic development for some rural communities – but negative social and environmental impacts have also occurred. The government of Laos, development partners and communities have raised concerns about environmental impacts from agricultural investments. These impacts include deforestation, eroded or degraded soil, contaminated drinking water sources, proximity to unsafe chemicals, and outdoor air pollution, among others. Laos' transition from subsistence to commercial agricultural production, combined with increasing areas of land under contract farming arrangements, has posed a challenge in terms of regulating investments and enforcing environmental standards.

Within this context, the Lao-German Land Program initiated the E-RAI project to examine the interrelated issues of environmental protection and agricultural investment – with a particular focus on land tenure security – across northern Laos.

The E-RAI project was implemented from July 2018 to February 2019 by a local civil society organization (CSO), Village Focus International (VFI), supported by the GIZ Land Program in Laos on behalf of the Federal Ministry of Economic Cooperation and Development (hereafter BMZ), in partnership with the Lao Ministry of Planning and Investment (MPI), the Faculty of Economics and Business Management (FEB) at the National University of Laos (NUoL), the Land Information Working Group (LIWG) Secretariat, and the LIFE initiative of LIWG.

This Briefing Packet outlines key findings and recommendations of the E-RAI project in four key topics:

1. Analysis of Legal and Regulatory Frameworks in Laos
2. Assessment of Environmental Impacts, Gaps and Needs of Agricultural Investment Stakeholders
3. Survey and Inventory of Rural Environmental Projects
4. Compilation of Training Materials and Curricula on Environmental and Investment Topics

Viengxay district, Houaphan
Photo credit: Justine Sylvester



Legal and Regulatory Framework Analysis

This brief summarizes key findings of the analysis of legal and regulatory frameworks of the E-RAI Project. The VFI team analyzed over 40 pieces of domestic legislation under four key sub-topics: investment, environment, land, and agriculture/forestry.

Domestic legislation across these sub-topics forms an extensive, interconnected network of policies, laws, strategic plans, implementation plans, decrees, orders and instructions. The team analyzed the gaps and strong points of the frameworks. Some of the **key findings and proposed actions** for closing remaining legal gaps are highlighted below:

- **Several important changes are underway in the legal framework.** Two crucial laws are currently under revision – the Forestry Law (2007) and Land Law (2013) – while the Agriculture Law (1998) is overdue for a revision. Implementing decrees, orders and instructions will be revised once these laws are passed. Public participation during this drafting process is required by the Law on Making Legislation (No.19/NA, 2012) and is necessary to ensure legislation reflects on-the-ground realities.
- **Inputs from sub-national level government agencies** (district and province) should be proactively sought and integrated into law-making processes, to ensure that any new legislation is applicable to local contexts, and that regulations can be consistently interpreted and readily enforced.
- **Efforts have been made by government agencies and development stakeholders to mitigate and address negative environmental impacts of agricultural investments.** Strong pieces of legislation have been introduced in the past few years, including the Decree on Pesticide Management (No. 258, 2017), the newly revised Investment Promotion Law (2016) and the Party Resolution on Land Management (2017). New legislation and public statements made by the government also promote a shift away from large-scale land acquisition (i.e. – concessions) towards potentially more inclusive investment models, such as smallholder land leasing (1+4) and contract farming (2+3).
- However, **a gap in the legal framework is that there is currently no law on contract farming.** There is a Law on Contracts (No.01/NA, 2008), but it does not specifically cover contracts for agricultural production between producers, traders and / or investors. A multi-stakeholder approach to draft this new law is recommended.
- The **legal enforcement mechanisms for contract farming agreements are also unclear**, meaning that penalties for environmentally irresponsible investments are ad hoc, and legal recourse for contracted parties is limited. A clear and specific Contract Farming Law could help to address this gap.
- **The framework for environmental and social impact assessments (ESIA) is strong, with a suite of related legislation; however, it only applies to large-scale concessions, not contract farming investments.** Environmental certificates (which are issued after a satisfactory ESIA report is approved by the relevant agencies, and then attached to the concession agreement) are not required for contract farming investments. This is a gap in the current legal framework.
- Historically, **the government has sometimes responded to negative environmental impacts by banning certain commercial crops** (i.e. rubber, eucalyptus, banana). While this action is well-intentioned, an unintended effect is that it creates an ever-changing and potentially confusing regulatory landscape, which may damage investors' and smallholders' confidence to invest long-term in commercial agriculture. Alternative regulatory measures for mitigating negative environmental impacts should be considered.

