Land Tenure Development and Divestiture
in Lao P.D.R.

by

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Abbreviations

ADB  Asian Development Bank
CPAWM  Center for Protected Areas and Watershed Management
CPC  Commission for Planning and Co-Operation
DAFO  District Agricultural and Forestry Office
DAFS  District Agricultural and Forestry Service
DoF  Department of Forestry
DOHLM  Department of Housing and Land Management
DSA  Department of State Assets
EAP  Environmental Action Plan
FAO  Food and Agriculture Organization of the United Nations
FIMC  Foreign Investment Management Committee
FOMACOP  Forest Management and Conservation Project
GDP  Gross Domestic Product
GIS  Geographical Information System
GoL  Government of Lao PDR
GTZ  Deutsche Gesellschaft für Technische Zusammenarbeit
IMF  International Monetary Fund
ILO  International Labour Organization
IUCN  World Conservation Union
LHMO  Land and Housing Management Office
LRMC  Land Re-Management Committee
MAF  Ministry of Agriculture and Forestry
MoF  Ministry of Finance
MoJ  Ministry of Justice
NAWACOP  Nam Ngum Watershed Management and Conservation Project
NBCA  National Biodiversity Conservation Areas
NEM  New Economic Mechanism
NGD  National Geographic Department
OCR  Order on Customary Rights and the Use of Forest Resources
PAFO  Provincial Agricultural and Forestry Office
PAFS  Provincial Agricultural and Forestry Services
PDR  People’s Democratic Republic
PIP  Public Investment Program
PNUD  Programme des Nations Unies pour le Développement
SIDA  Swedish International Development Agency
STENO  Organization of Science, Technology and Environment
UNDP  United Nations Development Programme
UNHCR  United Nations High Commissioner for Refugees
WB  World Bank

Executive Summary:

1. With its program of economic reform (NEM) starting in 1986 the Lao People’s Democratic Republic (PDR) has initiated a far-reaching transformation process in economics, politics, administration, and also, partially, in its social structure. The disagreements about desirable property regimes in general, and the land/resource tenure regime in particular constitute a cornerstone of the question of orientation towards socialist principles with central planning or towards the principles of a market economy and of decentralized decision making. Whereas the process of economic transformation in Laos is already well advanced and extensive, the State-party system and the power of the military continue to exercise a crucial influence on the direction and speed of institutional change.

2. It is the objective of this study to discuss the socioeconomic aspects of land tenure in the process of economic and political liberalization in the Lao PDR. It tries to make a contribution to the analysis and evaluation of the land tenure system in the country, in particular to the interrelated dynamics of resource tenure, divestiture and the process of privatization. It will demonstrate which direct and indirect effects the existing resource tenure regimes and tenure reforms have in a country, the wealth of which is based on its natural resources, especially in phases of transition and rapid change which is controlled in part by influential international private investors and public donors.

3. The study will present as well those constraints and difficulties which must be overcome in order to give recently formed or reformed property rights regimes an extensive legal and regulatory framework and to allow them to be effective. The restructuring of resource tenure does not only affect the willingness to invest, the factor productivity, but also the degree of acceptance of the seriousness of democratization, the participation at the village level and thus political stability in the long run. At the same time, the key function of a consistent and practicable land tenure system for agricultural soil fertility, the sustainability of forest lands and the preservation of natural resources for future generations will be dealt with in particular.

4. An overview of the transformation process in Lao PDR demonstrates pin-pointedly that the rule of the law and the previous French-influenced concept of land ownership was dismantled by the revolution in 1975 and replaced by the socialist model of an extensive set of decrees to rule the country. All the land was officially nationalized, many urban private properties owned by Laotians who fled the country were directly placed under state management. In the rural areas, the forced collectivization of agricultural production was urged on with slight success only due to the collapse of the rice production. From the 80s on, the fundamental role of family farms as the safeguard for food security was -in principle- recognized. Following the NEM policy the liberalization of price and trade policy and structural reforms started, including a new institutional and regulatory framework. The new Constitution and new laws on resource tenure were milestones in this process. At the same time economic liberalization also served the objective of holding back any political liberalization (e.g. multi-party system) and of maintaining the power and privileges of the outdated Party apparatus and bureaucracy.
5. The new land policy and resource tenure related legislation is embedded in broader development principles such as the consolidation of the macro-economic reforms, the improvement of the performance of the public sector, an improved living standard for the whole population and halting the degradation of natural resources. To achieve these objectives, the agricultural sector, including the forestry sector and water resources, will form the backbone of any future socioeconomic development in Laos. As a result of past policy failures, the performance of this sector has been poor up to the 90s. Land policy and resource tenure related legislation issues are right at the top of these failures, which led to over-exploitation, deforestation, soil-leaching and loss of biodiversity: insecure property rights and the limited implementation of already existing regulations, the inefficient use and depletion of state-owned assets; poor agricultural support services and low returns from donor-funded projects should be mentioned particularly.

6. A severe lack of individual and group incentives for the preservation of agricultural land, forests and water as well as the prevalence of State property rapidly accelerated the plundering of the production base. The uprooting of families and resettlement, all of this as an immediate result of the war, additionally aggravated this process, created strong, partly ethnic-based tensions increased the uncertainty over property rights to land and placed local customary tenure regimes under scrutiny. The local authorities lost their control over putting a stop to the clearing of land along hill slopes. The pressure grew for an entirely new conception of statutory law, a pressure which was induced more by the international donor community than by Laotian politicians and bureaucrats.

7. Accordingly, a change in the content, scope and quality of government intervention is of crucial importance for future development perspectives. Nevertheless, further serious bottlenecks will continue to exist in Lao PDR: regional differences in resource endowment and development potential, intrusion of shifting cultivators into areas susceptible to forestry and soil degradation. Conflicts in objectives as between economic growth and environmental protection or inconsistencies in the emphasis of the promotion of foreign investments, on the one hand, and due to the simultaneous existence of central and inflexible planning processes, on the other hand are to be expected.

8. The new legislation was worked out under great time pressure and is constantly remodified or completely repealed. Thus, observers criticize an incoordinate proliferation of laws, decrees, etc. giving rise to inconsistency, overlapping, and confusion between the involved organizations. Nevertheless working out a new land, water and forest legislation within a few years and starting with its implementation at the local level was enormous achievement. In important parts, the current resource-related legal framework is already of high consistency and has a „package“-character as its major elements reinforce each other.

9. The new legal and regulatory framework has to do justice to the complex bundle of development objectives of the State and those of international donors: the provision of secure, tradable rights of use and legally enforceable titles for selected land categories, of incentives for individuals as well as for communities or village groups; the guarantee that land can be used as a collateral; a completely changed role of the Government which emphasizes local land use planning; to ensure that the benefits of more efficient land markets are equitably shared within society and, more important than ever, a reasonable consideration of the complex customary rights.

10. Fundamental guiding principles and norms are enshrined in the Constitution of 1991, the Property Law, the Land Decree, the Decree on the Use of Forests and Forest Lands and the Decree regarding the Allocation of Land and Forest Lands. Not only individual but also communal rights to agricultural lands and forests are set down, the role of the private sector is strengthened. Step by step the decrees, which have been quite a flexible instrument for the administration but which created planning uncertainty as well, are replaced by laws.

11. The Constitution explicitly protects private property rights and foreign investments, but it remains consciously ambivalent with regard to the extent of state property. The laws which were first promulgated in the transition process such as the Property Law underline very much the role of the state in and are still strongly marked by the old socialist model of society. Nevertheless, both acknowledge in principle that differing natural resources with varying spatial expanses and yield potentials have to be managed and administered through various resource tenure regimes (private, communal, state ownership).

12. The basic Land Decree codifies long-lasting negotiable land use rights for the rural population and extensive rights to transfer land permanently or temporarily (inheritance, lease, sale). It guaranteed land titles for individuals and thus creates preconditions to overcome the hitherto strongly fragmented land markets. This nation-wide standardization brings up the complex problems of the stripping of customary land rights. Whereas neoliberal economists criticize it because of the still strong position of state ownership it is seen by other critical observers mainly as an instrument to ease foreign investment in Lao PDR, with the danger of extensive land purchases by foreign entrepreneurs and land speculation in (peri-)urban areas.

13. As in other countries in transition the core problem of restitution of landownership for those who abandoned their land for political reasons after 1975 is still unresolved. The land legislation remains...
ambiguous in its message; lengthy court cases can be expected and trust in the rule of the law remains fragile and jeopardizes the successful completion of the transformation process.

14. The Decree on Land Tax not only regulates the calculation and levying of the land tax, but also defines various land categories for land use policy. Actually, it is used as a very coarse instrument for land valuation and initiated a nation-wide land survey.

15. The Decree on the Management and Use of Forests and Forest Land (Decree 169) will play a key role in future resource legislation. For the first time, it allows the participation of the local population in land allocation, recognizes customary communal rights explicitly and offers a broad range of contractual arrangements for resource utilization and conflict resolution between stakeholders. Undoubtedly, it reflects very much the concepts of international donors regarding desirable land tenure regime and land use patterns. Its implementation is pushed forward but is still in a nascent stage. (Water and environmental laws, including the protection of biodiversity, are in preparation.)

16. Thus, the enormous achievements with the build-up of a new legal framework are indisputable; criticisms and disputes also continue: between Laotian politicians and national and international environmental and human rights groups about the speed, the direction of the process and the future state influence. Legal experts complain about the indiscriminate borrowing of legal terms and ideals from foreign cultures (private ownership, collateral); administrators see a flood of regulatory details and miss others and project managers fear that implementation and coordination will be too much for the local authorities. Thus, a further systematizing of the legislation is still necessary and a practicable implementation at the grass-root level is not yet secured. The enforcement of the new rights and obligations at all levels will be another crucial problem in the future.

17. The whole legislation can only be put into practice when an independent judiciary is workable and alternative arbitration authorities at the local level are recognized. Up to now, the conflicting parties have no trust in a former „socialist“ judiciary; numerous court cases involving problems of land ownership are pending; courts of first instance in the countryside are lacking, the training of independent judges is insufficient, and the work of lawyers is weakened as long as no legal bar exists.

18. The legal and regulatory framework is only workable when further statutory laws make land rights valid, ensure their transfer and completely integrate land matters in a broader social and economic context. Parts of the new legislation such as the Contract Law are marked by over-regulation and a keenness for detail on the part of former omnipotent state machinery. Besides, part of the legislation was, however, reformed in a painful learning process in which international donors and the business world doubtlessly exercised influence. The Foreign Investment Law fully protects foreign investors’ assets, allows for long-term land leases and tax exemptions.

19. The Family Law and the Law on Inheritance establish valid, nation-wide rules for property relations between married couples and set out the rules for the inheritance of land. It has not yet been made clear, in how far the generally recognized customary family code to settle conflicts, which has existed for centuries, will get into conflict with the statutory law or which role both will be allowed to play in the future in rural or in urban areas.

20. Land titling and the recording of land are still controversial issues in Lao PDR. Land registration constitutes a cornerstone for any comprehensive and consistent land management and administration policy, including functioning land markets. At present a - de jure - standardized land titling system for securing private property rights to land (mainly in urban and peri-urban areas) is being developed parallel to another system of more informal land recording for tax purposes which is mainly applied in rural areas. Although detailed instructions for the local level have already been elaborated for the pilot land titling project of the World Bank, so far, hardly any practical experience has been made in land registration.

21. There remains a basic criticism of the general ideas of country-wide registration put forward by development practitioners, donors, NGOs, environmental organizations and human rights activists: against the World Bank which exclusively pursues allocation objectives and is neglecting, temporarily at least, the negative distribution effects of income and wealth. The eligibility for land registration raises the question about the status of the Laotians who fled the country. The program is oriented towards the partially foreign concept of individual private ownership; communal customary rights remain extensively unattended. The same is true regarding women’s access to registered land. As long as land is surveyed for land tax purposes as well, a considerable ambiguity and lack of coordination between the roles and responsibilities of different government agencies continue to prevail.

22. A functional and flexible land administration is an essential precondition to implement the new legislation locally and to enforce it. In spite of endeavors to apply a decentralization policy, the existing administrative system represents a serious bottleneck in the successful dismantling of the state at the local level. This is
reinforced by a weak communication network between the local, provincial and the central administration. The rapid economic change has given the administration additional areas of responsibility and put them permanently under pressure to make decisions. The strain and workload are increased by the high expectations of the international donors. These new challenges are difficult to be meet, considering the state of training of the Laotian staff. They can easily lead to inaction, considerably delayed action through fear of sanction or to making wrong decisions. The letter and the spirit of the recently created legal framework thus remains unfilled in daily practice.

23. **New demands for government institutions** are also the consequence of the breakdown of the traditional village resource management systems in some areas in the socialist phase. Besides, customary tenure and management systems have continued to vest local communities with an important role in the management of land, water and forests in regions with difficult access from outside and where customary rights survived socialism. In the process of transformation, only little consideration has been given to cultural diversity and customary rights, especially by logging and hydropower companies. International NGOs and donors formed a countervailing power in pointing out the resulting high social (and economic) costs of wiping out or suppressing customary rights for resource protection and conflict resolution at the local level suing the redrafting of planned legislation in favor of women and other holders of secondary rights (animal holders, gatherers).

24. Attempts to integrate customary rights in resource legislation by an **Order on Customary Rights**, a missing link between statutory law, customary regulations and land use patterns, was controversysly discussed in 1995. Instead of adding new layers of legislation, the strengthening and improvement of existing decrees may be more effective for the protection of customary rights, resource preservation and the respect of gender-related problems in the access to land and its use.

25. Especially where customary rights and statutory law come face to face, the situation for **women** is quite complicated in Lao PDR. Women in rural areas do not fully grasp the male dominated practice of land registration, but they realize more and more that, in cases of divorce, the ownership title of land is an important matter of security for the future. Although the new legislation explicitly deals with gender relations concerning rights to assets and inheritance rules, the question remains open as to how far this claim is enforceable for women. Women, for example, hardly have a chance at present of getting a hearing in court and suing for their rights or to get formal credits.

26. In an **agrarian society** such as that of Laos, the interaction between access to land, guiding land tenure regimes and the conditions of land use will remain essential. The alteration of land use conditions away from an extensive, low input, low output system towards intensification through the opening of new areas for irrigated cropping and (a still low level of) agricultural technical progress have effects on property rights in favor of individualization and privatization of land. Fueled by nascent land markets, the rate of land conversion is already increasing, especially in the vicinity of towns. Now, land is being sold to town dwellers, a phenomenon which was hitherto unknown in the country. As a consequence, **intra-village conflicts** and small-scale enclosure movements are occurring increasingly as in the case of village pastures.

27. The Laotian State attaches great importance to the **restrengthening of functioning land markets**. This did not happen without pressure from **influential interest groups**. Resolving the problem of landownership is seen as an important indicator of the seriousness and desire of the state to make reforms; the existing informal „gray“ land market with its high premium on risks should be dried out. An effective demand for functioning land markets comes mainly from private investors returning to their home country, from the bank sector which demands credit security through state-guaranteed titles and from international donors, led on by the World Bank, who look upon secure private property rights as a precondition for extensive, long-term financial commitments.

28. The actual **quantitative weight of land markets** is difficult to assess, but there are indicators of vivid, but still inefficient land markets: residential land is mostly sold at a cash basis, but there is inevitably a prevalence of illegal sale and lending as a large number of pending court cases reflects. The pressing question arises in how far the mass of rural smallholders is able to raise its voice in this economic and political bargaining process on land. For them the advantages and risks of land markets have not yet been made clear „from above“. They are scarcely able to exert a direct influence on the process of legislation and have to rely on NGOs as their speakers.

29. **Urban land markets** are fragmented due to the loss of registers, nationalization and only partial restitution to former owners. Land transactions are connected with additional risks, since acquired rights cannot easily be sued for in court in land conflict cases. Although it is the prior objective of land policy to organize the blooming land market, it is illusory to assume that the Lao state will accept a free, unregulated land market in the future for fear of land accumulation, land grabbing and speculation and concentration of power.

30. In **peri-urban areas** people also sell, lease and mortgage land in ever-increasing amounts; prices have increased enormously. This includes sales of agricultural land to urban-based groups. Together with a
narrow segment of **dynamic agricultural entrepreneurs**, they have the strongest impact on land markets. In addition to being sold, land is also increasingly **leased**, thus developing informal rental markets, including sharecropping. **Rural land** is sold and rented as well, although detailed data are scarce. There, traditional villages authorities still hold a strong position in land transfers. In general, there is undoubtedly an effective demand for efficiently operating land markets through influential interest groups. What is hardly discussed within this context are the **distributional effects** which can be expected when free land markets assert themselves in a hitherto very egalitarian agrarian society.

31. **A multitude of interest groups** work in Lao PDR as potentially important players in shaping the nature and pace of reforms in the country’s land policy and administration. Although the impact of domestic actors, as the “old guard” of the State Party, military people, the administration, only partly smallholders and village communities is strong, **international actors** such as international capital, multilateral and bilateral donors and international NGOs still have an overwhelming influence. Their work is a blessing and a curse as well. They are not only trying to push through basic civil rights, a division of power, the rule of law but also to build up and to implement a consistent legal framework for land allocation and management.

32. National and international pressure groups were quite successful in building up free markets and unhindered entrepreneurship, whereas NGO’s have achieved a lot as lawyers for peasants, women, indigenous people, ethnic minorities in the discussion on customary rights, gender issues and biodiversity. Forming a coalition between former powerful party functionaries, the military and private investors must be judged critically, since this coalition opened up rent-seeking and an increased competition for scarce resources. The mushrooming of interest groups has led to enormous internal coordination problems, whose result has been blockages, for instance in the legislation process, up to the point of a stalemate. One can rarely rid oneself of the impression that the extensive interest groups activities have turned the State, in particular the line ministries, into dependent marionettes for their interests.

33. In the phase of transition and strong impact of pressure groups, **land conflicts** are increasing. Other reasons are the uprooting of the rural population, migration and resettlement in wartime, restitution claims, land scarcity due to population growth or land conversion. They all act within the tense situation created by incompletely implemented and not yet accepted land legislation and by broken down customary institutions. Reported conflicts include at the **local level**, those between returning families and those villagers who had occupied their land, between different ethnic groups and already between squatters and landholders. Every attempt is made at all levels to satisfy parties in conflict over natural resources, first of all by means of negotiation and compromise through village authorities, whose capacity for conflict resolution is still considered to be great.

34. With the implementation and the enforcement of the new resource legislation, **new conflicts** arise, e.g. between neighboring villages about boundaries, details of land use planning or the correct registration of plots. The local population and commercial logging companies quarrel on the terms of reforestation contracts and with hydropower enterprises about compulsory settlement for the villages. The **unresolved restitution** of dispossessed land remains a central field of conflict in the Laotian society. Here as well, all parties have tried so far to resolve conflicts at all levels outside the formal court system wherever possible.

35. **International donors** are dominant in the transformation process. Are they catalysts for resource tenure development or shadow governments? After an extensive exertion of influence on resource legislation, they often see themselves forced into a successful continuation of their policies and having to replace the lacking implementation capacity of the state or the lack of access to local self-help groups with their own structure. Thus, they run the risk of building up long-term parallel structures.

36. Among the international donors the **World Bank** and the IMF have guided and driven the economic transformation in Lao PDR and materialized their vision of a private land tenure regime, which influenced, or even restricted, all other donors. Some of the bilateral donors are working to implement the legal and regulatory framework for resource tenure and to help to create tenure security. Besides their own technical projects, some work as implementation agencies for World Bank programmes (land titling) (AusAid, Finida), others do lobby work in „their“ divisions to have an influence - within limits at least - on the forest, water, land and environmental legislation (e.g. GTZ funded NAWACOP project). There is still a deficit of coordination of guidelines, objectives, instruments and activities between donors. In the medium term, a far greater flexibility and openness is necessary amongst them to strengthen Laos’ ability to deal with its” donors and to make them in part superfluous.

37. **NGOs** have had a solid and sometimes very successful influence on the reformation of the statutory resource legislation and the land administration, relying on topic-specific networks and alliances and on the expertise of international environmental NGOs. They often were the only ones to give information on the living conditions in remote villages, on local land conflicts, internal migration, the strong role of women. The culture of the **public debate** about controversial land tenure issues (customary rights, gender) and of a **custodianship** for securing the property rights of smallholders, forest users, women, etc. was developed by them, including open letters, sharp internal statements and insistence on environmental impact assessment.
38. Evaluating the experiences, what are the recommendations for future development cooperation? Land tenure arrangements belong to a society's most intimate institutions. In addition, development cooperation in the field of land/resource tenure automatically always gives external support to changes of internal political, legal and administrative framework conditions in partner countries. One possible field of action is a policy dialogue, which can make the following contributions: increase the awareness of existing and emerging resource tenure problems, analyze comparable experiences in neighboring countries, clarify future problem areas, initiate broad discussions on the future of land and agriculture in a country, demonstrate alternative policy options, take a very informal influence on the process of legislation and its implementation, act as a lawyer for disadvantaged groups, emphasize the dialogue between international donors and build up international networks.

39. In Laos, as in other neighboring countries, there is a drastic shortage of well-trained staff from the district up to the national level. Training measures should include short and medium-term courses or training on the job for civil servants, including participatory land use planning methods and tools, GIS, methods for organizational development, etc. The advanced training of judges at all levels is highly necessary so as to enlarge the rule of law in land tenure conflicts. In the ongoing setting up of forestry and agricultural schools and colleges in the country, their curricula should pay attention to land and resource tenure issues. Further long-term training is necessary for top local experts, either on a Master level or with further academic qualifications, such as a PhD.

40. In rural areas, specific initiatives to secure property rights, to respect customary rights and to secure the participation of the local population in land demarcation, etc. within different projects or programmes are: to strengthen the implementation capacity for resource-related legislation, to assess existing property rights regimes in a project area, to secure the property rights of all actors involved, to integrate customary rights, to improve the dissemination of the new resource legislation and to encourage the participatory making of legal instruments. In urban and peri-urban areas, the dynamics of existing land markets and the pros and cons of different systems of registration should be an integral part of the project from the beginning.

41. Agencies of development cooperation have not in every case been optimally prepared for a far-reaching commitment in the area of tenure development: They have to overcome administrative barriers and to cross over divisional borders (water, forest, agricultural land, livestock, fisheries) and have – more than in the past – to accept the political embeddedness of primarily technical approaches and projects such as land titling. It must be tested each time in how far activities can be developed out of assumptions ("land policy remains unchanged") so as to politically buffer projects. The potential of joint approaches between technical and financial cooperation has not yet been realized, at least in German development cooperation.

I. Introduction

1. Issues and Objectives

With its program of economic reform, the "New Economic Mechanism" (NEM), which was already being tackled in 1986 before the implosion of the centrally planned economies in Eastern Europe, the Lao People's Democratic Republic (PDR) has initiated a far-reaching transformation process in economics, politics, administration, and also partially in its social structure. At the same time, the current developments in Lao PDR cannot be looked upon as prototypical of changes in Indochina as a whole for several reasons. What is, however, comparable to developments in Cambodia and Vietnam, is that the current economic and social problems and newly arising conflicts between different interest groups cannot be understood without considering the disruptions and consequences of the Vietnam War. Moreover, the people in all these countries had to live in different, strongly polarized systems for the period of time of only one generation, and were then confronted with the challenges and constraints of a rapid and fundamental re-orientation, both political and economic, after the collapse of the Soviet Union at the end of the 80s.

At the same time, especially in Laos and Cambodia, disagreements about desirable property regimes in general, and the land/resource tenure regime in particular form a cornerstone of the question of orientation towards socialist principles and central planning or towards the principles of a market economy and of decentralized decision making. Moreover, the solution of the property question is also the central precondition for an effective and steady process of transformation. Above and beyond this, the land question in an agrarian society which has a particular bond to land which has either been inherited or has been worked for generations is of the highest emotional significance.

The process of economic transformation in Laos is already well advanced and extensive: firstly, the reform program NEM now encompasses all sectors of the economy; the strong impulse that started by a vigorous private sector is
being maintained by foreign investors and expatriate Laotians returning to the country. Positive results can be seen in the re-orientation of the economy which is moving away from its emphasis on public ownership of key resources towards a market-oriented property regimes (World Bank 1994).

Secondly, not just content with re-defining its macro-economic policy, the Government of Laos (GoL) at the same time tackled one of the most difficult parts of the transformation of a social and economic system, namely the fundamental restructuring of the entire legal and regulatory framework. This takes in a far-reaching scrutinizing and reforming of previous institutional structures.

As in other countries which are in a process of transformation, the success of economic and social restructuring of the Lao PDR is closely measured by international donors by how far the emerging civil society and their legitimate institutions such as the national assembly has managed to get the old control and command State to divest itself of its resources and to transfer greater power or authority to the individual or the (local) community (Myers 1985). Thus far, Laos has only been partially successful in putting this objective into action. In spite of economic reforms, the rebuild of product and factor markets in mainly urban the State-party system, including the Politbureau, all sub-organizations and the central planning commission (CPC) continue to exist and continue to have a crucial influence on the direction and speed of institutional change. In cases of the seemingly successful divestiture of former state property, military people and the political elite have secured themselves key functions in newly created businesses (e.g. logging companies).

Thirdly, the liberalization of the economy is altering not only the economic as well as the social structures through the creation of a system of market incentives and the continuing integration of the population into markets for commodities and services and labor, capital and land markets. This is especially true for the agriculture and forestry sector, which · based on their contribution to the GDP, exports and employment · play a dominant role in Laos, and which will be the focal point of this paper.

It is the objective of this study to discuss the socio-economic aspects of land tenure, or rather resource tenure in the process of economic and · as far as it can be demonstrated · political liberalization in the Lao PDR. In doing so it makes a contribution to the analysis and evaluation of the tenure systems in the Lao PDR, in particular to the dynamics and the interrelationship of land/resource tenure, divestiture and the process of privatization. It will demonstrate which direct effects and which indirect multiplier effects existing resource regimes and tenure reforms have in a country, the wealth of which is based on its natural resources, especially in phases of transition and rapid social and economic change which is controlled in part by influential international investors and donors.

It is also the intention of this study to present those constraints and difficulties which must be overcome in order to give newly formed and reformed property rights regimes an extensive legal and regulatory framework and to let property rights be effective within this framework. The restructuring of resource tenure at all levels does not only influence key issues within economy and society, such as the willingness to invest, factor-productivity. It influences as well the degree of acceptance of the altered political system and the seriousness of democratization and participation at the village level, and thus it influences political stability in the long run. At the same time, the key functions of a consistent, extensive and practicable resource tenure system for the maintenance of soil fertility of agricultural lands, the sustainability of forest lands and the preservation of natural resources for future generations will be worked through in particular.

Accordingly, an introductory sketch of the cornerstones and problems of the transformation process in recent years will be made in Chapter I. Chapter II will concentrate on the analysis and evaluation of elements and problems of land policy and the more recent land-related legislation: objectives, the contents of land, forest and water legislation as well as their integration into an extensive legal framework, their implementation and enforcement at various levels. Here, the appropriate consideration of the interrelation between customary tenure regimes and statutory law, gender implications as well as the effects on various socio-economic strata (the poor, the landless, and returning refugees as well) are of central significance for development cooperation. This is also true for the interaction between land tenure and land use patterns as well as their effects on land use planning, integrated rural development, etc..

