

# MEETING OF HEADS OF LAND ADMINISTRATION OF ASEAN NATIONS

Kuala Lumpur - 7 and 8 December 2004

## LAO PDR COUNTRY PAPER<sup>1</sup>

### 1. POLICIES AND PROCEDURES OF LAND ADMINISTRATION

#### 1.1. Institutional Arrangements and Enabling Legislation

The 2003 amended Land Law sets out the main institutional responsibilities for land management and administration in Lao PDR and stipulates that the overall responsibility for land administration will, once established, belong to the National Land Management Agency. It is proposed that three current land management and land administration organisations will form the new agency; these being the Department of Lands (DoL), Department of National Land Use Planning and Development (DONLUPAD) and the Department of State Assets (DSA). The Land Law defines twelve specific land management functions and the responsibilities or these are assigned to six line ministries.

Details on the current main land administration agencies are detailed below.

***The Department of Lands (DoL) under the Ministry of Finance (MOF).*** The DoL is the core national agency responsible for the design and implementation of land administration programs. DoL is the agency that has been responsible for the implementation of the first project. The mandate of DoL is to carry out the design and supervision of national land registration and titling programs through the offices of the provincial services. The DoL, while expanded and strengthened during the implementation of the first phase (1997 to 2003) of the Lao Land Titling Project (LLTP), still has limited resources and capabilities, a factor that needs to be fully recognized in the formulation of a national land registration program. The total staff of DOL has expanded from 19 at the beginning of the LLTP to around 82 in the central office and in excess of 1,400 in provincial land offices and undertaking systematic adjudication activities in the provinces.

***The Department of National Land Use Planning and Development (DONLUPAD).*** The DONLUPAD under the Office of the Prime Minister has the responsibility of assisting the Government in ensuring coordination and implementation of national policy, legislation and regulation of land administration and management, state management and administration (macro-management) of land survey, land use planning and land development throughout the country (Office of the Prime Minister, Decree 237 of 11 December 2001). It succeeds and takes over some of the responsibilities of the former Land Re-Management Committee.

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**Provincial Divisions of Finance.** Administratively, the country is divided into 17 Provinces plus one special region and further divided into 129 Districts. At provincial level, the Division of Finance carries out the major functions relating to land administration. The actual implementation of the Land Titling Project was done through the Division of Finance in the project provinces.

**The National Geographic Department (NGD) under the Office of the Prime Minister.** The Department has the responsibility for carrying out mapping services, such as the establishment of the geodetic control, aerial photography and orthophoto mapping. The Department has played a key role in supporting the surveying and mapping activities of the Land Titling Project and the provision of control points to support systematic adjudication.

**Department of State Assets Management (DSA) under the Ministry of Finance.** The DSA is responsible for the registration, supervision and maintenance of the assets in the form of property, land and enterprises owned by the State. The DSA is the holder of the national Government's shares in enterprises which are divested through privatisation, and has been the major player in the privatisation program. The Department maintains a register of national Government entities that have been privatised. The DSA is responsible for registering and maintaining a register of leases between foreign investors and Lao entities relating to state property.

**Department of Forestry (DoF) under the Ministry of Agriculture and Forestry (MAF).** DoF is responsible for implementing the program of land use planning and land allocation (LUP/LA) which is being undertaken in rural areas. Through the District Agriculture and Forest Offices (DAFO) and District Administration Offices (DAO), Temporary Land Use Certificates have been issued to over 330,000 households. Registration of these rights, however, is the responsibility of DoL.

## **1.2. The Role of Government**

Since the introduction of reforms under the New Economic Mechanism (NEM) in 1986, the Government has been transforming the economy from a centrally planned to a market-oriented system. The structural reforms and sound macroeconomic management initiated under the NEM fostered a steady movement towards macroeconomic stability, production growth, the emergence of a small private sector, and increased foreign direct investment and trade flows, particularly with neighbouring countries.