Assessment of Environmental Impacts, Gaps and Needs of Agricultural Investment Stakeholders

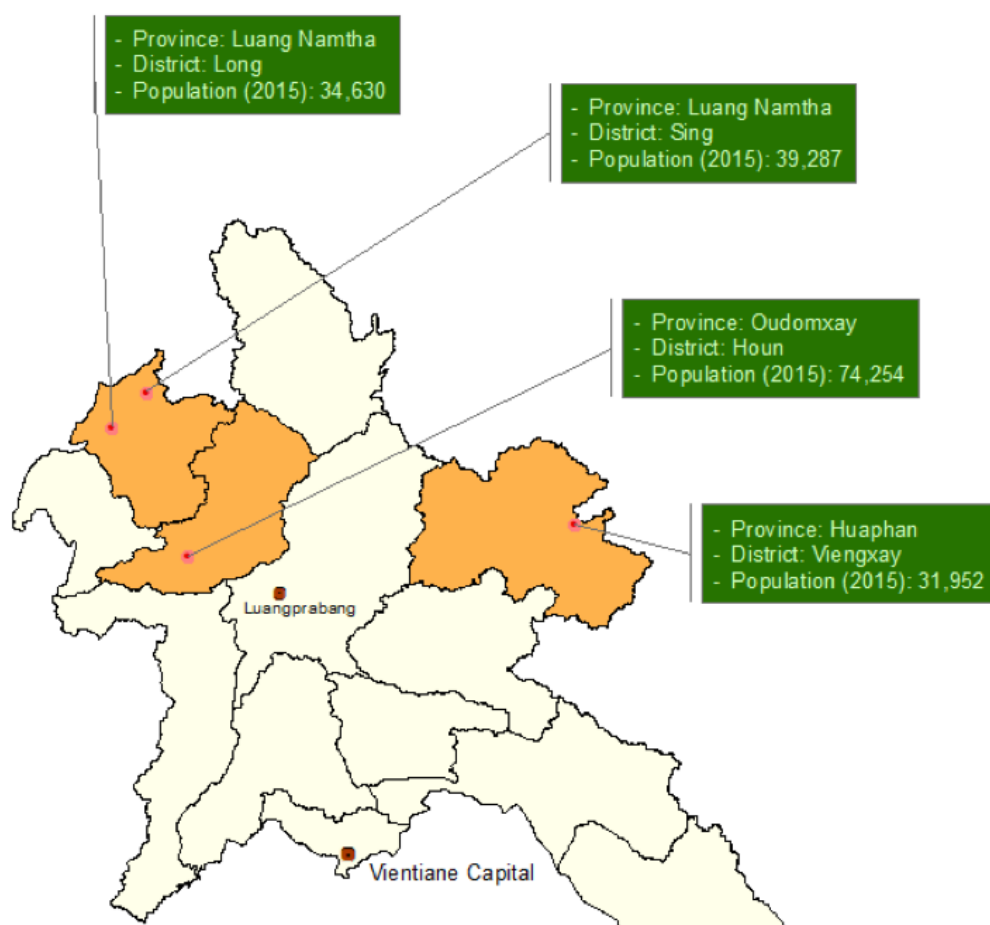
The objectives of this assessment are to:

- Describe the current situation of environmental impacts arising from agricultural investments in northern Laos;
- Identify key gaps and needs of stakeholders for improved planning, management and mitigation of these impacts;
- Assess the level of awareness and understanding of investors, local authorities and communities regarding domestic laws and regulations governing environment and agricultural investments; and
- Provide recommendations for all stakeholders working towards more environmentally sustainable agricultural investment policies and practices in Laos.