Chapter III attempts to assess the -hitherto neglected- processes of the emergence and resulting effects of land markets, particular those markets in urban and peri-urban areas. The existing material allows the identification of the various stakeholders (Chapter IV), and the analysis of the role of political and economic interest groups in the formation of and the exertion of influence on tenure legislation, as well as how the basic pattern of conflicts over crucial natural resources and capacities of institutions and instruments for solving conflicts are worked out (Chapter V).

Chapter VI analyses the findings pertaining to the activities of international and bilateral donors and NGOs in the Lao PDR which devote themselves to the question of land. Recommendations for future development cooperation can also be derived from this information in Chapter VII.
2. Overview of the Transformation Process in Lao PDR

Central stages, objectives and instruments of the transformation process in Laotian society and economy since the beginning of the 70s can be demonstrated pin-pointedly in the formation and securing of land access and land use rights.

Following a protracted civil war lasting two decades, the Lao People's Democratic Republic was declared at the end of the Vietnam war in 1975, replacing the monarchy. The transformation in the direction of a centrally administered economy was urged on through diverse political instruments (World Bank 1995a). The legal basis for land ownership and land use rights under the previous French-influenced regime was dismantled and no new formal framework was put in its place (Gaston 1995a). The old system under French colonial rule and the subsequent kingdom in Laos until 1975 guaranteed private ownership for individuals and legal entities in the case of registered land. The system used the complicated process of "immatriculation" when registering land, and claimed extensive state property using the instruments of "domaine public" and the "domaine privé", which, for example, was concretely established for the forestry sector in the "forêts classées".

Moreover, the rule of law and the bulk of the existing legislation, such as contract law, civil law with its regulations on inheritance or title registration as a basis for land distribution, were repealed and were finally replaced by an extensive set of decrees from the Party. Up to the beginning of the 90s, the country was governed on this basis by presidential and Party decrees and ordinances which could be revised at any time by the Party apparatus. Thus legal security, continuity and comprehensibility were neither guaranteed for the executive administration, nor for the individual citizen. Many properties owned by Laotians who fled the country were nationalized and placed under state management (Gaston 1995a). Furthermore, with the nationalization of the marketing, the distribution system and all land and its re-allocation in the beginning of the collectivization of agriculture, the small family farms dominant up to that point were put under scrutiny.

These efforts to collectivize led to the formation of more than 2,000 cooperatives; all in all, however, this program was urged on with only slight success. Long-term investment in land, for the maintenance of soil fertility, only took place to an inadequate degree; individual economic incentives did not exist. Collectivization was already stopped in 1979 due to the collapse of rice production, and greater efforts were made to consolidate existing cooperatives. This represented the basic shift in the government's approach from collective farming to acknowledging the preference of most farming families for private enterprise (Pham 1994, Gaston 1995a). Thus, the fundamental role of family farms as the safeguard of basic nutrition for the country continued to be recognized.

Although 23 percent of agricultural land was already being worked by cooperatives in 1984, the agricultural sector was still characterized by small private holdings. The legal status of this non-collective land remained unclear: the reach of an active nationalization policy concentrated itself on economically valuable registered areas of land in urban and peri-urban areas, where nowadays restitution claims against the State, Party and individual persons accordingly lead to long, drawn out, and sometimes severe conflicts about land tenure. The effectiveness of nationalization in rural areas was limited; new laws remained largely unknown and were scarcely enforceable. Legal uncertainty was increased by the abandonment of farms and massive migration within and between the Provinces as a result of the war.

The economic framework conditions for family farms in the Lao PDR were also consciously formed to the disadvantage of these farms. Farmgate prices and trade in agricultural products were strictly regulated by the state. Trade between provinces was restricted. The domestic price control, as well as overvalued exchange rates, led to parallel markets for goods and foreign exchange. Inflation increased with the worsening supply shortages caused by a distorted incentive structure (Pham 1994).

This is a brief sketch of the situation in which, even before the collapse of the East European centrally planned economies in 1986, the Laotian government introduced new political approaches and bundles of measures within the one-party system by using the "New Economic Mechanism". These approaches had an extensive economic liberalization and a return to market principles as their objective. Here is a summary of the areas in which the NEM is applied (Pham 1994):

- In pricing policies, because the dual price system (official and parallel market) was lifted, subsidies for agricultural inputs were eliminated, and the system of forced procurement of wage goods (rice) by the Government at below-market prices was done away with.

- In the liberalization of domestic trade: as self-sufficiency at the province level was abandoned, the movement of goods between provinces became allowed, private smallholders were given access to imported raw materials, machinery, transport. They were even allowed to borrow from the banking system.

- Liberalization of foreign trade: the Government ceased its monopolistic trading practices except for a few strategic goods such as minerals and logs (!), and alongside other instruments - the encouraged simplification of import and export taxes.
Macro-economic stabilization policies were carried out together with a comprehensive structural adjustment program enforced by the International Monetary Fund and the World Bank, which resulted in significant innovations and reforms in the fiscal, tax, and monetary policies.

Structural reforms, the simultaneous undertaking of which was unavoidable for the success of the stabilization policies mentioned above, comprised the following elements: the reform, i.e. the divestiture of public enterprises (about 600) and a comprehensive privatization program, the reform of the financial sector with separate functions for the central bank and commercial ones as well as the revision of the foreign investment code.

Institution building which above all comprises the adoption of the new Constitution and other important legislative work, the reform of the budgetary processes and a better coordination through inter-ministerial working groups, etc.

In the last area mentioned, the new formulation of the principles of allocation and the use of natural resources were tackled (World Bank 1995a). After the nation-wide standardization of the price-system, the systematic reforms of the institutional environment, especially the property regime, was the political action of the state since 1989, as well, of course, the strategies for exerting influence through various interest groups. Important steps here were:

1. Altered economic incentive systems: financial incentives, such as subsidies for cooperatives, were thus cut back which meant their very rapid economic end.

2. Above and beyond that, the Laotian State introduced active measures for the decollectivization and privatization of former state farms (Lao PDR 1995a). The majority of them were given back into the hands of the families which formerly owned them.

3. Systematic reforms of the institutional and regulatory framework were tackled beginning with the (re-) allocation of long-term land use rights to families, whereby the formal right of ownership remains with the State. These measures were connected with the further reduction of economic instruments which discriminated against family farmers (access to inputs, price policy).

The reprivatization of land use rights since the end of the 80s, especially in rural areas with concentrated populations, such as in the fertile river valleys, is made more difficult by either the spontaneous or government controlled resettlement of families who fled either to cities or safer provinces during the war. In doing this, the UNHCR programs for returning refugees from Thailand reflect in their numerical significance at best only a small section of the problem (UNHCR 1995). Waves of migrants within the country, squatting in abandoned villages, or either spontaneous or state directed resettlement led to either smoldering or open conflicts over land, particularly over valuable rice fields in the valleys which are unresolved even today, and create a big challenge for local authorities.

State leadership and official bodies came to the self-critical conclusion that inadequate growth in agriculture as well as low productivity in manufacture in the socialist phase was most certainly founded in the uncertain or unclearly defined property rights to agricultural land.

The reformation of land rights as well as the regulation of the use of significant forest resources is a key element of a far-reaching process of transformation, primarily aimed at the economic system. To this belong the privatization of numerous former State enterprises (including the logging industry) and further reforms in the legal and regulatory framework (Pham 1994, Schneider/El-Erian 1994).

The basic precondition for this was the working out of a Constitution (1991), the election of a National Assembly and the publishing of an Official Gazette in order to make public the results of the legislative process. In view of the lack of experience in the legislative process, internal government disputes, and enormous pressure of time, the percentage of decrees still outweighs the percentage of laws. In the years 1992-1994, milestones were achieved in the fundamental reformation of the legal and regulatory framework (Schneider/El-Erian 1994). Prime Ministerial decrees and laws were put into power:

- the organization of the ministries, of villages, and the statute governing civil servants;
- new regulations for the protection of national historical monuments and the environment;
- for the preparation of the regulation of intellectual property rights;
- the Land Decree and further regulations for implementation;
- other decrees issued in 1993 including various ones for taxation and customs duties;
• the adoption of the Enterprise Decree with its implementation regulations making provisions for partnership companies.

Other decrees from the socialist era, such as the Labor Decree, were removed without being replaced. At the end of 1995, there are still also deficits both where the working out of laws and regulations for their implementation are concerned. This comprises regulations for arbitration, public procurement, the accounting and auditing professions, a budget law, further commercial laws (negotiable instruments), and laws for the organization and functioning of the Government. "Even though the Lao PDR's agenda for the development of the legal and regulatory framework is yet to be completed, and at times the necessary means and skills for completing this agenda are not readily available, the country possesses the will and perseverance needed to continue with the achievements to date and develop its legal framework more fully over time." (Schneider/El-Erian 1994:112).

At the same time, it remains undisputed, even after 1988, that a continuous, wide-reaching central State influence alone - a "strong State" - is appropriate for enforcing reforms, and for permanently overcoming the constraints of a centrally planned economy. Comparable to the People's Republic of China or Vietnam, economic liberalization in Laos also served the objective of where possible being able to hold back a political and social liberalization, e.g. through permitting a multi-party system, and to maintain the power and privileges of the outdated bureaucratic and Party apparatus.

II. Land Policy and Resource Tenure Related Legislation

1. Land Policy as a Component of Development Guidelines: Recent Development and Cornerstones

The steps introduced for the economic transformation process were first of all the fundamental prerequisite for the working out of the current official objectives for economic and political development by the year 2000. It is easy to recognize in the wording of these guidelines (see below) that neither is this process by any means complete, nor is it sufficiently stable. (Lao PDR 1994a, Pham 1994, Lao PDR/GTZ 1994):

• the consolidation of the macro-economic reforms to ensure a smooth transition to a market-oriented economy;

• the improvement of the efficiency and the performance of the public sector;

• the acceleration of the socioeconomic development and the improvement of living standards by expanding the economic and social infrastructure and by increasing the quality and availability of social services in order to improve the level of human capital;

• to halt the degradation of the natural resource basis by developing and adopting sustainable resource and conservation management approaches to the use of natural resources.

These objectives are thus a reflection of the main bottlenecks and serious restrictions in the transformation process used up until now. It is precisely the consolidation of the macro-economic reforms and the halting of the degradation of the natural resource basis which demand further, even more durable measures for the completion of the legal and regulatory framework.

Natural Resource Use and Policy Failures in the Past

Alongside extensive reforms in the public sector, it is particularly necessary to improve the conditions for economic trade in the agrarian sector. Structural and policy changes following the adoption of NEM have led to a positive overall growth of the economy, accelerated in particular by the emergence of the private sector, but the agricultural sector, on the other hand, has contributed less and less to this overall growth in recent years (Kaosa-ard et al. 1995). "As the government sees it, the overriding concern is to improve agriculture production." (Dep. of Forestry 1995a:11). This sector will also form the backbone of any future socio-economic development; in so doing, it includes the forest sector, which is very important for Laos. Together they provide 58 percent of the gross domestic product, 83 percent of employment and up to 55 percent of export earnings (World Bank 1995a,b).

Laos is without doubt still rich in forests, water, biodiversity, mineral and land resources. The rapidly increasing scarcity of resources in the two last decades, conditioned by population growth as well as policy failure, makes an extensive and consistent land and resource policy from the State and other parties involved all the more urgent in order to be able to achieve the central development objectives.

1. Lao PDR has the largest per capita volume of renewable water resources in Asia, whereby 82 percent of water usage goes to agriculture, a mere 10 percent to private households, and only 8 percent to industry. At the same
time, the access of the population to clean water and waste water treatment remains limited. Groundwater contamination from waste water is a serious issue in Vientiane and other urban areas. These trends demand clear and above all enforceable water rights, especially in rural areas on the basis of community-based water supply systems and regulations for the distribution and pricing of water.

2. The country uses only a fraction of the hydroelectricity it produces itself. About 70 percent is exported to Thailand which earns about 25 percent of Laos' foreign exchange. The potential for economic use of hydropower is enormous: over 50 dam projects are in various stages of planning. 20 alone are supposed to be finished by the year 2009. Serious problems and conflicts connected with this kind of unchecked economic growth in this sector arise through the displacement of local population and issues of compensation and resettlement including State recognition of the property rights of these groups. Added to this, of course, are further environmental problems, such as the loss of biodiversity, effects on water catchment potentials, drainage capacities, etc.

Measured against its neighboring countries, Laos still has a considerable portion of forest cover in spite of massive drops in passed decades. Given the total forest area was approx. 70 percent of the total area of the country in 1970, the amount was then estimated at about 47 percent at the end of the 80s. With a figure of 40 percent in 1992, timber and timber products were still the largest export article and contributed to 15 percent of the GDP. Deforestation is serious: ca. 300,000 ha of forest are lost every year. The overfelling is more noticeable in the north than in the south, whereby shifting cultivation in particular is made responsible for this along with unsustainable and illegal logging activities and forest fires.

3. Land degradation and forest loss are generally blamed on unsustainable shifting cultivation practices which is deeply rooted in the tradition of that particular rural population which practices upland rice farming on cleared areas of land. The growing population pressure has accelerated the ever more rapid clearing of further areas, shortened fallow periods and it leads to a shortage of land in the more accessible areas. The results of this are declining soil fertility, reduced crop yields and a sharp increase in labor costs due to weeding requirements. Both of these things not only reduce the prospects for agricultural growth in the uplands, but also lead to the clearing of more forests. Given the currently stated factor proportions, the resource-destroying character of the practice of shifting cultivation is undisputed. Added to this is the fact that traditional shifting cultivators are increasingly competing for land with lowland marginal farmers who have been moving upland, practicing shifting cultivation as well.

4. In view of the topography and the poor infrastructure of the country, farming is concentrated on patches of low-lying plains along the Mekong river. Extension of agriculture on to hillslopes and uplands continues due to poor soil fertility as well as inadequate support to farmers for agricultural intensification. The development of irrigation systems is far below its potential. This pincer movement of the conversion of areas of land in the valleys, and of forest to agriculture on hillsides is the basis of further conflicts over village boundaries, utilization rights, and the role of old-established owners and new settlers. In the rebuilding-up of a consistent legal framework which has been underway since 1989, these land rights conflicts must be tackled, and long-lasting patterns for solutions at the local level must be offered.

5. Lao PDR's forests provide a substantial natural habitat for a wide variety of flora and fauna. To conserve biological diversity, the Laos government has identified 71 potential areas for protection with the help of IUCN and SIDA. Eighteen of these have been declared National Biodiversity Conservation Areas (NBCA) (Kaosa-ard et al. 1995). The aim in these areas is an active participation of local communities to preserve the natural richness. The challenges for the future formation of rights of access to and of use of forests, pastures, water and farming land in these regions is accordingly large.

The World Bank also sees the causes for the poor performance of the agro-forestry sector on into the 90s more as result of government policies, i.e. policy failure, than as a result of factors outside the control of Government, like droughts, floods and external market developments (World Bank 1995a). Land policy and resource tenure related legislation issues are right at the top of this list of policies:

- insecure property rights;
- inefficient use and depletion of state-owned assets;
- poor or non-existent transportation and communication, infrastructure, and a lack of a skilled manpower base;
- low or negative economic returns from donor-funded projects; and
- poor agricultural support services.

Something which further aggravates the situation of insecure property rights is the limited implementation and promulgation of already existing laws and regulations; along with this are unclear roles and divisions of tasks and responsibilities among sectors and central and provincial authorities as well as poorly trained civil servants at all
levels.

**Future Development Perspectives and Constraints**

Accordingly, a change in the content, scope and quality of government intervention must be of crucial importance for future development perspectives; it is undisputed that, above and beyond this, further serious bottlenecks will continue to exist (Dep. of Forestry 1995a). Social constraints include a high population growth (2.8 percent), illiteracy, material poverty, poor health, and a low level of formal education. Economic and financial constraints include: a limited technical infrastructure, underdeveloped production methods (and hence low productivity), a poorly trained labor force, a shortage of capital and uncertain product and factor markets.

The regional differences in resource endowment and growth potential continue to be considerable; in general, the southern and central provinces show a higher percentage of land suitable for irrigation with fertile soils as well as more favorable precipitation conditions than northern parts of the country. The economically usable forests in the north have already been considerably reduced. Lao PDR has among the world's most difficult and costly internal and external communications due to rugged terrain and long distances between settlements with an extremely low population density of 18 persons per km². Marketing channels are also poor, partially as a direct result of the poor transport infrastructure.

In view of scanty resources, priorities must be taken into account regarding an urgently required extension of the physical infrastructure. What also must be taken into account are the effects of an improved infrastructure on the protection of forests and other conservation areas from encroachment by unregulated commercial exploiters or an influx of shifting cultivators into areas susceptible to forestry and soil degradation (World Bank 1995a).

In the future, dependence upon what is still primarily subsistence-oriented rainfed agriculture will continue. The result of this can be significant seasonal food shortages. Accordingly, the "Socio-Economic Development Strategies" orient themselves toward the agricultural and forest sector with five programmatic approaches (Dep. of Forestry 1995a):

1. to achieve food security in the fertile plains;
2. to control deforestation and timber cutting, and to offer alternatives to shifting cultivation,
3. to improve farming practices;
4. to develop an integrated rural development approach in pilot areas;
5. to develop appropriate irrigation systems.

In detail, the following ambitious, but in part contradictory strategies for achieving objectives are being strived for (Dep. of Forestry 1995a):

1. To establish a commercially productive agro-forestry industry and services. This also comprises the development of hydropower for the provision of energy. In order to preserve the environment, forests and wildlife are looked upon as particularly compatible where these objectives are concerned.
2. To encourage joint efforts between the government and the private sector. This approach is aimed at transforming the nature-based economy into the market economy.
3. To pursue integrated rural development by promoting farming techniques for improving family farms and establish industrial processing bases.
4. To clearly define the government's role in macro-economic management in order to eliminate the remainder of the command economy and promote private enterprises.
5. To further expand economic cooperation with foreign countries; to attract foreign investment in various forms so as to create long-term co-operation - in agriculture, forestry, the generation of hydroelectricity, the establishment of the social and economic infrastructure; it is further intended to upgrade human resources for implementing the policy; to develop the regulations, policies, and comprehensive laws so as to create ventures with foreign investors.
6. To undertake sustainable human resource development so as to create a workforce with the capabilities needed to meet national development demands.
Conflicts in the objectives within these strategies, such as between economic growth and environmental protection, are to be expected. On the one hand, there is a clear admission of the extensive exploitation of the greatest material wealth of the country, its water and forest resources; at the same time, particular protection of this wealth is being looked at for following generations on the other hand. But there is no evidence of any special approach towards reaching any harmony. In the area of forestry legislation, this potential for conflict was given strong attention early - by international donors as well - which will be made very distinct through the example of Decree 169 (see II.2.). In the case of hydropower policy, the discussion is in full swing, as well as in connection with the pending legislation. The topic seems to have been taken up the least in the area of farming and livestock keeping: for example, the conflict between high production objectives for rice and livestock production and the growing need for cultivable land remains as long as conclusive concepts for intensification (extension services, inputs, credit) are not available.

Further, inconsistencies exist in the emphasis of market principles and promotion of foreign, public and above all private investments on the one hand, and by the simultaneous continued existence of central and often inflexible planning processes on the other. This can be seen most markedly in the elevated function of the Commission for Planning and Cooperation (CPC), by which all external projects must be approved. It reveals itself in the way the highest State representatives, such as ministers, hang on to rigid ways of thinking and planning categories, such as in the planning of land use and the zoning of village land according to the pattern of former production cooperatives. One can also see the tense relationship here between the ruling political elite who wants to secure the power of the state party, and the vested interests of the cadres, and the pressure of the international donors, who want to achieve political liberalization after economic liberalization has been achieved.

2. Land, Forestry and Water Legislation

Principles of the New Legislation

At the end of the 80s it became evident in Laos that a lack of individual incentives for the preservation of agricultural land, forests and water as well as the prevalence of State property rapidly accelerated the plundering of the production basis. The uprooting of families, their migration and the resettlement all as an immediate result of the war additionally aggravated the destruction of resources. The evacuation of entire villages and the resettlement of upland dwellers to the lowlands created a strong, partly ethnic-based tension, increased the uncertainty over property rights to land and placed local customary tenure regimes under scrutiny (see II.6.). It was hardly possible any longer for local authorities to be able to control and put a stop to the clearing of land on sloping areas and the deforestation in the vicinity of villages (Hirsch et al. 1994). Accordingly, the pressure grew for a entirely new conception of statutory laws for land, forests and water, obviously initially induced more by international development organizations than by a change of viewpoint amongst those responsible in the line ministries.

Above all else, the trial-and-error process of the building up of institutions of a market economy system is reflected in the currently valid land legislation. A variety of decrees, orders, regulations and circulars have attained legal power which have an impact on land and resource tenure, utilization rights and land titling. These new decrees were worked out under great pressure of time, put into force, constantly remodified or completely repealed. Only very few of them so far have the full status of "law". In exceptional cases, some regulations from the socialist period are still valid.

Observers of the processes rightly criticize an uncoordinated proliferation of laws, decrees, etc., giving rise to inconsistency, overlapping, uncertainty of definition, and confusion between and across government departments at all levels (Gaston 1995a). Whether or not Laos at the same time were able to act as sovereign state remains open, since government officials and expatriate consultants have hastily drawn up a new legislation to provide a legal basis for the new land use patterns promoted by international development agencies and conservation bodies (Colchester 1992). On the other hand, one must acknowledge the enormous achievement of the attempt to work it out within only a few years, to coordinate the legislation between line ministries, and to begin its implementation at the local level.

In important parts, the current resource-related legal framework is already of high consistency, framework laws have in part a "package" character, and together with enforcement conditions, they are mutually reinforcing (see II 3.-4.). The achievement can be all the more acknowledged as the statutory law had to do justice to the very complex objectives of the Laotian State on the one hand and international donors on the other (Gaston 1995a:5):

- Provision of a system of secure, tradable use rights and legally enforceable titles for selected categories of land and selected patterns of land use;
- Provision of incentives for individuals as well as for community groups or villages to manage particular land categories in a sustainable manner;
• To guarantee that land can be used as collateral in newly formed land markets;

• A complete change in the role of the Government to emphasize zoning, demarcation and provision of assistance to rural and urban land users so as to improve land use practices and to solve conflicts over resources;

• To improve resource mobilization for the allocation and transfer of land through the introduction of a new set of land taxes;

• To ensure that the benefits of more efficient land markets are equitably shared within society: not just between urban and rural stakeholders, or between the various socio-economic strata, but above all in relation to gender issues as well;

• Reasonable consideration of the complex customary rights in forest utilization.

In Lao PDR, the fundamental principals and regulatory norms governing rights to agricultural and forest lands are actually enshrined in the Constitution from 1991, the Property Law (1990), the Land Decree (No. 99 from 1992), the Decree on the Use of Forests and Forest Lands (No. 169 from 1993) and the Decree regarding the Allocation of Land and Forest Lands (No. 186 from 1994) (see Fig. 1). They are in the majority the result of the NEM policy of filling the rule-of-law vacuum left by the socialist State in that not only individual but also communal rights to agricultural land and forests are set down, and the role of the private sector is strengthened.

By looking at Figure 1, one can suspect just how extensively the State still also has to, or wants to operate with decrees. While these decrees are not "laws" in the technical sense, they attract a degree of authority which in many ways is equal to that of laws under "western" legal systems (Lao PDR 199_a). These become enacted by the Government and get signed by the Prime Minister without having to go through the process of legislation. The National Assembly has its own Legal Committee for consultation for questions in drafting laws. (Regulations, instructions which are looked upon as instruments of implementation but which comprise basic rules and definitions can be enacted by the line ministries alone.)

Decrees present themselves as perfectly flexible instruments for gathering experience for putting a new system of laws into action, and these, in the case of unsuitability, can be quickly altered, as in the case of the land tax (Schneider/EI-Erian 1994). But they also cause planning uncertainty and a loss of motivation for implementation organizations and participating actors, to transmit such ad hoc regulations at the local level, put them into action and thus in the long term, to create trust amongst the population.

Property related Legislation

The Constitution explicitly sets down the bases for the property related institutional environment in Articles 13 and 17. It expressly ensures that the State protects various property systems "...all forms of state, collective and individual ownership" (Art.14). The possibilities for acting which these property rights open to the participants are named: "... rights to governing, rights to using, rights to transferring and the rights to inherit property of organizations and individuals" (Art.15). With this, the protection of private ownership for Laotian and foreign investors is particularly emphasized.

Statements about land ownership in the Constitution have obviously been kept consciously ambivalent. It is not expressly defined that all land continues to remain State property. All that is set out is that there is land which is under the ownership of the national community. For this land, "...the state ensures the right to using, transferring and inheriting it in accordance with the law" (Art.15). Since no Land Law has thus far been passed, any interpretation of the valid property regimes has to be derived from the Land Decree (see below).

The Property Law passed in 1990 summarizes, conversely, five different property categories extensively and in great detail. With its strong emphasis of the role of State and collective property, and with its characteristic linguistic style, this law is strongly marked by the socialist society. Land, water, forests, water and land animals are defined here as natural resources "...belonging to the national community, represented by the state". At the same time it is stated that "...the state may grant the right of control, use transfer and inheritance to other organizations, economic units and individuals" (Art.4).

Thus the Constitution and the Property Law acknowledge that natural resources reveal varying spatial expanses, differ from one another in yield potential and intensity of use, are also varyingly controllable, and therefore have to be differently managed and administrated - as was the case before 1975 - through various resource tenure regimes (Kirk 1994). This happens according to yield expectations, and to production and transaction costs for their control and enforcement: for irrigation land more or less as individual private property, for village fields and forests as common property, for commercial plantations as the private property of corporations, for protected forests as state property or as a village, i.e. communal property. But in all cases, the State has reserved preferential responsibility for resource allocation and resource management since 1989. Thus, in the following, just how far the participation
of individuals and communities are guaranteed and promoted will be all the more critically analyzed.

The Property Law regulates above and beyond this - as is the case with the Land Decree - at least to a certain degree, the divestiture of the production cooperatives where there is a case of mismanagement, and makes possible "...the granting of the land of former cooperatives to other economic units or individuals without any liability for compensation" (Art. 12). It goes explicitly into the question of secondary rights as encumbrances which the owners may have to accept, e.g. road or drain passage (Art. 49 and 50).

**Figure 1: Land, Forest, and Water Related Legislation in Lao PDR**

The Land Decree (No. 99) as the central point of land legislation cements unequivocally for post-Socialist Laos one more time "...that the State owns the land on behalf of Lao nationals who are granted rights of land use" (Art. 1). It also codifies land use rights for the 85 percent of the population which, as farmers and forest users, live directly off the land. These long-lasting negotiable utilization rights are very similar to the private ownership of land, for they expressly allow the sale and mortgaging. The Decree allows Lao citizens to acquire land through inheritance, assignment, transfer, lease, sale or through the clearing of land (Art. 3) and ensures the protection of ownership rights against encroachers. Individuals lawfully possessing and using land gain the right to receive a land title (Art. 6). What can be directly deduced from this is the support of the legislator for the setting up of a national Registry Office and the allocation of negotiable land titles.
With the Land Decree, the far-reaching rights of the State as a landowner are set in regulating land allocation, land use and the issuance or titling and the rights of the state to tax different categories of land use (Art. 2). The possibility of land possession within the framework of the "forest land assignment policy programmes" is explicitly mentioned which was later elaborated in Decree 169. The Land Decree does not only provide the framework for property rights regimes, it also underlines the possibilities of improving resource mobilization from the allocation and transfer of land through the introduction of land taxes, new zoning procedures and programmes for registration and titling. It sets out broad regulations for land use planning and land management. Thus it can be explained why guidelines for the coordination between line ministries and for implementation were fixed in the concluding articles.