A major element of the Government's policy in supporting the transition from centrally planned to market economy has been the development of efficient markets for land, capital and labour to complement improvements in the capacity of the public sector to both plan and implement development programs. Efficient land markets and security of land tenure, on which they depend, are important in order to permit land to be allocated to its most efficient use and users and to encourage land-related investments and sustainable use of land. While land markets are now in existence in Lao PDR, they are not yet considered to operate efficiently, effectively or openly. Land is being traded but the turnover figures, as measured by recorded land transactions, are not high and transactions are hampered by the problems of establishing occupancy and use ownership rights. There is a prevalence of illegal possession, sale and use of land and a large number of court cases relating to land,

many of which are hampered by lack of ascertainable rights to and clear information on land; all these represent symptoms of an inefficient land market. Moreover, the great majority of the sale transactions are not registered. And since land registration is not common, there are foregone opportunities of using land as collateral to obtain loans from banks.

### **1.3. Implementation Aspects**

Since 1995 the major activity in the Department of Lands has been the implementation of the Lao Land Titling project. The Lao PDR Land Titling Project commenced on 1 July 1997 and the second phase of the Project commenced in October 2003. The second phase is funded for 5 years through a development credit agreement between the Government of Laos and the World Bank (IDA). The Technical Assistance (TA), funded as a 5 year grant to the Government of Laos by the Australian Government, is being provided by Land Equity International.

Primary responsibility for implementing the Lao Land Titling Project lies with the Department of Lands in the Ministry of Finance with the participating provincial Land Offices responsible for the day-to-day operations of the systematic registration and land registration activities. At the central level the National Geographic Department (NGD), the Department of National Land Use Planning and Development (DONLUPAD) and the Department of State Assets (DSA) have a close involvement with the implementation of the Project. The Lao Women's Union (LWU) has an active involvement in the project at central level and support project implementation at provincial, district and village level.

The project has commenced the registration of land parcels in Laos with an initial focus on urban and peri-urban areas in 9 of the countries 18 provinces. In excess of 200,000 land parcels have now been adjudicated. The Lao land Titling project has also supported the implementation of a Land Parcel Registration System (LPRS), a valuation system and the development of a High Diploma in Surveying and Land Administration at the Polytechnic School

### **1.4. Role of Customary Owners and Means of Dealing with Traditional Land Ownership**

Customary society throughout Lao PDR is largely rural and based on the extended family. An individual's identity welfare and future are predominately determined by one's family and the decisions of that family. As a subsistence based community, as long as the family is physically safe and the households agricultural base (land and livestock) is secure, then family members are provided for. In such a community an individual's roles and status are often strictly gender and age determined.

Society is often traditionally governed by customary codes of behaviour overseeing common values, norms, rules and practices. This in turn regulates attitudes and rights with regard to landed property. Nevertheless, throughout the country, there are different historical, economic, social and political conditions, which affected these customs. In some mountainous regions with minimal paddy rice cultivation and consequently minimal commercial activity, the land administrative provisions of the communities may state that property belongs to the family and is handed down

over generations through the men in the family, with women inheriting neither land nor other property.

Family land is a prevalent type of customary ownership of property. This is characterized by; (i) land that belongs to the family and not one individual; (ii) there is a strong reluctance to alienate family property; and (iii) family members do not forfeit their claim when they leave the land. These attributes provide a sense of security to family members and ensure that they do not lose their fundamental and stable means of subsistence.

Often under customary tradition, the subdivision of land (that is to say, who in the family can inherit the land) varies considerable throughout the country. Nevertheless, as stated above, in general two general forms of customary land inheritance systems exist: patrilineal and matrilineal. In communities that exercise a patrilineal decent system, landed property may belong to the male members of the family, and they do not forfeit their inheritance claim even if they leave the family household. Conversely, daughters, upon marriage, will leave their birth household and lose any rights to family land. Heirs are generally sons and their families and not daughters. In contrast, in a matrilineal system (as practiced by the Lao Loum communities) women often inherit land through customary practice. In this system, daughters are acknowledged as being the caretakers of their aging parents, remain in the family home, and are reward for their services by receiving land and property from her parents.

In either system land ownership is sanctified as a means of ensuring family subsistence and autonomy of present and future generations. What is fundamental to the basic social structure of these communities is the primacy of the family (as opposed to the individual) with the authority vested in the household head. In such customary norms, individuals may not have civil, juridical and social personality other then through the family.