The field research for this assessment was conducted in Houaphan, Oudomxay and Luang Namtha provinces between 29 October and 17 November (see map below). VFI conducted research together with a small team from the Faculty of Economics and Business Management (FEB) at the National University of Laos (NUoL), with MPI line agencies, and with support from the GIZ Land Program in Laos.

This report examines commercial crops under both contract farming and concession business models. The team collected data from stakeholders at provincial and district government agencies, as well as representatives from nine agricultural investors¹ and sixteen communities. The agricultural investments included in the assessment are:

- One American-owned coffee company;
- One domestic agribusiness with investments in maize and coffee;
- One joint Lao-Vietnamese agribusiness with investments in bamboo and livestock;
- Three Chinese-owned and operated rubber companies;
- One joint State- and privately-owned Chinese banana company;
- One Chinese-owned agribusiness with investments in sugarcane; and
- One Chinese-owned agribusiness with investments in livestock and fodder.



1. Agricultural investors are also sometimes 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.

The following **key findings** arose from focus group discussions with communities, interviews with investors, and workshops with multiple provincial and district government agencies:

- **Domestic regulations for agricultural investments are sometimes restrictive, contributing to a challenging investment climate.** In an effort to address these barriers, the government of Laos has taken several steps. For example, the Prime Minister's Order (No. 02/PM, February, 2018) aims to streamline procedures and strengthen coordination mechanisms amongst departments in order to facilitate business, while the government also announced a goal to improve Laos' ranking in the Ease of Doing Business Index to a two-digit ranking by 2020.
- **The private sector should be consulted during development of legislation that may affect them.** Many investors were not aware that public comment is required by Lao law (Law on Making Legislation, No. 019/NA, 2012), suggesting that more outreach needs to be done by policy-makers when developing legislation, to ensure it does not unduly constrain the operations of agricultural investors.
- The **absence of a contract farming law in Laos**, combined with a lack of legal guidance on how to make fair contracts, causes inconsistency in commercial agricultural investments across villages, districts, agencies and even between individuals. It also contributes to difficulties in enforcement and legal recourse.
- **More local consultancy services for legal and practical advisory services are needed**, especially for new Small-Medium Enterprises (SMEs) to access. Investors reported they were largely unaware of Lao laws regarding the environment, but would like to better understand them. Government officials had limited capacity to provide these services to companies, though, both due to limited staff and language barriers.
- **Effective methods for providing information to communities about agricultural investments and environmental risks are unclear.** Although communities are required to be informed of environmental risks by the "project developer" during the ESIA process², there are currently no requirements for ESIA for contract farming models. As such, investors disclose information about potential environmental risks or hazards to communities in an ad hoc manner.

2. The Ministerial Instruction on the Process of Environmental and Social Impact Assessment of the Investment Project and Activities (No. 8030/MoNRE, 2013) specifies that "project affected persons" should be consulted during the ESIA process.



An abandoned banana plantation in Sing District, Luang Namtha
Photo credit: Christina Cilento

- **Local line agencies lack sufficient technical and scientific equipment for testing soil, water, and air quality.** Verifying environmental impacts without evidence-based proof is difficult, thus limiting government's ability to hold companies to legal standards and resolve environmental damages. Lack of concrete evidence of environmental damage also made some communities skeptical if environmental and health risks of investments were real.
- **Grievance redress mechanisms (GRM) - particularly for dealing with environmental impacts - need to be further developed.** Communities interviewed often did experience negative impacts from agricultural investments, but did not report these to government or investors. As agricultural investment continues to expand in Laos, and as more local level agreements for contract farming are negotiated, increasing conflicts may result, so a well-designed GRM needs to be a priority.
- **Negative environmental and health impacts of pesticides are a key concern.** The government has recently taken steps to reduce the harmful impacts of agro-chemicals, including promoting "clean and green agriculture" and organic agricultural production, as well as issuing the Decree on Pesticide Management (No.258/GoL, 2017); however, a policy-implementation gap remains. Despite communities often acknowledging risks of pesticide use, many had few strategies for minimizing risk, and, in some cases, desired further evidence of pesticides' harm.
- **Secure land tenure promotes sustainability for agricultural investments.** Clearer land tenure security for both smallholders and investors - whether 'formal' land tenure documents (i.e. certificates or titles) or clearer recognition of customary land rights³ - would help to ensure environmental sustainability in the long-term.