Thus the Land Decree creates preconditions to overcome the so far strongly fragmented land markets in that urban investors are also able to acquire attested land rights in rural areas. Customary rights only grant this, as in other Asian and African countries, to non-members of owner groups and to "strangers" to a very restricted degree (Kirk/Adokpo 1994). The advantage of this nation-wide standardization of access rights to land are faced, of course, with the complex problems of the stripping of customary land rights, for the defining of resource legislation as statutory law is also connected with the danger of the undermining and long-term suppression of the traditional rights of the rural population (see II 5).

For its advocates, the Decree not only strengthens the rights of urban investors. It likewise strengthens the legal position and negotiating power of the rural population: the clear regulations for possession which are comprehensible to all parties have been created by this Decree. These regulations comprise strong incentives of legal possession which go towards stabilizing resource management (Chantaviphone 1996). In addition it allows the continuation of traditional property regimes, e.g. rice growing in the river valleys where individual private rights to rice fields exist alongside communal ownership of pasture land (Groppo et al. 1995).

Even if the Decree is criticized by liberal economists because of the established position of state ownership of land, it is undisputed that it sets out the most important fundamentals for secure and - theoretically - enforceable rights and establishes the rights to inheritance, sale and lease provided that land taxes are paid (Gaston 1995a). As a generally valid law, it does not only specify the principles of participation of Lao citizens in the land market, but also devotes particular attention to the temporary rights of foreign residents, foreign organizations and expatriate individuals.

**Legislation and Restitution Claims**

The strict differentiation between Lao and foreign investors may likewise appear to be over-regulation and a relic of the isolationist policy of the socialist era; this differentiation reflects above all the uncertainties about economic and social objectives and throws light on unresolved internal conflicts of the Government:

1. The State leaders fear the effects of free, uncontrolled capital, the effect of land and labor markets on socio-economic differentiation, the growing inequality of the distribution of wealth, as well as the effect of economic domination by neighboring countries, in particular Thailand. Extensive land purchases by foreign entrepreneurs and land speculation in (peri-) urban areas are already beginning to show themselves and are forming politically explosive material.

2. The core problem of restitution of land ownership still remains for those who left their country for political reasons after 1975. With the Land Decree, the Government has set down a restrictive line with regard to such claims (Art. 8 and 9): assignment, the transfer and transaction of rights of possession and use of land after fleeing the country are not recognized (Art.5). Individuals loose their rights of possession and use of land "...for a period of 10 years for having fled abroad, fled their place of origin during the war, except for certain cases which will be decided by the Government."

So far, the Laotian State has - in contrast to neighboring Cambodia - strictly avoided the stripping of ownership rights, and has kept open, at least partially, the back door to restitution claims through the Land Decree: "However, in the case of individuals having fled to participate in the struggle for national liberation, the state will appropriately reconsider their cases if applications are lodged before January 1996" (Art.8). In reality, the Land Decree supersedes an older Decree Concerning Land of Persons Who Fleed Lao (No. 129 from 1989) which had clearly dismissed every restitution claim. (According to unofficial information, this decree has already been partly suspended.)

Thus the Land Decree remains, perhaps consciously, ambiguous in its message. In view of the wide-reaching financial, economic and social implications of the recognition of restitution claims, it is not surprising that there was no information about the treatment of these cases at the end of 1995. Rather, reference was made to the awaited enactment of a Decree with regard to pending restitution issues in 1996.

**Legislation on Land Taxing**

The Decree on Land Tax (No. 50 from 1993) was issued in order to reinforce the implementation of the Land
Decree. It not only regulates calculation and levying of the land tax, but also defines above all the various land categories such as construction land, agricultural land and other zones (Art.4). Currently it is also being used as a very coarse instrument for land valuation which is performed using the simplest of categories. Land valuation is primarily supposed to serve the establishment of a land tax calculation base. This means that the Land Tax Decree has a double relevance for land legislation: the land categories, which play a central role in the implementation of the land use policy and land management at the local level, are not taken from the Land Decree, but rather from an extensive additional Decree (II 6). Another aspect is that there are only indications in this Decree about land valuation. The basic precondition is for the use of land as collateral and for mortgages. But land valuation will also be necessary in a case of compensation payments where dispossession takes place in the public interest.

Taxing land and yields from agricultural production as an incentive or a disincentive has a long tradition in Laos. In the socialist phase, there was a strictly progressive tax on marketable surpluses from private cultivation. The progression was lightened in 1980. On the other hand, there were tax incentives to join cooperatives. The result of this was escape strategies developed by the farmers in that they carried on shifting cultivation in the forests so that taxing in this case created an unwanted system of incentives towards destroying resources. Now the Land Tax is set out as a flat tax with only low rates of taxation based on the yields to be paid in cash and no longer in kind. High-yielding land is taxed at a lower rate than low-yielding land, i.e. the effect is regressive. The last reduction in rates of taxation took place in 1993.

The question remains as to why the Land Tax in Laos has such an emphasized role. In 1992/93 it only contributed 2 percent to tax income although agriculture and forestry contribute about 60 percent to the GDP (World Bank 1995a). Since a simple system of land registration is being set up in rural areas for establishing a basis for tax calculation (see III), the presumption remains that there are other reasons alongside fiscal considerations. Through the land tax, a nation-wide land survey is being urged along by the Registry Office. The basis for village land use planning etc. makes it possible to use land as collateral.

Legislation on Land Management

The Decree on the Management and Use of Forests and Forest Land (No. 169 from 1994) plays the key role in future resource legislation in Laos. For the first time it allows the participation of the local population in land allocation. In addition, it offers a broad spectrum of contractual arrangements for resource utilization and for avoiding conflicts between stakeholders in the case of clearly defined property rights. In this respect, it reflects to a high degree the concepts of international donors about desirable land tenure regimes and land use patterns.

The national significance of forests is recognized in this Decree, and agroforestry utilization is also put on a legal footing from which about 55 percent of the population lives directly. The Decree ought to overcome the decade-old state of lawlessness conditioned by State ownership without active resource management and enforcement, since this in particular has led to open access and an enormously high rate of deforestation and commercial logging. The pressure from international environmental organizations, which point out the forest destruction in neighboring Asian countries (Thailand, Malaysia) and demand the preservation of biodiversity, has also decisively shaped the form of the Decree (Colchester 1992) (see VI).

Three aspects are relevant for the land legislation:

1. It offers an extensive definition of forest and forest land, which shows how narrowly agriculture and forestry are interwoven with regard to land tenure and land use.

2. It basically recognizes the complex customary land tenure regulations for agricultural land, pasture and forests (see II 5).

3. Together with the Land Decree it will form a pillar for the new Land Law, the passing of which was planned for the working period of the National Assembly in February, 1996.

Decree 169 provides village communities with written, long-term rights of access and utilization through which communal rights are also integrated into the statutory law (Chantaviphone 199_). The communities are empowered to protect land against uncontrolled access in collaboration with one State. This is surely the central prerequisite for the maintenance of communal property, but it is taken for granted that enforcement by the (Forest-)Police, and local jurisdiction is guaranteed. At the same time, the Decree also comprises the obligation of the villages in the question of resource protection through reforestation and the prevention of bushfires.

In summing up, a weak point of the land and forest legislation in Laos is without doubt to be found currently in the unclear delimitation of various land categories and thus in the scope of the Decree: in view of the wealth of forests and the economic significance of agroforestry systems, one can scarcely differentiate between "agricultural" and "forest land". According to Decree 169, "forest land is all areas under the management of the Ministry of Agriculture and Forestry whether covered with forests or not, but are not used for or defined as permanent agricultural land." But permanent agricultural land has until now not been legally defined: there are references to it in the Land Tax
Decree where not only irrigation rice land but also upland rice fields, which come under forest land, are included into the category "agricultural land". Nor does a Temporary Provision on the Management and Use of Agricultural Land from 1990 make the situation clear regarding the intensively used irrigation areas in the river valleys.

It remains to be emphasized that the existing land related legislative framework is comparatively consistent in terms of property rights and the use of forests and forest land; it is quite vague, ad hoc and not comprehensive in terms of permanent agricultural land. This in part is an expression of the various capabilities and the implementation capacity of the Department of Forestry and the other Departments which are responsible for agriculture in a narrower sense (II 4).

The Decree on the Allocation of Land and Forest Land for Tree Plantation and Forest Protection (No. 186 form 1994) also gives priority to questions of land use and defines the rights of Lao citizens, forests and forest products to be used for daily private consumption, so that - in a preliminary way at least - customary rights remain acknowledged. Furthermore it guarantees a broad spectrum of property rights and utilization forms for forest plantations. Temporary and permanent transfers of plantation land through inheritance or mortgaging are secured through civil law. Wood from reforesting belongs in principle to those private citizens, village collectives or legal entities who have established the plantation or who hold the rights to the land. After a period of three years in which working of the land in accordance with the regulations has to be proved, the rights can be registered. In equal status to private enterprises, the State secures a long-lasting transfer of land to "villages, institutions and communes" (Art. 2) for its occupation and protection. Once again, this Decree also underlines the key role of the State in the allocation of this land, in particular in cooperation with foreign investors in the form of joint ventures or through the permission and control of contractual regulations between the village population and foreign investors (II 4).

Weaknesses in Decree 186 can be seen in the treatment of sanctions in the case of the mishandling of rights which have been dispensed by the State. Here the Decree remains vague, and refers to Decree 169. Moreover, there are no regulations either for the registration of legal titles for plantations, or for the transfer of these rights. So far, these are neither covered by the planned Land Titling System (III), nor are they taken into consideration in the simple registration of land through the Land Decree.

All in all it should be positively emphasized that the Land Decree as well as the Decreases 169 and 186 combine successfully to form a general legislative framework of Decrees which specify resource-specific ownership, utilization and transfer rights. With that, the legal framework for regulating access to and use of agricultural land and forests has been extensively set up - in contrast to the treatment of questions of property rights where water is concerned (see below). The implementation of these laws, however, still needs time, and has to be enforced by a local Administration which is heavily overworked (II 4).

So that there is a consistent and practicable land legislation in order to be able to make legal security, long-term investments and clear contracts possible, what is needed - and is still lacking - is a standardized system of land registration, as well as a Mortgage Law in order to be able to secure long-term credit through landed property, and to be able to open up additional strata of the population possibilities for acquiring land. In the mid and long term this would also have a positive effect on the distribution of wealth in the country. The way encumbrances in general and mortgage debts in particular can be identified and set down in the Registry Office, is closely tied to the organization of land titling. Of basic significance here is the point of intersection between capital and land markets, the successful interaction of which can only be made possible through land registration, and securities based on collateral. Although land is already used informally as collateral, the position of creditors (banks) and debtors (land owners) in front of the courts and in the eyes of the State Administration is unclear and is marked by great uncertainty on the part of all those concerned.

Water Legislation

The significance of irrigated farming shows how closely land and water legislation are bound up together. Thus far, access to and use of both surface and ground water resources, has not been legally regulated. Actually, water is not priced and is virtually free (Claridge 1995, World Bank 1995b), and legal incentives for the economical use of water and for maintaining its quality do not exist at all. Thus far the State has expansively used its property rights to water resources particularly in the former large irrigation areas and also for hydropower.

The Lao State has recognized this legal vacuum: there exists a draft of a Water Law from 1994. Its objective is the regulation and protection of water resources. As owner of water resources, the State apportions utilization rights whereby a differentiation must be made between three systems: basic rights of use (domestic, family, community needs and cultural purposes), medium rights of use (small weirs or dams to be used for hydropower generation or irrigation, livestock and fisheries) and large-scale rights of use (large reservoirs for hydropower and irrigation). The law also deals with secondary rights, i.e. encumbrances which land owners have to put up with. The environmental consequences of water usage are also dealt with in detail (harmful effects of water, erosion control and protection, etc.). The links with land utilization are at least partially taken into consideration here.
Criticism of the draft refers on the one hand to inconsistencies and a lack of coordination with the other resource legislation, and as well to the lack of regulations needed for rights to wetlands which make an important contribution to food security and to the maintenance of biodiversity (Nanni 1992, 199_). Compensation remains unregulated in the case of users who are dispossessed of their water rights in the interest of the State. It is also unclear in what form water rights should be registered: a central national water register is indeed favored, but at the same time, such a decision shows once again the tendency of the State to over-regulate. All the same, the interdependence between farm land, forests and water in Laos reflects administratively that those responsible for water rights and water utilization are settled in the Department of Forestry (Claridge 1995).

Environmental Legislation

Measured against neighboring countries, Laos is still able to show high biodiversity. In order to protect it, 18 regions are identified in the Decree on the Establishment of National Biodiversity Conservation Areas (No. 194 from 1994). These special conservation areas cover about 12 percent of the area of Laos (FOMACOP 1995). The State as owner has enacted extensive utilization bans in these protected areas, including the exploitation of mineral resources and hydropower. Turning land into farm land is strictly forbidden. Together with Decree 169, this decree regulates the use of buffer zones. The local population receives extensive utilization rights whereby, interestingly, these buffer zones have so far not been demarcated.

The most recent land and forest legislation have thus already taken up environmental issues in a far-reaching way, and have demonstrated ways for preserving the natural basis for production: local, participatory resource management; market-based contract solution between stakeholders and mechanisms for economic compensation exist. "The protection of the Environment is a priority of the Government, but as yet there is no comprehensive and consistent legal framework" (Schneider/El-Erian 1994:108, fn. 5). It remains unclear how far this legislation is covered by the Environmental Law planned for 1996, and above all what the connection will be between this law and others. A reminder was made in the Environmental Action Plan (EAP) in 1993 about the completion of the regulatory framework for environmental assessment (EAP 1993). In this plan, a cohesive legal framework governing procedures used in environmental planning and management is certainly called for, but clear plans and which elements a framework ought to comprise are not stated. If the Environmental Law forms a superordinate general outline, which basic new aspects should it deal with, or does it restrict itself to solutions for coordination requirements between State offices and the private sector? In how far does it also present itself as a legal instrument for international cooperation for the protection of water resources and forests, for example through the Mekong Secretariat?

Conclusions

The enormous achievements with the build-up of a legal and regulatory framework for agricultural and forest lands since 1989, are indisputable. However, basic criticisms and warning remarks as a frame of reference must be taken seriously:

- Lao politicians and officials as well as national and international environmental and human rights groups complain - with contrary intentions - about the speed, the often ill-considered ways of proceeding, and the strong influence of the donor community involved in the building-up of the new legal framework.

- Ordo-liberal economists criticize the influence of the State which is still too big. They are petitioning for a legal framework which uncompromisingly sets up unlimited private ownership rights and leave the formation of land tenure regimes within deregulated land markets to solutions for negotiations (Coase-solutions).

- Legal experts complain about the imprecise language of the legislation which is partly determined by translation problems, but also through the indiscriminate borrowing of legal terms from foreign cultures (private ownership, mortgage, collateral etc.). In Laos of all places (as well as in Cambodia), the character of the legislation is influenced by international consultants and State officials (the Land Titling Program is based on the Australian Torrens System; the Order on Customary Rights is influenced by the experience of consultants in Africa; after 1989, Soviet/Russian consultants still had an influence on the first of the new decrees). Thanks to this, the legislation is becoming heterogeneous, possibly even incompatible, and the Ministry of Justice does not even have the authority in its capacity as coordinator to remove these contradictions.

- The constant attempt to overload laws and decrees with a flood of regulatory details is particularly problematic. It would be more sensible to work these details into implementation and enforcement ordinances which are still outstanding. Administrators miss these regulations and complain about the lack of reality in a piece of legislation which corresponds to centralist thinking and scarcely has the requirements for application and enforcement at the local level in view.

- Project managers fear that implementing and coordinating the statutory law, which still has to be done, will be too much for local authorities. Any amount of over-regulation will make their daily tasks more difficult;
projects especially are often the first to experience the impracticability of the legislation and the lack of ability to be able to put it into action (Jones 1995).

In summing up, one must keep in mind that further systematizing the legislation is still necessary: in the actual land related legislation, it has till not been properly determined what is agricultural land and what is forest; what is also still missing is the construction of a system of land registration which is connected with decisions about how far an extensive land registry ("Grundbuch") solution which includes all encumbrances ought to be striven for. Although the government has shown up to now a strong commitment to draft and adopt a new Land Law experts criticize that it still remains unclear and is not well defined on crucial issues.

It must be made clear whether or not plantation land as well as water rights and encumbrances connected with water should be included in this more complex system. There remains a contradiction in all measures for improvement which cannot be resolved: the process of legislation is time consuming, above all in its implementation. In the years given for the process of transformation, the tasks at hand can scarcely be achieved; on the other hand, the expectations of the stakeholders are high. A workable legal framework justifies the trust advanced by the Lao citizens and foreign investors towards the State and in their estimation of the chances of improvement in the future. A crucial problem is the enforcement of the new rights and obligations at all levels and thus also the capabilities of an independent judiciary.

3. Resource Legislation within a Broader Legal and Regulatory Framework

The current valid land and forest legislation can only then be put into practice at the local level and also be accepted by the various interest groups when, on the one hand, an independent judiciary is workable, or on the other that alternative arbitration authorities are recognized. It is only workable when further legal instruments are both available and usable, such as contract law, a tax law, a family and inheritance law, or the certainty of foreign investment. There exists without doubt a lot of interest in the further development of an independent justice system in Laos, but so far there is neither a consistent concept about how this should occur, nor is there experience which stems from the recent past.

Independent Judiciary

With the Law on Supreme Court (1989), the fundamentals of a judiciary independent of both the executive and the legislature were created in Laos (see Figure 2). In principle, it has been guaranteed that it is the business of the court to enforce law at all levels, from the lowest authorities, right up to the Supreme Court. But in practice, constructing it is more difficult than expected. High officials in the Ministry of Justice as well as administrators and above all lawyers complain about the hindrances and delays in the creation of an efficient jurisprudence which has to resolve conflicts about property rights to natural resources more and more. The basic reasons for this are:

- The conflicting parties have as yet no trust in a judiciary which has been organized along Soviet lines for decades and which was not committed to the separation of powers. The independence of the courts is in doubt. Numerous court cases involving questions of ownership of land, are pending since neither the traditional, extra-legal attempts at resolution through negotiation and reconciliation were successful, nor are the parties prepared to take their disputes to court.

- The reservations of the opposing parties are justified in that the majority of judges are still not clear about their new role in a civil society. What is lacking here is up-and-coming judges who have experience with independent judiciaries abroad. What is also lacking is training for judges holding office in the Provinces and Districts, as, for example, is practiced by NGOs in Cambodia.

- The immediate result of this is that judges delay decisions, shy away from final judgments and leave unresolved cases pending. This is thoroughly in keeping with Buddhist-influenced tradition in this country of striving for joint solutions and avoiding irrevocable decisions. But this hinders investment decisions, creates legal uncertainty and scares off foreign investors.

- The uncertainty of the judges makes the work of lawyers considerably more difficult. Judges are often unfamiliar with the flood of new laws; they often have no copies of them. They try to defeat processes for formal reasons which means that lawyers always have to appear with the "law under their arms" so as to be able to convince judges of the legality of a case and also of their own jurisdiction.

- The position of lawyers is additionally weakened by the State because no legal bar exists. The old bar which was dependent upon the State was dissolved at the beginning of the 90s without another one being put in its place.
Thus lawyers possess no instrument for self-organization and self-control. While rules for ethical and professional responsibility for the exercise of the legal profession remain to be set, attorneys at law now have greater responsibility in the implementation and adjudication of the laws and regulations and the settlement of legal disputes (Schneider/El-Erian 1994). A Law on Notaries has indeed existed since 1991, but it was not possible to get information about the contents of this law. Hence the question is still open about the rights notaries have and in how far they take over tasks which are set down in the Decree on Document Registration (see below), and also about who appoints them.

A sophisticated legal system in which attorneys at law can practice hardly exists. There is a lack of courts of first instance at the provincial, and above all the district level, since decentralized jurisdiction had little meaning in a centrally planned economy and society. Above and beyond this, there is still currently a lack of a Court of Appeals and qualified judges to preside over it.

There is the basic problem, not only in formulating laws, but also in setting up institutions, and of the indiscriminate takeover of foreign legal systems: since there was little willingness to take on the legal system in the tradition of the French mold from the time of the Kingdom of Laos, instruments and principles of the Anglo-Saxon and French legal system as well as Chinese experience is being introduced, and reforms and regulations of the Soviet norm are still being experimented with. The development of jurisprudence is accordingly contradictory and lacking in uniformity.

Even well-established land and credit markets are currently still inefficient since it is impossible for banks and other creditors to enforce the repossession of mortgaged land if those taking out credit are unable to pay their loans, and banks then claim the land as collateral. Judges shy away from such decisions which additionally reduces the faith in the security of property rights.

**Statutory Law on Commerce and (Foreign) Investment**

Above and beyond the possibilities for enforcing laws through an efficient judiciary, further legislation is required to make land rights valid and to ensure the transfer of landed property. The multitude of co-existing laws for regulating the passage of business in the private sector for regulating family law once again underlines how partly unsystematic and ad hoc the legal and regulatory framework has been set up. It was not possible to realize the idea of a coherent consistent civil code, ("Code Napoléon" or "Bürgerliches Gesetzbuch"). Even if legislation does not exist as a unified whole, Laos has in this case laid the important cornerstones of framework legislation in a very short time (see Figure 2).

The Business Law (1994) is already an improved version of a previous decree. Its purpose is to promote all economic sectors "in view of market economy" (Art. 1). Different types of enterprises are defined, whereby joint enterprises with local and foreign partners are of particular significance in the forest sector (Art. 4) The particular interests of national security in the case of forests is set out so that business in this sector is subject to close control. The rights and obligations of joint ventures are further set out in the Foreign Investment Law, and specific joint ventures are additionally dealt with in Decree 186.

The Foreign Investment Law (1994) is also a reworked version of earlier decrees (World Bank 1994, 1995a). It emphasizes that the foreign investor's assets and investment will be fully protected by the legislation and that they "...will be kept from confiscation, seizure or nationalization, except in the case of public interest" (Art. 3). Two forms of foreign investment are possible: joint ventures between foreign and local investors and fully foreign-owned investment. In both cases, investors are entitled to lease land and to transfer their rights and interests from the leased land. Limitations exist in the forestry sector: in agreement with Decree 186, only joint venture projects are possible for reasons of State interest.

The law controls detailed taxation stipulations of investors, including possible tax exemptions: measured against earlier decrees, a better standardization has been achieved, and a better system of tax incentives have been created. Important for investors is that the transfer of benefits or funds generated in the Lao PDR to their own country or to a third county is not restricted. Planned joint ventures must be approved by the Foreign Investment Management Committee (FIMC) in all cases, the swift processing of which is guaranteed by law. Disputes between foreigners and a Lao partner are to be solved by a special Arbitration Committee so the legislator here forms an additional, informal authority - before going to court.

The planned Implementing Decree for the Lao Foreign Investment Law (revised draft version from 27.4.1994) refers specifically to Article 14 of the Constitution for the protection of various ownership systems: it follows in detail the Foreign Investment Law, by articulating detailed management standards and procedures to facilitate effective implementation of the Law. The legislation has not only matured in a very short time through the reworking of older decrees; it has made decisive steps for a practicable implementation. Linking the foreign investment legislation with the land tenure-related law is within the possible contractual regulations for the utilization of forests and forest land. This is in regard to:

- Decree 169 with the Forestation Business Contract for the management of degraded forests of land without
forest cover between the Ministry of Agriculture and Forestry (MAF) and foreign investors (alongside further possible contract partners);

- Decree 186, in which joint ventures are planned together with a Lao State-owned enterprise. Government policy is to fully replace concessions by a system of contract logging (FOMACOP 1995). If no commercial logging of natural forests is intended, no such arrangement is necessary for plantation development operations.

- Land Tax Decree which fixes tax charges for leased land.

The tendency towards over-regulation and all-encompassing control by the State can also be seen in the Contract Law from 1990: contracts and possible contract partners are defined in detail, conditions and terms regarding a contract are outlined including restrictive rules when the written form of the contract is compulsory. In this case, with the high rate of adult illiteracy in Laos, about half the adult population would remain excluded from the possibility of being able to make a contract with a value of more than US $5 (Lao PDR 199_a). Here alone one can already see how removed from reality this law is, a law which can never correspond to the economic conditions, since it operates with nominal quantities and pays no attention to inflation, or rather it would require permanent adaptation to legislation.

**Figure 2: Legal and Regulatory Framework for Resource Tenure Legislation**
Elements of Civil Law

With the Family Law (1990) and the Law on Inheritance (1990), the Lao State has already laid two cornerstones for extensive negotiable property rights to land ahead of schedule. They establish valid rules for the property relations between married couples and also set out the rules of inheritance for land.

The Family Law differentiates between initial and acquired assets. Initial assets are property owned by the husband or wife and brought into the joint estate, or assets specially inherited by only one of the partners. Property acquired by the married couple during the marriage are defined as acquired assets. If the joint estate is to be shared, only the acquired assets will be shared. In the case of divorce, the party responsible for the break-down of the marriage will receive a smaller part of these assets.

Alongside this new statutory law, a strong, generally recognized customary family code has existed for centuries. Family conflicts are mostly solved internally within the family, and assets subject to a possible conflict remain in the hands of the whole family. As well, this strong social structure provides a stable framework for long-term investments, such as tree plantations. Checks will have to be made in the future as to what extent State Law will be called upon in such disputes, whether or not both systems get into conflict, or if customary rights continue in rural areas and State jurisdiction is called into play in the urban context.

The Law on Inheritance determines who as direct heir (spouse, offspring, adopted children, step-children) will be awarded the rights to assets. It determines who is entitled to an inheritance if there is neither spouse, nor children. The rules of distribution for an inheritance, meaning also agricultural land, forests, plantations, etc., are specified here. It continues to be of significance that the Law stipulates rules regarding inheritance determined by a will (Art. 33). As with most legal systems, there is no complete freedom to dispose of the property: in Laos, a legal portion must also be granted to living children. Also in the Law on Inheritance it is not yet clear which effects the legislation will have both in the rural and urban context. At least - where the family is in agreement - it does not hinder land and forest plantations remaining the possession of the family under normal circumstances.

The Decree on Document Registration (No. 52 from 1993) should play a supportive function for Property Law, Contract Law, as well as for the Law on Inheritance and the Land Decree. It has indeed the task that all types of legal document pertaining to the transfer of property, use of assets, assignment of rights to individuals or juridical entities, contracts, etc., shall be registered "... to ensure their enforceability and legal value" (Art. 3). It in no way fulfills the demand to build up an extensive registration system for documents and to coordinate them with other legislative tools, such as the Law on Notaries, the Law on Inheritance and related registration of landed properties.