### **1.5. Role of Development Partners**

Development partners are playing a key role in the development of land administration activities in Lao PDR. Support is being provided through the Lao Land Titling Project which commencement in 1997. The Lao Land Titling Project (LLTP) is a Government of Lao initiative to accelerate the issuing of land titles in order to foster efficient use of land for improved economic and social development. Secure land tenure and confidence in land use rights will assist in mobilising domestic resources for investment. A land use right is a valuable right of every Lao citizen and the land title is the highest evidence of a land use right.

Operations funding is provided through a World Bank International Development Assistance (IDA) loan supported by counterpart funding from the Government of Lao PDR. Land Equity International has provided the international expertise for this project by way of a grant for technical assistance funded by the Government of Australia, through AusAID<sup>2</sup>.

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<sup>2</sup> Funding for Phase I and Phase II of the LLTP will be GoL, US\$1.1 m; World Bank (IDA) – US\$24.49 m and AusAID, US\$13.00 m.

## 2. LAND ADMINISTRATION AND LAND ISSUES

While issuing land titles for the first time is the primary output, the Lao Land Titling Project recognises that this is not sufficient to meet the goals of an efficient land market or to stimulate investment, especially through local resources. The agreement for the Land Titling Project between the Government of Lao and the World Bank provides for the implementation of 4 related functions of Land Administration:

- (a) The establishment of a geodetic framework for the country (this has been completed and on-going maintenance is the responsibility of the National Geographic Department);
- (b) First time issuing of land titles in project provinces;
- (c) Registration of land transactions using the land titles;
- (d) Land Valuation.

Government policy for systematic registration is:

- (a) To progressively issue land titles throughout the country;
- (b) To ensure maximum participation by the people, as resolved at the policy meeting organised by the Office of the Land Management Committee and Ministry of Finance on 11 March 1998.
- (c) The services and policies are aimed at assisting first registration activities and post registration activities so that land dealings can be made confidently, with security, efficiency and with full and open knowledge of the land market.

There are a number of clear benefits of the land titling work as implemented under the Land Titling Project that are already evident. The Lao Land Titling Project has provided the Government of Lao PDR with a modern land registration system with a strong legal and regulatory foundation, which provides a basis for significant revenue generation in the future as the number of land transactions increases. The land registration system also provides a cadastral map and a land ownership list that can be used for planning and monitoring land tax collection. The project has also developed a valuation system that has the potential to be expanded and provide the Government of Lao with an operational valuation system that can be used for tax collection and property rating purposes.

Prior to the commencement of the Project the existing land registration system was poorly developed and was not able to cater for the increased interest in the development of a land market. As with all projects there are numerous issues that arise during the course of project activities and the Lao Land Titling Project is no exception. The key point is that there needs to be procedures implemented to ensure that issues are addressed when they arise as issues provide the opportunity to learn.

What then are the key issues and lessons learnt from the Lao Land Titling Project?

- ❖ the understanding of the people is low but the importance of the land title is very high, therefore the community education programmes to the people must be very energetic and effective;
- ❖ the education levels and relevant experience of staff (both officials and private sector staff) is not high, especially in the use of new surveying technology and computers, therefore, a lot of technical training must be provided;
- ❖ the incentive for staff to work on the Project must be attractive;
- ❖ the fee for registering future transactions must also be reasonable and well understood;
- ❖ monitoring of operations must be performed with a positive attitude to improvement and to avoiding mistakes.

### **3. SECURITY OF TENURE**

Security of tenure implies that the State or other individuals cannot interfere with the landholder's possession or use of land subject to existing laws and regulations. It implies a confidence in the legal system and a lack of worry about a loss of one's rights over the land. Security of tenure encourages investment in land, supports the land market, and resolves or minimizes land disputes, and thereby enhances stability in the society.

The Lao Land Titling Project provides security of tenure by issuing a Land Title to the holder of the land use right. The Land Title is an official document and is evidence that the person named in the Land Title is legally entitled to the land use right.