Recommended next steps:

1. Local-level stakeholders, including private sector, district and provincial government agencies, communities and grassroots organizations, should be consulted during legal and policy drafting processes related to agricultural investment and the environment.
2. A national legal framework to govern contract farming arrangements is needed to strengthen environmental safeguards for all types of agricultural investments. Capacity building for negotiating and enforcing fair contracts is also needed.
3. Case studies of stakeholders' approaches to addressing environmental impacts from agricultural investments should be collected, documented, shared, and used as learning tools for policy-making and implementation.
4. Local agencies require capacity building to strengthen legal knowledge, implementation and enforcement of environmental and agricultural investment regulations.
5. Institutionalized grievance redress mechanisms are needed to empower communities to report environmental impacts, and capacity building is needed for all stakeholder groups to follow-up and address negative impacts.
6. Procedures for post-investment environmental management require further clarity, and preventative planning is needed to ensure that environmental impacts can be mitigated before an agricultural investment ends.

3. Customary tenure is broadly defined as the local rules, institutions and practices governing land, forests and fisheries that have, over time and use, gained social legitimacy and become embedded in the fabric of a society (Palmer et al., 2009 cited in Ironside, 2017). Customary tenure exists amongst all ethnic groups throughout rural Laos, and guides the use and management of a range of land types.

Survey and Inventory of Selected Rural Environmental Projects

This inventory includes selected rural and agricultural projects with activities related to the environment, and particularly to agricultural investment. To undertake this inventory, the VFI team worked with the Secretariat of the Land Information Working Group (LIWG), which is a network of nearly 40 core civil society organizations working on land and environment issues in Laos.

The team reached out to 23 organizations that implement or support projects in the environment and agricultural investment sectors (six development partners, eight international non-governmental organizations, seven non-profit associations, one social enterprise, and one farmers' organization). Seventeen projects were included in the inventory, hosted or supported by the below fifteen organizations. These projects were selected to provide an overview of existing initiatives, but not intended to provide a completely comprehensive inventory.

Organization included in inventory	Brief project(s) summary
Agroforestry Consultants (AFC)	Restoring forest cover through bamboo planting
Comité de Coopération avec le Laos (CCL)	Monitoring and awareness raising on pesticide use
Food and Agriculture Organization, UN (FAO)	Creating incentives for deforestation-free agriculture
GIZ	Climate change education and deforestation prevention (two projects)
Green Community Alliance (GCA)	Creating NPA network for Mekong river conservation
Helvetas	Agricultural extension, including on safe pesticide use
International Finance Corporation (IFC)	Sustainably managed forests/sustainable agroforestry
International Union for Conservation of Nature (IUCN)	Climate change adaptation in wetlands
Lao Biodiversity Association (LBA)	Palan palm tree protection, through market connections
Mekong Region Land Governance (MRLG)	Working group on responsible agricultural investment
RECOFTC - The Center for People and Forests	Private sector partnerships for forestry conservation
Sustainable Agriculture and Environment Development Association (SAEDA)	Sustainable/organic agriculture for food security and nutrition (two projects)
SNV	Sustainable agriculture for nutrition in uplands
Village Focus International (VFI)	Capacity building and market connections for 'safe' agriculture
Wildlife Conservation Society (WCS)	Sustainable coffee growth in national protected area