First and foremost the Decree on Document Registration must be looked upon as an attempt to strengthen the fiscal system in which a detailed system of registration fees is developed (Chapter II) whereby the foundations for calculating is the "... actual value of assets at the time of registration". How the asset valuation takes place is not dealt with. An important weakness in the decree is that it could hamper and impede business and the free movement of capital, since every single document has to be registered. The system will collapse if every single purchase contract regarding goods and services has to be sent to the Registration Management Office for registration. An attempt was made one more time to impose legislation which is too hard or virtually impossible for the average citizen to stick to which may further diminish the respect for the legislation (Lao PDR 199_a). Other parts of the previous tax legislation, such as the taxation of land, have already been dismantled and incorporated into the Decree on Land Tax (No. 55 form 1993).

In contrast to this, the attempt was made in the Customs Law of 1994 to gather experience made with the older decrees and to make impracticable, inefficient over-regulation and detailed regulations superfluous. Officially at least it replaces the Decree on State Tax System (No. 47 from 1989). The Customs Law provides rules regarding the import, export, and circulation of commodities. Its aim is to protect and encourage local production, promote investments and export, ensure revenues for the state budget, etc. (Art.1). At the same time, duties are to be paid according to rules and principles as proved in the tariff code. But as long as such a code and a new Tax Decree are not operational, the system of the State Tax Decree will continue to apply due to a lack of other alternatives (Lao PDR 199_a).
establish its influence on economic life and goes after fiscal interests above all. Many parts are unrealistic for the citizens where practicability and comprehensibility are concerned. On the other hand, a part of the legislation was, however, reformed in a painful learning process in that projects and representatives of powerful international donors (IMF, World Bank) and business men who are willing to invest have taken influence.

Loopholes in the law remain open: this is no law for mortgages, and protection for intellectual property rights has not been dealt with, which can achieve growing significance in the future because of biological diversity and the discussion about the protection of genetic resources alone. In the existing framework laws, the immense problems of coordinating them between Ministries and the regional level present themselves above all, when decentralizing, simplified administration, participation of those directly affected. The recent creation of a new Department for the coordination of legislation in the Ministry of Justice (MoJ) is only the first step here.

4. Land Titling and Recording of Land for Land Tax Purposes: Interactions and Contradictions

At present, there is at least de jure a standardized land titling system in Laos for securing private property rights to land, and for extensive and guaranteed transfer. The legal framework and the regulations for implementation have been created, and the practical application of land registration has been tested since October 1995 in selected districts of the capital, Vientiane, in a pilot scheme conducted by the World Bank (World Bank 1995c). In contrast, properties - especially in rural areas - have been recorded de facto with the simplest methods since the beginning of the 90s. The primary objective here is the raising of taxes and not the setting up of a simple cadastre.

Thus there would theoretically be the chance, at least partially, to further develop a land titling system and a cadastre out of already existing structures. But in practice, there is currently rather more the danger that two systems are developing parallel to one another and are only insufficiently inter-connected with one another. Since the Land Titling Project set-up by the State is only at the beginning of the pilot phase, the two have so far few points of contact in everyday administrative life. With the growth of cities and the urbanization of villages, they will cross paths more and more in the future. If their compatibility is not ensured now, it will only be possible to turn recording for tax purposes into a land title capable of registration effectively at high cost.

The attempt is made in Figure 3 to make both systems for recording plots or rather the planned registration and their legislative framework clear.

Land titles in Laos were originally established in 1912 and were kept in force under the Royal Order Law No. 135 from 1958. "These titles certified ownership of land and were supported by cadastral plans and maps for the towns of Vientiane, Pakse, Savannakhet and Luang Prabang" (World Bank 1995c). The continuation and maintenance of this French influenced system proved to be difficult in spite of several attempts to actualize it and spread it further, and it was finally given up in 1975. This means that the reconstruction of a Land Titling System can only take place on a fragmentary data base; it has to battle with a slight degree of familiarity amongst, and little acceptance by, the mass of the population, especially in rural areas.

In contrast, there has been a perfectly good continuation of informal land transaction recordings, also in rural areas after 1975. Land use rights remained informally recognized and a process of administering and recording transactions with those rights has developed. This process continues even today: "...although the land use rights now have legal standing and registration of transactions with those rights is required by law (by the Decree on Document Registration, M.K.), the system is one of registration of transactions rather than certification of title." (World Bank 1996c:2).

This recording of transactions is indeed not in place in all areas of the country and is not being fully used by the people, however the State was able to draw upon the experience of the participants when it began systematic nation-wide registration of all privately used land in 1993 by enacting the Land Tax Decree. Parallel to this, the Fifth Party Congress in March 1991 had already noted that it was necessary to "accelerate land registration and issue land certificates to those who have legal right to use it, so that each plot of land will have a legal owner."

Land registration forms a cornerstone to build-up a comprehensive and consistent land management and administration policy. The focus of registration is the need for more efficient land markets and to improve the sustainable management of land, water and forest resources in rural areas. With that, the various requirements of urban and rural areas are recognized. The twin land management and administration policy objectives are:

- to improve resource management and
- the more productive use of land resources through the provision of incentives to users,
- to improve the regulatory capacity of the Government to ensure that the benefits of more efficient land
markets are more equitably shared,

- to stop the illegal selling of land and to bring increasing land conflicts to an end.

**Figure 3: Land Registration and Recording of Land for Land Tax Purposes**

- **Property Law**
  - Decree on Land
  - Decree on Document Registration
  - Decree on Land Tax
  - Decree on the Use of Forests and Forest Lands
  - Decree on the Allocation of Land and Forest Lands...

  
  
  Ministry of Finance

  
  Decree on the Organization of the Ministry of Finance (No. 104 / 1993)

  
  Decree for Land Re-Management Committee (LRMC) No. 42 / 1994

  
  Instruction for the Implementation of the Decree in Land Tax (No. 267 / 1993)

  
  Department of Land and Housing Management (DOLHM)
  - issuing of titles
  - land management
  - implementation of laws
  - implement land tax collection

  
  Dep. of State Assets (CSA)
  - management of land / houses which are State property (registration, maintenance, etc.)
  - holder of Government shares in divested enterprises
  - register of leases between foreign investors and Lao state properties

  
  Provisional Direction on Adjudication of Land Possession and Use Right (No. 980 / 1995)

  
  LRMC:
  - policy direction
  - implementation assistance at all levels
  - Implement of Land and Land Tax
  - coordination between line ministries

  
  DLDM:
  - dissemination of tax procedures
  - collection of data on plots
  - registration of surveyed land
  - declaration of use rights transfers

  
  Ministry of Agriculture and Forestry

  
  DLDM:
  - delination of Forest Management Planning Areas
  - demarcation between forest and agricultural land
  - certificates of rights for permanent tenure

The high priority for a land registration system and the issuing of titles to all landholders is reflected in the current Public Investment Program 1994-2000 (PIP) which nominated land titling as a key project (Lao PDR 1994b). Currently it can only partly be tested whether or not the demands of the World Bank on the Land Titling Project are
feasible:

- projects should be designed simply with minimal objectives and a single implementing agency with clear management links at provincial or regional level;
- projects should be designed on the basis of the country’s existing human skills and institutions,
- projects should focus on existing land rights, and not on addressing their reallocation.

**Land Titling and Land Registration Procedures**

Does the land titling project fulfills these requirements? The planned land registration in Laos is as such simply fashioned because the simple aim is the construction of a system for the handing out of land titles and for land valuation. The lessons from the first attempt by the Lao Government, a pilot scheme in 1994, begin to show that the fear of the citizens of control through the State is great (tax payments) and eligibility is a lasting problem because owners have no proof of their rights. The pilot scheme financed by the World Bank is also restricted to Vientiane for the moment. Along with practical considerations (staff training, infrastructure), there is also pressure from a coalition of influential private interest groups which demand that the current ownership structure is quickly settled.

The responsibility of the carrying out of land titling is already clearly set out in the Decree on the Organization of the Ministry of Finance (No. 104 from 1993). It states that the issuing of title laid centrally within the responsibility of the Ministry of Finance, and indeed for all land which is not state property in the Department of Land and Housing Management (DOLHM). This is the core national agency responsible for the design and implementation of land management and administration programs (World Bank 1995c:6).

Working independently from this Department is the Department of State Assets (DSA), which is responsible for the registration, supervision and maintenance of state assets. On top of that, it registers leases between foreign investors and Lao entities relating to state property. It also maintains the register for all leases between parties.

Through the Land and Housing Management Office (LHMO), the Department occupies a subordinate office in every province as part of the Division of Finance of the general Province Administration. This office has an extensive field of operation: it maintains the land register, registers land use rights and operates the voluntary titling program, registers all contracts relating to land transfer, collects registration fees and starts local investigations, checks and monitors land valuation for the purpose of registration, assists at the district level in the process resolving disputes, assesses land tax and assists with its collection. One unit is responsible for the land titling records and cadastral surveys, the second is responsible for levying land tax. Essential for future planning is that at least the administrative preconditions have been met for being able to standardize the system of Land Titling for cadastral purposes with the system for land registration for calculating land tax.

Both functions are brought together in the District Office, which has an important function in the formal documentation registration and land tax collection system. This is because the officials carry out the procedures which have been formulated by the legislator (see below). The district level land officer represents the provincial administration in the villages in carrying out land registration activities. At the same time, the district is responsible for the identification of eight land classifications which are based on information from formal and informal transactions (Lao PDR 1995b:7). These categories reflect social reality in Laos more than any wording of the law since restitution, land conflicts and unresolved questions of ownership must be dealt with specifically:

1. state land, such as government buildings,
2. community land,
3. private plots covered by household use rights,
4. foreign-owned land under pre-1975 conditions,
5. foreign legations,
6. land owned by Laotians who left the country in 1975,
7. unknown ownership and
8. ownership of houses and land in dispute.

In their registration work, the land officers are supported by the village headman. Both provide the documentation
including tax certification and proof of ownership together with the required witnesses and documentation to the provincial office as it is the provincial office which certifies and signs the document for land. (This procedure will be discussed in conjunction with land tax collection.)

With the Decree for Land Re-Management Committee (No. 42 from 1994), the Land Re-Management Committee was created as a coordination office to provide policy direction and implementation assistance across institutions at all levels. It possesses the mandate to supervise the implementation of the relevant decree, and thus has an important land management policy-making function. Using it, the attempt is at least made to deal with the complexity of land policy and land management better, and likewise the imminent problems of implementation which will arise alone through the coordination of the numerous administration offices involved. The CPC, the Ministry of Finance and the Ministry of Agriculture and Forestry carry out key functions in the Committee. The DOLHM is used as an implementing agency.

This Committee is so far insufficiently institutionalized. At the national level, only parts of the tasks assigned to it have been dealt with. It has concentrated on policy and program design guidance to DOLHM in the areas of demarcation, registration and titling, adjudication and resolution of land disputes, and in particular on directing a pilot registration program to be commenced in Vientiane Prefecture. At the Province level it is, in part, not constituted at all. "These directives do not address core policy priorities. It is also not clear how the committee's mandate covers the rural land demarcation and utilization issues that require urgent attention" (Lao PDR 1995b:7). Thus important portions of the land policy and land-related policy are formulated and implemented outside the main government agencies which ought to have the mandate. In this way, demarcation is undertaken independent of the Dep. of Forestry.

The Provisional Ministerial Direction on Adjudication of Land Possession and Use Right (No. 990 form 1995) makes the commencement of the pilot project possible. Its objective is "...to provide the facility to the issuing of land certificates and to broaden the interest in registration for people who have not yet registered their land, to promote the development of highly effective land markets and to establish clear systematic land use rights" (Preamble of the Direction). Even if in reality the Land Titling Project in both the pilot and main phases in the urban area will remain restricted, the Direction will generally regulate all central steps of land registration for urban and rural areas in the future. These are:

- Land adjudication of land location and boundaries as well as people’s rights relating to land parcels;
- The rights, duties, tasks and the putting together of the land adjudication team;
- The publication and propagation of decisions taken by the adjudication working teams;
- Regulations for the application for reconsideration in disputed cases;
- Procedures for filing complaints in court;
- Terms and forms for issuing provisional or permanent land certificates;
- Payment of fees.

So far, there exists hardly any practical experience in land registration. Only the technical and administrative requirements for successfully carrying it out have been created: the requisite laws have been made, regulations for implementation are there, the choice of pilot scheme zones minimizes logistic problems, and financing and training of personnel have been secured. The Land Titling Scheme forms, however, one of the big, controversial topics in Laos, comparable to big investments schemes for dam construction. One must distinguish between two levels of criticism: 1) doubt in the feasibility and achievability of the set objectives and 2) general misgivings about whether the existing concept is in keeping with socio-economic and legal reality in the country about what broad effect it may ever have.

The first pilot scheme has brought future practical problems in the registration process to light (Gaston 1995a, Lao PDR 1995b, 1995c):

- The eligibility for land registration and the granting of titles is a controversial issue. The incidence of a lack of fully registered documentary evidence is so high that a systematic program will fail unless the criteria for issuing titles are relaxed.

- Requirements for coordinating the work with the National Geographic Department (NGD) or other organizations with Geographical Information Systems (GIS) were underestimated in order to have a sufficient mapping base. There is a lack of cadastral maps which makes it difficult to relate parcels to one another and to identify those parcels for which titles have been issued and those which have not.
The low incidence of registration in the first pilot phase gives rise to concerns about the sustainability of a land titling system in future. It must be determined whether or not participation is to be voluntary or mandatory.

It must be settled whether or not and in what ways penalties for non-registration should be replaced by incentives to register.

There remains a basic criticism from development practitioners, donors, NGO’s, environmental organizations and human rights activists:

- According to them, the land titling project cements and increases the already existing unequal distribution of income and wealth, above all between the small circle of urban-oriented people who profit from the economic transformation and the mass of those in rural areas for whom adaptation to the structural adjustment and economic liberalization first of all through price rises, inflation and the reduction of subsidies for basic subsidies has been perceived. A powerful coalition of Lao and foreign businessmen, politicians and military people have an interest in legalizing the land tenure status quo in the towns in view of the dynamic land markets with high expectation of profits.

- From NGO circles comes the accusation against the World Bank that it exclusively pursues allocation goals, and that it is neglecting, temporarily at least, the appearance of negative distribution effects. The Bank wants doubtlessly to strengthen land markets, legal security and willingness to invest through land registration. In its statements, it also sounds as though the Bank would like to sell a "product" with its model of land titling in Laos which it self sees as being successful in neighboring countries, and gives the scheme very high priority (World Bank 1995c).

- Eligibility for land registration raises the question about the status of those Laotians who fled the country and the ability to claim land rights now. The legislator, which itself is not prepared to make definite decisions about dispossession or restitution, has passed the buck on to implementation organizations for land titling. They cannot solve the problem, and long-term conflicts which should have been settled before the beginning of registration, will continue into the future.

- Customary rights remain extensively unattended to. They are an important aspect of land use activity in rural areas, but have yet to be formally defined. Whilst it is Government policy to protect customary rights, it is not presently possible to do so in law. The recording of communal land and other customary rights is not planned in land titling, likewise sanctions against unauthorized encroachment on those rights. The program is basically oriented towards the partially foreign concept of individual private ownership.

- It is disputed whether or not the planned process will be comparably simple for women meaning that they are be able to register land in their husbands' name, in particular because the men are seen as the head of the house in most cases.

- There continues to be a considerable ambiguity and lack of coordination between the roles and responsibilities of government agencies with interests in land matters at national and provincial levels. The role of DoF in villagers' land registration in forestry areas seems to have a parallel but uncoordinated relationship with the DOLHM land titling project (Lao PDR 1995b). The actual performance of the LRMC seems to be at some variance to the original intent.

- The cost-benefit-ratio of a nation-wide dissemination of land titling, in particular in regions not opened up, is accordingly estimated as less favorable than the opportunity costs of alternative approaches which build up on existing structures.

- As long as the areas of land which are registered in both systems cannot be clearly identified by mapping and GIS, and cannot be transferred to each other the parallelism of the two registration systems will continue. Thus the formation of two classes of legal security is also reinforced (recognition in court!).

The ways of functioning, the strengths and weaknesses of the land tax collection systems and the registration of surveyed land will be analyzed in the following section.

**Land Tax Collection and Registration of Surveyed Land**

The systematic levying of the newly fashioned Land Tax and the simple registration of parcels of land began in 1993 following the enactment of the Decree on Land Tax and also the Instruction for the Implementation of the Decree on Land Tax (No. 267). While this registration is already well advanced in Districts near the capital which have a built-up infrastructure the percentage of registered land areas in the Province of Xieng Khouang is maximum 30 percent the process has not yet been started in other Provinces, according to verbal communication. So far,
“private land” has primarily been registered, as well as paddy fields and orchards. Shifting cultivation land areas have so far been paid less attention to, although all land used for agriculture (including pasture) officially ought to be taxed. Since the form of utilization constantly changes through the constant encroachment of farming into forest land, it is scarcely possible to be able to charge the correct tax rate. There exist additionally particular coordination requirements of the Ministry of Finance with the Ministry of Agriculture and Forestry, since according to the Decree on the Use of Forests and Forest Land (No. 169), shifting cultivation land areas come under their area of responsibility and DAFO will be responsible for the demarcation between forest and agricultural land (see Figure 3).

The practical procedure for surveying and registering land is as follows: surveying teams are put together from the people responsible at the District Office (MoF), as well as those at the District Agriculture and Forestry Office (MAF). The surveying of land, its classification and the settling of minor disputes between neighbours is always done in conjunction with village members. Together they form an ad hoc committee. The people from the village involved are normally: the village head, the village tax officer, representatives of the main village organizations (women, elders, security). The work is carried out systematically, plot by plot, whereby only the most simple aids such as measuring tapes can be used.

In the Registration Sheet (see Annex), basic information about the possessors is recorded as well as a description of the position of the property, in particular prominent border points, and houses or trees which are to be found on the land. It is accordingly classified as settlement land, agricultural land, or land in remote areas. Encumbrances, such as rights of trespassing can also be included in the sheet. During the assessment of land areas in the initial phase, there were frequently disputes and conflicts, as well in particular because the personnel was badly trained and possessed too little understanding of village structures and customary regulations for the settlement of open questions of land!

If the assignment of land to an owner takes place harmoniously, a copy of the registration sheet stays with the owner, and another one goes to the Administration. In view of the poor coordination and logistic problems between the District, Province and Central Document Administration, the files remain in the District Office and do not get sent on to the central government as is supposed to happen. The danger of original documents being lost, destroyed or not properly looked after is therefore great. This is a hint that the process being practiced thus far offers too little legal security, and it is possible that they cannot be presented in court as evidence.

The registration sheet provides further columns for the point of time and the type of change of possession (inheritance, gifts, selling). For the acknowledgment of such a change of possession, a special request must be made to the District Office. With this, the parties involved must present proof of, or witnesses to, the origin of the land and the legality of the transfer. Further, the village head has to certify the application. In addition, the District Office has to check again the site where the transfer takes place before making the entry of registration. There are small fees for this procedure, as well as the tax for the conversion of possession, the rate of which is calculated as a percentage of the land value, and varies according to how closely the people are related, all in accordance with the Decree on Document Registration.

Chances and weak points in the legal framework and implementation of land policy and land management reveal themselves here: rights to land get registered, even the transfer of these rights is already documented. In order to also develop the system as a basis for land titling, a distinct, recognizable identification of the various plots would be necessary first of all. Additionally, it is inconsistent that the value of the land cannot be determined in the process of registration, since the officials are neither trained for this, nor do they have guidelines to fall back on. The market value can also only be realized (through selling) and will be evident for the levying of tax in the case of a commercial transaction, but in other cases, levying taxes is not possible.

The original purpose of registration is the calculation and levying of the land tax: if the sum of the tax is determined following registration, it is collected by the village tax officer. If the land tax is not paid on time, penalties accrue. In extreme cases, refusal to pay or insolvency can result in dispossession of parts of the land by the State. In such cases, these areas of land get passed on to government officials who have been transferred to the villages. But since traditional village solidarity would scarcely permit such a dispossession, harmonious solutions are usually worked out locally. In more out-of-the-way places, enforcement is not possible at all meaning, a poor tax moral cannot be fought against.

In the understanding of the State, the registration document ought in no way have the character of a land title. Such a title is only awarded through the Land Titling Project. Thus land which has been registered for the purposes of tax cannot officially be used as collateral for credit. However, a further certificate can be drawn up on the basis of the registration document which can serve as collateral with banks. Such an application must be made at the Province level. This additionally extravagant piece of administration became necessary after the banks were confronted again and again with claims from third parties when plots of land were dispossessed because of insolvency.

In addition to the application, witnesses must also be brought along (members of the village council, private people) who can verify the history of the property in the last twenty years since the current register was only begun in 1993. There are also problems here when pieces of land are involved which were taken over by people who fled Laos in 1975. A certificate is not normally awarded in such cases. In order to calculate the credit margin of the bank, the
land is valuated on site based on the village’s decisions about the actual value. (It would be interesting to investigate whether or not making things public in such a process increases the value of land, or reduces it). In the case of insolvency, the banks normally turn to the District Administration to resell the land.

An evaluation of the costs and benefits of registration for the purposes of taxation is unknown. What is certain is that tax revenue from the Land Tax is slight when compared nation-wide to other taxes, and the administrative effort does not seemed justified just for fiscal purposes. In contrast, the potential of seeing registration as the basis of a multi-purpose cadastre and to promote it nation-wide has so far not been supported either by the State or by international donors. The World Bank has devoted hardly any attention to the problem of the future parallelism of the systems, the DOLHM, in which land titling as well as land tax are administratively established, likewise after the new project for land titling had obviously tied up a large part of its planning experts. Worries about future development are rather more dominant in the DoF which collaborates closely with the District officials of the MoF for the delineation of forest and agricultural land and for the regulation of village borders.

5. Administration of Land and Related Resources

An administration which is functional, deals flexibly, and is capable of cooperation and communication at all levels is an elementary precondition for implementing the new legal framework locally and also for enforcing the law. Without this, neither property rights for agricultural, forest and commercial utilization can be newly granted or confirmed especially in the districts and villages, nor is a documentation of the transfer of land possible. The same is so for the control of sticking to land use patterns (plots for cropping and pasture, protected land, shifting cultivation and conservation areas).

1. As a part of its shift towards a market economy, the Lao PDR is now reforming its institutional apparatus by reorganizing existing institutions and creating new ones and by clearly demarcating the roles of executive agencies and line ministries (Kaosa-ard et al. 1995). The following processes in the direction of centralization and decentralization must be observed:

2. Centralization took place in that the attempt was made to reduce the very far-reaching autonomy of the provinces from the socialist period, and to transfer key responsibility to the national level. Their previous independence allowed provinces to apply the revenue from forest concessions as they chose and led to their being virtually independent of line ministries. In the course of administrative decentralization, provincial and district level agencies were integrated in a single system with centralized budget allocation, but were given the responsibility of executing national programs at local levels.

3. The establishment of a clear distinction of roles and functions between agencies responsible for overall executive government functions (like STENO) and line technical agencies (like MAF) took place. The latter are responsible for sectoral technical programs, while the former are responsible for macro-level policy formulation and implementation.

4. Decentralization was apparent in that subordinate authorities, such as the Land Office or DAFS, were allotted clear tasks and responsibilities through the reorganization of their ministerial superiors. At least formally, they have more freedom in deciding and acting in the implementation of laws locally, and resolving conflicts.

According to this, the following basic principles determine the administration of natural resources at the various regional levels (Hirsch et al. 1994).

1. With the reorganization of the Ministries at the national level, the administrative structures of the Ministry of Finance (MoF) and the Ministry of Agriculture and Forestry (MAF) take on key functions in resource tenure legislation and daily land management issues. The main thrust of this reorganization was to decentralize the Ministries, making them a vertically structured organization with overall sectoral management and supervisory responsibilities from the central government through the provincial and district levels (World Bank 1995a). In addition, the passing of numerous decrees and regulations was necessary for establishing the institutional arrangements for the implementation of land/resource administration policy. According to this, the Department of Forestry has the task of “studying and executing strategic guidelines, policy, law and regulations concerning national forestry management and development based on the general directives and general policy of the party central and the government” (Tasks, Rights and Duties of the DoF 1995). In doing so, the implementation of the regulations can independently be brought on through the passing of orders, regulations, instructions and announcements.

2. Provincial authorities are now responsible for transmitting central government policy measures to District levels. In the area of resource tenure and management, provincial authorities are only concerned directly with larger scale operations (sawmills, resettlement).
3. The District level administration is more directly involved with the implementation of the new legislation and plays the key role in local resource management and decision making, i.e. in the allocation of land for various purposes at the village level, such as Forest Management Planning Areas, the Forestry Management Plans (see below) or to adjudicate in disputes between communities over land.

4. At the village level, there are two main formal organizational structures. The Village Committee (Khana Baan) is the primary body responsible for day to day administrative affairs. It also takes on responsibility for the administration and adjudication of traditional resource management rights and responsibilities. Along with this it carries out the instructions of the District Administration in the village. Additionally there is a council of elders in the villages which provides advice to the Village Committee and is also often involved in adjudicating conflicts including resource management conflicts.

5. Since water utilization rights are still barely regulated, water management normally takes place at the household level. Irrigation is used communally, sometimes among a few households, sometimes at the village level, depending on its size.

But as can be observed in other countries in the process of transformation, the existing administrative system in Laos also presents, in spite of endeavors to make reforms, a serious bottleneck in the successful dismantling of the state at the local level and in the implementation of institutional reforms in the country. Indeed the MAF is supposed to evaluate policies, establish priorities, implement programs, and coordinate donor-funded projects, but the legal mandate for the central government to play this role is relatively new and the practical implementation of this role vis-à-vis the provincial governments is tenuous. The capacity to be able to implement priority interventions at the village, district, and provincial levels is likewise very limited (World Bank 1995a). There is an additional problem which is that the communication between local, provincial and the central administration is still very poor.

In spite of the numerous decrees for structurally reorganizing the MAF, the redirection of human and financial resources to priority areas is made difficult by the lack of clear linkages and communications between the different levels of government. The organizational, structural, and procedural environment is in a state of flux with considerable ambiguity regarding the roles and responsibilities of the central and provincial governments. The implementation of the new structure is far from being complete since it is especially the communication between the provincial and national levels which is lacking. The provincial agricultural and forestry services (PAFS) retain considerable autonomy and nothing approaching a unified national system of (land) policy formulation and resource allocation is yet in place. The autonomy can also lead to existing decrees being ignored and well-worn practices being continued with (bribery to ensure illegal logging quotas). But this autonomy also has the reverse effect, that extensive independent initiatives get developed. The Luang Prabang and the Sayaboury Provinces have accordingly „translated“ these into their own instruction manuals on agricultural land and forest allocation (Gaston 1995b). Luang Prabang has also prepared a set of provincial instructions for the implementation of the Land Decree (No.99) and the Land Tax Decree (No. 50).

The resource legislation passed in 1989, in particular Decrees 169 and 186, emphasizes decentral decision structures and the systematic involvement of stakeholders, for example for village land use planning and conflict arbitration. A legal framework oriented towards participation presents considerably greater demands on bureaucracies and additionally overloads the capacity for implementation of the established administration. A high degree of self-initiative and willingness to take on responsibility is expected from all levels which has not been fulfilled in a command and control system (cf. Figure 4). A great deal of value is put on the protection of forest resources in these decrees. But so far there has hardly been any viable dialogue built up between the state represented by the local administration and the village population for finding out how the villages can increase their competence so as to achieve this resource protection.