The government further supports security of tenure by:

- ❖ providing a system for the registration of transactions with land
- ❖ providing for compensation to be paid when land is compulsorily acquired
- ❖ providing a community education program that informs landholders of their property rights
- ❖ strengthening the legal framework to develop capacity to deal with land and property issues

One area where the Land Titling Project is endeavouring to improve security of tenure is with state land. The project has brought into focus a major problem caused by the large amount of state land parcels in urban and peri-urban areas. There are many parcels in Lao PDR where the parcels are recorded as state land but the status of the occupier cannot be verified, so no recognition of the occupier's rights or claim to the property can be noted. This is a serious gap in the completeness of the land titling system.

These parcels are already developed in most cases, mostly with residential houses, which are now occupied by officials or other families, often with little or no land right documentation. Most of the affected land originally belonged to Lao who fled,

although a much smaller amount was owned by the previous regime, or seized from those condemned by the People's Court in 1975, or has been given to the state.

Much of this state land is run-down and not maintained because there is no security of tenure. There is thus no incentive for the present occupier to invest in maintaining the property or, if appropriate, to demolish an out-of date structure and build a modern building in its place. There is a need to find a way to free up this large amount of land, which is effectively "frozen", so that the property market can function properly and efficiently.

The DoL has been involved, in consultation with the Department of State Assets, in developing laws that will provide security of tenure to the occupiers of such state land. The occupiers will be issued with a long term transferable lease, which can be mortgaged, inherited, and renewed at the discretion of the occupier. It is anticipated that this legislation will help to fill the gap in the completeness of the land titling system.

#### **4. LAND OWNERSHIP AND ENVIRONMENTAL SUSTAINABILITY**

Land titling is intended to stimulate investment and economic activity. In and around urban centres, such activity may involve the permanent conversion of agricultural land to other uses, such as houses, shops and business premises.

In order to determine the impact of the Lao Land Titling Project, and to improve its design, the project conducted a Socio-economic Baseline Study at the end of Phase I. The study concluded that there is no evidence linking the project to the irreversible loss of crop land on agricultural parcels. At present the conversion of land to non-agricultural uses is concentrated on titled building parcels. Land titling may be a factor in conversion and loss of agricultural land on these building parcels (e.g. gardens, fields behind the house).

Land titling is reported to have resolved many local boundary problems, but in some cases the adjudicated parcel boundaries have not been consistent with approved urban plans.

#### **5. URBANISATION AND MIGRATION**

There is a gradual movement of people from rural areas to urban areas as the economy develops and alternatives to subsistence farming are developed. This is resulting in an increase in urbanisation.

The Government of Laos has implemented a resettlement program. The Government allocates land under the Rural Development Program and the Resettlement Program to resettle ethnic minority peoples to lowland areas adjacent to Mekong River or tributaries to eradicate shifting cultivation, opium cultivation as well as poverty.

The main activities under the Resettlement Program are:

- (i) Allocation of land to each family for housing and permanent agriculture

- (ii) Allocation of funds for development of social and economic support services, e.g. agriculture development, small or medium irrigations, water supplies, village revolving funds, health centres and primary schools. Several international organizations and financing institutions and donor countries also provided a lot of supports in terms of funds, technology and experts, to these programs
- (iii) Provision of subsistence allowance and tax exemption to settlers during the first 1 or 2 years period in order to allow times for settlers to adjust their livings at the new site and sustain agricultural production
- (iv) Granting rights to settlers to collect non-timber products in the assigned village areas

## **6. LAND MARKETS**

Land titling promotes an efficient land market because boundaries are known, ownership is clear, transfer of ownership is easy, and because the process, including valuation is public knowledge inasmuch as it is registered and known to local government authorities.

***Transparent Land Markets.*** An efficient land market is transparent and therefore enables local government and the community at large to control not only the illegal use of land but, importantly land-hoarding for speculation purposes. If there is a potential for a rapid increase in the value of land, individuals or companies may buy up land and properties in certain strategic locations and hold it until prices rise. Land may even be held off the market to restrict supply and thus push prices even higher. Because the value lies in the future potential of the land rather than the present economic return of the buildings on it, the buildings may be let at low rents and be badly maintained, becoming a health hazard for poor occupants and neighbours alike. A transparent market on its own will not stop land hoarding; legislation is required to limit land holdings by individuals, companies or associations.