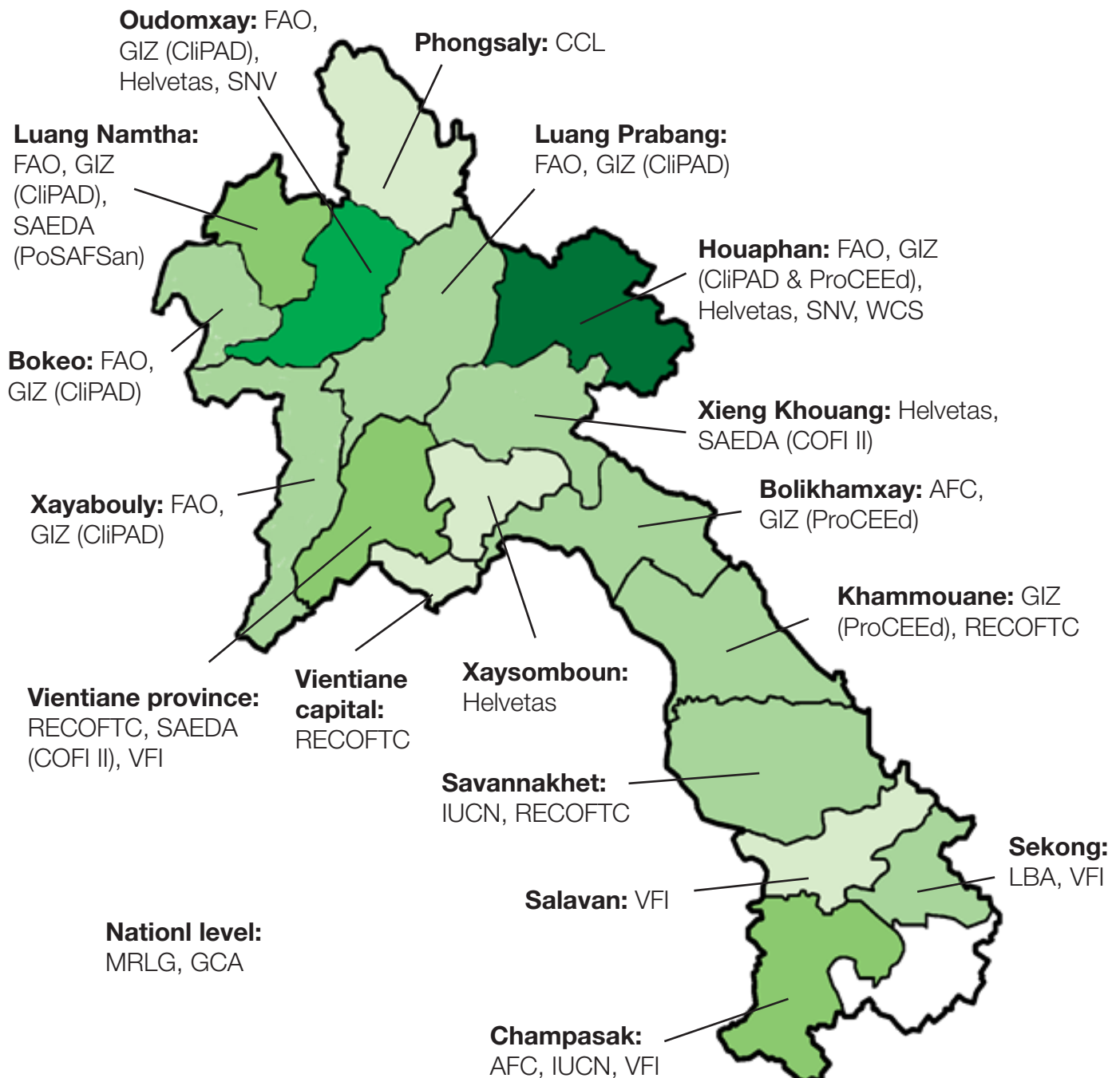
The projects reported some **similar challenges** in implementing their work:

- Some organizations noted that coordinating among communities, government, companies, and civil society around agricultural investment is difficult. Each group has its own unique interests and perceives of environmental concerns and responsible investment differently.
- A few projects raised a concern with pesticide use. Although they are addressing negative impacts from pesticides, they indicated that changing pesticide practices is challenging, and new approaches, collaborating with government and companies, need to be pursued.