The economic liberalization in all sectors and the quick economic change have given the administration additional areas of responsibility and put them permanently under pressure to make decisions (allocation of logging licenses, making contracts with village communities, earmarking of protected zones, tax collection, etc.). The allocation of logging licenses requires completely new coordination structures from the MAF with the FIMC, but also in particular with the province level, which alone possess the technical competence for estimating the value of the license.

These new challenges lead, as in other countries in the process of transformation, e.g. noticeably in Uzbekistan (Eckert/Elwert 1996), to inaction and heavily delayed action by handing cases on to the highest level through fear of sanctions and making wrong decisions. The letter and spirit of the newly created framework laws remain thus unfulfilled.

The strain and workload are increased by the high expectations of the international donors. The proliferation of donor projects, although individually worthwhile, has made it difficult to develop coherent national strategies and to implement them at the local level. In view of the scarcity of personnel and completely inadequate education and training, the authorities try to first of all fulfill the demands of the project sponsors which already takes up their limited capacity. Since these projects are constantly subject to quality control by evaluation, they put the pressure on for quick implementation of the planned activities, often especially in out-of-the-way provinces and districts. The implementation of further institutional reforms, such as legal plans in villages, can accordingly only be moved on
sluggishly.

It remains difficult to understand how the administration could take over these additional tasks given the state of training and the amount of personnel. Before employing this apparatus for land use planning, it is urgently necessary to make sure that the legislation is sufficiently disseminated and understood. The challenges are all the more serious since special programmes for dissemination of the new legislation already initiated by the Ministry of Justice and financed by international donors have only had limited success.

Taking the example of the implementation of Decree 169, the district and local levels, the duties, responsibilities and coordination needs for the District Administration (DAFO) and the current implementation bottleneck become clear (Figure 4):

- A multitude of new committees were created through the new legislation with its participatory approach, which must do more than to just give lip service to their objectives. There is a great danger of every legal novelty creating further ones also as the result of the lack of coordination between Ministries. Parallel legal systems would be unwelcome especially for everyday situations.

- International donors are tempted to bring new structures to life within their project regions instead of strengthening and further developing the ones which are already there.

- The various responsibilities of the DAFS in the committees are already very extensive. More and more coordination tasks are added by work with other ministries, with State planning organizations, donors and with foreign investors. It is very doubtful if the current personnel is really able to keep up with the legal regulations.

- Problems of responsibility are unavoidable, not only between ministries, but also within the Departments for Agriculture and Forestry in the MAF, for both of them have unclear mandates (agricultural land), but the legislation in the operational area of the DoF is already far more extensively reformed than in the area of agriculture.

Figure 4: Duties, Responsibilities and Coordination Needs for MAF/DoF to Implement Decree 169 (On the Use of Forests and Forest Lands)

While the majority of Lao PDR’s rural population currently has access to some land, security of land access is increasingly becoming an issue. Access rights and responsibilities of land users are ill defined, particularly in areas where customary rights governing access to land are beginning to break down. (World Bank 1995b:47). Not only the growing population pressure in the intensively cultivated river valleys, but also integration into the market economy and the advancing of the private sector with the alienation of land through leasing for commercial farming and logging have caused a breakdown of the traditional village resource management systems in some areas. The disregard of these rights through centralist planning have also accelerated the collapse of customary regulations in some regions. On the other hand, customary tenure and management systems have continued to vest local communities with an important role in the management of land, water and forests in regions with difficult access and little supervision from the State. Until recently, this was tacitly acknowledged but not formally recognized because informal arrangements were often more acceptable for the State and were adequate means of avoiding problems of open access (Hirsch et al. 1994:1). Thus customary rights partially also survived socialism. There were, de facto, overlapping areas, interactions and doubtless also contradictions between statutory and customary law.

What contains „customary rights” in the Laotian context?
• Community level forest management with a wide range of rules and prohibitions, usually differentiated between locals and outsiders including enforcement mechanisms such as fines and other penalties. This also comprises gathering rights for wild fruits and other utilization rights in forests;

• Regulations for animal holding on communal pastures;

• The organization of village irrigation perimeters.

In the process of transformation, with its first reform laws, only little regard has been paid to cultural diversity, and the identity of indigenous peoples and their customary rights. Only the Constitution explicitly devotes some Articles to them (see Figure 5). The subsequent process of legislation was accordingly critically observed by national and international NGOs with regard to the consideration of human rights (see VI); the discussion about the future role of customary rights was stirred up by this. In the middle of this is the dispute about whether the legal framework is compatible with traditional patterns of community resource management, and which effects of distribution the new legal framework has for those groups which have always been organized on the basis of customary regulations:

• At first, state and most international donors had an unbroken trust in the adjustability of resource tenure through the setting up of the new, nation-wide legal framework, in particular where the incentives for reduction of shifting cultivation activities were concerned. International functioning NGOs have been complaining at least since 1992 that the World Bank's programmes of forest management and conservation will facilitate "...the application of very restrictive laws which are not only entirely contrary to international legal norms regarding indigenous peoples ... but which are also contrary to the World Bank's own recently revised Operational Directive on Indigenous Peoples" (Colchester 1992:1). They point out the resulting high economic and social costs of wiping out or suppressing customary rights for long-lasting resource protection at the local level, as well as menacing community conflicts, using negative examples in neighboring countries.

• They sue for the revision of the planned programmes and requested that the proposed legislation on land tenure, forest management and conservation should be radically redrafted with the following aims: the evolution of a fully participatory planning process in which local communities have a decisive voice; a clear and unambiguous recognition of the rights of local communities to the use and control of the natural resources and the subordination of commercial development programmes to ensure that the meeting of local peoples' needs are given first priority (Colchester 1992:1f).

• Compared with the structure of customary rights, there is a fear of negative distribution effects for the indigenous people who are still primarily dependent on the yields of community property. Further, a one-sided disadvantage can be expected for women (see also II. 8) as well as for those groups which possess secondary rights (animal holders, gatherers). External resource users, such as logging and hydropower companies still rarely have to regard indigenous rights in spite of the reformed legislation. Even if customary rights are explicitly mentioned here, such as in Decree 169, they have hardly been pursued equally with economic objectives, and the consideration of these customary rights locally can scarcely be implemented or enforced.

• Forests and forest lands are treated differently in legislation compared to permanent agricultural land. Customary rights are explicitly acknowledged only in the first category. However, these rights are by no means exclusive to users of forests and forest lands. To offer a uniform and logical legislative framework for all citizens, customary rights on permanent agricultural land (and even in urban areas) should be incorporate as well.

• The opportunities for taking advantage of incentives with customary rights for maintaining the biodiversity of the country are not made use of by the State often enough.

Figure 5: Land tenure legislation and customary rights
Public debate and pressure from NGOs has led to various drafts for an "Order on Customary Rights and the Use of Forest Resources" (OCR) (MAF, 4th April, 1995) being presented and intensively discussed under the substantial influence of the World Bank. This order is understood to be helpful in interpretation and implementation as well as being complementary to Decree 169 (and Decree 186) (Lao PDR 1995d). The basic idea is that the preferable way of dealing with forest use practices is through the contractual, consensus route. While Decree 169 does contain some incentives, the Order clearly states that every attempt must be made by all to settle rights issues through contracts before contemplating resorting to law. Thus the focus of this implementing regulation is to address the subject of traditional use of forests as it is relevant to everyday life in the village and the district. To that end, the local institutional context is the major element needing regulation if the who, what and how concerning users' rights is to be clarified (Lao PDR 1995d:8). Thus it is looked upon as a missing link between statutory law, customary regulations and land use patterns. Basically it deals with the following:
it makes an attempt at defining customary rights (individuals and groups as bearers of rights, limited possibilities for transfer within the group), including the dimension of „custom” whereby one cannot help getting the impression that the authors of the Order refer strongly to the African experience;

it tries to stake out the boundaries within which customary rights can be superseded or removed by State legislation;

it provides mechanisms for settling disputes although it was felt that an Order could not by itself determine the means of non-judiciary dispute settlement (Decree 169 is silent on that subject). Decree No. 102 on the Organization and Administration of Villages was more useful as it contains a procedure for the settlement of disputes through reconciliation (see Figure 5);

it gives tips about possibilities for compensation in such cases and

creates rules and committees for complying with the observance of customary rights (see below). At the same time it continues on from the Forest and Forest Land Distribution Committee established in Decree 169, but broadens its authority at the same time and makes the participation of further groups (including NGO representatives) at the local level possible. By enlarging itself in the above-mentioned manner, the committee increases its capacity for achieving its main task: ensuring that a balance is maintained between the needs of the users for their livelihood, the conservation of the resource and the attainment of founded economic objectives (Lao PDR 1995d:9).

With this, the Order is seen as a transitory instrument. Concerning the statement of principles a law or at least a decree would have been the proper legal document to affirm such basic, widespread economic rights (Lao PDR 1995d). A stand-alone Law or Decree specifically on customary rights and resource use would have been ideal, offering as a bonus the opportunity to create new institutions and procedures or adapt existing ones. Another possibility would have been to amend Decree 169. But since both ways were seen as being too time consuming, the alternative of the Order was chosen. Its substantive elements should be incorporated as soon as possible in the new forestry law still under preparation or in stand-alone legislation.

The dispute remained very lively up to autumn 1995 at the highest government level in the Ministries and amongst the projects and programmes of national and international donors as to whether or not an „Order on Customary Rights” was a suitable instrument for providing the indigenous rights with support in getting access to resources and partial self-determination over their utilization.

The criticism of the OCR attacks at two levels:

- Does the „Order“ cover all relevant dimensions and aspects of customary rights?

- Do customary rights have their own irrefutable value, and should they be placed above state legislation in the case of conflicts? If the answer is no, to what degree should they be subordinated?

In the OCR, the Ministerial bureaucracy sees a legal instrument under an extreme exertion of external influence which hardly relates to economic conditions and the cultural context. Accordingly, it is treated often with a lack of understanding, even rejection. Undoubtedly donors see the absolute necessity of establishing customary rights in writing, but they doubt whether it is a practicable and viable instrument, e.g. when carrying out Decrees 169 and 186. NGOs also have expressed their worries in a combined letter to the Department of Forestry about whether or not the Order can fulfill its legal expectations (see Annex).

In individual sections, the „Order” must been seen as not yet mature, for example when it refers to the Decree on Land (No. 99) where customary rights have neither been mentioned explicitly nor can be deduced indirectly. The definitions appear often to be arbitrary and seem to bear no relation to the living conditions of the very people whose interests they should be strengthening. The order clearly defines the roles and responsibilities of committees which are already named in other statutes, and it only contributes to the proliferation of such committees: the „Land and Forest Lands Distribution Committee” is of crucial importance for the implementation of Decree 169. To facilitate this implementation at the local level, it would seem to be more appropriate to integrate these parts in Decree 169 from the beginning. At the same time, the Order creates a new „Special Committee”.

The important process of dispute settling at the local level which also ought to take customary regulations particularly into consideration proposed in the OCR refers to Decree 169. Further procedures for reconciliation are already mentioned in Decree 102 on Village Administration (see Figure 5). A further clarification here is needed to ease the daily work of provincial and district authorities and to help villagers to understand their rights.

Having established that customary rights are largely self-regulating and should not be interfered with as a matter of principle, the fact remains that those rights are to be exercised in conjunction with both national conservation
policies and national economic pursuits such as industrial exploitation of the forests. Thus, limits on the exercise of the rights are justified in specific cases (Lao PDR 1995:7). The question of what value customary rights have, whether or not they should be restricted to forest activities with the passing of the OCR, and who should decide where and to what degree they should be pruned, remains for both legislators and local administrations and development projects.

The discussion was not concluded in autumn 1995. The majority of the participants had agreed that instead of adding new layers of legislation, the strengthening and improvement of existing decrees may be more effective for the protection of customary rights, for legislative uniformity and for a better understanding of the new legal framework (NGO Letter 1995) (see Annex). New laws for lands, forestry and water resources are currently being prepared. Amongst other things, it should be recommended that customary rights be incorporated into these laws more than it appears to have been the case so far, subject to overriding considerations of conservation, of food security and social stability (Gaston 1995a).

7. Gender-related Issues and Problems

"Despite the important role women play in agriculture, there is no strategy or programme to enhance their contribution to and benefits from agricultural development" (World Bank 1995a:78). This statement is just as valid for the effects of the reformed resource legislation and the development in customary rights on gender relations in the case of access to natural resources and their utilization (see chapter II.6). However, there is currently a lack of reliable gender-specific data so that it has scarcely been possible to support the arguments in the current public debate about the way women are put at a disadvantage by the reformed legislation with sound data. This by no means detracts from the fundamental meaning and the necessity of such a discussion for the future socioeconomic development of the country.

Case studies which were made during the conception of the controversial Land Titling Project reflected the sophisticated gender-related autochthonous land tenure rules (Outhaki 1994). The data on landownership and inheritance patterns show that traces of every possible combination of inheritance and property can be found nation-wide. Although the dominant patterns of patrilineal inheritance of land exists which usually give a male dominance in gender relations, this trend is flawed and smoothed by matrilineal and bi-lineal influences from the Lao Lum (Lao lowlands) culture. Interest groups which are currently giving out warnings about the loss of women’s resource rights, e.g. through land titling, also emphasize that traditional land tenure followed matri-local patterns of ownership and inheritance, in Lao Lum culture at least, with the family house and land passing from mother to daughter(s). When sons marry, they are usually expected to move out of their parents house and to live with the bride. This means that lowland Lao women have maintained strong control and influence over land ownership and on land use patterns.

The little material which is available gives rise to the suspicion that the situation for women especially where customary rights and statutory law come face to face is much more complicated (Outhaki 1994): There are also cases in matrilineal societies on the Mekong plain in which irrigated land is indeed acquired by married couples but not as common property. It is only registered in the name of the husband. In rare cases, there is an entry in the (tax) register for both partners. Even so, women in matrilineal ethnic groups are perfectly conscious of the fact that it is their land and should be registered in their name (Outhaki 1994). Nevertheless, other women are in the dark about their rights in the case of divorce or death of the husband when they unsuspectingly allow the land to be registered in the husband’s name. In patrilineal groups in Xieng Khouang Province, there are clearly male dominated regulations, even if irrigated land is commonly acquired. Women in rural areas are not so clear about the male dominated practice of registration; it is in urban areas with an increase of divorce cases that women start to realize that ownership of land and property formally registered in their name is an important matter of economic and emotional security in life.

Accordingly, as in other Asian and African countries, a very controversial discussion is developing in Laos about the following questions:

1. Does the resource legislation in particular existing since 1989 adequately take the interests of women into account?
2. Even if the answer to this is yes, does their implementation make women secure, and can they use their attested rights against the influence of their husbands?
3. To what extent does a legislative process dominated by men and its implementation consciously or unconsciously disadvantage the interests of women?
4. Does not land titling in the planned form decisively contribute to women losing their traditionally strong rights to men and to their being in a worse situation than before in the case of death or divorce?
Doubtless, the government has been active, especially in providing a legal framework to enhance the role of and benefits to women in development. The country’s Constitution ensures equal rights for both sexes in political, social, economic, and cultural affairs (Art. 24). But history has taught us without any doubt in both capitalist and socialist countries that these guaranteed basic rights are hardly enough to ensure women the same access to resources and equal rights to make use of the benefits. In addition, a number of laws and decrees have been enacted since 1992, including the Property, Insurance, Labor, Election and in particular Family and Inheritance Laws (see Chapter II.3.), which provide a framework for action enhancing women’s rights and participation. Even if these laws just mentioned very closely deal with gender relations concerning rights to assets and inheritance rules, the question remains open about how far this claim must be regarded when implementing the laws, and how far it is enforceable by women.

The more framework laws are made operational through implementation regulations the more rare it is that women’s rights are explicitly dealt with. For example, the guidelines for implementing Decree 169 for Luang Prabang Province and for implementing the Land Decree explicitly do not take the attested rights of women again. There is a conspicuous discrepancy between the keenness for regulating everything when working out the rules of implementation (including the „Order on Customary Rights”) in general and the silence surrounding gender-related issues which ought to be regarded by the administrative officers. The public administration, the task of which is to implement the new legal framework, is dominated by men at all levels. The people they deal with in questions of inheritance, land surveys or the levying of taxes, when giving credit or advice continue to be the male household head. The practice in most rural communities is that men are the ones who deal with „outsiders” (especially if the „outsiders” are men as well). Thus men often make far-reaching decisions about portions of family money which wives, sisters and daughters clearly have a right to according to customary rights or strictly applied statutory law. Women are thus often excluded from these key decisions.

Providing relevant government officials with gender training is thus important, but of course not sufficient. For realistically speaking, women hardly have a chance at present of getting a hearing in court and suing for their rights: they are not familiar with the new legislation; going to court would mostly have to be done against the will of the husband and financed alone. Just how far male judges in the court of first instance will grant women’s claims to rights remains to be seen.

The crunch question for NGOs with reference to land titling is how seriously the Laotian State and donors are about their active promotion of women in social life and the process of development. It is of great concern for the NGOs that the land titling project may exacerbate the problem which was outlined in the previous section, not only by weakening women’s direct control over land, but also by enabling land to be more readily used by men as an economic instrument in development activities. According to NGO opinion, the land titling process could result in the widespread and „creeping” erosion of traditional property and inheritance rules by making household heads (usually men) the legal holders of land titles and enabling the conversion of land as economic tool (collateral, sale), and thus weaken especially rural women’s access to and control over land resources.

Many women in rural areas still lack, due to illiteracy and unequal opportunities for formal education, the experience and information necessary to understand fully and evaluate the long-term impact of the titling procedures. Although the implementation of new regulations at the grassroots level in general is strongly assisted by foreign NGOs (World Bank 1995b:78), actually there is no system known for providing women with independent legal advice. All this will put women at a clear disadvantage in a process which will be centered around documentation and legalistic paperwork.

Experience in land registration and the rise of a land market in African countries, in particular in Kenya (Kirk 1994), shows that the fears of the NGOs is not unfounded. The criticism of the planned implementation of the land titling procedures has already led to clarifications in its implementation: although making it mandatory for both husbands and wives to sign land title documents would be a positive step; it would not, however, in itself ensure that women are fully informed of the implications of the ongoing process. In view of current experience, it is difficult to imagine a scenario in which the land titling process would not cause and exacerbate inequalities along gender lines.

8. Access to Land, Land Tenure Regimes and Conditions of Land Use

In an agrarian society such as Laos’, among the poor, and the importance of agriculture as the main source of livelihood in rural areas, the interaction between access to land, guiding land tenure regimes and the conditions of land use will remain essential (World Bank 1995b:45). In the following section, only a few central relations can be gone into:

- The extent and direction of the alteration of the conditions of land use and their effect on property rights and land tenure regimes;
- The importance of regional diversification, in particular the dependence on irrigated land and forestry;
• Interdependence between new agricultural technology and land tenure changes;
• in particular the obligation towards intensification and the necessary preconditions in land tenure regimes;
• goal conflicts created by resource tenure legislation for the reduction of shifting cultivation and simultaneously less potentials for intensification of food production;
• This is overlaid by the importance of market integration for land use systems and demands upon land tenure regimes;
• The quality of information up until now about the conditions of land use and the role of land use planning;
• conversion of land, altered land use patterns and land tenure in the peri-urban context.

Land Use Conditions and Land Distribution

The conditions of land use are rapidly changing in Lao PDR determined by population growth, internal migration, the substitution of forest use by farming, the destruction of farm land and forests as well as a loss in soil quality due to the Vietnam War, as well as the build-up of new market production structures in the former subsistence-oriented, indeed autarkic agriculture. The sections II. 2-4. have explained that the attempt has been since 1989 - often in a futile race against accelerated resource degradation - to anticipate these trends and to create long-term viable regulations for resource utilization and conservation through resource legislation.

The agricultural sector can be characterized as an extensive, low input, low output system. Irrigation is still rare, double cropping equally scarce, and land quality overall is highly variable (World Bank 1995b:iv). The access to resources is accordingly still relatively equally distributed with each family claiming ownership to 1.4 hectares of cultivable land on average. The range of land ownership is modest, with the lowest quintile of income distribution owning 1.29 hectares on average and the richest quintile only 1.72 hectares.

Access to land per se does not seem to vary significantly with a household’s position on the income distribution scale (World Bank 1995b:45) The large majority of the rural population (96 percent) either possesses or has free access to land, but the average amount of land available to rural households is small and frequently of poor quality, particularly in the uplands. About three quarters of the population only have access to dry land, 6 percent only cultivate irrigated land, and 13 percent cultivate dry and irrigated land. Thus landlessness in great proportions is not currently a major issue of concern, not even with regard to the Lao PDR’s rural poor. But when one considers that 44 percent of the households embrace 6-9 people, the beginnings of land pressure cannot be denied if these households only cultivate 1.4 hectares of dry land on average (Lao PDR 1995_b:1).

Regional Discrepancies

In comparison with Vietnam, the overall land distribution is relatively skewed at the bottom and the top end of the income distribution. There are significant regional variations in Laos with land distribution in the north being the most equitable and least equitable in the middle of the country (World Bank 1995b:46 f). The relative availability of irrigation land, forests and wet lands marks the principle conditions of land use and of income generation in rural areas; private ownership for irrigated land, either individually or within the family, state ownership with plantations, communal property with pastures and forests, and of resources, the access to which is not institutionally regulated (any more) (Groppo et al. 1995, Kirk 1994). Population growth, market integration and sectoral change are already leading to scarcity of land to varying degrees in various regions and accordingly exert pressure on existing land tenure regulations. The discussion about these challenges has so far barely started in the Lao PDR - except in the Department of Forestry; thus the changes in structure will meet a relatively unprepared population.

The well-known low productivity of Lao PDR agriculture is displayed by the absence of any clear relationship between land type (irrigated, dry land, both) and household income. Only land size shows such a relationship, indicating that a typical Lao family would be better off with more land (World Bank 1995b:iv). Thus the most frequently cited farming problems are a regionally specific absolute shortage of land and an insufficient quality of land. This indicates that Lao peasants themselves would prefer to extend or to improve their land to increase income, and are not utilizing modern agricultural implements on a large scale such as fertilizer, new varieties or implements which could raise productivity of the current agricultural areas (Table 1).

Indicators for the accelerated process of change in the present conditions of land use are, in Xieng Khouang Province for example: the opening up of new areas for irrigated cropping which is already accompanied by a local scarcity of water as a result of the endangering of catchment areas through logging and shortened rotation periods for shifting cultivation. Here, soil fertility declines causing reduced crop yields and an increase in the number of weedings. Further indicators are reduced forest cover caused by new settlements and the conversion of forests into farming fields, or a greater amount of time for gathering forest products on the basis of customary rights (Hirsch et
Access to agricultural land and forest lands of varying quality and differing land use patterns are unevenly distributed throughout the country and determine locally specific, flexible adaptive land tenure regulations, for the central and southern regions are endowed with plains along the Mekong and other rivers which are irrigable and have fertile soils. The pressure on the land is already strongly noticeable here (Groppo et al. 1995). Population densities of up to 350 inhabitants/km² are not uncommon. In contrast, the northern region is very mountainous and rugged with nearly no irrigable land (World Bank 1995a:9). This mountainous nature has led to its economic isolation from the rest of the country due to extremely poor transport linkages.

Table 1: Access to Rural Infrastructure and Service in Lao PDR

<table>
<thead>
<tr>
<th></th>
<th>Percent of population in villages with access to</th>
</tr>
</thead>
<tbody>
<tr>
<td>village can be reached by truck</td>
<td></td>
</tr>
<tr>
<td>- never</td>
<td>22</td>
</tr>
<tr>
<td>- always</td>
<td>50</td>
</tr>
<tr>
<td>- dry season only</td>
<td>28</td>
</tr>
<tr>
<td>&lt; 1 km from public transport</td>
<td>37</td>
</tr>
<tr>
<td>&gt; 10 km from public transport</td>
<td>22</td>
</tr>
<tr>
<td>connected to electricity</td>
<td>11</td>
</tr>
<tr>
<td>school in village</td>
<td>92</td>
</tr>
<tr>
<td>permanent market in village</td>
<td>7</td>
</tr>
<tr>
<td>access to safe water</td>
<td>33</td>
</tr>
</tbody>
</table>

Source: World Bank 1995b:56, Table 3.11.

The attempt is being made with Decree 169 and the regulations for its implementation to establish long-lasting regulations for land use patterns or to newly develop them with the delineation of village centered Resource Management Areas. With that, the DoF has performed important preliminary work for forest cultivation and dry land agriculture without the comparable strains of permanent, intensive irrigation cultivation being recognizable. Important impulses which pay attention to the narrow interdependence between land tenure and conditions of land use, between technical innovations and the corresponding institutional change so far come from committed individuals or from first-hand project experience, i.e. „from outside“, and less from the Departments responsible.

Technical Innovations, Intensification and Access to Markets

The application of new agricultural technologies will remain limited to chosen sites at first, determined by the lack of infrastructure and the weaknesses of agricultural support services (extension, credit). The most extensive changes to the conditions of land use and land tenure regimes can be expected here. The extent to which Lao farmers can increase agricultural production through an increase of labor-saving technology in expanding cultivated areas actually depends not critically on the availability of uncultivated land, for good surplus land is generally still available in most of the southern and central regions. In the north, land is becoming increasingly scarce as reflected in a reduction in the fallow periods. Decision about the application of technology is much more dependent on a) the availability of labor-saving technology, and b) whether the savings in labor costs outweigh the cost of technology in rural areas (World Bank 1995a:18 f).

The dissemination of new technology for mechanization is only proceeding sluggishly (see Table 2). With the marked decline in fallow land, weeding in Laos is also becoming the main labor bottleneck which requires labor-saving agrarian technology. However, most labor-saving technologies, such as herbicides or even tractors are not economically feasible in view of the even smaller access to markets for agricultural products and the lack of purchasing power (Table 2). Hence there is virtually no scope for increasing planted areas. On the other hand, the application of draught animals and tractors is already increasing in peri-urban areas, and indeed to the extent that labor costs, market access is improving and profitable cash crop production is possible.

Agricultural intensification will be based in the future above all on rice crops and livestock production through an
introduction of improved rice varieties, the use of fertilizers, double cropping in irrigated areas and manure, or supplementary feeding of livestock (World Bank 1995a:19f). For this to happen, appropriate technical packages still have to be identified for the various agro-ecological zones.

Table 2: Use of Machinery and Inputs and Access to Agricultural Support Services

<table>
<thead>
<tr>
<th>% of farmers using:</th>
<th>National Level</th>
</tr>
</thead>
<tbody>
<tr>
<td>- tractor</td>
<td>2</td>
</tr>
<tr>
<td>- draft animals</td>
<td>66</td>
</tr>
<tr>
<td>- plow</td>
<td>61</td>
</tr>
<tr>
<td>- oxcart</td>
<td>10</td>
</tr>
<tr>
<td>% of villages:</td>
<td></td>
</tr>
<tr>
<td>- visited by Agric. Extension Worker</td>
<td>36</td>
</tr>
<tr>
<td>- visited by Livestock Extens. Agent</td>
<td>25</td>
</tr>
<tr>
<td>- where at least ½ of all farmers use fertilizer</td>
<td>13</td>
</tr>
<tr>
<td>- where at least ½ of all farmers use pesticides</td>
<td>6</td>
</tr>
</tbody>
</table>

Source: World Bank 1995b:50, Table. 3.5.