***Increases in the Value of Land.*** Increases in the value of land encourages investment in the land. The benefits of land titling to town planning have the potential to mitigate some physical environmental degradation associated with rapid urban growth and poverty. However, there are also problematic ramifications which arise from the very land market potentially enabled by land titling that can make matters worse. This tendency for the land market to disadvantage some groups of people may happen in any event (with or without land titling). Nonetheless, if land titling is undertaken with a view to mitigating what might be called "natural" market tendencies (taking into account vulnerable groups), then undoubtedly the process will have a positive environmental impact.

## **7. GLOBALISATION AND INVESTMENT**

The key economic objectives of the government of the Lao People's Democratic Republic (as outlined in the Five-Year Plan for 2001-2005) are to raise the level of sustainable economic growth and per capita income, and to progress with poverty reduction. The country's Poverty Reduction and Growth Facility supported program for 2001-2003 in particular focuses on stabilising macroeconomic conditions and undertaking the structural reforms required for achieving sustainable growth. A

number of major policy challenges remain although the gradual introduction of a regulatory framework and policies to support private sector economic activity, and in particular to attract foreign direct investment, has been fairly successful.<sup>3</sup>

During recent years attempts aimed at improving fiscal management have intensified – in recent budgets, tax administration has been a focus point. Government has committed itself to continue raising revenue while restraining expenditure and has acknowledged that broadening the existing tax base, increasing some excise duties and improving tax and customs collection could assist in achieving a higher revenue target.<sup>4</sup>

Overall, monetary policy in Lao PDR has had limited success. The high level of dollarization in the economy, lengthy and opaque decision making processes and limited financial resources of the Bank of Lao are but a few of the problems that undermine confidence in the financial sector and the currency. The banking sector (small and dominated by state-owned commercial banks) is in need of urgent reform.

Although economic reform was progressed during most of the 1990s, the combined effect of the Asian crisis, a lack of financial resources to support ambitious investment plans, and the high level of dollarization in the economy caused the economy to stumble in the late nineties. Central bank intervention in an attempt to bolster growth subsequently resulted in a pronounced depreciation of the kip and a sharp rise in inflation in 1999. Since then, attempts at restraining and stabilizing the economy have proved relatively successful. Inflation (CPI) has contracted from 87 per cent (end of 1999) to 9 per cent (February 2001)

## **8. EQUITABLE SUCCESSION LAWS**

Inheritance of all property, including land, is governed by the Law of Inheritance.

Heritage refers to all types of properties, including rights and obligations of a deceased person, except for those specified by laws or by contract to be executed by the deceased himself or herself (Article 1, Law of Inheritance). Original assets are properties owned by the husband or wife before marriage or gained through inheritance or handing over or bestowal to specifically either the husband or wife after marriage, and still existing or transformed into new assets. Acquired assets are properties gained and acquired by the married couple during their married life, except for assets for personal use of low value (Article 1).

Inheritance is the devolvement of properties, rights and obligations of the deceased to an entitled heir according to the law or the will (Article 2, Law of Inheritance). The location for inheritance proceedings is the last permanent address of the deceased. Inheritance proceedings must take place in the presence of a court clerk or the village administrative committee (Article 5).

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<sup>3</sup> IMF website information: [www.imf.org](http://www.imf.org): Memorandum on Economic and Financial Policies of the government of The Lao People's Democratic Republic for 2001.

<sup>4</sup> IMF website information: [www.imf.org/external/np/loi/2001/lao/01/index.htm](http://www.imf.org/external/np/loi/2001/lao/01/index.htm)

Acceptance of inheritance must take place within a period of six months from the day the inheritance proceedings commence. The court registration office or village administrative committee must issue a certificate of inheritance to the heir as evidence (Article 10).

Heirs by law or will have the right to relinquish the heritage within 6 months from the commencement of the inheritance proceedings.

If a person dies leaving a spouse and children behind, the children have the right to inherit the deceased's original assets. Acquired assets are to be shared in two, with half to the surviving spouse and the other half to be divided into equal portions between the children. The surviving spouse has the right to manage assets devolved upon children under age (Article 16).