Some **commonalities in project approaches** were also identified:

- The most common themes that these fifteen projects include are forest conservation, pesticide use, and capacity building for sustainable agriculture. Three projects include private sector partnerships for responsible agricultural investment.
- Multiple projects included economic incentives for environmental conservation, or market connections for selling environmentally conscious products. Organizations reported that economic benefits need to exist for communities to pursue environmental activities, and that, in some cases, a lack of economic benefit for communities results in little interest in organizations' projects.

The below map shows the distribution of the environment-oriented projects included in this inventory. Selected projects operated at the national level, and in seventeen of Laos' eighteen provinces, with no projects identified in Attapeu province.



Compilation of Selected Training Materials and Curricula on Environmental and Investment Topics

The last report of the E-RAI project outlines some key training materials and approaches undertaken by organizations in Laos to build capacity for responsible agricultural investment. This product aggregates selected training and educational materials used by government, development partners, and civil society, and highlights **five good practice approaches to training** by five entities: the Land Information Working Group; Village Focus International; GIZ's ProCEED project; the LIFE initiative; and Poverty Reduction Fund. These approaches are described in more detail, including their objectives, activities, target audience, materials, and methodologies. Note that, while many other training programs exist in Laos, these selections are meant to give only a sampling of some relevant to responsible agricultural investment.

The below descriptions highlight the training and education materials offered by each stakeholder:

- The [Land Information Working Group](#) produces an annual legal calendar as a communication tool that distills laws and policies related to land, environmental management, and investments in easy to understand ways. LIWG has also recently produced a series of legal booklets in seven topics, including environment and forestry, to be used in secondary school education.
- [Village Focus International](#) has developed training materials in responsible agricultural investment, particularly around contract negotiations and free, prior and informed consent, for use with both agricultural companies and communities.
- GIZ's [ProCEED project](#) has produced a number of media materials that raise awareness on a range of environmental issues, including deforestation and climate change. The project conducts local-level environmental education, and trains government officials at the Ministry of Natural Resources and Environment in environmental education techniques, which the Ministry then feeds down to its line agencies.
- The [LIFE initiative](#), a project of LIWG, employs a team of trainers who conduct capacity building to CSOs, government and development partners on land and agricultural issues such as contract farming, environment, and environmental impact assessments. These partners then train at the community level, with support from LIFE.
- The [Poverty Reduction Fund](#), housed under the Ministry of Agriculture and Forestry, empowers communities in poor and rural areas of Laos. Trainings are conducted with local staff, who then train communities, in environmental and social safeguards; environmental laws; and pest management.

Through the process of identifying and aggregating training programs, the research team identified that multiple organizations work in similar issues – for instance, contract farming or pesticide education. It appears that different projects take different approaches to the same topics, and there are potentially opportunities for streamlining and collaboration where training programs overlap.

From examining these selected initiatives, the research team highlighted the following successful approaches for implementing environmental training and education programs:

- Take a **multi-stakeholder approach in product development**, including government, civil society, and others, to achieve buy-in and endorsements early on;
- Assemble training materials **based on existing gaps and needs**, which should be identified through assessments or analyses;
- Design curriculums to be **flexible to different contexts**, and tailor each training program to the needs and situations of different target audiences;
- **Allow trainers to give direct input into material development**, since they are familiar with local contexts and will be the ones to scale up the training approach;
- Designate **ample time for practicing trainings** and coaching of trainers before implementation;
- **Scale up the program implementation** by providing “training of trainers”, which will ensure maximum reach with less required resources;
- Integrate **feedback mechanisms** into the programs so trainers can improve their approach in the future.

Semi-processed bamboo before export to Hanoi in Viengxay district, Houaphan
Photo credit: Justine Sylvester