Market Integration and Land Tenure

Laotian agriculture is on the verge of far-reaching changes for increasing productivity which have already been completed in most Asian countries, or are in full swing. Labor-saving and land-saving investments in technological change are gaining more and more importance and determine secured property rights to land in all cases. The introduction of new agricultural technology is part of the market integration of agriculture and the differentiation of labor tasks, land and capital markets in rural areas: the free transfer of land through land markets is becoming necessary for market-orientedly producing, highly productive farms so as to secure optimal farm sizes for the introduction of technology (subdivision and land consolidation); rural capital markets are necessary for financing the technical innovations; and labor markets are required for dealing with labor peaks, as well as the result of the differentiation of work relations through multiple employment and income diversification.

„As agriculture will become more market oriented, the existence of enforceable land and forest resource tenure rights will become critical, not only to guarantee those who have traditionally controlled these resources with continued use and access rights and hence safeguards from encroachment by outsiders (including commercial investors), but also to allow those who wish to sell or transfer their land to other users or to use it as collateral for credit to do so. Implementation of the recently adopted land use and forest land use decrees is thus important.” (World Bank 1995b:60).

Goal Conflicts

More than 80 percent of Laos’ population is currently directly dependent on land, water and forest resources for securing an income. Even after the dissemination of more productive agro-technology, increased market production and new land use patterns, the people will still continue to be dependent on a balance of agricultural, forest land and even wetlands. Since advances in productivity can only assert themselves slowly, one third of the population still practices shifting cultivation. Since this is so, conflicts in achieving agricultural and forestry policy objectives are foreseeable: for example, between food security today and the promotion of future forest production in a country for which forest resources are a central economic factor.

Attempts are made with Decrees 169 and 186 to do justice to various interests with the identification of production and conservation, or even protection areas. To produce a comparable combining of at first temporary and later permanent dryland rice cultivation and permanent farming in the lowlands has so far never been properly put into practice by the line ministries. Indeed there exists legislation for safeguarding private property, as has been developed in sections II. 2-4: for example, rice land; the areas of land are surveyed for levying land tax, but a comparable vision for forestry is lacking which deals with land use patterns, land use planning and land tenure in a common context, with comparable participation of the groups involved. These are cases in which the tree cover has
already been removed forever: the land is no longer characterized as „forest land”, but rather has been converted to „agricultural land”.

Conversion of Land

The relationship between the conditions of land use and land tenure is reciprocal: in the past, the current and future consequences of altered resource endowments and relative factor scarcities of land tenure were primarily dealt with. However, cases are also mounting up in Laos in which the reformed legal and regulatory framework which offer more possibilities for land transfer and which in time will change radically the conditions of land use. The rate of land conversion is increasing with the market economy in other countries as well as Laos, especially in the vicinity of towns. Now farm land is being sold to town dwellers, a phenomenon which was hitherto unknown in Laos.

Cases form the centre and south of the country show villages in which an increasing amount of community reserves, such as pasture, are being sold to outsiders so that the village population must practice new land use patterns, such as permanent cultivation. (Groppo et al. 1995). Permanently used rice land which is privately owned is also being sold which is then being used for business or residential purposes. Intra-village conflicts increase accordingly since the sale of communal property by the village chiefs is not accepted by all of the residents. This process is common to all properties which are situated in the vicinity of roads and which promise high increase in market values. Enclosure movements are occurring increasingly as in the case of village pastures as soon as these extensively used areas of land are no longer available for this purpose which also determines new livestock production systems. A scarcity of pasture land and thus altered land regulations must be expected all the more since the demand for draught animals and animals for breeding increases. Groppo et al. even talk about a „crise profonde” for livestock keeping since enclosure would lead to a reduction of available food resources and to a reduction or the complete abandonment of livestock keeping amongst poorer households (Groppo et al. 1995:22 f). On the other hand, one must expect that some of the farmers will intensify livestock keeping in view of higher income expectations using fodder cultivation on private land, by planting trees and shrubs, delivering fodder and offering a contribution to agro-forestry use. The dissemination of appropriate agricultural technology forms a critical bottleneck here.

The fragmentary data basis for this section has already made clear that information about current conditions of land use are scattered and incomplete. When the land tax surveys have been completed, they will at least present relatively precise data about the extent and distribution of irrigated areas (Groppo et al. 1995). With the implementation of the Decrees 169 and 186, further protected conservation and production forests and the utilization forms will be earmarked. All in all, there will be a patchwork of data bases for identifying current land use and as a foundation for future land use planning. The responsibilities for this remain distributed amongst various Departments, in part amongst various Ministries (MAF, MoF) the recording methods and mapping systems of which are still not uniform even if they are trying to achieve a harmony between them.

But above all, the crucial role and a decisive contribution of the Departments of Irrigation, Livestock and Veterinary Services and of Crop Extension is scarcely recognizable, both of which would fill the gap in the area of „agricultural lands”. Thus there remains the task in the future of securing the identification of permanently used agricultural land but above all of also the increasing conversion of land within agricultural and forest use, as well as precisely following between agro-forestry and industrial use and improving the mechanisms of coordination between the responsible Ministries. Future conflicts over landownership and land use are foreseeable in this gray area since the potential within the legislation which already exists is not made use of, and existing gaps in „agricultural land” are not being closed.

III. Land Markets and the Privatization of Land Rights

1. Driving forces for the re-emergence of land markets in Laos

As has already been established in the previous section (Chapter II), the Laotian State attaches great importance to the restrengthening of functioning land markets within the framework of its economic policy. This did not happen without pressure from „outside” through the influence of economic and political interest groups. After the upheaval of the socialist regime, they emphatically demanded that the State Party re-establishes a legal and regulatory framework for land markets as quickly as possible.

This resuscitation of efficient and open urban and rural land markets had to be a declared objective of the post-“control and command” state for highly varying reasons:

- The question of landownership (private, state or „people’s” property) always formed the core of the dispute, indeed the battle of social and economic systems. Therefore, the guarantee of private property and its unhindered transfer forms a basic indicator for the seriousness and desire of the state to make reforms, and is the basis of the trust investors have in future economic policy.
Although Laos is endowed with extensive land resources, it suffers from a shortage of land with convenient access and a well-developed infrastructure for industrial services and agro-forestry activities. The growing economic value of such areas of land has already given rise to "gray" land markets hidden in the socialist system. With that, the transactions of the market participants were not protected by State law; acquired rights could not be sued for.

No matter how the Laotian State may resolve the restitution claims of former landowners, the discussion about it has brought the problem to the attention of all parties involved that an "institutional memory" exists concerning unavailable land titles from the royal era or Land Register files which do still exist. This cannot be ignored since the state claims that it upholds principles of law and defends basic civil rights.

An effective demand for functioning land markets comes from three groups of stakeholders who have particularly strong economic weight and who accordingly have emphatically been able to assert their interests in the face of the State:

- private investors, be they Laotians having returned from exile or investors, in particular from neighboring Asian countries;
- the bank sector which demands credit security through guaranteed land titles;
- international donors, led by the World Bank, who look upon secure private property rights as the precondition for long-term financial commitment.

If land markets are thus given such a strong political key role, it must be explained what quantitative weight they are being given at present in Laos. The data basis for evaluating their current and future importance is completely unsatisfactory. Land is, of course, being traded, although the turnover figures as measured in recorded land transactions are not high and transactions are hampered by the problem of establishing ownership as long as the legislation is not yet amended (Land Law) or existing Decrees (Land Decree) are not fully implemented (land titling process). Most residential land is sold on a cash basis, while the lending which is occurring with respect to commercial or agricultural properties is made with cash flow in mind rather than the security of the title and the inadequacies in existing mortgage laws. There is inevitably a prevalence of illegal possession, sale and use of land and a large number of court cases relating to land: all these are symptoms of existing, vivid but still inefficient land markets.

A precise count of the number of parcels is not possible as long as the surveying of land for land tax purposes is not complete. It has been estimated that there are approximately 1.6 million parcels in the country, agriculture being the dominant land use (Lao PDR 199_b:277 f, World Bank 1995c:10 f). From the approx. 259,000 ha. of land which were taxed in 1993-1994, only about 7.6 percent were earmarked for construction, i.e. rural and urban buildings. Doubtless these are plots with an already high economic value; land is already transferred and mortgaged, an active land market already exists.

2. Urban Land Markets

In urban areas there was a less concerted effort to restructure land ownership and its use compared with the setting up of cooperatives in rural areas which often remained inactive, but nevertheless remained on the books until 1988 when they began to disintegrate following the Government’s withdrawal and the recognition of individual rights to land (World Bank 1994, 1995b). Former nationalized properties and real estate in urban areas were managed by the state and until the NEM was launched, there was little private investment activity which necessitated legal delineation of property rights. Investments in all key sectors were the basic prerequisite for the acceleration of the speed of economic change. "...Faced by the need to provide access to land to urban-based Lao investors and foreign investors who have no access to land under the customary land tenure system...", the State had to give up their basic ideological position of rejecting private ownership completely and land markets at the end of the 80s.

Interestingly, the World Bank argues here that new institutional arrangements using factor markets are necessary since entrepreneurs possess no access to land via the customary rights system. For one thing, the exceptional importance of customary rights would once again be given prominence in the rural context. The quantitative
importance of land registration in towns before the revolution of 1975 would thus have a low value. For another thing, customary rights are again blamed to be a hindrance to free enterprise, investment and market-economy development and would force institutional innovations. After the framework conditions for foreign investment in land had been covered in the Law on Foreign Investment, the absence of a legal basis for land transactions and use became a more serious constraint. While the government moved to return several nationalized properties to their former owners and encouraged the resumption of private business, sales of land and transfer of land use rights could not be formalized under the existing legal framework.

As shown in Chapter II, continuing efforts must be made in implementing this framework, in particular through a functioning Land Titling System. Until this works smoothly, land transfers are being dealt with in a “gray zone”. Thus acquired rights are not clearly secured by the law. The Department of Land in the MoF is still responsible for processing and approving any transfer of land use rights, but has to proceed without any clear guidelines and on the basis of ad-hoc arrangements. Given the short time since these decrees have been improved, it will inevitably take several years before they are fully implemented. A further deficit is the lack of guidelines for land valuation.

Urban land markets thus continue to be fragmented and land transactions are connected to additional risks since it is not certain that acquired rights can also be sued for in court in land conflict cases. Although there is no reliable data about nominal land prices and their shadow prices, it can be assumed that additional risk premiums have to be paid. The explosion of property prices in Vientiane in recent years has also been determined in part at least by these high risk premiums under unclear legal position, in particular when Lao citizens function as “front men” for foreign investors, registering land and property in their own names.

Therefore the priority objective of land policy in the coming years in the urban context must be to organize the existing and blooming land market more efficiently. All claims to land must be registered in an extensive titling system; the transaction costs for getting information and enforcement are thus reduced; it will be possible through land evaluation to create a greater overall view of prices, and to make mortgaging more efficient. The preliminary work for all this is well under way thanks to the massive commitment of the World Bank.

It is however, illusory to assume that the Lao State will accept a free, completely unregulated land market in the future as long as the elite of the socialist state also have an influence in reformed Laos. This is based in the repeated fear of land accumulation, land speculation and concentration of power through foreign investors who operate through intermediaries. Just as land grabbing will become a major concern of public discussion, attempts must be expected in modifying the current legislation and in regulating the transfer of land, e.g. through ceilings and the increased control of foreign investors.

3. Peri-urban Land Markets

People also sell, lease and mortgage land in peri-urban areas in ever-increasing amounts. Quantitative studies hardly exist apart from case studies which demonstrate, amongst other things, the development of land markets and the privatization of land rights in the environs of the capital Vientiane. They underline emphatically the momentum of emerging land markets (Groppo et al. 1995): this deals with villages in which individual land possession of rice fields as well as pasture, forest and communal property have been represented until now. The sales of agricultural land from peasants to urban-based groups is mounting here. Principally irrigated land and smaller forest areas are being sold. These land sales were only of marginal importance until 1992, but since then they have increased in importance along with frequency of sales and the size of parcels sold.

Bought-up land serves towns as an object of speculation in expectation of the further growth of the towns, but also as a capital investment either as a security against inflation or for old age. A lot of land is being taken away from agricultural usage and is being fenced in with high costs. An „enclosure movement” is also being carried out in Laos in a limited framework coupled with the conversion for former land utilization forms. Land prices have increased enormously in recent years whereby the development of prices is basically a function of the position of land (near to roads) and the speed of the growth of towns (expectation of commercial utilization).

Markets and market prices follow the law of supply and demand; accordingly inhabitants of the villages studied, who have little or no land seldom have the chance of buying or only leasing land which is on offer since they lack the financial means. They remain dependent upon the allocation of land from the village authorities, but the authorities are not able to offer much land: reserved areas of land get claimed by migrants to the villages, partially by former refugees who have been resettled by UNHCR (UNHCR 1995); sometimes the village elite have bought communal land themselves. The market value and individual economic utilization are gaining increasing importance in contrast to numerous further functions of land, such as security, reduction of risks, homes, etc. A consequence of this which is already recognizable is, for example, that livestock keepers can no longer assert their secondary rights to the land: there was often a communal right to grazing crop residues; if land is sold and fenced in, these customary rights are extensively removed with a corresponding repercussion on the type of livestock keeping (cf. Section II.8).
In this time of radical change, farmers (and village administrations) are consciously making use of the chances offered by a booming land market. Land sales facilitate their investment in agricultural implements for use on their own farms as well as for offering them as a service in the village (tractors, draught animals); they make the diversification of agricultural activities in farming and in livestock keeping easier. A narrow segment of market-integrated, financially strong, dynamic agricultural entrepreneurs is emerging who employ casual labor, and who are doubtless important supporters of future peri-urban agricultural development. Along with this there is socio-economic differentiation within the villages, triggered off by land sales (Groppo et al. 1995).

The record of sales is similar in all villages: the village chiefs still play a key role in this since they must be in agreement with the transfer. In doing so, they allot themselves a role which is still founded upon their strong position in the socialist period, but which is not supported by current legislation. There are no explicit instructions for their involvement in the Land Decree. Their right to have an influence is not to be found in the Decree on Village Administration at any rate (Groppo et al. 1995:20). The involvement of the Land Office is legally secured in the Land Tax Decree. The Land Office issues a certificate of transfer which so far - in absence of a land title - is the only document for land sales.

In addition to being sold, land in peri-urban areas is also increasingly leased. There is a sophisticated market for temporary utilization rights. Leasing takes place not only amongst peasants in a village; it also takes places between villages. This can seen as a further indication that social networks and reciprocal obligations (e.g. towards those without land) are losing importance in the village context with respect to anonymous contractual arrangements with outsiders from which a higher profit can be expected. Rice fields are leased above all else. In view of the high rate of inflation during the first years after the introduction of the NEM, leases are paid preferentially in kind as a percentage of the harvest. This occurs in part as fixed rent which is 50-180 kg of rice per leased hectare; normally, however, this occurs as a sharecropping arrangement whereby a reasonable 10 - 20 percent of the harvest has to be paid currently.

It is in the peri-urban regions in particular that there is also the tendency in Laos for communal, i.e. customary regulations to lose influence compared to individual, private rights when there is a considerable rise in the value of land. Autochthonous institutions for regulating access to or utilization of land are being replaced step by step by land markets. With that, a virtually complete state legal framework and an increasingly attenuated system of customary rights clash with one another especially in peri-urban areas. In the near future, land titling by the MoF, and land demarcation as well as land use planning by the MAF in the framework of Decree 169 will be well coordinated with one another in peri-urban areas. The methods of surveying, mapping, etc. must be interchangeable and mutually recognized because a continuous, flowing change in the conditions of land use is taking place. Property rights are shaped and active land markets accelerate the transfer rate of land. The less this implementation and coordination is achieved, the greater the future conflict potential.

4. Rural Land Markets

Rural land is sold and rented, but it has been difficult to obtain data about these activities from official sources up to now because transactions are not usually registered (Lao PDR 199_b:228). The volume of sales is indeed still low in many regions, however it can be assumed that land markets are also beginning to develop in zones far removed from urban areas, and indeed to the extent that a rise in values, can be expected through investment in logging or hydropower activities i.e. through development projects as well.

Sales are dealt with in a way comparable to those in peri-urban areas. There are problems currently since very much less land has been registered in the rural provinces according to the Land Tax Decree, the technical and staffing quality of which is far worse than in peri-urban areas. The village authorities still hold a strong position: this might be an advantage if they feel a duty towards customary regulations and the social bond of property; but it can also lead to increased arbitrariness and personal dependence on those with the power of decision. The Land Tax Decree is leading at least step by step to a registration of rice land; the implementation of Decree 169 establishes the delineation between land and various uses so that basic framework conditions for land sales, leasing or pawnning can be created. A prognosis of the time span required for completing this cannot, however, be made.

Even if the officers of the Land Office in individual districts fulfill the designated procedures for the recognition of land as collateral for credit, loan documentation for banks in rural (and urban) areas remains a problem. They often have to settle for hand-written collateral with documentation of ownership written by village authorities including a hand-drawn sketch map. Indeed there is heavy emphasis on documenting the lender’s persons credibility, with a certificate of diligence and additional biographical details.

But a concern for lenders is the difficulty in identifying prior liens so that the claims of a third party on mortgaged land can never be unequivocally established. A further bottleneck for creditors in rural areas in particular is the insecurity concerned with land valuation. Valuation practices vary and banks may not have formal guidelines yet. They sometimes accept a borrower’s value estimation, presumably in circumstances where there is a strong
personal covenant stipulated by the borrower.

So far, the informal rules for giving credit have also been based on a given basis of trust, but as market forces prevail, the present rural discipline may erode. This demands a reliable titling system from the point of view of the banks so as to have access to the land in the case of credit default. The danger of credit defaults is reckoned as being very high in view of low life expectancy, volatile prices for goods, risks of livestock diseases and high natural risks in agricultural production. With that, the initial emphasis of titling processes should be concentrated on the most productive areas. The reasoning for this comes from typical neo-institutional arguments: any registration system must facilitate searching via mortgage, lease, sales and linking transactions for a particular property, thus enabling the lender to assemble the relevant details easily.

So it is that the high costs of information and enforcement make nation-wide land titling appear to be desirable in the view of the banks. However, it is unrealistic to assume that land titling will ensure transparent land markets across the board in the near future. One can assume that simple land registration for land tax will be completed nation-wide by the end of the millennium. After all, it offers a working land policy instrument for proof of landed property in the case of inheritance, selling and mortgaging.

What is hardly discussed here are the distribution effects which can be expected when free land markets assert themselves in a thus far very egalitarian society and cost-benefit ratios in the case of nation-wide land titling in the form which is being tried out in the pilot project in the towns.

There is without doubt in Laos an effective demand for efficiently operating land markets through influential interests groups for which a functioning land titling system is the basic prerequisite. At first it can only be fulfilled in the urban context, but has immediate spread-effects on peri-urban areas. It has indeed been suggested that a parallel program be introduced into rural areas based on current DoF proposals, including the linking of land registration and a three-year provisional period during which the landowner is expected to show that appropriate land management practices are being undertaken (Gaston 1995a:21). Realistically speaking, the informal and technically unsatisfactory framework will also have to do for the bulk of the rural population in the future when securing land transfers to fragmented land markets. Thus the group of the population which is particularly exposed to high risks in production must also take particularly high risks in land market activities.

IV. Resource Tenure and the Role of Political and Economic Interest Groups

1. About the Dynamics of Interest Groups in Lao PDR

A multitude of interest groups also function in Laos, as they also do in neighboring Cambodia or in African countries in the process of transformation, with at times very different objectives as potentially important players in shaping the nature and the pace of reforms in the Lao PDR's land policy and administration. There can be no doubt that the distribution of property rights to natural resources in a society is closely interrelated to the power that these groups hold in their society (Birner 1996). One might distinguish between economic power and political power according to the means which provide the capacity for exercising power. Economic power can be conceptualized as bargaining power (for example, over logging quotas, conditions of hydropower dams, leasehold terms for forest land). Above and beyond this, one has to take into consideration power which is exercised by the abuse of property rights (enrichment through illegal acquirement of resource benefits, through extortion or blackmail) and the invasion into well-defined property rights (stealing someone's resources with the threat of violence). Political power is exercised by interest groups when they impose their objectives on other individuals or groups, also against the will of these individuals of groups, through skillful lobbying or economic pressure, e.g. in resource legislation.

It has become clear to all actors since 1989 that the forming of land tenure regimes will have profound political, social and economic consequences for different groups within and outside the country (Myers 1995:38). The various social, economic, regional, political and even ethnic backgrounds of potential domestic actors (party, military people, administration, smallholders (?), villages) have already been made just as clear in the previous chapter as has the current overwhelming influence of international actors (international capital, multilateral and bilateral donors, international NGO's). The analysis of the political economy of land tenure development and the dealings of stakeholders has begun in earnest in Laos, the data basis for this is minimal.

As can be observed in other countries in the process of transformation, dealing with so many factions and interest groups must be seen as both a blessing and a curse. The groups have been putting pressure on the government and central administration at various levels of intervention without a break since the end of the 80's. They are not only doing this to push through basic civil rights, division of power and the rule of law as guiding principles, but also to build up a consistent legal framework for land allocation and land management, and above all to place those immediately concerned at the center of their implementation through participation (from above). The most successful of all of these were the national and international pressure groups which made free product and factor markets as well as unhindered entrepreneurship and the strengthening of the private sector their uppermost
objectives. NGOs have achieved a lot as lawyers for peasants, women, indigenous peoples or other ethnic minorities who were only able to articulate their own interests with difficulty. The discussion about customary rights, gender issues and biodiversity zones are the most important milestones here.

Forming a coalition between former powerful Party functionaries, the military and private investors must be critically judged, this being a coalition which has opened up rent-seeking opportunities and has increased competition for scarce resources. In addition, the mushrooming of interest groups has led to enormous internal co-ordination problems in a very short time. The result has been blockages, for instance in the process of legislation (Land, Forest, and Water Law) right up to the point of a stalemate. One would be underestimating the influence of the interest groups through lobbying or through threats of financial pressure if one were merely to call these delays in State dealings helpful information, consultation and opinion-forming process. In contrast, one can rarely rid oneself of the impression that the extensive interest group activities have turned the State, in particular the line ministries into dependent marionettes for their interests.

2. The State Party

The State Party will also have a basic influence over the process of reforming the country's land policies in the future. A multi-party system has so far not been permitted; top functionaries of the "old guard" who are still inclined towards the centralized control and command system for land policy, and also towards top-down approaches, continue to hold key positions in parliament, in the government the line ministries or the CPC, and carry out gatekeeper functions in these posts. The structures of the Party have remained in the transformation process from the national level right down to the villages, and with that they still decisively influence decision making processes.

There remains an unspoken objective of the Party which is to save as many "socialist" principles and instruments for guiding the economy and society as possible in the reformed State. Success has been achieved at the national level in getting State ownership of land to be enshrined in the Constitution disguised as "people's property" as well as the insistence in very schematic planning "from above", the long-standing denial of the existence of "customary rights", or mistrust of land markets. They are tainted with the smell of speculation carried out by unscrupulous (foreign) entrepreneurs in the Party-controlled press. This tendency has carried over to a varying degree into the provinces, of some of which it is said that they are bulwarks of planned economy thinking which have successfully cut themselves off from institutional innovations through laws and projects.

But the attempt to maintain "socialist achievements" only presents one dimension of the dealings of the State Party. Outrageous cases in which members of the party elite have enriched themselves by illegally or unfairly acquiring resources such as houses, property for building, irrigated agricultural land or logging rights are at any rate discussed in whispers since there is no free press. In comparison to other countries such as Cambodia or Mozambique (Kirk 1996, Myers 1995), however, the extent seems to be slight.

That the elite of the State Party indirectly profits from the redistribution of property rights results from their role as top administrators who are authorized to decide who gains access to resources and under what conditions, for example through project approval by the CPC. This gatekeeper role in Laos as well as in other countries gives opportunities for extraction and rent seeking. (Only the mightiest of investors are able to develop countervailing strategies.) The State leadership has, for example, influence in the implementation of resource laws, e.g. for the allocation of commissions for production of aerial photographs for land use planning. By pointing to national security considerations, the state puts freshly established market economy processes out of action and interferes in the investment decisions of logging enterprises or donors.

3. The Military

The military leadership has used its dominant position in the State and in society in close co-operation with the State Party, to secure a large percentage of state property with the most valuable natural resources. This takes place in agreement with market economy principles with the help of newly founded commercial logging companies. It is an open secret in Laos that the military leadership has known how to continue exercise its former key role in logging even in the reformed State. The three para-statal Lao logging companies, which were fused together out of the mass of former State firms and form an oligopoly, are ruled by the military.

The income from logging activities of the companies secures "hidden budgets" for the military. This is money additional to the military budget contained in the State budget which ensures an extensive autonomy for the military as a "state within a State" which can be scarcely controlled democratically. Thus the military belongs to the groupings which have been able to profit most extensively from land tenure reforms, and have also been able to lay the foundation stone for their power in the future.
4. Bureaucracy at Different Regional Levels

Bureaucrats situated at different regional levels within the state apparatus have differing interests in resource tenure development. Accordingly they also involve themselves differently in the transformation of the economic system. One could easily believe the cliché in Laos that the bureaucracy merely has an inflexible, reactionary and dampening effect on the reform process, that it only treads well-worn paths and is clinging to the power which has been handed down to it; the strategies and ways of dealing of the bureaucracy are much more complex.

The Ministry of Agriculture is symptomatic of the complicated structure at the national level. Some Departments give outsiders the impression that agricultural policy and support services can be continued with (business as usual) relatively untouched by changes brought about in 1986, that bureaucracy is merely securing and frantically defending its power and methods passed on to it. In contrast, there are Departments in which a new understanding of the access to resources is taking hold. They have influence over legislation and resource policy; personal reputation and power are secured in the Department primarily through co-operation with international donors and the inclusion of financially powerful projects.

Dynamic, skilled and innovative bureaucrats deliberately use the opening offered by the search process of the transformation and create specific coalitions with donors. In so doing, they test the limits allowed by the Party and State apparatus. Such coalitions are only successful in the long term if they are of mutual benefit. This is case if the donors are able to achieve their objectives, such as the participation of disadvantaged groups, environmental protection, the fight against poverty, as through strong Departments in the line ministries, and also if they are able to establish these objectives in the legislation. An exact analysis of the history of how Decree 169 came into being and the part played by the Department of Forestry could shed light on these mutual benefits. Lao administrators can thus increase their influence in the bureaucracy as well as aver the chances of promotion through proof of large project budgets. They can also do this through the setting of standards, such as for geographical information systems (GIS) used for demarcation, zoning and land use planning. Additionally, help from donors as well as international experts and researchers allows them all the better to push through or accelerate their own ideas of the necessary alterations in the legislation, by using seminars and consultancy presentations, etc. Examples of this would be the success of the inclusion of watersheds as a planning entity in the newly passed Water Law, or an objectification of the debate about customary rights.

