

3 PART 3: RECOMMENDATIONS

3.1 Policy & Legal Framework

In September 2004, Lao PDR ministers and provincial governors met to discuss the management of forest and timber business, including illegal logging and timber trade. They also discussed the promotion of tree plantations and approved the draft Prime Minister's Order on forest management and timber trade for 2004-2005. This order defines rules for logging, wood exportation and the level of forestry management by local and central authorities in order to increase efficiency of the use of forest resources (Vientiane Times, 27 September 2004).

The past half-century has seen considerable turmoil concerning policies and laws on land occupancy and use rights, particularly in China, Lao PDR, Vietnam and Cambodia. The terms and conditions under which land is occupied has a significant bearing on the long-term agricultural productivity of the land, and on the sustainability of the cultivation practices employed by the land users. In the countries afore-mentioned, the situation concerning access to paddy land has been more or less resolved and has reverted to follow traditional practices whereunder the tiller retains the rights to use the land and to pass on that use right by inheritance to one or more descendants. In Lao PDR, the actual ownership is vested in the State, but the occupant is the owner of structures and crops on the land. Full ownership of lowland agricultural lands by landlords and individual farmers is the rule in Thailand, rather than the exception. Certificated land can be bought and sold and capital gains accrued. Landlordism has become a problem, exacerbating social disparity in some rural areas and reducing overall agricultural productivity. The Royal Thai Government is currently embarking on a land reform programme, redistributing land holdings in excess of 50 rai (about 7 ha) from former landlords to poor farmers.

Most of the agricultural land in Lao PDR is still held through traditional and customary rights but in the sedentary agricultural areas, these rights are held on a family basis, or on a village territory basis in shifting cultivation areas. Village Forest lands are held communally, while the State maintains ownership of all other forests. These forests are maintained for Watershed Protection, Biodiversity Conservation or State Production Forestry. In the latter, logging or plantation concessions may be granted to private sector corporations. In China since 1980, in an effort to regenerate forest cover on catchments of hydropower and irrigation schemes, numerous land tenure systems for non-State forestlands have been experimented with. Reportedly (Liu Dachang, 2001), individual family ownership of farm forests with State licensing of timber-cutting and selling rights has been most effective in rehabilitating the integrity of the river catchments.

In Lao PDR there are ongoing initiatives for urban and peri-urban land titling (under the World Bank-supported Land Titling Project) and rural land occupancy Certification (under the Landuse and Forest Zonation and Allocation Programme, operated by the Department of Landuse Planning and Land Development in the Office of the Prime Minister). A major rationale for the Land Titling Programme (which provides for full ownership of urban and peri-urban properties and the structures thereupon) is to provide a basis for increasing tax revenues from property sales. At this stage, the land allocation programme in the rural areas provides only temporary land occupancy certification (3 years viability). Much work is still required to link these with the sustainability of landuse in sloping catchment areas prior to the issuance of full title certification.

In Lao PDR, the Law on Water and Water Resources of 1996 is intended to assure sustainable use of water. Water use is categorised into small, medium and large-scale use. The legislation prescribes the rights and permit procedures for the different categories of water use. Development of a large-scale user projects will require the preparation of an EIA, particularly if the project is for hydropower generation or mining, with private sector involvement. Similar laws and provisions apply in Thailand, Cambodia and Vietnam. The policy and legal provisions concerning EIA are much less specific in the case of irrigation projects however and environmental awareness within the respective Departments of Irrigation is a recent and not yet thoroughgoing phenomenon.

With respect to hydropower development in the Lao PDR, the basic legal framework comprises the Environmental Protection Law and legislation covering forestry, land allocation, water use and resettlement. Neither in Lao PDR, nor in the downstream riparian countries, does the Environmental Law adequately cover the use or abuse of irrigation systems, or of sloping lands in catchment areas. Over the past 15 years, GoL has been supported by numerous technical assistance projects in the elaboration of policies and the promulgation of laws, decrees and guidelines, which address the standards of the international donor/lender organisations.

Estimates for increased water consumption show a need for three times the existing supply by 2025 when up to 80 million people may inhabit the Lower Mekong Basin, up from 55 million at present. Given the fact that the Basin's resources are finite, and already existing populations are expanding onto fragile habitats and marginal lands (at the expense of both terrestrial and aquatic biodiversity), there is cause for all riparian countries to follow China's example of policy-driven population growth limitation. If atmospheric and aquatic pollution is taken into account, continued urbanisation and industrialisation is not an environmentally compliant answer to ever-expanding human population.