## **9. LAND DISPUTES RESOLUTION**

Disputes are bound to arise as systematic land registration is implemented. The process of adjudication means that claims of ownership or derivative rights must be examined and conflicting claims which exist but which have not been pursued through official agencies such as the courts may come to light. There are many types of disputes which may arise in relation to land. There may be disputes between individuals about claims to ownership of the land or about derivative rights. There may be disputes between adjoining land owners about the location of boundaries or encroachments. Or there may be disputes between a person claiming land ownership and the state which may also claim ownership.

The implementation of land registration may provoke tension and conflict over land as it is implemented because it calls for claims of ownership or of derivative rights to be brought forward to the land registration authority and it calls for the location of boundaries on the basis of agreement between adjoining owners. In anticipation of these difficulties, there must be provided in law mechanisms for the hearing and final resolution of disputes and claims as well as administrative procedures which apply in respect of the land ownership record; for example, how to record the existence of the dispute, how the dispute is to be dealt with during systematic land registration, what the effect of the recording of a dispute is and how any notification about disputes which have been entered on the record may be cancelled .

In Lao PDR, the main law governing the systematic adjudication of land is Ministerial Direction on Systematic Adjudication of Land Use Right 997/Ministry of Finance. There are several provisions in this Ministerial Direction that provide for the resolution of disputes that arise during adjudication.

There are also post-adjudication land dispute resolution provisions in Ministerial Direction on Land Parcel Registration System 996/Ministry of Finance. Article 43 provides that a person who believes that information in the Land Register Book is incorrect can bring an action in the court to prove that the information is incorrect. Article 45 provides that if a court decides that a person or organisation has proved that information in the Land Register Book should be corrected, then the person or organisation should provide the concerned Office of Land with a copy of the court's order. The Office of Land is obliged to carry out the court's order and correct the information in the Land Register Book and other parts of the Land Parcel Registration System which has the incorrect information.

## 10. ADEQUACY OF LEGISLATIVE FRAMEWORK

After the introduction of the New Economic Mechanism in 1986 and the gradual opening of the economy, the Lao government changed to govern by law rather than decree as had been the case since the 1975 revolution. Several decrees and laws were introduced.

Various decrees have been issued to address, among other things, land and house ownership in urban areas (Decree 99), forest and forest land control and management (Decree 169) and land allocation throughout the country (Decree 186). A Forest Law was passed in 1996, followed in 1997 by a Land Law. These two laws provide a comprehensive legal framework for land use ownership rights, though the implementing agencies continue to provide more detailed regulations and procedures. As is the case with the Decrees, these laws are 'gender-neutral'.

Since the early 1990s the government in Lao PDR has moved to formalize land administration systems. The 1991 Constitution affirmed the rights of individuals to use land. The Fifth Party Congress (March 1991) identified the need to accelerate land registration and issue land title certificates so that the use rights for each parcel of land were clearly defined. Land management and administration policies are reflected mainly in the decrees that followed the promulgation of the Constitution in 1991. The Land Titling Project has supported the development of this legislative framework. Major legislative measures are:

- (i) **Laws** - the Property Law (Ownership Law of 1990), the Land Law (33/PO of 1997), and the revised Land Law (04/NA 21 October 2003), the Law on State Assets (09/NA 12 October 2002);
- (ii) **Presidential Decrees** - on Land Tax (03/PD of 2000);
- (iii) **Prime Ministerial Decrees** - on Document Registration (52/PM of 1993), transforming State land use rights and ownership of houses, vehicles and essential household equipment to Government personnel ownership (194/PM of 1994), implementing the Land Law (22/PM of 1999), on the implementation of the Presidential Decree on Land Tax (150/PM of 2000), on Implementation of the Secured Transactions Law (171/PM of 1999), on the organization and activities of the Department of National Land Use Planning and Development (237/PM of 2001);
- (iv) **Ministerial Directions** - on the fee for issuing titles (2232/MoF of 1997), on land parcel registration (996/MoF of 1998), on systematic registration (997/MoF of 1998), on sporadic registration (998/MoF of 1998), on the position, roles and functions, rights organizational structure and working method of the Department of Lands (1362/MoF of 1999), on cadastral surveying and mapping (748/MoF of 2000) and on Land and Building Valuation Information System (1677/MoF).

There is also draft legislation concerning leasing of state land and buildings and a new Prime Ministers Decree replacing Decree 52/PM that has yet to be promulgated.