These differing strategies for preserving the access to resources and power, or rather for securing this access, inevitably deepens the rift and problems of co-ordination between the Departments, even to the point of causing open disagreements, and can both delay and cripple reforms. Foreign investors can make use of this weakness, and play Departments and Ministries off against one another.

Bureaucrats at the provincial level have forfeited a part of their previous power and their ability to deal autonomously through the recentralisation since 1986 in that they increasingly have to redirect tax revenue (e.g. from the Land Tax) to the Central State, or in that they have to - as subordinate officials, bound by orders - implement the new resource legislation so that it is uniform and compulsory for all. Laos also carries on a policy of decentralization in so far as clear responsibilities for making decisions between District, Province and National levels have been established, for instance when allocating forest concessions. Since the Central State cannot deal with its control in all provinces equally intensively, there remain numerous openings at the provincial level. Here, dynamic, and to a certain degree daring top officials (e.g. in the Luang Prabang or Sayaburi Provinces) use a lack of implementation regulations (e.g. Decree 169) in order to be able to form their own drafts, to have influence on planning and also to make their work interesting for projects, so as to accumulate finance and influence. There are reports from the provinces that the province administration continues to follow the control and command system almost unhindered, and uses its gate keeper function when issuing forest concessions, and allocating of State land for agricultural enterprises (cattle breeding, poultry farms) so as to gain personal advantage.

The relationship between the Central State and the Provinces is tense in view of the power struggle for autonomy, or rather subordination within hierarchical administrative processes. The pressure of international donors to give more weight to participation, the subsidiarity principle and locally specific land use planning for resource management and strengthens the position of the Provinces.

The bureaucracy at the District level currently carries the main burden of implementing the resource legislation. Measured against the existing level of payment, the danger of getting people out of their depth and resignation is increasing above all through the unsatisfactory communication with the central level. Thus the danger of corruption is also growing. They fill the key roles in the demarcation between agricultural and forest land, between village forest, conservation and production areas, in the surveying of agricultural land, and in the allocation of certificates of possession. It also depends here, as in the Province administration, upon how quickly their work can be controlled in starting with land use planning and resource management in public and controlled by the villages. At the same time they must be motivated with incentives to help with reforms.
5. Smallholders

"The group which is least understood by policy makers and donors and most excluded from the formal process of reform is made up of smallholder farmers." (Myers 1995:42). This is also true for the Lao PDR. So far, the bulk of smallholders living and working on family farms has not been able to build a forum with which they could assert their interests directly at the national level. They have no bargaining power, and the interests have to be indirectly dealt with by NGO’s or committed projects. They are the ones who could most benefit from the reform for whose benefit large parts of the land legislation has been reformed. However, whether or not they have been informed about the reformed resource tenure rules and the consequences for their work and living conditions, and what they concretely desire in terms of land reform has never been systematically included in the reform process. It is also true here, as in Mozambique, after the shock of war, changing political systems and the capriciousness of the State, that at minimum most smallholders would favor a system which would provide security of tenure while at the same time developing more authority over resources and use of local level institutions (Myers 1995:42).

The new land and forest legislation is in principle supposed to open up this potential for them in that it guarantees individuals or groups clearly set, long-lasting rights of utilization to degraded forest land, or for example to land for plantations. If the planned participatory methods for demarcation, mapping and allocation of this land in the villages is also actually employed, there is a good chance in the future of families and village groups with similar objectives being able to assert their interests together. This can only be achieved through coalitions with the local administration, not against their interests.

6. Village Communities

So far there has been too little empirical data to be able to judge to what extent the compulsory measures for building up production cooperatives carry on a "spirit of the community" in the villages. It is clear that the power of the villages, represented by the various committees, is reckoned to be strong by donors and investors in forest plantations. They are tightly organized, show great solidarity outwardly, and represent their interests with great emphasis in dealings in production forests. In addition, the new forest laws demand the conservation of communal forests, village forests and other forms of communal property of land. Thus it can be expected through this and through the participatory process of land demarcation, that villages will be additionally empowered to re-define and to protect their property rights to land, also in the face of the Central State and logging companies. Projects and NGO’s are often their allies in such cases.

7. National Entrepreneurs

National entrepreneurs must de facto be counted part of the group of international investors. These entrepreneurs are often returning Lao citizens from the former small upper class who fled after 1975. In order to look after their claims to restitution, they partially take on Lao citizenship again. Since most of the families, who were wealthy and had influence in economics and politics, never broke off contact with their relatives who stayed on as custodians of house and property. They are well informed about land policy and have been quickly able to rebuild a power base in politics and the economy. Many have built up new wealth through hard work under competitive conditions in the USA, other Asian countries or France, and are prepared to invest in their homeland under the condition, however, that market an investment friendly climate is created. They exert both economic pressure on the State in family unions, and especially exert political pressure in clearing up the question of returning property, in that they also take up positions in administration and projects, etc. Other national entrepreneurs work as representatives, as frontmen for foreign companies so that these companies gain access to land in their name.

8. International Capital

After almost a decade of economic transformation, international capital is without doubt the most powerful and successfully operating interest group, although it is by no means homogeneous. One must differentiate between (middle-class) entrepreneurs, who for example invest in garment and consumer goods industry, in large, partially transnational companies which build hydropower plants and run logging companies, and in internationally operating agro-business enterprises which invest in the agro-industry.

For any entrepreneurial commitment in the agricultural and forestry sectors land rights are often a critical component in the investment equation (Myers 1995). Important foreign investors are not currently expressing so
much concern about long-term stability and security of their assured rights, e.g. for dam projects with long reimbursement periods. However, they do see some of the objectives in Laos as not yet having been achieved; land titles should also be offered in rural areas, foreigners should be able to acquire land, and the process of approving and implementing laws should be simplified. All external development projects must be approved by the CPC. For major projects, CPC approval is a rubber stamp for decisions taken at a higher level. For these reasons, in the medium and long term, it is likely that they will continue to pressure the government into continuing the construction of a more coherent, transparent, and market-friendly set of legal and administrative structures (Myers 1995:43).

The greatest economic interest for foreign investors is the exploitation of natural resources of the country. The relatively low population density in Laos, so far combined with a general lack of environmental safeguards and the country’s desperate need for foreign exchange, make its natural resource basis highly vulnerable to exploitation by neighboring countries (Claridge 1995). Thai investors are particularly eager to get access to Laos' timber resources and hydro-electric power. Their lobbying for the construction of the Nam Theun II dam, for instance, was strong and successful. Particular care must be taken in overcoming the hurdle created by the CPC, since it is difficult to imagine a line agency refusing permission for a project approved at the CPC level.

(Confidential) MoU's which have already been drawn up show the strong bargaining power of the investors, since they have often succeeded in privatizing expected profit and to externalize the possible costs and risks for the environment, i.e. they have put all the blame on the Lao State. Investors receive very favorable leasehold conditions (lease rates, length of lease) for the project land, only paying the lowest legally possible margin for royalties and other fees and taxes; a complete return of profit is guaranteed, and the utilization of the forests by the local population is heavily limited, etc. The State is responsible for and carries the cost of resettling the population, grants extensive tax incentives and is responsible for the main burden of environmental protection measure. The process of individual application and individually negotiated MoU's thus defines property rights to resources for investment each time, meaning that investors have a particularly good bargaining position (being able to make reference to similar cases with particularly favorable conditions).

International logging companies are also particularly successful in pushing through their objectives which, however, have been forced to rethink their strategies because of the new forest legislation (Decrees 169 and 186). Their representatives complain about the difficulties of working with the new decrees since there are no rules for their implementation, and their is scarcely any information about the state and position of forests (a lack of forest inventories) for being able to estimate the profitability of investments ex ante realistically and the power of the villages in negotiations is too great.

But obviously the companies succeed in negotiating favorable conditions and in realizing their entrepreneurial objectives. The great interest in logging quotas in Laos cannot be explained any other way. Examples of land lease contracts with villages for starting plantations indicate the strong negotiating position of the companies (setting wages for planting and maintenance work on the plantations and as a form of lease payment; limitation of access rights to forest production areas; determining the kind of agro-forestry utilization; fixing the distribution of fertilizer provided by the company).

In contrast, State bureaucrats complain about the problems of cooperation with private entrepreneurs in disseminating new legislation at the local level. In the absence of established blueprints from the forest administration, individual entrepreneurs high-handedly negotiate contracts between villages and investors for establishing and using plantations, and thus build up parallel legally binding structures alongside the State.

The question remains about whether foreign capital is likely to push for the construction of more secure and robust property rights in the long run, or whether they will not just use existing loopholes and inconsistencies for pushing through their own interests more efficiently and present the State with a "fait accompli" at the village level, and thus demonstrate their power.

9. International Donors

It cannot be emphasized often enough that international donors have the greatest impact on land policy reform thus far (see a more detailed discussion in Section VI). From the beginning of the transformation process on, they have seen land policy reform as a central objective of their activities. The first international donor to do this was the World Bank which had already furnished technical assistance in reforming resource legislation and land administration. The Bank was, of course, the one which had begun the most hefty to condition financial resources upon progress with resource tenure reforms. Through the clever build-up of donor consortiums for major projects, it has also narrowly integrated other multi- and bilateral donors into this policy (Finida, AusAid).

While the World Bank has been able to use its economic power in a directly political way which corresponds to its objectives and ideology, other donors have also used their "social capital" of trust, reliability and ability in co-
operation and conflict resolution, all of which has been built up over a long period, to newly define forestry-sector property rights in a "step-wise" approach, and to anchor participation (for instance, the Lao-Swedish Forestry Programme which had already begun in the socialist era).

It has also been recognized for other countries undergoing transformation that pressure from outside, especially in the extremely complicated and politically sensitive issue of land tenure, the donors' approach to the issue may well affect the government's desire or willingness to address the topic. There is a painful limit beyond which is difficult for the Government to go as they may not be willing to concede their basic ideological tenets if pressured too openly. "This is particularly true with regard to land reform because the nature of property rights - who controls them and how they are administered - constitutes the primary ways in which a society defines itself" (Myers 1995:44). The international donor's community has recognized this in Laos in so far as it did not try to enforce private property as a norm in the Constitution, and not to intervene in the delicate question of the restitution of land to refugees.

The strategies of donors are accordingly altered, lessons are learned, and ways of proceeding become more subtle. If lobbying the Ministries, e.g. for the increased anchoring of participatory approaches in the legislation are inadequate, there is the possibility of applying the existing laws to the letter so as to show that they do not work, and thus to force changes. If there are problems which are of critical importance for the success of a project, there is the possibility of drafting new regulations and to try them out in a pilot project and to demonstrate the proof of loopholes in the legislation, for instance in the area of the Forest Management Agreement (according to Decree 169).

The pressure of time and ideological restriction have also led to the pushing through of a new land policy in Laos; the complex nature of resource tenure reform is lost from view from time to time. This became distinctly clear in that internationally operating NGO's questioned the strictly market-oriented dealings of the big donors in political bargaining and raised the subjects of "customary rights and "indigenous peoples". The dominance of individual donors has given rise to such a countervailing power through NGO's which appeared here as a spearhead (see Chapter VI) and triggered off a discussion amongst other donors.

A particular success for, and growth of, power in NGOs bargaining between Government, bureaucracy, technical and financial co-operation, grassroots groups and even foreign investors must be recognized here. They are not only the lawyers for endangered species or for the creation of protected areas. Initial empirical research was doubtless important for their argumentation so that research organizations cannot be separated from international donors, for Laos has long been a "tabula rasa" where socioeconomic research in agriculture and forestry are concerned. Universities in Asia, Australia, Europe, Canada the USA, and international agricultural research institutes etc. cooperate with development projects or with NGOs and deliver valuable information to the village and household level and offer assistance in argumentation for political bargaining and public relations work.

V. Land Conflicts and Conflict Resolution

Land conflicts are increasing in the Lao PDR. The reasons for this are very complex. The uprooting of the rural population, migration and resettlement as a result of the war, restitution claims of families returning to towns as well as to rural areas have a significant influence. To this is added a scarcity of land because of population growth, soil degradation or land conversion, as well as the demands of new interest groups for agricultural land, forests and water resources. They all act within the tense situation created by a new, only incompletely implemented and not yet generally accepted land legislation by broken down customary institutions as well as by inconsistencies in combination of both formal and customary land-tenure systems.

It is conspicuous in Laos that the attempt is made at all levels of conflict to satisfy parties in conflict over natural resources, first of all through negotiation and compromise. This ideal of harmony and balance is deeply rooted in the Buddhist tradition of the country. There are values and norms which, following suppression or toleration after the revolution, have been experiencing an extensive renaissance since the end of the 80's. Only when - following the principle of subsidiary- attempts at mediation at all levels have failed do conflicts get taken to court.

Reported conflicts actually include at the local village level:

- conflicts in villages between returning families and village inhabitants who have occupied their land. The impetus for this came from the breaking up of co-operatives and the return to the family household economy as the basic unit of production. After flight, uprooting and in part emigration, many of them are now reclaiming agricultural land abandoned in wartime (Hirsch et al. 1994:4).

- Such conflicts become aggravated when at this point, various ethnic groups, which harbor mistrust for one another and apply differing customary regulations for resolving conflicts, are confronted with one another through resettlement (e.g. the Hmong). More recently it has been government policy to encourage upland minorities to resettle in the lowlands so as to protect the forests endangered by shifting cultivation. Whether
ethnicity per se is the basis for resource conflicts is doubtful (Hirsch et al. 1994:22), for ethnic differences can sometimes serve to highlight or exacerbate resource competition, but more often than not, the root of the problem lies in incompatible production systems.

- The scheduled resettlement to the fertile river valleys of families which fled to Thailand carried out by UNHCR and other organization aggravates the conflicts mentioned.

- Since landlessness is beginning to become a problem for families, conflicts in the future between the landless and landowners cannot be ruled out at the local level, especially if mature leasing systems are not able to create a balance. Squatting and high-handed land conversion on as large a scale as has so far been the case (shifting cultivation hidden in inaccessible forests) then also lead to conflicts between those directly affected, and between squatters and the State.

Generally, the capacity of the village authorities and committees in Laos for resolving conflicts is reckoned to be great. However, certain conflicts have remained hanging in the balance for many years; they smolder on, burdening social relationships, and poisoning the climate of the village. Case studies demonstrate that no-one dares to suggest and put solutions through, which, with the growing scarcity of land, now bring the relinquishment of claims, loss of access to resources and the forfeit of power with them. The same is true for conflicts between villages for rules are said to be difficult to enforce due to its reluctance to upset long-existing relations between communities. The autochthonous regulations push the limits here, “...it was often suggested that government regulations and assistance with enforcement might help to overcome such problems” (Hirsch et al. 1994:21 f.)

With the application of the reformed resource legislation at the local level completely new conflicts arise which could not have been expected until now:

- Land and forest allocation at the community level relies very much on clearly defined boundaries. The lack so far of boundaries and the incipient demarcation of village land lead to conflicts between neighboring villages. While village committees are quite clear and consistent with their neighbors in identifying the natural features which serve as dividing lines, there are several areas of conflict. Growing land scarcity put the old boundaries in question. When conflicts arise, the District Administration tries to mediate.

- The earmarking of lowland and upland for agricultural use, village forests, protected and conservation forests, of production forest for logging and of biodiversity zones and incipient land use planning are a new experience for many villages. Redistributing property rights is the result of village interest groups being formed (animal holders, gatherers of production forests, and peasants who practice shifting cultivation). It is scarcely possible to achieve an uncontested allocation of land for different purposes, especially when former rights to common property are questioned and individualized. The officials from the DAFO and the District Land Office have a double function here: enforcement of the new legislation and arbitration in conflict cases. The procedures for conflict mediation are set down in Decree 169, Decree 186, in the "Decree on Village Administration" and the "Order on Customary Rights", but it is still too early to be able to estimate whether or not they are all practicable.

- When surveying land for registration for the purposes of levying land tax, new conflicts arise between landholders and the local administration (Land Office) thanks to false or inexact measurements. According to submissions from the officials involved, the local tools for reconciliation are sufficient for finding solutions acceptable to both sides.

- In the future, conflicts between men and women can be expected now that it has become clear that men receive advantages from the Government. NGOs will support women in asserting their property and inheritance claims and will provide them with a forum.

Since the new implementation of the resource laws thus always has the effect of redefining and redistributing existing property rights, conflicts between local users and the State are in general unavoidable.

- However, as long as the power of the State is asserted with the top-down approach, partly because of improved knowledge and the situation of the interests of the villages, the State will continue to be regarded as an "intruder" and as a "predator". Its measures are either got around and sabotaged, or local DAFO and Land Officers, as well as foreign investors, whose interests the State represents in the conclusion of production forest contracts, regard themselves as a closed defense front against the village committees.

- Professional incompetence, a lack of information and the local administration's lack of good materials and personnel weaken their chances of arbitration.

Some of the conflicts between the local population and the intrusion of outsiders who either violate existing customary rights, or want to push through State laws which are not known or are not recognized locally are listed here:
Wood cutting. There has always been a tendency for shifting cultivation by immigrant families (see above). Customary conflict solutions are, however, made increasingly difficult by scarcity of land, tense ethnic relations and the new legislation.

The State cannot prevent the conflicts since the Forest Administration is equipped with poor personnel, and is unable to enforce existing laws. The dispute at the national level about whether there should be a separate forest police, or whether the police should also be responsible for forest offenses has not yet been concluded.

A new area of conflict is to be found in the activities of the commercial logging companies which have to negotiate contracts with the villages for planting reforestation plantations according to Decree 169. If large plantations of over 1,000 ha. are planted, one has to assume that this area will be used in many different ways, and misunderstandings and conflicts of interest will always arise. The investors have a strong legal position here and know that the power of the State is behind them. However, they cannot enforce their position locally. Since the new legislation provides for extensive contractual rules, one must wait and see if conflicts will be defused by such negotiations and contract solutions. The demands of both sides are, of course, very high.

Conflicts arise inevitably in the case of hydropower dams if compulsory resettlements are necessary, and the State and companies want to enforce them. The local population was always obedient under the control and command system (e.g. in the case of Nam Ngum), but with the assistance of international environmental and human rights groups, the conflicts surrounding the planned dam projects will doubtless become intensified. Clear regulations for (environmental) impact assessment and the allocation of responsibilities for this absolutely necessary.

A further area of conflict is the unresolved restitution of dispossessed land. The path of these conflicts is complicated as well:

- Dispossessed families demand their land back from the State, both in court and out of court. The demands are made more difficult when the property is valuable since high functionaries now often live in the houses, and each case becomes a political issue.
- Resolutions out of court attempted with negotiation and compromise in ad hoc land committees have so far proved to unsuccessful.
- New conflicts arise within the family because those who fled accuse those who remained of not having carried out their custodianship responsibly and of misappropriation.?
- Conflicts the widely dispersed family clans about which strategies are to be used for restitution and the future use of the land. Of course, these last mentioned internal quarrels weaken this negotiating position vis-à-vis the State.

Thus all parties involved in Laos have tried so far to resolve conflicts at all levels outside the formal court system where possible, for it is well-known that the system does not always function as an independent third party, that judges are not yet properly trained, and that court cases cost a lot of time and money and that it is not foreseeable what the outcome will be. On the other hand, customary procedures of negotiation and arbitration are familiar. Thus, the system of conflict resolution needs further development. As markets are more formalized, procedures for resolving disputes over land will be needed. Clear procedures and guidelines are lacking at present, and increase the risks and uncertainty when entering into land contracts (World Bank 1994:68).

There are many promising approaches in the new resource legislation for diffusing conflicts: customary rights are being recognized for the first time (village forest use), and the active participation of the population is planned in the process of demarcation. In cases of conflict, a graded system of negotiation and arbitration is planned through various committees before cases go to court. Of course, there is the danger that this complex system will not be extensively implemented locally and the actors involved will thus be out of their depth. In such a case, the resource conflicts will come to a head.

VI. Resource Tenure and the role of Donors and NGO's

1. Donors and NGO's: Catalysts or secret shadow governments?

The area of influence of intentional donors and NGO's on the development of resource tenure in the Lao PDR were and are very varied and have far-reaching effects. As in other countries in the process of transformation, donors
with their large pool of resources at their disposal have played a significant role in influencing the new resource-related legislation, the content of macro-economic policies including land policy and in reforming basic state institutions which are related to land administration and resource tenure issues (Myers 1995:45). With this, their dealings are at first concentrated at the central state level; their influence is continually growing at present nationwide with newly conceived technical projects at the regional and district levels.

Donors find themselves more and more in a state of tension rich in conflicts: after an extensive exertion of influence on the resource legislation, they often see themselves forced into a successful continuation of their policies, and having to replace the lacking implementation capacity of the State (or the lack of access to local self-help groups) with their own structures. They fill in gaps or weak points of their own accord, and run the risk of building up long-term parallel structures. They are only slowly able to make good their officially worded claim of strengthening the capacities of the Laotian Administration and the personal responsibility of the objective groups. Unclear framework conditions of their work create increasing donor-internal voting and co-ordination problems that bind a growing part of personnel and financial means.

From time to time, international donors have functioned as a "shadow government" in that they replace lacking concept and personnel experts within the Laotian State so as to channel the wave of external funding in the sectors, and to create minimal standards for an implementation and monitoring of the application of funds, above all in the area of resources management (Kaosa-ard et al 1995). With hindsight, this first phase of transformation between 1986 and the beginning of the 90's has been judged very critically by the donors: on the one hand, the necessity for massive, technical, staff and financial support of the transformation process is undisputed; on the other hand, a lack of national framework planning, impractical legislation and weak, incompetent organizations for the uncoordinated dissemination of multiple donor initiatives have led to unnecessary double financing, paternalistic behavior on the part of the donors towards the Lao partners, and at times to massive internal co-ordination problems.

Especially the increasing domination of a small externally dependent State through models, procedures and through ideology of the donors formed the starting point of a very critical dispute between the internationally working NGO's and donor policy. As examples, attention must be drawn to the following: the initially unreflectedly carried over model of the private ownership of land as the central precondition for market-economy structures and for "development", the ignoring of indigenous institutions in property questions and project and programme approaches with a top-down approach.

The NGO's working internationally have organized their work starting at the local level in accordance with their often narrow objectives and intervention levels. NGO's have had solid and sometimes very successful influence on the process of reformation of the statutory resource legislation and the land administration, especially in Laos. This has been possible since smaller, bilateral functioning NGO's have also built up topic-specific networks and action alliances alongside their specific objectives and procedures, have appeared outwardly united (e.g. in the dispute over customary rights) and have purposely included the expertise of international environmental NGO's (IUCN, WWF, Forest Peoples).

In view of the success of the NGO's, development cooperation in Laos will encompass a greater spectrum of actors and bring new challenges in coordination and conflict arbitration: between donors and the State, between the NGO's and the State, and between donors and NGO's.

2. Multilateral Donors

A differentiation must be made between two groups of multilateral donors which directly deal with resource tenure issues with regard to their objectives, structures, and above all the sphere of influence of their commitment in Laos: the international development banks as World Bank (WB) and the International Monetary Fund (IMF), the Asian Development Bank (ADB), as well as the sub-organisations of the UN, like the FAO or the UNDP.

World Bank

The World Bank and the IMF have guided and driven on the process of economic transformation in Laos. Price and trade liberalization policies in goods and factor markets as well as the liberalization of domestic and foreign trade have been introduced since 1986. In view of rapidly rising inflation and deficit financing associated with large wage increases in the public sector, they are enforcing decisive stabilization measures in conjunction with a comprehensive structural adjustment programme (Pham 1994). A part of this far-reaching programme were the structural reform measures with the reform of public enterprise and the privatization programme as well as the rebuilding-up of a legal and regulatory framework. A small portion of the multiple activities of the World Bank are thus touched on here.

As the most potent donor in Laos, the World Bank has carried out its vision of a private land tenure regime on a large scale in a multi-layered scheme, and has thus also influenced the strategies of all other multi- and bilateral
donors, i.e. they have also partially restricted and controlled them.

- The first step of the Bank was to act primarily at the national level in interplay with the IMF through the conditioning of foreign aid, with the objective of creating a liberal, entrepreneur-friendly legal framework, and to advise the Ministries in the formulation of new laws through policy (Schneider/El-Erian 1994).

- The second step was concentrated as of about 1993 on the implementation and dissemination of the formulated land policy and land legislation. Here in particular the concentration was on land titling in urban and peri-urban areas as well as on the agro-forestry sector. This took place through the planning of projects and programmes, the technical implementation was mostly in conjunction with bilateral donors who had proven themselves to be both competent and experienced in either Laos or Thailand (AusAid, Finida).

- In order to secure the consolidation of their own success in the setting up of the framework legislation, e.g. through the FOMACOP Project, the World Bank had to go a parallel third step under pressure from the NGO's and other donors. It partially takes on the basic criticism (customary rights, top-down approach), makes it appear to be a matter of her own concern and acts on its own initiative ("Order on Customary Rights"). Thus it takes some of the wind out of the critics' sails and presents itself as capable of taking criticism and being able to learn. Independent of how one judges the quality of the "reform of her reform", one must admit that the bank has a great capacity for adaptability and being able to react quickly.

Parallel to this specific land tenure related objective, the bank will also have a direct influence in the future on the various decrees concerning land tenure in a land law through its coordinating function in legislation, for instance via the Ministry of Finance. The same applies for the acceleration of the process of legislation for the Forest and Water Law.

Asian Development Bank

The Asian Development Bank has committed itself to the forestry sector through the institutional strengthening of the Dep. of Forestry and its "ADB Plantation Forestry Project". Its objective is to promote plantation tree planting by enterprises and farmers (Dep. of Forestry 1995a:19). Since a comprehensive understanding of the current legislation for land and tree tenure is indispensable for a sustainable plantation development, the project delivers background material about the current legislation to the staff of the Dep. of Forestry, the Provincial Forestry Service and other stakeholders involved in development in the Lao PDR (Dep. of Forestry 1995b). The first step was a detailed analysis of Decree 186; the paper about the far more complex Decree 169 is being awaited with great suspense. So far this paper is only available in English so that there is the danger of actors at the province and local level not being able to use it in all cases.

Food and Agriculture Organisation (FAO)

As in other countries in the process of transformation, the FAO had already begun in good time after the beginning of the market-oriented reforms in 1991 to actively support the Laotian State with the setting up of a new legal and regulatory framework. The first thing was to commission the make of an inventory of available land, forest and water related legislation in the confines of technical cooperation and to make it public (Bouderbala & Mekouar 1992, Nanni 1992, 199_).

In the meantime, the documents have been overtaken by a number of new decrees and laws and in part are now only of historical value. However, they fulfilled an important function in helping donors, politicians and investors to orient themselves concerning the legal framework conditions, to plan a rational donor policy, and to find starting points for legal reforms. The ADB has, as has been shown above, taken over comparable activities for the current valid forest legislation, and has taken it further.

Together with the UNDP, the FAO has extended the technical co-operation in the area of land tenure, and has begun a project "...d'aider le Gouvernement de la RDP Lao...à formuler un document de base et des orientations politiques portant sur une utilisation durable des ressources foncières dans le secteur agricole, au profit de la petite paysannerie" (Groppo et al. 1995). In so doing, the FAO closes a serious gap in that it 1) diverted attention from the forest and agro-forestry sector to the land tenure in intensively used irrigated agriculture, and 2) made empirical studies where it analyses the land tenure situation of small farmers though case studies and demonstrates the consequences for sustainable resource management. Even if the available study is only the first step and does not permit a generalization, it does at least signal the character for further studies. It can stimulate the consciences of politicians, planners and donors where the deficits so far in the planning of tenure conditions for sustainable development in rice producing agriculture are concerned, and can also stimulate a stronger diversification of donor activities beyond forestry.

United Nations Development Programme (UNDP)

The UNDP is financing at least two schemes in which land tenure and resource legislation are the center of focus.
In addition to co-financing the above-mentioned project for "Politique de Régularisation Foncière pour une Agriculture Durable en RDP Lao", the UNDP has also submitted a "Legal Project" to the Ministry of Justice. It is supposed to serve as a "clearing bureau" in the legislation process, to bundle drafts for the Ministries, to update and document the state of the available legislation (and in Laotian, too!), but as well to obtain as extensive expertise as possible from the Third Side and to create discussion forums. Instruments for this are seminars, workshops and further training functions. At the forefront of the projects, several workshops have been organized for the planned Land Law, and foreign consultants have been invited. It is still to early to be able to evaluate the effectiveness of this project for the acceleration and improved coherence of the legislation.

3. Bilateral Donors

Of the bilateral donors, above all SIDA, FINIDA, GTZ and AusAid are working to implement the legal and regulatory framework related to resource tenure and to help to create land tenure security. Rather than focusing on how to reform existing macro-level policy in order to modify the existing legal framework and to improve tenure security, they are working in the area of technical cooperation and do not in general question the existing framework of land policy and administration.

Exceptions to this rule do however exist for two reasons: firstly, AusAid and FINIDA operate as implementation agencies for World Bank projects and are thus extended arms of this organization which have comprehensively helped to influence the legal framework. Secondly, the administrative structures in Laos certainly allow individual projects to gain influence on the legislation, for instance about awareness creation with regard to existing problems through workshops and other lobby work in the ministries. Three organizations will be presented in more detail:

The Swedish International Development Agency (SIDA): Swedish support for the Lao forestry sector dates back to 1977 (Dep. of Forestry 1995a:37), so that the Swedish development cooperation probably has the longest experience in the country and the most trusted relationship to the Lao authorities. The current phase of the Lao-Swedish Forestry Programme (LSFP) focuses, amongst other things, on institutional strengthening and human resource development, increasing awareness and knowledge of forest resources and their implications for policy development, the development of sustainable forest management and utilization of forest resources and applying results from model building in rural development villages within pilot districts.

In order to implement successfully land use planning based on the allocation, forest protection and conservation, the stabilization of shifting cultivation, the provision of credit as well as joint forest management at the village level (LSFP 1995), the programme naturally has influence over the Department of Forestry on the process of legislation. It has determinedly - in the tradition of Nordic countries - called for bottom-up approaches and participatory elements. It appears that those responsible for the programme have overtaken the function as mediators in the case of blockages or conflicts between donors or between donors and the State because of their acceptance both by other donors and the State.

The Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ): of the 17 schemes of GTZ in Laos, at least four are directly touched by the development of land/resource tenure. The NAWACOP Project and the Forestry College in Dong Dok are directly assigned to the Department of Forestry and work within the set legal and regulatory framework.

Land/resource tenure issues are of central importance for the NAWACOP Project, since the goal of the project is to lay the foundations of a sustainable cultivation of natural resources in the watershed of Nam Ngum, to develop income alternatives for the target group and to make a contribution to the development of an international strategy for the management of the watershed. The scheme for the promotion of forest education in Dong Dok must continuously adapt curricula of the BSc course to the quickly changing forestry legislation and pass on new developments to the multiplicators who are being trained.

But through lobby work in "their" divisions, via donor co-ordination meetings in the Dep. of Forestry, through workshops and awareness creation, they are also in the position to have an influence - within limits at least - on the forest, water, land and environmental legislation. The NAWACOP Project, facing of a lack of sources, has obtained for the present a comprehensive overview of the current land tenure and use rights of forests and forest land in the project region (Gaston 1995a,b). In the next step it is working on general suggestions with regard to improvements in the land allocation and management procedures at different levels in Xieng Khouang Province. Following procedures for implementation in Luang Prabang and Sayaburi provinces, it is developing papers and formats on improved land zoning and allocation in view of increasing people's participation towards communal resource management.

Persistent and tenacious policy advice and awareness creation in the Ministries and Government, workshops, and training courses (together with DSE) with regard to a national strategy for watershed management (Klemm 1995) has resulted in the incorporation into the most recent Water Law.
The FINIDA supports a systematic implementation of the current policy reform in the forest sector with the "Forest Management and Conservation Project" (FOMACOP) in partial programmes for forest policy consolidation, building up an incentive system for sustainable forest conservation, forest management and forest use. It is conducting a new phase of the transformation process in so far as the success of the new legislation ought to be secured long-term through the application of a coherent forest policy. With that, the FINIDA is faced with the challenge of testing the strictly market-based incentives approach of the World Bank in a pilot form and of putting it into action.

There is still a deficit of the coordination of guidelines, objectives, instruments and activities between the donors. Exchanging information is more often than not a matter of coincidence. However, the more Laotian institutions arise out of the transformation process, newly formed and strengthened, the greater the chance of them forcing donors into a consistent policy. This generally encompasses valid rules for the implementation and the avoidance of solo efforts and parallel structures in giving advice and legal instruction at the local level. However, the Lao State is currently hardly in the position to identify the various approaches and the guidelines of the donors, to evaluate them and to add their own emphasis. In the medium term, a far greater flexibility is necessary amongst donors through which they strengthen Laos' ability to be able to deal and cooperate with them and thus to make previous approaches in part superfluous.

4. Non-Governmental Organizations (NGO's)

International non-governmental organizations and smaller Laotian NGO's have been performing important humanitarian work since the country was opened up, above all for the rural population, for the returning refugees and other disadvantaged groups. The majority of the 40 NGO's currently registered in the directory of NGO's dedicate themselves primarily to community development in rural areas, health care, education or emergency and relief measures, including the care of returning refugees (Directory 1994). As in other countries, the NGO's in Laos are slowly re-orienting themselves from the provision of humanitarian assistance to longer-term development projects (Myers 1995:49), now that a part of the acute consequences of the war have been overcome and food situation has been stabilized.

While both Vietnam and Cambodia have important NGO's working in the environmental arena, only a few of the NGO's working in Laos explicitly take care of problems of resource tenure or concentrate on the implementation of resource-related legislation (Kaosa-ard et al. 1995) By encouraging women, the demonstration of gender-related constraints on development or sustainable rural development, NGO's have also been more and more confronted in recent years with the challenges of future resource tenure regimes, and have taken a stand through concerted undertakings. Important impulses still come from the large international NGO's which critically comment on environmental questions, human rights and special gender issues in Laos.

The motives of increasingly taking a stand on land tenure problems and suing for tenure security strongly resemble those which were identified in countries in the process of transformation in Africa (Myers 1995:49): ambiguities in the new land legislation for local users, weak implementation capacities of the state deriving from a scarcity of human and financial resources, a lack of transparency in the registration and land titling procedures up to now, the marginalisation of customary regulations and authorities, the returning influence of women on land allocation and decision on land use, continuing authoritarian top-down approaches in rural development efforts without securing the participation of those who are affected locally.

A decisive impulse for the involvement of NGO's in land tenure issues came from the international NGO's at the beginning of the 90's, these NGO's having very critically commented on Laotian forest policy, the planned major projects of the World Bank and its partner as well as the expected logging activities. The correspondence shows that the dispute with the Laotian State was very hard in its contents, but very polite and binding in its form so that dialogue was initiated between the parties: "...It is important to note how welcome it is that the Lao PDR is engaged in extensive consultations with NGO's in the development of its forest policy" (World Rainforest Movement 1992:1).

Externally, apart from this dialogue, locally working NGO's were one of the few sources which were able to feed in sophisticated reports about the living conditions of the people in the remote villages into the political discussion. They brought up land conflicts which arose around refugees returning to the Mekong plain or arose as a result of internal migration, they pointed out the traditionally strong property rights and powers of decision of women in the Lao-Lum society, emphasized the strong position of the village committees in resource allocation and the arbitration of conflicts.

The culture of public debate about controversial land tenure issues was further developed in 1995 by a group of NGO's which demanded the stronger inclusion of customary rights into the resource-related legislation in an open letter to the Department of Forestry. With the appropriation of expertise, improved internal co-ordination, information networks and the strengthening of the negotiating position through the outward appearance of local NGOs became an important actor in the tenure debate which can no longer be ignored as the reaction of the World Bank has shown in recent years.
In a further thrust the NGO’s are pushing for a rigorously applied and comprehensive environmental impact assessment (Wildlife Fund Thailand 1994:14). Environmental issues are also inevitably always tenure issues where the conversion of production forests into protected areas, the prevention of expulsion of local populations for dam projects and the improvement of communal resource management are concerned. Through environmental protection, the emphasis on the objectives of Agenda 21 and the upholding of human rights, land tenure is the focus of permanent external “monitoring” or control from outside. This triggers off permanent conflicts and tension and is considered as neo-colonial interference by government officials, but it also has the function of a custodianship for the securing of property rights for smallholders, forest users, women and ethnic minorities, etc.

Alongside the public, moderately worded opinion, the criticism from NGO’s, especially of the Land Titling Programme in internal statements, is much sharper. The weak points of the programme all too clearly and plausibly referred to, and ought to serve the evaluation teams and the donors as a handout. The criticism of the alliances between international and bilateral donors (World Bank/Finida) is also clear and hard: 1) the massive amount of money of major projects relevant to land tenure cannot be invested in view of the lack of implementation expertise. Under the pressure of their own success donors set up their own heteronomous structures. 2) NGO’s are very cautious if they suspect that the interests of private entrepreneurs are hiding behind the commitment of individual donors, as in the case of FINIDA where NGO activists see the interests of Finnish timber companies and they call the programme a "blueprint for commercial logging" (quoted from Kaosa-ard et al. 1995:67). Such an undifferentiated, general criticism of major projects specifically, and the philosophy of the World Bank in general, discredits some NGO’s and their representatives and pushes them away to the edge of the debate.

Limitations on the work and the areas of influence of the NGO’s in the area of land tenure in Laos exist, of course, in that they have not so far been able to directly influence either the legislation or its implementation. While this is not what most of them want (in view of their own objectives), there are other potential spheres of influence in Laos which have not yet been taken advantage of. In contrast to Cambodia (Kirk 1996) or Mozambique (Myers 1995), there is still a lack of activities in the area of legal assistance for individuals or villages who feel themselves unjustly dealt with by hydropower projects or logging activities, in the support of women to fight for their land, and in the further training of judges of the lowest court of appeal and of lawyers.

VII. Recommendations for Future Development Cooperation

1. Specific Requirements for Countries in the Process of Transformation

It is not a priority objective of this study to work out detailed recommendations for the next steps of the reform of resource tenure regimes and the future shape of the land policy in Laos alone. Laos is seen rather more as prototypical for other countries in the process of transformation: there are lessons to be learned in this case. Therefore, particular weight must be given to the starting points and the instruments of development cooperation for resource tenure

- through which the transformation process can be secured long-term and can be made irreversible, and

- which can react to the future challenges which are already recognizable.

After the initial euphoria, the sobriety regarding social consequences, and marginalisation or international dependency has set restorative process in action with which - above all in Africa - the "hands of time" are supposed to be turned back, and reforms of property rights are to be withdrawn or no longer pursued (cf. Benin, Ethiopia, Eritrea, Niger). Other countries, such as Cambodia, are in danger of being controlled by new Mafia structures in view of the immense problems for enforcing human rights, the rule of law and the participation of people in the process of development.

Land tenure arrangements belong to a society’s most intimate institutions. They are the result of historical, social, economic and political development of a country or a society. Influences from outside can be dangerous (Kuhnen 1996:59). With that, development co-operation in the field of land/resource tenure development also always gives external support to changes of internal political, legal and administrative framework conditions in partner countries. It directly influences five criteria which the German Ministry for Development Cooperation has identified as the most important internal framework conditions which are to be specifically supported:

- respect of human rights, by paying regard in this case to customary rights, gender issues, property rights of ethnic minorities, etc.,

- legal security, for instance through the improvement of tenure security, and the strengthening of incentives for long-term investment;
participation of the population in the political process through the empowerment of local users, participatory land management, etc.;

market-oriented institutional environment through the setting up of a resource-related legal framework and new contractual arrangements and

development-oriented state action through the implementation of the reformed resource tenure legal framework or the divestiture of state property.

German development cooperation distinguishes between countries in which a) the government suppresses or hinders the will of the people through arbitrary measures (violations of human rights, the suppression of the freedom of opinion, etc.), and b) those in which the sociopolitical reform process is underway or is introduced by the government (from top down) as in most countries in the process of transformation. Lao PDR does not fit into either of these categories since the economic reform process is indeed scarcely irreversible, the sociopolitical reform process is being rather timidly introduced from top down, but freedom of opinion remains limited and there are individual cases of human rights violations.

The possible fields of action for development co-operation are accordingly very complex:

- The political dialogue must be centered around extending the space for a socio-political reform discussion concerning resource tenure-related problems and to sustain the discussion in the future; this has to be done by sharing the workload with NGO's or political foundations;
- a check must be made as to whether or not official policy advice should be striven for in a further step which would further support the reforms of the institutional environment.
- involve actors at all levels with training programmes and the dissemination of information so as to build up a long-term investment - to familiarize the actors with concepts such as self-administration, subsidiarity, market solutions, etc.
- to strengthen the position of groups so far disadvantaged with regard to the access and use of resources through programmes of financial and technical co-operation;
- at the same time, to strengthen specifically the dialogue between theses groups (rural population, shifting cultivators, women, etc.), their official representatives (in self-help groups, associations) and state officials;
- to build up the efficiency of the State administration with regard to land questions, and
- also to establish legal security and the rule of law at long-term in the case of conflicts.

With that, all regional levels will come into contact with: the national level in the policy dialogue and in the case of further development of the legal framework, the regional level, in case of further development of land titling or co-ordination of land use planning, the local level in the strengthening of the self-organisations of stakeholders, the promotion of participation in land management and conflict resolution. In addition, sector-specific (irrigated agriculture, shifting cultivation) and sector-encompassing approaches (land markets) are required.

2. Possible Fields of Action

Policy Dialogue

German Development Cooperation possesses specific comparative advantages in the policy dialogue with respect future development of resource tenure in transformation countries which have been used too little until now. A policy dialogue which is primarily carried out at the national level can contribute to the following, whereby the steps should be carried out sequentially in part:

- Increase of awareness of existing and emerging resource tenure problems

In formally centrally organized States, projects of development co-operation must partially take over a function as mediator and catalyst between the central bureaucracy and the local level: through the explanation of deficits in the implementation of the legislation, over newly arising law-free spaces in juxtaposition of statutory and customary law, over erupting land conflicts, new escape strategies to circumvent new regulations, etc.
Existing round tables and working groups between government administration and donors (as in the Dep. of Forestry in Vientiane) pick up weak points, keep talking about them, and work out common resolution suggestions for other Ministries or the legislator.

In presenting the results of short-term consultancies or empirical research projects, a public forum should always be offered at which a broad circle of interested experts, politicians donors and NGO representatives can take part. An open culture of discussion must first be built up again in many countries in transformation; many points of inhibition and fears about contact are broken down by dealing with central technical questions.

- Analysis of comparable experience in neighboring countries

The reciprocal state of knowledge about tenure development in neighboring Laos and Cambodia is slight, but the interest in additional information is great. German development co-operation is seen by partners as an important informant about possible "third ways" for land tenure reforms, it is credited with expert competence, and the "Grundbuch"-system is being striven for as a long-term objective. It is also looked upon as an "honest broker", which does not offer models form the old colonial powers and does not represent any extreme ideological positions (private versus state property).

International workshops on technical problems (cadastre as multi-purpose land information system) or policy workshops at the level of Departments ought to be promoted as far as there is a demand for them. In Laos especially, the positive and negative effects of land titling in Thailand have only been inadequately taken on.

The exchange of information with countries in a comparable situation can help and can strengthen the position of critical administrators, researchers and politicians in the respective countries. If they are invited as resource persons and taken notice of internationally, this will strengthen their positions in their own countries without donors being accused of exerting a direct external sphere of influence.

- Clarification on future problem areas

Development cooperation ought to build up the dialogue of partner countries with those countries which already have far-reaching experience in market-oriented resource tenure regimes. In the near future in Laos there will be a need for negotiating in the areas which so far have scarcely been taken notice of by the political debate (the list is incomplete):

- the growing importance of rental arrangements in rural areas,
- landlessness
- intensification of agricultural production and repercussion on land tenure,
- co-ordination of different systems of land registration,
- splitting up of plots and the need for land consolidation,
- land as collateral and increasing power of agricultural banks
- conversion of agricultural land and conflicts over appropriate land use.
- Initiation of broad discussions on the future of land and agriculture

If partners have recognized negative effects of market-oriented land policy in other countries, development cooperation is confronted with great challenges. It ought to prepare the national actors for the approaching changes and must prevent the government from restricting the freedom of transfer of land, imposing land ceilings, and restricting the activities of foreign investors, etc. through political advice in the face of the expected social consequences.

New policy orientations, which must be brought into the discussion so as to secure the process of transformation, are:

- limited access to land for a growing population in future and the need to concentrate on the access to income (multiple employment, part-time farming)
- sectoral and structural change, including the growth of rural towns with new uses for land (commerce, service, tourism, etc.)
Demonstration of alternative policy options

In countries which are at the beginning of the process of transformation the following policy alternatives should be discussed intensively:

- Demonstration of the whole spectrum of property rights regimes. As well long-term, inheritable rights of utilization give tenure security and permit investment.

- Comprehensive, but expensive nation-wide land titling based on the Torrens System versus less formal, but compatible approaches in rural areas.

- Basic framework laws with only a few clear principles (hierarchy of legal instruments) versus very detailed laws, and regulations as legal substitutes.

- Critical discussion on the minimum level and the implication of decentralization and the reasons for a strong central government with the will and the ability to implement and enforce policy

Informal Influence on the Process of Legislation and Implementation

The experience of donor-sponsored programmes and projects in Laos have shown that committed groups of officials in the line ministries who are supported technically and morally by external donors can most certainly improve the resource tenure-related legislation (e.g. watershed management in the new water law). Workshops, consultancies and research deliver important arguments and can influence the forming of opinions.

- Acting as Lawyers for Disadvantaged Groups

International donors must fulfill a long-term task here which will never be completed: they are lawyers for smallholders, animal holders, women and migrants who are only able to form themselves into a pressure groups with difficulty. In addition, donors must permanently defend the benefits of greater freedom of the decision making in land management at the local level against the encompassing influence of the central state.

- Strengthening Dialogue between International Donors

Internal political dialogue is highly necessary in Laos in order to be able to avoid future parallel work and clashes, and also to be able to achieve central goal setting outwardly with one voice. Since resource tenure is an ideologically burdening and very sensitive subject, it cannot be assumed that an agreement on guiding philosophies and principles can be achieved (role of private property, restriction on land markets, etc.)

- The build up of International Networks.

This ought to encompass the exchange of information (via e-mail or other networks), the discussion of acute problem areas in (electronic) conferences with the relevant national and international decisions makers and research institutions as well as the setting up of data banks for bibliographies, experts, etc.

Training and Research

In Laos, as in other neighboring countries, there is a drastic shortage of competent and well-trained staff from the district level up to the national level. This will also be a bottleneck in the coming years in the implementation of new legislation. In all training measures, it must be tested whether a small country like Laos has the necessary capacity for being able to organize country-specific further training, or whether regional-specific collaboration should be striven for.

- Short and medium-term courses and/or training on the job in the country or overseas ought to be offered to Lao civil servants from the DoF, DOLHM, STENO, CPAWM, etc. at the national and province levels in close cooperation with other multi- and bilateral donors. The contents of these courses should be determined by the partners and the projects: including belong land use planning methods and tools, participatory village development planning, GIS, methods for organization development, etc.

- This advanced training can be carried out in part within the framework of already existing programmes by the German Foundation for International Development (watershed programmes) or through other organizations in the Asian region (Land Reform Training Institute Taoyua/Taiwan); new modules must be worked out specifically.

- The advanced training of judges at all levels is highly necessary so as to enlarge the rule of law in land
tenure conflicts. Technical development co-operation ought in any case create framework conditions and work with volunteer services, experienced lawyers from the country as well as the political foundations.

- In the imminent setting up of the forestry and agricultural schools and colleges in the country and the development of their curricula, attention should be paid to the fact that land and resource tenure as well as the interaction between tenure and agricultural/forestry and rural development takes up a much greater amount of space in curriculum planning as was previously thought. Only in this way can future generations of bureaucrats also be convinced of the continuation of the adopted path of reform. In concrete terms, this means that external experts in resource tenure development ought to be included in curricula development systematically as well.

- At the same time, it should be tested how adequate existing textbooks and existing didactic material are, and whether new ones should be written.

- Since a Master's Degree, which is relevant to land tenure, cannot be obtained in most disciplines in Laos at present, support for above-average candidates for further training is necessary so as to thoroughly train future leading local experts. Accordingly, qualified Master's Courses in neighboring countries, or in Europe, Australia or the USA must be identified which specifically deal with land tenure-related issues.

- The same goes for the minority of top experts who are undertaking further academic education (PhD) in order to be able to take over principle tasks in economics and administration, or to be active in research and teaching in their country.

- In view of the research capacity in the country which is at present in an inadequate state, the current programmes and projects will also have the task of supporting applied, empirical research: for one thing for the improvement of their own data bases, and for another, as an investment in future counterparts and competent Lao consultants. Besides natural sciences, the up to now neglected fields of applied (agro-)economics, socio-economics, sociology and anthropology should be specifically supported.

Finally it should be mentioned that the further training of staff at the district level should be carried out primarily in the country itself in co-operation with other projects and programmes.

Specific Initiatives

1. In Rural Areas

The concrete steps for securing property rights to land in rural areas, the respect of customary rights, and securing the participation of the local population in land demarcation, registration and land use planning, etc. encompass a broad field of application within different project/programme types: regional rural development, buffer zone management, refugee support, (re-)settlement programmes, watershed management, environmental action planning, food security programmes as well as all approaches aimed at increasing agricultural and forestry production through technical innovations, etc.

- Strengthening the Implementation Capacity for resource-related legislation

Reforms of the legal framework which are as broadly imposed as they are in Laos with new responsibilities at the local level, require enormous effort in their implementation: pilot phases for testing implementation instruments, development of manuals, staff training, co-ordination between various departments which are involved in land demarcation, resource management contracts, etc. The success of technical projects stands or falls with the successful implementation of the new regulations.

- Assessment of existing property rights regimes in a project area

It is necessary for the success of a project that all existing property rights systems in the context of a village, a watershed, or a district etc. are known so as to be able to implement specifically effective instruments.

Agricultural extension projects require this information in order to be able to estimate the investment behaviour of potential adopters. Regional rural development and (re-)settlement programmes for planning infrastructure and land use planning, and all programmes which are dependent on the communal co-operative action of the population for the protection of resources (buffer zone, watershed management, water user associations), are likewise dependent on pre-information. This list could be extended.

Stronger co-operation with NGO's, capable locally working officials, and research organisations which have experience with empirical socio-economic research locally are all also necessary.
Securing property rights of actors involved

The assessment will show in many ways that ownership rights and temporary rights of utilisation are only inadequately protected, that groups are disadvantaged in the access to resources, and that conflicts exist either latently or openly. It will help greatly in Laos if the registration of land (for tax purposes) is supported at all levels, so as to achieve clarity in the legal position at the village level.

Here as well the instruments and resolution approaches are dependant on the very property rights regime which should be secured. Titling/registration can only be a solution for intensively used land; the viable solutions for communal property or the overcoming of open access are often more complicated.

- Integrating customary rights as an integral element of project/programme work

As in other countries, the legal position especially for customary rights is still also unclear and uncertain. However, for project/programmes, there are numerous positive signs of the legislator, to be seen customary rights actively as an integral element of project planning and to look upon itself as the lawyer for the users of these rights.

- Improved dissemination of the content of the new resource related legislation

The daily work in the villages and districts should be more strongly used for overcoming the historically developed rift between the Central State and the local level as well as a measure for building up trust, so as to impart the ideas for participatory resource tenure development, land use planning, for contacts for family plantations which are contained in the Decrees 169, 186, etc. more strongly.

- Encouragement of the participatory making of legal instruments

In pilot schemes, impractical implementation instructions or ordinances could be reformed in a following step together with the local population, or drafts for new regulations could be developed which are looked upon by the population as being urgently required.

2. In urban and peri-urban areas

If development co-operation in countries in transformation undertakes new activities in the area of land titling, analyses should be carried out locally - taken up by existing projects - of the dynamics of land markets, both for the sale of land as well as for temporary transfers (leasehold, mortgaging). This would also make the rules for land transfer clear as well as the importance of sales to non-farmers and for non-agricultural use.

Work like this provides valuable information about actors involved, pressure groups, even violence and thus the political dimension of titling. It makes it easier to estimate the ex-ante success of projects as well as of expected blockages and risks. It must be decided from case to case if this should happen via short-term consultancies, applied research or activities within running projects.

3. Organizational Development within Agencies of Development Cooperation

Agencies of development cooperation have not in every case been optimally prepared for a far-reaching commitment in the area of resource tenure development:

- Overcoming administrative barriers

Resource tenure development as it has been introduced in Laos and must be continued requires approaches which strongly cross over divisional borders (water, forest, agricultural land, cropping, livestock, logging and fisheries activities etc.). It must be tested whether or not technical (and financial) co-operation in Germany has been optimally prepared. Stronger permeability and communication between technical divisions are necessary, as well as work in comprehensive topic areas, co-ordination of the activities of various divisions, which in part undertake identical analyses and implement identical instruments.

- Political embeddedness of primarily technical approaches

The development of land markets, the building up of land titling systems and the nation-wide registration of land in particular have strong political and social implications. Thus it must be more strongly put into people's consciences that technical solutions alone (such as the building up of a cadastre system) can never be put into practice released from the political environment and can be used as a plaything with by the more powerful interest groups (who
primarily serves titling, who is (at first) excluded, which land distribution will be cemented, which additional actors, such as speculators and Mafia-like groupings, will appear?

This is to be taken into account as regards project planning, its execution and final evaluation, for instance in that administration and social scientists or economists alongside land survey engineers are intensively involved in the project cycle. In addition to this, it must be tested each time how far activities can be developed out of assumptions ("land policy remains unchanged") so as to politically buffer projects of technical and financial cooperation locally.

- Joint approaches between technical and financial cooperation

German development cooperation is highly competent in the setting up of cadastres, land use planning, and the financing of titling programmes, etc. But so far it has not been sufficiently represented in financially strong donors consortiums (a positive example is the PGRN in Bénin), which could have a stronger indirect influence on national land policy through policy dialogue. The conditions of success and risks (e.g. dependence on the respective "donor philosophy") for a more active participation in the invitation for tenders of the international financial donors (World Bank, ADB) for taking over the technical execution should be tested; just as well the stronger cooperation between German technical and financial development cooperation in the area of resource tenure development should be tested.

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